

therefore is not considered small. The other mining operation is owned by Georgia-Pacific; however, the company operates on Arizona State Land Department managed land where no Federal nexus exists, and all potential impacts resulting from mallow conservation are considered to be baseline impacts. The remaining forecast impacts are anticipated to be conducted for road and highway maintenance projects. Little to no impact to third parties is expected associated with these activities. For this reason, there would be little to no impacts to small entities as a result of critical habitat designation for Gierisch mallow. Please refer to Appendix A of the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted

entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We conclude that future consultations are unlikely to involve a third party. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Gierisch mallow, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. In accordance with the Tenth Circuit, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Gierisch mallow. Our preliminary determination is that the designation of critical habitat for the Gierisch mallow would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

#### Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 18, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013-07122 Filed 3-27-13; 8:45 am]

**BILLING CODE 4310-55-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120416018-3159-01]

RIN 0648-BC05

#### Fisheries of the Northeastern United States; Tilefish Fishery Management Plan; Regulatory Amendment, Corrections, and Clarifications

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Tilefish Individual Fishing Quota Program was implemented at the start of the 2010 fishing year (November 1, 2009). After 3 years of operation, it has become apparent that some of the implementing regulations need to be clarified, corrected, or modified to better reflect the intent of Tilefish Amendment 1 and clarify certain regulatory text that may cause confusion or otherwise appear inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action would make corrections, clarifications, and regulatory modifications to the regulations that implemented the Tilefish Individual Fishing Quota Program. These changes would not affect the fishing operation of any vessel.

**DATES:** Written comments must be received no later than 5 p.m. eastern standard time, on April 29, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2012-0247, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2012-0247](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2012-0247), click the "Comment Now!" icon,

complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Tilefish Correction Proposed Rule."

- *Fax:* (978) 281-9135, Attn: Douglas Potts.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Potts, Fishery Policy Analyst, phone (978) 281-9341, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 24, 2009, NMFS published a final rule (74 FR 42580) to implement provisions of Amendment 1 to the Tilefish Fishery Management Plan (FMP) (Tilefish Amendment 1). Tilefish Amendment 1 included a new structure for managing the commercial tilefish fishery using an individual fishing quota (IFQ) system. The new tilefish IFQ program became effective on November 1, 2009. After 3 years of operation, it has become apparent that some of the implementing regulations need to be clarified, corrected, or modified to better reflect the intent of Tilefish Amendment 1.

In most IFQ programs, there is a clear distinction between quota share (QS) and quota pounds (QP). QS is the percentage of the total annual allocation of fish to the IFQ program that is held by an allocation holder from year to year (e.g., 2 percent of the total allocation). QP refers to the quota, expressed in weight of fish, that is issued annually to each IFQ allocation permit holder based on the QS they hold and the total amount of fish allocated to the IFQ program (e.g., 2-percent QS  $\times$  1,000,000 lb (453,592 kg) = 20,000 lb (9,072 kg)

QP). The current regulations regarding the tilefish IFQ program use the term "allocation" to refer to both QS and QP in the tilefish IFQ fishery. In some instances, this lack of distinction can cause confusion, particularly when discussing transfers of QS and QP. For example, QP transfers are temporary (i.e., a lease), effective for the duration of the current fishing year, while QS transfers are permanent and affect the calculation of QP that would be allocated to an IFQ allocation permit holder in the following fishing year. Accordingly, an IFQ allocation permit holder could potentially conduct either or both types of transfer in a given year, not necessarily to the same individuals. In order to clarify the difference between QS and QP, this rule would adopt, throughout the tilefish IFQ regulations, the terms "IFQ quota share" and "annual IFQ allocation" to refer to QS and QP, respectively, rather than using the term "allocation" to refer to both QS and QP.

The use of the term "allocation" to refer to both QS and QP also resulted in the current regulations referring to "permanent allocation" and allocation "ownership," as another way to distinguish QS from QP. These terms could be confusing to the reader, because the MSA specifically states that harvest authorizations under a limited access privilege program (such as the tilefish IFQ program) do not create any right, title, or interest to or in any fish prior to harvest and may be revoked, limited, or modified at any time (16 U.S.C. 1853a(b)). Therefore, allocations are not permanent and are not "owned" by the allocation holder. This rule would modify language throughout the regulation that might appear to be inconsistent with the MSA by removing references to IFQ allocation being "owned" or "permanent," and, where appropriate, would replace such references with references to these allocations being held by or allocated to tilefish IFQ allocation permit holders.

Tilefish Amendment 1 specifies that U.S. citizens, permanent resident aliens, or corporations eligible to own a U.S. Coast Guard documented vessel are eligible to hold a tilefish IFQ allocation permit for both QS and QP. However, the current regulatory language regarding who can hold a tilefish IFQ allocation permit only makes reference to the section of the U.S. Code pertaining to ownership of a U.S. Coast Guard documented vessel. Because permanent resident aliens cannot own a U.S. Coast Guard documented vessel, their ability to hold a tilefish IFQ allocation permit is not addressed by the current regulations. Therefore, this

action would consolidate the number of cross references to the relevant section of the U.S. Code into a single cross reference in a new subparagraph at § 648.294(a)(3) and add language to specifically allow permanent resident aliens to hold a tilefish IFQ allocation permit. This action would also correct an error in the cross reference to the U.S. Code.

The regulations require vessel owners or operators in the tilefish IFQ program to report landings of tilefish within 48 hours of landing, through the Interactive Voice Response (IVR) system. This action would specify in § 648.7(b)(2)(ii) that such reports may be submitted through the IVR system, or through another system approved by the Regional Administrator. This would allow for the future development of an online reporting option that could be more convenient for the fishing industry and less prone to data entry errors.

When the tilefish IFQ system was first implemented, a deadline of September 1 was set for all transfers of both QS (permanent transfer) and QP (temporary transfer) allocations. The September 1 deadline was intended to allow time for NMFS to process any permanent transfers of QS before QP allocations needed to be issued prior to the start of the next fishing year on November 1. This action proposes to maintain the September 1 deadline for submitting an application for a QS transfer, but would revise § 648.294(e)(4) to allow a deadline of October 10 for a QP transfer. This additional time would allow IFQ allocation permit holders who exceed their available QP by a small amount near the end of the fishing year to lease more QP to cover the potential overage and avoid a deduction in their QP allocation the following year. It would also allow IFQ allocation permit holders who have more QP than they intend to harvest to gain some value by leasing it out. This additional time for transferring annual QP could lead to fuller and more efficient utilization of the available QP.

Section 304(d) of the MSA requires NMFS to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program. This action proposes regulatory changes to the process of determining and collecting IFQ cost recovery fees under the authority granted the Secretary in section 305(d) of the MSA. The Tilefish Amendment 1 document and the August 24, 2009, final rule were both written before the tilefish IFQ cost recovery fee year had been established and before the system for billing and collecting payments had been fully developed. Consequently, the

regulations do not fully reflect the current practices of the cost recovery system that developed after the initial stages of the IFQ cost recovery process. This action proposes regulatory changes to § 648.294(h) to reconcile the regulatory language with the intent of Tilefish Amendment 1 to ensure clear and efficient collection of the required cost-recovery fees, and the current cost recovery fee collection system. For example, the current regulations require the Regional Administrator to deny renewal of an IFQ allocation permit if the cost recovery fee is not paid by the initial due date. However, since the fee year that was established after the regulations were written does not align with the fishing year, permits are issued 3 months before cost recovery bills are calculated, making denial of permit renewal a potentially ineffective deterrent against non-payment. Therefore, the proposed action would authorize the Regional Administrator to suspend an IFQ allocation permit, prohibiting landing or leasing QP or transferring QS, if full payment of the cost recovery fee is not made by the initial due date, rather than waiting until the next fishing year to deny the renewal of the IFQ allocation permit. Under the current regulations, a fisherman may submit additional documentation to support a different fee amount, but it is not clear when or how such documents must be submitted, or if this represents a formal appeal of the fee amount. NMFS has provided more information about how to appeal an IFQ cost recovery fee as part of the annual IFQ cost recovery fee bill that is sent to IFQ allocation permit holders. The proposed changes would clarify in the regulation that an IFQ allocation permit holder may appeal the fee amount, and, if an appeal is made, the permit holder may request a letter of authorization to allow continued fishing for tilefish while the appeal is pending. These changes would bring the regulatory text in line with the intent of Tilefish Amendment 1 to ensure clear and efficient collection of the required cost-recovery fees and the current cost recovery fee system as described in the cost recovery bills, and provide greater detail on the consequences of failing to pay or appeal the fee before the due date, as well as the process by which an IFQ allocation permit holder could appeal the cost recovery fee. In addition, the action would reorganize § 648.294(h) to improve the section's clarity by using additional subparagraphs identified by headers to separate different aspects of the cost recovery fee collection process,

including Payment Responsibility, IFQ Fee Determination, Fee Payment Procedure, Payment Compliance, Appeal of the IFQ Fee Amount, and Annual Cost Recovery Report.

The action also would correct a regulatory cross reference pertaining to the Research Set-Aside program through revisions to 648.292(e).

#### Classification

Pursuant to section 304(b)(1)(A) of the MSA, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification is as follows:

The proposed measures would only affect vessels holding an active Federal open-access tilefish permit and fishing under the tilefish IFQ program. In 2011, there were 12 Federal open-access tilefish vessels that were authorized to land tilefish under the tilefish IFQ program. All of these vessels fall within the SBA's definition of a small business, because none of the vessels exceeds the \$4 million gross revenue threshold for commercial harvesters. No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The purpose of this action is to clarify, correct, and/or modify certain provisions of the tilefish IFQ program's implementing regulations to clarify potentially confusing regulatory language and to better reflect the intent of the Tilefish Amendment 1 and current practices under the tilefish IFQ program. Specifically, if implemented, this action would (1) clarify potentially confusing regulatory language regarding the difference between QS and QP or that such allocations are "owned" or "permanent;" (2) specify in the regulations that tilefish landings may be reported through the IVR system, or through another system approved by the Regional Administrator, to allow for the future development of an online reporting option; (3) correct cross references within the regulations pertaining to the Research Set-Aside

Program; (4) revise regulatory language and cross references in the regulations to clarify that permanent resident aliens are allowed to hold a tilefish IFQ allocation permit, as specified in Tilefish Amendment 1; (5) modify the regulations to extend the deadline for QP transfers from September 1 to October 10 of each fishing year; and (6) modify the regulations governing the cost recovery fee collection system to reflect current fee collection practices and the intent of Tilefish Amendment 1 to ensure clear and efficient collection of the required cost-recovery fees.

Proposed changes (1) through (4) would make only minor, non-substantive changes to the regulations to clarify confusing regulatory language, provide for potential alternative tilefish landing reporting methods, and correct cross references in the regulations. These proposed changes would not change the operating practices in the fishery or cause a net change to fishing effort, participation in the fishery, or increases in fishery expenses. Thus, these proposed changes are not expected to have a significant (if any) economic impact on the tilefish IFQ allocation permit holders.

Proposed changes (5) and (6), which would make minor substantive changes to the regulations, are not expected to have a significant economic impact on the affected entities. The extended deadline for QP transfers until October 10 of each fishing year is not expected to significantly impact the amount of QP transferred nor the number of QP transfer requests. The intent of the modification is to allow IFQ allocation permit holders additional time to lease small amounts of QP to cover minor exceedances of their QP allocations prior to the beginning of the next fishing year on November 1. Likewise, the extended deadline for QP transfers would allow for similarly small gains in value by leasing surplus QP. For example, by the September 1 deadline in fishing year 2012, 7 of the 12 tilefish IFQ allocation permit holders requested a total of 5 QP transfers, in which 13 percent of the total allowable landings were transferred (254,379 lbs of the total allowable landings of 1,895,250 lbs). While the additional time for QP transfers could result in more transfer requests, the amount of QP that IFQ allocation permit holders have requested to transfer by September 1 in the past would not be expected to increase significantly by extending the deadline to October 10. Accordingly, extending the QP transfer deadline is not expected to cause a significant net change to fishing effort, participation in the fishery, or increases in fishery

expenses, and therefore is expected to have a minor economic impact on the tilefish IFQ allocation permit holders.

Similarly, the proposed changes to the cost recovery fee regulations in § 648.294(h) are not expected to have a significant economic impact on the affected entities. The action's proposed changes would allow the Regional Administrator to suspend an IFQ allocation permit during the current fishing year for failure to pay the cost recovery fee, rather than not renewing the permit for the following fishing year. The proposed changes also would provide greater detail on the consequences of failing to pay or appeal the fee before the due date, as well as clarify the right of and process for appealing the cost recovery fee. Under the appeals process, an IFQ allocation permit holder may request a letter of authorization to allow continued fishing for tilefish while an appeal is pending. Therefore, because an IFQ allocation permit holder may appeal the cost recovery fee and request such a letter to continue fishing during that appeal, the proposed change is not expected to have a significant impact on the affected entities. Furthermore, during the time the Tilefish IFQ Program has been in existence, the cost recovery fees have been significantly less than the maximum 3 percent fee allowed under the MSA (the cost recovery fee percentages for 2010 and 2011 were 0.424 percent and 0.3836 percent, respectively), and no IFQ allocation permit holder has failed to pay his/her cost recovery fee on time or appealed a fee amount. These proposed changes to the cost recovery fee regulations would reconcile the regulatory language with the intent of Tilefish Amendment 1 to ensure clear and efficient collection of the required cost-recovery fees, as well as with the current cost recovery fee collection system as communicated to IFQ allocation permit holders in the annual cost recovery bills. The action also would improve the clarity of § 648.294(h) by adding additional subparagraphs identified by headers to separate different aspects of the cost recovery fee collection system. All of these proposed changes to § 648.294(h) would provide greater clarity to the affected entities of the cost recovery fee system, but are not expected to cause a net change to fishing effort, participation in the fishery, or increases in fishery expenses. Thus the proposed changes are not expected to result in a significant economic impact on the IFQ allocation permit holders.

Therefore, because this action proposes to make minor corrections, clarifications, and modifications to the

regulations, and because no significant net change in fishing effort, participation in the fishery, or fishery expenses is expected, this action will not have a significant economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.2, the definitions of “Interest in an IFQ allocation” and “Lessee” are revised to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Interest in an IFQ allocation* means: An allocation of quota share or annual IFQ allocation held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

\* \* \* \* \*

*Lessee* means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) A person or entity eligible to hold tilefish IFQ allocation, who receives temporarily transferred tilefish IFQ allocation, as specified at § 648.294(e)(1).

\* \* \* \* \*

■ 3. In § 648.7, paragraph (b)(2)(ii) is revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel fishing under a tilefish IFQ allocation permit issued under this part, as described in § 648.294(a), must submit a tilefish catch report by using the IVR system, or other reporting system approved by the Regional Administrator, within 48 hours after returning to port and offloading. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; trip during which tilefish are caught; pounds landed; VTR pre-printed serial number; and the Federal dealer number for the dealer who purchases the tilefish. This reporting requirement does not exempt the owner or operator from other applicable reporting requirements of this section.

\* \* \* \* \*

■ 4. In § 648.292, paragraph (e) is revised to read as follows:

**§ 648.292 Tilefish specifications.**

\* \* \* \* \*

(e) *Research quota.* See § 648.22(g).

■ 5. Section 648.294 is revised to read as follows:

**§ 648.294 Individual fishing quota (IFQ) program.**

(a) *IFQ allocation permits.* (1) After adjustments for incidental catch, research set-asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ quota share holders who held IFQ quota share as of September 1 of a given fishing year. Allocations shall be made by applying the IFQ quota share percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ allocation of 0.5 lb (0.23 kg) or smaller created by this calculation shall be rounded downward to the nearest whole number, and amounts of IFQ allocation greater than 0.5 lb (0.23 kg) shall be rounded upward to the nearest whole number, so that annual IFQ allocations are specified in whole pounds.

(2) Allocations shall be issued in the form of an annual IFQ allocation permit. The IFQ allocation permit shall specify the quota share percentage held by the IFQ allocation permit holder and the total pounds of tilefish that the IFQ allocation permit holder is authorized to harvest.

(3) In order to be eligible hold tilefish IFQ allocation, an individual must be a

U.S. citizen or permanent resident alien. Businesses or other entities that wish to hold allocation must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(b) *Application*—(1) *General*. Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ quota shares and IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications*.

Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) *Issuance*. Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold IFQ quota share as of September 1 of the current fishing year. From September 1 through October 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) *Duration*. An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

(4) *IFQ Vessel*. All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder who wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS. This notification must include the vessel name and permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land tilefish pursuant to the IFQ allocation permit. A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ tilefish.

(5) *Alteration*. An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(6) *Replacement*. The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(7) *Transfer*. The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the IFQ quota share or the annual IFQ allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(8) *Abandonment or voluntary relinquishment*. Any IFQ allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c)–(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the initial holder of an annual IFQ allocation may transfer the entire annual IFQ allocation, or a portion of the annual IFQ allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section. Annual IFQ allocation transfers shall be effective only for the fishing year in which the transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The

Regional Administrator has final approval authority for all annual IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred annual IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, and subject to final approval by the Regional Administrator, a holder of IFQ quota share may permanently transfer the entire IFQ quota share allocation, or a portion of the IFQ quota share allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section.

(3) *IFQ allocation transfer restrictions*.

(i) If annual IFQ allocation is temporarily transferred to any eligible person or entity, it may not be transferred again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ allocation or quota share will not be approved by the Regional Administrator if it would result in an entity holding, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) For the purpose of calculating the appropriate IFQ cost recovery fee, if the holder of an IFQ allocation leases additional IFQ allocation, the quantity and value of landings made after the date the lease is approved by the Regional Administrator are attributed to the transferred quota before being attributed to the allocation holder's base IFQ allocation, if any exists. In the event of multiple leases, landings would be attributed to the leased allocations in the order the leases were approved by the Regional Administrator. As described in paragraph (h) of this section, a tilefish IFQ quota share allocation holder shall incur a cost recovery fee, based on the value of landings of tilefish authorized under the allocation holder's annual tilefish IFQ allocation, including allocation that is leased to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer*. Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast

Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by September 1 to be processed for the current fishing year. Applications for annual IFQ allocation transfers must be received by October 10 to be processed for the current fishing year.

(i) *Application information requirements.* An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; a declaration of the recipient's eligibility to receive IFQ allocation; the amount of allocation or quota share to be transferred; and a declaration, by IFQ allocation permit number, of all the IFQ allocations in which the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land the IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ catch share and/or IFQ allocation is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ catch share or IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned, pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in the transferee having a tilefish IFQ allocation or holding IFQ quota share that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section; the transferor or transferee is delinquent in payment of an IFQ cost recovery fee as described in paragraph

(h)(4) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* If an IFQ allocation is exceeded, including by amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, the amount of the overage will be deducted from the IFQ shareholder's allocation in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction.* No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery.* As required under section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the Regional Administrator shall collect a fee to recover the actual costs directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program.

(1) *Payment responsibility.* Each tilefish IFQ allocation permit holder with quota share shall incur a cost recovery fee annually, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation, including allocation that he/she leases to another IFQ allocation permit holder. The tilefish IFQ allocation permit holder is responsible for paying the fee assessed by NMFS.

(2) *IFQ fee determination.* The tilefish IFQ cost recovery billing period runs annually from January 1 through December 31.

(i) *Determination of total recoverable costs.* The Regional Administrator shall determine the actual costs directly associated with the management, data collection and analysis, and enforcement of the tilefish IFQ program incurred by NMFS during the cost recovery billing period.

(ii) *Calculating fee percentage.* The recoverable costs determined by the Regional Administrator will be divided by the total ex-vessel value of all tilefish IFQ landings during the cost recovery billing period to derive a fee percentage. Each IFQ allocation permit holder with quota share will be assessed a fee based on the fee percentage multiplied by the total ex-vessel value of all landings under his/her IFQ allocation permit, including landings of allocation that was leased to another IFQ allocation permit holder.

(A) The ex-vessel value for each pound of tilefish landed by an IFQ allocation permit holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(B) The cost recovery fee percentage shall not exceed 3 percent of the total value of tilefish landings, as required under section 304(d)(2)(B) of the Magnuson-Stevens Act.

(3) *Fee payment procedure.* NMFS will create an annual IFQ allocation bill for each cost recovery billing period and provide it to IFQ allocation permit holder with quota share. The bill will include information regarding the amount and value of IFQ allocation landed during the prior cost recovery billing period, and the associated cost recovery fees.

(i) *Payment due date.* An IFQ allocation permit holder who has incurred a cost recovery fee must pay the fee to NMFS within 45 days of the date of the bill.

(ii) *Payment submission method.* Cost recovery payments shall be made electronically via the Federal Web portal, [www.pay.gov](http://www.pay.gov), or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be

authorized by Regional Administrator if he/she determines that electronic payment is not practicable.

(4) *Payment compliance.* If an IFQ allocation permit holder does not submit full payment by the due date described in paragraph (h)(3)(i) of this section, the Regional Administrator may:

(i) At any time thereafter, notify the IFQ allocation permit holder in writing that his/her IFQ allocation permit is suspended, thereby prohibiting landings of tilefish above the incidental limit, as specified at § 648.295.

(ii) Disapprove any transfer of annual tilefish allocation or quota share to or from the IFQ allocation permit holder as described in paragraph (e)(4)(iii) of this section, until such time as the amount due is paid.

(iii) Deny renewal of the IFQ allocation permit if it had not yet been issued for the current year, or deny renewal of the IFQ allocation permit for the following year.

(iv) If the fee amount is not appealed, the Regional Administrator may issue a Final Administrative Determination (FAD) as described in paragraph (h)(5) of this section, based upon available information.

(5) *Appeal of IFQ fee amount.* If a tilefish IFQ allocation permit holder disagrees with the fee amount determined by NMFS, he/she may appeal the cost recovery bill.

(i) IFQ fee appeals must be submitted to NMFS in writing before the due date described in paragraph (h)(3)(i) of this section.

(ii) The IFQ allocation permit holder shall have the burden of demonstrating

that the fee amount calculated by NMFS is incorrect and what the correct amount is.

(iii) If a request to appeal is submitted on time, the Regional Administrator shall notify the IFQ allocation permit holder in writing, acknowledging the appeal and providing 30 days to submit any additional relevant documentation supporting an alternative fee amount.

(iv) While the IFQ fee is under appeal and the tilefish IFQ allocation permit is suspended, as described in paragraph (h)(4) of this section, the IFQ allocation permit holder may request a Letter of Authorization to fish until the appeal is concluded. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued.

(v) *Final Administrative Determination (FAD).* Based on a review of available information, including any documentation submitted by the IFQ allocation permit holder in support of the appropriateness of a different fee amount, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that an alternate fee amount is correct. This determination shall be in set forth in a FAD that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce.

(A) The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD.

(B) If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall:

(1) Refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection; and

(2) Cancel any Letter of Authorization to fish that had been issued during the appeal.

(vi) If NMFS does not receive full payment of an IFQ cost recovery fee prior to the end of the cost recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit and any associated IFQ quota share shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(8) of this section.

(6) *Annual cost recovery report.* NMFS will publish annually a report on the status of the tilefish IFQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, enforcement, and data collection and analysis associated with the tilefish IFQ program during the prior cost recovery billing period, and other relevant information at the discretion of the Regional Administrator.

(i) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.*, future amendments or frameworks), but no less frequently than every 7 years.

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