



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 201106-0294]

RIN 0648-BJ98

### Fisheries of the Northeastern United States; Golden Tilefish Fishery; 2021 and Projected 2022 Specifications and Emergency Action

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

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

**SUMMARY:** NMFS proposes specifications for the 2021 commercial golden tilefish fishery and projected specifications for 2022. This action also proposes to implement emergency measures for the golden tilefish fishery at the request of the Mid-Atlantic Fishery Management Council. The proposed action is intended to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. The proposed emergency measures would allow a limited one-time carryover of up to 5 percent of unharvested fishing quota from the 2020 fishing year into the 2021 fishing year. This action also informs the public of the proposed specifications and emergency measures and provides opportunity for public comment.

**DATES:** Comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2020-0113, by either of the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov*#!/docketDetail;D=NOAA-NMFS-2020-0113,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). If you are unable to submit your comment through *www.regulations.gov*, contact Douglas Potts, Fishery Policy Analyst, *douglas.potts@noaa.gov*.

Copies of the Supplemental Information Report (SIR) prepared for this action, and other supporting documents for these proposed specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Dover, Suite 201, DE 19901. These documents are also accessible via the Internet at *http://www.mafmc.org*.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281-9341.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council manages the golden tilefish fishery under the Tilefish Fishery Management Plan (FMP), which outlines the Council’s

process for establishing annual specifications. The FMP requires the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures, for up to 3 years at a time. The directed fishery is managed under an individual fishing quota (IFQ) program, with small amounts of non-IFQ catch allowed under an incidental permit. The Council's Scientific and Statistical Committee (SSC) provides an ABC recommendation to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following this review, NMFS publishes the final specifications in the **Federal Register**.

A 2017 stock assessment update found the tilefish stock is not overfished or experiencing overfishing. Based on this report and recommendations made by the Council's SSC, the Council voted in April 2020 to recommend quota specifications for the golden tilefish fishery for fishing years 2021 and 2022. A summary of the Council's recommended specifications is shown below in Table 1. A management track stock assessment is scheduled to be completed in 2021 that could inform a new specifications action to replace the projected 2022 specifications included in this action. At the April 2020 meeting, the Council also voted to request that NMFS implement emergency measures, under the authority provided in section 305(c) of the Magnuson-Stevens Act, for a one-time carryover of up to 5 percent of unharvested IFQ allocation from the 2020 fishing year into the 2021 fishing year. This request was intended to mitigate the severe negative impacts to the tilefish fishery (*e.g.*, market conditions) as a result of COVID-19. The tilefish IFQ program does not normally allow any carryover of unharvested

allocation from one fishing year into the next. The Council’s request for emergency measures is discussed in more detail below.

**Proposed Specifications**

The Council’s recommendations are consistent with the SSC’s recommended ABCs, and represent a status quo ABC compared to 2020. The proposed initial IFQ TAL of 1,554,259 lb (705 mt) is also status quo compared to 2020. However, the incidental TAL of 70,548 lb (32 mt) is a 1 mt reduction from 2020 to account for updated discard information. The proposed incidental sector typically lands less than half of its allocated quota each year, so this reduction is unlikely to have a significant impact.

**Table 1 -- Summary of Recommended Golden Tilefish Specifications**

	2020		2021		Projected 2022	
	million lb	mt	million lb	mt	million lb	mt
ABC	1.636	742	1.636	742	1.636	742
ACL	1.636	742	1.636	742	1.636	742
IFQ ACT	1.554	705	1.554	705	1.554	705
Incidental ACT	0.082	37	0.082	37	0.082	37
IFQ TAL	1.554	705	1.554	705	1.554	705
Incidental TAL	0.073	33	0.070	32	0.070	32

The Council recommended an ABC equal to the ACL. Under the FMP, 95 percent of the ACL is allocated for the IFQ fishery, and the remaining 5 percent is allocated for the incidental fishery. This results in the ACT for each. The TAL for each of these sectors of the fishery is derived by deducting anticipated discards of tilefish from the ACT.

The golden tilefish industry strongly supports consistency in annual harvest quotas, and has operated under a constant landings strategy since 2001. Continuing this

strategy, the Council opted to recommend the same quota for the 2021 and 2022, with the understanding that the specifications will be reviewed next year and the 2022 specifications may be changed based on the results of the planned 2021 stock assessment. We are proposing the 2021 specifications along with the projected specifications 2022 so the public is aware. We will publish a notice in the **Federal Register** to confirm the projected specifications or announce any necessary changes to the specifications for 2022. The Council did not recommend changes to other regulations for this fishery. We propose, based on this recommendation, that all other management measures in the golden tilefish fishery will remain unchanged for the 2021-2022 fishing years. The incidental trip limit will stay 500 lb (226.8 kg) (live weight), or 50 percent of the weight of all fish being landed, whichever is less, and the recreational catch limit will remain eight fish per angler per trip. Annual IFQ allocations will be issued to individual quota shareholders in advance of the November 1 start of the fishing year.

### **Emergency Action**

After approving the proposed 2021-2022 specifications, the Council approved the following motion at its April 2020 meeting, which requests that NMFS take emergency action to allow carryover of 5 percent of unused IFQ quota from fishing year 2020 to 2021.

Move that given the COVID-19 national emergency, to request the service to consider an emergency action to allow a 5% rollover of unused IFQ 2020 quota allocation for the golden tilefish fishing year November 1, 2020, thru October 31, 2021.

The tilefish IFQ program does not normally allow any carryover of unharvested allocation from one fishing year into the next. Unforeseen changes in the market for seafood resulting from the COVID-19 pandemic, particularly the loss of restaurant sales due to local closure orders, have substantially reduced demand for golden tilefish. A review of golden tilefish IFQ landings from November 1, 2019, through June 30, 2020, shows that landings were approximately 18.5-percent below the same date in 2018 and

2019. Because of this unprecedented impact on the fishery, we are proposing to grant this one-time carry over under our emergency rulemaking authority specified in section 305(c) of the Magnuson-Stevens Act.

We are interpreting this request to mean each IFQ quota shareholder could carry over all 2020 IFQ quota pounds that are not used to land tilefish before the end of the fishing year, up to a maximum amount of 5 percent of their initial 2020 IFQ quota pounds. Final IFQ accounting is normally completed in December or January, after all landings data has been submitted and undergone normal reviews for quality control and quality assurance. Following that accounting, IFQ quota shareholders that land less than 95 percent of their initial 2020 quota pounds would be eligible for the full 5-percent carryover. Those that land between 95 and 100 percent of their initial 2020 quota pounds could carryover the amount they were under. Revised 2020 allocation permits indicating the amount of any carryover would be issued to IFQ quota shareholders. Although carryover IFQ pounds would be added to accounts after the start of the November 1, 2020, start of the fishing year, the effective date would be retroactive to November 1.

If every IFQ quota shareholder were to receive the maximum 5-percent carryover it would result in a maximum potential IFQ TAL for 2021 of 1.631 million lb (740 mt), compared to the 1.554-million lb (705-mt) TAL proposed above. However, it is expected that actual carryover would end up being less because not all quota shareholders will carry over the full 5-percent allowance. Any increase in the 2021 IFQ TAL would reflect 2020 IFQ TAL that was not harvested. Thus, total landings for 2020 and 2021 would remain at or below the combined IFQ TAL for the 2 years. In addition, the Council's SSC takes a precautionary approach when setting ABC recommendations incorporating a substantial buffer between the ABC recommendation and the level of harvest thought to result in overfishing. The ABC recommendation for 2018-2020 of 742 mt was 300 mt below the average overfishing limit for those years. The 35 mt maximum possible

carryover is relatively small by comparison. These factors minimize any potential risk that allowing this one-time carryover could result in overfishing.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has preliminarily determined, subject to public comment on this proposed rule, that allowing the carryover of unharvested tilefish IFQ quota pounds as described above meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstances. On March 13, 2020, a national emergency was declared in response to the global spread of a novel coronavirus (SARS-CoV-2), and the outbreaks of the disease caused by this virus, COVID-19. Days earlier, state governors across the Greater Atlantic region had begun declaring states of emergency in recognition of the growing impacts and risks of COVID-19. The tilefish industry began to experience impacts from the COVID-19 pandemic in March 2020. These impacts were unforeseen during the development of management measures for the 2020 fishing year that began on November 1, 2019.

The emergency presents serious conservation or management problems in the

fishery. When state governors across the Greater Atlantic region declared states of emergency it became exceedingly difficult for members of the tilefish industry to complete fishing trips and sell their catch to federally permitted tilefish dealers. Even after some tilefish dealer activity resumed, the ability of tilefish IFQ quota holders to harvest their quota remained very limited, and it is expected that a number of fishermen will be unable to harvest their full quota for this fishing year. This emergency action would help prevent additional economic losses to industry participants, shoreside businesses, and fishing communities, and help offset lost fishing opportunities during the 2020 fishing year.

Although the Council has the authority to develop a management action to authorize carryover, an emergency action can be developed and implemented by NMFS more swiftly than a Council action that is subject to requirements not applicable to the Secretary. If the normal Council process is used to implement carryover provisions, it would take substantially longer for those provisions to be implemented and could prevent vessels from harvesting carryover at an opportune time in the upcoming fishing year. It is not possible to implement these changes for the start of the 2021 fishing year through rulemaking following the normal Council process because of time required for the Council to develop a FMP amendment or framework adjustment. If implemented through emergency action, it may be possible for any carryover to be authorized early in the tilefish fishing year, which may be advantageous to some fishermen. While considering the Council's request, we are also taking into account the importance of any carryover quota being available for the full year to allow tilefish permit holders to plan their operations to be able to use additional quota when it is most beneficial to them. Section 305(c) of the Magnuson-Stevens Act specifies that emergency regulations may only remain in effect for 180 days from the date of publication and may be extended for one additional period of not more than 186 days. Including the Council's request in this

proposed rule also allows the opportunity to accept public comment on the emergency measures, which is not usually available for an emergency action.

### **Classification**

NMFS is issuing this rule pursuant to sections and 304(b)(1)(A) and 305(c) of the Magnuson Stevens Act, which provide specific authority and procedure for implementing this action. Section 304(b) authorizes NMFS to implement regulations implementing a fishery management plan or plan amendment. Section 305(c) authorizes NMFS to implement regulations at the request of the Council to address an emergency in the fishery. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

For Regulatory Flexibility Act (RFA) purposes only, NMFS defines a small business in the commercial fishing industry as a firm with total annual receipts (gross revenues) not in excess of \$11.0 million.

The proposed action consists of a slight decrease to the incidental quota to account for updated discard data, status quo initial individual fishing quota (IFQ) allocation, and one-time carryover of a small amount of unharvested IFQ allocation from 2020 into 2021 fishing year. The measures proposed in this action apply to vessels that

hold a Federal permit for golden tilefish, including the 10 entities currently (2019) holding golden tilefish IFQ allocations.

For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with golden tilefish permits may be considered to be part of the same firm because they may have the same owners.

According to the ownership database, 176 affiliate firms landed golden tilefish during the 2016-2018 period, with 172 of those business affiliates categorized as small business and 4 categorized as large business. The 3-year average (2016-2018) combined gross receipts (all species combined) for all small entities was \$148,189,557 and the average golden tilefish receipts was \$4,583,593; this indicates that golden tilefish revenues contributed approximately 3.09 percent of the total gross receipts for these small entities. The four firms that were categorized as large entities had combined gross receipts of \$77,944,741 and average golden tilefish receipts of \$740. As such, golden tilefish receipts as a proportion of gross receipts is <0.01 percent.

The golden tilefish fleet landed between 96 and 99 percent of the quota in the most recent two years of the current multi-year specifications cycle (2018 and 2019). The average ex-vessel price per pound of golden tilefish reported by processors was \$3.81 in 2019, slightly higher than the \$3.31 per pound in 2018. The total ex-vessel value of the 2019 harvest was approximately \$5.4 million, slightly higher than \$4.9 million in 2019. Because the 2021-2022 IFQ quota under the proposed action is identical to the quota implemented in the past few years, it is not expected that its implementation will affect the way the fishery operates or adversely impact future fishing landings compared to recent years.

The incidental fishery does not catch its quota each year, so a small decrease

(2,205 pounds (1 mt) or 3.1-percent lower than 2020) is not expected to have any impact on that sector of the fishery. The small amount of carryover that would be allowed under this action represents under harvest in the 2020 fishing year. Any resulting increase in revenue in 2021 is likely offset by a corresponding decrease in revenue in 2020. The amount of additional tilefish IFQ quota pounds any single quota shareholder might receive is not expected to be large enough to affect the way the fishery operates. Therefore, this action is not expected to have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: November 6, 2020.

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

[FR Doc. 2020-25042 Filed: 11/12/2020 8:45 am; Publication Date: 11/13/2020]