

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Environmental Justice*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of this proposed rulemaking on low-income populations and minority populations and concluded that it will not cause any adverse effects to these populations. As stated above, the Agency has determined that the risk of significant data loss is very low. The data elements proposed for removal or streamlining either have a low incidence of reporting, have other data source readily available or do not appear to be used to any significant degree by the public.

#### **List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 29, 2004.

**Michael O. Leavitt,**  
*Administrator.*

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 372 as follows:

#### **PART 372—[AMENDED]**

1. The authority citation for Part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11028.

#### **Subpart E—[Amended]**

2. Section 372.85 is amended as follows:

- i. Revise paragraph (a).
- ii. Remove paragraph (b)(6).
- iii. Redesignate paragraphs (b)(7) through (b)(18) as paragraphs (b)(6) through (b)(17).
- iv. Revise the newly-designated paragraph (b)(6).
- v. Revise the newly-designated paragraph (b)(14)(i)(C).
- vi. Remove the newly-designated paragraph (b)(16)(iii).
- vii. Redesignate the newly-designated paragraphs (b)(16)(iv) and (v) as paragraphs (b)(16)(iii) and (iv).
- viii. Revise the newly-designated paragraph (b)(16)(iii).
- ix. Remove the newly-designated paragraph (b)(17).

#### **§ 372.85 Toxic chemical release reporting form and instructions.**

(a) *Availability of reporting form and instructions.* The most current version of Form R may be found on the following EPA Program Web site, <http://www.epa.gov/tri>. Any subsequent changes to the Form R will be posted on this Web site. Submitters may also contact the TRI Program at (202) 564-9554 to obtain this information.

(b) \* \* \*

(6) Dun and Bradstreet identification number.

\* \* \* \* \*

(14) \* \* \*

(i) \* \* \*

(C) Discharges to receiving streams or water bodies.

\* \* \* \* \*

(16) \* \* \*

(iii) An estimate of the efficiency of the treatment, which shall be indicated by a range.

3. Section 372.95 is amended as follows:

- i. Remove paragraphs (b)(11), (b)(13), (b)(14) and (b)(15).
- ii. Redesignate paragraph (b)(12) as paragraph (b)(11) and redesignate paragraphs (b)(16) through (b)(17) as paragraphs (b)(12) through (b)(13).

[FR Doc. 05-430 Filed 1-7-05; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 041221358-4358-01; I.D. 121504A]

**RIN 0648-AR56**

#### **Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries**

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

**ACTION:** Proposed rule, 2005 initial specifications; request for comments.

**SUMMARY:** NMFS proposes initial specifications for the 2005 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish proposed specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources.

**DATES:** Public comments must be received no later than 5 p.m., Eastern Standard Time, on February 9, 2005.

**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.noaa.gov>.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope, "Comments-2005 MSB Specifications." Comments also may be sent via facsimile (fax) to 978-281-9135. Comments on the specifications may be submitted by e-mail as well. The mailbox address for providing e-mail comments is [SMB2005Specs@noaa.gov](mailto:SMB2005Specs@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments-2005 MSB Specifications." Comments may also be submitted electronically through the

Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Council, appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 600.516(c) and 648.21, 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 initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), 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 § 648.20 also specify that IOY for squid is equal to the combination of research quota 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 Atlantic mackerel.

In addition, the regulations at § 648.21(g) allow the specification of research set-asides (RSA) to be used for research purposes. For 2005, the Council recommended the consideration of RSAs of up to 3 percent of IOY for Atlantic mackerel, butterfish, and squids. The RSAs would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2005 based on research priorities previously identified by the

Council (69 FR 10990, March 9, 2004). The deadline for submission was April 8, 2004. On May 14, 2004, 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, two project proposals requesting *Loligo* squid set-aside landings were recommended for approval and will be forwarded to the NOAA Grants Office for award, for a total RSA of 255.1 mt. Consistent with the recommendations, the quotas in this proposed rule have been adjusted to reflect the projects recommended for approval. If the awards are 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.

Table 1 contains the proposed initial specifications for the 2005 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2005.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	26,000	24,000	N/A <sup>1</sup>	12,175
ABC	17,000	24,000	335,000	4,545
IOY	16,744.9 <sup>4</sup>	24,000	115,000 <sup>2</sup>	1,681
DAH	16,744.9	24,000	115,000 <sup>3</sup>	1,681
DAP	16,744.9	24,000	100,000	1,681
JVP	0	0	0	0
TALFF	0	0	0	0

<sup>1</sup>Not applicable.

<sup>2</sup>IOY may be increased during the year, but the total ABC will not exceed 335,000 mt.

<sup>3</sup>Includes 15,000 mt of Atlantic mackerel recreational allocation.

<sup>4</sup>Excludes 255.1 mt for Research Set-Aside.

NMFS also proposes three clarifications to the Atlantic mackerel, squid, and butterfish regulations. The first, in § 648.21, would remove references to the dates on which the proposed and final rules for the annual specifications must be published by the Administrator, Northeast Region, NMFS (Regional Administrator), because it is not necessary to specify these dates in regulatory text. The second clarification, in § 648.23, would revise a confusing sentence to make it clearer. The third clarification, in § 648.4(a)(5)(i), would clarify that the *Illex* permit moratorium is in effect until July 1, 2009. These regulatory language changes are purely administrative and reflect previously approved measures in the FMP.

**2005 Proposed Specifications**

*Atlantic Mackerel*

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of  $F_{MSY}$  (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is  $F_{MSY}$  (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the biomass level that would produce MSY on a continuing basis ( $B_{MSY}$ )), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (1/2  $B_{MSY}$ ). Annual quotas are

specified that correspond to the target F resulting from this control rule.

The most recent estimate of Atlantic mackerel stock biomass was 2.1 million mt. Since SSB is currently above 890,000 mt, the target F for 2005 is 0.25. According to the Atlantic mackerel, squid, and butterfish regulations, 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 F. The yield associated with the target F=0.25 is 369,000 mt. The estimated Canadian catch is 34,000 mt. Thus, 369,000 mt minus 34,000 mt results in and ABC of 335,000 mt.

The Council proposed that the IOY and the DAH for the 2005 Atlantic mackerel fishery be set at 165,000 mt. The Magnuson-Stevens Fishery

Conservation and Management 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. As a result, the Council's proposal to set IOY equal to DAH necessarily results in a TALFF of zero. While NMFS agrees that there are legitimate and legally defensible reasons to set the IOY at a level that can be harvested by the domestic fleet and that would thereby preclude the specification of a TALFF, NMFS does not find that the Council's analysis justifies the levels of IOY and DAH that it recommends.

The Council recommended an IOY of 165,000 mt, arguing that this level would provide the greatest overall benefit to the Nation with respect to food production and recreational opportunities. This level of IOY was also adopted because the Council believes that it allows for a significant increase in domestic landings, which have increased considerably in the last several years due to major investments in the domestic mackerel processing sector. This level of IOY represents a modification of MSY based on economic and social factors (the mackerel regulations at § 648.21(b)(2)(ii) state that, "IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC"). The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. 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 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. In 2003, the primary nations that received the U.S. exports were Nigeria, Bulgaria, Romania, and Canada. The only economic benefit associated with a TALFF is the foreign fishing fees it generates. These fees pale in comparison to the 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 more income for people resident in coastal communities and generally enhance the social fabric of these communities.

For these reasons, the Council concluded, and NMFS agrees, that the specification of an IOY at a level that can be fully harvested by the domestic

fleet, thereby precluding the specification of a TALFF, will assist the U.S. mackerel industry to expand and will yield positive social and economic benefits to both U.S. harvesters and processors. NMFS therefore recommends that IOY be specified at 115,000 mt. NMFS believes that the commercial and recreational fishery will harvest this amount of mackerel in 2005, based on a reasonable projection of the commercial sector harvesting capacity. Because IOY=DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

The Council's DAH recommendation is composed of commercial landings and recreational landings. The specification of DAH at 165,000 mt includes an allocation for recreational catch of 15,000 mt, and an allocation for commercial landings of 150,000 mt. After reviewing the Council's analysis, NMFS concludes that the available data do not support a projection of commercial landings at that level in 2005. The Council assumes that commercial landings in 2004 will be approximately 60,000 mt, and that the landings for 2005 could be twice that level. The increases in U.S. commercial landings in recent years do not support the Council's conclusion that landings could rise to 150,000 mt. Landings from 2001–2002 more than doubled (increasing 112 percent, from 12,308 mt to 26,192 mt). Landings from 2002 to 2003 (30,378 mt) rose by roughly 16 percent. As of October 1, 2004, 53,352 mt of mackerel had been landed. The final landings for 2004 will likely be roughly the same as they were as of October 1, 2004 (historically, a very small percentage of mackerel is landed in November and December, e.g., roughly 1 percent in 2003). The increase in landings from 2003 (30,738 mt) to 2004 (53,352 mt) is roughly 74 percent. It appears reasonable to project that domestic commercial landings in 2005 could approach a doubling of the 2004 landings. The domestic processor sector appears to have overcome the "start-up" problems associated with new investment in additional processing capacity.

Given all these data, and the upward trend noted, NMFS is proposing to set the DAH at 115,000 mt (including 15,000 mt for the recreational catch). This specification would allocate 100,000 mt to the commercial fishery, allowing room for the fishery to expand in line with its recent significant increase in landings. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concludes that it is

reasonable to assume that in 2005 the commercial fishery will harvest 100,000 mt of mackerel.

The regulations, at § 648.21(e), allow for inseason adjustments of the mackerel, squid, and butterfish specifications. Thus, should the performance of the mackerel fishery during the 2005 fishing year justify increasing the DAH for mackerel, NMFS could use the inseason adjustment mechanism to increase both the DAH and the IOY to the levels necessary to enable the fishery to perform to its fullest potential. Such increases, however, would be constrained by the analysis that the Council included in this year's specifications. That means that DAH and IOY could be increased to a maximum of 175,000 mt, which are the highest levels that the Council originally proposed and analyzed for each of these measures. NMFS invites the public to comment on its proposed use of the inseason adjustment mechanism to set new levels for DAH and IOY during the 2005 fishing year, should such changes be warranted based on the performance of the fishery. More specifically, NMFS invites the public to comment on the appropriateness of potentially increasing DAH and IOY up to the maximum levels of 175,000 mt through the inseason adjustment mechanism.

NMFS also agrees with the Council's recommendation to specify JVP at zero (as compared with 5,000 mt of JVP in 2004). In previous years, the Council specified 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. The Council has been systematically reducing JVP because it concluded that the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for mackerel has expanded over the last several years. The Council received testimony from processors and harvesters that the shoreside processing sector of this industry has been undergoing significant expansion since 2002–2003. As a result of this expansion, the Council concluded that shoreside processing capacity was no longer a limiting factor relative to domestic production of mackerel. The Council, therefore, concluded that the U.S. mackerel processing sector has the potential to process the DAH, so JVP would be specified at zero. In coming to this conclusion, the Council assumed that DAH would be set at 165,000 mt. The argument for zero JVP specification is even stronger for a proposed DAH set at 115,000 mt.

**Atlantic Squids***Loligo*

In 2004, the Council specified the annual quota and other measures for *Loligo* squid for a period of up to 3 years (i.e., 2004 - 2007). After a review of available information, the Council recommended no change to the *Loligo* quota or other measures in 2005, and NMFS concurs with this recommendation. Based on research projects approved for 2005, the Council recommended that the RSA for scientific research for *Loligo* squid not

exceed 255.1 mt. The 2005 proposed Max OY for *Loligo* squid is 26,000 mt, the recommended ABC for the 2005 fishery is 17,000 mt, and the IOY is 16,744.9, which takes into account the 255.1 mt RSA.

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, JVP and TALFF are zero.

**Distribution of the Annual *Loligo* Squid Quota**

Since 2001, the annual DAH for *Loligo* squid has been allocated into quarterly periods. The Council and NMFS recommend no change from the 2004 quarterly distribution system. Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this proposed rule would adjust the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2005 quarterly allocations would be as follows:

**TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS**

Quarter	Percent	Metric Tons <sup>1</sup>	Research Set-aside
I (Jan-Mar)	33.23	5,564.3	N/A
II (Apr-Jun)	17.61	2,948.8	N/A
III (Jul-Sep)	17.3	2,896.9	N/A
IV (Oct-Dec)	31.86	5,334.9	N/A
Total	100	16,744.9	255.1

<sup>1</sup>Quarterly allocations after 255.1 mt RSA deduction.

Also unchanged from 2004, the 2005 directed fishery would be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calendar day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calendar day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent is applied to Quarter III.

*Illex*

The Council recommended maintaining the *Illex* specifications in 2005 at the same levels as they were for the 2004 fishing year. NMFS concurs with this recommendation; thus, 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%  $F_{MSY}$ . The biomass target is specified as  $B_{MSY}$ . The minimum biomass threshold is specified as  $1/2 B_{MSY}$ .

In September 2003, the results of an updated assessment of the *Illex* squid stock (the 37th Northeast Regional Stock Assessment Workshop; SAW-37) were released. SAW-37 concluded that overfishing was not likely to have occurred during the period 1992-2002. SAW-37 found that it was not possible to evaluate the current biomass status for *Illex* squid relative to  $B_{MSY}$  because the size of the stock could not be reliably estimated. SAW 37 noted that, since 1999, the Northeast Fishery Science Center (NEFSC) autumn survey abundance indices have been below the 1982-2002 average, but that it could not determine whether this trend is due to low abundance, low availability or both. The assessment noted that surface and bottom water temperatures in the Mid-Atlantic Bight have been warmer than average during recent years, and that *Illex* abundance and biomass indices from the autumn surveys were significantly negatively correlated with bottom water temperature anomalies from the autumn surveys. SAW 37 concluded that this likely indicates an environmental effect on productivity. While landings have been below the 1982-2002 average since 1998, SAW 37 found that this could be due to the

reduced effort observed during the time period, low biomass or both factors.

SAW 37 cautioned that, under current stock conditions, a DAH of 24,000 mt, which assumes a stock at  $B_{MSY}$ , may not be sufficient to prevent overfishing. It also cautioned that the existing overfishing definition, which is based on  $F_{MSY}$ , is not only difficult to estimate given the available information, but may also perform poorly given the stock's production dynamics. In addition, SAW 37 recommended that, given uncertainties in the stock distribution and population biology, the fishery should be managed in relation to the proportion of the stock on the continental shelf and available to U.S. fisheries. However, SAW 37 did not recommend specific action, and the assessment also noted that more knowledge of *Illex* is necessary to respond to these concerns. While cooperative research efforts are underway, there is currently no information to use to construct an alternative recommendation.

Despite the cautions within SAW 37, the assessment also concluded that it was unlikely that overfishing occurred during 1999-2002 for several reasons. Many of these reasons remain applicable to the proposal to maintain DAH at 24,000 mt for 2005. The reasons are: (1) the current small fleet size and effort levels make it unlikely that the fishery could exert the very high fishing mortality rate required to exceed the level recommended in the assessment ( $F_{50\%}$ ), (2) the short fishing season makes high annual average fishing

mortality rates unlikely, (3) the restricted geographical distribution of the fishery makes high annual average fishing mortality rates for the entire stock unlikely, (4) relative exploitation indices have declined considerably since 1999 and have been below the 1982–2002 median since then, and (5) preliminary model results indicate that fishing mortality rates as high as  $F_{50\%}$  are unlikely to have occurred even during 1999, when relative fishing mortality was the highest in recent years.

Therefore, NMFS proposes that the annual specifications for *Illex* squid should remain unchanged for 2005, agreeing with the Council that there is no basis for concluding that the specifications are likely to result in overfishing. As the Council noted, the management program for *Illex* requires the directed fishery to be closed when 95 percent of the quota (22,800 mt) is harvested. While incidental landings are allowed following this closure, the amount of *Illex* caught incidentally by vessels targeting other species is limited due to the specialized nature of the *Illex* fishery. *Illex* is harvested offshore near the edge of the continental shelf during the summer. The species spoils quickly, so freezing or refrigerated seawater equipment must be utilized to prevent spoilage. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than the specified amount in a single calendar day, which is 10,000 lb (4,536 kg). Few vessels are expected to invest in the necessary equipment to pursue *Illex* under the incidental catch allowance. Furthermore, if evidence were to become available that overfishing was occurring, based on stock assessment data gathered in 2005, the current FMP allows for in-season adjustments to the IOY.

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 proposed specifications would reduce the IOY from 5,900 mt to 1,681 mt to achieve the target fishing mortality rate (75 percent of  $F_{msy}$ ) specified in the FMP based on the most recent stock assessment for the species (Stock Assessment Review Committee (SARC) 38). Based on that assessment and assuming that biomass in 2005 will be nominally the same as 2000–2002, then the catch associated with the target F would be 2,242 mt, and this forms the basis for the specification of butterfly

ABC. Assuming that the discard-to-landing ratio remains constant, then IOY, DAH, and DAP = 1,681 mt (i.e., the allowable landings equals ABC less estimated discards, which are roughly twice landings). NMFS supports this recommended level of landings because it should achieve the target fishing mortality rate and allow for stock rebuilding.

The Council has recommended, and NMFS supports, implementing a 3.0-inch (7.62-cm) minimum codend mesh size requirement for butterfly otter trawl trips greater than 5,000 lb (2,268 kg), the level that the Council concluded would qualify as a directed butterfly trip. The purpose of this minimum mesh size requirement is to allow for escapement of unmarketable sized butterfly and fish below the size at which 50 percent of the butterfly are sexually mature. Based on inspection of the size composition of discarded butterfly from unpublished sea sampling data, the minimum marketable size for butterfly is approximately 5.5 inches (14.0 cm). Based on a scientifically supported selection factor of 1.8, the mesh size corresponding to an L50 of 14 cm is 7.78 cm, or about 3.0 inches. The minimum mesh requirement of 3.0 inches (7.62 cm) in the directed butterfly fishery should have a number of positive biological impacts. First, discards in the directed fishery should be reduced, which, in combination with the reduced quota, should result in reduced fishing mortality on the butterfly stock (especially on small, sexually immature butterfly). This should result in an increase in spawning stock biomass, which will increase the chance of successful recruitment and aid in stock rebuilding. In addition, by delaying age at entry to the fishery, an increase in yield per recruit should be realized. Finally, an increase in mesh size in the butterfly fishery should also result in a decrease in bycatch of non-target species in the directed butterfly fishery.

#### Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866. The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see ADDRESSES) or via the Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows:

#### Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

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

The number of potential fishing vessels in the 2005 fisheries are 381 for *Loligo* squid/butterfish, 72 for *Illex* squid, 2,407 for Atlantic mackerel, and 2,119 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts. Many vessels participate in more than one of these fisheries; therefore, the 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

The IOY specification under the proposed action for Atlantic mackerel (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; in 2003 they were 30,738 mt; and for 2004 they were 53,352 mt (based on preliminary data). Therefore, no reductions in revenues for the mackerel fishery is expected as a result of the proposed action. However, there is likely to be an increase in revenues as a result of the proposed action. Based on preliminary 2004 data, the mackerel fishery could increase its landings by 46,648 mt in 2005, if it takes the entire IOY. In 2003, the last year with complete financial data, the average value for mackerel was \$234 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$10,915,632 as a result of the proposed action.

The IOY specification under the proposed action for *Illex* (24,000 mt) represents a slight constraint on revenues in this fishery. *Illex* landings for 2001–2003 averaged 4,350 mt; in

2003 they were 6,389 mt; and for 2004 they were 25,968 mt (based on preliminary data). Therefore, the proposed action represents a reduction in landings, from 2004, of 1,968 mt. In 2003, the last year with complete financial data, the average value for *Illex* was \$626 per mt. Using this value, the *Illex* fishery could see an decrease in revenues of \$1,231,968 as a result of the proposed action. But, it is important to note that the preliminary *Illex* landings for 2004 are 8 per cent more than the quota for that year allowed. Had the fishery landed the quota, only, then the proposed action would represent no restraint on the fishery in 2005.

Under the proposed specifications for butterfish (IOY=1,681 mt), landings could be constrained relative to the 2001–2003 fisheries. During the period 2001–2003, butterfish landings averaged 1,906 mt. Compared to this average, the proposed action would reduce landings by about 12 percent. However, compared to the most recent 2 years for which complete information is available, 2002 and 2003, when landings were 873 mt and 473 mt, respectively, the proposed action would not be expected to reduce revenues in this fishery, but would rather increase those revenues. Based on 2003 data, the value of butterfish was \$1,269 per mt.

The proposed action would also implement a 3.0–inch (7.62–cm) minimum codend mesh size requirement for other trawl trips landing greater than 5,000 lb (2,278 kg) of butterfish. During the period 2001–2003, there were 16,854 trips that landed butterfish based on unpublished NMFS Vessel Trip Report (VTR) data. More than half (57 percent) of the landings of butterfish during 2001–2003 were taken with mesh sizes less than 3.0 inches (7.62 cm). Within this mesh size range, most was taken with mesh sizes between 2.5 inches (6.35 cm) and 3.0 inches (7.62 cm). The trips using this mesh size range (i.e., less than 3.0 inches) could potentially be affected by the proposed mesh size. However, the proposed 3.0–inch (7.62–cm) mesh requirement would only apply to otter trawl trips landing 5,000 lb (2,278 kg) or more of butterfish. In terms of numerical frequency of trips, the vast majority of trips during 2001–2003 landed less than 5,000 lb (2,278 kg) of butterfish, based on unpublished NMFS VTR data. While 57 percent of the landings by weight were taken on trips of greater than or equal to 5,000 pounds during the period, less than 1 percent of the trips landing butterfish were greater than or equal 5,000 lb (2,278 kg). There were only 26 vessels that had trips that included landings of butterfish of 5,000

lb (2,278 kg) or more, and also reported using mesh sizes less than 3.0 inches (7.62 cm) on those trips. Therefore, it is expected that the economic impact of this proposed measure should be negligible because the vast majority of trips and vessels would not be affected because they land less than 5,000 lb (2,278 kg) per trip. The costs for those vessels that do land butterfish on trips larger than 5,000 lb (2,278 kg) should also be negligible because virtually all of those vessels already possess codends 3.0 inches (7.62 cm) mesh or greater (because they are fishing for butterfish or in another fishery that uses nets of that size, e.g., whiting), so they should not incur any additional costs due to the proposed minimum mesh size requirement.

The Council analysis evaluated three alternatives for mackerel. One would have set IOY at 175,000 mt. The two other alternatives would have set IOY at 165,000 mt. Neither of these IOYs represents a constraint on vessels in these fisheries. Absent such a constraint, no impacts on revenues in this fishery would be expected as a result of any of these alternatives. Two of these alternatives one setting IOY at 165,000 mt and the other setting it at 175,000 mt would have set the ABC at 347,000 mt. These two alternatives were rejected on biological grounds because that level of ABC is not consistent with the overfishing rule adopted in Amendment 8 to the FMP (F=0.25 yield estimate of 369,000 mt minus the estimated Canadian catch of 34,000 mt). Furthermore, the Atlantic mackerel alternative that would set IOY at 175,000 mt was rejected because it was set 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, please see the earlier section on Atlantic mackerel). The Atlantic mackerel alternative that would set IOY at 175,000 mt would also would allocate 5,000 mt for JVP. This allocation of JVP was rejected because it was concluded that U.S. processing capacity is sufficient to process the entire DAH. JVP need only be allocated when DAH exceeds DAP, and that is not the case here. The third alternative for mackerel considered was one that would have set IOY at 165,000 mt, and ABC at 335,000 mt. Although this ABC is the same as in the proposed action, this IOY was rejected because it was set 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, please see the earlier section on Atlantic mackerel).

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 these specifications. 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.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at 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. In the absence of such a constraint, neither of these alternatives would reduce revenues in the fishery. However, both of these alternatives were rejected because they would likely result in overfishing and the additional depletion of the spawning stock biomass.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 4, 2005.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out above 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 § 648.4, the introductory text of paragraph (a)(5)(i) is revised to read as follows:

##### § 684.4 Vessel permits.

(a) \* \* \*

(5) \* \* \*

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid*

*moratorium is in effect until July 1, 2009.*

\* \* \* \* \*

3. In § 648.14, paragraphs (a)(74) and (p)(5) are revised and new paragraph (p)(11) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(74) Possess nets or netting with mesh not meeting the minimum size requirements of § 648.23, and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* or butterflyfish harvested in or from the EEZ.

\* \* \* \* \*

(p) \* \* \*

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

\* \* \* \* \*

(11) Possess 5,000 lb (2.27 mt) or more of butterflyfish unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

\* \* \* \* \*

4. In § 648.21, paragraph (d) is revised to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

\* \* \* \* \*

(d) Annual fishing measures. (1) The Squid, Mackerel, and Butterflyfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterflyfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the

recommendations and will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterflyfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the **Federal Register** notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

\* \* \* \* \*

5. In § 648.23, paragraph (a) is revised to read as follows:

**§ 648.23 Gear restrictions.**

(a) *Mesh restrictions and exemptions.*

(1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 5,000 lb (2.27 mt) or more of butterflyfish 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 head rope.

(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 1 7/8 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 head rope, unless they are 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):

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'

(4) Vessels fishing under this exemption may 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 1 7/8 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 (c) and (d) of this section, when the vessel is landward of the specified coordinates.

\* \* \* \* \*

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