

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 961125338-6328-01; I.D. 103196B]

RIN 0648-AJ06

## Fisheries of the Northeastern United States; Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement measures contained in Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 6, which has been submitted by the Mid-Atlantic Fishery Management Council (Council) to NMFS for approval is intended to establish additional measures to prevent overfishing of the Atlantic squids and butterfish, allow for seasonal restrictions in the *Illex* squid fishery to improve yield per recruit, and change the closure trigger for all species from 80 percent to 95 percent of the domestic annual harvest (DAH). Also included in Amendment 6 is a revision of the trip limits on bycatch of these species when a fishery is closed.

**DATES:** Comments on the proposed rule must be received on or before January 21, 1997.

**ADDRESSES:** Comments on the proposed rule should be sent to: Dr. Andrew A. Rosenberg, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope, "Comments on Amendment 6 Atlantic Mackerel, Squid, and Butterfish." Copies of Amendment 6, the environmental assessment, regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 508-281-9104.

**SUPPLEMENTARY INFORMATION:**

## Background

In 1994, NMFS conducted a national scientific review of the overfishing definitions in use in U.S. fisheries management plans (NMFS-F/SPO-17). The overfishing definitions for *Illex* squid, *Loligo* squid, and butterfish that were reviewed define overfishing as occurring when the 3-year moving average of pre-recruits from the Northeast Fisheries Science Center autumn bottom trawl survey falls within the lowest quartile of the time series 1968 to the present. The review found these definitions to be risky, given the short life span of each of these species. While previous assessments had assumed that both species of squid had a life span of up to 3 years, more recent scientific information has established that both species have only an annual life span. The life span for butterfish may not exceed 3 years. In response to the risk identified in the existing definitions, the 21st Northeast Stock Assessment Workshop (SAW 21) derived new overfishing definitions for each species of squid and for butterfish. The Council has submitted Amendment 6 in order to establish these new definitions and provide adequate protection from recruitment overfishing for each of these species.

*Illex illecebrosus*

If Amendment 6 is approved, overfishing for *Illex* would be defined as occurring when the catch associated with a threshold fishing mortality rate (F) of  $F_{20}$  is exceeded.  $F_{20}$  is the fishing mortality rate that would result in 20 percent of the maximum spawning potential (MSP) of the stock. This means that 20 percent of the maximum spawning biomass would remain in the population compared to an unfished population. For *Illex*, this overfishing definition would equate to roughly to  $F = 0.28$ , or an annual rate of removal of about 22 percent from the population due to fishing.

Maximum optimum yield (max OY) would also be specified as the catch that would result from  $F_{20}$ . To ensure that the overfishing F level is not closely approached, the annual quota would be specified to correspond to a target fishing mortality rate of  $F_{50}$ .  $F_{50}$  is the fishing mortality rate that results in 50 percent of the MSP of the stock. This means that 50 percent of the spawning biomass would remain in the population compared to an unfished population. For *Illex*, this would equate roughly to  $F = 0.11$ , and to an annual rate of removal of about 8 or 9 percent from the population due to fishing.

*Loligo pealei*

Overfishing for *Loligo* would be defined as occurring when the catch associated with a threshold fishing mortality rate of  $F_{max}$  is exceeded.  $F_{max}$  is the fishing mortality rate that results in the maximum yield per recruit. For *Loligo*, this overfishing threshold would equate roughly to  $F = 0.36$ , and to an annual rate of removal of about 27 percent from the population due to fishing. Max OY would also be specified as the catch that would result from fishing at  $F_{max}$ . To ensure that the overfishing threshold not closely approached, annual quota would be specified that correspond to a target fishing mortality rate of  $F_{50}$ . For *Loligo*, this would equate roughly to  $F = 0.13$ , and to an annual rate of removal of about 11 percent from the population due to fishing.

## Atlantic Butterfish

Because current estimates of F are not statistically reliable, SAW 21 recommended amending the existing overfishing definition, to take a more conservative (lower risk) approach. Overfishing would be defined as occurring when the 3-year moving average of pre-recruits from the NMFS Northeast Fisheries Science Center's autumn bottom trawl survey (mid-Atlantic to Georges Bank) falls within the lowest quartile of the time series, or when landings exceed a level that would result from a threshold fishing mortality rate of  $F_{MSY}$ . Max OY would also be specified as the catch level that would result from fishing at  $F_{MSY}$ . Thus, when an estimate of F is available, it would be incorporated as a management tool.  $F_{MSY}$  is the fishing mortality rate that results in the maximum sustainable yield.

In addition to defining overfishing, the current FMP specifies that, in order to prevent the DAH from being exceeded, the directed fisheries for all species will be closed when 80 percent of the DAH is taken. The 80-percent closure trigger was adopted when the catch data used to monitor the fisheries were not available on a timely basis and coastwide coverage of the fisheries was generally poor. Since then, Amendment 5 to the FMP has made logbook and dealer reporting mandatory, so that data quality and timeliness of receipt is improved. The Council adopted, and NMFS seeks public comment on, the proposed measure that would close the directed fishery for each species when 95 percent of DAH for that species is projected to be taken. During the closure, any vessel of the United States could retain up to 2,500 lb (1.13 mt) of

*Loligo* or butterfish and up to 5,000 lb (2.27 mt) of *Illex*. These levels would allow the fishery to be prosecuted only as a bycatch fishery after 95 percent of DAH is taken and would be beneficial to the inshore/small boat fishery since the bycatch fishery would remain open for the remainder of the fishing year. These bycatch levels correspond to the non-moratorium bycatch specifications in Amendment 5 to the FMP.

Amendment 6 also contains a provision that would allow seasonal quotas to be specified annually for *Illex*. The FMP currently provides that seasonal quotas can be specified for *Loligo*, only. The Council proposes this measure to provide a mechanism that could be used to delay the opening of the *Illex* season and increase yield, since the animals will be given more time to grow before they are harvested. The seasonal closure would be implemented on an annual basis through the Monitoring Committee process specified in the FMP.

#### Classification

This regulatory action is being processed under the accelerated review schedule in accordance with the Magnuson-Stevens Fishery Conservation and Management Act as amended (Magnuson-Stevens Act). At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would revise overfishing definitions for *Loligo* and *Illex* squid, and butterfish, adjust the closure trigger for these species from 80 percent to 95 percent of domestic annual harvest, revise trips limits on bycatch of these species when a fishery is closed, and establish a framework mechanism for seasonal closures in the *Illex* squid fishery.

The new overfishing definition for *Illex* would not affect the current fishing patterns in this fishery. During the observed period (1989 through 1994), annual catch in the *Illex* fishery did not exceed 19,000 mt, the catch associated with the target fishing mortality

rate of  $F_{50}$  under Amendment 6.  $F_{50}$  is the fishing mortality rate that would result in 50 percent of the of the maximum spawning potential of the stock. Average catch during this period was 14,035 mt. Based on this information, the new definition would not adversely affect participants and would not have a significant economic impact on a substantial number of small entities. Landings data by individual vessels in regard to size, horsepower, length, and other vessel characteristics have not been recorded for the *Illex* fishery. Therefore, it is not possible to ascertain the economic impact on individual vessels or groups of vessels within the fishery that would result from the implementation of the target fishing mortality rate of  $F_{50}$ .

The new overfishing definition for *Loligo* is expected to have some economic effect on this fishery because it is likely to result in annual quotas that reduce landings from levels in recent years. The effects of the target fishing mortality rate of  $F_{50}$  on revenues when compared to the 1994 season would be a reduction of \$2,231,455, that, if evenly distributed, would mean that each vessel would lose \$4,668 (2.46 percent decrease in total gross revenue). On the other hand, when compared to the average revenue from landings for the 1989–1994 season, there would be an increase of \$1,171,620 and each business unit would earn \$2,451 (1.29 percent increase in total gross revenue). In either case, the impact would not be significant. As in the case of *Illex*, landings data by individual vessels in regard to size, horsepower, length, and other vessel characteristics have not been recorded for the *Loligo* fishery. Therefore, it is not possible to ascertain the economic impact on individual vessels or groups of vessels within the fishery that would result from the implementation of the target fishing mortality rate of  $F_{50}$ .

The revised overfishing definition for butterfish would have no economic impact on the butterfish fishery. The revision would add a threshold mortality rate associated with  $F_{MSY}$ .  $F_{MSY}$  is the fishing mortality rate that results in the maximum sustainable yield. However, the revision would not require any change in the proposed specification for domestic annual harvest of 5,900 mt for butterfish adopted by the Mid-Atlantic Fishery Management Council for 1997. This is the same specification as for 1996. Meanwhile, annual butterfish landings from 1989 to 1994 were at historically low levels, averaging only 3,084 mt. These landings ranged from 2,189 mt in 1991 to 4,430 mt in 1993.

The implementation of a closure trigger for the directed fisheries for squid and butterfish of 95 percent would not result in a significant economic impact on these fisheries. A closure trigger of 80 percent had been implemented in these fisheries for several years but had never been utilized. Increasing this trigger may have some positive effects, in that, more product may be available for the directed fishery markets as opposed to the bycatch markets. However, adequate price data is not available to assess this effect, although it is believed to be minimal.

The seasonal closure in the *Illex* fishery is proposed as a framework provision. The economic impacts on small businesses

resulting from a seasonal closure are dependent on the timing and length of the closure. This action would be expected to provide additional management flexibility by allowing the harvest of larger squid, which, in turn, can be expected to provide positive net benefits for participants in the fishery. Analyses regarding impacts on small businesses resulting from a proposed closure cannot be initiated until a specific proposal is made regarding length and time of the closure. Prior to implementation of a seasonal closure, the effects on small business entities will be analyzed.

If the management measures contained in Amendment 6 are implemented there would be no additional costs of compliance, in terms of capital or variable costs, for affected vessels. No substantial changes in fishing behavior, e.g., areas closed to fishing that may leave vessels further from fishing areas, thus, requiring additional fuel and food costs, are associated with these measures. In addition, no physical changes to the vessel or its hull, e.g., new or additional nets, winches, leg irons, or chafing gear, would be required.

Landings data by individual vessels in regard to size, horsepower, length, and other vessel characteristics have not been recorded for these fisheries. Therefore, it is not possible to ascertain the economic impact on individual vessels or groups of vessels, i.e., small or large, within the fishery that would result from the implementation of these management measures. Therefore, comparison between large and small entities are not possible at this time.

These management measures would not be expected to directly impact exit or entry of vessels prosecuting these fisheries. Therefore, it is not expected that as many as 2 percent of the vessels or processors in these fisheries will be forced to cease operations if Amendment 6 is approved and implemented.

As a result, an initial regulatory flexibility analysis was not prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 2, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, 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—[AMENDED]

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.20, paragraphs (b) through (d) are revised to read as follows:

#### § 648.20 Maximum optimum yield (OYs).

\* \* \* \* \*

(b) *Loligo*—the catch associated with a fishing mortality rate of  $F_{max}$ .

(c) *Illex*—the catch associated with a fishing mortality rate of  $F_{20}$ .

(d) Butterfish—the catch associated with a fishing mortality rate of  $F_{MSY}$ .

3. In § 648.21, paragraph (c)(5) is revised to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(5) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

\* \* \* \* \*

4. In § 648.22, paragraphs (a) and (c) are revised to read as follows:

**§ 648.22 Closure of the fishery.**

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for mackerel, the Assistant Administrator shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

\* \* \* \* \*

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the trip limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the trip limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the trip limit for *Illex* is 5,000 lb (2.27 mt).

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**50 CFR Part 648**

[Docket No. 961129337-6337-01; I.D. 112096A]

RIN 0648-XX75

**Fisheries of the Northeastern United States; Summer Flounder, Scup and Black Sea Bass Fisheries; 1997 Scup Specifications**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed specifications for the 1997 scup fishery; request for comments.

**SUMMARY:** NMFS proposes specifications for the 1997 scup fishery that include commercial catch quotas and other restrictions. The implementing regulations for the fishery require NMFS to publish proposed specifications for the upcoming fishing year and provide an opportunity for the public to comment. The intent of these measures is to prevent overfishing of the scup resource.

**DATES:** Public comments must be received on or before January 6, 1997.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. Comments on the proposed specifications should be sent to: Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope, "Comments—1997 Scup Specifications."

**FOR FURTHER INFORMATION CONTACT:** Lucille L. Helvenston, Fishery Management Specialist, 508-281-9347.

**SUPPLEMENTARY INFORMATION:** Comprehensive measures enacted by Amendment 8 to the Summer Flounder and Scup Fishery Management Plan (FMP) were designed to rebuild the severely depleted scup stock. Amendment 8 established a Monitoring Committee that meets annually to review the best available scientific data and make recommendations regarding the catch quota and other management measures in the FMP. The Committee's recommendations are made to achieve the target exploitation rates established in the Amendment to reduce overfishing. The Committee bases its recommendations on: (1) Commercial and recreational catch data; (2) current estimates of fishing mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis (VPA); (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear other than otter trawls on the mortality of scup; and (9) other relevant information.

Based on the recommendations of the Monitoring Committee, the Mid-Atlantic Council's Demersal Species Committee

makes a recommendation to the Council, which in turn makes a recommendation to the Regional Administrator. The Council recommended a commercial quota, recreational harvest limit, and changes in the minimum mesh regulations for 1997.

The proposed action would set the coastwide commercial quota at 6.0 million lb (2.7 million kg). The recreational harvest limit would be 1.947 million lb (0.88 million kg). These values are derived by the following process: (1) The TAC (9.11 million lb (4.1 million kg)) was divided into two allocations of 78 percent for the commercial quota and 22 percent for the recreational harvest limit, and (2) discard estimates for each sector were deducted from each allocation to establish commercial quota and recreational harvest limits. The commercial quota of 6.0 million lb (2.7 million kg) is derived by subtracting an estimated 1997 discard of 1.103 million lb (0.5 million kg) from the 7.103 million lb (3.2 million kg) allocated to the commercial sector. The recreational harvest limit of 1.947 million lb (0.88 million kg) was derived by subtracting the estimated 1997 discard of 0.060 million lb (0.03 million kg) from the 2.007 million lb (0.9 million kg) allocated to the recreational sector. Based on stochastic projections, this proposed catch level has a 50 percent probability of achieving the target exploitation rate (47 percent) in 1997. Current exploitation rates on this stock are approximately 67 percent.

Amendment 8 contains provisions that allow for annual changes in the minimum fish size and minimum otter trawl mesh requirement. Current regulations require a 9-inch (22.9-cm) total length (TL) minimum fish size in the commercial fishery and a 4-inch (10.2-cm) minimum mesh in the codend of the net for vessels possessing in excess of a 4,000-lb (1,814-kg) threshold level of scup. The proposed action does not change the minimum fish size, but would increase the minimum mesh size to 4.5 inches (11.43 cm). The proposed action would also implement seasonal minimum mesh threshold levels of 4,000 lb (1,814 kg) in the winter months (November–April) and 1,000 lb (453 kg) in the summer months (May–October).

The coastwide quota would be implemented January 1, 1997. However, the Council has proposed a regulatory change in a separate action that would divide the quota into three seasons with landing limits: Winter 1 (January–April), Summer (May–October) and Winter 2 (November–December). The summer quota would be allocated on a