

For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: October 18, 2006.

**Ron Kreinzebeck,**

*Acting Regional Administrator, Region 10.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.060823223-6223-01; I.D. 072706B]

RIN 0648-AT63

#### 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:** Notice of withdrawal of proposed rule.

**SUMMARY:** NMFS withdraws the proposed rule published on September 6, 2006, which proposed an increase in the annual tilefish total allowable landings (TAL) for the remainder of the 10-year stock rebuilding period. Thus, the previously established annual tilefish TAL of 1.995 million lb (905 mt) remains in effect.

**DATES:** The withdrawal of the proposed rule to increase the total allowable landings for the tilefish fishery (71 FR 52519, September 6, 2006) is effective October 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, (978) 281-9220.

#### SUPPLEMENTARY INFORMATION:

##### Background

Regulations implementing the fishery management plan (FMP) for the tilefish fishery prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and N. The FMP (section 1.2.1.2) states that, after a "benchmark" stock assessment, conducted at a Northeast Fisheries Science Center (NEFSC) sponsored stock assessment workshop (SAW), and subsequent review by the stock assessment review committee (SARC), from which the biological

reference points could change, a change in the TAL may be warranted. The 41st SAW met in June 2005, assessed the tilefish stock, and concluded that the tilefish stock is not overfished and overfishing is not occurring. Fishing mortality in 2004 was estimated to be 87% of Fmsy, and total biomass in 2005 was estimated to be 72% of Bmsy, a level above that projected for 2005 in the 1998 assessment (59% of Bmsy). However, the SAW also concluded that, given the high variance associated with the terminal year estimates of 2004 F/Fmsy and 2005 B/Bmsy ratios, biomass projections could not be conducted, as these were considered too uncertain to form the basis for evaluating likely biomass recovery schedules relative to Bmsy under various TAL strategies.

As a result of the findings from the 41st SAW, the Council convened the Tilefish Monitoring Committee in April 2006 to consider the results of the stock assessment and to make recommendations to the Council's Tilefish Committee. Based on the Tilefish Monitoring Committee's recommendation that a slight increase in the TAL could be justified, the Council recommended to NMFS that the TAL be increased from 905 mt to 987 mt live (whole) weight ( a 9-percent increase), beginning with the fishing year that starts November 1, 2006. The Council also argued that an increase in the tilefish TAL is justified because the fishery has been operating at or near the proposed TAL level for several years as a result of an accounting error by which the quota was erroneously monitored by landed (gutted) weight instead of live (whole) weight, with no observed adverse consequences to the stock. A proposed rule soliciting public comment was published in the **Federal Register** on September 6, 2006 (71 FR 52519). The comment period ended on September 21, 2006.

##### Basis for Withdrawal

Although the Tilefish Monitoring Committee suggested that a small increase in the tilefish TAL would not jeopardize the recovery of the stock, the NEFSC raised several concerns about the lack of data used to reach these conclusions. Specifically, the strong 1999 year class is a primary determinant of the population's estimated intrinsic rate of increase. If this year class does not persist as expected, the stock assessment model could show a much lower estimate of the population's productivity at the next stock assessment workshop. In the 41st SAW stock assessment report there were eight specific sources of uncertainty noted, with two major sources of uncertainty,

that could impact the estimate of tilefish population estimates. The two major sources of uncertainty involved the catch per unit of effort measurement, which was not able to take into account changes in fishing practices or spatial distribution of tilefish, and the estimate of population biomass and size structure, since these estimates were derived from sparse length frequency data and fishery dependent data sources. These sources of uncertainty are due primarily to the fact that tilefish are rarely captured in the NEFSC bottom trawl surveys, resulting in full reliance on fishery dependent bottom longline data, for which only trip-level data are captured.

Based on this uncertainty in the 2005 stock assessment, and the fact that the next stock assessment for tilefish is not scheduled to be completed until at least late 2007, affording little time to make any necessary adjustments to the TAL if population productivity estimates prove to be lower than that given in the 2005 stock assessment, and given the 10-year rebuilding period ends in 2011, an increase in the tilefish TAL is not justified at this time. Thus, the TAL for 2007 will remain unchanged from the current level.

##### Comments and Responses

During the comment period on the proposed rule seven comments were received. Two comments were opposed to an increase in the TAL, and five comments supported the proposed increase in the TAL. Commenters included individual fishermen, the New York State Department of Environmental Conservation, the Montauk Tilefish Association, the New Bedford Seafood Consulting, and the general public.

*Comment 1:* Two comments were received opposing the increase in the tilefish TAL. One commenter did not offer a reason or justification for the opposition, just asking that the quota not be changed. A second comment opposed the increase in the tilefish TAL due to a lack of trust in fisheries data.

*Response:* Due to high scientific uncertainty in the 2005 tilefish stock assessment and the timing of the next stock assessment in relation to the end of the tilefish stock rebuilding period, NMFS is withdrawing the proposed rule. NMFS is concerned that there would be significant time to meet the FMP's rebuilding goal should the results of the most recent assessment be overly optimistic. Therefore the TAL will remain unchanged.

*Comment 2:* Five comments were received in favor of the increase in the tilefish TAL. In general all five

comments supported the increase based upon the Council's rationale that the tilefish fishery has been operating at or near the proposed TAL due to an accounting error, without any observed adverse consequences to the stock. Two commenters expressed the view that the proposed 9-percent increase in the TAL was a correction of miscommunication made during the early implementation of the FMP that eventually resulted in the TAL being effectively reduced by 9-percent in May 2005 when the accounting error was corrected (the 9-percent reduction in the TAL was the result of the mathematical conversion of the landed weight to whole weight for the purposes of monitoring the quota).

*Response:* Although NMFS acknowledges that there was miscommunication in the early implementation of the FMP regarding

the correct weight by which to monitor the quota, NMFS has the responsibility to correct the error to reflect what is specified in the FMP. It is clear, after discussions with both the Council and the NEFSC, that the annual TAL specified in the FMP is based on live (whole) fish weight. The proposed rule to increase the TAL, and effectively regain quota levels equivalent to that prior to May 2005, is not justified due to the high degree of scientific uncertainty in the 2005 tilefish stock assessment and the fact that the stock is not yet rebuilt.

As a result of the withdrawal of the aforementioned proposed rule, the tilefish TAL for FY 2007 and subsequent years of the rebuilding program will remain at 1.995 million lb (905 mt), unless superceded by additional rulemaking consistent with the

provisions of the FMP. The FMP dictates that the TAL be divided between the three limited access tilefish permit categories after the TAL is reduced by 5 percent to account for incidental tilefish landings (open-access Incidental permit category) as follows: Sixty-six percent (1,250,865 lb (466,875 kg)) to Full-time Tier 1; 15 percent (284,288 lb (106,108 kg)) to Full-time Tier 2; and 19 percent (360,098 lb (163,338 kg)) to Part-time vessels.

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

Dated: October 23, 2006.

**Samuel D. Rauch III,**

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

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