

discontinuance proceedings by a date certain?

- Should the Board require potential offerors to make a financial responsibility showing before requiring carriers to provide financial information to those offerors?
- Should the definition of financial responsibility include the ability, based on the price reflected in an offer of financial assistance, to purchase and operate for at least two years a line being abandoned or to subsidize for one year service being abandoned or discontinued?
- Should the Board alter the process for carriers to provide required financial information to potential offerors, and if so, how?
- Should the Board require potential offerors to make an “earnest money” payment or escrow payment, or to obtain a bond? Key considerations include: Whether the payment or bond amount would be a fixed figure or established on a case by case basis; what method would be used in calculating or fixing the amount; when in the process an offeror would need to make a payment or obtain a bond; and whether (and under what circumstances) a waiver of such a requirement would be appropriate.
- Should the Board prohibit OFA filings by individuals or entities that have abused the Board’s processes or engaged in other deceitful or abusive behavior before the Board, and if so, what standards should the Board establish in making a prohibition determination?

Continuation of Rail Service

The Board has also adjudicated cases in which there has been controversy as to whether a party seeking to subsidize or acquire a line through the OFA process is doing so based on a genuine interest in and ability to preserve the line for rail service. *See, e.g., Consol. Rail Corp.—Aban. Exemption—in Hudson Cty., N.J.*, AB 167 (Sub-No. 1190X), slip op. at 5 (STB served May 17, 2010) (exempting line from OFA process despite OFA filing because offerors failed to show cause that there was a continued need for rail service outweighing other concerns); *Roaring Fork R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle, & Pitkin Cties., Colo.*, AB 547X (STB served May 21, 1999) (dismissing OFA because the record did not provide “some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service”). The Board’s regulations do not currently

address these situations; therefore, we ask parties for ideas on how the regulations could be modified to do so. In particular, we ask parties to comment on the following:

- Should the Board require that an offeror address whether there is a commercial need for rail service as demonstrated by support from shippers or receivers on the line or through other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible?
- Should the Board establish criteria and deadlines for carriers that want to file requests for exemptions from the OFA process?

Identity of the Offeror

Another issue the Board has encountered in OFA proceedings is confusion over the identity of the potential offeror. *See CSX Transp. Inc.—Aban. Exemption—in Allegany Cty., Md.*, AB 55 (Sub-No. 659X), slip op. at 1 n.2 (STB served April 24, 2008) (describing confusion over proper name and existence of entity that filed OFA in 2005 but may not have been a legal entity until 2007 or the correct legal entity to receive deed for rail line). In order to avoid such confusion in future proceedings, we ask the parties to comment on the following:

- Should the Board require multiple parties intending to submit a joint OFA to do so through a single legal entity, such as a corporation or partnership, to facilitate the financial responsibility determination and to clarify the party acquiring the common carrier obligation?
- Should the Board require an individual filing an OFA to provide his or her personal address?
- Should the Board require a private legal entity filing an OFA to provide the offeror’s exact legal name, the state under whose laws it is organized, and the address of its principal place of business?

Because this is an Advanced Notice of Proposed Rulemaking, the Board may not act on each item listed above, but we seek the public’s comment on these ideas, including how they could best be implemented, if appropriate. Parties are encouraged to be specific in commenting on these possible changes and in presenting ideas for other possible changes to the OFA process.

The requirements of section 603 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, (RFA) do not apply to this action because, at this stage, it is an ANPRM and not a “rule” as defined in section 601 of the RFA. Under the RFA,

however, the Board must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If adoption of any rule likely to result from this ANPRM could have a significant economic impact on a small entity within the meaning of the RFA, commenters should submit as part of their comments an explanation of how the business or organization falls within the definition of a small entity, and how and to what extent the commenter’s business or organization could be affected. Following review of the comments received in response to this ANPRM, if the Board promulgates a notice of proposed rulemaking regarding this matter, it will conduct the requisite analysis under the RFA.

It is ordered:

1. Initial comments are due by February 12, 2016.
2. Reply comments are due by March 14, 2016.
3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

Kenyatta Clay,
Clearance Clerk.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151204999–5999–01]

RIN 0648–BF45

Control Date for the Blueline Tilefish Fishery in Waters North of the Virginia/North Carolina Border

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: This document announces a control date that may limit or restrict access to the blueline tilefish fishery in Federal waters north of the Virginia/North Carolina border. This action is

necessary to inform fishery participants that we are considering future action. We intend for this document to promote awareness of possible future rulemaking, and discourage speculative entry into and/or investment in the Mid-Atlantic blueline tilefish fishery.

DATES: December 14, 2015, is established as the “control date” for the blueline tilefish fishery, and may be used as a reference date for future management measures related to the blueline tilefish fishery in Federal waters north of the Virginia/North Carolina border, consistent with applicable Federal laws and the Mid-Atlantic Fishery Management Council’s recommendations. Written comments must be received on or before February 12, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0139 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-2015-0139, 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, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Blueline Tilefish Control Date.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered. We may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, NMFS, 978–281–9341, or Christopher

M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 302–526–5255.

SUPPLEMENTARY INFORMATION: The fishery for blueline tilefish (*Caulolatilus microps*), also known as grey tilefish, in Federal waters north of the Virginia/North Carolina border has, until earlier this year, been unregulated, and historically had very low landings. Landings have increased in recent years. The fishery south of this line is managed by the South Atlantic Fishery Management Council as part of the Snapper-Grouper Fishery Management Plan (FMP).

In 2014, new restrictions on harvest in the South Atlantic led to a rapid, 20-fold increase in unregulated landings of blueline tilefish caught north of the Virginia/North Carolina border. This spike in landings prompted the Mid-Atlantic Fishery Management Council to request that we take emergency action to prevent long-term harm to the stock. On June 4, 2015, we published an emergency rule (80 FR 31864) to temporarily restrict harvest of this species in the Mid-Atlantic. Subsequently, the Mid-Atlantic Council initiated an amendment to the Golden Tilefish FMP to establish management measures for blueline tilefish within its jurisdiction with the intention of having new management measures in place before NMFS’s emergency rule authority would expire. This would avoid a return to an unregulated fishery.

Due to the limited time to implement new management measures, the Mid-Atlantic Council is not considering a limited access program in the current FMP amendment under development. However, the Mid-Atlantic Council has expressed interest in potentially developing such a program in a future action. At its October 2015 meeting, the Mid-Atlantic Council voted to request that we publish a control date in the **Federal Register** that may be used to affect future participation in all sectors of the blueline tilefish fishery in Federal waters. The Council’s discussions clarified that it is the Council’s intent that this control date apply to all forms of fishing that have caught and landed blueline tilefish, including: Commercial fishing vessels; party/charter vessels that take recreational anglers for hire; as well as private recreational vessels. However, NMFS has no current information that could be used to distinguish private angler participation

in this fishery before and after a control date. Therefore, such a control date would not provide meaningful notification or guidance to private recreational anglers.

Therefore, this notification establishes December 14, 2015, as a control date for potential use in determining historical or traditional participation for the commercial and for-hire recreational sectors of the blueline tilefish fishery. Establishing a control date does not commit us or the Council to develop any particular management program or criteria for participation in this fishery. We may choose a different control date or may choose a management program that does not make use of such a date. We may also choose to take no further action to control entry or access to the blueline tilefish fishery. Any future action we take will be pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, will be discussed at Council meetings, and will have additional Federal rulemaking, including opportunity for public comment.

This notification gives the public notice that interested commercial and for-hire blueline tilefish fishery participants should locate and preserve records that substantiate and verify their participation in the fishery, such as: Dealer purchase slips for commercial fishing trips; Fishing Vessel Trip Reports for both commercial and party/charter vessels; or any other relevant documents. There is no precedent in the Greater Atlantic Region for a limited access program that applies to party/charter or private recreational vessels. In light of the novelty of this aspect of the Council’s control date request, we encourage the public to comment on whether limited access for party/charter and private recreational anglers is needed in the blueline tilefish fishery, and, if so, what sort of qualification criteria might be considered by the Council. This notification and control date do not impose any legal obligations, requirements, or expectation.

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

Dated: December 8, 2015.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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