

# Amendment 1 to the Tilefish FMP Approved Measures

## INDIVIDUAL FISHING QUOTA (IFQ) PROGRAM FOR THE LIMITED ACCESS TILEFISH FISHERY

Amendment 1 implements a new IFQ Program in the limited access tilefish fishery. In order to fish for, possess, or land tilefish, in or from the Tilefish Management Unit, a vessel must be issued a tilefish open access vessel permit. To possess more than the incidental limit of 300 lb of tilefish, a vessel must be authorized to do so by an IFQ Allocation permit.

All current limited access Category A (Full-time tier 1), B (Full-time tier 2), and C (Part-time) permits, and Incidental open access permits, will be replaced with one open access vessel permit. This open access vessel permit allows a vessel to land up to the incidental trip limit of 300 lb of tilefish. In order for any vessel to possess more than the incidental trip limit of 300 lb of tilefish, the vessel must also fish under the authorization of an IFQ Allocation permit. **If you currently hold a valid 2009 limited access or open access Tilefish permit you will automatically be issued and mailed a new 2009 vessel permit with the new open access commercial Tilefish permit issued to it.** If you do not currently hold a valid 2009 limited access or open access Tilefish permit, an application is enclosed with this letter. Applications for IFQ Allocation permits were sent under separate cover to all limited access vessel permit owners.

**Limited Access Tilefish permits issued for the 2009 permit year will not be valid after October 31, 2009. Beginning November 1, 2009, to fish for tilefish, vessels are required to hold a valid open access tilefish vessel permit, and a tilefish IFQ Allocation permit to possess more than 300 lb of tilefish per trip.**

### **Initial Application for a Tilefish IFQ Allocation Permit**

NMFS sent initial applications for tilefish IFQ Allocation permits to all tilefish limited access permit holders on August 24, 2009, along with additional information about the application and permit process. This application package can also be downloaded from our website: <http://www.nero.noaa.gov>.

### **Application Deadline**

Amendment 1 establishes a 180-day period to submit an initial application for a Tilefish IFQ Allocation permit so that NMFS can expedite the transition to the IFQ program. The deadline to submit an application is February 20, 2010.

**NMFS must receive an initial application for a Tilefish IFQ Allocation permit no later than February 20, 2010. Failure to submit an application for a tilefish IFQ Allocation permit by February 20, 2010, permanently prevents issuance of a tilefish IFQ Allocation permit based on the qualifying vessel's fishing and permit history.**

In order to qualify for an IFQ Allocation permit, the following conditions must be satisfied:

- A person or entity must own a vessel with fishing history that includes a valid tilefish limited access permit during the 2005 permit year and that reported average landings of tilefish from 2001 through 2005 that constituted at least 0.5 percent of the average landings in the tilefish Category for which it was permitted during that timeframe; or
- A person or entity must hold a valid confirmation of permit history (CPH) for a fishing history that includes a valid tilefish limited access permit for the 2005 permit year and that reported average landings of tilefish from 2001 through 2005 that constituted at least 0.5 percent of the average landings during that timeframe in the tilefish Category for which it was permitted.

Only NMFS landings data from dealer and interactive voice reporting (IVR) reports shall be used to establish a vessel's landings to determine eligibility for an IFQ Allocation permit.

**NOTE:** January 1, 2001, through December 31, 2005, is the landings qualification period (qualification period). The last day of the 2005 permit year, April 30, 2006, is the date that NMFS will use to determine eligibility of ownership of a 2005 tilefish limited access permit. A person or entity that held a tilefish limited access permit on that date would meet the permit requirement, provided that they retained the permit history.

### **Notification of Qualification for an IFQ Allocation**

A person or entity that qualifies for a tilefish IFQ allocation will be issued an IFQ Allocation permit that will list the percentage of the IFQ Total Allowable Landings (TAL) that the permit holder may possess, lease, or transfer pursuant to the permit for the fishing year. In addition, the permit will list this percentage as an amount in pounds for the current fishing year.

### **Data Confidentiality**

**The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) restricts the release of confidential fishery information (including landings information) to anyone other than the owner of the vessel at the time the data were compiled. Due to this restriction, for qualifying vessel IFQ information for vessels that are currently owned by someone other than the owner of the vessel that made the landings, NMFS may be restricted in the release of the landings information if the release of such information would be inconsistent with the Magnuson-Stevens Act. NMFS understands that this may add complexity to the qualification and appeals process, but will work with vessel owners to ensure fairness in the appeals process.**

## **Appeal of Permit Denial or IFQ Allocation**

If your application for an IFQ Allocation permit is denied, or if you dispute your IFQ allocation, you are able to appeal in writing. Appeals must be based on the grounds that the information used in denying the permit was incorrect. The only items subject to appeal under this IFQ program are the initial eligibility for IFQ allocations based on ownership of a tilefish limited access permit, the accuracy of the amount of landings, and the correct assignment of landings to the permit holder. The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by NMFS. A hearing will only be held if the applicant presents credible documentation with the hearing request to show an error was made in determining the ownership of a tilefish limited access permit, the accuracy of the amount of landings, or the correct assignment of landings to the permit holder. If you choose to appeal, the appeal must be made in writing within 30 days of any denial.

**Because the tilefish fishery has been subject to mandatory catch reporting since November 2001, no landing slips or other records will be accepted for purposes of an appeal unless they can be verified with NMFS records, such as submitted IVR records.**

### **Status of Vessels under Appeal**

A person or entity that is denied a Tilefish IFQ Allocation permit and that submits a valid appeal can fish for tilefish if the vessel obtains and has on board a letter of authorization (LOA) from the RA authorizing the vessel to fish under the requirements of the applied-for tilefish IFQ Allocation permit. The RA shall issue such an LOA for the pendency of any valid appeal, if requested by the applicant, provided that the applicant owns the history for a valid 2008 tilefish limited access vessel permit.

All restrictions applicable to the appealed tilefish IFQ Allocation permit apply to the LOA. This includes the IVR call-in requirements of IFQ Allocation permits. If the appeal is denied, the RA shall send a notice of final denial to the applicant, and the LOA will become invalid 5 days after receipt of the final notice of denial.

### **Voluntary Relinquishment of Eligibility for Failure to Renew**

Prior to the start of the second year of the IFQ program (November 1, 2010), applications to renew an IFQ Allocation permit must be received by September 15, 2010. Renewal applications received after this date may not be approved in time to issue a permit for continued fishing at the start of the next fishing year. An IFQ Allocation permit holder must renew his/her IFQ Allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required, i.e., beginning on October 31, 2011, and every year thereafter. Any IFQ Allocation permit that is voluntarily relinquished to the RA, or deemed to have been voluntarily relinquished for failure to renew the IFQ Allocation permit, shall not be reissued or renewed in a subsequent year.

## **Allocation of the IFQ TAL under the IFQ Program**

For the first year of the IFQ program, beginning on November 1, 2009, the tilefish TAL will be allocated to vessels with IFQ Allocation permits in the following manner: Three percent will be reserved for research set-aside projects, if any; five percent will be deducted to allow for incidental catch; and fifteen percent will be reserved to resolve appeals. The remaining portion of the TAL will be allocated to IFQ Allocation permit holders, as described below.

### **Calculation of Individual Fishing Quotas**

Each person or entity that qualifies for an IFQ Allocation permit will be allocated a percentage of the IFQ TAL. For each fishing year of the IFQ program, a tilefish IFQ Allocation permit holder may only possess, transfer, or lease the total amount of tilefish he/she is allocated, as indicated on the permit.

### **Calculation of the Initial IFQ Allocation**

A person's or entity's IFQ allocation is determined by first calculating the percentage of the vessel's landings of its permit category's average landings during the qualification time period, to ensure they are greater than 0.5 percent of the average landings within its category. For Full-time tier 1 or 2 (Category A or B) permitted vessels, this percentage is multiplied by the vessel's permit category's percentage of the IFQ TAL to determine the vessel's percentage of the IFQ TAL (see the example on the next page). For Part-time (Category C) permitted vessels, each person or entity receives an equally divided share based on the number of qualifying vessels.

**IFQ Calculation Formula for Full-time Vessels**

$$\frac{\text{Vessel's Average Landings During Qualification Period}}{\text{Average Landings in Vessel's Category During Qualification Period}} \times 100 = \% \text{ of Category Landings}$$

**Next**

$$\text{Vessel's \% of Category Landings} \times \text{Category's \% of IFQ TAL} = \text{Vessel's \% of IFQ TAL}$$

**Next**

$$\text{Vessel's \% of IFQ TAL} \times \text{IFQ TAL} = \text{Vessel's IFQ in Pounds}$$

**IFQ Calculation Example for Full-Time Vessels**

e.g., IFQ TAL = 1,000,000 lb

Vessel Held a Full-time Tier 2 Category Permit (15% of the IFQ TAL)

Vessel's Average Landings During Qualification Period = 10,000 lb

Average Landings in the Vessel's Category During Qualification Period = 400,000 lb

$$\frac{10,000 \text{ lb}}{400,000 \text{ lb}} \times 100 = 2.5\% \text{ of Full-time Tier 2 Landings}$$

**Next**

$$2.5\% \times 15\% = 0.375\% \text{ of IFQ TAL}$$

**Next**

$$0.375\% \times 1,000,000 \text{ lb (IFQ TAL)} = 3,750 \text{ lb (IFQ in Pounds)}$$

**IFQ Transfers**

IFQ allocations are fully transferable among persons or entities that are permanent U.S. citizens or permanent resident aliens, or corporations eligible to own a U.S. Coast Guard documented vessel, as long as they meet the requirements under the Magnuson-Stevens Act.

- Tilefish IFQ Allocation permit holders are allowed to transfer IFQ on a temporary or permanent basis by submitting an IFQ Allocation Transfer Form to NMFS. This form must contain the following data elements: The type of transfer (permanent or temporary); signature of both parties involved in the transfer; the cost associated with the transfer; the amount of quota (in pounds for a temporary transfer, and in terms of a percentage for a permanent transfer) to be transferred; and a list of all Federal vessel permit numbers for all vessels authorized to land tilefish pursuant to the transferred IFQ allocation.
- A temporary IFQ transfer (lease) allows an IFQ Allocation permit holder to sell a temporary right to land tilefish in a specified amount to any other person or entity for the remainder of the fishing year in which the lease occurs.
- A permanent IFQ transfer allows an IFQ Allocation permit holder to permanently sell

his/her entire tilefish IFQ allocation, or a portion thereof.

- An IFQ Allocation permit holder who wishes to lease his/her IFQ to another individual is responsible for ensuring that he/she has sufficient allocation to lease.
- Any attempt to lease out quota in excess of an IFQ Allocation permit holder's existing allocation will be denied by NMFS.
- Once all, or a portion of, an IFQ allocation is leased, the lessee will not be able to subsequently sub-lease that IFQ allocation.
- Temporary and permanent IFQ transfers shall be monitored by NMFS to ensure that a recipient does not exceed the cap in interest of IFQ allocation at any point during a fishing year. This cap is 49 percent of the tilefish IFQ TAL.
- A temporary transfer is effective only for the fishing year in which it is requested and authorized.
- Requests for transfers may not be processed by NMFS for a given fishing year if they are received after September 1.
- Persons or entities receiving a permanent transfer of allocation in a given fishing year may not be able to fish all or a portion of that allocation until the beginning of the subsequent fishing year if the transferor had previously fished the allocation prior to the transfer.

### **IFQ Cost Recovery**

The Magnuson-Stevens Act requires that NMFS recover the costs directly related to the management, data collection and analysis, and enforcement of an IFQ program. The costs recovered may not exceed 3 percent of the ex-vessel value of the fishery. The authority for collection of cost recovery fees is established in Amendment 1. The cost-recovery billing period is the full calendar year, beginning with the start of the first full calendar year following the effective date of the final regulations (January 1, 2010).

- During the first year of the IFQ program, the recoverable costs will be initially set at 3 percent of the total ex-vessel value of the fishery, as calculated from dealer reports submitted to NMFS. After the first year of the fishery, NMFS will determine the recoverable costs in the fishery annually, and they will be divided by the ex-vessel value of the fishery to derive the percentage that is recoverable. IFQ Allocation permit holders will be assessed a fee based on this percentage multiplied by their total allocated tilefish ex-vessel value for the calendar year.
- At the conclusion of the first year of the IFQ program, if NMFS determines that the recoverable costs are less than 3 percent of the ex-vessel value of the fishery, NMFS will issue a credit toward each IFQ Allocation permit holder's subsequent year bill.
- Fees will be due at the conclusion of each calendar year, within 45 days after the date of the NMFS bill.
- If an IFQ Allocation permit holder does not pay his/her cost-recovery fee, or pays less than the full amount due, within 45 days of the date on the bill, his/her IFQ Allocation permit will not be renewed for the subsequent fishing year, and no transfers that are associated with the permit (permanent or temporary) will be approved by NMFS.
- An IFQ Allocation permit holder may appeal a fee through an administrative appeals procedure.

- Cost-recovery payments must be made electronically via the Federal web portal, [www.pay.gov](http://www.pay.gov). Instructions for electronic payment will be made available on both the payment website and the paper bill. Electronic payment options include payment via a credit card (the RA would specify in the cost-recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account.

### **IFQ Allocation Acquisition Limit**

- Amendment 1 prohibits any person or entity from owning, or holding an interest in, more than 49 percent of the tilefish IFQ TAL at any time.
- Having an interest in an IFQ allocation (permanent or temporary) is defined so as to include allocation held in the following ways: (1) In an IFQ allocation permit holder's name; (2) as a shareholder, officer, or partner of a company; (3) by an immediate family member (a person's spouse, parents, children, and siblings); or (4) as an owner or a part owner of a company. Shareholders, officers, or partners of a corporation have an interest in the total allocation owned by the corporation.

*For example: Assume that Tilefish, Inc., a corporation, held 42 percent of the IFQ TAL. Assume that it was composed of three officers: Mike, Jan, and Tom. All three would hold an interest in 42 percent of the tilefish IFQ TAL due to their association with the business. Therefore, Mike, Jan, and/or Tom could not additionally acquire an interest in more than 7 percent as individuals. If this were to occur, they would each hold interest in greater than 49 percent of the tilefish IFQ TAL, which is not allowed.*

- Temporary and permanent IFQ transfers shall be monitored by NMFS to ensure that a transferee does not exceed this allocation acquisition limit at any point during a fishing year.
- A declaration of interest in IFQ allocation(s), listed by IFQ Allocation permit number, is required annually, at the time IFQ Allocation permits are renewed.

### **Recreational Measures**

#### **Charter/Party Vessel Permit Requirements**

Any owner of a party or charter vessel carrying fishermen for hire that fishes for tilefish within the U.S. EEZ must obtain a valid Federal tilefish open access Charter/Party permit from NMFS. A charter/party vessel can have both a federal Charter/Party permit and a commercial permit to catch and sell tilefish under an IFQ Allocation permit. However, such a vessel must not fish under the IFQ Allocation permit if it is carrying passengers for a fee. Federal Charter/Party permitted vessels must report tilefish landings on NMFS-issued vessel trip report (VTR) forms. Please indicate on the enclosed vessel permit application whether you would like to apply for an open-access tilefish Charter/Party permit.

## Recreational Bag Limits

Amendment 1 institutes a recreational landing limit of eight tilefish per person per trip.

### Gear Restricted Areas (GRAs)

Amendment 1 prohibits the use of bottom-tending mobile gear (such as the bottom otter trawl), within and adjacent to Norfolk, Veatch, Lydonia, and Oceanographer Canyons. The GRA closures are bounded by the coordinates listed below.

Canyon	N. Lat.			W. Long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

### **Submission of Catch Reports**

Amendment 1 requires that tilefish catch reports be submitted via the IVR within 48 hr after offloading. Amendment 1 also requires submission of VTR and that the VTR serial number be input into the IVR system in order for this to be used as a trip identifier to match all reported IVR landings to dealer reports. The dealer number is also required to be input into the IVR system to allow for better matching of IVR data to dealer (weighout) data on a trip-by-trip basis.

### **No Discard Provision**

Amendment 1 prohibits any commercial vessel from discarding tilefish, unless fishing pursuant to the incidental catch limit, or under an LOA trip limit, if one is instituted by the RA.

### **Monitoring of Tilefish Commercial Landings**

The Tilefish Management Unit (TMU) is defined as all golden tilefish under U.S. jurisdiction in the Atlantic Ocean north of the Virginia/North Carolina border. Amendment 1 requires vessels that catch tilefish from the TMU to land tilefish within the TMU only, and prohibits combination trips in which vessels fish both inside and outside the TMU for golden tilefish on the same trip. Amendment 1 prohibits dealers from purchasing or otherwise receiving for commercial purposes tilefish caught in the EEZ from outside of the TMU, unless otherwise permitted under 50 CFR part 622.

### **Overages**

A permanent IFQ allocation that is exceeded, including from amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage in the subsequent fishing year. If a permanent IFQ allocation overage is not deducted from the appropriate allocation before the IFQ Allocation permit is issued for the subsequent fishing year, a revised IFQ Allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation had already been landed or transferred, the IFQ Allocation permit would indicate a reduced allocation for the amount of the overage in the next fishing year.