

Authority: 16 U.S.C. 1533.

§ 226.206 [Removed]

9. Section 226.206 is removed.

§§ 226.207 through 226.209 [Redesignated as §§ 226.206 through 226.208]

10. Sections 226.207 through 226.209 are redesignated as §§ 226.206 through 226.208, respectively.

Table 4 to part 226 [Removed]

11. Table 4 to part 226 is removed.

Dated: March 29, 1999.

Rolland A. Schmitt,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

Dated: March 22, 1999.

Jamie Rappaport Clark,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 99-8195 Filed 4-2-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 981228324-8324-01; I.D. 121697A]

RIN 0648-AJ70

Magnuson-Stevens Fishery Conservation and Management Act; Amendment of Foreign Fishing Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the foreign fishing regulations to provide for the issuance of certain transshipment permits under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). NMFS also proposes to make additional minor changes in the foreign fishing regulations to update permit application and issuance procedures applicable to all types of foreign fishing permits issued under the Magnuson-Stevens Act. These proposed actions are necessary to maintain the foreign fishing regulations in a current and complete manner.

DATES: Comments must be received on or before May 5, 1999.

ADDRESSES: Send comments to Gary C. Matlock, Office of Sustainable Fisheries,

NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, 301-713-2276.

SUPPLEMENTARY INFORMATION:

Regulations at 50 CFR part 600, subpart F, govern foreign fishing under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Among other things, the regulations establish procedures for permit application and issuance under section 204(b) of the Magnuson-Stevens Act. Under these regulations, foreign fishing vessels may be permitted to fish in the U.S. Exclusive Economic Zone (EEZ). Until the SFA (Pub. L. 104-297) established section 204(d) of the Magnuson-Stevens Act, all foreign fishing applications were submitted under section 204(b) of the Magnuson-Stevens Act.

Section 204(d) of the Magnuson-Stevens Act authorizes the Assistant Administrator for Fisheries (AA) to issue transshipment permits authorizing foreign vessels to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. Issuance of a permit to a foreign vessel to receive fish or fish products at sea within the boundaries of a state is subject to certain conditions and restrictions and contingent upon the concurrence of the involved state. Until section 204(d) was added to the Magnuson-Stevens Act, transshipments of this nature at points at sea within the boundaries of a state were prohibited.

For consistency of process with permits issued under section 204(b) of the Magnuson-Stevens Act, NMFS proposes to make minor changes in the regulations at 50 CFR part 600, subpart F, to accommodate applications submitted under section 204(d) of the Magnuson-Stevens Act and to provide for the issuance of permits under section 204(d).

NMFS proposes to amend § 600.501(d) to provide that application forms for permits issued under section 204(d) be available from NMFS, and submitted to the AA. NMFS proposes that the application fee submitted for a permit under section 204(d) of the Magnuson-Stevens Act be the same as for applications submitted under section 204(b) of the Magnuson-Stevens Act. Currently this fee amount is \$354.00 per vessel. This fee was determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook. However, in accordance with section

204(d)(7) of the Magnuson-Stevens Act, this fee will be waived for applications under section 204(d) of the Magnuson-Stevens Act if the applicant provides satisfactory documentation to the AA indicating that the foreign nation under which the applicant vessel is registered does not collect a fee from vessels of the United States engaged in similar activities in the waters of such foreign nation. NMFS proposes that the documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee. NMFS proposes to publish, as appropriate, a notice of receipt in the **Federal Register** to notify interested parties of the opportunity to review and/or comment on applications. NMFS suggests that applicants allow 90 days for processing applications submitted under section 204(b) and (d) of the Magnuson-Stevens Act.

Following consideration of all recommendations, comments and any other factors pertinent to an application, the AA may issue an appropriate permit to a foreign vessel authorizing transshipments under provisions of section 204(d) if the AA determines that to do so would be in accordance with section 204(d)(3) of the Magnuson-Stevens Act. It is proposed that activity code 10 be established at § 600.501(c) to denote transshipment activities under section 204(d) of the Magnuson-Stevens Act. It is proposed that § 600.501(e)(2) be amended to provide for issuance of permits for activity code 10 directly to applicants and to provide that permits for activity codes 1 through 9 will be provided to the official representative of the applicant foreign nation by the Department of State (DOS). It is proposed that in § 600.508, a new paragraph (g) regarding transshipment operations be added.

NMFS also proposes that additional minor changes be made in the foreign fishing regulations at 50 CFR part 600, subpart F, to make vessels operating under permits issued in accordance with section 204(d) of the Magnuson-Stevens Act subject to the same requirements as vessels operating under permits issued in accordance with section 204(b) of the Magnuson-Stevens Act.

NMFS also proposes to amend § 600.501(e)(2) to reflect the fact that permit holders no longer have to enter any data in "blank permit forms." All necessary information will appear on the permit provided by the DOS (in the case of activity codes 1 through 9) or the NMFS (in the case of activity code 10). In order to delete references to outdated

permit processes, NMFS also proposes to delete § 600.501(k)(2) through (k)(5).

NMFS also proposes to update a reference to section 201 of the Magnuson-Stevens Act at § 600.506(a) and an address at § 600.506(b).

Lastly, NMFS proposes to delete several references to the Fishing Vessel and Gear Damage Compensation Fund program due to the discontinuance of the program. The cessation of this program was announced in a notice published in the **Federal Register** at 61 FR 34798, July 3, 1996.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act defines "small business" by reference to the Small Business Act (SBA). The SBA definition of the term small business is implemented through regulations at 13 CFR part 121. Those regulations define small business as meaning "a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy, through payment of taxes or use of American products, materials or labor." None of the entities affected by this proposed rule meet that definition. Further, section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has the capacity to perform the transportation for which the application is submitted has indicated * * * an interest in performing the transportation at fair and reasonable rates." Therefore, no U.S. firms will be impacted. As a result, an initial regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply

with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA), both of which have been approved by the OMB. The collections of information are as follows:

(1) *Approved under OMB control number 0648-0089*—Application form for foreign fishing permits, including those to be issued under section 204(d) of the Magnuson-Stevens Act; estimated at 45 minutes per response.

(2) *Approved under OMB control number 0648-0075*—Reporting by vessels operating under foreign fishing permits, including those issued under section 204(d) of the Magnuson-Stevens Act; estimated at 6 minutes per response.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Foreign relations, Intergovernmental relations.

Dated: March 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.501, paragraph (c) introductory text, and paragraphs (d)(1), (d)(4), (e) and (k) are revised, and paragraph (c)(10) is added to read as follows:

§ 600.501 Vessel permits.

* * * * *

(c) *Activity codes.* Permits to fish under this subpart may be issued by the Assistant Administrator for the activities described in this paragraph, but the permits may be modified by regulations of this subpart and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed. Only vessels of nations having a GIFA with the United States may be issued permits for activity codes 1 through 9. A GIFA is not required for a vessel to be issued a

permit for activity code 10. The activity codes are described as follows:

* * * * *

(10) *Activity Code 10.* Transshipping at sea for the purpose of transporting fish or fish products from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

(d) *Application.* (1) Applications for FFV permits authorizing activity codes 1 through 9 must be submitted by an official representative of a foreign nation to the DOS. Applications for permits authorizing activity codes 1 through 9 are available from, and should be submitted to, DOS, OES/OMC, Washington, DC 20520. Applications for FFV permits authorizing activity code 10 may be submitted by any person to the Assistant Administrator. Applications for permits authorizing activity code 10 are available from NMFS, Attn: International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910. All applicants should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Councils and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 600.518.

* * * * *

(4) Each applicant may request to substitute one FFV for another of the same flag by submitting a new application form and a short explanation of the reason for the substitution to the appropriate address listed at paragraph (d)(1) of this section. Each substitution is considered a new application, and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the appropriate Council(s) and governmental agencies have been notified of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson-Stevens Act and approves the permit application.

(ii) The applicant has paid the fees and provided any assurances required by the Secretary in accordance with the provisions of § 600.518.

(iii) The applicant has appointed an agent.

(iv) The applicant has identified a designated representative.

(v) The applicant has accepted the general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson-Stevens Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or for the prevention of significant impairment of the national defense or security interests.

(2) The DOS will provide permits for activity codes 1 through 9 to the official representative of the applicant foreign nation. The Assistant Administrator will provide permits for activity code 10 directly to the applicant.

(3) An approved permit will contain—

(i) The name and IRCS of the FFV and its permit number. (ii) The permitted fisheries and/or activity codes.

(iii) The date of issuance and expiration date, if other than December 31.

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats that are launched from larger vessels. Any enforcement action that results from the activities of a launched boat will be taken against the permitted vessel.

* * * * *

(k) *Change in application information.* The applicant must report, in writing, any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

* * * * *

3. In § 600.502, paragraph (a) is revised, and a new paragraph (h) is added, to read as follows:

§ 600.502 Vessel reports.

(a) The operator of each FFV must report the FFV's activities to the USCG and NMFS as specified in this section.

* * * * *

(h) *Alternative reporting procedures.* As an alternative to the use of the specific procedures provided, an applicant may submit proposed reporting procedures for a general type of fishery operation (i.e., transshipments under Activity Code 10) to the appropriate Regional Administrator and

the USCG commander (see tables 1 and 2 to § 602.502 of this chapter). With the agreement of the USCG commander, the Regional Administrator may authorize the use of alternative reporting procedures.

4. In § 600.505, paragraphs (a)(8), (a)(9), and (b)(1) are revised to read as follows:

§ 600.505 Prohibitions.

(a) * * *

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the Assistant Administrator or appropriate Regional Administrator;

(9) Retain or attempt to retain, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for Activity Codes 4, 6, or 10;

* * * * *

(b) * * *

(1) Within the boundaries of any state, unless:

(i) The fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson-Stevens Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(ii) The fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501, and the Governor of that state has indicated concurrence to allow fishing consisting solely of transporting fish or fish products from a point within the boundaries of that state to a point outside the United States; or

* * * * *

5. In § 600.506, the last sentence in paragraph (a) and the first sentence in paragraph (b) are revised to read as follows:

§ 600.506 Observers.

(a) * * * Except as provided for in section 201(h)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ will submit to the appropriate Regional Administrator or Science and Research Director and also to the Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910 a schedule of fishing effort 30 days prior to the beginning of each quarter. * * *

* * * * *

6. In § 600.508, paragraph (g) is added to read as follows:

§ 600.508 Fishing operations.

* * * * *

(g) *Transshipping.* Each FFV with Activity Code 1, 2, 3, 4, 5, 6, 7, 8, or 10 may transship in accordance with this subpart and the vessel's permit.

7. In § 600.518, paragraph (c) is removed, paragraphs (d) and (e) are redesignated as paragraphs (c) and (d) respectively, and paragraphs (a), (b)(1) introductory text, (b)(2) heading, and (b)(2)(i) introductory text are revised to read as follows:

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee. The amount of the fee will be determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook. The fee is specified with the application form. At the time the application is submitted, a check for the fees, drawn on a U.S. bank, payable to the order of "Department of Commerce, NOAA," must be sent to the Assistant Administrator. The permit fee payment must be accompanied by a list of the vessels for which the payment is made. In the case of applications for permits authorizing activity code 10, the permit application fee will be waived if the applicant provides satisfactory documentary proof to the Assistant Administrator that the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation. The documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee.

(b) *Poundage fees.* (1) *Rates.* If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table.

* * * * *

(2) *Method of payment of poundage fees and observer fees.*

(i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocation at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the

observer fees required by paragraph (c) of this section. The L/C must—

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 031999E]

Tilefish Fishery; Intent to Prepare an Environmental Impact Statement

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

ACTION: Notification of intent to prepare an environmental impact statement (EIS); request for scoping comments.

SUMMARY: NMFS announces its intention to prepare, in cooperation with the Mid-Atlantic Fishery Management Council (Council), an EIS to assess potential effects on the human environment of changes to the management regime for tilefish (*Lopholatilus chamaeleonticeps*) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended. Management would be accomplished by developing and implementing a Tilefish Fishery Management Plan (FMP) that would include appropriate management measures.

In addition, the Council announces a public process for determining the scope of issues to be addressed and for identifying the significant issues related to developing management measures for tilefish. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATES: Written comments will be accepted until April 30, 1999. The scoping meeting will be held at 7 p.m. on Tuesday, April 27, 1999.

ADDRESSES: Send scoping comments to Mr. Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904-6790. The scoping meeting will be held at the Atlantic City Sheraton, 6821 Black Horse Pike, Atlantic City West, NJ.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, 302-674-2331 (FAX 302-674-5399).

SUPPLEMENTARY INFORMATION:

Problems Discussed for this FMP

1. Overfishing Must Be Ended and the Stock Biomass Must Be Rebuilt

Results from the recently completed (February 1999) NMFS Northeast Fishery Science Center (NEFSC) stock assessment indicate that the tilefish stock (north of North Carolina) is at a low biomass level and is likely overexploited. Total biomass in 1997 was estimated to be 7.3 million lb (3.311 million kg), which is about 36 percent of the biomass that would produce maximum sustainable yield (MSY) (B_{MSY}). Biomass-based fishing mortality was estimated to be 0.55, which is about 2.8 times higher than F_{MSY} of 0.20. Total landings in 1997 were slightly under 4.0 million lb and roughly the estimated MSY. One projection indicates that the stock can rebuild to B_{MSY} in 10 years if fished at a biomass-based fishing mortality of 0.16 for the next 10 years. This rate of fishing mortality equates to annual landings of about 1.7 million lb (0.77 million kg). Current fishing mortality rates are unsustainable. There has been a shift in the exploitation pattern towards smaller fish.

2. Overcapitalization Should Be Avoided

The tilefish fishery takes place year-round. However, it is most intense from October to June when market values and catch rates are the highest. Tilefish vessels are usually of steel construction and range in length from 50 to 100 ft (15.24 to 30.48 m). Although the number of vessels targeting tilefish has decreased since the peak in the early 1980s, the approximate dozen vessels currently in the fishery have more than adequate capacity to harvest the MSY level. Reductions in fishing effort for most of the New England and Mid-Atlantic fisheries (i.e. groundfish, scallops, and summer flounder) could result in additional fishing effort on the tilefish resource, as displaced vessels could enter this fishery.

3. Need for Better Data

National Standard 2 of the Magnuson-Stevens Act states that "measures shall be based upon the best scientific information available." The 14th NEFSC Stock Assessment Workshop noted that the weighout interview coverage of the fishery was low and that other data, which would allow for detection of changes in abundance would be useful to corroborate trends observed in the

abundance indices. This workshop also called for the collection of size samples from landings. These data are important to assess the impacts and effectiveness of management measures, as well as, monitor fishing mortality and changes in stock size to determine if additional management measures for the FMP may be necessary.

4. Identification and Description of Essential Fish Habitat

Pursuant to the 1996 requirements of the Sustainable Fisheries Act, which amended the Magnuson-Stevens Act, the Council is required to identify and describe essential habitat for tilefish in the western Atlantic Ocean north of North Carolina. Therefore, the Council solicits comments from the public on the identification of and threats to essential habitat for tilefish during the scoping process.

5. Possible Management Objectives and Proposed Management Measures

The current proposed management unit is all tilefish under U.S. jurisdiction in the Atlantic Ocean north of North Carolina. Tilefish south of the Virginia/North Carolina border are currently managed as part of the Snapper-Grouper Fishery Management Plan by the South Atlantic Fishery Management Council and NMFS.

The intended purpose and possible objectives of the FMP are to: (1) End overfishing and rebuild the resource to the MSY level; (2) prevent overcapitalization; (3) limit new entrants; and (4) collect data to develop, monitor, and assess biological, economic, and social impacts of management measures designed to prevent overfishing.

Possible proposed management measures include: (1) Minimum fish size, (2) minimum hook size, (3) closed seasons, (4) closed areas, (5) quotas, (6) moratorium on vessels, (7) dealer and vessel permits, (8) dealer and vessel reports, (9) operator permits, (10) gear restrictions, (11) gear limits, (12) trip limits, and (13) other measures to reduce effort.

It is likely that any of the measures that are actually implemented would be frameworked. A Monitoring Committee, made up of representatives of the Councils and NMFS, would annually review the condition of the fishery and adjust the measures (e.g., trip limits, quotas, etc.) to achieve the desired goals.

6. Permitting and Reporting

It is anticipated that permits would be required for vessels landing tilefish for