

despite having the lowest associated impact on small entities.

Through this final rule, NMFS implements the summer flounder, scup, and black sea bass TALs contained in Alternative 1 (summer flounder, 29.48 million lb (13,372 mt); scup, 20.0 million lb (9,072 mt); and black sea bass, 3.6 million lb (1,633 mt)), the Council's preferred alternatives, which consist of the quota alternatives that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. Relative to 2010, the 2011 commercial quotas and recreational harvest measures in this action would result in the following TAL changes for the commercial and recreational sectors:

- (1) A 33.2-percent increase for summer flounder;
- (2) A 41.7-percent increase for scup; and
- (3) A 2.7-percent reduction for black sea bass.

The respective TALs contained in Alternative 1 for all three species were selected because they satisfy NMFS's obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the TALs for all three species all have very low likelihoods of causing overfishing to occur in 2011. TAL Alternative 1 for summer flounder is also projected to provide the necessary continued stock rebuilding to achieve the  $SSB_{MSY}$  by the rebuilding period ending date of January 1, 2013.

The revenue decreases associated with allocating a portion of available catch to the RSA program are expected to be minimal, and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program can be sold, and the profits used to offset the costs of research. As such, total gross revenues to the industry are not expected to decrease substantially, if at all, as a result of this final rule authorizing RSA for 2011.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take

to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: <http://www.nero.noaa.gov>.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 101116568-0608-01]

RIN 0648-BA42

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule, request for comments.

**SUMMARY:** NMFS issues this interim final rule to amend the cost recovery regulations implementing the Tilefish Fishery Management Plan (FMP) to require the first year cost-recovery fee percentage to be calculated based on the best estimate of the actual costs associated with the management, data collection and analysis, and enforcement of the individual fishing quota (IFQ) allocation program (not to exceed 3 percent), rather than to be set at the statutory maximum 3 percent of the ex-vessel value of tilefish landings.

**DATES:** This rule is effective December 28, 2010. Written comments must be received no later than 5 p.m. eastern standard time, on January 27, 2011.

**ADDRESSES:** This document and other supporting material are available online at <http://www.regulations.gov> or <http://www.nero.nmfs.gov>. You may submit comments, identified by RIN number 0648-BA42, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.

- **Fax:** (978) 281-9135, Attn: Christopher Biegel.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Tilefish Cost-Recovery Regulatory Amendment."

**Instructions:** All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

#### **FOR FURTHER INFORMATION CONTACT:**

Christopher Biegel, Fishery Management Specialist, phone (978) 281-9112.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Limited access privilege programs (LAPPs) are a management tool authorized under section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that allow a permit holder exclusive harvest of a portion of the total allowable catch of a fishery, but does not confer any right or title to any fish before the fish is harvested by the holder. An IFQ is a form of LAPP where the harvest permit is issued to an individual. Cost-recovery for LAPPs is mandated by section 304(d)(2) of the Magnuson-Stevens Act, which states that "the Secretary \* \* \* shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program."

The tilefish fishery is managed by the Mid-Atlantic Fishery Management Council (Council) through the Tilefish FMP. The final rule implementing Amendment 1 to the FMP (74 FR 42580, August 24, 2009) established an IFQ program which included the required cost-recovery provisions.

Fees are collected to recover the costs associated with management, data

collection and analysis, and enforcement of IFQ programs. Amendment 1 provides that NMFS shall determine a cost-recovery fee percentage for the tilefish fishery (not to exceed the statutory maximum of 3 percent) by calculating all the expenditures that are directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program for each fee period (calendar year) and then dividing that total by the total ex-vessel value of all tilefish landings from dealer reports for the same time period. The resulting percentage is used to calculate the individual tilefish IFQ fees for each fee period. This fee calculation has not been changed from the method detailed in the final rule implementing Amendment 1. Tilefish IFQ allocation permit holders are responsible for paying the fee, which is based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit.

When cost-recovery fees have been assessed, IFQ allocation permit holders have 45 days from the date of the bill to submit payment to NMFS. Cost-recovery payments are made electronically via the Federal Web portal, <http://www.pay.gov>. Electronic payment options include payment via a credit card, or via direct automated clearing house (ACH) withdrawal from a designated checking account.

This interim final rule changes the language of the tilefish cost recovery regulations at 50 CFR 648.291(h)(1) pertaining to the first year cost-recovery billing period fee. NMFS initially set the fee at a statutory maximum of 3 percent of the total ex-vessel value of all landings under each permanent IFQ allocation permit, including landings of allocation that is leased for the first year, with any over charges to be credited against cost-recovery fees assessed in subsequent years. NMFS implemented this provision because NMFS expected that the information necessary to calculate the actual recoverable costs would not be available prior to sending out recovery fee statements for the first fee period. Using recently available information on the amount of actual costs incurred and the value of landings to date during the first year of the IFQ program, NMFS has estimated that using a fee of 3 percent could over charge tilefish allocation holders as much as 10 times their actual fee liability. This would constitute an unnecessary and excessive fee to the affected industry and, as such, would be contrary to the public interest. The new regulations require the first year fee percentage to be calculated based on the best estimate of the actual costs

associated with the management, data collection and analysis, and enforcement of the IFQ allocation program (not to exceed 3 percent).

#### Classification

The Administrator, North East Region, NMFS, determined that the FMP cost-recovery regulatory amendment is necessary for the conservation and management of the tilefish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be unnecessary, impracticable, and contrary to the public interest. This amendment includes revisions that make only minor, non-substantive changes in order to avoid imposing unnecessarily high fees on tilefish IFQ holders. The regulatory provisions that this rule modify had set the cost-recovery fee for the first year at 3 percent of landed value of tilefish which is the maximum allowed by the Magnuson-Stevens Act. NMFS established this fee because NMFS expected that the information necessary to calculate the actual fee for the first year would be unavailable as the cost-recovery fee bills must be mailed near the end of the fee period. However, the information necessary to calculate the actual cost-recovery fee has recently become available, so NMFS has been able make the calculation before the end of the fee period. The actual fees calculated were significantly less than the 3 percent of landed value of tilefish. Also, although fee payment overages are credited against cost-recovery fees assessed in subsequent years, there is a concern that some fishermen may leave the fishery and not be able to recover their fee payment overage as there is no mechanism in the regulations that allows for such a repayment. Soliciting prior public comment on, and delaying the effective date of this rule, could prevent NMFS from billing IFQ holders for the actual cost-recovery fees and impose an unnecessary burden on the industry.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the reasons given above.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 21, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.291, paragraph (h)(1) is revised to read as follows:

#### § 648.291 Individual fishing quota.

\* \* \* \* \*

(h) \* \* \*

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program.* The Regional Administrator shall determine the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period to derive a percentage. IFQ allocation permit holders will be assessed a fee based on this percentage times the total ex-vessel value of all landings under their permanent IFQ allocation permit, including landings of allocation that is leased. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ Allocation permit holder. If NMFS determines that the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program exceed 3 percent of the total value of tilefish landings, only 3 percent are recoverable.

(i) *Valuation of IFQ Allocation.* The 3-percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed by an IFQ allocation holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which contain the price per pound at the time of dealer purchase.

(ii) [Reserved]

\* \* \* \* \*

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