

**Regulatory Impact Review &
Initial Regulatory Flexibility Analysis for a
Proposed Rule to Reinstate the Vessel Permitting Requirements
of the Tilefish Fishery Management Plan**

1.0 Regulatory Impact Review (E.O. 12866)

This section contains the required elements for determination of whether the proposed action is significant under E.O. 12866.

1.1 Description of the Management Objectives

The goals of the Tilefish Fishery Management Plan (FMP) are to rebuild tilefish so that the optimum yield can be obtained from this resource.

To meet this overall goal, the following objectives were adopted in the FMP:

1. Prevent overfishing and rebuild the resource to the biomass that would support MSY.
2. Prevent overcapitalization and limit new entrants.
3. Identify and describe essential tilefish habitat.
4. Collect necessary data to develop, monitor, and assess biological, economic, and social impacts of management measures designed to prevent overfishing and reduce bycatch in all fisheries.

The proposed action would reinstate the vessel permitting requirements of the FMP that were set aside in a recent Federal Court Order (Court Order) in Hadaja v. Evans (May 15, 2003) based upon supplemental information provided the Mid-Atlantic Fishery Management Council (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.

1.2 Description of the Fishery

1.2.1 Species Description and Distribution

Tilefish is the common name for *Lopholatilus chamaeleonticeps*. It is sometimes called the golden tilefish, colorful tilefish, or rainbow tilefish along the southeast coast to distinguish it from *Caulolatilus chrysops* (goldface tilefish), *C. cyanops* (blackline tilefish), *C. intermedius* (anchor tilefish), *C. microps* (blueline tilefish), and *Malacanthus plumieri* (sand tilefish) (Freeman and Turner 1977).

Tilefish are found along the outer continental shelf from Nova Scotia, Canada to Surinam on the northern coast of South America (Dooley 1978 and Markle *et al.* 1980) in depths of 250 to 1500 feet. They are abundant in the southern New England/mid-Atlantic area, where a commercial

fishery has existed since 1879; off southern Florida; and in the Gulf of Mexico. Over the range of tilefish, the distribution can be discontinuous with gaps occurring where benthic substrates are unsuitable for building and maintaining burrows (Steimle *et al.* 1998).

In the southern New England/mid-Atlantic area, tilefish generally occur at the depths of 250 to 1200 feet and at temperatures from 48-62 °F (Nelson and Carpenter 1968, *et al.* 1983, and Grimes *et al.* 1986). Fish have been observed from Norfolk to Lydonia Canyons, but the majority of the fishery is concentrated between Hudson and Veatch Canyons.

Tilefish are shelter seeking and perhaps habitat limited. There are indications that at least some of the population is relatively nonmigratory (Turner 1986). Warne *et al.* (1977) first reported that the tilefish occupied excavations in submarine canyon walls along with a variety of other fishes and invertebrates, and they referred to these areas as “pueblo villages.” Valentine *et al.* (1980) described tilefish use of scour depressions around boulders for shelter. Able *et al.* (1982) observed tilefish use of vertical burrows in Pleistocene clay substrates in the Hudson Canyon area, and Grimes *et al.* (1986) found vertical burrows to be the predominant type of shelter used by tilefish in the mid-Atlantic/southern New England region. Able *et al.* (1982) suggested that sediment type might control the distribution and abundance of the species. For example, the longline fishery for tilefish in the Hudson Canyon area is primarily restricted to areas with Pleistocene clay substrate (Turner 1986).

Tilefish movement patterns are poorly understood. Tilefish are not thought to be schooling fishes, but they do aggregate in their preferred habitat (Freeman and Turner 1977). It is generally stated that as tilefish become increasingly larger, they tend to live in progressively deeper depths (Freeman and Turner 1977). There are some indications that tilefish remain in an area for long periods of time while other information suggests that at least some members of the population are relatively mobile (Turner 1986). Tagging studies suggest that tilefish do not migrate long distances (Grimes *et al.* 1980) while Freeman and Turner (1977) reported local movement of up to 1 or 2 miles per day. Repeated observations from a submersible of individual fish at specific sites over 24 hours, after 32 hours, and after one year, as well as limited tagging returns from fish at liberty between four and nineteen months indicated that some tilefish were long-term residents in an area (Grimes *et al.* 1983 and Grimes *et al.* 1986). In contrast, geographic and temporal changes in catch rates do indicate that tilefish concentrate in shallow depths inshore of Veatch Canyon in the late winter and spring in conjunction with decreasing bottom water temperatures both inshore and further east on Georges Bank (Grimes *et al.* 1983 and Grimes *et al.* 1986).

For a complete species description see Section 2.1.1 of the FMP.

1.2.2 Status of the Stock

The tilefish stock is at a low biomass and is considered overfished. The biomass level associated with maximum sustainable yield (B_{MSY}) is estimated to be 18.6 million pounds. Total biomass in 1998 was estimated to be 6.8 million lb, or 35-percent of the level producing MSY. The fishing

mortality (F) level associated with the MSY (F_{MSY}) is estimated at $F = 0.22$. In 1998, F was estimated to be $F=0.45$, which is about twice the F_{MSY} . In order to end overfishing and rebuild the tilefish stock to the biomass threshold of $1/2 B_{MSY}$ (or 9.3 million lb) within 10 years, the Council developed and implemented the FMP, which became effective on November 1, 2001. The FMP established a rebuilding schedule consisting of a constant harvest strategy that established a fixed annual quota of 1.995 million lb. According to the analysis provided in the FMP, there is a 50-percent probability that the tilefish stock will be fully rebuilt to B_{MSY} within 10 years under this rebuilding schedule. In addition, the tilefish rebuilding schedule is expected to gradually reduce F to be $F=0.11$ by the 10th year of the FMP.

The Status of the Stock is fully described in Section 2.1.3 of the Tilefish Fishery Management Plan.

1.2.3 Economic Environment

The tilefish fishery began in 1879, but collapsed shortly thereafter. Nominal catches were first recorded in 1915 (325,000 lb). A record total of 10 million lb was taken in 1916, but only 20,000 lb were reported in 1920. Landings later increased to between 3 and 4 million lb during the early 1950s, followed by a decline to less than 100,000 in the late 1960s. Beginning in the early 1970s, a directed commercial longline fishery expanded rapidly in the Mid-Atlantic, and longlines have since been the predominant gear type used. Landings increased to 8.7 million lb in 1979 before declining to about 4 million lb annually from 1982-1986. Landings jumped to about 7 million lb in 1987, but then plummeted to only 1 million lb in 1989. In the late 1990s, landings have increased from a low of less than 1.5 million lb in 1994, to 2.7 million lb in 1998.

Available data over the past 50 years indicates that New York had the highest percentage of total commercial tilefish landings (38 percent) from Maine through Virginia, with New Jersey being the second highest (36 percent). Conversely, during the 10 year period from 1989-1998, New York landed nearly 68 percent of all tilefish from Maine to Virginia, with New Jersey landing 22 percent and Rhode Island landing 8 percent.

Tilefish are primarily caught by longline and otter trawl. Ninety-three percent of the tilefish landings during 1989-1998 have been made with longline gear, with the remaining 7 percent from bottom trawls.

Commercial landings increased 260 percent from 1989 to 1998. Through this period, average annual prices showed a slight increase from \$1.75/lb (1998 adjusted) in 1989 to \$1.80 in 1998. The peak annual average price over the past decade was \$1.91 for both 1994 and 1995. Of course, ex-vessel value of United States commercial tilefish landings shows the same trends as the landings. The ex-vessel value of tilefish neared \$4.8 million in 1998, and accounted for 0.5 percent of the total value of all species in the New England and Mid-Atlantic regions combined. The highest recorded annual ex-vessel value for tilefish was \$8 million in 1987, the year when landings were the 6th highest recorded since 1915.

In 1998, New York had the highest ex-vessel value of tilefish landings for any state at \$3.3 million, with an average price of \$1.85/lb. Maryland fish brought the highest price at \$2.07/lb while Rhode Island fish were the lowest, valued only at \$0.61/lb. This difference is attributable to the trawl net's selection of smaller individuals and its predominant use among Rhode Island tilefish fishermen. Upon the implementation of the FMP on November 1, 2001, tilefish landings were fixed at an annual TAL of 1.995 million lb. Ex-vessel price since the implementation of the FMP has ranged from \$1.32 to \$2.51, with an average price of \$1.90 per lb.

Although vessels are no longer required to hold a Federal permit to land tilefish, as of November 18, 2003, there were 1,706 currently permitted tilefish vessels. Of these only 32 are limited access vessels. The 32 limited access vessels are divided among the following 3 categories: 4 full-time tier 1 (Category A) vessels, 5 full-time tier 2 (Category B) vessels, and 23 Part-time (Category C) vessels. The remaining 1,674 vessels hold an open access incidental catch permit (Category D). Therefore, vessels participating in the directed tilefish fishery make up less than 2 percent of the all vessels holding tilefish permits. Because the recent Court Order set aside the vessel permitting requirements for the tilefish fishery, any vessel is currently able to target tilefish regardless of its past participation in this fishery. As a result, all of the vessels currently permitted in the incidental category are able to land more than the 300-lb incidental limit established in the FMP. In addition, vessels not previously permitted in the tilefish fishery may land tilefish in unlimited amounts.

Ex-vessel price varies by month, by state, and by type of gear used to land them. Although tilefish are typically landed gutted by the longline fleet, landings and prices are usually quoted using live-weight equivalent figures. Longline vessels typically land larger fish, explaining the increase in price that they obtain. In 2003, the average ex-vessel price for tilefish landed by longline gear was \$1.56 per pound live weight (\$1.70 landed weight), while the other type vessels obtained an average of \$0.85 per pound live weight (\$0.93 landed weight). Prices in New York and New Jersey are typically higher than average.

Preliminary dealer weighout (DWO) data (as of November 21, 2003) for the 2003 fishing year (November 1, 2002 - October 31, 2003) show a total of 1,699,843 lb were landed, representing \$2,500,719 million based upon the above mentioned average prices. Approximately 93-percent of that value was harvested by longline vessels, with the remaining 7 percent harvested by vessels using other gear types (predominantly otter trawl). Most of the longline landings came from the states of New York (88.1 percent) and New Jersey (10.9 percent), while most of the otter trawl landings (72.6 percent) came from Rhode Island. This information also shows that there were 197 identifiable vessels which landed some amount of tilefish during the 2003 fishing year.

Based upon the available DWO data, 87 dealers bought tilefish during the 2003 fishing year. According to the preliminary 2003 data, most of these dealers are located in the states of New York (37.9 percent), Rhode Island (28.7 percent), and New Jersey (14.9 percent).

A full description of the Economic Environment is provided in Sections 2.3.1 and 2.3.2 of the

FMP.

1.2.4 Social Environment

As stated in the FMP, there are 31 northeast ports which showed some tilefish landings in 1998. Of these 31 ports, there are 17 (located in 9 counties) which show a 0.01 percent or greater dependence on tilefish either as a percentage of total pounds landed, or as a percentage of total revenue from all landings (fishing revenue dependence). Only 5 ports, however, have at least a 1.0 percent fishing revenue dependence on tilefish: Montauk, NY (Suffolk County); Long Beach/Barnegate Light, NJ (Ocean City); Hampton Bay, NY (Suffolk County); Other Ocean (Ocean City) in New Jersey; and Point Judith (Washington County) in Rhode Island. Only one port (Montauk, NY) shows at least a 10 percent dependence on tilefish by either poundage or fishing revenue. Looking at individual port level dependence, Wanchese, NC (Dare County) is the highest, followed by Montauk, NY (Suffolk County), Barnegate Light, NJ (Ocean City), Hatteras, NC (Dare County) and then two more Suffolk County ports- Mattituck and Greenport, NY. Although, North Carolina is listed for completeness, it is managed under the South Atlantic Fishery Management Council's Snapper/Grouper FMP.

Historically the tilefish fishery has been primarily caught by longline vessels. Ninety-three percent of the tilefish fisher landings during the past decade have been made with longline gear, with otter trawls accounting for only 7 percent. During the past decade, the percentage of tilefish landings harvested by means of otter trawl were highest in 1993, accounting for 13.1-percent of the total tilefish landings. No other gear type has been attributed to any significant amount of commercial tilefish landings. The FMP prohibited directed commercial fishing with any other gear except longline gear. However, the recent Court Order set aside this portion of the regulations enabling any gear type to be used (including trawl gear) to harvest tilefish.

According to preliminary DWO data for fishing year 2003, vessels from New York were responsible for the majority (80 percent) of total tilefish landings, while vessels from Rhode Island accounted for 9.9-percent of the total tilefish landings, and vessels from New Jersey accounted for 9.5 percent of the total landings. However, the majority of vessels landing tilefish during the 2003 fishing year were from Rhode Island (58.9 percent), while New York vessels comprised only 22.8-percent of the total. Furthermore, most of the tilefish landings for the first portion of 2003 came from a few longline vessels (11 vessels) that landed in New York (77.1 percent), while 8.8 percent of the total landings came from several otter trawl vessels (109 vessels) landing in Rhode Island. This information appears to be consistent with historical landings trends.

A full description of the Social Environment is provided in Section 2.3.3 of the FMP.

1.3 Statement of the Problem

A recent Court Order in Hadaja v. Evans set aside the regulations pertaining to the permit requirements for commercial tilefish vessels specified under 50 CFR 648.4(a)(12). By setting

aside the permit requirements of the FMP, the Court Order effectively eliminated most of the regulations implementing the FMP, since many of these regulations reference vessels holding a limited access or incidental tilefish permit. As a result, in addition to the vessel permit requirements specified under § 648.4(a)(12), the vessel operator permit requirements under § 648.5(a), the vessel reporting requirements under § 648.7(b)(2)(ii), the observer coverage regulations at § 648.11(a), and the incidental catch limit under § 648.292 are no longer in effect. Thus, the Court’s decision has resulted in an open access tilefish fishery that is not subject to any Federal vessel permit requirements or incidental catch limit.

The Court Order has also eliminated the ability of NOAA Fisheries to close the tilefish fishery once the annual quota is projected to be harvested since the fishery closure provisions established in the FMP are based on limited access permit categories. As a result, NOAA Fisheries does not have the authority under existing regulations to prevent the annual tilefish quota of 1.995 million lb from being overharvested. Allowing vessels to continue to harvest above tilefish quota level established in the FMP would jeopardize the ability to end overfishing and continue the rebuilding of the tilefish stock, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

1.4 Description of the Alternatives

A summary of the limited entry options considered in the FMP is provided in the following table.

Limited Entry Options	Part-time Category	Full-time Category
Option 1	At least 10,000 lb in 1 year 1988-1993, and at least 10,000 lb in 1 year between 1994-1998	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	Same as Option 1	<u>Tier 1</u> : At least 250,000 lb per year for 3 years between 1993-1998. <u>Tier 2</u> : At least 30,000 lb per year for 3 years 1993 and 1998. <u>For both tiers</u> : At least 1lb of tilefish landed prior to the June 15, 1993, control date.
Option 3	At least 10,000 lb in 1 year between 1988 and June 15, 1993	Same as Option 1
Option 4	Same as Option 3	At least 50,000 lb in 1 year between 1988 and June 15, 1993

Option 5	At least 10,000 lb in 1 year between 1977 and June 15, 1993.	At least 50,000 lb in 1 year between 1977 and June 15, 1993
Option 6	Same as Option 1, or 28,000 lb in 1 year between 1984 and 1993	<u>Tier 1</u> : Same as Option 2 <u>Tier 2</u> : Same as Option 2

The Council’s preferred alternative was Option 6, which was implemented in the final rule implementing the FMP (66 FR 49136, September 26, 2001). The proposed action would reinstate Option 6 as implemented in this final rule.

1.5 Economic Analysis

This action would reinstate the limited entry program established in the FMP. Therefore, the economic and social impact analysis conducted under Section 3.1.5.5 of the FMP is applicable to this action. Section 3.1.5.5 discusses the impacts related to the implementation of a limited entry program in the tilefish fishery. This section describes the expected impacts on non-qualifying vessels by home town, and primary port of landing. According to this analysis, Washington County, Rhode Island, contained the largest number of non-qualifying fishermen based on residence, and Point Judith, Rhode Island, contained the largest number of non-qualifying vessels (based on principle port). Thus, Rhode Island fishermen were the group that most negatively impacted by the limited entry program established in the FMP.

In 1998, prior to the FMP being implemented, 215 vessels landed tilefish along the Atlantic coast. Upon implementation of the FMP, 32 vessels qualified for limited access permits. In addition, approximately 1,650 vessels have obtained an incidental tilefish permit. However, only 137 vessels landed tilefish during the 2002 fishing year according to DWO data. An analysis of the vessels that would qualify for the limited access fishery under the preferred alternative was included in the FMP under Section 4.9.3.1.1.1. This analysis shows that 100 percent of the full-time tier 1 category vessels, 25 percent of the full-time tier 2 category vessels, and none of the part-time category vessels would incur revenue reductions of 5 percent or greater as a result of the management measures implemented under the FMP.

In terms of impacts to the total fishery, the economic analysis in the FMP shows that under the preferred alternative, which includes the limited access program that was implemented in the FMP, ex-vessel revenue and net benefits, would decline by \$0.99 million and \$0.57 million, respectively, during the first year of the FMP. A full discussion of the economic impacts associated with FMP measures are provided in Sections 3.1.5 and 4.0 of the FMP.

If the limited access program in the FMP is not reinstated, both positive short term and negative long term economic impacts could be observed for the tilefish fishery. In the absence of regulation, the traditional problems associated with open access fisheries would occur. An open access fishery would allow industry participants who may not have been eligible for a limited

access tilefish permit to fish for and land tilefish in excess of the incidental catch levels. This could result in an increase in short-term landings, revenue, and net returns for the approximately 1,650 vessels holding an incidental tilefish permit. In addition, the 32 vessels issued a limited access permit (categories A, B, and C) would be allowed to harvest tilefish in excess of the portion of the yearly quota assigned to their particular permit category, should their respective yearly quota be exceeded. This could result in increased short-term landings, revenues, and net returns for the limited access vessels, and their crew.

Furthermore, if the limited entry program implemented in the FMP were not reinstated, economic benefits would not accrue in the long term. The magnitude of the economic consequences would depend on the time frame that the open access fishery was allowed to continue as well as the activity and number of participants who join the fishery. Those who have previously qualified for limited access receive the benefit of assured access and the ability to reap a continuing and known share of the tilefish resource as it rebounds. Under the status quo, this benefit would no longer exist. Thus, there is great potential for negative long term economic consequences. However, there is a degree of risk involved since we cannot tell if that potential will be realized, or to what degree. Under open access fisheries, the severity of that risk is unknown.

1.6 Determination of significance under E.O. 12866

NOAA Fisheries Guidelines provide criteria to be used to evaluate whether a proposed action is significant. A “significant regulatory action” means any regulatory action that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

The RIR prepared for the FMP (Section 4.0 of the FMP) shows that the impacts of the preferred alternative will not have an annual effect on the economy of \$100 million, nor adversely effect in a material way the economy, a sector of the economy, productivity, competition, the environment, public health or safety, or State, local, tribal governments or communities. Because vessel permitting requirements for the tilefish fishery were considered as part of that analysis, the proposed action to reinstate the vessel permitting requirements established in the FMP will not have any additional economic effects beyond those analyzed in the RIR prepared for the FMP. Therefore, this action will not have an annual effect on the economy of \$100 million, nor adversely effect in a material way the economy, a sector of the economy, productivity, competition, the environment, public health or safety, or State, local, tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

The proposed action does not appear to create a serious inconsistency with any action taken or planned by another agency, since it is designed to maintain tilefish landings at a constant harvest level, as specified in the FMP.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

The proposed action does not affect any entitlement, grant or other programs.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The proposed action is being taken pursuant to the mandates of the Sustainable Fisheries Act to end overfishing, rebuild the stock to MSY in 10 years, and achieve optimum yield from the fishery. In the absence of the proposed action to reinstate the tilefish limited access program established in the FMP, the status of the tilefish fishery would be jeopardized, and the stock rebuilding program established in the FMP would be comprised. Therefore, the proposed action to reinstate the permit requirements of the FMP is not considered to be significant under the fourth and final criterion specified in E.O. 12866.

Because none of these criteria apply, NOAA Fisheries has determined that the proposed action to reinstate the vessel permitting requirements contained in the FMP is not significant for the purpose of E.O. 12866.

2.0 Initial Regulatory Flexibility Analysis

The following sections contain analyses of the effect of the proposed action on small entities in accordance with Section 603(b) of the Regulatory Flexibility Act.

2.1 Reasons for Considering the Action

This action is being taken in response to a recent Federal Court decision in the case of Hadaja v. Evans, that set aside the regulations pertaining to the permit requirements for commercial tilefish vessels specified under 50 CFR 648.4(a)(12). The Court's decision to set aside the permit requirements has a substantial impact on the regulations implementing the FMP, since many of these regulations reference vessels holding a 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. Thus, the Court's decision has greatly impacted the ability of the National Marine Fisheries Service (NOAA Fisheries) to manage the tilefish fishery in accordance with the Magnuson-Stevens Act

Despite the impact of the Court Order on the FMP, the tilefish fishery is still subject to an overall quota of 1.995 million lb. However, there is currently no mechanism under existing regulations to close the fishery since the closure provisions specified at § 648.291 are based on the existence of limited access permit categories. The only means the Regional Administrator (RA) has to close the tilefish fishery once the overall quota is projected to be harvested is through Secretarial Action, such as an emergency rule, which can take several weeks to prepare and implement. Therefore, the RA currently does not have a timely means of closing the tilefish fishery once the overall quota is projected to be harvested, increasing the likelihood that the annual quota will be overharvested, and potentially impacting the stock rebuilding program established in the FMP.

2.2 Objectives and legal basis for the action

The basis for the Court's decision to set aside the tilefish permit regulations was that the limited access program in the FMP violated National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) because it was not based on scientific evidence, but born of political compromise between two powerful industry groups. In its Order, the Court stated that NOAA Fisheries must adopt a plan that is based on the best scientific information available. According to the Court, this plan may be the same plan that was adopted in the FMP, but only if the evidence in the administrative record clearly supports it.

The purpose of this action is to reinstate the limited access program established in the FMP based on additional information provided by the Mid-Atlantic Fishery Management Council (Council) to support the limited access permit criteria established in the FMP. The objective being to help end overfishing, and ensure that the stock rebuilding goal of the FMP is achieved.

The Council passed a motion at its August 5-7, 2003, meeting to move forward with developing the supplemental record needed to reinstate the permitting requirements of the FMP through proposed and final rulemaking. A meeting was then held on September 18, 2003, between the Tilefish Committee (Committee), the Tilefish Technical Team (Technical Team), and the Tilefish Industry Advisors (Industry Advisors) to discuss developing this supplemental record. At this meeting these individuals discussed how the criteria for each limited access category was developed based upon the landings data that was 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 establishing the various limited access alternatives, and the rationale behind the selection of the limited access program contained in the final FMP.

2.3 Description and number of small entities to which the rule applies

All of the entities (fishing vessels) affected by this final rule are considered small entities under the standards described in NOAA Fisheries guidelines. 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 approximately 1,650 vessels that currently hold an Incidental tilefish permit, although vessels are no longer required to hold a Federal permit to land tilefish.

2.4 Reporting, recordkeeping and other compliance requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. The reporting and recordkeeping requirements contained in the FMP were approved under OMB control numbers 0648-0018, 0648-0202, 0648-0212, 0648-0229, and 0648-0350.

2.5 Duplication, overlap or conflict with other Federal rules

The proposed rule does not duplicate, overlap or conflict with other Federal rules.

2.6 Economic impacts on small entities resulting from the proposed action

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. Specifically, Section 4.9.3.1.1.1 of the FMP analyzes the expected impacts of the preferred quota and limited entry alternatives. 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 proposed action to reinstate the limited entry program contained in the FMP 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 annua 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.