OHIO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Cincinnati-Hamilton Area:				
Butler County		Nonattainment		Moderate.[2]
Clermont County		Nonattainment		Moderate.[2]
Hamilton County		Nonattainment		Moderate.[2]
Warren County		Nonattainment		Moderate.[2]
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

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BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 951208293–7055–04; I.D. 110796F]

RIN 0648–AF01

Fisheries of the Northeastern United States; Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries; Resubmitted Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement three provisions of Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) that were initially disapproved but have been revised and resubmitted by the Mid-Atlantic Fishery Management Council (Council). These measures revise the overfishing definition for Atlantic mackerel, establish criteria for a moratorium vessel permit for *Illex* squid, and establish a 5,000–lb (2.27 mt) incidental catch permit for *Illex* squid. The intent of these measures is to prevent overfishing and to avoid overcapitalization of the domestic fleet in these fisheries.

DATES: Effective June 26, 1997.

ADDRESSES: Copies of Amendment 5 and its supporting documents, and the resubmission including the environmental assessment, regulatory impact review (RIR) and initial regulatory flexibility analysis (IRFA), 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.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, 1 Blackburn Dr, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), (Attention: NOAA Desk Officer), Washington, D.C. 20502.

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

SUPPLEMENTARY INFORMATION:

Background

Amendment 5 was developed in response to concerns regarding overcapitalization expressed by industry representatives at several meetings of the Council and its Squid, Mackerel, and Butterfish (SMB) Committee in the early 1990's. Details concerning the development of Amendment 5 were provided in the preamble to the proposed rule, which was published in the **Federal Register** on December 20, 1995 (60 FR 65618), and are not repeated here.

NMFS, on behalf of the Secretary of Commerce (Secretary), reviewed Amendment 5 in light of the administrative record underlying it and the public comments received relative to the amendment and the proposed rule. Based upon this review, the following provisions of the amendment were found to be inconsistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and, accordingly, were disapproved: (1) The *Illex* moratorium permit, (2) the use of long term potential catch to cap allowable biological catch (ABC) for Atlantic mackerel, and (3) the exemption from the minimum mesh requirement for the *Loligo* fishery for a vessel fishing for sea herring whose catch is comprised of 75 percent or more of sea herring. Details concerning the disapprovals were provided in the preamble to the final rule implementing Amendment 5, which was published on April 2, 1996 (61 FR 14465), and are not repeated here.

At its June, 1996, meeting, the Council revised several of the disapproved measures for resubmission. Management measures for an *Illex* moratorium permit, an increase in the allowable incidental catch of *Illex*, and a cap on Atlantic mackerel ABC were resubmitted. A proposed rule to implement these measures was published in the **Federal Register** on December 23, 1996 (61 FR 67521). The preamble to the proposed rule described the measures. Comments were accepted through February 3, 1997. NMFS approved those measures on behalf of the Secretary on February 21, 1997.

Under the final rule, a vessel will qualify for a moratorium permit if 5,000 lb (2.27 mt) or more of *Illex* were landed from it and sold on at least 5 trips between August 13, 1981, and August 13, 1993. Additionally, a vessel that was under construction for, or was being rerigged for, use in the directed fishery for *Illex* on August 13, 1993, qualifies for a moratorium permit if 5,000 lb (2.27 mt) or more of *Illex* were landed from it and sold on at least 5 trips prior to December 31, 1994. The *Illex* moratorium will terminate at the end of the fifth year following implementation unless extended by an amendment to the FMP.

The rule also implements an open-access incidental catch permit for *Illex* squid. The catch allowance associated with this permit is 5,000 lb (2.27 mt) per

trip. This represents an increase of 2,500 lb (1.13 mt) over the allowance proposed in the initial submission of Amendment 5. The incidental allowance could be revised by the Council annually as part of the annual specification process.

Finally, the rule revises the overfishing definition for Atlantic mackerel to restrict ABC in U.S. and Canadian waters to that quantity of mackerel associated with a fishing mortality rate of $F_{0.1}$, as recommended by the Northeast Fisheries Science Center. The overfishing definition is otherwise unchanged, and still maintains the requirement that ABC be specified to maintain a spawning stock size of at least 900,000 mt in the year following the year for which specifications are being developed. Based on the most recent stock assessment for Atlantic mackerel (1994), this will cap ABC for Atlantic mackerel at 383,000 mt.

Changes From the Proposed Rule

There are two changes from the proposed rule. Paragraph 648.4(a)(5) is revised to be consistent with other Northeast regulations for vessel permits, and the heading at

§ 648.8(a)(5)(ii) is changed to read *Illex squid moratorium permit* (Applicable from July 1, 1997, until July 1, 2002.) This changes the effective date of the *Illex* moratorium permit from the previously proposed date of June 1, 1997, which appeared in Paragraph 648.4(a)(5) of the proposed regulations, to July 1, 1997. This change come as a result of delays in the publication of the final rule.

Comments and Responses

A total of four commenters provided 10 substantively different comments on the proposed rule to implement the resubmitted measures. The commenters were comprised of a representative of the East Coast Fisheries Federation, Inc., representatives of the States of Connecticut and Maine, and an individual representing Seafreeze, Ltd. of Rhode Island and Lund's Fisheries, Inc. of Cape May, New Jersey. One commenter supported the resubmitted measures for the *Illex* moratorium permit while three opposed this measure. One commenter supported the increase in the incidental catch allowance for *Illex*. One commenter appended several Congressional comments opposing the *Illex* moratorium permit. The substance of these comments are incorporated in other comments. No comments were received regarding the cap on Atlantic mackerel ABC.

Comment 1: One commenter asserts that the submission violates the mandate in the Magnuson-Stevens Act to reduce regulatory discards since catches of *Illex* may be mixed with *Loligo* to as much as a 50:50 ratio in certain seasons. The commenter assumes that a large number of vessels in the *Loligo*/butterfish moratorium fishery will not qualify for the *Illex* moratorium fishery, and that discards of *Illex* in excess of the bycatch allowance by these *Loligo* moratorium vessels will be unacceptable.

Response 1: The commenter bases his comment about the seasonal mixing of squid stocks on information supplied by an experienced fishing vessel captain at the August, 1996, Council meeting. The minutes of that meeting indicate the captain noted that by moving to a different area or fishing at a different time of day or both, a vessel operator can practically eliminate large bycatches of *Illex* and the need to discard large amounts of that species. The captain was actually making a point in favor of a bycatch allowance after attainment of 95 percent of the quota, a measure proposed in Amendment 6.

Comment 2: A commenter states that in other moratoria, the Council has used the landing of 1 lb (.45 kg) of the subject species during a time period as qualifying criteria for a moratorium permit, e.g., the summer flounder moratorium permit. Since the adoption of the multiple pound qualifying criterion for *Illex* and *Loligo* squid, the Council has reverted back to 1 lb (.45 kg) of landing in its scup moratorium permit qualifying criteria.

Response 2: The objective of the resubmitted measures for the *Illex* moratorium permit is to prevent overcapitalization in a fishery that is fully-utilized. The Council estimated that a 1 lb (.45 kg) of landing qualifying criterion would prequalify a minimum of 295 vessels using the August 13, 1981, through August 13, 1993, window. The Council noted and NMFS concurs, that given that 19 vessels harvested approximately 17,814 mt in 1992, which represents 94 percent of the 1997 quota for *Illex*, using a 1 lb (.45 kg) landing criterion would likely lead to overcapitalization and threaten the conservation of the *Illex* stock.

Comment 3: A commenter estimates that 400 vessels will obtain the *Loligo*/butterfish moratorium permit. To allow 400 boats into those fisheries while excluding them from *Illex* will do nothing but place enormous pressure on two species while providing no ''relief valve'' in the third; and there will be no opportunity to take advantage of normal cycles and fluctuations in resource availability and market—the essence of the mixed-trawl fishery which the Council has pledged to sustain.

Response 3: NMFS believes that those vessels which qualify for a *Loligo*/butterfish moratorium permit represent the historic and directed participants in the fishery. The same is true for the *Illex* fishery. The Council demonstrated that the number of vessels estimated to qualify for the *Illex* permit would have the ability to harvest in excess of the entire 1997 quota under certain circumstances. The Regulatory Impact Review prepared by the Council shows that allowing a large number of new vessels to prosecute this fishery could cause significant losses in income (8 to 10 percent) to existing harvesters while putting the stock in jeopardy.

Comment 4: The NMFS letter of disapproval of February 9, 1996, stated that ''the measure has discriminatory effects that render the allocation of fishing privileges in the *Illex* fishery unfair and inequitable.'' One commenter agrees and hopes NMFS will reject this even-more restrictive and more discriminatory plan.

Response 4: The letter of disapproval voiced a concern about the impact on vessels that routinely caught less than 5,000 lb (2.27 mt) of *Illex* per trip that would be eliminated from the fishery. The administrative record underlying Amendment 5 did not address these participants. This is the discriminatory effect that the Regional Administrator asked the Council to address. The administrative record supporting the resubmission indicated that if there were such participants, they were minimal and only participated in the fishery on an incidental basis. NMFS believes that increasing the incidental catch allowance to 5,000 lb (2.27 mt) for this species meets this concern.

Comment 5: One commenter complained that until last year, vessels fishing from northern New England ports were unable to target this resource because the use of small mesh nets which were necessary to catch *Illex* squid in the quantities required to qualify for a permit under the proposed rule, has been prohibited in the Gulf of Maine.

Response 5: Until April 1995, regulations in the Gulf of Maine did not prevent a small mesh fishery for *Illex* from being prosecuted under a number of different small mesh exemption programs which did in some cases include restrictions on fishing by area by season. Therefore, NMFS believes that vessel owners fishing in the Gulf of Maine had the same opportunity to qualify for an *Illex* moratorium permit as vessel owners from other areas.

Comment 6: One commenter was of the opinion that the qualification criteria for an *Illex* moratorium permit unquestionably contravene some of the most fundamental provisions of the Magnuson-Stevens Act, most particularly Section 301, National Standards 4 through 6.

Response 6: The qualification criteria are consistent with National Standards 4 through 6.

National Standard 4 prohibits discrimination between residents of different states. The qualifying criteria for a moratorium permit are unrelated to the residency of an applicant. National Standard 5 prohibits the implementation of a management measure that has economic allocation as its sole purpose. A moratorium using the qualifying criteria will prevent overcapitalization that could lead to overfishing of the resource. The 21st Northeast Stock Assessment Workshop (SAW 21) determined that the stock of *Illex* is currently fully-utilized and introduced new overfishing definitions for the squids to reduce the risk of overfishing these species, which new information determines lives for only 1 year.

National Standard 6 requires management measures to take into account and allow for variations among, and contingencies in fisheries, fishery resources, and catches. SAW 21 recommended a maximum optimum yield (Max OY) of 24,000 mt for the *Illex* fishery. The vessels that will comprise the moratorium fishery will be capable of taking this amount, although historic catches have been below the recommended Max OY. This will allow the Council to set annual quotas taking into account a range of catches and contingencies based upon future stock assessments.

Comment 7: A commenter provided several reasons for supporting the *Illex* moratorium measure. He states that the criterion is appropriate because it confers eligibility on participants with reasonable dependence on the fishery in the specified period. He states that it properly does not confer eligibility on vessel owners who entered the fishery after that period.

Response 7: NMFS agrees.

Comment 8: In support of the Council proposal, one commenter stated that a decision by NMFS to disapprove the *Illex* moratorium permit will trigger a surge in speculative over-capacity as people fish to gain history, thus causing a downward spiral in the industry and a shift in fishing behavior to derby system practices.

Response 8: NMFS agrees.

Comment 9: The resubmission analysis demonstrates that the *Illex* fishery is industrial in nature, with no real participation by small-scale fishermen. The resubmission analysis (pg 14–15) states that 18 out of 53 vessels that reported landing *Illex* in 1993 represented 99 percent of the total harvest of the fishery for that year. The average trip landed roughly 90,000 lb (40.83 mt) and the average landings of the 19 vessel reference fleet was 130,000 lb (58.98 mt). Small-scale fishermen are simply not involved in the directed fishery because it occurs offshore and requires substantial investments in freezing capacity or refrigerated seawater system capacity. The Council nonetheless increased the bycatch allowance to 5,000 lb (2.27 mt) to ensure that the traditional dependence in the *Illex* fishery by small-scale fishermen was fully accounted for.

Response 9: NMFS agrees.

Comment 10: One commenter observed that if the resubmission is disapproved and an open access fishery is permitted to continue, any effort by boats to diversify into the *Illex* fishery will now result in direct losses to existing *Illex* participants. As more vessels come into the fishery, the behavior patterns of the fishermen will begin to shift, and we will be faced with a derby-style system. If the *Illex* moratorium permit is approved, opportunities to diversify would still exist. Mackerel prices on the world market are good, and mackerel and herring both continue to be under-exploited. Vessel operators need to spend time and effort with the growing mackerel processing industry in Gloucester and New Bedford in order to develop stable markets for this fishery if their interest is diversification.

Response 10: NMFS agrees.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

In compliance with the Regulatory Flexibility Act (RFA), the Council prepared an initial regulatory flexibility analysis (IRFA) for the resubmitted portion of Amendment 5. The IRFA concluded that this rule would have a significant impact on a substantial number of small entities. No comments were received on the IRFA. The final regulatory flexibility analysis (FRFA) consists of the IRFA, the comments and responses in this final rule, most of which address in some way the public's concerns about possible effects of this rule on small entities, and the discussion below.

The analysis of the impact of the moratorium on the existing participants in the directed *Illex* fishery is based on information available for 1993, the last year of the moratorium qualification period. The analysis shows that while there were 3,061 vessels issued the open-access vessel permit required to harvest *Illex* squid, only 53 vessels landed *Illex* squid that year. All of the owners of these permitted vessels are considered small business entities. Of those 53 vessels, only 26 vessels landed 5,000 lb (2.27 mt) or more of *Illex* on at least one trip in that year. The average number of trips for these vessels was 12.8 trips. Eighteen of those vessels accounted for 99% of the total landings. The total landings for all vessels landing any *Illex* in 1993 was 18,017 mt. However, 21 vessels accounted for 17,058 mt of the total landings. These landings represent nearly the entire total allowable catch (i.e., quota) for the *Illex* fishery. Most of the vessels that were issued the open-access vessel permit caught no *Illex* at all. Therefore, it is reasonable to conclude that the economic reliance of these vessels on this species is non-existent. It is likely that the owners of these vessels hold Federal permits for other fisheries in which they are substantial participants and obtained the open-access permit to preserve the option of retaining *Illex* if it was encountered as a bycatch in these other fisheries. In light of the foregoing, the directed fishery consists of a relatively small number of vessels that land substantial quantities of *Illex* per vessel. This analysis uses the 26 vessels that landed 5,000 lb (2.27 mt) or more on at least one trip in 1993 as the best estimate of the existing participants in the directed *Illex* fishery. Based on the average number of *Illex* trips these vessels made in 1993 (i.e., 12.8), they easily qualify for a *Illex* moratorium permit. These 26 vessels are referred to as the ''reference fleet''. The other 27 vessels that also landed *Illex* squid in 1993 are referred to as the ''fringe fleet''.

Amendment 5, as originally submitted by the Council, states that decreased landings of *Illex* from fisheries in other nations are likely to mean increased value for this species in future years. The value of *Illex* has been generally increasing for several years due to decreasing catches in other parts of the world. As a result, the U.S. *Illex* fishery would certainly attract additional

participants if entry is not limited. The landings data for the fishery demonstrate that the reference fleet is capable of taking the entire total quota for this species. Data for subsequent years shows that more vessels are entering the fleet and each vessel is taking less of the ''pie''. Since the directed *Illex* fishery typically involves large vessels that land high volumes of *Illex* (the total catch for a reference fleet vessel in 1993 was 1,522,695 lb), each additional vessel participating in the directed fishery would generate a large amount of *Illex* landings, creating the potential for a rapid increase in overcapitalization and resultant pressure to overfish the resource. Since there are a total of 52 vessels noted in Table 1 of resubmitted Amendment 5 that would qualify for a moratorium permit, the capacity to harvest the entire quota is extant in the fleet that would qualify for a moratorium permit. It is not anticipated that there will be a sudden shift of the additional vessels to the directed fishery, since this sector of the fleet has not, to date, exhibited a great economic reliance on *Illex*. The 27 vessel in the fringe fleet in 1993 made only an average of 3.9 trips and landed an average of 1,155 lb of *Illex* per trip. This pattern persisted in 1994. It is reasonable to conclude that these vessels have Federal fisheries permits for other fisheries on which they are more economically dependant. Also, some of owners of these vessels may be deterred from entering the directed *Illex* fishery due to the cost of acquiring refrigeration equipment necessary to maintain the product quality demanded by on-shore processors. Because of these reasons, the Council concluded that there is real justification for a vessel permit moratorium program to control further expansion of the directed fishery to avoid overcapitalization and jeopardy to the stock. NMFS agrees.

NMFS landings data is used in the resubmitted version of Amendment 5 as the basis to estimate the number of vessels additional to the reference fleet that would qualify for a moratorium permit under various moratorium permit eligibility criteria including the one chosen by the Council and implemented by this final rule. Five eligibility criteria in addition to the criteria implemented by this rule (landings of 5,000 lbs (2.27 mt) or more of *Illex* on at least 5 trips from August 13, 1981 - August 13, 1993) were evaluated. Each criterion was evaluated for two qualification periods: August 13, 1981 - August 13, 1993; and August 13, 1981 - August 13, 1994. The five additional eligibility criteria are: (1) landings of 2,500 lbs (1.13 mt) or more of *Illex* on at least 5 trips; (2) landings of 20,000 lbs or more of *Illex* during any 30-day period; (3) landings of 5,000 lbs (2.27 mt) or more of *Illex* on at least 1 trip; (4) landings of 2,500 lbs (1.13 mt) or more of *Illex* on at least 1 trip; and (5) landings of 1 lb (.45 kg) or more of *Illex* on at least 1 trip.

The number of vessels in addition to the 26 vessel reference fleet that would qualify for a moratorium permit under the qualifying criteria considered varies from a low of 26 under the eligibility criteria implemented in this rule (resulting in a qualifying fleet of 52 vessels) to a high of 309 under an eligibility criteria of 1 lb (.45 kg) or more of *Illex* landed on at least one trip between August 13, 1981 and August 13, 1994 (resulting in a qualifying fleet of 335 vessels).

In order to assess the impact of this rule on small business entities, an examination must be made of the impact upon the revenues of the reference fleet under a range of assumptions about the participation of the additional vessels. The reference fleet comprises the small business entities that are the substantial participants in the *Illex* fishery and most economically reliant upon it.

Because the qualification criteria adopted by the Council and implemented by this final rule would add the smallest number of additional vessels of all the alternatives considered, it is reasonable to conclude that the qualification criteria implemented by this rule would have the smallest economic impact upon the reference fleet of all the alternatives considered. This will minimize the significant economic impact on these small business entities while taking into account the factors that the Council has to consider under section 303(b)(6) of the Magnuson-Stevens Act when limiting access to a fishery. The underlying analysis in the resubmitted Amendment 5 shows that if none of the additional qualifying vessels make any landings, the revenue of the reference fleet would increase 5.3% if the 1997 quota of 19,000 mt is harvested. The increase is due to the fact that in 1993 total catch was only 18,017 mt. This analysis also examines a range of catch levels for the additional qualifying vessels and shows that reference fleet revenues could decrease by as much as 10.4%.

The *Illex* moratorium regime that was proposed by the Council in its initial submission of Amendment 5 was modified for the resubmission by increasing the incidental catch allowance for non-moratorium vessels from 2,500 lbs (1.13 mt) per trip to 5,000 lbs (2.27 mt) per trip and by limiting the moratorium to a period of five years unless extended by another FMP amendment (a ''sunset provision''). The criteria for qualifying for a moratorium permit were not changed.

The original moratorium regime was disapproved because it arbitrarily restricted vessels which have historically landed *Illex* in amounts greater than 2,500 lbs (1.13 mt) but less than 5,000 lbs (2.27 mt) per trip to an incidental catch allowance of 2,500 lbs (1.13 mt) per trip. These vessels, which may have routinely caught more than the 2,500 lbs (1.13 mt) incidental catch allowance proposed, would not qualify for a moratorium permit and would have had to reduce their landings to comply with the 2,500 lbs (1.13 mt) incidental catch allowance. While these vessels still will not qualify for a moratorium permit, the increased incidental catch allowance will allow them to harvest as incidental catch at least, and for most vessels, more than their past historical levels.

The modified measure implemented by this rule was approved by NMFS because the modifications (increase in incidental catch allowance to 5,000 lbs (2.27 mt) per trip and 5-year sunset provision) addressed the concerns that led to the initial disapproval. The incidental catch allowance of 5,000 lbs (2.27 mt) will allow sustained small vessel participation at or above previous historic levels. Therefore, this alternative compared to the original submission minimizes impacts on small entities that do not qualify for a moratorium permit and thus, cannot participate in the *Illex* directed fishery. Increasing the incidental catch allowance to 5,000 lbs (2.27 mt) per trip has no negative conservation effect because incidental catches are counted against the total quota. While this increase in the incidental catch allowance likely would mean that less of the quota will be available to those vessels qualifying for a moratorium permit, the effect on the qualifying fleet likely will be small, since only between 27 and 35 non-qualifying vessels caught *Illex* in the 1992 through 1994 fishery and it is unlikely any significant number of additional vessels will elect to join the harvest because it is not economically feasible to conduct a directed *Illex* fishery offshore at the low volume permitted by the 5,000 lbs (2.27 mt) per trip limit given the price per pound for landed *Illex* and the costs incurred during a fishing trip. In all likelihood, raising the incidental catch amount to 5,000 lbs (2.27 mt) per trip will be a factor only if the *Illex* move

inshore, a phenomenon which is uncertain from year to year.

Raising the incidental catch allowance higher than 5,000 lbs (2.27 mt) per trip was not analyzed since the 5,000 lbs limit eliminated the arbitrary restriction discussed above. However, as the limit is raised higher and higher more and more vessels could be lured into the incidental catch fishery with consequent negative economic impacts on participants in the directed fishery as the share available to them was reduced. This would unjustly benefit new participants in the incidental catch fishery at the expense of directed fishery participants with a historic economic reliance on this species.

The sunset provision submitted as part of the Council's resubmission will require the Council to examine capacity in the fishery over the five-year moratorium period. Should the Council determine that extension of the moratorium is necessary, an amendment, including the analyses required by the Magnuson-Stevens and Regulatory Flexibility Acts, will be required.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. This requirement has been approved by the OMB under control number 0648–0202. Public reporting burden for the collection of information is estimated to average 30 minutes for an initial vessel permit application and 15 minutes for a vessel permit renewal request.

The estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 21, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set out in the preamble, 50 CFR part 648, Subpart B, is amended as follows:

PART 648—FISHERIES OF 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, paragraphs (a)(5)(ii) through (a)(5)(iv) are redesignated as (a)(5)(iii) through (a)(5)(v), a new paragraph (a)(5)(ii) is added, introductory text for paragraphs (a)(5) and (a)(5)(i)(A), and newly redesignated paragraphs (a)(5)(iii) and (a)(5)(iv) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) *Mackerel, squid, and butterfish vessels* - Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) *Loligo squid and butterfish moratorium permit.* (A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (a)(5)(iii) of this section, if it meets any of the following criteria:

* * * * *

(ii) *Illex squid moratorium permit* (Applicable from July 1, 1997, until July 1, 2002.)

(A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Illex* squid in excess of the incidental catch allowance specified in paragraph (a)(5)(iii) of this section, if it meets any of the following criteria:

(*1*) The vessel landed and sold 5,000 lb (2.27 mt) or more of *Illex* squid on at least 5 separate trips between August 13, 1981, and August 13, 1993; or

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section; or

(*3*) The vessel was under construction for, or was being rerigged for, use in the directed fishery for *Illex* squid on August 13, 1993, and the vessel landed and sold 5,000 lb (2.27 mt) or more of *Illex* squid on at least 5 separate trips prior to December 31, 1994.

(B) *Application/renewal restrictions.* No one may apply for an initial *Illex* squid moratorium permit for a vessel after:

(*1*) June 26, 1998; or

(*2*) The owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* See paragraph (a)(3)(i)(D) of this section.

(iii) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish, or up to 5,000 lb (2.27 mt) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(iv) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ.

* * * * *

3. In § 648.13, paragraph (a) is revised to read as follows:

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued a mackerel or squid/butterfish incidental catch permit and authorized in writing by the Regional Administrator to do so, may transfer or attempt to transfer *Loligo*, *Illex*, or butterfish from one vessel to another vessel.

* * * * *

4. In § 648.14, paragraphs (p)(2) through (p)(8) are redesignated as (p)(3) through (p)(9), a new paragraph (p)(2) is added, and paragraphs (a)(75) and newly redesignated paragraph (p)(6) are revised to read:

§ 648.14 Prohibitions.

(a) * * *

(75) Transfer *Loligo*, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessels are permitted or have a valid squid/butterfish incidental catch permit and a letter of authorization from the Regional Administrator.

* * * * *

(p) * * *

(2) Possess more than the incidental catch allowance of *Illex* squid unless

issued an *Illex* squid moratorium permit.

* * * * *

(6) Transfer squid or butterfish at sea to another vessel unless that other vessel has been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessel is permitted or a valid squid/butterfish incidental catch permit and a letter of authorization by the Regional Administrator.

* * * * *

[FR Doc. 97–13817 Filed 5–23–97; 8:45 am]

BILLING CODE 3510–22–F