



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 201214-0337]

RIN 0648-BJ98

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

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

ACTION: Final rule.

SUMMARY: NMFS announces final specifications for the 2021 commercial golden tilefish fishery and projected specifications for 2022. This action also implements temporary emergency measures for the golden tilefish fishery at the request of the Mid-Atlantic Fishery Management Council. This action establishes 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 emergency measures 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.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Emergency action measures expire June 19, 2021. The 2021 specification measures expire November 1, 2021.

ADDRESSES: Copies of the Supplemental Information Report prepared for this action 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.

Detailed background information regarding the development of the 2021-2022 specifications for this fishery was provided in the specifications proposed rule (85 FR 72616; November 13, 2020). That information is not repeated here.

Specifications

The table below shows the 2021 and projected 2022 specifications including the ABC, ACL, ACT, and TAL for the commercial Mid-Atlantic golden tilefish fishery. NMFS will publish a notice in the *Federal Register* before the 2022 fishing year notifying the public of the final specifications.

Table 1 -- 2021 and Projected 2022 Golden Tilefish Specifications

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

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.

This action makes no changes to possession limits in the golden tilefish fishery. The incidental trip limit remains 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 remains eight fish per angler per trip.

Emergency Action

At its April 2020 meeting, the Council requested that NMFS take emergency action to allow a 5 percent carryover of unharvested IFQ quota from fishing year 2020 to 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 implementing this one-time carry over under our emergency rulemaking authority specified in section 305(c) of the Magnuson-Stevens Act.

Each IFQ quota shareholder will be able to carry over 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 will receive the full 5-percent carryover. Those that land between 95 and 100 percent of their initial 2020 quota pounds will receive the amount they were under. Revised 2020 allocation permits indicating the amount of any carryover will be issued to each IFQ quota shareholder. Any increase in the 2021 IFQ TAL reflects 2020 IFQ TAL that was not harvested. Thus, total landings for 2020 and 2021 will remain at or below the combined IFQ TAL for the 2 years.

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 determined 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. State governors across the Greater Atlantic region declared states of emergency and implemented health and travel restrictions 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 a number of fishermen were unable to harvest their full quota for the 2020 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 was 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, carryover allocation will be available to fishermen early in the tilefish fishing year, which allows maximum flexibility and ensures the intended benefits of this action are realized. Making carryover quota available for as much of the fishing year as possible is important to allow tilefish permit holders to plan 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.

Comments

The public comment period for the proposed rule ended on November 30, 2020. We received no relevant comments on the proposed rule.

Changes from Proposed to Final Rule

There are no changes from the proposed rule.

Classification

NMFS is issuing this rule pursuant to sections 304(b) 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 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.

The Assistant Administrator Fisheries, NOAA (AA) finds the need to implement these measures in a timely manner to implement the final harvest limits for the 2021 fishing year that started on November 1, 2020, and to implement emergency measures to allow the carryover of up to 5 percent of unharvested IFQ quota, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date and make the rule effective immediately upon publication in the *Federal Register*. The 2021 tilefish fishing year is already underway and delaying the effective date for this rule would undermine the intent of this rule. A full assessment of the potential impacts of the emergency measures in this action was not available until late October, delaying the

publication of the proposed rule for this action.

The 30-day delay in implementation for this rule is also unnecessary because this rule contains no new measures (*e.g.*, requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

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

Dated: December 14, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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