

swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are limited, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait:

(1) 18/0 or larger circle hooks with an offset not to exceed 10° and whole Atlantic mackerel (*Scomber scombrus*) bait; or,

(2) 18/0 or larger non-offset circle hooks and squid bait.

(i) For purposes of paragraphs (c)(5)(iii)(C)(1) and (2) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 1.97 inches (50 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The offset in paragraph (c)(5)(iii)(C)(1) of this section is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

(ii) [Reserved]

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the **Federal Register** for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the **Federal Register** for publication notification of any new devices that are approved as meeting the standards.

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4. In § 635.71, paragraph (a)(33) is revised as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(33) Deploy or fish with any fishing gear from a vessel with pelagic longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i).

\* \* \* \* \*

[FR Doc. 04-2982 Filed 2-10-04; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No 040122024-4024-01; I.D. 010904A]

RIN 0648-AR75

**Fisheries of the Northeastern United States; Tilefish Fishery**

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

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

**SUMMARY:** NMFS proposes to reinstate the permit requirements for commercial tilefish vessels specified under 50 CFR 648.4(a)(12). These permit requirements were set aside in a recent Federal Court Order (Court Order) in *Hadaja v. Evans* (May 15, 2003) on the grounds that the limited access program contained in the Tilefish Fishery Management Plan (FMP) violated National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is proposing to reinstate these permit requirements based on additional information provided by the Mid-Atlantic Fishery Management Council (Council) that supports the limited access permit criteria contained in the FMP. This action will enable NMFS to manage the tilefish fishery in accordance with the provisions of the Magnuson-Stevens Act by helping end overfishing, and ensuring that the stock rebuilding objective of the FMP is achieved.

**DATES:** Comments must be received on or before March 12, 2004.

**ADDRESSES:** Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Tilefish Action." Comments may also be submitted via facsimile (fax) to (978) 281-9135. Comments may also be submitted via e-mail to the following address: [tilefish75@noaa.gov](mailto:tilefish75@noaa.gov).

Copies of the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available upon request from the RA at the above address. Copies of the Final Environmental Impact Statement (FEIS) prepared for the FMP may be obtained by contacting

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904. The FEIS, which was completed in 2001, contained a complete analysis of the impacts of the permit requirements contained in the FMP. Because nothing has changed since the FEIS was completed that would affect that determination, further analysis under the National Environmental Policy Act (NEPA) is unnecessary.

**FOR FURTHER INFORMATION CONTACT:** Allison Ferreira, Fishery Policy Analyst, (978) 281-9103, fax (978) 281-9135, e-mail [Allison.Ferreira@noaa.gov](mailto:Allison.Ferreira@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The tilefish fishery is managed by the Council under the FMP. The FMP was approved by the Secretary of Commerce (Secretary) on May 10, 2001, and became effective on November 1, 2001 (66 FR 49136; September 26, 2001). The Tilefish Management Unit is all golden tilefish under U.S. jurisdiction in the Atlantic Ocean north of the Virginia/North Carolina border. The primary objective of the FMP is to eliminate overfishing and rebuild the tilefish stock through the implementation of a stock rebuilding program. Measures in the FMP established to achieve this objective include a limited entry program; a tiered commercial quota, based on the limited entry program; permit and reporting requirements for commercial vessels, operators, and dealers; a prohibition on the use of gear other than longline gear by limited access tilefish vessels; and an annual specification and framework adjustment process.

The stock rebuilding schedule established by the FMP consists of a constant harvest strategy under which the TAL is set at 1.995 million lb (905,000 kg) each year for the entire 10-year rebuilding schedule. The objective of the tilefish rebuilding schedule is to reduce the fishing mortality rate (F) from its 1998 level of F=0.45, to F=0.29 in the first year of the FMP, and gradually down to F=0.11 in the tenth year of the FMP. These measures are designed to provide at least a 50-percent probability of achieving biomass at maximum sustainable yield (Bmsy) by October 31, 2011. The annual TAL is apportioned as follows. First, a total allowable catch (TAC) of up to 3 percent of the TAL may be set aside for the purpose of funding tilefish research. Following any reduction due to the establishment of a research TAC, the TAL is reduced by 5 percent to account

for incidental catch. Finally, the remaining TAL is divided among three limited access permit categories as follows: Full-time tier 1, 66 percent; Full-time tier 2, 15 percent; and Part-time, 19 percent.

A Federal Court Order in *Hadaja v. Evans* set aside the regulations pertaining to the permit requirements for commercial tilefish vessels specified under § 648.4(a)(12). In its order, the Court concluded that the tilefish limited access program violated National Standard 2 of the Magnuson-Stevens Act 16 U.S.C. 1801 *et seq.*) because it was not based on the best scientific information available. The Court held that the Secretary must adopt a plan that is based on the best scientific information available, which may be the existing plan, but only if the evidence in the administrative record (record) clearly supports it.

Because the Court held that NMFS's tilefish limited access program was inconsistent with National Standard 2, its decision to set aside the permit requirements has a substantial impact on the other regulations implementing the FMP since the trigger for many of these regulations implementing the FMP is the issuance a valid limited access or incidental tilefish permit. As a result, in addition to the vessel permit requirements, the vessel operator permit requirements under § 648.5(a), the vessel reporting requirements under § 648.7(b)(2)(ii), the observer coverage regulations under § 648.11(a), and the incidental catch limit under § 648.292 are no longer in effect. As a result, the ability of NMFS to manage the tilefish fishery in accordance with the Magnuson-Stevens Act has been impacted.

The proposed action would reinstate the vessel permitting requirements of the FMP, specified under § 648.4(a)(12), that were set aside by the Court based upon a supplemental administrative record developed in conjunction with the Council to support the limited access permit criteria established in the FMP. The purpose of this action is to help end overfishing, and ensure that the stock rebuilding objective of the FMP is achieved. Because the regulatory text for the tilefish permitting requirements was never formally removed by NMFS, this proposed rule does not contain any new regulatory language.

The Court Order also set aside the regulations prohibiting the use of all gear other than longline gear for limited access tilefish vessels specified under § 648.294. Due to a lack of information to support reinstating the ban on the use of trawl gear in the directed tilefish

fishery, the Tilefish Committee (Committee), Tilefish Technical Team (Technical Team), and Tilefish Industry Advisors (Industry Advisors) recommended not to address the trawl gear issue in this action at a September 18, 2003, meeting held to discuss the development of a supplemental administrative record. Thus, this action would remove the prohibition on the use of gear other than longline gear for limited access tilefish vessels, and proposes only to reinstate the tilefish vessel permitting requirements as noted above.

The Council passed a motion at its August 5–7, 2003, meeting to move forward with developing the supplemental administrative record needed to reinstate the permitting requirements of the FMP. At the September 18, 2003, meeting held to discuss the supplemental administrative record, the Tilefish Committee, the Technical Team, and the Industry Advisors discussed how the criteria for each limited access category were developed, based upon the landings data that were available at that time. This discussion was continued at a Committee meeting held in conjunction with the October 7–9, 2003, Council meeting. Based upon the discussions that took place at these two meetings, a supplemental record has been compiled that describes in detail the steps taken by the Council and Committee in developing the limited access program alternatives contained in the FMP, and the rationale behind their selection of a preferred limited access program. A summary of the information contained in the supplemental record is provided in the following paragraphs.

#### **Summary of the Supplemental Record for Tilefish**

Management of the tilefish resource was first considered in earnest in 1993, when a notice of intent (NOI) to prepare an environmental impact statement (EIS) was published on February 24, 1993 (58 FR 11217). A control date for the fishery was then published on June 15, 1993 (58 FR 33081). At that time, Council staff proposed several considerations for a management scheme, including a new entrant moratorium, an effort reduction program, and an overall quota with potential sub-quotas. At an Industry Advisors Subcommittee meeting in February 1994, the concept of dividing the tilefish fishery into full-time and part-time vessels was raised. This concept was based largely on the management scheme for the Atlantic sea scallop fishery, which consists of Full-time, Part-time, and Occasional vessel

permit categories. However, due to several more pressing fishery management issues, the Council did not revisit tilefish management until 1999. On April 5, 1999 (64 FR 16417), a new NOI was published in the **Federal Register** for the EIS prepared in conjunction with the FMP, and a public scoping meeting was held on April 27, 1999.

In considering limiting access to the tilefish fishery, the Council had to consider several factors mandated under section 303(b)(6) of the Magnuson-Stevens Act. Two primary factors to be considered were present participation in the fishery and historical fishing practices in, and dependence on the fishery. The only data available to the Council with which to develop a limited entry scheme were vessel permit and landings data. This information was used to generate tables reflecting annual individual vessel landings. The information enabled the Council to exercise an element of judgement in identifying those natural breaks in the landings data, and the overall time frame that should be used as the qualifying criteria for the individual categories to reflect their differing levels of participation in the tilefish fishery.

Upon reviewing landings data provided by the NMFS Northeast Fisheries Science Center (Center), the Committee, along with the Industry Advisors, began to formulate qualifying criteria for a directed and indirect tilefish fishery at the April 1, 1999, Committee meeting. Based upon the landings data, the Industry Advisors suggested that a minimum of 250,000 lb (113,398 kg) be used as the basis for qualifying a permit for the directed fishery, and a minimum of 10,000 lb (4,536 kg) be used as the basis for qualifying for the incidental permit. Furthermore, it became apparent that there was a considerable disparity between vessels that landed 250,000 lb (113,398 kg) of tilefish a year, and those that did not. As a result, a Committee member recommended that there be a Full-time and Part-time category; the same concept that was raised at the February 1994 Committee meeting. The concept of subjecting the Incidental category to a trip limit was also raised at this meeting. After some discussion, the Committee elected to recommend that the Council move forward with three permit categories: Full-time, Part-time, and Incidental. However, the Committee requested that the Center conduct further analysis of tilefish landings data.

At the May 6, 1999, Committee meeting, the concept of a two-tier Full-time permit category was adopted by the

Committee. At this meeting, the Committee developed limited entry criteria for each of the proposed permit categories, based upon landings information provided by the Center. These data indicated that four vessels landed at least 250,000 lb (113,398 kg) of tilefish annually, for several of the last 6 years for which there were complete landings data. Based upon this information, the Committee developed the following criteria for the Full-time, tier 1 category: 250,000 lb (113,398 kg) per year for 3 years from 1993–1998, with at least 1 lb (0.5 kg) of tilefish landed prior to the June 15, 1993, control date. For the Full-time, tier 2 category, the Committee suggested qualifying criteria of 30,000 lb (13,608 kg) per year for 3 years from 1993–1998, with at least 1 lb (0.5 kg) of tilefish landed prior to the control date of June 15, 1993. For the Part-time category, the Committee suggested qualifying criteria of 10,000 lb (4,536 kg) per year for any 1 year from 1988–1993, and 10,000 lb (4,536 kg) per year in any 1 year from 1994–1998. The limited entry criteria for each alternative reflected elements of present and historical participation, as well as dependence on the fishery as required under section 303(b)(6) of the Magnuson-Stevens Act. The qualifying period ended with 1998, since this was the last year for which complete annual landings data were available. This alternative ultimately became limited entry Option 2 in the FMP.

The Council then considered the Committee's recommendation at its May 25, 1999, meeting. At this meeting, industry members voiced concern over the selection of 1988 as the cut-off year for historical participation, since a number of them had been in the fishery since the late 1970s to early to mid-1980s, but had left the fishery for a variety of reasons. The industry group representing these individuals was the Historical Tilefish Coalition. The 1988 cut-off year was originally selected simply because the Center had only analyzed data back this far, due to limitations in data prior to 1988. However, the data analyzed were not considered to be complete, because there was no requirement for vessel owners to report their tilefish landings data until the mid-1990s. Even then, vessels only had to report these landings if they held a Federal fisheries permit. After some debate, the Council adopted a new alternative for the public hearing document that extended the qualification time-period for the Full-time and Part-time categories back to 1977. Under this alternative, which is Option 5 in the FMP, a vessel could

qualify for the Full-time category if it landed 50,000 lb (22,680 kg) in any one year between 1977 and June 15, 1993, or for the Part-time category if it landed 10,000 lb (4,536 kg) of tilefish in any one year between 1977 and June 15, 1993. The year 1977 was selected because the Center had been able to estimate landings back to 1977, but was unable to provide landings information for individual vessels. Some Council members expressed concern about the number of vessels that this alternative would let into the fishery, given the reduced quota needed to rebuild the fishery within 10 years.

The public hearing document for the FMP ultimately contained five options for limited entry criteria. These are represented as Options 1 through 5 in the final FMP document (see Table 1). The public hearing document also explained that there would be a sub-quota for each permit category, which would be based on the percentage of the overall tilefish landings from 1988 through 1998 by the vessels that qualified for each permit category. Following public hearings on the FMP, which took place in August 1999, the Council convened on October 14, 1999, to inform its members of points of contention regarding the alternatives in the FMP, and to answer any questions. Final decision on the FMP was delayed until November 23, 1999, when a special Council meeting was to be held to address the FMP. The location for this meeting was selected to be more accessible to tilefish fishermen.

TABLE 1. LIMITED ACCESS PROGRAM ALTERNATIVES IN THE TILEFISH FMP

Option	Limited Access Program Tilefish Landings Criteria
Option 1 Full-time .....	At least 50,000 lb (22,680 kg) in 1 year from 1988–1993, and at least 25,000 lb (11,340 kg) per year for 2 years from 1994–1998.
Part-time .....	At least 10,000 lb (4,536 kg) in 1 year from 1988–1993, and at least 10,000 lb (4,536 kg) in 1 year between 1994–1998.
Option 2 (Preferred alternative in FMP) Full-time: tier 1.	At least 250,000 lb (113,398 kg) per year for 3 years between 1993–1998, and at least 1 lb (0.5 kg) landed prior to June 15, 1993.

TABLE 1. LIMITED ACCESS PROGRAM ALTERNATIVES IN THE TILEFISH FMP—Continued

Option	Limited Access Program Tilefish Landings Criteria
Full-time: tier 2.	At least 30,000 lb (13,608 kg) per year for 3 years between 1993–1998, and at least 1 lb (0.5 kg) landed prior to June 15, 1993.
Part-time .....	Same as Option 1.
Option 3 Full-time .....	Same as Option 1.
Part-time .....	At least 10,000 lb (4,536 kg) in 1 year between 1988 and June 15, 1993.
Option 4 Full-time .....	At least 50,000 lb (22,680 kg) in 1 year between 1988 and June 15, 1993.
Part-time .....	Same as Option 3.
Option 5 Full-time .....	At least 50,000 lb (22,680 kg) in 1 year from 1977 to June 15, 1993.
Part-time .....	At least 10,000 lb (4,536 kg) in 1 year from 1977 to June 15, 1993.
Option 6 Full-time: tier 1.	Same as Option 2.
Full-time: tier 2.	Same as Option 2.
Part-time .....	Same as Option 1, or at least 28,000 lb (12,701 kg) in 1 year between 1984–1993.

Virtually every active tilefish fisherman was present at the November 1999 Council meeting. In addition, the historical participants from New Jersey were represented by the Historical Tilefish Coalition. In debating the appropriate qualifying criteria to be adopted for the Full-time category, the Council concluded that the Full-time category should be split into tier 1 and tier 2 levels. This decision was supported by the fact that four vessels landed considerably more tilefish than any other vessel active in the tilefish fishery. As a result, the Council adopted the following qualifying criteria for the Full-time, tier 1 category: 250,000 lb (113,358 kg) per year for 3 years between 1993–1998. However, the Council deliberated over the criteria to be adopted for the Full-time, tier 2 category. There was some sentiment among Council members to adopt qualifying criteria more in line with those proposed under Options 1 and 4, which were 50,000 lb (22,680 kg) in 1 year between 1988–1993, and at least 25,000 lb (11,340 kg) per year for 2 years during 1994–1998. This was because the Council was concerned about the number of vessels that would qualify for

the limited access fishery, given the reduced annual quota that would apply to the fishery. This became less of a concern once the Council decided to apply sub-quotas to each of the permit categories. These sub-quotas were to be a percentage of the overall quota that would reflect the percentage of the overall tilefish landings from 1988 through 1998 by vessels qualifying for each permit category. Therefore, as more vessels qualified for a particular permit category, the larger the percentage of the overall quota would be allocated to that permit category. The Council ultimately adopted a landings requirement of 30,000 lb (13,608 kg) for the Full-time, tier 2 category, based on the 1988 through 1998 landings data. This level of landings was set high enough above the landing requirement being considered for the Part-time category (10,000 lb (4,536 kg)) to represent a level of participation in the fishery that could be considered full-time. Thus, the qualifying criteria adopted by the Council for the Full-time, tier 2 category was as follows: 30,000 lb (13,608 kg) of tilefish for any 3 years between 1993 and 1998, with at least 1 lb (0.5 kg) landed prior to June 15, 1993.

The Council considered a number of alternative qualifying criteria for the Part-time category, bearing in mind their need to address the historical participants in the fishery. Recognizing that the landing requirement was 30,000 lb (13,608 kg) for the Full-time, tier 2 category, the Council looked at a lower annual poundage level to reflect the part-time nature of the fishery. The Council was concerned that the level be set high enough to limit the number of vessels that would qualify for this category. Ultimately, the Council settled on a qualifying poundage of 10,000 lb (4,536 kg) for the Part-time category, since it was significantly below the poundage requirement for the Full-time, tier 2 category, yet above the level of landings for those vessels that truly landed only an incidental catch of tilefish. However, the difficult decision facing the Council was how far back to set the qualifying window. According to the information provided in the public hearing document, the inclusion of vessels landing tilefish back to 1977 (Option 5) would allow as many as 119 vessels into the fishery. Thus, extending the qualifying period back to 1977 raised issues of equity and conservation, but beginning the qualifying window in 1988 failed to capture the time period for the historical fishery. Furthermore, there was a lack of vessel-specific information prior to 1988. At the Council's suggestion, members of the

tilefish industry brought forward their landings data at the November 23, 1999, Council meeting. At this meeting, industry proposed that the Council consider a modification to Option 2 by allowing an alternative basis for qualifying for the Part-time category. Under this modified Option 2, vessels could qualify for the Part-time category if they could prove tilefish landings of 28,000 lb (12,701 kg) in any year between 1984 and 1993. Utilizing the landings data brought forward by the tilefish industry and new data provided by the Center, the Council was able to ascertain that this modified Option 2 would allow 42 vessels to qualify for the Part-time category. While this new alternative allowed 32 more vessels to qualify for the Part-time category than under Option 1, it allowed 7 fewer vessels to qualify than under Option 3, which was the Council's preferred alternative in the public hearing document. This revised Option 2, which became Option 6 in the final FMP, was attractive to members of the Council, since it limited participation in this category more than its previously preferred option, and it captured a time-frame when the historical fishery was still going strong. After much deliberation, the Council adopted the new Option 6. Thus, the industry proposal, referred to as "the compromise" in the FMP, was carefully considered, and the reasons for adopting this option, well thought out. Therefore, the reference of this option as a "compromise" in the FMP is inaccurate.

As stated earlier, the Court set aside the permitting requirements of the FMP on the grounds that they violated National Standard 2. National Standard 2 requires that "[c]onservation and management measures shall be based on the best scientific information available." The Guidelines for the National Standards, which are found under 50 CFR part 600, indicate that scientific information includes, but is not limited to, information of a biological, ecological, or social nature. The focus of the FMP was on the biological and ecological data pertaining to the tilefish fishery because the fishery had been determined by the Secretary to be overfished. However, neither the biological or ecological data in the FMP served as the direct basis for the tilefish permitting scheme. Since the biological data clearly showed that the tilefish resource was overfished, the conclusion was to reduce fishing effort. The management method adopted by the Council to reduce fishing effort was limitation on access to the tilefish fishery. Thus, biological data were an

indirect basis for the Council's consideration of a limited access system. The ecological data available to the Council did not factor into the creation of a limited access system, since the Council concluded that there was no basis to limit the number of vessels in the fishery to protect essential fish habitat. As stated previously, the only data available to the Council upon which to develop a limited entry system were the vessel permit and Center landings data. These data were utilized by the Council to develop several options for a limited access system. In addition, these data were utilized to determine each permit category's share of the overall quota based on landings by vessels that would qualify for that permit category, and to determine the exclusionary impact on certain vessels of selecting various qualifying criteria.

### Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA prepared for this action follows NMFS's "Guidelines for Economic Analysis of Fishery Management Actions" (NMFS's guidelines). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows:

The universe of vessels impacted by this action are those vessels that qualified for a limited access permit under the requirements established in the FMP, and those vessels that hold an incidental tilefish permit. A total of 32 vessels qualified for limited access permits under the limited access criteria established in the FMP. In addition, there are currently 1,650 vessels holding an open access Incidental tilefish permit, although they are no longer required to hold any Federal permit to land tilefish. All of these vessels are considered to be small entities.

Section 4.9.3 of the FMP provides an analysis of the economic impacts resulting from the various quota alternatives and limited entry alternatives considered in the FMP. According to this analysis, the economic impact to vessels qualifying under each limited access category ranged from expected revenue losses of 50 percent or greater for 1 vessel, to an expected increase in revenues for 181 vessels. A total of 10 vessels were projected to be impacted by revenue losses of 5 percent or greater, 35 vessels were projected to

have no change in revenue, and 24 vessels were projected to incur revenue losses of less than 5 percent. By limited access category, all 4 vessels (100 percent) that qualified for the Full-time, tier 1 category were projected to incur revenue losses of greater than 5 percent, while only 1 vessel (25 percent) in the Full-time tier, 2 category, and no vessels in the Part-time category were projected to incur revenue losses of greater than 5 percent. Furthermore, this analysis projected that 5 vessels (3 percent) in the Incidental category would incur revenue loss of greater than 5 percent, with 1 vessel incurring revenue losses of 50 percent or greater.

The FMP considered six limited entry alternatives as a means of controlling effort in the tilefish fishery. Each of these alternatives consisted of at least two different limited access categories, Full-time and Part-time, having different qualifying criteria. The alternatives are summarized as follows:

Option 1: Part-time - At least 10,000 lb in 1 year 1988–1993, and at least 10,000 lb in 1 year between 1994–1998; Full-time - At least 50,000 lb in 1 year 1988–1993, and at least 25,000 lb per year for 2 years during 1994–1998.

Option 2: Part-time - Same as Option 1; Full-time, Tier 1 - At least 250,000 lb per year for 3 years between 1993–1998, and at least 1lb of tilefish landed prior to the June 15, 1993, control date; Full-time, Tier 2 - At least 30,000 lb per year for 3 years 1993 and 1998, and at least 1lb of tilefish landed prior to the June 15, 1993, control date.

Option 3: Part-time - At least 10,000 lb in 1 year between 1988 and June 15, 1993; Full-time - Same as Option 1.

Option 4: Part-time - Same as Option 3; Full-time - At least 50,000 lb in 1 year between 1988 and June 15, 1993.

Option 5: Part-time - At least 10,000 lb in 1 year between 1977 and June 15, 1993; Full-time - At least 50,000 lb in 1 year between 1977 and June 15, 1993.

Option 6: Part-time - Same as Option 1, or 28,000 lb in 1 year between 1984 and 1993; Full-time, Tier 1 - Same as Option 2; Full-time, Tier 2 - Same as Option 2.

The Council's preferred alternative was Option 6, which was implemented in the final rule implementing the FMP. The proposed action would reinstate Option 6 as implemented in this final rule. This action would serve to minimize the economic impacts of the overall quota established in the FMP by dividing this quota among the vessels that qualify under each limited access category. This would enable those vessels that are dependant on the tilefish fishery (those vessels in the Full-time, tier 1 category) to continue to harvest their share of the annual quota in a manner that maximizes their total revenues. If the limited entry program is not reinstated, those vessels that are dependant on the tilefish resource would be faced with the uncertainty of when the overall quota would be harvested, forcing them to fish in a manner that does not maximize their total revenues. Furthermore, in the absence of a limited entry program, a derby fishery for tilefish could occur. A derby fishery could result in large

quantities of tilefish entering the market, reducing the price received by the vessel, and reducing total revenues. A derby fishery would also increase safety concerns.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements.

A copy of this analysis is available from NMFS (*see ADDRESSES*).

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 4, 2004.

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

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

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

#### **§ 648.14 [Amended]**

2. In § 648.14, paragraph (c)(6) is removed, and reserved.

#### **§ 648.294 [Removed and reserved]**

3. Section 648.294 is removed, and reserved.

[FR Doc. 04–2869 Filed 2–10–04; 8:45 am]

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