

national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions

of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 12, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20154 Filed 8-21-09; 8:45 am]

BILLING CODE 9110-9B-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 071220873-91153-02]

RIN 0648-AS25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 1 to the Tilefish Fishery Management Plan (FMP), developed by the Mid-Atlantic Fishery Management Council (Council). The approved measures address issues and problems that have been identified since the FMP was first implemented. These measures are intended to achieve the management objectives of the FMP, and implement an Individual Fishing Quota (IFQ) program.

DATES: Effective November 1, 2009, except for the amendments to 15 CFR 902.1(b), and 50 CFR 648.290 and 648.291, which are effective August 24, 2009.

ADDRESSES: A Final Environmental Impact Statement (FEIS) was prepared for Amendment 1 that describes the action and other alternatives considered and provides a thorough analysis of the impacts of the approved measures and alternatives. Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. A copy of the RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/>.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Policy Analyst, 978-281-9204.

SUPPLEMENTARY INFORMATION:

Background

In March 2004, the Mid-Atlantic Fishery Management Council (Council) began development of Amendment 1 to the FMP to evaluate alternatives for a limited access privilege program (LAPP) and other measures for limited access tilefish vessels. The Council held 17 public meetings on Amendment 1 between March 2004 and April 2008. After considering a wide range of issues, alternatives, and public input, the Council submitted a Draft Environmental Impact Statement (DEIS) for Amendment 1 to NMFS. The Notice

of Availability (NOA) for the DEIS published in the **Federal Register** on December 28, 2007 (72 FR 73798). Following the public comment period that ended February 11, 2008, the Council adopted Amendment 1 on April 10, 2008. The NOA for Amendment 1 was published on May 4, 2009 (74 FR 20448), with a comment period ending on July 6, 2009. A proposed rule for Amendment 1 was published on May 18, 2009 (74 FR 23147), with a comment period ending on July 2, 2009. On July 31, 2009, NMFS approved Amendment 1 on behalf of the Secretary of Commerce.

Amendment 1 was developed and adopted by the Council consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Amendment 1 management measures were developed by the Council to: (1) Implement an IFQ program; (2) establish IFQ transferability of ownership; (3) establish a cap on the acquisition of IFQ allocation (temporary and permanent); (4) address fees and cost-recovery; (5) establish flexibility to revise/adjust the IFQ program; (6) establish IFQ reporting requirements; (7) modify the Interactive Voice Response (IVR) reporting requirements; (8) require Charter/Party vessel permits, and recreational landing limits; (9) improve monitoring of tilefish commercial landings; (10) expand the list of management measures that can be adjusted via the framework adjustment process; (11) modify the Essential Fish Habitat (EFH) designation; (12) modify the habitat areas of particular concern (HAPC) designation; and (13) implement measures to reduce gear impacts on EFH within the Exclusive Economic Zone (EEZ). The IFQ program measures are intended to reduce overcapacity in the commercial fishery, and to eliminate, to the extent possible, problems associated with a derby-style fishery. Amendment 1 also created a tilefish Charter/Party permit, which will require reporting from owners or operators of vessels that take fishermen for hire. When the original FMP was implemented in 2001, the recreational component of the fishery was thought to be small. However, anecdotal evidence suggests that, in recent years, the recreational component of the fishery may have grown. The tilefish open access Charter/Party permit will provide NMFS with the ability to collect landings information on this component of the fishery in order to properly assess the health of the stock.

Approved Measures

Changes in the descriptions of the management measures from the proposed rule's descriptions are noted below. Changes in the regulatory text from the proposed rule are noted under "Changes from Proposed Rule to Final Rule" in the preamble of this final rule.

Institution of an IFQ Program in the Tilefish Fishery

Amendment 1 requires that a qualified vessel owner obtain a valid tilefish IFQ Allocation permit to possess or land tilefish in excess of an incidental catch limit of tilefish (*see below*). In addition, a vessel owner is required to possess, and carry on board, a valid tilefish vessel permit to fish for, possess, or land tilefish in or from the Tilefish Management Unit (TMU). An incidental catch of 300 lb (136 kg) of tilefish, per trip, can be landed by any vessel issued a tilefish vessel permit, other than a Charter/Party vessel permit, not fishing under a tilefish IFQ Allocation permit. All permits issued to current limited access vessels (*i.e.*, all Full-time and Part-time vessels) will be automatically converted to tilefish open access permits and issued to the permit holder of record prior to November 1, 2009. In addition, current holders of tilefish limited access permits will be issued a tilefish IFQ Allocation permit if they meet the Amendment 1 qualification criteria (*see item B below*). IFQ Allocation permit holders are required to declare all vessel(s) that they own, or lease, that will land their IFQ allocation, by providing a list to NMFS at the beginning of each fishing year (prior to receiving their IFQ Allocation permit). Although not explicitly stated in the proposed rule, NMFS clarifies in this final rule that IFQ Allocation permit holders must notify NMFS, in writing, if they wish to remove any of these declared vessels from the list of vessels that may possess tilefish under the authorization of their IFQ Allocation permit. In addition, an IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit, must send written notification to NMFS that includes the vessel permit number, and the date on which the vessel is authorized to land IFQ tilefish pursuant to the IFQ Allocation permit.

A. Initial IFQ Allocation Permit Application

NMFS will notify all vessel owners, for whom NMFS has tilefish landings data available, whose vessel(s) meet(s) the qualification criteria described below. Applications for initial tilefish

IFQ Allocation permits must be submitted to NMFS no later than February 22, 2010.

B. Qualifying Criteria

Amendment 1 specifies the landings and permit history criteria that must be met to qualify for a tilefish IFQ Allocation permit. NMFS has clarified these qualifying criteria such that persons or entities who purchased vessels with fishing histories that include a 2005 tilefish limited access permit meet these initial qualifying criteria. Under Amendment 1, a person or entity is eligible to be issued a tilefish IFQ Allocation permit if he/she owns a vessel with fishing history indicating that the vessel was issued a valid tilefish limited access permit for the 2005 permit year or, if the person or entity currently holds a valid Confirmation of Permit History (CPH) for the fishing history associated with a vessel that was issued a valid tilefish limited access permit for the 2005 permit year (*see Item C below for further detail regarding CPH vessels*). Persons or entities that own fishing history for a 2005 tilefish Full-time limited access permit (Category A or B), are eligible to receive an IFQ allocation based on their average landings for the 2001 through 2005 calendar years. These landings will be used to assign the IFQ allocations to each vessel under the IFQ program by dividing a vessel's landings by the total landings within their respective Category for the 2001 through 2005 calendar years (Category A (*i.e.*, Tier 1, which is allocated 66 percent of the adjusted total allowable landings (TAL)) or Category B (*i.e.*, Tier 2, which is allocated 15 percent of the adjusted TAL)) to derive a percentage. This percentage will then be applied to the adjusted TAL to derive an IFQ allocation percentage, which will then be converted to a specific number of pounds. For example, a Category A vessel that landed 20 percent of the average landings within Category A would receive an IFQ allocation equal to 20 percent of 66 percent of the adjusted TAL ($0.2 \times 0.66 \times 1,895,250 \text{ lb}$ (859,671 kg) = 250,173 lb (113,476 kg)), which is equal to 13.2 percent of the adjusted TAL. Persons or entities that own fishing history for a 2005 tilefish Part-time limited access permit (*i.e.*, Category C, which is allocated 19 percent of the adjusted TAL), are eligible to receive an equal IFQ allocation by dividing the percentage of the adjusted TAL allocated to Category C among those vessels that had landings over the 2001–2005 period to derive a percentage, which will also be converted to pounds. For example, if 10

vessels from Category C qualified for an IFQ allocation, each vessel owner would receive an IFQ allocation equal to 19 percent of the adjusted TAL divided by 10 ($0.19/10 = 0.019$), or 1.9 percent of the adjusted TAL, which is equal to 36,010 lb (16,334 kg). Landings data are based on NMFS dealer data for calendar year 2001, and NMFS IVR data for calendar years 2002–2005. For additional information, *see* item D (Appeal Permit Denial). In order to qualify for an IFQ Allocation, the person or entity that owns fishing history for a vessel issued a valid limited access tilefish permit during the 2005 permit year must have average landings, from the 2001–2005 period, that constitute at least 0.5 percent of the landings for the Category for which it was permitted. This landings requirement has been clarified from the proposed rule to ensure the intent of the Amendment 1 document is met.

C. CPH

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, is required to have applied for and received a CPH in order to be eligible for a tilefish IFQ Allocation permit. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel for the reasons outlined above. Under Amendment 1, a tilefish IFQ Allocation permit would be issued to a person or entity who owns the history of a vessel associated with a 2005 tilefish limited access permit, that is in CPH, and its IFQ allocation would be determined by the limited access permit that was placed into CPH, provided it meets the respective qualification criteria for that permit as specified in item B above. As with any IFQ allocation, IFQ associated with a CPH could be transferred. IFQ associated with a CPH would count towards an individual's overall interest held in an IFQ allocation, and is constrained by the 49-percent cap on the acquisition of IFQ.

D. Appeal of a Permit Denial

Amendment 1 specifies an appeals process for applicants who have been denied a tilefish IFQ Allocation permit. Such applicants are able to appeal in writing to the NMFS Northeast Regional Administrator (RA). Under this amendment, appeals must be based on the grounds that the information used by the RA in denying the permit was incorrect. The only items subject to appeal under this IFQ program are the

initial eligibility for IFQ allocations based on ownership of a tilefish limited access permit, the accuracy of the amount of landings, and the correct assignment of landings to the permit holder. The RA will review, evaluate, and render final decisions on appeals. Appeals must be submitted to the RA postmarked no later than 30 days after a denial of an initial IFQ Allocation permit application. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. Hardship arguments will not be considered. The appeal shall set forth the basis for the applicant's belief that the RA's decision was made in error. The appeal may be presented, at the request of the applicant, at a hearing before an officer appointed by the RA. The final rule clarifies that a hearing will only be held if the applicant presents credible documentation with the hearing request to show that the RA made an error in determining the ownership of a tilefish limited access permit, the accuracy of amount of landings, or the correct assignment of landings to the permit holder. The hearing officer will make a recommendation to the RA. The RA's decision on the appeal is the final decision of the Department of Commerce.

The final regulations implementing the original FMP were effective on November 1, 2001. Effective that date, the owners of vessels issued a tilefish limited access permit were required to report their landings of tilefish for each fishing trip, via the NMFS IVR call-in system. Under Amendment 1, NMFS IVR landings data are used to determine landings for years 2002 through 2005, and NMFS dealer data are used for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the *Hadaja v. Evans* lawsuit). As indicated above, the data on historical landings are based on more than one source. The Council examined the different sources of data available for each year and, compared the completeness and accuracy of each source of data. The implementation of the original FMP, in November 2001, required owners of permitted tilefish vessels to submit their landings into the IVR system. Although dealer data have historically been used to calculate total landings for the purposes of setting an initial quota allocation, the Council decided to use IVR data beginning with 2002 landings to determine the initial tilefish IFQ Allocations. The rationale for this decision is that: (1) Landings reported via the IVR system were being

used to monitor the tilefish quota during the 2002–2005 time period; (2) there were a significant number of documented fishing trips in the IVR that were not reported in the dealer data system, particularly for Full-time Tier 1 vessels that sold predominantly to a single dealer (especially in 2004 and 2005); and (3) the Council did not consider that fishermen would have any incentive to over-report landings via the IVR system because over-reporting of landings would have caused the fishery to close early and adversely affected those who over-reported.

Under Amendment 1, during the first year of the IFQ program only, the RA will reserve 15 percent of the TAL prior to initial distribution of IFQ allocations, to be used to allow vessels to fish under a letter of authorization (LOA), pending disposition of the applicants' appeals. Any portion of the 15-percent reserve remaining after the appeals process has been completed will be proportionately distributed back to the initial IFQ recipients as soon as possible that year. If resolution of appeals requires more than a 15-percent reserve, due either to the number of appeals filed, or the time needed to bring them to disposition, the allocations of all initial allocation holders will be reduced proportionately, as soon as possible that year, to accommodate a reserve in excess of the 15 percent. If any subsequent reduction is applied to an IFQ Allocation permit holder that has already fished his/her annual allocation, this further reduction will be treated as an overage in the subsequent fishing year (*see* Other Measures, item E). An individual whose IFQ Allocation permit application is denied will be eligible to apply for an LOA from the RA to continue to fish for tilefish, pending the resolution of his/her appeal. An LOA will only be issued to an individual that was issued a valid tilefish limited access permit for the 2008 permit year. This LOA will allow a vessel to continue to fish for tilefish. NMFS has clarified in this final rule that it has preliminarily determined that the number of individuals expected to fish under an LOA, pending an appeal, will not land a percentage of the adjusted TAL that would unreasonably diminish the allocations issued to IFQ Allocation permit holders. However, if individuals fishing under an LOA are projected to land a portion of the adjusted TAL that NMFS determines will unreasonably diminish the allocations issued to IFQ Allocation permit holders, the RA, under authority proposed in § 648.291(d)(3), will impose a trip limit to reduce the landings of individuals fishing under an LOA.

IFQ Program Administration

A. IFQ Allocation Permit Renewal and Allocation of the Tilefish IFQ TAL

In order to ensure the processing of an IFQ Allocation permit by the start of each fishing year on November 1, applicants are required to submit their application to NMFS by September 15. Applications received after September 15 may not be approved and issued in time for the beginning of the fishing year, in which case a vessel may not fish for tilefish pursuant to that permit until it is processed by NMFS and sent to the IFQ Allocation permit holder. All IFQ Allocation permits will be issued on an annual basis by the last day of the fishing year for which the permit is required. Failure to renew an IFQ Allocation permit by this date will be deemed as the voluntary relinquishing of the permit, with no possibility for reissue and renewal in a subsequent year. The allocation listed on the IFQ Allocation permit will be updated to reflect the results of applicable allocation transfers (if allocation transfers are approved) and any redistribution of allocation resulting from permanent revocation of applicable permits under 15 CFR part 904. Allocation of tilefish quota is calculated by multiplying an IFQ allocation percentage by the annual adjusted TAL. The updated IFQ Allocation permits will indicate any change in the annual commercial quota for tilefish, and any debits required as a result of prior fishing year overages (see Other Measures, item E). IFQ participants will be able to monitor the status of their allocations by contacting NMFS or by monitoring the NMFS Web page. IFQ Allocation permit holders will be responsible for keeping an accurate record of their landed IFQ allocation for the purposes of future leases and transfers, and to submit a percentage of their annual ex-vessel landings value to pay a cost-recovery fee at the conclusion of the calendar year.

B. Vessel Permit Renewal

A vessel owner, other than the owner of a private recreational vessel, must renew his/her tilefish vessel permit annually to possess either an incidental catch of tilefish, or to fish under a tilefish IFQ allocation authorized by an IFQ Allocation permit (see item A above) or a Charter/Party vessel permit in order to possess amounts of tilefish equal to the possession limit for anglers on board.

C. IFQ Transfers (Temporary and Permanent)

Under Amendment 1, IFQ allocations are fully transferable among persons or entities that are permanent U.S. citizens or permanent resident aliens, or corporations eligible to own a U.S. Coast Guard documented vessel, as long as they meet the requirements of the Magnuson-Stevens Act. Tilefish IFQ Allocation permit holders are allowed to transfer IFQ on a temporary and permanent basis by submitting an IFQ Transfer Form to NMFS. This form must contain at least the following data elements: The type of transfer; signature of both parties involved in the transfer; the cost associated with the transfer; the amount of quota to be transferred; and a list of all Federal vessel permit numbers for all vessels authorized to land tilefish pursuant to the transferred IFQ allocation. These required contents of the transfer form were revised slightly from the proposed rule to ensure that NMFS receives the vessel permit numbers for all vessels that are authorized to land tilefish pursuant to the transferred allocation. This will ensure that landings are properly attributed to the appropriate IFQ Allocation permit holder. A temporary IFQ transfer (lease) allows an IFQ Allocation permit holder to sell a temporary right to land tilefish in a specified amount to any other individual for the remainder of the fishing year in which the lease occurs. A permanent IFQ transfer allows an IFQ Allocation permit holder to permanently sell his/her entire tilefish IFQ allocation, or a portion thereof. An IFQ Allocation permit holder who wishes to lease his/her IFQ to another individual is responsible for ensuring that he/she has sufficient remaining allocation for that fishing year to lease. Any attempt to lease out quota in excess of an IFQ Allocation permit holder's existing quota will be denied by NMFS. Once all, or a portion of, an IFQ allocation is leased, the lessee will not be able to subsequently sub-lease that IFQ allocation.

D. IFQ Cost-Recovery

Under section 304(d)(2)(A) of the Magnuson-Stevens Act, the Secretary of Commerce (Secretary) is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested, to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs such as the one approved in Amendment 1. The procedures for the collection of cost-recovery fees are established in this final rule. Under the

Magnuson-Stevens Act, the cost-recovery fee for any IFQ that was temporarily transferred to another IFQ Allocation permit holder is the responsibility of the owner of the permanent IFQ allocation, not the lessee. Therefore, under Amendment 1, a tilefish IFQ Allocation permit holder with a permanent allocation will incur a cost-recovery fee that would be paid from the value of tilefish landings, authorized under his/her tilefish IFQ Allocation permit, including allocation that is landed under a temporary transfer of allocation. The RA will determine the recoverable costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The cost-recovery billing period is defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations implementing Amendment 1.

Prior to the first year of the IFQ program, NMFS will not have information needed to determine the recoverable costs. Therefore, during the initial cost-recovery billing period, the recoverable costs are set at 3 percent. In a given cost-recovery billing period, the recoverable costs may not exceed 3 percent of the ex-vessel value of the fishery. NMFS has clarified the following description of the calculation of the cost-recovery fee so that it better represents the intent of the Council, as described in Amendment 1. The recoverable costs will be divided by the annual ex-vessel value of the fishery to derive the percentage that is recoverable. IFQ Allocation permit holders will be assessed a fee based on the recoverable cost percentage multiplied by their total allocated tilefish ex-vessel value. If the recoverable costs for the first cost-recovery billing period are determined to be less than 3 percent, NMFS will issue each IFQ Allocation permit holder a fee-override credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee. Three percent of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period, as reported to NMFS from Federally permitted dealers, is the maximum annual cost that could be recoverable in the fishery. Payment of the cost-recovery fee is a condition of an IFQ Allocation permit. NMFS will mail a cost-recovery bill to each IFQ Allocation permit holder for the IFQ cost-recovery fee incurred by that IFQ Allocation permit holder for the previous cost-recovery billing period.

IFQ Allocation permit holders are required to submit payment within 45 days of the date of the NMFS cost-recovery bill. A tilefish IFQ Allocation permit will not be renewed by NMFS (*i.e.*, not be issued), for the subsequent fishing year, until payment for the prior cost-recovery billing period fee is received in full. The bill for a cost-recovery fee may also be made available electronically, by NMFS, via the Internet. As described above, all IFQ Allocation permit holders are responsible for submitting fees for all landings associated with their permanent allocation during the calendar year (not fishing year) for later submission to NMFS, to be compliant with section 304(d)(2)(B) of the Magnuson-Stevens Act. Unless otherwise specified below, if an IFQ Allocation permit holder does not pay his/her cost-recovery fee, or pays less than the full amount due, within 45 days of the date on the bill, his/her IFQ Allocation permit will not be renewed for the subsequent fishing year, and no transfers (permanent or temporary) will be approved by NMFS involving this IFQ.

Disputes regarding fees will be resolved through an administrative appeal procedure. If, upon preliminary review of the accuracy and completeness of a fee payment, the RA determines the IFQ Allocation permit holder has not paid the amount due in full, NMFS will notify the IFQ Allocation permit holder by letter. NMFS will explain the discrepancy and the IFQ Allocation permit holder will have 30 days from the date of the letter to either pay the amount that NMFS has determined should be paid, or provide evidence that the amount paid was correct. The IFQ Allocation permit will not be renewed until the payment discrepancy is resolved. If the IFQ Allocation permit holder submits evidence in support of his/her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). A FAD will be the final decision of the Department of Commerce. If the FAD determines that the IFQ Allocation permit holder owes fees, no tilefish IFQ Allocation permit(s) held by the IFQ Allocation permit holder will be renewed until the required payment is received by NMFS. If NMFS does not receive such payment within the 30-day time period prescribed in the FAD, NMFS will refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection. If NMFS does not receive such payment

prior to the end of the next cost-recovery billing period, the IFQ Allocation permit will be considered voluntarily relinquished, and not renewable. Cost-recovery payments will be required to be made electronically via the Federal Web portal, <http://www.pay.gov>, or other Internet sites as designated by the RA. Instructions for electronic payment will be made available on both the payment Web site and the paper bill. Electronic payment options will include payment via a credit card (the RA would specify in the cost-recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the RA if the RA determines that electronic payment is not possible. NMFS will create an annual IFQ report and provide it to the owner of the IFQ Allocation permit. The report will include annual information regarding the amount and value of IFQ tilefish landed during the prior calendar year, the associated cost-recovery fees, and the status of those fees. This report will also detail the costs incurred by NMFS, including the calculation of the recoverable costs for the management, enforcement, and data collection and analysis, incurred by NMFS during the fishing year.

E. IFQ Allocation Acquisition Cap

Amendment 1 limits the accumulation of IFQ allocation to 49 percent of the TAL allocated to the IFQ program (after adjustments for incidental catch, research set-aside, and/or overages have been made). This allows for an IFQ allocation accumulation that is 12-percent greater than the largest yearly landing by an individual tilefish vessel during the 1988 through 1998 period. This allocation cap also allows the two vessel owners that are anticipated to receive the largest initial allocation to consolidate. Thus, Amendment 1 prohibits any entity from owning, or holding an interest in, more than 49 percent of the tilefish IFQ TAL at any time. Having an interest in an IFQ allocation (permanent or temporary) is defined so as to include allocation held in the following ways: (1) In an IFQ allocation permit holder's name; (2) as a shareholder, officer, or partner of a company; (3) by an immediate family member; or (4) as an owner or a part owner of a company. Temporary and permanent IFQ transfers shall be monitored by NMFS to ensure that a transferee does not exceed this allocation acquisition limit at any point during a fishing year. A declaration of interest in IFQ allocation(s), listed by

IFQ Allocation permit number, is required annually, at the time IFQ Allocation permits are renewed.

F. Periodic Review of the IFQ Program

The Magnuson-Stevens Reauthorization Act established national guidelines for the implementation of a LAPP. The Magnuson-Stevens Act now includes provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program. The Magnuson-Stevens Act further requires a formal and detailed review within 5 years of the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years). Amendment 1 institutes a provision for regular review and evaluation of the performance of the IFQ program. The measures for review may include, but are not limited to: Capacity reduction; safety at sea issues; transferability rules; ownership concentration caps; permit and reporting requirements; and fee and cost-recovery issues. Other items may be added to address problems and/or concerns with the IFQ program that are unforeseeable at this time. The formal review shall be conducted by the Council.

Recreational Measures

A. Charter/Party Vessel Permit Requirements

Amendment 1 requires that any owner of a party or charter vessel carrying fishermen for hire that fishes for tilefish within the U.S. EEZ obtain a valid Federal tilefish open access Charter/Party permit from NMFS. A private recreational vessel, other than a party or charter vessel (vessel for hire) fishing in the EEZ, is exempt from this permitting requirement; however, it cannot land more than the recreational tilefish landing limit (*see* Item B below), multiplied by the number of persons on board, per trip. A charter/party vessel could have both a Federal Charter/Party permit and a commercial permit to catch and sell tilefish under an IFQ Allocation permit. However, such a vessel could not fish under the IFQ Allocation permit if it is carrying passengers for a fee. Amendment 1 requires that Federal Charter/Party permitted vessels report tilefish landings on NMFS-issued Fishing Vessel Trip Report (VTR) forms. The collection of this information will provide valuable data to determine the

number of vessels and level of activity in the recreational tilefish fishery.

B. Recreational Bag Limits

Amendment 1 institutes a recreational landing limit of eight tilefish per person per trip. NMFS VTR data between 1996 and 2005 indicate that recreational tilefish landings by charter/party vessels have ranged from 81 to 994 tilefish per year. Mean angler catches onboard charter/party vessels have ranged from approximately one fish per angler, in most years, to eight fish per angler. Therefore, the recreational bag limit of eight tilefish per person per trip is at the upper range of the mean effort seen in the last 10 years.

EFH Measures

A. EFH Designations

Amendment 1 modifies the current EFH designations based on the incorporation of new information and a re-examination of information that was used to develop the original EFH descriptions in the FMP. The new designations rely on temperature and sediment type as a stronger indicator of EFH for tilefish, with depth as a secondary correlate. The depth that

corresponds to the revised temperature profile is between 100 and 300 m. Specific locations and maps for the new proposed EFH designation can be found in Amendment 1.

B. HAPC

Amendment 1 designates HAPC for juvenile and adult tilefish as clay outcrop/pueblo village habitats within Norfolk, Veatch, Lydonia, and Oceanographer Canyons at the depth range specified for tilefish EFH (100–300 m). Amendment 1 contains locations and maps that depict these areas.

C. Gear Restricted Areas (GRAs)

The Magnuson-Stevens Act requires that Councils evaluate potential adverse effects of fishing activities on EFH and include in FMPs management measures necessary to minimize adverse effects to the extent practicable. Specifically for tilefish, clay outcroppings (pueblo habitats) have been determined to be highly vulnerable to permanent disturbance by bottom-tending mobile gear such as the bottom otter trawl, as described in Amendment 1. Therefore, several GRAs are approved to minimize

impacts on juvenile and adult tilefish EFH from bottom trawling activity. These closed areas do not follow the depth contours exactly, but are designed as polygonal areas that approximate the areas and depths described, while allowing for straight boundaries for enforcement purposes. In addition, because these areas are closed polygons, any areas within those GRAs that are deeper than the maximum depth that defines tilefish EFH are also closed to bottom trawling activity, even though they are not defined as EFH. Amendment 1 prohibits bottom trawling, within and adjacent to the four Canyons identified as HAPC, at depths associated with the revised EFH designation. These GRAs were considered because of the potential for current or future bottom otter trawling activity to impact clay outcroppings within these canyon areas. Three Canyons—Norfolk, Veatch, and Lydonia—are known to have tilefish “pueblo burrows” that are formed in exposed clay outcroppings. In addition, clay outcroppings are known to exist in Oceanographer Canyon. The GRA closures are bounded by the coordinates listed below.

Canyon	N. Lat.			W. Long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

Other Measures

A. Frameworkable Measures

Amendment 1 requires additional management measures to be identified in the FMP that could be implemented

or adjusted at any time during the year through the framework adjustment process. The recreational management measures that are added to the list are: (1) Recreational bag limit; (2) fish size limit; (3) seasons; and (4) gear

restrictions or prohibitions. The additional measures that would facilitate the periodic review of the IFQ program are: (1) Capacity reduction; (2) safety at sea issues; (3) transferability rules; (4) ownership concentration caps;

(5) permit and reporting requirements; and (6) fee and cost-recovery issues. Adding these measures to the list of measures that could be addressed via the framework adjustment process will provide flexibility to managers to address potential changes in the fishery in a timely manner.

B. Submission of Catch Reports

The description of this measure is slightly revised from the proposed rule to clarify the intent of the reporting changes. The current FMP requires that the owner or operator of any vessel issued a limited access permit for tilefish submit a tilefish catch report, via the IVR system, within 24 hr after returning to port and offloading. Amendment 1 eases this requirement to require that tilefish catch reports be submitted via the IVR within 48 hr after offloading. This allows for tilefish fishermen to report catch via the IVR after the fish have been weighed by the dealer to allow for a more accurate report of landings via IVR. This alternative is expected to allow fishermen to provide better data. Amendment 1 also requires that the VTR serial number be inputted into the IVR system in order for this to be used as a trip identifier to match all reported IVR landings to dealer reports. In addition, the dealer number is required to be inputted into the IVR system, which will allow for better matching of IVR data to dealer (weighout) data on a trip-by-trip basis. These reporting changes will ensure that amounts of tilefish landed, and ex-vessel prices, are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively, and will ensure an accurate association of tilefish landings with IFQ Allocations.

C. No Discard Provision

Amendment 1 prohibits any commercial vessel from discarding tilefish. The description of this measure in this final rule is revised to exclude vessels from this prohibition if they are fishing pursuant to the incidental catch limit, or under an LOA trip limit, if one is instituted by the RA. This is intended to prohibit the practice of highgrading, whereby low-value tilefish are discarded so that higher-value tilefish may be retained. Current NMFS data show that commercial discard of tilefish is almost non-existent. Therefore, this is an opportune time to prohibit commercial discards.

D. Monitoring of Tilefish Commercial Landings

The management unit for this FMP is defined as all golden tilefish under U.S.

jurisdiction in the Atlantic Ocean north of the Virginia/North Carolina border. Tilefish south of the Virginia/North Carolina border are currently managed as part of the FMP for the Snapper-Grouper Fishery managed by the South Atlantic Fishery Management Council. Currently, the FMP does not restrict fishermen that hold both a Federal Northeast tilefish permit and a Southeast Federal snapper/grouper permit, to fish for tilefish both inside and outside of the TMU, as defined in § 648.2, on the same trip. If tilefish landings are not properly reported to indicate where each species is caught, the recovery of the stock could be adversely affected. To avoid these reporting problems, Amendment 1 requires vessels that catch tilefish from the TMU to land tilefish within the TMU only, and prohibits combination trips in which vessels fish both inside and outside the TMU for golden tilefish on the same trip. Furthermore, Amendment 1 prohibits dealers from purchasing or otherwise receiving for commercial purposes tilefish caught in the EEZ from outside of the TMU, as described in § 648.2, unless otherwise permitted under 50 CFR part 622. These new requirements ensure that all tilefish landings are reported in the appropriate management unit.

E. Overages

Under Amendment 1, an IFQ allocation that is exceeded will be reduced by the amount of the overage in the subsequent fishing year. 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 had already been landed or transferred, the IFQ Allocation permit would indicate a reduced allocation for the amount of the overage in the next fishing year. If quota is temporarily transferred and the lessee exceeds a permit holder's temporary IFQ allocation, the overage would be deducted from the allocation of the permanent IFQ Allocation permit holder who leased the IFQ allocation.

Comments and Responses

A total of 16 relevant comment letters were received from limited access tilefish vessel owners, an attorney representing industry, non-government environmental organizations, captain and crew, and other interested members of the public on Amendment 1 and the proposed rule. One comment letter was

received that is not legible or relevant. A comment letter that was received from a non-government environmental organization was only partly relevant to the approved measures contained within Amendment 1; only the relevant comments will be addressed below.

General Comments

Comment 1: Three comments supported Amendment 1, based on the qualification time period chosen by the Council. One of these commenters stated that this time period was fair and equitable for all participants and that individuals that are in opposition to the qualification time period, and who have fished since 2005, are primarily motivated to obtain IFQ allocation for financial gain. This commenter stated that the preferred alternative rewards individuals that fish for tilefish for 100 percent of their income.

Response: The adoption of any LAPP has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 1 it chose to allocate the initial tilefish IFQ in a manner that emphasizes recent participation in the tilefish fishery as opposed to historical participation. The Council has the latitude to weigh these allocation decisions, so long as they are justified with sufficient analysis. NMFS had determined that the Council properly analyzed and justified the allocation alternatives in Amendment 1.

Comment 2: Eight commenters opposed Amendment 1, due to the Council's decision to base the qualification period on landings from 2001 to 2005. Some of these commenters stated that the tilefish stock was in a rebuilding plan during this time period, and that it was not appropriate to fish for tilefish during this time. These industry members stated that they voluntarily ceased tilefish fishing during this time frame, in part, to lessen fishing pressure on the overfished tilefish stock. These commenters were highly critical of the Council's decision to "reward" those who fished during this time period. Instead they believe that the initial IFQ allocation should be distributed to those with historic participation in the fishery. One of the commenters specifically noted that the Barnegat Light, NJ, tilefish fleet reduced fishing effort between 2000 and 2005, while the Montauk, NY, tilefish fleet did not, and that the Montauk Port, NY, fleet stands to receive a monopoly of tilefish permits under Amendment 1. Another commenter stated that vessels in Montauk, NY, stand to receive 80

percent of the IFQ allocation under Amendment 1, and that the allocation should have been divided up more equitably. Finally, one commenter noted that, in using the 2001–2005 time period to qualify IFQ allocations, Amendment 1 would allocate significantly more quota to the Part-time vessels than to a specific vessel in the Full-time tier 2 category.

Response: The adoption of any LAPP has the potential to benefit certain fishermen, while disadvantaging others. This effect is recognized in the National Standard 4 guidance in § 600.325(c)(3)(i)(B). The Council analyzed the positive and negative consequences of its decisions and chose to allocate the initial tilefish IFQ in a manner that emphasizes more recent participation in the tilefish fishery as opposed to more historical participation. As noted in section 303A(c)(5) of the Magnuson-Stevens Act, factors such as current and historic participation need only be “considered.” There is no requirement that a Council has to provide for historical participants. The Council has considered both current and historical participants in the tilefish fishery in determining the allocation scheme. The Council has the latitude to weigh these allocation decisions, so long as they are justified with sufficient analysis. In response to the commenter who asserted that the Montauk, NY, tilefish fleet would gain a monopoly of not only the Full-time, but the Part-time permits, NMFS will qualify individuals for IFQ allocations based on the approved measures contained in this final rule. At this time, NMFS has not made a determination as to the specific individuals that will qualify for an IFQ Allocation permit; however, according to the analysis contained in Amendment 1, and NMFS’s permit records, the majority of the Part-time limited access permits that may qualify for an IFQ Allocation permit are held by vessels that are ported in Barnegat Light, NJ. NMFS approved Amendment 1 because the Council’s analysis was consistent with the Magnuson-Stevens Act, and other applicable law, and the action promotes a sustainable tilefish fishery.

Comment 3: Four individuals commented that a Council member involved in the development of Amendment 1 made biased decisions based on personal gain or agenda.

Response: There is no evidence to support bias of a Council member in the development of Amendment 1. The Amendment was adopted by a majority of all Council members present. The Council’s decisions were based on numerous meetings, open to the public,

and on information, comments, and input provided by the public.

Comment 4: One commenter stated that the IFQ allocation will be distributed in a manner that would give a few individuals the power to completely control the market for tilefish.

Response: Amendment 1 sets an individual allocation accumulation limit at 49 percent of the TAL (adjusted). In setting this limit, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocation, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not expect that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish.

Comment 5: One comment stated that the Council should have allocated the IFQ to the captain and crew of tilefish vessels that landed tilefish during the qualification period, or the Council should not have adopted an IFQ program in Amendment 1.

Response: The Council did not consider allocating the initial tilefish IFQ to captains and/or crewmembers in the tilefish fishery. The landings history of a vessel is owned by the owner of record of the vessel. For example, the landings and permit history of a vessel is presumed to transfer with the vessel whenever it is sold by the owner. Therefore, the captain and crewmembers of a vessel could not qualify for an IFQ allocation unless the Council chose qualification criteria that were not associated with vessel landings. The Council could have chosen to allocate the IFQ in any manner that was consistent with the Magnuson-Stevens Act. The Council did consider alternatives that would have limited the universe of entities that could receive IFQ allocation through transfer and lease to include established captains and crew. These alternatives were not selected due to the difficulty in determining what constitutes an established fisherman. Due to the complexities involved in determining what constitutes an established fisherman, the Council determined that the administrative burden to NMFS would be prohibitively high, as there is currently no similar program that verifies identities and work histories.

Comment 6: One comment, in opposition to Amendment 1, asserted that “ITQs [IFQs] are forever.” Another comment from a non-government environmental organization contended

that the IFQ program would privatize valuable public resources in perpetuity.

Response: As stated in Amendment 1, IFQ privileges would be assigned for the duration of the IFQ program. The IFQ program would remain in effect until it is modified or terminated. The program may be modified after going through an administrative review of the operation of the program. As indicated in the approved measures, the Magnuson-Stevens Act requires a formal program review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant FMP. The IFQ allocations are not granted in perpetuity. According to the Magnuson-Stevens Act, a limited access privilege is a permit issued for a period of not more than 10 years. The permit can be renewed before the end of that period, unless it has been revoked, limited, or modified as provided by the Magnuson-Stevens Act (section 303A(c)(7)(f)). Further, the Council has the discretion to revise or replace the IFQ program if it determines that a different management strategy better suits the objectives and the provisions of the Magnuson-Stevens Act.

Comment 7: One commenter asked to have his support removed for the approved measure that will distribute the Part-time limited access permit category quota equally. He asked that his support be shifted to the alternative within Amendment 1 that would have allocated the Part-time permit category quota based on the average landings by Part-time limited access vessels during the qualification period. The commenter stated that he did not properly anticipate the financial impact on his business that would result from the adopted measure, and that he will suffer a disproportionate drop in income.

Response: The Council’s decisions were based on numerous meetings, open to the public and on information, comments, and input provided by the public. Voting on a prospective management program is not a referendum. NMFS approved Amendment 1 because it is consistent with the Magnuson-Stevens Act and promotes a sustainable tilefish fishery.

Comment 8: A commenter stated that, due to the present state of the economy, Amendment 1 is not appropriate at this time, as it will result in a loss of income for individuals that do not qualify for an initial IFQ Allocation permit.

Response: As stated in the response to Comment 1, the adoption of any LAPP has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions and chose to allocate the initial tilefish

IFQ in a manner that emphasizes more recent participation in the tilefish fishery as opposed to more historical participation. The Council has the latitude to weigh these allocation decisions, so long as it conducts the proper analyses and justifies them.

Comment 9: Two commenters asked, if the Council wanted to use the most recent timeframe for determining landings that qualify an individual for an IFQ allocation, why did they not use 2006 through 2009 landings.

Response: The process of developing a fishery management plan is long and dynamic. As the program is being developed, adapted, and implemented, new data are becoming available. There is no obligation on the part of the Council to continually update the information to be used in the development of a program. Otherwise, the program could never be finalized. It is only when new information indicates drastic changes in the fishery that it needs to be incorporated into the program. The Council identified no such changes represented by the 2006 through 2009 landings data.

Comment 10: An attorney representing an industry group (attorney) contended that the qualification time period chosen in Amendment 1 will disadvantage vessels that are ported in Barnegat Light, NJ, relative to vessels that are ported in Montauk, NY. The attorney, and a non-governmental environmental organization, requested that NMFS disapprove the portions of Amendment 1 that implement the IFQ program as they are inconsistent with the Magnuson-Stevens Act in that the IFQ program is neither fair nor equitable, as required under National Standard 4 (section 301(a)(4)), section 303(b)(6), and section 303A(c)(5) of the Magnuson-Stevens Act.

Response: National Standard 4 and sections 303(b)(6) and 303A(c)(5) of the Magnuson-Stevens Act require that the purpose for, reasoning of, and consideration of management measures be fair and equitably applied to all fishermen, not that the outcome, result, or affects of the management measures be fair and equitable to all such fishermen. As noted in section 303A(c)(5) of the Magnuson-Stevens Act, factors such as current and historic participation need only be "considered." There is no requirement that a Council has to provide for historical participants. The Council has considered both current and historical participants in the tilefish fishery in determining the allocation scheme. The adoption of any limited access privilege program has the potential to benefit

certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 1 it chose to allocate the initial tilefish IFQ in a manner that emphasizes more recent participation in the tilefish fishery as opposed to more historic participation. The National Standard 4 guidelines at § 600.325(c)(3)(i)(B) state that:

An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo.

Therefore, the Councils are given wide latitude to determine what is equitable within a particular fishery and to create the appropriate management measures to accomplish the goals of a FMP.

Comment 11: The attorney commented that the Council did not provide adequate rationale for its decision to disregard the language contained in the original Tilefish FMP that stated that any future tilefish amendments would only include a formal qualification based on 1984 to 1998 landings data.

Response: Fishery Management Councils make recommendations to the Secretary, which are advisory only. The actions of a particular Council do not constitute prior practice from which it cannot deviate without sufficient rationale. It is solely within the prescription of the Secretary to approve, disapprove, or partially approve the recommendation of a Council.

Comment 12: The attorney, and a non-governmental environmental organization, commented that the IFQ program results in excessive geographic consolidation, as prohibited by section 303A(c)(5)(B)(ii) of the Magnuson-Stevens Act, and results in affects to fishing communities that are inconsistent with National Standard 8 (section 301(a)(8)) of the Magnuson-Stevens Act.

Response: NMFS determined that the approved measures in Amendment 1 are consistent with National Standard 8 of the Magnuson-Stevens Act, and that Amendment 1 does not result in excessive geographic consolidation. Excessive geographic consolidation need only be considered in looking at the basic cultural and social framework

in the fishery. The approved measures in Amendment 1 distribute IFQ allocation proportionately among those qualifying individuals who have historically or who currently participate in the tilefish fishery, regardless of the location of their principle port of landing or home state. The IFQ qualification criteria do not differentiate among U.S. citizens, nationals, resident aliens, or corporations based on their State of residence, or incorporation, and they do not rely on a statute or regulation that discriminates against residents of another State. The Amendment 1 document fully analyzes the effects of the IFQ program on fishing communities, port structure, employment, income, and other socio-economic variables. Amendment 1 considered whether the management measures would create an excessive geographic consolidation in the fishery. The analysis within section 6.5.1 of Amendment 1 concluded that the total value of all tilefish landings in Barnegat Light, NJ, during 2000–2005, represented only 2.1 percent of all species landed, and that the majority of the commercial tilefish quota was landed in Montauk, NY. In addition, during this time period, 11 percent of the total commercial tilefish landing value was associated with landings in Barnegat Light, NJ. The adopted measure will allocate the Part-time category equally among all vessels that meet the qualification criteria, and the majority of the vessels within the Part-time category are currently ported in Barnegat Light, NJ. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 1 it chose to allocate the initial tilefish IFQ in a manner that emphasizes recent participation in the tilefish fishery, as opposed to historic participation. The attorney commented that, under Amendment 1, "66 percent of the fishery would end up in Montauk, NY." This comment is consistent with the current port/landings structure of the tilefish fleet. Currently, all of the vessels permitted in the Full-time tier 1 category are ported in Montauk, NY. This category has received 66 percent of the tilefish commercial adjusted TAL annually since the inception of the original Tilefish FMP in FY 2001. In addition, under Amendment 1, the current Part-time category will initially be allocated 19 percent of the adjusted TAL. Although the commenter is correct that the vessels that have not fished recently and/or did not fish during the 2001–2005 time period in the Part-time category will not qualify for an IFQ allocation under this final rule, the

majority of the active permits would qualify for an equal share of 19 percent of the adjusted TAL. As stated in the Amendment 1 document, disenfranchisement of the inactive vessels is an unquantifiable impact, as it is difficult to quantify the impact of removing a tilefish limited access permit from an individual who does not fish for tilefish. Therefore, for these reasons and the rationale contained in the Amendment 1 document, NMFS has determined that Amendment 1 would not result in excessive geographic consolidation of the tilefish fishery. The Council's analysis within Amendment 1 is compliant with National Standard 8, and section 303A(c)(5)(B)(ii) of the Magnuson-Stevens Act, as it considered the importance of fishery resources to fishing communities. In addition, while proper analysis is required by the Magnuson-Stevens Act, and is contained in Amendment 1, the National Standard 8 guidelines at § 600.345(b)(2) state that the standard does not constitute a basis for allocating resources to a specific fishing community, nor for providing preferential treatment based on residence in a fishing community. The analysis contained within Amendment 1 concluded that the economic impacts of the commercial tilefish fishery relative to employment and wages is difficult to determine; however, the analysis concludes that only a small amount of the region's fishing vessel employment, wages, and sales are dependant on tilefish, since the relative contribution of tilefish to the total value and poundage of finfish and shellfish is very small. As stated above, from 2000 through 2005, only 2.1 percent of the total value of seafood landings in Barnegat Light/Long Beach, NJ, were associated with tilefish. The other species with the highest commercial landings in Barnegat Light/Long Beach, NJ, are sea scallops, monkfish, and swordfish. The longline gear used in the directed tilefish fishery is also used in the tuna and swordfish fisheries. Therefore, the community impacts associated with the potential reduction in tilefish landings, and a reduction in inactive tilefish permitted vessels, may be mitigated somewhat by vessels that transition to fish for other species, such as those listed above. During the time period selected by the Council to qualify individuals for an IFQ allocation, approximately six vessels landed the majority of the commercial tilefish quota. The majority of these landings were made in Montauk, NY. The analysis concerning the economic impacts to specific ports, as a result of

the approved measures, are described in section 6.5.1 of the Amendment 1 document. The allocation scheme adopted under Amendment 1 is consistent with the requirements under section 303A(c)(5)(A) of the Magnuson-Stevens Act to consider the current and historic participation of fishing communities. NMFS does not concur with the commenter that Congress, by enacting the provisions contained in section 303A, and National Standard 8 of the Magnuson-Stevens Act, intended to prevent an IFQ allocation distribution similar to that adopted under Amendment 1. NMFS has determined that the socio-economic effects of the approved measures on selected fishing ports and regions need to be analyzed in the context of what would maximize benefits to fishing communities as a whole, consistent with the National Standard 4 guidelines. NMFS has determined that reducing the overcapacity in the tilefish fishery, preventing the race-to-fish mentality, and reducing or eliminating the derby-style fishery is beneficial for fishing communities within the Northeast Region.

Comment 13: The attorney, and a non-governmental environmental organization, commented that the IFQ program results in excessive shares and impermissible concentration of harvest privileges, as prohibited by National Standard 4 (section 301(a)(4)), and section 303A(c)(5)(D)(ii) of the Magnuson-Stevens Act.

Response: National Standard 4, and section 303A(c)(5)(D)(ii) of the Magnuson-Stevens Act, require that allocations in LAPPs be distributed in such a manner that no particular individual, corporation, or other entity acquire an excessive share of the limited access privilege. NMFS has determined that Amendment 1 meets this requirement, as under Amendment 1, a specific maximum percentage (49 percent of the adjusted TAL) of the total limited access privilege that may be held by any one entity is identified. In setting this limit, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocation, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not expect that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish. The Council also concluded that setting a 49-percent IFQ share cap would provide tilefish vessels with an opportunity to accumulate

shares above what some specific vessels had landed in recent history to allow for a reduction in capacity within the tilefish fishery. As such, the Council considered management objectives in their analysis of what cap level would be appropriate in the fishery. The Council identified that a management objective of the IFQ program was economic efficiency, and that allowing for some future consolidation, through transfer of share above the current level of ownership in the fishery, would encourage less efficient operators to transfer their allocation to more efficient operators.

Comment 14: The attorney, and a non-governmental environmental organization, commented that the IFQ program raises serious antitrust concerns that have been submitted to the U.S. Department of Justice, Antitrust Division, in accordance with section 303(A)(c)(9) of the Magnuson-Stevens Act.

Response: Although NMFS concurs with the commenters that section 303A(c)(9) of the Magnuson-Stevens Act does not preclude the application of antitrust laws to LAPPs, NMFS does not consider Amendment 1 to violate any antitrust laws for the reasons stated in the response to Comments 12 and 13.

Comment 15: NMFS received a comment from a non-governmental environmental organization that urged NMFS to adopt the GRA conservation measures in Amendment 1 while expanding their coverage to prohibit bottom-tending mobile gear in all 13 deepwater canyons.

Response: The EFH regulations at § 600.815(a)(2)(ii) require NMFS to ensure that each FMP minimize, to the extent practicable, adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Under Amendment 1, the Council conducted a practicability analysis, described in section 7.18.6 of Amendment 1, to determine which areas, if any, should be closed to bottom-tending mobile gear. This analysis included a determination of whether none, some, or all of the 13 deepwater canyons that contain pueblo/clay outcrop habitat for tilefish should be closed to bottom-tending mobile gear. The Magnuson-Stevens Act requires that Councils evaluate potential adverse effects of fishing activities on EFH and include in FMPs management measures necessary to minimize adverse effects to the extent practicable. Specifically for tilefish, clay outcroppings (pueblo habitats) have been determined to be highly vulnerable to permanent disturbance by bottom-tending mobile gear such as the bottom otter trawl, as

described in Amendment 1. Under Amendment 1, the Council adopted measures to close the four canyons that are known to contain tilefish pueblo or clay outcrop habitat as these closures were determined to be highly practicable. The other deepwater canyons were not selected, as they are not known to contain these habitats, and their closure would not have been as practicable. Also, since these other canyons are not known to contain pueblo or clay outcrop habitat, a rationale for closing these areas does not appear to exist. Absent such a basis, a closure of these areas appears to be indefensible under the "arbitrary and capricious" standard of the Administrative Procedure Act.

Comment 16: NMFS received a comment from a non-governmental environmental organization that urged NMFS to adopt the HAPC conservation measures in Amendment 1, while requesting that they be expanded. The commenting organization contended that all 13 canyons should be designated as HAPC, as they meet at least one of the sensitivity criteria specified in § 600.815(a)(8), and that all of the canyons are known to contain clay outcrop/pueblo habitat.

Response: The Council considered several action alternatives to designate HAPC within tilefish EFH. The Council decided to designate HAPC in the four canyons that are known to contain clay outcrop/pueblo habitats that are considered highly vulnerable to the adverse impacts of bottom-tending mobile gear. The canyons that are not known to contain clay outcrop/pueblo habitat were not designated as HAPC. The Amendment 1 document states that, if clay outcroppings are identified in the future in these other canyons, they could be designated as additional HAPCs through a framework action or amendment to the FMP. NMFS is not able to expand the designated areas, as its authority, based on a delegation from the Secretary, is limited to approval, disapproval, or partial disapproval of Amendment 1.

Comment 17: NMFS received a comment letter from a non-governmental environmental organization that urged NMFS to close all 13 deepwater canyons to bottom-tending mobile gear to protect deepwater coral communities.

Response: The Council exercised its discretion not to include measures to protect deepwater coral communities in Amendment 1, since it is not a required provision of an FMP or amendment. Amendment 1 to the Tilefish FMP was developed primarily to implement a LAPP in the fishery. As required by

§ 600.815(a)(10), NMFS reviewed the EFH provisions of the tilefish FMP and, within Amendment 1, revised and amended the EFH provisions as warranted based on available information. Under Amendment 1, the Council considered the impacts of fishing gear to juvenile and adult tilefish EFH to determine whether any GRAs should be identified. The Council analyzed several alternatives, including whether to close none, some, or all of the 13 deepwater canyons to bottom-tending mobile gear to protect tilefish pueblo/clay outcrop habitat. Although the Council did not explicitly consider alternatives to protect deepwater coral habitat in this amendment, the adopted GRAs will have the indirect benefit of protecting deepwater species such as sponges and corals from the impacts of bottom-tending mobile gear.

Comments on Proposed Measures and Regulations

Comment 18: Two commenters stated that the regulation at § 648.291(b)(1), that requires an IFQ Allocation permit holder to declare all vessel(s) that they own, or lease, that will land their allocation, by providing a list to NMFS at the beginning of each fishing year, could be a problem in the case where a vessel was lost or broken down during the fishing year. The commenter also questioned whether the allocation could be transferable under this condition.

Response: NMFS revised the regulations at § 648.291(b)(3) to clarify that 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 tilefish 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 IFQ Allocation permit. An IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit must send written notification to NMFS that includes the vessel permit number and the dates on which the vessel may fish for tilefish pursuant to the IFQ Allocation permit. In addition to this requirement, allocation is transferable under § 648.291(e).

Comment 19: Two commenters stated that the regulation at § 648.291(d)(4) that reserves 15 percent of the IFQ TAL to allow an individual to continue to fish under an LOA, pending resolution of an appeal, should not be deducted from the overall IFQ TAL. Rather, the 15-percent reserve should be proportionally reserved from each of the

three limited access categories. This would allow for 66 percent of the 15-percent reserve (9.90 percent of the IFQ TAL) to be applied to the Full-time tier 1 category; 15 percent of the 15 percent reserve (2.25 percent of the IFQ TAL) to be applied to the Full-time tier 2 category; and for 19 percent of the 15 percent reserve (2.85 percent of the IFQ TAL) to be applied to the Part-time category. This alternate method for reserving 15 percent of the IFQ TAL would allow for the reserve to be ultimately deducted from the category for which the appeals are submitted.

Response: NMFS has determined that this revision to the rule would not be consistent with the intent of the Council, as described in the Amendment 1 document. Although the Council was not specific as to how the 15-percent reserve should be deducted from the IFQ TAL (*i.e.*, either from the overall IFQ TAL, or proportionately from the contribution of each limited access category), NMFS has determined that the intent of the reserve is to allow vessels to continue to fish pursuant to a LOA, pending the resolution of appeals. The Council did specifically intend, as described in Amendment 1, that, if the resolution of appeals requires more than a 15-percent reserve, the allocations of all initial IFQ Allocation permit holder's would be reduced proportionately to accommodate the required allocation in excess of the 15-percent reserve. Therefore, the reserve is not specific to a particular category, but rather is to be deducted from the overall IFQ TAL at the beginning of the initial year of the IFQ program only. NMFS has determined that the majority of the vessels that would be likely to appeal their IFQ Allocation permit applications are currently permitted in the Part-time category. The 15-percent reserve was designed to allow these vessels an ability to continue to fish, pursuant to an LOA, until their appeals are resolved. NMFS determined that, if only 19 percent of the 15-percent reserve (2.85 percent of the IFQ TAL) was accessible to the majority of vessels fishing under an LOA, these vessels would not have the ability to continue to fish while their appeal is resolved, contrary to the intent of the Council.

Comment 20: One commenter opposed the initial cost-recovery fee of 3 percent of the landed value of the IFQ allocation, as described in § 648.291(h). The commenter stated that NMFS should estimate this cost prior to the implementation of the IFQ program.

Response: As described in Amendment 1, and as stated in this final rule, NMFS will not know the actual cost of the management, data collection

and analysis, and enforcement, of the tilefish IFQ program until after the end of the first year of the program. If the recoverable costs are determined to be less than 3 percent of the ex-vessel value of the fishery, NMFS will issue each IFQ Allocation permit holder a fee-coverage credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee.

Changes From Proposed Rule to Final Rule

In § 648.2, the definition of "interest in an IFQ allocation," is revised to define what an immediate family member is.

In § 648.2, the definition of "bottom-tending mobile gear," and "Interest in an IFQ allocation," are revised to correct syntax errors.

In § 648.4, paragraph (a)(12) is revised to correct syntax errors.

In § 648.7, paragraph (b)(2)(ii) is revised to correct syntax errors.

In § 648.14, paragraph (u)(2)(v) is revised to replace "golden tilefish," with "tilefish."

In § 648.14, paragraph (cc)(11) is revised to clarify that a vessel fishing subject to a trip limit is not prohibited from discarding tilefish.

In § 648.290, paragraph (b) is revised to replace "TAC," with "amount," so that the term is consistent with other portions of the regulatory text.

In § 648.291, paragraph (a)(1)(i) is revised to clarify that a person or entity meets the qualification criteria if they own a vessel with permit and fishing history containing a valid tilefish limited access permit for the 2005 permit year and qualifying landing amount, or if they currently hold a valid CPH for the fishing history associated with a vessel that was issued a valid tilefish limited access permit for the 2005 permit year that has a qualifying landing amount. In addition, "quota," within this paragraph was replaced with "landings," to better reflect the intent of the Council as described within Amendment 1.

In § 648.291, paragraph (a)(1)(ii) is revised to clarify the intent.

In § 648.291, paragraph (b)(1) is revised to clarify what each IFQ Allocation permit application must include.

In § 648.291, paragraph (e)(4)(i) "proof of eligibility to receive IFQ allocation," is replaced with, "indicate eligibility to receive IFQ allocation."

In § 648.291, paragraph (b)(3) is revised to add the requirement that IFQ Allocation permit holders must notify NMFS in writing if they wish to remove a Federal vessel permit number from the

list of vessels that may possess tilefish pursuant to their IFQ Allocation permit. This section was also revised to specify that an IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit must send written notification to NMFS that includes the vessel(s) permit number, and the dates on which the vessel(s) is authorized to land tilefish pursuant to the IFQ Allocation permit.

In § 648.291, paragraph (h)(1) is revised to clarify how NMFS will determine the cost-recovery fee.

In § 648.291, paragraph (c)(1)(i) is revised to clarify the intent.

In § 648.291, paragraph (d)(2) is revised to clarify that a hearing will only be held if the applicant presents credible documentation with the hearing request to show that the RA made an error in determining the ownership of a tilefish limited access permit, the accuracy of amount of landings, or the correct assignment of landings to the permit holder.

In § 648.291, text within paragraph (d)(3) is moved to paragraph (d)(4).

In § 648.291, paragraphs (e)(2), (e)(2)(i) and (e)(3)(iii) are revised to clarify the intent.

In § 648.291, paragraph (g) is revised for a syntax error.

In § 648.291, paragraph (h) is revised to clarify that an IFQ Allocation permit holder will incur a cost-recovery fee for his/her permanent allocation that he/she leased to another IFQ Allocation permit holder, if it is landed.

In § 648.291, paragraph (h)(1) is revised to clarify that, if the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program are greater than 3 percent of the ex-vessel value of the fishery, only 3 percent will be recoverable.

In § 648.291, paragraph (h)(3) is revised to clarify the intent.

Section 648.292 is removed and reserved to negate the RA's authority to close the EEZ to tilefishing, as this is not consistent with the intent of the IFQ program as described in Amendment 1.

In § 648.294, paragraph (a)(1) is revised to clarify that management measures may be adjusted, but not implemented, under the framework process.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, NMFS has determined that this final rule is consistent with the FMP, and other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS, in making that determination, has taken

into account the data, views, and comments received during the public comment period.

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

An NOA was published in the **Federal Register** on May 4, 2009 (74 FR 20448), and a proposed rule was published in the **Federal Register** on May 18, 2009 (74 FR 23147). Public comments were solicited on the amendment, and the proposed rule.

The Council prepared an FEIS for Amendment 1; the FEIS describes the impacts of the proposed Amendment 1 measures on the environment. Since most of the measures determine whether or not fishermen can continue to fish for tilefish, and at what level in the future, the majority of the impacts are social and economic. Although the impacts may be negative in the short term for fishermen who do not qualify for an IFQ Allocation, the long-term benefits to the Nation of a tilefish fishery without over-capitalization and derby-style fishing are positive.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(A) to waive prior notice and opportunity for public comment for the revisions to 15 CFR 902.1(b) because this portion of this final rule specifies actions of agency organization, procedure, or practice. Revisions to 15 CFR 902.1(b) in this action are necessary to maintain an accurate inventory of valid OMB control numbers for NOAA actions. The public has already been provided opportunity to comment on these information collections through the publication of the proposed rule for Amendment 1. Further, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delayed effectiveness for revisions to 15 CFR 902.1(b) in this final rule because these revisions are necessary for the purposes of agency procedure and practice to comply with the requirements of the PRA, and are necessary to allow for the collections required under § 648.291 of this final rule. These non-substantive revisions are necessary to ensure that the public is informed of the accurate OMB control number associated with particular regulatory citations. These revisions do not affect vessel operations.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for §§ 648.290 and 648.291 of this rule. These sections give NMFS the authority to qualify individuals for IFQ allocations, issue IFQ Allocation permits, and process IFQ Allocation

Transfer Forms. A delay in the effective date of these sections of this final rule would cause a disruption in the ordinary commerce of the tilefish fishery, and would be contrary to the public interest. IFQ Allocation permit holders will receive a portion of the overall annual quota for the species. Fishing for tilefish under the IFQ program begins on November 1, 2009, to coincide with the start of the 2010 fishing year. IFQ allocations are often transferred, either permanently or temporarily, to meet changing economic circumstances in an IFQ fishery prior to the beginning of the fishing year so that they are effective on the first day of the fishing year. Without the portions of this rule that allow NMFS to qualify applicants, issue IFQ Allocation permits, and process IFQ Allocation Transfer Forms in effect, NMFS could not ensure that the IFQ Allocation permits would be issued to the qualified individuals by the beginning of the fishing year; or make a transfer of part or the entirety of an allocation, either permanently or temporarily, that would be effective on the beginning of the fishing year. This inability on the part of NMFS to issue such permits and process such IFQ allocation transfers would preclude the intended recipients of such permits or transfers from fishing, thereby engendering a negative economic impact on the tilefish fishery. A delay in the effectiveness of these portions of the rule would be contrary to the rule's intent to shift the tilefish fishery from a limited access quota-monitored fishery, to an IFQ fishery that is efficient, reduces capacity in the fishing fleet, reduces the incentive for derby-style fishing, and allows the fishermen more flexibility in their operations so as to minimize the negative impacts of fishing in adverse weather. Allowing these sections of the rule to be effective upon publication would have the support of a majority of the qualified IFQ Allocation permit holders and would facilitate the permitting and transfer of IFQ. The publication of the proposed rule was delayed because the original submission of the Amendment 1 document to NMFS from the Council needed revisions to allow NMFS to consider it complete. Every effort was made to publish this final rule as expeditiously as possible.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0590. Public reporting burden for this

collection is estimated to average as follows:

1. Initial application for an IFQ Allocation permit—30 min per response;
2. Renewal application for an IFQ Allocation permit—15 min per response;
3. Appeal of an initial IFQ Allocation permit denial—2 hr per response;
4. Completion of an IFQ allocation interest declaration form—5 min per response;
5. Application for an IFQ transfer (permanent or temporary)—5 min per response;
6. Electronic payment of cost-recovery fees—2 hr per response;
7. Additional IFQ reporting requirements—2 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to *David.Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Pursuant to 5 U.S.C. 603, NMFS prepared a FRFA, which describes the economic impact that this final rule, along with other non-preferred alternatives, would have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Amendment 1, the comments and responses in this final rule, and the corresponding economic analyses prepared for Amendment 1 (e.g., the FEIS and the RIR). The contents of these documents are not repeated in detail here. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

Statement of Need for This Action

The purpose of this action is to improve the management of the tilefish fishery by the implementation of an IFQ program in the Tilefish FMP.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Sixteen comment letters were received during the comment periods on the FMP and proposed rule. The majority of comments were not specifically directed to the IRFA, but most were related to economic impacts on small entities. The comments and responses are contained in the Comments and Responses section of the preamble of this final rule and are not repeated here. Comments 2, 4, 7, 8, 10, 11, 12, 13, 14, and 15 were specifically directed at the economic consequences of Amendment 1 and, particularly, at the IFQ program and its potential impacts on individual vessels, all of which are small entities.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

When the original Tilefish FMP was implemented, the tilefish quota was divided among three limited access fishing categories under a limited access program. A total of 31 vessels (Full-time, Part-time, and CPH) are currently permitted to participate in the limited access tilefish fishery. In addition, approximately 2,400 vessels currently hold an open access tilefish Incidental category permit. The approved measures will mostly affect the 31 vessels that are permitted to participate in the fishery under the current limited access system. The approved measures only apply to the Full-time and Part-time tilefish vessels. Vessels with an Incidental tilefish permit would continue to operate with a tilefish open access permit that would allow the landing of an incidental catch of tilefish, *i.e.*, 300 lb (136 kg). In addition, according to NMFS VTR data, 32 vessels have landed tilefish from 1996 through 2005. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing industry, as a firm with receipts (gross revenues) of up to \$4.0 and \$6.5 million, respectively. All persons or entities that own permitted vessels fall within the definition of small business.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains several new collection-of-information, reporting, and recordkeeping requirements. The following describes these requirements.

1. Initial IFQ Allocation Permit

Because 32 vessels have landed tilefish during the period described above, NMFS estimates that there would be, at most, 32 applicants for an IFQ Allocation permit. Each IFQ Allocation permit application will take approximately 30 min to process. Consequently, the total time burden for the initial applications will be approximately 16 hr ($32 \times 30 \text{ min}/60 \text{ min} = 16$). According to the analysis for Amendment 1, only 13 IFQ applicants are expected to qualify and consequently renew their applications each year. IFQ Allocation permit renewal is estimated to take 15 min per application on average, for a total burden of approximately 3.25 hr per year ($13 \times 15 \text{ min}/60 \text{ min} = 3.25$). Thus, the 3-year average total public time burden for IFQ Allocation permit applications and permit renewals would be approximately 7.33 hr ($(15.5 + 3.25 + 3.25)/3 = 7.33$). Up to 32 applicants could potentially appeal their IFQ Allocation permit application decisions over the course of the application period. The appeals process is estimated to take 2 hr per appeal to complete, on average, for a total burden of 64 hr. The burden of this one-time appeal, annualized over 3 years, would be 21.33 hr.

2. Permanent and Temporary Transferability of IFQ

Using the NMFS Northeast Region Atlantic Surfclam and Ocean Quahog (SC/OQ) ITQ Transfer Program (OMB Control No. 0648-0240) as a proxy for the response rate for the tilefish IFQ quota transfer program, it is anticipated that there will be approximately 65 quota transfers (permanent and temporary) annually in the tilefish IFQ program. It is reasonable that it would take the same amount of time to complete a tilefish IFQ transfer application as it does to complete a SC/OQ transfer application. Therefore, using SC/OQ as a proxy, it is estimated that each transfer application will take approximately 5 min to complete. As noted above, the Council estimates that 13 entities will qualify for an initial tilefish IFQ Allocation. If these 13 IFQ Allocation permit holders completed 5 transfers annually, at 5 min per form, the annual burden would be approximately 5 hr.

3. IFQ Allocation Acquisition

To administer the 49-percent limit on IFQ allocation acquisition, tilefish IFQ Allocation permit holders will be required to submit an IFQ allocation interest declaration form annually, at

the time that they submit their IFQ Allocation permit renewal applications. If there are approximately 13 initial tilefish IFQ Allocation permits issued, there will be approximately 13 interest declaration forms each in the second and third years. However, due to IFQ allocation transfer, it is possible that there could be a different number of IFQ allocations after the initial year. It is estimated that it would take 5 min to complete each IFQ allocation interest declaration form; therefore, the annual reporting burden would be 1 hr ($13 \times 5 \text{ min}/60 \text{ min}$), or 1 hr, averaged over the first 3 years.

4. Cost-Recovery Fee Collection

As NMFS is initiating cost-recovery for this program, there are no current data for use in estimating the burden associated with submitting a cost-recovery payment. Using the burden per response used by the NMFS Alaska Region's Individual Fishing Quota Cost-Recovery Program (OMB Control No. 0648-0398) as a proxy for the tilefish IFQ program, it is estimated that it would take 2 hr per response. Each tilefish IFQ Allocation permit holder will be required to submit a cost-recovery payment once annually. Assuming that there are 13 tilefish IFQ Allocation permit holders, the burden hour estimate is 26 hr (13×2).

5. IFQ Reporting Requirements

Tilefish vessels will be required to input their pre-printed VTR serial number and dealer number into the IVR system within 48 hr of landing. Using the burden per response used by the current Northeast Family of Forms (OMB Control No. 0648-0202) as a proxy for the tilefish IFQ program, it is estimated that it will take 2 min for each IVR response. Landings data collected from vessels within the Full-time Tier-1 category for the previous 3 years indicate that they land, on average, 19 times a year. The current Full-time Tier 1 category is thought to most closely resemble the future IFQ program, as vessels currently have a cooperative system in place to evenly distribute landings throughout the year. As stated earlier, the Council estimates that 13 entities will qualify for an initial tilefish IFQ Allocation. The 13 vessels associated with these initial allocations will each call into the IVR system approximately 19 times a year. Amendment 1 requires two new IVR reporting requirements (dealer number and pre-printed VTR serial number). Each call to the IVR system will now include an additional two responses, each requiring 2 min of response time. This additional burden would be

approximately 16 hr ($13 \times 19 \times 4/60 \text{ min}$).

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The following discussion also includes a description of the economic impacts of the proposed action compared to significant non-selected alternatives as required under the RFA for inclusion in the FRFA. In addition, descriptions of the economic analysis for several of the selected and non-selected alternatives contained in the IRFA were not included in the FRFA, as NMFS determined that they are not significant under the RFA, and should not have been included in the IRFA. These alternatives include the Commercial Trip Limit, IFQ Program Review Process, Reporting Requirements, Recreational Bag-Size Limits, Framework Adjustment Process, Monitoring of Tilefish Landings, EFH Designations, and the HAPC designation measures.

Based on preliminary unpublished NMFS dealer data from Maine to Virginia, the 2005 total commercial value for tilefish was estimated at \$3.3 million from Maine through Virginia. In summary, assuming 2005 ex-vessel prices, the overall reduction in gross revenue in all Federally managed fisheries, under the approved measures, would be approximately \$100,000. This includes:

- An increase in tilefish ex-vessel revenue by approximately \$253,000, as landings will likely be spread throughout the year, thus supporting a higher price per pound, and there will likely be a reduction in derby-style fishing.
 - The implementation of cost-recovery will decrease vessel gross revenues by approximately \$141,066, assuming a TAL of 1.995 million lb (0.905 million kg), 2005 tilefish ex-vessel value, and an initial default cost-recovery fee of 3 percent of ex-vessel value.
 - The potential reduction in ex-vessel revenue, for all fisheries, associated with the implementation of GRAs may be approximately \$210,000.
- The initial default fee and cost-recovery rate of 3 percent may change

in subsequent years if the fee and cost-recovery is lower than initially assessed. Therefore, potential changes in revenue associated with the cost-recovery program may be lower than estimated here. The table included in the Measures to Reduce Gear Impacts in EFH section of the preamble to this final rule shows the economic impact to the fisheries as a result of the implementation of the Veatch and Oceanographer Canyon GRAs. However, as indicated in the analysis of the GRA alternatives, it is expected that localized reductions in revenues due to the proposed GRAs are likely to be partially or completely recouped due to an increase in effort outside of the GRAs. Effort displacement could, however, increase operating costs for fishermen who are forced to fish in other areas. As such, the lost revenue estimates represent a worst-case prediction of the anticipated loss in ex-vessel revenues that would result from closing this area to bottom-tending mobile gear. There was no bottom-tending mobile gear activity reported within the Norfolk and Lydonia GRAs in 2005. Finally, the proposed IFQ program also has associated costs to fishermen from the processing of payment fees, sale of IFQ allocations, and lease of IFQ allocations. These additional costs are estimated to be approximately \$1,270 total for fishermen during the first year of the IFQ program. These costs are expected to be reduced, thereafter, to approximately \$600 per IFQ Allocation permit.

Measures Affecting Fishery Program Administration

1. IFQ System

A detailed description of each IFQ Allocation alternative is presented in section 5.1 of Amendment 1, and the analysis of impacts is presented in section 7.1. The original FMP implemented a limited entry program and a tiered commercial quota allocation of the TAL. However, the original FMP does not address how the quota is to be distributed among vessels within each of the three limited access fishing categories. Currently, the tilefish fishery is overcapitalized. While there are fewer boats participating in the fishery today, there are still more boats in the fishery than required to efficiently harvest the TAL. Furthermore, derby-style fishing conditions in the Part-time and Full-time Tier 2 categories have forced early closures in recent years. The approved IFQ program should eliminate the derby-style fishing that exists under the current management system. Under the

approved IFQ program, fishermen can decide when to harvest, taking into consideration weather conditions and price at the dock, without losing fishing opportunity when the quota is reached.

The IFQ Allocation management measures within Amendment 1 analyze a wide variety of different systems. The evaluated IFQ programs could have implemented quota allocations for any combination of the limited access categories. As is currently the case, the Full-time Tier 1 category would initially receive 66 percent of the initial adjusted TAL, the Full-time Tier 2 category vessels would receive 15 percent, and the Part-time category would receive 19 percent. However, each IFQ alternative proposed under Amendment 1 would allocate specific quota allocations to vessels within the three permit categories based on historical landings from one of three proposed sets of time periods (average landings for 1988–1998, average landings for 2001–2005, or best 5 years from 1997 to 2005) or by dividing the overall quota for each permit category equally among all permitted vessels in each category.

As previously indicated, all of the IFQ Allocation alternatives considered under Amendment 1 would have the potential to reduce fishing capacity, as it is expected that these alternatives would all allow fishermen to improve overall fishing methods by providing more flexibility in deciding when, where, and how to fish. The reduction in fishing capacity could potentially be the highest under the IFQ programs evaluated that include the largest number of permit holders (*e.g.*, Alternatives 5.1.D and 5.1.E within Amendment 1). Furthermore, alternatives that allocate the initial IFQ in a manner that rewards more recent fishing participation would also further reduce excess fishing capacity and latent fishing effort. In addition, smaller operators, with limited quota allocations, but with other fishing opportunities and earnings, may quickly exit the fishery. Operators with larger quota allocations, more experience, and/or significantly less fishing opportunities and earnings in other fisheries (or sectors of the economy) may take longer, or not exit the fishery at all. These marginal operations are expected to continue to fish for tilefish under an IFQ program, as long as they can cover their variable costs. By improving catch efficiency under an IFQ program, operating costs could be lowered, as fishermen have more flexibility in their input choices and trip planning. This in turn is expected to promote safer at-sea operating conditions.

The Council adopted management measures to implement an IFQ program in all three of the current limited access permit categories. Under Amendment 1, IFQ Allocation for qualifying Full-time vessels will be distributed using average landings for the 2001–2005 period. For Part-time vessels, an equal allocation will be used to calculate IFQ for vessels that landed tilefish during the 2001–2005 period. The specific IFQ Allocations associated with all of the evaluated alternatives are fully described in section 7.1 of Amendment 1. It is expected that landings for Full-time vessels will not change under an IFQ program when compared to the landings generated by these vessels under the current limited access system in 2005 (base year). The approved IFQ program is not expected to change the overall amount of tilefish landed, since this fishery is already operating under a hard TAL system, and the TAL is being fully harvested. The IFQ program will only divide and assign the current TAL (as reduced by research set-asides, incidental catch, and prior year overages) to individual fishermen. Overall tilefish prices are not expected to change significantly, and the overall landings are likely to remain constant under the current rebuilding scheme. However, it is likely that Part-time vessels qualifying for IFQ Allocations may spread their landings throughout the year (to avoid the current derby-style fishing practices) and, therefore, they are more likely to receive higher prices for their product. Assuming the current TAL allocated to the Part-time vessels, and the 2005 tilefish price differential between Full-time and Part-time vessels, it is expected that Part-time vessels may generate revenue increases, from spreading landings throughout the year and not engaging in a derby-style fishery, of approximately \$253,000. An increase in tilefish prices could decrease consumer surplus. If there is a change in the price of tilefish there would be associated changes in producer surplus (PS). The magnitude of the PS change will be associated with the price elasticity of demand for this species. The law of demand states that the price and quantity demanded are inversely related. The elasticity of demand is a measure of the responsiveness of the quantity that will be purchased by consumers, given changes in the price of that commodity (while holding other variables constant). Seafood demand, in general, appears to be elastic. For example, an increase in the ex-vessel price of tilefish may increase PS. A decrease in the ex-vessel price of tilefish may also increase PS if

we assume that the demand for tilefish is moderately to highly elastic. The exact shape of the market demand curve for tilefish is not known; therefore, the magnitude of these changes cannot be fully assessed. In addition, the proposed tilefish IFQ program may also affect the ability of fishermen to negotiate better prices for their product.

Under the non-selected status quo alternative, the commercial tilefish fleet would likely continue to be characterized by higher than necessary levels of capital investment and increased operating costs. In addition, shortened seasons and limited at-sea safety, price fluctuations, and depressed ex-vessel price, would continue. The implementation of an IFQ program will likely decrease overcapitalization, distribute fishing effort throughout the year, decrease operating costs by allowing fishermen to better manage their operations, and potentially increase ex-vessel prices. The approved measures are not expected to change enforcement costs drastically. However, it is possible that these costs could decrease.

2. Permanent Transferability of Ownership

The Council considered five alternatives that would define transferability of ownership. Restrictions on who may purchase quota allocations, after an initial IFQ allocation has been established, are frequently a major consideration when developing IFQ programs. Transfer restrictions are generally used to address concerns that implementation of an IFQ program will result in drastic and rapid changes to the status quo. In the short-run, transferability results in lower operating costs and higher production value in fisheries that have large harvesting capacity. Fishermen that can operate at the lowest cost, or produce the most valuable product, are able to buy or lease fishing quotas from marginal operators at a price that is satisfactory to both parties. In the long-run, transferability of quota is anticipated to optimize the size of the tilefish fishing fleet as an allocation holder will have no economic incentive to invest in a level of capital larger than needed to land their quota allocation. The free transfer of quota allocation, implemented under the IFQ program, will likely change the existing fishery rapidly and/or substantially. In addition, it is possible that IFQ could be sold to entities that are willing to pay the highest price. It is likely that these entities would operate at the lowest cost, produce the most valuable

product, and in general terms, be the most efficient.

The no action alternative would have prohibited the transfer of IFQ allocations. Thus, the no action alternative would not have benefited those individuals that wanted to sell their allocations or buy allocations to enter the fishery or expand fishing operations. The Amendment 1 approved measure for quota allocation transfer allows for free quota allocation transfers, with limited restrictions, and will enhance the market for IFQ allocations to a greater extent than any other evaluated alternative. The other non-selected alternatives would all restrict the transfer of IFQ in some fashion, at a level between the no-action and the preferred alternative. It is likely that increased demand for a commodity that has a fixed supply would tend to increase the selling price.

3. Temporary Transferability of Ownership

As indicated in section 7.3 of Amendment 1, some degree of temporary transfer (leasing) flexibility may be important to allow fisheries to adapt to change. For instance, leasing would allow fishermen without a quota allocation, or a small initial quota, to lease quota allocation in order to participate in the fishery, and fine-tune their operations before they make a commitment to purchase IFQ allocations. The supply and demand factors that affect the price of IFQ allocations, and the benefits to fishing operations that are derived from the various levels of transferability systems discussed under the previous alternative, also apply here. As occurs with the permanent transfer of ownership, the difference in leasing price for the alternatives evaluated cannot be estimated with the existing information. It is possible that a lease would move quota allocations to individuals that are willing to pay the highest price. It is likely that these individuals would operate at the lowest cost, produce the most valuable product, and in general terms be the most efficient operators. However, the overall harvest cost may increase for these individuals as a consequence of leasing IFQ Allocations. IFQ Allocation permit holders can also benefit from leasing, as they can modify their operations to deal with market fluctuations, lease their allocations in the event of some type of physical or mechanical hardship, or lease to generate revenue.

4. IFQ Allocation Acquisition

IFQ consolidation may lead to positive economic development and may be considered a rational outcome of a LAPP. However, consolidation may result in only a few participants enjoying the benefits of the public tilefish resource. As the price of allocations rise, smaller operators may not be able to afford to buy into the fishery. Therefore, smaller operators may lease allocations and the fishery may become comprised of absentee owners. Alternative 4A would not have restricted allocation consolidation. This could have potentially led to increased economic efficiency, as vessel owners could attempt to maximize profit by improving vessel efficiency and benefit from the opportunity to reduce production costs (economic efficiency grounds; exploitation of economies of scale). Other alternatives would have limited the amount of consolidation in the fishery, which may not have allowed for the most efficient vessel operations, and/or impact the initial quota allocation. An excessive allocation limit can only be defined in the context of a well defined problem, which is related to the amount of quota allocation owned or controlled by a single entity, or by the number of operating entities. The excessive allocation limit is defined as the limit that prevents the problem from occurring, or keeps it at an acceptable level. One of these problems is the potential control of market power in the tilefish fishery. The Amendment 1 adopted measure sets an individual allocation accumulation limit at 49 percent of the TAL (adjusted). In selecting this alternative, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocations, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not expect that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish. The Council also considered historical landings and participation when setting the allocation cap at 49 percent. Prior to the implementation of the original FMP, one vessel landed approximately 36 and 37 percent of the overall tilefish landings during the 1989 and 1990 years, respectively. Therefore, a 49-percent IFQ allocation acquisition limit provides tilefish vessels with an opportunity to accumulate allocations modestly above what some specific

vessels have landed in recent history in order to potentially allow for the most efficient operations to harvest the quota. Furthermore, the Council was concerned that, if the overall TAL is reduced in the future, then Full-time Tier 1 and Tier 2 vessels may not be able to fish at efficient levels and may require the buying or leasing of additional allocations from other vessels in order to continue to participate in the fishery. The vessels that originally qualified for the Full-time permit categories had more than enough capacity to harvest the current quota level. In fact, in 1997, three Full-time vessels landed between 706,000 lb (320,236 kg) and 811,000 lb (367,863 kg) of tilefish.

5. Fees and Cost-Recovery

As previously indicated, NMFS is required under the Magnuson-Stevens Act to collect fees to recover the costs directly related to the management, enforcement, and data collection and analysis of IFQ programs. Under section 304(d)(2) of the Magnuson-Stevens Act, the Secretary is authorized to collect a fee to recover these costs. The fee shall not exceed 3 percent of the ex-vessel value of the fish harvested. A fee and cost-recovery program for the tilefish fishery is implemented under the adopted measures. The main difference between the adopted measure and the other non-selected action alternative is the manner in which payments are collected and made. Under the adopted measure, the IFQ Allocation permit holder is responsible for self-collecting his or her own fee liability for all of his/her IFQ tilefish landings for later submission to NMFS. Under the non-selected alternative, Federally permitted dealers would be required to collect a fee, for later submission to NMFS, when they purchase tilefish. Each of these alternatives proposed to implement a 3-percent fee of the actual ex-vessel value of tilefish landed under the IFQ program. The fee can be adjusted downward by NMFS in the event the recovered fees exceed the costs directly related to the management, enforcement, and data collection and analysis of the LAPP components of the

tilefish fishery. The approved measures will implement an IFQ program for all permit categories. Using a TAL of 1.995 million lb (904,917 kg) of tilefish, and applying a 2005 coast-wide average ex-vessel price for all market categories of \$2.48 per pound at the maximum fee level of 3 percent, the total fee expected to be collected in the first year of the program is \$141,066. Applying these assumptions regarding quota and price at a 2-percent fee level, the total fee expected to be collected would be \$94,044. Producer surplus is reduced by the amount of the fee plus any other costs associated with paying the fee. Those costs include time and materials required for completing the paperwork and paying the fee. Preliminary analyses show that the management, enforcement, and data collection and analysis cost would be approximately \$94,000, which is less than the 3-percent maximum fee.

Recreational Charter/Party Vessel Permits and Reporting Requirements

The no action alternative would not have implemented permit and reporting requirements for Charter/Party permitted vessels and operators. The adopted measures require that Charter/Party vessels fishing for tilefish obtain a Federal open access Charter/Party permit, and require that any vessel fishing under a Charter/Party permit have on board at least one person who holds an operator permit. According to NMFS VTR data, 32 vessels landed tilefish between 1996 and 2005. It is expected that all of these vessels will apply for a Charter/Party permit in order to maintain flexibility in their operations. The implementation of this measure would likely increase the understanding of the recreational participation in the fishery, and would assist managers to better assess fishing trends. This action is purely administrative and is not expected to change current participation of charter/party vessels in the tilefish fishery.

Measures To Reduce Gear Impacts on EFH

Under the adopted measure, the Council decided to close a portion of Norfolk, Veatch, Lydonia, and

Oceanographer Canyons to bottom-tending mobile gear to reduce gear impacts on juvenile and adult tilefish EFH. The associated potential changes in ex-vessel revenues associated with each of the evaluated GRAs are discussed in detail in sections 7.18.5 and 7.18.6 of Amendment 1. The status quo alternative is expected to have neutral short-term social and economic impacts, as the current status quo would be maintained. However, there could potentially be longer-term negative socioeconomic impacts if the failure to establish a GRA prevents potential future increases in the productivity and associated fishery yields of managed resources in the region. Alternative 18B would have implemented a closure to protect tilefish habitat between 70°00'W. long. and 39°00'N. lat. on the outer continental shelf/slope from bottom otter trawling. This area was considered for closure because of the extensive bottom trawl activity identified in the overlap analysis (Appendix E of Amendment 1) in these two statistical areas. This alternative would have had significant short-term negative socioeconomic impacts based on an examination of 2005 VTR data within the proposed closure area. It should be noted that, because the data are self-reported, there could be errors in the spatial information or reported data resulting from inaccurate reporting, unclear handwriting, or errors in transcribing the written information. Potential losses in ex-vessel revenue could be as high as \$18.3 million (when compared to 2005 fishing opportunities) if this alternative was selected, and the EFH designation was not changed. Economic losses associated with this non-selected alternative could have been slightly lower under the adopted EFH measures. Under the approved measures, the combined potential changes in ex-vessel revenues associated with the implementation of GRAs in Veatch and Oceanographer Canyons, for all fisheries, is expected to be approximately \$210,000 (see table below). There was no bottom trawl activity reported within the Norfolk and Lydonia GRAs in 2005.

	VEATCH CANYON GRA	OCEANOGRAPHER CANYON GRA
NUMBER OF TRIPS	9	5
	VALUE (\$)	VALUE (\$)
MONKFISH	1,198	3,929
BLUEFISH	0	0
BUTTERFISH	4,059	2,293

	VEATCH CANYON GRA	OCEANOG- RAPHER CANYON GRA
ATLANTIC CROAKER .....	.....	.....
COD	0	1,055
BLUEBACK HERRING .....	.....	.....
CONGER EEL .....	.....	.....
UNKOWN EEL .....	.....	.....
WINTER FLOUNDER	0	2,656
SUMMER FLOUNDER	4,798	4,072
WITCH FLOUNDER	0	1,357
YELLOWTAIL FLOUNDER	0	6,031
AMERICAN PLAICE	0	741
FOURSPOT FLOUNDER .....	.....	.....
HADDOCK	0	16,946
RED HAKE	439	392
WHITE HAKE	0	0
ATLANTIC HERRING	0	0
JOHN DORY	821	0
KING WHITING	0	0
LUMPFISH	0	0
ATLANTIC MACKEREL	3	355
POLLOCK .....	.....	.....
SCUP	0	0
UNKNOWN SEATROUT	0	0
BLACK SEA BASS	347	0
SEA ROBINS .....	.....	.....
SQUETEAGUE WEAKFISH	5	0
SPOTTED WEAKFISH .....	.....	.....
SPINY DOGFISH .....	.....	.....
SKATES (MIX)	0	0
LITTLE SKATE .....	.....	.....
BLUELINE TILEFISH	0	0
GOLDEN TILEFISH	1,287	0
BLACK WHITING	0	0
SILVER HAKE	1,476	42,620
LOBSTER	0	0
SEA SCALLOP	0	766
LOLIGO SQUID	109,294	154
ILLEX SQUID	0	0
UNKNOWN SQUID	0	0
2005 TOTAL	\$123,728	\$83,368

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 “the 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 letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, *i.e.*, permit holder letter, will be sent to all holders of permits for the tilefish fishery. The

guide and this final rule will be available upon request.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 17, 2009.

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

■ For the reasons stated in the preamble, 15 CFR part 902, and 50 CFR part 648 are amended as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

- a. Revising the existing entry for § 648.7; and
- b. Adding new OMB control numbers in numerical order and new entries for § 648.291 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR.	
648.7	-0018, -0202, -0212, -0229, and -0590.
648.291	-0590.

* * * * *

TITLE 50—WILDLIFE AND FISHERIES

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 4. In § 648.2, the definitions for “Bottom-tending mobile gear,” “Lessee,” and “Lessor” are revised, and a definition of “Interest in an IFQ allocation” is added in alphabetical order to read as follows:

§ 648.2 Definitions.

Bottom-tending mobile gear, with respect to the NE multispecies and tilefish fisheries, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

Interest in an IFQ allocation means: An allocation permanently or temporarily 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 own a documented vessel under the terms of 46 U.S.C. 12102(a), who receives temporarily transferred tilefish IFQ Allocation, as specified at § 648.291(e)(1).

Lessor means:

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

(2) An IFQ Allocation permit holder who temporarily transfers tilefish IFQ Allocation, as specified at § 648.291(e)(1).

■ 5. In § 648.4, paragraph (a)(12) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) *Tilefish vessels.* Any vessel of the United States must have been issued, under this part, and carry on board, a valid vessel permit to fish for, possess, or land tilefish, in or from the Tilefish Management Unit, and must fish under the authorization of a tilefish IFQ Allocation permit, issued pursuant to § 648.291, to possess, or land tilefish in excess of the trip limit as specified under § 648.293.

(i) *Party and charter vessel permits.* Any party or charter vessel must have been issued, under this part, a Federal Charter/Party vessel permit to fish for tilefish in the Tilefish Management Unit, if it carries passengers for hire. Recreational fisherman fishing onboard such a vessel must observe the recreational possession limits as specified at § 648.295 and the prohibition on sale.

(ii) [Reserved]

■ 6. 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 § 648.291(a), must

submit a tilefish catch report by using the IVR system within 48 hr 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. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

■ 7. In § 648.14, paragraph (u) is revised to read as follows:

§ 648.14 Prohibitions.

(u) *Golden tilefish.* It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements—(i) Operator permit.* Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the Tilefish Management Unit, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Dealer permit.* Purchase, possess, receive for a commercial purpose; or attempt to purchase, possess, or receive for a commercial purpose; as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the Tilefish Management Unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(iii) *Vessel permit.* Sell, barter, trade, or otherwise transfer from a vessel; or attempt to sell, barter, trade, or otherwise transfer from a vessel; for a commercial purpose, other than solely for transport on land, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(2) *Possession and landing.* (i) Fish for, possess, retain, or land tilefish, unless:

(A) The tilefish are being fished for or were harvested in or from the Tilefish Management Unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel, other than a Party/Charter vessel, that is engaged in recreational fishing.

(ii) Land or possess tilefish harvested in or from the Tilefish Management Unit, in excess of the trip limit pursuant to § 648.293, without a valid tilefish IFQ Allocation permit, as specified in § 648.291(a).

(iii) Land tilefish harvested in or from the Tilefish Management Unit in excess of that authorized under a tilefish IFQ Allocation permit as described at § 648.291(a).

(iv) Operate a vessel that takes recreational fishermen for hire to fish for tilefish in the Tilefish Management Unit without a valid tilefish Charter/Party permit, as required in § 648.4(a)(12)(i).

(v) Fish for tilefish inside and outside of the Tilefish Management Unit on the same trip.

(vi) Discard tilefish harvested in or from the Tilefish Management Unit, as defined in § 648.2, unless participating in recreational fishing, as defined in § 648.2, or while fishing subject to a trip limit pursuant to § 648.291(d)(3) or § 648.293.

(3) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(ii) Purchase or otherwise receive for commercial purposes tilefish caught in the EEZ from outside the Tilefish Management Unit unless otherwise permitted under 50 CFR part 622.

(4) *Presumption.* For purposes of this part, the following presumption applies: All tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Tilefish Management Unit, unless the preponderance of all

submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in State waters.

* * * * *

■ 8. In § 648.290, the section heading, and paragraphs (b) and (c) are revised to read as follows:

§ 648.290 Individual fishing quota program and other restrictions.

* * * * *

(b) *TAL allocation.* For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research amount, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will, for the first year of the Individual Fishing Quota Program (IFQ TAL), be reduced by the 15-percent reserve, as specified in § 648.291(d)(4), and then allocated as follows: Full-time tier Category 1, 66 percent; Full-time tier Category 2, 15 percent; Part-time, 19 percent, to allow for the calculation of IFQ allocations and the issuance of IFQ Allocation permits pursuant to § 648.291.

(c) *Adjustments to the quota.* If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 300 lb (138 kg) may be reduced in the following fishing year. In the first year of the IFQ program only, any overages from the prior limited access category fishery will be deducted from the appropriate category, prior to the initial distribution of IFQ allocation as specified at § 648.291(c). If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

* * * * *

■ 9. Section 648.291 is revised to read as follows:

§ 648.291 Individual fishing quota.

(a) *Individual fishing quota (IFQ) allocation permits.* After adjustments for incidental catch, research set asides, and overages, as appropriate, during the first year of the IFQ Program, the Regional Administrator shall divide the Category quotas specified pursuant to § 648.290(b), among the owners of vessels that meet the qualification criteria specified in paragraphs (a)(1)(i) and (ii) of this section. Initial allocations shall be made in accordance with paragraph (b)(1)(i) of this section, in the form of an IFQ Allocation permit issued to a qualifying vessel owner, who files a complete application, specifying the allocation percentage of the IFQ TAL that the owner is entitled to harvest. This allocation percentage shall be calculated pursuant to paragraph (c) of

this section and converted annually into pounds of tilefish. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. Allocations in subsequent years shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.290(b), subject to any deductions for overages pursuant to paragraph (f) of this section. These allocations shall be issued in the form of an annual IFQ Allocation permit.

(1) *Qualifying criteria.* (i) A person or entity qualifies for an IFQ Allocation permit if they: Own a vessel with a fishing history that includes a valid tilefish limited access permit for the 2005 permit year and reported landings of tilefish from 2001 through 2005 that constituted at least 0.5 percent of the total landings in the tilefish Category for which it was permitted; or

(ii) Hold a valid confirmation of permit history (CPH) that meets the criteria in paragraph (a)(1)(i) of this section.

(2) [Reserved]

(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 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) *Initial application.* An applicant shall submit an application for an initial IFQ Allocation permit no later than 6 months after the effective date of this regulation.

(ii) *Renewal applications.* Applications to renew an IFQ Allocation permit must be received by September 15 to be processed in time for the start of the November 1 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.

(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 permanent allocation as of September 1 of the current fishing year. During the period between September 1 and October 31, transfer of IFQ is not permitted, as described in paragraph (e)(4) of this section. The IFQ Allocation permit shall specify the allocation percentage of the IFQ TAL which the IFQ permit holder is authorized to harvest.

(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, or revised due to a transfer of all or part of the allocation percentage under paragraph (e) of this section. 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 that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit must send written notification to NMFS that includes the vessel permit number, and the dates on which the IFQ Allocation permit holder desires the vessel to be authorized to land IFQ tilefish pursuant to the IFQ Allocation permit to be effective.

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

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

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

(7) *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) *Initial allocation formulas—(1) General.* An individual fishing quota of tilefish shall be calculated as a percentage of the IFQ TAL, based on the following formulas:

(i) *Full-time vessels.* The owner of a vessel that held a Full-time (Category A or B; 66 percent of the adjusted TAL for Category A, and 15 percent of the adjusted TAL for Category B) limited access permit in 2005 shall receive an allocation based on the division of the vessel's average landings from 2001 through 2005 by the total average landings in their respective Category during this same time period to derive a percentage. This percentage shall then be applied to the IFQ TAL to derive an IFQ allocation percentage of the IFQ TAL that shall also be converted to an amount in pounds. If the landings of all qualified vessels yield percentages that are less than the allocation of the entire adjusted quota, the remainder shall be distributed among the qualified vessels based on the ratio of their respective percentages. Vessel landings during this time period will be calculated using NMFS interactive voice reporting (IVR) data for 2002 through 2005, and NMFS dealer data submitted for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the Hadaja v. Evans lawsuit).

(ii) *Part-time vessels.* An owner of a vessel that held a Part-time (Category C) limited access permit in 2005 shall receive an allocation based on the equal division of the Category C quota (19 percent of the adjusted TAL) among vessels that had landings during the 2001 through 2005 time period, to derive an IFQ allocation percentage of the IFQ TAL. This percentage shall also be converted to an amount in pounds. Vessel landings during this time period will be calculated using NMFS IVR data for 2002 through 2005, and NMFS dealer data submitted for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the Hadaja v. Evans lawsuit).

(2) [Reserved]

(d) *Appeal of denial of permit—(1) General.* Any applicant denied an IFQ Allocation permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in this section. The appeal must set forth

the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(2) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may appeal the initial decision to the Regional Administrator by submitting a request in writing within 30 days of the notice of the initial decision. If requested, the appeal may be presented at a hearing before a hearing officer appointed by the Regional Administrator. A hearing will only be held if the applicant presents credible documentation with the hearing request to show that the Regional Administrator made an error in determining the ownership of a tilefish limited access permit, the accuracy of amount of landings, or the correct assignment of landings to the permit holder. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative decision of the Department of Commerce. If a hearing is held, the hearing officer shall make findings and a recommendation based upon the administrative record, including that generated during any hearing, pertaining to the application and appeal within NMFS to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendations from the hearing officer, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal.* Any applicant denied an IFQ Allocation permit may request the issuance of a letter of authorization (LOA) from the Regional Administrator to continue to fish for tilefish after the effective date of the final regulations, pending the resolution of the relevant appeal, if his/her vessel was issued a valid tilefish permit in 2008. This LOA would allow a vessel to continue to fish for tilefish. If the appeal is finally denied, the LOA will become invalid 5 days after the receipt of the notice of final denial from the Regional Administrator.

(4) *LOA reserve.* During the first year of the IFQ program, the Regional Administrator will reserve 15 percent of the IFQ TAL, prior to initial distribution of IFQ allocations, to allow for continued fishing under an LOA, as specified in paragraph (d)(3) of this section, pending resolution of the relevant appeal. Any portion of the reserve remaining after the appeals process has been completed will be distributed to IFQ Allocation permit

holders based on their allocation percentages as soon as possible during that fishing year. If vessels fishing under an LOA are projected to land a portion of the IFQ TAL that NMFS determines would unreasonably diminish the allocations of IFQ Allocation permit holders, the Regional Administrator will impose a trip limit to reduce the landings of vessels fishing under an LOA. If vessels fishing under LOAs, pending resolution of the appeals process, are projected to harvest an amount of tilefish in excess of the 15-percent reserve, the allocations for all IFQ Allocation permit holders will be reduced proportionately during that fishing year, to increase the amount of the reserve determined to be necessary. If an IFQ Allocation permit holder has no allocation remaining at the time of the proportionate reduction of all IFQ allocations, this reduction will constitute an overage and will be deducted from the IFQ Allocation permit holder's subsequent fishing year allocation.

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary 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 temporary 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 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, an owner of an IFQ allocation may permanently transfer the entire IFQ allocation, or a portion of the IFQ Allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). The Regional Administrator has final approval authority for all permanent IFQ allocation transfer requests.

(3) *IFQ allocation transfer restrictions.* (i) If IFQ allocation is temporarily transferred to any eligible entity, it may not be transferred by the transferee

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 will not be approved by the Regional Administrator if it would result in an entity owning, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) If the owner of an IFQ allocation leases additional quota from another IFQ Allocation permit holder, any landings associated with this transferred quota would be deducted from the total yearly landings of the lessee, before his/her base allocation, if any exists, for the purpose of calculating the appropriate cost-recovery fee. As described in paragraph (h) of this section, a tilefish IFQ Allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ Allocation permit, including allocation that he/she leases to another IFQ Allocation permit holder.

(4) *Application for an IFQ allocation transfer.* Any IFQ Allocation permit holder applying for either permanent or temporary transfer of 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 IFQ allocation transfers must be received by September 1 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, indicate eligibility to receive IFQ allocation, the amount of allocation to be transferred, and a declaration, by IFQ Allocation permit number, of all the IFQ allocations that the person or entity receiving the IFQ allocation has an interest in. The person or entity receiving the IFQ allocation must indicate the permit numbers of all Federally permitted vessels that will possess or land their 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 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 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 will result in the transferee having a tilefish IFQ Allocation 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 own a documented vessel under the terms of 46 U.S.C. 12102(a); 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.* Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage 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 can not 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 § 648.290, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent or temporary transfer of IFQ. 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.* A fee shall be determined as described in paragraph (h)(1) of this section, and collected to recover the costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ Allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ Allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ Allocation permit, including allocation that he/she leases to another IFQ Allocation permit holder. A tilefish IFQ Allocation permit holder, with a permanent allocation, shall be responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations. NMFS will create an annual IFQ allocation bill for each cost-recovery billing period and provide it to each IFQ Allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

(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 authorized under their permanent IFQ Allocation permit, including landings on 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. Prior to the first year of the IFQ program, NMFS will not have information needed to determine the management, data collection and analysis, and enforcement costs of the program. Therefore, during the initial cost-recovery billing period, the fee shall be set at 3 percent. If the recoverable costs are determined to be less than 3 percent, NMFS shall issue each IFQ Allocation permit holder a fee-override credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee.

(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 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]

(2) *Fee payment procedure.* 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. Cost-recovery payments shall be made electronically via the Federal Web portal, <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 possible.

(3) *Payment compliance.* If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ Allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ Allocation permit holder has not paid the full amount due, he/she shall notify the IFQ Allocation permit holder in writing of the deficiency. NMFS shall explain the deficiency and provide the IFQ Allocation permit holder 30 days from the date of the notice, either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ Allocation permit holder submits evidence in support of the appropriateness of his/her payment,

the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be in set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ Allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ Allocation permit holder may be issued a letter of authorization to fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ Allocation permit shall not be issued, and the letter of authorization shall not be valid until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ Allocation permit, if issued. If the Regional Administrator determines that the IFQ Allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ Allocation permit has already been issued, the Regional Administrator shall issue a FAD and will notify the IFQ Allocation permit holder in writing. The IFQ Allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ Allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ Allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ Allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ Allocation permit holder may renew the tilefish IFQ Allocation permit. If NMFS does not receive full payment of a recoverable cost 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 shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

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

§ 648.292 [Removed and reserved]

■ 10. Section 648.292 is removed and reserved.

■ 11. Section 648.293 is revised to read as follows:

§ 648.293 Tilefish trip limits.

Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 300 lb (138 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ Allocation permit, as specified at § 648.291(a). Any tilefish landed by a vessel fishing under an IFQ Allocation permit, on a given fishing trip, count as landings under the IFQ Allocation permit.

■ 12. Section 648.294 is added to read as follows:

§ 648.294 Framework specifications.

(a) *Within-season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP.

(1) *Specific management measures.* The following specific management measures may be adjusted at any time through the framework process:

- (i) Minimum fish size;
- (ii) Minimum hook size;
- (iii) Closed seasons;
- (iv) Closed areas;
- (v) Gear restrictions or prohibitions;
- (vi) Permitting restrictions;
- (vii) Gear limits;
- (viii) Trip limits;
- (ix) Overfishing definition and related thresholds and targets;
- (x) Annual specification quota setting process;
- (xi) Tilefish FMP Monitoring Committee composition and process;
- (xii) Description and identification of EFH;
- (xiii) Fishing gear management measures that impact EFH;
- (xiv) Habitat areas of particular concern;
- (xv) Set-aside quotas for scientific research;
- (xvi) Changes to the Northeast Region SBRM, including the CV-based

performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs;

(xvii) Recreational management measures, including the bag-size limit, fish size limit, seasons, and gear restrictions or prohibitions; and

(xviii) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.

(2) *Adjustment process.* If the Council determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two Council meetings. The Council will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second Council meeting on that framework action. After developing management actions and receiving public comment, the Council will submit the recommendation to the Regional Administrator; the recommendation must include supporting rationale, an analysis of impacts, and a recommendation on whether to publish the management measures as a final rule.

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council will make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of

the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur with the Council's recommendation, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

■ 13. Section 648.295 is added to subpart N to read as follows:

§ 648.295 Recreational possession limit.

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a Charter/Party vessel shall observe the recreational possession limit.

■ 14. Section 648.296 is added to subpart N to read as follows:

§ 648.296 Gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. Lat.			W. Long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

[FR Doc. E9-20207 Filed 8-21-09; 8:45 am]
 BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 24, 2009 and is applicable beginning August 13, 2009.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone number: 202-685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a), pertaining to the placement of the masthead light on the ship's fore and aft centerline. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is

impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Two by adding, in alpha numerical order by vessel number, an entry for USS PROVIDENCE (SSN 719); The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

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