

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 150311250-5474-01]

RIN 0648-BE97

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; Secretarial Emergency Action

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

ACTION: Temporary rule, emergency action.

SUMMARY: This temporary rule implements possession limits for the blueline tilefish fishery in waters north of the Virginia/North Carolina border as requested by the Mid-Atlantic Fishery Management Council. These emergency management measures are necessary to temporarily constrain fishing effort on the blueline tilefish stock while a long-term management plan is developed. The rule is expected to reduce fishing mortality and help ensure the long-term sustainability of the stock.

DATES: Effective June 4, 2015, through December 1, 2015, except for the amendment to the “Tilefish” definition in § 648.2, which is effective June 4, 2015. Comments must be received on or before July 6, 2015.

ADDRESSES: Copies of the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for this emergency action are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA, 01930. The EA/RIR is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov/>.

You may submit comments, identified by NOAA-NMFS-2015-0062, by either of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2015-0062, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Blueline Tilefish Emergency.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:**Background**

Blueline tilefish (*Caulolatilus microps*) are mainly distributed off the southeastern U.S., and have been managed as part of the South Atlantic Fishery Management Council’s Snapper Grouper Fishery Management Plan (FMP). The South Atlantic Council developed, and NMFS has implemented, Amendment 32 to the Snapper Grouper FMP to end overfishing of blueline tilefish within the South Atlantic Council’s management jurisdiction. Amendment 32 includes reduced commercial and recreational possession limits (80 FR 16583; March 30, 2015). However, Amendment 32 measures do not apply to vessels fishing for blueline tilefish north of the South Atlantic Council’s jurisdiction (which extends as far north as the latitude of the Virginia/North Carolina border).

In recent years, there has been increasing recreational and commercial fishing activity for blueline tilefish in the Greater Atlantic Region, outside the jurisdiction of the South Atlantic Council’s Snapper Grouper FMP. Commercial landings in the Greater Atlantic Region (Virginia to Maine) averaged 11,000 lb (5 mt) per year for 2005–2013. Recreational charter/party vessels reported an average of 2,400 fish per year for 2002–2011. However, commercial landings in 2014 increased to over 217,000 lb (98 mt), and recreational landings from 2012–2014 increased to 10,000–16,000 fish per year. The rapid increase in blueline tilefish harvest in the Greater Atlantic Region represents a risk to the conservation of the species and the long-term sustainability of the fisheries.

Blueline tilefish north of the Virginia/North Carolina border warrant

precautionary management. Based upon these concerns, on March 10, 2015, the Mid-Atlantic Fishery Management Council submitted a request for Secretarial emergency action under section 305(c) of the Magnuson-Stevens Act to implement temporary management measures for blueline tilefish in the Greater Atlantic Region. Additionally, at its April 2015 meeting, the Mid-Atlantic Council initiated an action to develop a long-term management approach.

Subsequently, on May 6, 2015, the South Atlantic Council submitted a new request to the NMFS Southeast Regional Office for emergency action in the blueline tilefish fishery, based upon the preliminary findings of its Scientific and Statistical Committee (SSC). In its request, the South Atlantic Council states that the most recent stock assessment for blueline tilefish (SEDAR 32) applied to the blueline tilefish stock coastwide, and that the assessment represents the best scientific information available on which to base management measures. Therefore, the South Atlantic Council requested that the current blueline tilefish management measures included in its Snapper Grouper Fishery Management Plan (analyzed as “Alternative 2” in the environmental assessment supporting the temporary rule) be implemented in the Greater Atlantic Region. The Council further asserts that these measures, which appear to be more restrictive than those included in the current temporary rule as requested by the Mid-Atlantic Council, are needed to end overfishing on the stock.

On May 11, 2015, the Mid-Atlantic Council commented on the South Atlantic Council’s emergency action request in a letter to the Greater Atlantic Regional Administrator. The Mid-Atlantic Council disagrees with the South Atlantic Council’s interpretation of the results of SEDAR 32, identifies relevant data that were not included in SEDAR 32, and argues that the assessment is not applicable to the blueline tilefish resource in the Greater Atlantic Region.

Based upon the conflicting information received from the two Councils, there is a need to further evaluate the scientific basis for the conclusions reached by both Councils in order to decide on the proper long-term approach. The South Atlantic Council’s SSC is meeting on June 3, 2015, to consider stock projections and fishing level recommendations. While the more restrictive management measures recommended by the South Atlantic Council may appear to be warranted, additional time would be necessary to

fully analyze the impacts of those measures on both the blueline tilefish resource and the recreational and commercial fisheries that depend on access to these fish. The additional time needed for this further review and analysis would prolong addressing the primary, immediate emergency need of stopping unacceptably high levels of harvest by the commercial fleet. Both Councils are united by the desire to immediately put *some* measures in place in order to constrain the ability of the commercial fleet to land in New Jersey or other ports where there are no limits on the landing of blueline tilefish.

The proposed emergency rule to implement the Mid-Atlantic Council's request will have the practical effect of equaling what appear to be the more restrictive South Atlantic measures for the commercial fishery. The commercial fishery is the component that is exerting substantial pressure on the stock, while the recreational fishery appears to be having less of an impact. The proposed 300-lb (136-kg) trip limit will have the practical effect of ending directed commercial fishing on this stock once the South Atlantic Council's 100-lb (45.4-kg) trip limit south of Virginia has been reached, or the South Atlantic Council's commercial fishery has been closed. This is because it is not economically feasible for vessels to catch a limit of 300 lb (136 kg) of blueline tilefish off Virginia or Maryland and then steam all the way to New Jersey to land it. We expect a 300-lb (136-kg) trip limit to induce fishermen to cease commercially targeting blueline tilefish. The trip limit allows fishermen targeting other species to retain limited amounts of incidentally caught blueline tilefish, thus reducing waste that would occur if no retention was allowed.

Moreover, the proposed recreational limit of seven fish per angler is consistent with measures in place in Virginia and Maryland. The recreational component of this fishery is very small compared to the commercial component and our records indicate that only 12 percent of anglers catch seven blueline tilefish per day. Implementing the less restrictive recreational measures mitigates socio-economic impacts on the recreational fleet without undermining the conservation benefits coming from the primary focus of this rule which is to stop the commercial fleet's landing of high levels of blueline tilefish.

These measures are expected to constrain fishing mortality and reduce the risk of overfishing on blueline tilefish while the Mid-Atlantic and South Atlantic Councils develop a long-term management plan for blueline

tilefish throughout its range. NMFS will continue to evaluate all of the available information and determine whether additional restrictions are needed.

Emergency Management Measures

Based upon the recommendation of the Mid-Atlantic Council, we are implementing the following management measures for blueline tilefish in the Greater Atlantic Region:

1. A requirement for commercial or charter/party vessels landing blueline tilefish in the Northeast region (*i.e.*, north of the latitude of the Virginia/North Carolina border: 36° 33' 01.0" N. latitude) to hold a valid Northeast open access golden tilefish commercial or charter/party vessel permit, which are issued by the Greater Atlantic Regional Fisheries Office;

2. A commercial possession limit of 300 lb (136 kg) whole weight per trip; and

3. A recreational possession limit of seven blueline tilefish per person, per trip.

None of these management measures modify the existing possession regulations for golden tilefish, or any other species. The requirement to hold a valid Northeast permit will ensure that catch, effort, and fishing location information for blueline tilefish will be reported moving forward. This information will be valuable to both Councils as they further develop long-term approaches for managing blueline tilefish across its distribution. The duration of this emergency action is limited by the Magnuson-Stevens Act to an initial period of 180 days, with a potential extension of an additional 186 days.

Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson-Stevens Act and other applicable law. NMFS has determined that the rapid expansion of fishing activity for blueline tilefish in the Greater Atlantic Region justifies the emergency requested by the Mid-Atlantic Council. NMFS reviewed the Council's request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997) and determined that the Council's request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the Magnuson-Stevens Act. The action is needed to address unforeseen rapid increases in landings and fishing effort for blueline tilefish in the Greater

Atlantic Region. This action is needed to help prevent a serious conservation problem—fishing potentially resulting in rapidly increasing catch and the potential for unconstrained fishing mortality. Finally, the immediate benefits to the blueline tilefish resource outweigh the value of the advance notice and public comments provided under the normal rulemaking process, hence, this action is being implemented as a final temporary rule.

Pursuant to section 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator (AA) for Fisheries, NOAA, finds that it would be impracticable and contrary to the public interest to provide for prior notice and opportunity for the public to comment on this rule. During the 2014 fishing year, it became apparent that unregulated blueline tilefish landings in the Greater Atlantic Region were increasing rapidly compared to previous years. The Mid-Atlantic Council analyzed and discussed the issue, and on February 25, 2015, voted to request that we implement emergency measures. The emergency request was submitted to us on March 10, 2015. Since blueline tilefish fishing activity has typically started in May, and there is a clear need to establish measures to constrain fishing mortality on the stock in the Greater Atlantic Region, it would be potentially harmful to the long-term sustainability of resource to further delay implementation of these measures through notice-and-comment rulemaking. Given the South Atlantic Council's concerns about the status of the blueline tilefish stock, any additional unregulated harvests could increase the risk of overfishing during the current fishing year. Public comments will be accepted on this final temporary rule, and there will be multiple opportunities for public participation and notice-and-comment rulemaking as the Mid-Atlantic and South Atlantic Councils develop a long-term management plan for blueline tilefish in the Greater Atlantic Region.

Additionally, the AA finds good cause to waive the requirement for a 30-day delay in effectiveness pursuant to section 553(d) of the Administrative Procedure Act. For the reasons described above, delaying the effectiveness of these regulations could undermine the purpose of this emergency action, to put in place measures to reduce catch during the 2015 fishing year as a stop-gap measure while both Councils further develop suitable long-term approaches for sustainable harvest of blueline tilefish.

This action is being taken pursuant to the emergency provision of the

Magnuson-Stevens Act and is exempt from OMB review.

This rule is exempt from the otherwise applicable requirement of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 28, 2015.

Samuel D. Rauch III,

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.

■ 2. Section 648.2 is amended as follows:

- a. Add in alphabetical order a definition for "Blueline tilefish," and
b. Revise the definition of "Tilefish."

The addition and revision read as follows:

§ 648.2 Definitions.

* * * * *

Blueline tilefish means Caulolatilus microps.

* * * * *

Tilefish means golden tilefish, Lopholatilus chamaeleonticeps, unless otherwise specified.

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■ 3. In § 648.4, paragraph (a)(12)(ii) is added to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(12) * * *

(ii) Blueline tilefish vessels—(A)

Commercial. Any vessel of the United States must have been issued and have on board a valid Federal commercial tilefish permit to fish for, catch, possess, transport, land, sell, trade, or barter, any blueline tilefish in excess of the recreational possession limit as specified under § 648.298(c) from the EEZ portion of the area defined at § 648.298(a).

(B) Party and charter vessel permits. Any party or charter vessel must have

been issued, under this part, a Federal Charter/Party tilefish vessel permit to fish for blueline tilefish in the EEZ portion of the area defined at § 648.298(a), if it carries passengers for hire. Any person onboard such a vessel must observe the recreational possession limit as specified at § 648.298(c) and the prohibition on sale in § 648.14(w)(1)(ii).

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■ 4. In § 648.5, add paragraph (a)(1) and reserved paragraph (a)(2) to read as follows:

§ 648.5 Operator permits.

(a) * * *

(1) The operator permit provisions outlined in § 648.5(a) pertaining to operator permit requirements also apply to the operator of any vessel fishing for or possessing blueline tilefish harvested in or from the EEZ portion of the area defined at § 648.298(a).

(2) [Reserved]

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■ 5. In § 648.14, add paragraph (w) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) Blueline tilefish. It is unlawful for any person owning or operating a vessel to do any of the following:

(1) Permit requirements—(i) Operator permit. Operate a vessel with a tilefish permit to fish for or possess blueline tilefish in or from the EEZ portion of the area defined at § 648.298(a), unless the operator has been issued, and is in possession of, a valid operator permit.
(ii) Vessel permit. Fish for, catch, possess, transport, land, sell, trade, or barter any blueline tilefish for a commercial purpose, other than solely for transport on land, unless the vessel has been issued a tilefish permit, or unless the blueline tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(2) Possession and landing. (i) Fish for, possess, retain, or land blueline tilefish, unless:

(A) The blueline tilefish are being fished for or were harvested in or from the EEZ portion of the area defined at § 648.298(a) by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The blueline tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The blueline tilefish are being fished for or were harvested in or from the EEZ portion of the area defined at § 648.298(a) in accordance with the possession limits specified at § 648.298(b) or (c).

(3) Fish for or possess blueline tilefish inside and outside of the EEZ portion of the area defined at § 648.298(a) on the same trip.

(4) Transfer and purchase. (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; blueline tilefish caught by a vessel without a tilefish permit, unless the blueline tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(5) Presumption. For purposes of this part, the following presumption applies: All blueline tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the EEZ portion of the area defined at § 648.298(a), unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in State waters.

■ 6. Add § 648.298 to read as follows:

§ 648.298 Blueline tilefish management measures.

(a) Management unit. The regulations in this paragraph apply to vessels or operators of vessels fishing for blueline tilefish in the area of the Atlantic Ocean from the latitude of the VA and NC border (36° 33' 01.0" N. Lat.), extending eastward from the shore to the outer boundary of the EEZ and northward to the United States-Canada border.

(b) Commercial possession limit. A vessel or operator of a vessel that has been issued a valid Federal commercial tilefish permit under this part may fish for, possess, and/or land up to 300 lb (136 kg) whole weight of blueline tilefish per trip from the area defined in this section.

(c) Recreational possession limit. Any person fishing on a vessel who is not fishing under a commercial tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to seven blueline tilefish per trip from the area defined in this section.

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