

(3) If the claimant's assertion refers to a document relating to the appeal of an administrative decision, such as a notice of disagreement or substantive appeal, VA will follow proper appeal procedures based on date of receipt of the document, as determined under this section.

(4) If the only issue raised by the claimant's assertion concerns the effective date of an award for benefits for a claim already decided, VA will establish the proper effective date without additional development.

(c) *Effective dates.* For claims allegedly submitted between April 14, 2007, and October 14, 2008, the effective date will be established in accordance with the date asserted by the claimant as the date on which the Secretary received the claim.

(Authority: 38 U.S.C. 501(a)(1))

[FR Doc. E9-27077 Filed 11-10-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301206-91208-01]

RIN 0648-AY13

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 2010 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action proposes to maintain quotas for Atlantic mackerel (mackerel), *Illex* squid (*Illex*), *Loligo* squid (*Loligo*), and butterfish at the same levels as 2009. This action also proposes to modify accounting procedures for underages of Trimester 1 quotas in the *Loligo* fishery so that Trimester 1 quota underages that are greater than 25% of the Trimester 1 quota would be allocated equally to Trimesters 2 and 3, and underages that are less than 25% of the Trimester 1 quota would be allocated to Trimester 3. Additionally, this action proposes to increase the minimum mesh size requirement for codend covers in the

Loligo fishery from 4.5 inches to 5 inches. 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 14, 2009.

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>.

You may submit comments, identified by 0648-AY13, 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, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2010 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 9-11, 2009, meeting in New York, NY, the Mid-Atlantic Fishery Management Council (Council) recommended 2010 MSB specifications. The recommended specifications for mackerel, *Illex*, *Loligo*, and butterfish are the same as those implemented in 2009. For *Loligo*, the Council recommended a modification in accounting Trimester 1 quota underages. The Council also recommended increasing the minimum mesh size requirement for codend covers in the *Loligo* fishery. The Council submitted these recommendations, along with the required analyses, for agency review on August 10, 2009.

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 2010 *Loligo*, *Illex*, butterfish, and mackerel quotas be set aside to fund projects selected under the 2010 Mid-Atlantic RSA Program.

NMFS solicited research proposals under the 2010 Mid-Atlantic RSA Program through the **Federal Register** (74 FR 75, January 2, 2009). The deadline for submission was March 3, 2009. The project selection and award process for the 2010 Mid-Atlantic RSA Program has not concluded and therefore, the research quota awards are not known at this time. When the selection process has concluded, projects requesting 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 2010 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.

2010 Proposed Specifications and Management Measures

TABLE 1. PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2010 FISHING YEAR.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	32,000	24,000	N/A	12,175
ABC	19,000	24,000	156,000	1,500
IOY ³	18,430	23,280	111,550 ¹	485
DAH	19,000	24,000	115,000 ²	500
DAP	19,000	24,000	100,000	500
JVP	0	0	0	0
TALFF	0	0	0	0

¹ IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.

² Includes a 15,000 mt catch of Atlantic mackerel by the recreational fishery.

³ Excludes 3 percent of the IOY for RQ.

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 2010, 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 December 2009. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2010 will remain at the 2009 level of 55,000 mt. Thus, 211,000 mt minus 55,000 mt results in a proposed 2010 mackerel ABC of 156,000 mt.

This action proposes a mackerel IOY of 115,000 mt. The Council selected an IOY under all three alternatives that is consistent with the recent increases in processing capacity and domestic landings of mackerel. The recent increase in US processing capacity in conjunction with relatively high world demand has created conditions which are favorable for continued growth of the US mackerel fishery. Industry

testimony from shore side processors indicated that the ability and intent exist to land and process well in excess of 100,000 mt of Atlantic mackerel in 2010. To reach this level, the Atlantic mackerel stock will need to be sufficiently abundant and available in the right sizes to the harvest sector (unlike the situations in 2007–2009). Industry members have testified that if stock conditions are similar to those prior to 2005, then they fully intend and expect 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. While a surplus existed between ABC and DAH for many years, that surplus has disappeared due to the downward revision in the estimate of MSY and recent increases in both US and Canadian landings. The Council concluded that no surplus exists between the US portion of the sustainable yield from this stock and the IOY for 2010. As a result TALFF is specified as zero under all three alternatives considered by the Council. Based on analysis and a review of the

state of the world mackerel market and possible increases in US production levels, the Council concluded that specifying an IOY resulting in zero TALFF will yield positive social and economic benefits to the mackerel fishery and to the Nation.

For these reasons, 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 U.S. mackerel industry to expand. This would yield positive social and economic benefits to both U.S. harvesters and processors. NMFS concurs that it is reasonable to assume that in 2010 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 available 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 6 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 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. The Council concluded that processing capacity is no longer a limiting factor relative to domestic production of mackerel, so JVP would be specified at zero.

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. In 2010, as in 2009, 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 2010 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2010. 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_{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_{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_{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_{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_{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 that the 2010 *Loligo* Max OY, ABC, IOY, DAH, and DAP remain at the 2009 level. Therefore, the proposed *Loligo* Max OY for 2010 is 32,000 mt and the proposed ABC, IOY, DAH, DAP is 19,000 mt.

NMFS concurs with the Council's recommendation, therefore, this action proposes a 2010 *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.

Distribution of the *Loligo* DAH

As was done in 2007 to 2009, NMFS is proposing that the 2010 *Loligo* DAH be allocated into trimesters, consistent with the Council's recommendation. The proposed 2010 trimester allocations would be as follows:

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

Trimester	Percent	Metric Tons ¹
I (Jan–Apr)	43	7,925
II (May–Aug)	17	3,133
III (Sep–Dec)	40	7,372
Total	100	18,430

¹ Trimester allocations after 570 mt RQ deduction.

This action proposes to adjust how Trimester I underages are distributed among the remaining Trimesters. Currently any overages or underages in Trimester I or II are applied to Trimester III. The proposed action would split the distribution of Trimester I underages evenly between Trimester II and III if the underage is greater than 25% of the Trimester I quota. All other underages

or overages would be applied to Trimester III, as is currently done.

In 2008, the fishery experienced a significant underage in Trimester I, which was then applied to Trimester III. However the fishery also experienced a closure during Trimester II. This resulted in the fishery being unable to harvest the total DAH in Trimester III. The proposed method of underage distribution will facilitate a reduction in small transfers that could lead to unforseeable season openings or closures in Trimester II. This will prevent an underharvest of the annual quota, and distribute unharvested quota evenly throughout the year. However, as a result of both the inherent data processing time lag and late dealer reporting in the dealer reporting program, it is not possible to make the underage calculation and announce a quota adjustment until up to two months after Trimester 1 ends.

Changes to *Loligo* Codend Mesh Size Requirements

This action proposes to increase the "net strengthener"/"codend cover" minimum mesh requirement from 4.5 inches to 5 inches (inside stretch measurement). This would make the *Loligo* codend mesh size requirement consistent with the next highest mesh size currently required in another Mid-Atlantic fishery (Scup).

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 2010 at the same levels as they were for the 2009 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 FMSY. 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 butterfly 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 butterfly stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Act. The Council has developed a rebuilding plan for the butterfly stock in Amendment 10 to the , which was approved October 7, 2009. As in 2009, 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 butterfly, a directed butterfly fishery has not existed for several years, with landings since 2003 ranging from 437 mt to 674 mt.

The MSB FMP specifies that maximum sustainable yield equals Max OY. SARC 38 re-estimated butterfly maximum sustainable yield as 12,175 mt, and the butterfly overfishing threshold at F of 0.38. Assuming that butterfly discards equal twice the level of landings, the amount of butterfly discards associated with approximately 500 mt of landings is approximately 1,000 mt.

Therefore, in 2010, as implemented in 2009, 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 butterfly stock in 2010. Additionally, consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfly in 2010 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 Butterfly FMP, other provision 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.

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 2010 specifications and management measures for mackerel, squid, and butterfly, and proposes to modify accounting procedures for underages of Trimester 1 quotas in the *Loligo* fishery, and to increase the minimum mesh size requirement for codend covers in the *Loligo* fishery from 4.5 inches to 5 inches. 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 2008, the numbers of potential fishing vessels in the 2009 fisheries are as follows: 371 for *Loligo*/butterfish, 77 for *Illex*, 2,342 for mackerel, and 2,193 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 2009, and is no constraint to vessels relative to the landings in recent years. Mackerel landings for 2004–2006 averaged 51,836 mt. Landings in 2007 were 25,547 mt, and landings in 2008 were 21,749 mt. This action also allows for an inseason adjustment, which would increase the IOY up to the ABC (156,000 mt), if landings approach the IOY early in the fishing year. Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action.

The *Loligo* IOY (19,000 mt) proposed in this action represents the status quo compared to the 2009. No reductions in revenues for the *Loligo* fishery are expected as a result of this proposed action.

The *Illex* IOY (24,000 mt) proposed in this action represents status quo as compared to 2008. Implementation of this proposed action would not result in a reduction in revenue or a constraint on expansion of the fishery in 2010.

The butterfly IOY proposed in this action (500 mt) represents status quo, as compared to 2009, and represents only a minimal constraint to vessels relative to the landings in recent years. Due to market conditions, there has not been a directed butterfly fishery in recent years; therefore, recent landings have been low. Given the lack of a directed butterfly fishery and low butterfly landings, the proposed action is not expected to reduce revenues in this fishery more than minimally.

The accounting methods for *Loligo* trimester underages proposed in this action would distribute any substantial underage in Trimester I (greater than 25% of the Trimester I quota) evenly over the rest of the year. This method of transferring quota over to Trimester II from Trimester I may provide some economic benefits to this fishery compared to how the fishery was prosecuted under the 2008 and 2009 specifications.

The proposed action would also increase the required minimum codend cover mesh size from 4.5 inches to 5.0 inches in the *Loligo* fishery. A mesh size increase is not expected to have a significant impact on landings since most of the selectivity occurs in the codend liner. Most vessels are equipped with nets meeting or exceeding the proposed codend minimum mesh size, so no negative impacts on revenues in this fishery are expected as a result of these alternatives.

Alternatives to the Proposed Rule

The Council analysis evaluated two alternatives to the proposed action for mackerel, which is also the status quo. The first alternative would have set the ABC at 56,000 mt, IOY at 56,000 mt, and the second alternative would have set the ABC at 186,000 mt, IOY at 115,000 mt. Based on recent harvest levels, neither of the ABC and IOY alternatives represent a constraint on vessels in this fishery. However, the ABC of 56,000 mt in the first alternative could result in forgone revenue if mackerel is available to the fishery.

For *Loligo*, the alternatives to the proposed action would have set the Max OY at 32,000 mt and ABC, IOY, DAH,

and DAP at 19,000 mt, as in the proposed action, and the status quo. The alternatives differed only in how Trimester underages and overages were applied to the following Trimester quotas. The first alternative is the status quo, and would continue to transfer Trimester I and II overages or underages to Trimester III. The second alternative would make the full amount of a Trimester I underage available to Trimester II. The proposed action distributes any substantial underage in Trimester I (greater than 25% of the Trimester I quota) evenly over the rest of the year, which may positively impact *Loligo* stocks, and prevent an underharvest of the annual quota.

The three alternatives to the proposed minimum codend mesh size increase were all more restrictive than the proposed increase or the status quo. The first alternative recommended a minimum codend mesh size of 6 inches. This mesh size represents the most frequently observed codend mesh size observed in the *Loligo* fishery. The second alternative recommended a 6 inch mesh size using a square mesh for codend covers. Although diamond mesh is predominantly used in the *Loligo* fishery, this alternative specified square mesh based on reduced obstruction caused by square mesh compared to the diamond mesh. The third alternative would have required a minimum codend mesh size of 9.5 inches using square mesh. This alternative is based on the largest and least obstructive mesh size and type that has been observed in use for a codend cover in the *Loligo* fishery.

For *Illex*, one alternative was considered that would have set the ABC, IOY, DAH, and DAP at 19,000 mt rather than 24,000 mt. This quota was used between 1997 and 1999, and was associated with the SAW 21 stock assessment from 1996. However, this alternative would still allow harvest in excess of recent landings in this fishery.

For butterflyfish, two alternatives were considered in addition to the recommended action. The first would have set Max OY at 12,175 mt, ABC at 4,525 mt, and IOY, DAH, and DAP 1,861 mt, which is equivalent to the 2005–2007 specifications. The second

alternative would set Max OY at 12,175 mt, ABC at 9,131 mt, and IOY, DAH, and DAP at 3,044 mt. The amounts in this alternative represent the specifications that would result from the application of the F target control rule if the butterflyfish stock was declared rebuilt. This alternative has been included due to the potential for rapid rebuilding in the butterflyfish stock. However, this alternative was not adopted by the Council because it would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species. None of these alternatives represent a constraint on vessels in this fishery or would reduce revenues in the fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 03, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, 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 § 648.21, paragraph (f)(2) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(f) * * *

(2) Any underages of commercial period quota for Trimester I, which are greater than 25% of the Trimester I quota, will be divided in half, with one portion applied to Trimester II, and one portion applied to Trimester III of the same year. Any underages of commercial period quota for Trimester I, which are less than 25% of the Trimester I quota, will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

* * * * *

3. In § 648.22, paragraph (a)(2)(i) is added and paragraph (a)(2)(ii) is added and reserved to read as follows:

§ 648.22 Closure of the fishery.

(a) * * *

(2) * * *

(i) If the Regional Administrator determines that the Trimester I closure threshold has been underharvested by 25% or more, then the amount of the underharvest shall be reallocated to Trimester II and Trimester III in equal amounts, through notice in the **Federal Register**.

(ii) [Reserved]

* * * * *

4. In § 648.23, paragraph (a)(3)(i) is revised to read as follows:

§ 648.23 Gear restrictions.

(a) ***

(3) ***

(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 17/8 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 5 inches (12.7 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.

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