Dated: December 20, 2007

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*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 070717340–7550–01]**

**RIN 0648–AV40**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

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

**SUMMARY:** NMFS proposes 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action also proposes to modify existing management measures. Specifically, it would clarify gear requirements for the *Loligo* squid fishery, standardize procedures for closing the Atlantic mackerel (mackerel) and butterfish fisheries, modify incidental possession limits for mackerel and butterfish, and establish a butterfish possession limit. Additionally, this action requests public comment concerning the possibility of an inseason adjustment to increase the mackerel harvest, if landings approach proposed harvest limits. These proposed specifications and management measures promote the utilization and conservation of the MSB resource.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on January 28, 2008.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

You may submit comments, identified by 0648–AV40, by any one of the following methods:

*Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*;

*Fax:* (978) 281–9135, Attn: Carrie Nordeen;

Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2008 MSB Specifications''.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 648.21 and 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

At its June 12–14, 2007, meeting in Hampton, VA, the Council recommended 2008 MSB specifications. The recommended specifications for *Loligo* squid and *Illex* squid are the same as those implemented in 2007. For mackerel, the Council recommended a reduced ABC, based on an updated fishing mortality target from the most recent stock assessment. The IOY, DAH, DAP, JVP, and TALFF recommended for mackerel are the same as those implemented in 2007. For butterfish, the Council recommended reducing the ABC, IOY, DAH, and DAP to levels approximating recent landings while a butterfish rebuilding program is being developed in Amendment 10 to the FMP. The Council also recommended modifying existing management measures. Specifically, it recommended clarifying gear requirements for the *Loligo* squid and butterfish fisheries, adjusting triggers and incidental possession limits associated with closures of the mackerel and butterfish fisheries, and establishing a butterfish possession limit.

For 2008, the Council recommended the consideration of RQ of up to 3 percent of the IOY for *Loligo* and *Illex* squid, butterfish, and mackerel. The RQ would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2008 based on research priorities previously identified by the Council (71 FR 77726, December 27, 2006). The deadline for submission was February 12, 2007. On June 12, 2007, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panel comments, one project proposal requesting *Loligo* squid set-aside landings was recommended for approval and will be forwarded to the NOAA Grants Office for award, for a total RQ of up to 23 mt. The commercial *Loligo* squid quota in this proposed rule has been adjusted to allow for RQ. If the award is not made by the NOAA Grants Office for any reason, NMFS will give notice of an adjustment to the annual quota to return the unawarded set-aside amount to the fishery.

#### *Disapproval of Increased Incidental Loligo Squid Possession Limit for the Illex Squid Vessels*

The issue of incidental catch of *Loligo* squid in the *Illex* squid fishery was identified several years ago when large amounts of *Loligo* squid discards were reported in vessel trip reports by *Illex* squid vessels during closures of the directed *Loligo* squid fishery in the

summer and fall of 2000. Analyses developed for Amendment 9 to the FMP indicated that the *Illex* squid fishery occurs primarily during June–November in offshore waters and that both squid species can co-occur during September–November on the *Illex* squid fishery grounds, when the *Loligo* squid begin to move offshore. Because of the seasonal co-occurrence of the two squid species, members of the directed *Illex* squid fishery testified at Council meetings that the 2,500–lb (1.13-mt) incidental *Loligo* squid possession limit during closures of the *Loligo* squid fishery creates compliance problems for the *Illex* squid fishery because vessels catch more than 2,500 lb (1.13 mt) of *Loligo* squid when the species mix. In an effort to reduce regulatory discarding and allow more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommended increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery during *Loligo* squid fishery closures. Specifically, during closures of the *Loligo* squid fishery in August–October, *Illex* squid moratorium vessels fishing seaward of the small mesh exemption line (approximately the 50-fm (91-m) depth contour) would be permitted to possess and land up to 5,000 lb (2.27 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

This measure is similar to the measure proposed by the Council in the 2007 MSB specifications, but not implemented due to concerns about NMFS's ability to administer the measure effectively. The small mesh exemption line, which approximates the 50-fm (91-m) depth contour, was implemented for the *Illex* squid fishery because *Illex* squid are not generally available to the fishery shoreward of this line. The *Illex* squid fishery is exempt from the 1–7/8-inches (48-mm) minimum mesh requirement for the *Loligo* squid fishery in the exemption area. However, *Loligo* squid are widely distributed shoreward of this line, which would make it difficult to determine if the *Loligo* squid is truly incidentally caught within the *Illex* squid exemption area. Currently, there is no mechanism to determine if *Illex* squid moratorium vessels fish for *Loligo* squid shoreward of the small mesh exemption line. Tools to collect spatial effort information on the *Illex* squid fleet were discussed by the Council, but implementation of those tools would require an FMP amendment or framework adjustment. Therefore, for 2008, the incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels, during closures of the *Loligo* squid fishery, will remain at 2,500 lb (1.13 mt) per trip per day.

2008 Proposed Specifications and Management Measures

TABLE 1.—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2008 FISHING YEAR.

| Specifications | Loligo | Illex | Mackerel | Butterfish |
|---|---|---|---|---|
| Max OY | 26,000 | 24,000 | N/A | 12,175 |
| ABC | 17,000 | 24,000 | 156,000 | 1,500 |
| IOY | [1]16,977 | 24,000 | [2]115,000 | 500 |
| DAH | 16,977 | 24,000 | [3]115,000 | 500 |
| DAP | 16,977 | 24,000 | 100,000 | 500 |
| JVP | 0 | 0 | 0 | 0 |
| TALFF | 0 | 0 | 0 | 0 |

[1] Excludes 23 mt for Research Quota (RQ).
[2] IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.
[3] Includes a 15,000 mt catch of Atlantic mackerel by the recreational fishery.

*Atlantic Mackerel*

The status of the Atlantic mackerel stock was most recently assessed at the 42nd Stock Assessment Review Committee (SARC) in late 2005. SARC 42 concluded that the mackerel stock is not overfished and overfishing is not occurring. According to the FMP, mackerel ABC must be calculated using the formula ABC = T − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target fishing mortality rate (F). Based on projections from SARC 42, the yield associated with an F of 0.12 in 2008 is 211,000 mt. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2008 has been increased from the 2007 estimate of 52,000 mt to 55,000 mt. Thus, 211,000 mt minus 55,000 mt results in a proposed 2008 mackerel ABC of 156,000 mt.

NMFS proposes a mackerel IOY of 115,000 mt. The Council believes that this level of harvest would provide the greatest overall benefit to the Nation with respect to food production and recreational opportunities, and would allow for an increase in domestic landings. In recent years, domestic mackerel landings have been increasing due to major investments in the domestic mackerel processing sector. Mackerel landings in 2003 totaled 35,071 mt, while landings for 2006 totaled 58,279 mt. The 115,000-mt IOY is consistent with mackerel regulations at § 648.21(b)(2)(ii), which state that IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides that the specification of TALFF, if any, shall be that portion of the optimum yield (OY) of a fishery that will not be harvested by vessels of the United States. TALFF catches would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry efforts to expand exports. The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. The Council noted that this would prevent the U.S. industry from taking advantage of declines in the European production of Atlantic mackerel that have resulted in an increase in world demand for U.S. fish. The only economic benefit associated with a TALFF is the foreign fishing fees it generates. On the other hand, there are economic benefits associated with the development of the domestic mackerel fishery. Increased mackerel production generates jobs both for plant workers and other support industries. More jobs generate additional sources of income for people resident in coastal

communities and generally enhance the social fabric of these communities.

For these reasons, and as recommended by the Council, NMFS proposes to specify IOY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to assist the U.S. mackerel industry to expand. This would yield positive social and economic benefits to both U.S. harvesters and processors. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concurs that it is reasonable to assume that, in 2008, the commercial fishery will harvest 100,000 mt of mackerel. Thus, DAH would be 115,000 mt, which is the commercial harvest plus the 15,000 mt allocated for the recreational fishery. Because IOY = DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004), consistent with the Council's recommendation. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 2 years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for mackerel has expanded. The Council received testimony from processors and harvesters that the shoreside processing sector of this industry has continued to expand since 2002–2003. Subsequent industry testimony estimated current processing capacity at 2,500 mt per day. The Council also heard from the industry that the availability (i.e., the size, distribution, and abundance) of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded that processing capacity is no longer a limiting factor relative to domestic production of mackerel. Furthermore, the Council concluded that the U.S. mackerel processing sector has the potential to process the DAH, so JVP would be specified at zero.

**Closure of the Mackerel Fishery**

Regulations at § 648.22(a) specify that NMFS shall close the directed mackerel fishery when 80 percent of the mackerel DAH is landed, if such a closure is necessary to prevent the DAH from being exceeded. To facilitate achieving the mackerel DAH, NMFS is proposing to close the mackerel fishery when 90 percent of the mackerel DAH is projected to be landed in 2008, consistent with the Council's recommendation.

**Mackerel Incidental Possession Limit**

Regulations at § 648.22(c) specify that, during closures of the mackerel fishery, the incidental possession limit for mackerel is 10 percent, by weight, of the total amount of fish on board. In general, possession limits that are a percent of the total catch on board are difficult to estimate and enforce. At its June 2007 meeting, the Council discussed revising the incidental possession limit for mackerel, such that it is easier to estimate and enforce, and that it is similar to incidental possession limits for squid and butterfish.

The Council considered several competing objectives in the development of a revised incidental possession limit for mackerel. First, the possession limit needed to be low enough to ensure that the mackerel ABC would not be exceeded. Secondly, the possession limit needed to be set high enough to minimize regulatory discarding of mackerel in fisheries where mackerel is taken incidentally, but not so high as to encourage directed fishing. Lastly, because small-scale mackerel fisheries contribute only minimally to the overall mackerel harvest, the Council wanted the incidental possession limit to be high enough to allow small-scale fisheries to continue after the directed fishery was closed. After considering these factors, NMFS is proposing a mackerel incidental possession limit of 20,000 lb (4.54 mt) for 2008, consistent with the Council's recommendation.

**Inseason Adjustment of the Mackerel IOY**

Regulations at § 648.21(e) provide that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. At the June 2007 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest in increasing the 2008 mackerel IOY if landings approach 115,000 mt during the most active part of the fishing year (January–April). However, the mackerel fishing season is short and it would be difficult to implement a separate inseason action during the fishing season. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, this action proposes and seeks comment on such an inseason adjustment. In 2008, NMFS's Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office Web site (*http://www.nero.noaa.gov/*). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. If, using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2008 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2008. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

*Atlantic Squids*

*Loligo Squid*

While the annual quota and other measures for *Loligo* squid can be specified for up to 3 years, the Council chose to recommend *Loligo* squid specifications and management measures for 1 year only. After a review of available information, the Council recommended no change to the *Loligo* squid Max OY and ABC from 2007; NMFS concurs with this recommendation. Therefore, the proposed 2007 *Loligo* squid Max OY is 26,000 mt and the proposed ABC is 17,000 mt. The Council recommended that the *Loligo* squid RQ for 2007 be up to 3 percent (510 mt) of the ABC. One scientific research project proposal requesting *Loligo* squid RQ was recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* squid IOY, DAH, and DAP were adjusted to reflect the RQ and equal 16,977 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, there would be no JVP and TALFF in 2008.

Distribution of the *Loligo* Squid DAH

Prior to 2000, the DAH for *Loligo* squid was specified as an annual quota. In 2000, the quota was subdivided into three trimester allocations. During 2001–2006, the annual DAH for *Loligo* squid was allocated into four quarter allocations, as follows: Quarter I

(January–March) with 33.23 percent of the quota, Quarter II (April–June) with 17.61 percent of the quota, Quarter III (July–September) with 17.30 percent of the quota, and Quarter IV (October–December) with 31.86 percent of the quota. In an effort to improve the monitoring and management of the *Loligo* squid fishery, the 2007 DAH was allocated by trimester. Managing the DAH by trimesters, rather than quarters, results in allocations that can be higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information, potentially increasing projection accuracy. Additionally, managing by trimesters rather than quarters streamlines administration because only three closures, rather than four, of the directed fishery could occur during a fishing year. For these reasons, NMFS is proposing that the 2008 *Loligo* squid DAH be allocated into trimesters, consistent with the Council's recommendation. The proposed 2008 trimester allocations would be as follows:

TABLE 2. PROPOSED TRIMESTER ALLOCATION OF LOLIGO SQUID QUOTA IN 2008

| Trimester | Percent metric tons[1] | RQ (mt) | |
|---|---|---|---|
| I (Jan–Apr) | 43 | 7,300 | NA |
| II (May–Aug) | 17 | 2,886 | NA |
| III (Sep–Dec) | 40 | 6,791 | NA |
| Total | 100 | 16,977 | 23 |

[1] Trimester allocations after 23 mt RQ deduction.

For 2008, the Council recommended that the percentage at which the directed *Loligo* squid fishery would close and the handling of quota overages and underages would be the same as in 2007. Therefore, this action proposes the directed *Loligo* squid fishery would close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III. Additionally, it proposes that any underages from Trimesters I and II would be applied to Trimester III, and any overages from Trimesters I and II would be subtracted from Trimester III.

Clarification of *Loligo* Squid Gear Requirements

Regulations at § 648.23(d) specify that net strengtheners have a minimum mesh size of 4–1/2 inches (11.43cm) and that any device, including net strengtheners, may not be used on the top 50 percent of a codend (i.e., the portion of the codend that is not in contact with the ocean floor when the net is fishing) if it constricts the minimum mesh size to less than the required 1–⅞ inch (48 mm). However, any time a 1–⅞-inch (48-mm) codend is used with a 4–½-inches (11.43-cm) net strengthener, the actual mesh size will be less than 1–⅞ inches (48 mm) because the meshes from the codend and the net strengthener will not be in alignment and will overlap. Last fall, the U. S. Coast Guard brought it to NMFS's attention that *Loligo* squid vessels have net strengtheners covering the top 50 percent of the codend. When questioned about the need for and use of net strengtheners, members of the Loligo squid fishing industry explained that codends with a minimum mesh size of 1–⅞ inches (48 mm) are of such fine gauge that they will burst if a net strengthener does not surround the entire circumference of the codend. Therefore, current gear regulations are inconsistent with the way the Loligo squid fishery needs to operate.

At its June 2007 meeting, the Council discussed clarifying *Loligo* squid gear requirements such that net strengtheners would be permissible around the entire circumference of a codend, provided the minimum mesh size was 4–1/2 inches (11.43 cm). Therefore, this action proposes that net strengtheners, splitting straps, and/or bull ropes or wire may be used around the entire circumference of the codend, provided they do not have an effective mesh opening of less than 4–1/2 inches (11.43 cm), diamond mesh, inside stretch measure.

*Illex Squid*

NMFS proposes to maintain the *Illex* squid specifications in 2008 at the same levels as they were for the 2007 fishing year, consistent with the Council's recommendation. Specifically, this action proposes that the specification of Max OY, IOY, ABC, and DAH would be 24,000 mt. The overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of $F_{MSY}$ is exceeded. Max OY is specified as the catch associated with a fishing mortality rate of $F_{MSY}$, while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75 percent $F_{MSY}$. The biomass target is specified as $B_{MSY}$. The minimum biomass threshold is specified as ½ $B_{MSY}$. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

*Butterfish*

The status of the butterfish stock was most recently assessed at the 38th SARC in late 2004. The assessment concluded that, while overfishing of the stock is not occurring, the stock is overfished because estimates of stock biomass are below the minimum biomass threshold (1/2 $B_{MSY}$). SARC 38 estimated the butterfish stock at 8,700 mt, ½ $B_{MSY}$ at 11,400 mt, and $B_{MSY}$ at 22,798 mt. Based on this information, the Council was notified by NMFS on February 11, 2005, that the butterfish stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Act, and the Council is developing a rebuilding plan for the butterfish stock in Amendment 10 to the FMP (Amendment 10). One of the goals of Amendment 10 is to develop a program to allow the butterfish stock to rebuild to $B_{MSY}$ and protect the long-term health and stability of the rebuilt stock. Rebuilding of the butterfish stock will be dependent upon increases in recruitment, which recently has been poor to intermediate. Rebuilding is further complicated because the natural mortality of butterfish is high, butterfish have a short lifespan, and fishing mortality is primarily attributed to discards (discards equal twice the annual landings).

While a butterfish rebuilding program is being developed in amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding

stock. Without a current market for butterfish, an intense, directed butterfish fishery has not existed for several years. Since 2003, butterfish landings have ranged between 437mt–554mt. SARC 38 re-estimated butterfish maximum sustainable yield as 12,175 mt and the overfishing threshold as F = 0.38. The MSB FMP specifies that maximum sustainable yield equals MAX OY. Therefore, the Council recommended, and NMFS is proposing, that butterfish MAX OY be set at 12,175 mt in 2008. While a butterfish rebuilding program is being developed in Amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding stock. Without a current market for butterfish, an intense, directed butterfish fishery has not existed for several years. Since 2003, butterfish landings have ranged between 437 mt-554 mt. Based on SARC 38, an F of 0.34 was associated with butterfish catch (landings plus discards) of 2,700 mt. Assuming that butterfish discards equal twice the level of landings, the amount of butterfish discards associated with approximately 500 mt of landings is approximately 1,000 mt. Therefore, in 2008, the proposed specifications would set the IOY, DAH, and DAP at 500 mt and would set ABC at 1,500 mt. Harvest at these proposed levels should prevent overfishing on the butterfish stock in 2008. Additionally, consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2008 because zero TALFF is proposed for mackerel.

**Closure of the Butterfish Fishery and the Incidental Butterfish Possession Limit**

Existing regulations specify that the butterfish fishery close when the Regional Administrator projects that 95 percent of the butterfish DAH is projected to be landed. Once the butterfish fishery is closed, the current incidental butterfish possession limit is 2,500 lb (1.13 mt) per day. In previous years, when the butterfish DAH was set at approximately twice the level of landings, a 95-percent closure threshold and 2,500-lb (1.13-mt) incidental possession limit encouraged the entire DAH to be taken, while preventing the DAH from being exceeded. However, consistent with the lower butterfish DAH that is proposed for 2008, the Council also wanted to consider a lower fishery closure threshold and incidental possession limit. Council staff used butterfish landings data from 2004–2006 to evaluate a range of closure thresholds (e.g., 80–95 percent) and associated incidental possession limits (e.g., 500 lb (0.23 mt)—2,500 lb (1.13 mt)). The analysis suggested that butterfish were landed at a relatively steady rate throughout the year, but with substantial week-to-week variability. Based on this analysis, the Council recommended that, in 2008, an 80-percent closure threshold and a scaled incidental possession limit, such that a 250-lb (0.11-mt) incidental possession limit would be associated with a fishery closure prior to October 1 and a 600-lb (0.27-mt) incidental possession limit would be associated with a fishery closure on or after October 1. Consistent with the Council's recommendation, this action proposes that, in 2008, if 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish possession limit would be in effect for the remainder of the year. Additionally, if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit would be in effect for the remainder of the year. These measures should prevent the 500-mt butterfish DAH from being exceeded, while allowing for butterfish taken incidentally in other fisheries to be landed, thus reducing discards.

Incidental possession limits for butterfish apply not only during a fishery closure but also year-round to vessels issued incidental catch permits. While the Council did not explicitly recommend an incidental butterfish possession limit for vessels issued a butterfish incidental catch permit, this action proposes a year-round, 250-lb (0.11-mt) butterfish possession limit for vessels issued incidental butterfish catch permits, similar to the Council's recommended incidental butterfish possession limit during a fishery closure. NMFS invites the Council to comment whether this measure is consistent with the Council's intent.

**Butterfish Possession Limits**

Regulations at § 648.23(a)(2) specify that trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm). Consistent with the Council's intent to prevent expansion of the butterfish fishery and protect the rebuilding stock as Amendment 10 is being developed, the Council recommended reducing the butterfish possession limit associated with using small mesh (i.e., a minimum mesh size of less than 3 inches (76 mm)), as well as establishing an additional butterfish possession limit for the 2008 fishing year. To discourage targeting butterfish and help ensure the butterfish DAH is available for much of the year, so that butterfish catch does not result in additional discarding, NMFS is proposing reducing the possession limit on trips using small mesh and establishing an additional butterfish possession limit for all trips, consistent with the Council's recommendation. Therefore, this action proposes that trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm) and that a vessel issued a butterfish moratorium permit may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip per day.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after pubic comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

*Statement of Objective and Need*

This action proposes 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish, and modifications to existing management measures to improve the monitoring and management of these fisheries. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

Based on permit data for 2006, the number of potential fishing vessels in the 2008 fisheries are as follows: 383 for *Loligo* squid/butterfish, 78 for *Illex* squid, 2,495 for mackerel, and 2,016

vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

*Minimizing Significant Economic Impacts on Small Entities*

Proposed Actions

The mackerel IOY proposed in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt. Landings in 2004 were 55,528 mt, landings in 2005 were 43,246 mt, and landings for 2006 were 58,279 mt. This action also proposes an in-season adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to the ABC (156,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action; in fact, an increase in revenues as a result of the proposed action is possible. Based on 2006 data, the mackerel fishery could increase its landings by 56,721 mt in 2008, if it takes the entire IOY. In 2006, the last year with complete financial data, the average value for mackerel was $418 per mt. Using this value, the mackerel fishery could see an increase in revenues of $23,709,378 as a result of the proposed 2008 IOY (115,000 mt), and an additional increase in revenues of $17,138,000 as a result of the proposed adjustment to increase the IOY up to the ABC (156,000 mt).

Additionally, this action is proposing to change the percentage at which the directed mackerel fishery would close (from 80 percent to 90 percent of OY) and the incidental mackerel possession limit after the directed fishery is closed (from 10 percent, by weight, of the total fish on board to a fixed possession limit of 20,000 lb (4.54 mt)). Under these proposed changes, it is likely that a higher level of revenue could be realized by vessels engaged in the directed mackerel fishery compared to the other alternatives. An increase in revenues of 10 percent of OY in the directed fishery could be realized, amounting to a potential increase in landings in the directed fishery on the order of about 10,000 mt. Given recent prices, this would translate into increased revenues of about $4.2 million, or $15,000 per vessel.

The *Loligo* squid IOY (17,000 mt) proposed in this action represents status quo as compared to 2007. *Loligo* squid landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 15,447, landings in 2005 were 16,984 mt, and landings in 2006 were 15,880 mt. In 2006, the last year for which complete financial data are available, the average value for *Loligo* squid was $1,751 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2008.

The *Illex* squid IOY (24,000 mt) proposed in this action represents status quo as compared to 2007. *Illex* squid landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 26,098 mt, landings in 2005 were 12,032 mt, and landings in 2006 were 13,944 mt. In 2006, the last year for which complete financial data are available, the average value for *Illex* squid was $578 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2008.

The butterfish IOY (500 mt) proposed in this action represents no constraint to vessels relative to the landings in recent years. Due to market conditions, there has been not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Landings in 2004 were 537 mt, landings in 2005 were 437 mt, and landings in 2006 were 554 mt. Given the lack of a directed butterfish fishery and low butterfish landings, the proposed action is not expected to reduce revenues in this fishery. Based on 2006 data, the value of butterfish was $1,472 per mt.

This action also proposes modifying the trigger for closing the directed butterfish fishery and reducing butterfish possession limits. Specifically, this action is proposing to change to the percentage at which the directed butterfish fishery would close (from 95 percent to 80 percent of DAH) and the incidental butterfish possession limit after the directed fishery is closed (from 2,500 lb (1.13 mt) to either 600 lb (0.27 mt) or 250 lb (0.11 mt)). Additionally, this action proposes a 5,000-lb (2.27-mt) butterfish possession limit for all trips and reducing the possession limit for trips using small mesh (i.e., less than 3 inches (76 mm)) from 5,000 lb (4.54 mt) to 1,000 lb (0.45 mt). These proposed measures potentially limit the amount of fishing effort for butterfish as the stock rebuilds compared to the other alternatives. Therefore, there could be some minor losses in revenue for vessels that wanted to direct on butterfish in the short term (i.e., during the rebuilding period).

**Alternatives to the Proposed Rule**

The Council analysis evaluated three alternatives for mackerel, and all of them would have set IOY at 115,000 mt, maintained the status quo trigger for closing the directed fishery, and maintained the status quo incidental mackerel possession limit. This IOY and these management measures do not represent a constraint on vessels in this fishery, so no negative impacts on revenues in this fishery are expected as a result of these alternatives. One of these alternatives (status quo) would have set the ABC at 186,000 mt, and the other could have set the ABC at 335,000 mt. These alternatives were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest that was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, see the earlier section on Atlantic mackerel).

For *Loligo* squid, all alternatives would have set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota and incidental *Loligo* squid possession limit for *Illex* squid vessels. Two alternatives would have allocated quotas by trimester. Of these, both include an increase of the *Loligo* squid incidental possession limit for *Illex* squid vessels during August–October closures of the *Loligo* squid fishery; one alternative specifies a 5,000-lb (2.27-mt) limit for vessels fishing seaward of the small-mesh exemption line (approximating the 50-fm (91-m) depth contour), and the other specifies a 10,000-lb (4.54-mt) limit for vessels fishing seaward of a boundary approximating the 80-fm (146-m) depth contour. As described in the preamble

of this proposed rule, there are no tools in place for NMFS to monitor spatial activities of the *Illex* squid fleet; therefore, this possession limit provision of these alternatives will not be implemented because it cannot be administered effectively. The third alternative would allocate quota by quarters (status quo). Difference in seasonal quota distribution may have distributive effects on seasonal participants in the fishery; however, all alternatives are expected to result in the same total landings for 2008.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with this alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Another alternative considered would have set MAX OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The Council considered this alternative unacceptable because it was unnecessarily restrictive.

For butterfish, one alternative considered would have set the ABC at 4,525 mt and IOY, DAH, and DAP at 1,861 mt, while another would have set ABC at 12,175 mt and IOY, DAH, and DAP 9,131 mt. These amounts exceed the landings of this species in recent years. Both alternatives would have maintained the status quo trigger for closing the directed fishery, incidental possession limit, and possession limit for trips using mesh smaller than 3 inches (76 mm). Therefore, neither alternative represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 20, 2007.

**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 proposed to be 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. In § 648.14, paragraphs (a)(73), (p)(3), (p)(5), and (p)(11) are revised to read as follows:

### § 648.14 Prohibitions.

(a) * * *

(73) Take, retain, possess, or land more mackerel, squid, or butterfish as specified at § 648.25.

* * * * *

(p) * * *

(3) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession allowance specified at § 648.25.

* * * * *

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23, or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless nets or netting is stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

* * * * *

(11) Possess 1,000 lb (0.45 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

* * * * *

3. In § 648.22, paragraph (c) is removed and paragraph (a) is revised to read as follows:

### § 648.22 Closure of the fishery.

(a) *Closing procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25 will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(3) NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(4) NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

* * * * *

4. In § 648.23, paragraphs (a)(4) and (d) are removed and paragraphs (a)(2) and (a)(3) are revised to read as follows:

### § 648.23 Gear restrictions.

(a) * * *

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1–⅞ inches (48 mm) diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the

50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm), diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements specified at paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

| Point | N. Lat. | W. Long. |
|---|---|---|
| M1 | 43°58.0′ | 67°22.0′ |
| M2 | 43°50.0′ | 68°35.0′ |
| M3 | 43°30.0′ | 69°40.0′ |
| M4 | 43°20.0′ | 70°00.0′ |
| M5 | 42°45.0′ | 70°10.0′ |
| M6 | 42°13.0′ | 69°55.0′ |
| M7 | 41°00.0′ | 69°00.0′ |
| M8 | 41°45.0′ | 68°15.0′ |
| M9 | 42°10.0′ | 67°10.0′ |
| M10 | 41°18.6′ | 66°24.8′ |
| M11 | 40°55.5′ | 66°38.0′ |
| M12 | 40°45.5′ | 68°00.0′ |
| M13 | 40°37.0′ | 68°00.0′ |
| M14 | 40°30.0′ | 69°00.0′ |
| M15 | 40°22.7′ | 69°00.0′ |
| M16 | 40°18.7′ | 69°40.0′ |
| M17 | 40°21.0′ | 71°03.0′ |
| M18 | 39°41.0′ | 72°32.0′ |
| M19 | 38°47.0′ | 73°11.0′ |
| M20 | 38°04.0′ | 74°06.0′ |
| M21 | 37°08.0′ | 74°46.0′ |
| M22 | 36°00.0′ | 74°52.0′ |
| M23 | 35°45.0′ | 74°53.0′ |
| M24 | 35°28.0′ | 74°52.0′ |

* * * * *

3. Section 648.25 is added to read as follows:

**§ 648.25 Possession restrictions.**

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Loligo.* During a closure of the directed fishery for *Loligo,* vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex,* vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(I)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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