

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Channel 264C2 at Kihei.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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**BILLING CODE 6712-01-P**

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

[Docket No. 0808041043-81412-01]

**RIN 0648-AX16**

**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 2009 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action proposes to maintain quotas for Atlantic mackerel (mackerel), *Illex* squid (*Illex*), and butterfish at the same levels as 2008, while increasing the quota for *Loligo* squid (*Loligo*). Additionally, this action proposes to increase the incidental possession limit for mackerel and requests public comment concerning the possibility of an inseason adjustment to increase the mackerel quota, 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 December 17, 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-AX16, 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 NMFS,** Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2009 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) 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 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 10-12, 2008, meeting in Atlantic City, NJ, the Mid-Atlantic Fishery Management Council (Council) recommended 2009 MSB specifications. The recommended specifications for mackerel, *Illex*, and butterfish are the same as those implemented in 2008. For *Loligo*, the Council recommended increasing the Max OY, ABC, IOY, DAH, and DAP based on updated biological reference points implemented in Amendment 9 to the FMP and based on the most recent stock assessment. The Council also recommended increasing the incidental possession limit for mackerel during summer months to reduce the potential for the regulatory discarding of mackerel by the Atlantic herring fleet. With the exception of the incidental possession limit for mackerel, all other management measures (e.g., fishery closure thresholds, possession limits, gear requirements) are the same as those implemented in 2008.

**Research Quota**

Framework Adjustment 1 to the FMP established the Mid-Atlantic Research Set-Aside (RSA) Program, which allows research projects to be funded through the sale of fish that has been set-aside from the total annual quota. The RQ may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that 3 percent of the 2009 *Loligo*, *Illex*, butterfish, and mackerel quotas be set aside to fund projects selected under the 2009 Mid-Atlantic RSA Program.

NMFS solicited research proposals under the 2009 Mid-Atlantic RSA Program through the **Federal Register** (73 FR 7528, February 8, 2008). The deadline for submission was March 24, 2008. On July 5, 2008, NMFS convened a Review Panel to review the comments submitted by technical reviewers. At this time, the project selection and award process for the 2009 Mid-Atlantic RSA Program has not concluded. Based on discussions between NMFS staff, technical review comments, and Review Panel comments, projects requesting *Loligo* RQ will be forwarded to the NOAA Grants Office for award. If any portion of the RQ is not awarded, NMFS will return any un-awarded RQ to the commercial fishery either through the final 2009 MSB specification rulemaking process or through the publication of a separate notice in the

**Federal Register** notifying the public of a quota adjustment.

Vessels harvesting RQ in support of approved research projects would be issued exempted fishing permits (EFP) authorizing them to exceed Federal possession limits and to fish during Federal quota closures. The Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that interested parties be provided an opportunity to comment on all proposed EFPs. These exemptions are necessary to allow project investigators to recover research expenses, as well as adequately

compensate fishing industry participants harvesting RQ. Vessels harvesting RQ would operate within all other regulations that govern the commercial fishery, unless otherwise exempted through a separate EFP.

**2009 Proposed Specifications and Management Measures**

TABLE 1. PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2009 FISHING YEAR.

Specifications	Loligo	Illex	Mackerel	Butterfish
Max OY	32,000	24,000	N/A	12,175
ABC	19,000	24,000	156,000	1,500
IOY	13,300 <sup>1</sup>	24,000	115,000 <sup>2</sup>	500
DAH	13,300	24,000	115,000 <sup>3</sup>	500
DAP	13,300	24,000	100,000	500
JVP	0	0	0	0
TALFF	0	0	0	0

<sup>1</sup> Excludes 5,700 mt (3 percent of the IOY) for RQ.

<sup>2</sup> IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.

<sup>3</sup> 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 the target F of 0.12 in 2008 is 211,000 mt. SARC 42 did not project yields for 2009, but the yield projections from 2008 will be used as a proxy until new projections are calculated in the next mackerel stock assessment, currently scheduled for 2009. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2009 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 2009 mackerel ABC of 156,000 mt.

This action 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 Council concluded, based on industry testimony, that U.S. vessels will continue to increase their landings and that shoreside processing capacity has increased to the point that it can process all of the DAH. Industry has indicated that the relatively low landings in 2007 (26,429 mt) as compared to 2006 were because mackerel were farther offshore than in recent years and thus less available to the fishery. If mackerel are available to the fishery in 2009, industry expects to land the entire IOY. The proposed 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 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 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 residents of coastal communities and generally enhance the social fabric of these communities.

For these reasons, and consistent with the Council's recommendation, 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 expansion of the U.S. mackerel industry. 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 it has experienced significant growth, NMFS concurs that it is reasonable to assume that, in 2009, the commercial fishery has the ability to 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 ability to process the total

amount of mackerel that U.S. harvesters could land. However, for the past 5 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., 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.

#### Mackerel Incidental Possession Limit

Regulations at § 648.25(a) specify that, during closures of the directed mackerel fishery, the incidental possession limit for mackerel is 20,000 lb (9.08 mt). At the Council's June 2008 meeting, the industry requested increasing the incidental mackerel possession limit to minimize the potential for regulatory discard of mackerel by the Atlantic herring fleet. Mackerel and Atlantic herring are known to co-occur in the Gulf of Maine during summer months. To minimize the potential for the regulatory discarding of mackerel by the Atlantic herring fleet during a closure of the directed mackerel fishery, the industry requested that the mackerel incidental possession limit be increased during summer months. Industry identified a 50,000–lb (22.7–mt) incidental mackerel possession limit, to be effective after June 1, as an appropriate limit to minimize the potential for regulatory discarding by the Atlantic herring fleet in the Gulf of Maine, without creating directed fishing for mackerel during a closure of the mackerel fishery. When considering this incidental possession limit increase, the Council discussed that, relative to the quota, few mackerel are landed after June 1, because they move offshore and are largely unavailable to U.S. pelagic fishing fleets. The Council also recognized that this measure was not anticipated to result in a quota overage because it was unlikely that the buffer between the threshold at which the directed mackerel fishery closes (103,500 mt) and the IOY (115,000 mt)

would be landed between June 1 and December 31.

After considering these factors, NMFS proposes that the mackerel incidental possession limit be increased from a 20,000–lb (9.08–mt) incidental possession limit to a 20,000–lb (9.08–mt) limit if the directed mackerel fishery closes prior to June 1, and a 50,000–lb (22.7–mt) limit if the directed mackerel fishery closes on or after June 1. This proposed incidental possession limit is 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 NMFS Northeast Regional Administrator (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 2008 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 2009 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 2009, as in 2008, NMFS's Northeast Fishery Statistic Office will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office website (<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 2009 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2009. 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*

Amendment 9 to the FMP (Amendment 9) (73 FR 37382, July 1, 2008) revised the proxies for *Loligo* target and threshold fishing mortality rates,  $F_{\text{Target}}$  and  $F_{\text{Threshold}}$ , respectively, to reflect the analytical advice provided by the most recent *Loligo* stock assessment review committee (SARC 34). While Amendment 9 revised the formulas and values for these reference points, the function of the reference points remains unchanged.  $F_{\text{Target}}$  is the basis for determining OY and  $F_{\text{Threshold}}$  determines whether overfishing is occurring.

Because *Loligo* is a sub-annual species (i.e., has a lifespan of less than 1 year), the stock is solely dependent on sufficient recruitment year to year to prevent stock collapse. The revised proxies for  $F_{\text{Target}}$  and  $F_{\text{Threshold}}$  implemented in Amendment 9 are fixed values based on average fishing mortality rates achieved during a time period when the stock biomass was fairly resilient (1987–2000). The revised proxies are calculated as follows:  $F_{\text{Target}}$  is the 75th percentile of fishing mortality rates during 1987–2000 and  $F_{\text{Threshold}}$  is the average fishing mortality rates during the same period. The revised proxy for  $F_{\text{Target}}$  (0.32) is used as the basis for establishing *Loligo* OY. The use of a proxy is necessary because it is currently not possible to accurately predict *Loligo* stock biomass because recruitment, which occurs throughout the year, is highly variable inter-annually and influenced by changing environmental conditions.

Based on the revised biological reference points for *Loligo*, the Council recommended an increase to the 2009 *Loligo* Max OY, ABC, IOY, DAH, and DAP. In 2008, the *Loligo* Max OY was 26,000 mt and the ABC, IOY, DAH, and DAP was 17,000 mt. For 2009, the proposed *Loligo* Max OY is 32,000 mt and the proposed ABC, IOY, DAH, DAP is 19,000 mt. Using the revised *Loligo* biological reference points, the Monitoring Committee initially calculated the proposed 2009 *Loligo* ABC, IOY, DAH, and DAP to be 23,000 mt. The Monitoring Committee subsequently reduced the proposed 2009 *Loligo* ABC, IOY, DAH, and DAP to 19,000 mt, to be consistent with SARC 34 management recommendation that harvest not exceed 20,000 mt, and due to uncertainty associated with the *Loligo* stock assessment model.

NMFS concurs with the Council's recommendation, therefore, this action proposes a 2009 *Loligo* Max OY of 32,000 mt and an ABC, IOY DAH, and

DAP of 19,000 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* fishery because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, there would be no *Loligo* JVP or TALFF in 2009.

As described previously, the Council recommended that the *Loligo* RQ for 2009 be up to 3 percent (5,700 mt) of the ABC. Scientific research project proposals requesting *Loligo* RQ were recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* IOY, DAH, and DAP were adjusted to reflect the RQ and equal 13,300 mt. Any of the *Loligo* RQ that is not awarded to a scientific research project will be made available to the commercial fishery after the publication of a notice in the **Federal Register**.

#### Distribution of the *Loligo* DAH

As was done in 2007 and 2008, NMFS is proposing that the 2009 *Loligo* DAH be allocated into trimesters, consistent with the Council's recommendation. The proposed 2009 trimester allocations would be as follows:

TABLE 2. PROPOSED TRIMESTER ALLOCATION OF *Loligo* QUOTA IN 2009

Trimester	Per-cent	Metric Tons <sup>1</sup>
I (Jan-Apr)	43	8,116
II (May-Aug)	17	3,208
III (Sep-Dec)	40	7,550
Total	100	13,300

<sup>1</sup> Trimester allocations after 5,700 mt RQ deduction.

#### *Illex* Squid

The *Illex* stock was most recently assessed at SARC 42 in late 2005. While it was not possible to evaluate current stock status because there are no reliable current estimates of stock biomass or fishing mortality rate, qualitative analyses determined that overfishing had not likely been occurring.

NMFS proposes to maintain the *Illex* specifications in 2009 at the same levels as they were for the 2008 fishing year, consistent with the Council's recommendation. This action proposes that the specification of Max OY, IOY, ABC, and DAH would be 24,000 mt. This level of DAH corresponds to a target fishing mortality rate of 75 percent  $F_{MSY}$ . The FMP does not authorize the specification of JVP and TALFF for the *Illex* 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 SARC 38 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 ( $\frac{1}{2} B_{MSY}$ ). SARC 38 estimated the butterfish stock at 8,700 mt,  $\frac{1}{2} B_{MSY}$  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. The Council is developing a rebuilding plan for the butterfish stock in Amendment 10 to the FMP. Therefore, as in 2008, the Council recommended that the quota be restricted to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding stocks. Without a current market for butterfish, a directed butterfish fishery has not existed for several years, with landings since 2003 ranging from 437 mt to 554 mt.

The MSB FMP specifies that maximum sustainable yield equals Max OY. SARC 38 re-estimated butterfish maximum sustainable yield as 12,175 mt, and the butterfish overfishing threshold at  $F$  of 0.38. 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 2009, as implemented in 2008, the proposed specifications would set the Max OY at 12,175 mt; the ABC at 1,500 mt; and the IOY, DAH, and DAP at 500 mt. Harvest at these proposed levels should prevent overfishing on the butterfish stock in 2009. Additionally, consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2009 because zero TALFF is proposed for mackerel.

#### 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 public 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 2009 specifications and management measures for mackerel, squid, and butterfish, and proposes to modify an incidental possession limit for mackerel. 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 2007, the numbers of potential fishing vessels in the 2009 fisheries are as follows: 383 for *Loligo*/butterfish, 78 for *Illex*, 2,462 for mackerel, and 2,108 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 status quo, as compared to 2008, and is no constraint to vessels relative to the landings 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, landings in 2006 were 58,279 mt, and landings in 2007 were 24,446 mt. This action also proposes an inseason 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 2007 data, the mackerel fishery could increase its landings by 90,554 mt in 2009, if it takes the entire IOY. In 2007, the last year for which complete financial data are available, the average value for mackerel was \$258 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$23,362,932 as a result of the proposed 2009 IOY (115,000 mt), and an additional increase in revenues of \$10,578,000 as a result of the proposed adjustment to increase the IOY up to the ABC (156,000 mt).

The *Loligo* IOY (19,000 mt) proposed in this action represents a potential for increased landings when compared to the 2008 IOY (17,000 mt). *Loligo* landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 15,447 mt, landings in 2005 were 16,984 mt, landings in 2006 were 15,880 mt, and landings in 2007 were 12,342 mt. In 2007, the last year for which complete financial data are available, the average value for *Loligo* was \$1,883 per mt. No reductions in revenues for the *Loligo* 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 2007 data, the *Loligo* fishery could increase its landings by 6,658 mt in 2009, if it takes the entire IOY. Using the average value for *Loligo* from 2007 (\$1,883 mt), the *Loligo* fishery could see an increase in revenues of \$12,537,014 as a result of the proposed 2009 IOY (19,000 mt).

The *Illex* IOY (24,000 mt) proposed in this action represents status quo as compared to 2008. *Illex* landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 26,098 mt, landings in 2005 were 12,032 mt, landings in 2006 were 13,944 mt, and landings in 2007 were 9,022 mt. In 2007, the last year for which complete financial data are available, the average value for *Illex* was \$428 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on the fishery in 2009. Based on 2007 data, the *Illex* fishery could increase its landings by 14,978 mt in 2009, if it takes the entire IOY. Using the average value for *Illex* from 2007 (\$428 mt), the *Illex* fishery could see an increase in revenues of \$6,410,584 as a result of the proposed 2009 IOY (24,000 mt).

The butterflyfish IOY proposed in this action (500 mt) represents status quo, as compared to 2008, and represents only a minimal constraint to vessels relative

to the landings in recent years. Due to market conditions, there has been not been a directed butterflyfish fishery in recent years; therefore, recent landings have been low. Landings in 2004 were 537 mt, landings in 2005 were 437 mt, landings in 2006 were 554 mt, and landings in 2007 were 673 mt. Given the lack of a directed butterflyfish fishery and low butterflyfish landings, the proposed action is not expected to reduce revenues in this fishery more than minimally. Based on 2007 data, the value of butterflyfish was \$1,602 per mt.

#### Alternatives to the Proposed Rule

The Council analysis evaluated three alternatives for mackerel, and all of them would have set the ABC at 156,000 mt, IOY at 115,000 mt, and maintained the status quo trigger for closing the directed fishery. This ABC and IOY 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. These alternatives only differed from the proposed action with respect to incidental possession limits. The proposed action specifies the incidental mackerel possession limit at 20,000 lb (9.08 mt) if the directed mackerel fishery closes prior to June 1, and at 50,000 lb (22.7 mt) if the directed mackerel fishery closes on or after June 1. The alternatives to the proposed action specify incidental mackerel possession limits at 20,000 lb (9.08 mt)(status quo) and at 50,000 lb (22.7 mt)(least restrictive). These alternatives were not adopted by the Council because the status quo incidental possession limit may have resulted in the regulatory discarding of mackerel by the Atlantic herring fishery in the Gulf of Maine and, if mackerel are available to the fishery in 2009, the least restrictive incidental possession limit may have encouraged targeting on mackerel during a fishery closure early in the year (January–April). Differences in incidental possession limits may affect behavior and effort during closures of the directed fishery; however, all alternatives are expected to result in the same total landings for 2009.

For *Loligo*, alternatives to the proposed action would have set the Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt (status quo) or Max OY at 32,000 mt and ABC, IOY, DAH, and DAP at 23,000 mt (least restrictive). These alternatives were not adopted by the Council because they were either not consistent with the revised reference points from SARC 34 (status quo) or not consistent with the management recommendations from

SARC 34 and did not consider the uncertainty associated with the *Loligo* stock assessment model (least restrictive).

For *Illex*, 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*. 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 butterflyfish, 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. 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 by the Council 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: November 12, 2008.

**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 § 648.25, paragraph (a) is revised to read as follows:

##### § 648.25 Possession restrictions.

(a) *Atlantic mackerel*. During a closure of the directed Atlantic mackerel fishery that occurs prior to June 1, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time,

and may only land Atlantic mackerel 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 June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of Atlantic mackerel per trip at any time,

and may only land Atlantic mackerel once on any calendar day.  
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