

the four “depressed” or “critical” populations. Many of these populations appear stable and healthy. For instance, the Kilisut Harbor populations fluctuated from 279 tons in 1975 to 850 tons in 1999. The Quartermaster Harbor, Dungeness Bay, Skagit Bay, Fidalgo Bay, and Samish-Portage Bay populations experienced similar population trends during that time period.

Biomass in the Canadian portion of the Strait of Georgia, estimated from spawn deposition surveys, did not show the severe downward trends observed for some of the Puget Sound populations. The population was at relatively high levels in recent years, fluctuating between 67,031 metric tons (mt) in 1990 to 83,450 mt in 1999 (Schweigert and Fort, 1999).

Recreational fishery landings in Puget Sound are insignificant, and commercial fishing for Pacific herring has not been allowed in Washington coastal waters west of the Strait of Juan de Fuca. In Puget Sound, the sac roe fishery closed in 1981, and was followed by a general purpose fishery closure in 1983. The spawn-on-kelp fishery began in 1990 and continued on a limited basis until 1996. A low level sport bait fishery continues, primarily in central and south Puget Sound. Commercial landings were historically modest and did not exceed 1,000 tons until 1958 and then remained above 1,000 tons until 1983 (K. Stick, WDFW, pers. comm. cited in NMFS, 2001b). Since then, landings have ranged from 1,076 tons in 1990 to 361 tons in 1998, which is well below peak landings of 7,171 tons in 1975 (K. Stick, WDFW, pers. comm. cited in NMFS, 2001b). Native American tribes have conducted a significant Pacific herring fishery in the past, but these efforts were curtailed in 1996 due to concerns about the species’ declining abundance.

Bargmann (1998) reported that natural herring mortality rates increased significantly from 1976 to 1995. In addition, the number of age groups comprising the bulk of the populations decreased from five to two or three during this time period. While Pacific herring formerly lived to ages exceeding 10 years, fish older than 6 years are now rare (Bargmann, 1998). British Columbia populations did not exhibit a decrease in abundance of older fish comparable to the decrease in Puget Sound populations (Schweigert and Fort, 1999). However, weight at age has decreased in all major British Columbia populations since the mid- to late 1980s (Stocker and Kronlund, 1998), which is consistent with the decline observed for the Cherry Point population. Numbers of 3-year-old fish in the Cherry Point

population were approximated for the 1971–1975 and 1996–1999 period. This study indicated a considerably higher recruitment of 3-year-old fish during 1971 to 1976 than in later years. Reduced recruitment of 3-year-old Pacific herring and increased non-fishery related losses of older fish appear to be the primary causes for declining biomass of the Cherry Point populations and, perhaps, other Puget Sound populations as well.

As noted previously, NMFS has found that this Pacific herring DPS consists of populations from Puget Sound and the Strait of Georgia. Therefore, NMFS’ risk assessment included more populations than those addressed in the petition. The British Columbia populations do not appear to be declining or at the low levels observed for some of the Puget Sound populations. Consequently, the population declines apparent in Puget Sound do not appear to be widespread throughout the range of the DPS. Moreover, because of the moderate to high productivity of Pacific herring populations and their tendency to stray among spawning sites, there are reasonable possibilities for reversing declines of depleted populations in specific spawning sites. Therefore, NMFS concludes that the Georgia Basin Pacific herring DPS is not presently in danger of extinction nor is it likely to become so in the foreseeable future.

#### Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, that are being made to protect such species.

After reviewing the best available scientific and commercial information for these species, NMFS concludes that for the three rockfish species reviewed, petitioned populations comprise five DPSs under the ESA: (1) A Puget Sound proper copper rockfish DPS; (2) a Northern Puget Sound copper rockfish DPS; (3) a Puget Sound proper quillback rockfish DPS; (4) a Northern Puget Sound quillback rockfish DPS; and (5) a Puget Sound proper brown rockfish DPS. In addition, NMFS concludes that the petitioned populations of Pacific herring do not constitute a “species” under the ESA, but are part of a larger

Georgia Basin Pacific herring DPS that consists of inshore populations from Puget Sound and the Strait of Georgia. After assessing the risk of extinction faced by each DPS, NMFS further determines that none of the rockfish or herring DPSs warrant listing as threatened or endangered at this time.

#### References

A list of references is available upon request (See **ADDRESSES**).

**Authority:** 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

Dated: March 27, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 950616159–1055–05; I.D. 022601D]

RIN 0648–ZA16

#### Northeast Multispecies Fishery; Fishing Capacity Reduction Program

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

**ACTION:** Notice of proposed fishing capacity reduction program and request for comments.

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**SUMMARY:** The Military Construction Appropriations Act for FY 2001 included an emergency supplemental appropriation for the Northeast multispecies fishery of \$10.0 million. The emergency appropriation is intended to support a voluntary fishing capacity reduction program in the Northeast multispecies fishery (FCRP) that permanently removes multispecies limited access fishing permits. NMFS is considering a plan for distributing funds to permit holders in exchange for their permit forfeiture. This document suggests two methods for ranking bids (math programming or correlation with fishing capacity). NMFS is requesting comments on the most appropriate and cost-effective means to accomplish the FCRP’s intended goal. NMFS also announces that it will be holding a series of meetings to discuss the program and receive comments and suggestions on implementation.

**DATES:** NMFS will accept comments through May 25, 2001. Public meetings will be held between May 8, 2001 and May 17, 2001. For specific dates and times, see **SUPPLEMENTARY INFORMATION** under the heading IV. Public Information Meetings.

**ADDRESSES:** Send written comments on the proposed program to: National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn: Jack Terrill. The public meetings will be held in Maine, New Hampshire, Massachusetts, Rhode Island, New York, and New Jersey. For specific locations, see **SUPPLEMENTARY INFORMATION** under the heading IV. Public Information Meetings.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill, Fishery Administrator, (*Jack.Terrill@NOAA.GOV*) 978-281-9136 or Daniel Morris, Environmental Officer (*Daniel.Morris@NOAA.GOV*) 978-281-9237.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 13, 2000, the President signed the Military Construction Appropriations Act for FY 2001 (Pub.L. 106-246), which authorized a \$10 million emergency supplemental appropriation for disaster assistance in the Northeast multispecies fishery. The funds are intended to compensate industry permittees who choose to participate in a program aimed at reducing the permitted fishing capacity in the multispecies fishery. Similar past initiatives have proven successful, but have been the subject of some criticism, as discussed here. This FCRP aims to respond to those criticisms.

The Northeast multispecies fishery has been declared a commercial fishery failure under the authority of section 308(b)(1) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)(1)). Among other things, the declaration was based on incomplete understanding of mechanisms for determining multispecies stock levels. Variables that determine fluctuations in natural mortality were not fully known. For many years, fishing pressure on the multispecies fish stocks increased due to significant technological advances, rapid capitalization, and unlimited permitting, resulting in a decline in stock abundance to record low levels. This led to a determination by NMFS in 1992 that the key multispecies stocks had been overfished. In 1994, Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP) implemented a 5-year stock rebuilding program with the goal of reducing groundfish fishing effort by 50

percent. Among the other Amendment 5 management actions were limits on the number of vessels in the fishery and on the amount of time many vessels in the fleet could spend at sea with a schedule for reducing days-at-sea (DAS) over several years. In 1996, Amendment 7 to the FMP modified the rebuilding program by imposing a more rigorous DAS reduction schedule, by removing most exemptions from DAS controls, and by providing a more flexible adjustment process to respond to specific resource conditions. Such measures imposed economic hardships; several financial assistance programs were implemented to mitigate the economic impact that reduced time at sea would have on fishermen and fishery-dependent communities.

Even with these effort reduction measures, the amount of effort available to multispecies permittees is still a cause for concern for the New England Fishery Management Council (Council) and NMFS. Of particular concern is the amount of fishing capacity that is permitted and available to the fleet, but is not utilized. According to a recent report of the Council's ad-hoc Capacity Committee (October 4, 2000), the total DAS allocated to the multispecies permittees (in the limited access permit categories) in 1998 was 154,286. Of that total, only 51,880 DAS were reported as being used.

There are many reasons that permitted multispecies effort goes unused. Vessels may be working in other fisheries. Market conditions, (including fish prices, fuel, labor, maintenance, lost opportunity costs and other variables) may not make participation in the multispecies fisheries sufficiently profitable. Vessels may be in need of repair or otherwise inoperable. Adverse weather may prevent or discourage use of DAS. Any one of these reasons or a combination may result in DAS going unused. Additionally, there are many permits in a "Confirmation of Permit History" (CPH) status that are currently unassociated with any vessel, but which could be reactivated if the permit owner acquires a new vessel. At present, 85 limited access multispecies permits are in the CPH status. If the multispecies fish stocks begin to recover or market incentives prompt inactive or less than fully active permittees to initiate or to increase their effort in the fishery, then the fishery resource rebuilding program may not achieve its goals.

The degree of effort latency varies as broadly as the reasons for its existence. According to the Report of the Ad-Hoc Capacity Committee, from 1994-1999, 199 vessels with valid multispecies

permits in limited access categories did not report any fishing activity in the Northeast region. During that same period, 166 vessels with valid multispecies permits in limited access categories that landed other species did not report any landings of the 10 regulated species of groundfish. Of the 1,315 vessels that landed one or more pounds of any of the 10 regulated species, many did not utilize their full allocation of DAS. Reactivation of this latent effort or the shift of effort from other fisheries to multispecies fisheries could undermine the groundfish resource recovery.

On September 10, 1999, NMFS published the Council-approved control date for the Northeast multispecies and Atlantic sea scallop fisheries (64 FR 49139, September 10, 1999), which may be used for establishing eligibility criteria for future access to these fisheries. At about the same time, the Council established an ad-hoc Capacity Committee to examine and provide recommendations to the Council on the various capacity issues existing within the multispecies and sea scallop fisheries. The Capacity Committee has concluded its year-long deliberations and has provided recommendations to the Council to be developed further by the Council's Groundfish Committee. The Capacity Committee's report discusses measures to consolidate effort in the fishery, to defer or allocate effort, or to provide incentives for vessels to leave the fisheries. The Report of the Ad-Hoc Capacity Committee will be among the many factors the Council will weigh as it develops and implements, by the fall of 2002, the next round of restructuring of the multispecies fishery through Amendment 13 to the FMP. NMFS consulted with the Capacity Committee and Council staff regarding the timing of the implementation of the FCRP with respect to the Council's Amendment 13. The Military Construction Appropriations Act requires "timely" disbursement of the funds and implementation of the program.

**Review of Previous Efforts—Initial, Expanded Buybacks**

Under the provisions of the Emergency Supplemental Appropriations Act of 1994, \$2 million was made available as part of the Northeast Fisheries Assistance Program for a pilot program called the Fishing Capacity Reduction Demonstration Program (pilot program). The purpose of that pilot program was to test an approach for permanently reducing the fishing capacity in the Northeast multispecies fishery. On October 11, 1995, NOAA announced that 114 vessel

owners, with vessels worth over \$52 million and representing 31 percent of the active groundfish capacity, applied to participate in the pilot program. Under the pilot program, vessel owners submitted bids, that is--the price at which he/she would be willing to forfeit all Federal fishing permits and render the vessel unable to fish. The criterion for selection was the ratio of the bid to the vessel's revenues from groundfish during a specified period. NOAA made grant awards to 11 vessel owners totaling \$1.89 million. In addition to the 11 Federal multispecies limited access fishing permits surrendered under the pilot program, an additional 15 limited access fishing permits for the summer flounder, ocean quahog, squid, mackerel, and butterfish fisheries were retired.

The pilot project demonstrated that industry interest in a buy-out was high, and the project seemed to be favorably received by the public. Between September 1996 and May 1998, the program was expanded with very few changes to procedures or selection criteria, and \$23 million was awarded to remove an additional 68 vessels from the multispecies fishery, bringing the total number of vessels removed to 79. As with the pilot project, many other limited access permits were forfeited.

In a June 2000 report to the House Committee on Resources, the Government Accounting Office (GAO) presented an analysis of the fishery buyback programs in New England, the Bering Sea, and Washington State, specifically commenting on the New England program as follows:

[The] New England buyback removed 79 vessels that accounted for 19 percent of the groundfish catch in that fishery. However, 62 additional vessels have become active since the buyback because no steps were taken during the program to prevent previously inactive vessels from engaging in fishing. These vessels have begun to erode the capacity reductions made by the buyback because they have replaced fishing capacity by as much as two-thirds of that purchased through the buyback. (p. 4)

One concern regarding subsequent buyout programs is that, as in the past, previously unutilized capacity or CPH multispecies permits will be activated by the industry to replace any active permits that may be removed through the buyback program and little net reduction in capacity utilization will be realized. GAO recommended that NMFS design future buyback programs to restrict the use of unused permits in the buyback fishery with excess fishing capacity and identify mechanisms to minimize the incentives to increase fishing capacity in a buyback fishery.

In addition, section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes fishing capacity reduction programs to be administered by NMFS under certain conditions and if requested by a fishery management council or the governor of a state. Section 312(b)(1)(B)(i), in particular, requires that the fishery management plan affected by such a program will "prevent replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet." In response to the aforementioned criticism from the GAO, the Secretary of Commerce, in a report to the House Committee on Government Reform, committed to applying certain of the section 312(b) conditions to all future fishing capacity reduction programs: "[E]xcept in the most extreme cases of financial distress in which some form of immediate relief is needed, we will apply section 312(b)(1)(B)[i] requirements to disaster assistance under other authorities even though the practical effect may often be to exclude the use of disaster assistance funds for capacity reduction." (Secretary Mineta to the Honorable Dan Burton, dated 9 November 2000).

The fishery has been a limited access fishery and closed to new entrants since implementation of FMP Amendment 5 in May 1994. Vessel upgrades are limited by the FMP as implemented at 50 CFR 648.4(a)(1)(i)(E)-(F). Limitations to upgrading of vessel horsepower, length, and tonnage are discussed in the proposed program details below. Finally, effort control measures have been in place in the multispecies fishery since May 1994 and, though modified since, remain in effect.

Although there is no measure proposed as part of this FCRP that would restrict the activation of unused permits in the buyback fishery, the Council's establishment of a control date for the multispecies and Atlantic sea scallop fisheries is an existing measure that is intended to discourage speculative reactivation of latent capacity. Further, the proposed FCRP has been designed to encourage participation by permittees who are presently not active in the fishery and who comprise some proportion of the finite capacity pool. These permittees are most likely to seek compensation for voluntarily surrendering their permits because generally they are gaining least by holding on to permits. If permittees who are active in the fishery participate in this FCRP, their effort may be

replaced by reactivation of unused permits, but it is less likely that active permits will be retired because of the criteria established by the FCRP. In any case, the removal of permits, whether latent or active, is going to directly reduce the amount of capacity that, otherwise, can be exercised in the multispecies fishery, particularly as the fishery is rebuilt to more productive levels.

### Proposed FCRP

To date, the fishing capacity reduction programs in the Northeast have been designed to compensate permit holders who disable, scrap, scuttle, or transfer their vessels to non-fishing purposes and surrender all their Federal fishing permits. The term "vessel buyback" aptly described the programs. The legislation that initiated the current FCRP specifies that the funds "shall be used to support a voluntary fishing capacity reduction program in the Northeast multispecies fishery that permanently revokes multispecies, limited access fishing permits so as to obtain the maximum sustained reduction in fishing capacity . . . and to prevent the replacement of fishing capacity removed by the program." NMFS intends to satisfy this statutory requirement by disbursing funds for the surrender of permits. NMFS has no intention of buying or otherwise directly removing vessels from the fishery.

It is likely that some vessel owners will be willing to surrender their multispecies permit through this FCRP while retaining other limited access permits and participating in other fisheries. The practice of splitting one vessel's suite of limited access permits to allow one or more other vessels to operate in separate limited access fisheries is prohibited by 50 CFR 648.4(a)(1)(i)(L). Because, under this FCRP, the multispecies limited access permit would be surrendered to the Government, and not transferred to another vessel, the vessel's remaining limited access permits would remain valid. In other words, permittees with more than one limited access permit would not be required to surrender all of their permits to participate in the FCRP.

On the other hand, permittees may certainly offer to surrender limited access permits in addition to their multispecies permits. If a multispecies permit holder plans to participate in this FCRP by submitting a bid, he/she may offer to surrender limited access permits in addition to the multispecies permit. Bid ranking is to be based on the baseline characteristics and other factors

related only to the multispecies permit. However, the offer to surrender additional limited access permits may be considered by NMFS as a means of favorably adjusting a bid's rank, should two or more bids be ranked equivalently. NMFS is seeking comments on how offers to surrender additional permits should be valued and ranked in the bid review process.

During the multispecies crisis, many industry members have shifted the focus of their fishing effort to underutilized species. Changes in industry behavior, along with a variety of fishery management measures, has resulted in limited recovery of some of the multispecies stocks. While a vessel's active participation in the multispecies fisheries and/or the expense of re-outfitting the vessel for participation in multispecies fishery may affect the value the owner places on the multispecies permit (and, thus, may affect the bid that is proffered), the present status of the vessel and its recency of participation in the multispecies fishery are not to be qualifiers for participation in this proposed FCRP.

In contrast to the earlier fishing capacity reduction programs, which weighted and ranked bids with respect to the vessel's recent multispecies revenues, a capacity reduction program that is focused on removing latent as well as active permits from the fishery must consider potential fishing capacity of the permitted vessel as a factor in the value of the permit. Each multispecies limited access permit has a vessel baseline associated with it. The baseline consists of four vessel characteristics -- length overall (LOA), gross registered tonnage (GRT), net tonnage (NT), and horsepower (HP) -- and was set in 1994-95 to reflect the status of the vessel at the time the permit category became limited access. The purpose of the baseline is to limit capitalization in the fishery. Permit holders are allowed to upgrade LOA, GRT, and/or NT by up to 10 percent only once for the life of the permit. Horsepower may be upgraded by 20 percent one time during the life of the permit; the HP upgrade need not be contemporaneous with the one-time LOA, GRT, and/NT upgrade. Upgrading may be achieved through vessel alterations or purchase of a replacement vessel that falls within the upgrade constraints.

NMFS is considering two methods for ranking bids under the proposed FCRP, each of which would factor in vessel baseline characteristics. Under one method, NMFS would prepare an estimate of any potential bidders vessel capacity to harvest multispecies,

weighted by DAS allocations, using mathematical programming methods. This estimate of harvest capacity would be an inference, based on capacity estimates for similarly configured vessels that are actively working in the fishery. It would consider vessel baseline characteristics (GRT, HP, and LOA) vessel age, crew size, and perhaps other vessel and operational characteristics. Bids would then be scored by dividing the vessel's estimated capacity by the bid, and the highest scoring permits would be selected in descending order. Under this bid ranking alternative, bidders, if they choose, may request that NMFS determine their vessel's capacity prior to submission of the bid.

Another approach to ranking bids would be to develop a formula that has been determined to be highly correlated with capacity. The formula would be based on vessel baseline characteristics, where each parameter is weighted corresponding to its importance with respect to fishing capacity. For example, the formula might use a greater factor by which to multiply HP than it would for GRT because HP is a more important element in determining a vessel's fishing capacity. The formula might not use all of the baseline characteristics. LOA and GRT are highly correlated, thus one might be dropped from the formula for the sake of simplicity without affecting the outcome of the ranking process. The formula could also include a weighting factor for DAS or type of permit. For example, a hook-gear only permit can never be converted to a permit that would allow the use of gill net or trawl gear, and, thus, capacity for the Hook Gear category is more gear limited. Also, permits in the Small Vessel category do not restrict DAS, but do restrict landings of cod, haddock, and yellowtail flounder, so this might have to be balanced in the formula if bids are to be ranked without respect to permit categories. The formula would be announced by publication in the **Federal Register** and bidders would be able to work through the formula using their own baseline characteristics to inform their development of the bids. To rank the bids, the outcome of the formula would be verified by NMFS and divided by the bid, and the higher scoring permits would be selected in descending order.

No matter which method is adopted, vessel baseline will be an important factor in the ranking. From the fall of 1998 through 1999, NMFS initiated the Baseline Audit Program for multispecies and scallop limited access permit categories. NMFS contacted all permittees and asked them to verify

and/or correct the permit baseline information in NMFS records. The time window for correcting permit baselines has closed, and NMFS considers its records on permit baselines for multispecies and scallop limited access permit categories to be complete and up to date. The audit program did not include all CPH status permits. Some CPH baselines have been verified, but some have not. If owners of CPH status permits without verified baselines want to participate in the FCRP, NMFS will work with the applicant to establish/verify the vessel baseline. For all other FCRP participants, NMFS intends to use the baseline information as verified or corrected through the Baseline Audit Program.

To represent adequately the full potential capacity of a permit and to improve the consistency of the ranking process, NMFS is considering using the permitted vessel baseline plus the authorized upgrade capacity available to the vessel as the parameters for the capacity evaluations. For example, because a one time upgrade of up to 20 percent of vessel's baseline HP is authorized, a vessel with a 200-HP baseline would be considered for the purposes of this program to have 240 HP, if the owner has not yet exercised the upgrade option. NMFS requests comments from the public on these bid ranking methods and the parameters that should be taken into consideration under each. NMFS requests comments about the upgrade adjustment where the upgrade in LOA of a vessel under a Category C permit (Small Boat Exemption) would render it ineligible for the permit category.

This FCRP is intended to address unutilized fishing capacity in the multispecies fishery by removing limited access permits. In implementing this program, NMFS is tasked "to obtain the maximum sustained reduction in fishing capacity at the least cost." If participation is insufficient in this FCRP to use up all the allocated funds, or if NMFS determines the bids are too high to satisfy the letter and intent of this "least cost" provision, then NMFS retains the discretion to reject bids, to close the FCRP, and to restructure it using the remaining funds to meet the statutory goals.

## II. Definitions

CPH—a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, and has applied for and received a CPH. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for

a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in 50 CFR 648.4.

Regulated species—those species that are regulated under the FMP and are limited to cod, haddock, pollock, yellowtail flounder, winter flounder, gray sole, American plaice, windowpane flounder, white hake, and redfish.

Valid multispecies limited access permit—those limited access permits defined in the regulations implementing the FMP, at 50 CFR 651.4(b). To be valid, a permit must be free of all permit sanctions, pending or otherwise, at the time that the application is submitted, and at the time of closing.

### III. Request for Comment on the Proposed Program

The purpose of this FCRP is to reduce permanently the maximum fishing capacity within the multispecies fishery through the removal of limited access fishing permits. Like previous fishing capacity reduction programs, this FCRP is a voluntary market based program intended to remove the greatest amount of fishing capacity at the lowest cost. It will allow the applicant to establish a price for offered permits that will be scored in a competitive manner.

#### Proposed Application Procedures

##### A. Eligible Applicants

NMFS intends to consider applications to this FCRP only from owners of Federal multispecies permits in limited access categories or CPH status, in accordance with the procedures that will be set forth in a future Federal Register publication. An owner may be an individual who is a citizen or national of the United States; or a citizen of the Northern Mariana Islands; or a corporation, partnership, association (non-profit or otherwise), trust, or other nongovernmental entity; if such an entity is a citizen within the meaning of section 802 of the Shipping Act, 1916, as amended (46 U.S.C. App. 802). Federal Government agencies or employees, including full-time, part-time, and intermittent personnel, and Regional Fisheries Management Council members and employees are not eligible to submit an application.

The multispecies permits that are to be offered for forfeiture must be valid limited access fishing permits, free of any permit sanctions, pending or otherwise, both at time of application and at closing. Any additional limited access fishing permits that are offered to be surrendered must also be free of any

permit sanctions, pending or otherwise, both at time of application and at closing. NMFS seeks comments from the public on the participant eligibility for the FCRP.

##### B. Proposed Application and Review Processes

NMFS intends to give vessel owners 60 days from the date of publication in the **Federal Register** of the final FCRP Notice to submit an FCRP application form. The form may request the following information: Owner, permit number, permit vessel baseline, and, as applicable, vessel name, vessel number, and other relevant information related to vessel configuration and operations. Applicants will be required to submit one signed original application. No facsimile applications will be accepted. Proof of receipt may be obtained by sending an application by certified mail, return receipt requested. The anticipated time required to process applications is 120 days from the closing date of the solicitation.

NMFS intends to send an application form along with a copy of the final **Federal Register** notification announcing the availability of funds under the FCRP to all multispecies limited access fishing permit holders. Applications will also be made available at the NMFS Northeast Regional Office and through the NMFS Northeast Regional Office's website, <http://www.wh.who.edu/ro/doc/nero.html>.

Two methods of ranking bids under the FCRP are discussed above. If the mathematical programming method, in which NMFS develops an estimate of permitted capacity based on input from program participants, is selected, then NMFS, upon request, will provide prospective applicants with a capacity estimate prior to their submission of a bid. This step would not be required. Applicants could simply submit a bid in accordance with published procedures without knowing their vessel's estimated capacity. If the formulaic method is selected, the formula for ranking will be published in the **Federal Register** notice, but, applicants will not be required to calculate their own vessel's capacity.

As applications are received, NMFS will review them for completeness and correctness. Once the 60-day period for applications closes, NMFS intends to rank all timely bids mathematically, as described above. Offers to surrender limited access permits in addition to the multispecies permit will not be used to determine the initial ranking, but will be used to distinguish between similarly ranked applicants. That is, offers to surrender non-multispecies limited

access permits will be considered by NMFS as tie-breakers when choosing between otherwise equivalent bids.

Determining a bid amount is extremely important, since this will be a key factor in the success of an applicant. If the bid is too high in relation to the permit's baseline capacity, the bid may not be competitive.

The Administrator, Northeast Region, NMFS, will determine which applicants are eligible with competitive bids based on the ranking of the applications. NMFS may initially find more eligible applications than it can fund, but will consider all such applications in order of their ranking. NMFS, based upon established criteria, will reserve the right to reject any or all applications and may solicit additional applications. If additional applications are solicited, or if the program is restructured to encourage participation, all applications submitted previously and not determined to be eligible with competitive bids will be considered rejected. NMFS will notify eligible applicants, whose bids are competitive, in writing. However, eligible applicants are not guaranteed funding by simply having a competitive bid. The bid must be selected and the application will be subject to a thorough investigation to ensure the owners and permits meet the eligibility requirements prior to the disbursement of the awards.

NMFS will provide notice to the permit owners for which an eligibility investigation has been successfully completed. Proprietary information submitted by applicants will only be disclosed to Federal officials who are responsible for the FCRP or otherwise when required by applicable disclosure statutes or by court order.

Representatives from the NMFS Financial Services Division will establish the programmatic terms for the awards. These terms will be binding on the applicants and will control the applicant's post-award rights and obligations. Award terms will include provisions to ensure that applicants do not violate fisheries laws and regulations prior to closing. At their own expense, applicants may choose to retain closing attorneys to represent their interests. The method of payment for this FCRP has yet to be determined. NMFS may use purchase orders, grants, or other means for distributing the funds, depending on the amount of the awards and the time window for disbursement. NMFS will make every effort to ensure awards are paid in a timely manner. Depending on the payment method and the amount, awardees may be required to complete additional

forms to certify they are in good financial standing with the government, their workplace is drug-free and they will limit their governmental lobbying activities. The specific details of these certifications will be published in the **Federal Register**.

NMFS requests comments from the public on the appropriateness of spending the appropriated monies by this proposed application and bid process, the methods to be used for ranking bids, the process for distributing funds and all aspects of this proposed FCRP.

#### IV. Public Information Meetings

To gain information from the public on how best to implement a fishing capacity reduction program utilizing the \$10.0 million appropriation, NMFS is planning the following public meetings, which will start at 7 p.m.:

1. May 8, 2001 - Gloucester, MA - NMFS, 1 Blackburn Drive, 978-281-9136
2. May 9, 2001 - Portland, ME - Holiday Inn By the Bay, 88 Spring Street, 207-775-2311
3. May 10, 2001 - Plymouth, MA - John Carver Inn, 25 Summer Street, 508-746-7100
4. May 10, 2001 - Ellsworth, ME - White Birches Motel, U.S. Route 1, 207-667-3621
5. May 15, 2001 - Portsmouth NH - Comfort Inn, Route 1, 603-433-3338
6. May 15, 2001 - Riverhead, NY - Ramada Inn East, 1830 Route 25, 631-369-2200
7. May 16, 2001 - New Bedford, MA - New Bedford Inn, 500 Hathaway Road, 508-997-1231
8. May 17, 2001 - Toms River, NJ - Holiday Inn, 290 Route 37E, 732-244-4000
9. May 17, 2001 - Narragansett, RI - URI Coastal Institute, Graduate School of Oceanography, Corliss Auditorium, South Ferry Road, 401-874-6110

Additional meetings may be requested by the public and will be announced in the **Federal Register** as they are scheduled.

**Authority:** 16 U.S.C. 4107

Dated: March 27, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 010319075-1075-01; I.D. 011101A]

RIN 0648-AF87

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

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

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

**SUMMARY:** NMFS proposes regulations to implement the Fishery Management Plan for Tilefish (FMP). The FMP was developed by the Mid-Atlantic Fishery Management Council (Council) and would initiate management of golden tilefish (*Lopholatilus chamaeleonticeps*) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The management unit is defined as all golden tilefish in the exclusive economic zone (EEZ) from Maine to the Virginia/North Carolina border. The intended effect of this proposed rule is to stop overfishing and to rebuild the tilefish stock in the Northwest Atlantic Ocean.

**DATES:** Comments must be received on or before May 18, 2001.

**ADDRESSES:** Comments on this proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope: "Comments on Tilefish Plan Proposed Regulations." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

Comments on the collection-of-information requirements that would be established by this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer) and to the Regional Administrator, NMFS, Northeast Region (see previous address).

Copies of the FMP, its Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the

Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 978-281-9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Results of the NMFS 1998 stock assessment of tilefish indicate that the tilefish stock is at a low biomass (B) level and is overexploited. Total biomass in 1998 was estimated to be 6.8 million lb (3.1 million kg), which is approximately 35 percent of the biomass that would produce maximum sustainable yield (MSY) or  $B_{MSY}$ . The biomass-based fishing mortality rate (F) in 1998 was estimated to be 0.45, which is about double the F that would produce MSY or  $F_{MSY}$  where  $F_{MSY} = 0.22$ . Total landings of tilefish in 1998 were 2.7 million lb (1.2 million kg), which is significantly less than the estimated MSY of 4.2 million lb (1.9 million kg). Total landings of tilefish in 1999 decreased to 1.2 million lb (0.544 million kg).

To meet the requirements of the Magnuson-Stevens Act, the FMP would establish the following: An overfishing definition; a stock rebuilding strategy; a limited entry program; a commercial quota; permit and reporting requirements for commercial vessels, operators, and dealers; a Tilefish Monitoring Committee; a framework adjustment process; and identification and designation of tilefish essential fish habitat (EFH). A notice of availability of the FMP was published at 66 FR 9814, February 12, 2001, with a 60-day comment period ending on April 13, 2001.

##### Overfishing Definition

The Magnuson-Stevens Act requires that each fishery management plan specify objective and measurable status determination criteria for identifying when stocks or stock complexes are overfished. The Council would establish status determination criteria based on a maximum F threshold and a minimum B threshold. The maximum F threshold would be specified as  $F_{MSY}$ , and the minimum B threshold would be specified as  $\frac{1}{2} B_{MSY}$ . The Magnuson-Stevens Act national standard guidelines suggest that risk-averse fishing mortality and biomass targets be specified. For tilefish, the Council