

I, title 50 of the Code of Federal Regulations, as follows:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.108 by adding paragraph (a)(7) to read as follows:

**§ 17.108 List of designated manatee protection areas.**

(a) \* \* \*

(7) A tract of submerged land on the west side of the confluence of Three Sisters Spring run and the residential canal off the eastern shore of Kings Bay, Crystal River, lying in the northeast corner of Section 28, Township 18, South Range 17 East in Citrus County, Florida; containing less than one quarter acre.

\* \* \* \* \*

Dated: November 20, 1997.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 971107264–7264–01; I.D. 102297A]

RIN 0648–AK47

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1998 Specifications**

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

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule and proposed 1998 initial specifications; request for comments.

**SUMMARY:** NMFS proposes initial specifications for the 1998 fishing year for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish (MSB). In addition, NMFS proposes to amend the minimum net mesh size requirement for *Loligo* squid to make it applicable only to the cod end of the net. The intent of this change is to reduce the frequency that nets need to be replaced with a resultant cost savings to the fishery. Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and provide an opportunity for the public to comment.

**DATES:** Public comments must be received on or before December 26, 1997.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council’s quota paper and recommendations, the Environmental Assessment, and Regulatory Impact Review, including analysis of impacts under the Regulatory Flexibility Act, are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope “Comments—1998 MSB specifications.”

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, (978) 281–9104.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish a proposed rule specifying the initial annual 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), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. In addition to commercial quotas, the Council, in consultation with its Squid, Mackerel, and Butterfish Technical Monitoring Committee, may recommend revisions to the amount of *Loligo* and *Illex* squids and butterfish that may be retained, possessed, and landed by vessels issued the incidental catch permit; commercial minimum fish sizes; commercial trip limits; commercial seasonal quotas/closures for *Loligo* or *Illex* squid; minimum mesh sizes; commercial gear restrictions; recreational harvest limit; recreational minimum fish size; and recreational possession limits.

The following table contains the proposed initial specifications for the 1998 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council:

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1998  
[Metric ton (mt)]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY .....	<sup>1</sup> 26,000	<sup>1</sup> 24,000	<sup>2</sup> N/A	<sup>3</sup> 16,000
ABC .....	21,000	19,000	382,000	7,200
IOY .....	21,000	19,000	<sup>4</sup> 80,000	5,900
DAH .....	21,000	19,000	<sup>5</sup> 80,000	5,900
DAP .....	21,000	19,000	50,000	5,900
JVP .....	0	0	15,000	0
TALFF .....	0	0	0	0

<sup>1</sup> Maximum optimum yield (Max OY) corresponds to a level of fishing beyond which overfishing occurs for *Loligo* and *Illex*.

<sup>2</sup> Max OY is not applicable for Atlantic mackerel.

<sup>3</sup> Max OY is specified as a catch level that would result from  $F_{msy}$  for butterfish.

<sup>4</sup> IOY for Atlantic mackerel may be increased during the year, but the total will not exceed 382,000 mt.

<sup>5</sup> Includes 15,000 mt of Atlantic mackerel recreational allocation.

**1998 Proposed Specifications***Atlantic Mackerel*

The ABC is recommended to be 382,000 mt. This is consistent with the overfishing definition for Atlantic mackerel that restricts ABC in U.S. and Canadian waters to that quantity of mackerel associated with a fishing mortality rate of  $F_{0.1}$ , estimated by the most recent stock assessment (1996) at 405,000 mt. In addition, the recommendation must maintain a spawning stock size of at least 900,000 mt in the year following the year for which specifications are being developed (see § 648.21(b)(2)). A harvest of 405,000 mt is estimated by the assessment to result in an estimated spawning stock for 1999 of 1,695,000 mt. Using the projected Canadian catch of 23,000 mt, the proposed measure would cap ABC for Atlantic mackerel at 382,000 mt (405,000—23,000 mt).

IOY is a modification of ABC which reflects social and economic factors (see § 648.21(b)(2)(ii)). IOY is comprised of two components: DAH and TALFF. DAH is the sum of a recreational catch estimate: DAP and JVP. The Council estimates that the 1998 recreational catch will be 15,000 mt, and DAP will be 50,000 mt. The Council also recommends that IOY be set at a level that provides for a JVP of 15,000 mt and TALFF of zero. The resulting IOY recommended is 80,000 mt.

DAP has historically been estimated using the Council's annual process or survey, which this year estimated 11,364 mt necessary for 1998. However, for the 1998 estimates, response was low and did not contain projections from the large, known processors. In addition, inquiries concerning entry of displaced New England groundfish trawlers into the Atlantic mackerel fishery have led the Council to anticipate increases in harvest. Therefore, the Council recommends no change to the DAP for the 1998 fishery from the 1997 level of 50,000 mt.

The 1998 JVP specification of 15,000 mt was reduced by 10,000 mt from 1997 to reflect the concern the Council has about the negative effect that joint ventures (JVs) could have on the further development of the U.S. export market. The potential for future North Sea mackerel total allowable catch (TAC) reductions may provide an opportunity for U.S. producers to sell additional mackerel on the international market. The reduction is consistent with the Council's stated policy to proceed on a course that recognizes the need for JVs in the short term to allow U.S. harvesters to take mackerel at levels in excess of current U.S. processing

capacity. However, in the longer term, the Council intends to eliminate JVs as U.S. processing and export capacity increases.

An IOY level that keeps TALFF at zero is recommended for the 1998 Atlantic mackerel fishery. The Fisheries Act of 1995 prohibits a specification of TALFF unless recommended by the Council. In 1992, the Council used testimony from both the domestic fishing and processing industries and analysis of nine economic factors found at § 648.21(b)(2)(iii) to determine that mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to recent declines in the North Sea mackerel stock, have resulted in increased opportunities for U.S. producers to increase sales to new markets abroad. The U.S. industry has made some progress in capturing an increased market share for mackerel in Japan over the past 2 years, though Canada and Jamaica remain the most important export nations. Several factors indicate that market expansion for U.S. Atlantic mackerel is likely to continue. In addition, U.S. Atlantic mackerel stock abundance remains high. The continued low abundance of several important groundfish stocks in the Gulf of Maine, southern New England, and on Georges Bank and restrictions on fishing for those species also increase the likelihood that harvesters will redirect their efforts to Atlantic mackerel. Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and marketing.

The Council also recommended that four special conditions imposed in previous years continue to be imposed on the 1998 Atlantic mackerel fishery as follows: (1) Joint ventures be allowed south of 37°30' N. lat., but river herring bycatch can not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) must ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total must not exceed ABC; and (4) a joint venture with a particular nation shall not be allowed unless the Regional

Administrator determines, based on an evaluation of performance, that the nation's purchase obligations from previous years have been fulfilled.

*Atlantic Squids*

The FMP sets the Maximum Optimum Yield (Max OY) for *Loligo* squid at 26,000 mt. The recommended ABC for the 1998 *Loligo* squid fishery is 21,000 mt, unchanged from the 1997 ABC. This level represents the harvest level associated with a fishing mortality rate of  $F_{50}$ , which was adopted in Amendment 6 to the FMP as an appropriate target harvest level for this species. The Council recommended that IOY should equal ABC.

The FMP sets the Max OY for *Illex* squid at 24,000 mt. The Council recommended an ABC of 19,000 mt, which represents the harvest level associated with a fishing mortality rate of  $F_{50}$  as required in Amendment 6 to the FMP. As for *Loligo* squid, the Stock Assessment Workshop (SAW) 21 recommended that  $F_{50}$  would be an appropriate target harvest level for this species. The Council recommended that the IOY for *Illex* squid be set equal to ABC.

*Butterfish*

The FMP sets the Max OY for butterfish at 16,000 mt. The most recent stock assessment was done in 1994 (SAW-17) and advised that the stock may not be able to sustain landings in excess of the long-term historical average (1965-92) of 7,200 mt. Based on this advice, the Council recommends maintaining ABC at 7,200 mt (unchanged from 1997). The Council also recommended maintaining IOY and DAH at 1997 levels (5,900 mt) to reflect the uncertainty that exists regarding the level of discards in the directed fishery.

As a result of the approval of Amendment 5, the FMP specifies that there will be no JVP or TALFF specified for *Loligo* squid, *Illex* squid, or butterfish, except that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Since the Council recommended no TALFF for Atlantic mackerel, no bycatch TALFF is required for butterfish.

*Framework Measure for Loligo Squid Nets*

Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish FMP established a minimum mesh requirement of 1 $\frac{7}{8}$  inches (48 mm) throughout the entire net, for vessels possessing *Loligo* squid. Amendment 5 also established a framework procedure whereby the minimum mesh provision

for *Loligo* squid could be reconsidered by the Council on an annual basis. Numerous members of the commercial fishing industry testified before the Council that the minimum mesh requirement for *Loligo* squid established in Amendment 5, applied throughout the entire net, was creating a major compliance problem within the squid industry. Testimony was given that, after continuous use, meshes forward of the codend become distorted and shrink. Because the body of the net forward of the codend lasts significantly longer than the codend, this problem becomes more acute with time. Industry is concerned that nets, which were legal when new, could be in violation of the minimum mesh provision after extended use. Since selection occurs in the codend of the net, they argue that the requirement for minimum mesh throughout the entire net is creating an unnecessary burden on the industry.

In response to these concerns the Council decided to change the minimum mesh requirement for *Loligo* squid such that it applies to the codend of the net only. The actual mesh size requirement of 1 $\frac{7}{8}$  inches (48 mm) remains unchanged. Thus the Council has chosen to modify the mesh requirement for *Loligo* squid for 1998 by requiring that nets have a minimum mesh size of 1 $\frac{7}{8}$  inches (48 mm) diamond, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, if the net is not long enough for such a measurement, the terminal one-third of the net, measured from the terminus of the net to the head rope. This should relieve the industry of major costs associated with replacing the body of the net before its useful service life has been realized. The effects on the fishery should be minimal since the selection process, which occurs in the codend, will be unchanged. The Council concluded that the benefits to the industry in terms of cost savings far outweighed any negative effects of applying the mesh requirement to the codend only. Additional savings in terms of enforcement of the mesh regulations should be realized since enforcement officers will only be required to check mesh sizes in the codend instead of the entire net, which,

in most cases, is quite large and can consume a significant amount of time during the boarding process.

#### Classification

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. It is assumed that all vessels prosecuting these fisheries are small entities. For *Loligo* and *Illex* squid and butterfish, gross revenues are not expected to decrease as a consequence of the proposed actions. In 1996, *Loligo* squid landings were 12,459 mt. The proposed IOY specification for *Loligo* squid in 1998 is 21,000 mt. In 1996, *Illex* squid landings were 16,969 mt. The proposed IOY specification for *Illex* squid in 1998 is 19,000 mt. In 1996, butterfish landings were 3,489 mt. The proposed IOY specification for butterfish in 1998 is 5,900 mt. In the case of Atlantic mackerel, the 1998 IOY was reduced from 90,000 mt in 1997 to the proposed level of 80,000 mt in 1998. Both specifications far exceed recent harvest in the 1996 fishery of 15,712 mt. In addition, the reduction in IOY in 1998 was due to a reduction in the JV specification by 10,000 mt. Since there has been no JV activity in recent years, the reduction in the JV specification should not affect revenues in the fishery.

Based on this information, the 1998 quotas allow for a further expansion of domestic fishing effort. Assuming that prices are constant and 1997 harvest levels are similar to those in 1996, the 1998 quotas represent no constraint on the ability of individual vessels to increase revenues. It was also determined that restricting the minimum mesh size to the codend, for the *Loligo* squid fishery, would decrease operating costs for the industry by reducing the number of times they would be forced to change the mesh in the body of the net.

NMFS, therefore, concludes that the proposed 1998 quota specifications for the squid, mackerel, and butterfish

fisheries would not decrease annual gross revenues by more than 5 percent for a substantial number of small entities. Furthermore, it is not expected that any vessels would cease operations if these proposed specifications are implemented, nor should compliance costs increase by 10 percent or more for 20 percent of the vessels or processors in any of these fisheries. As a result, a regulatory flexibility analysis was not prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 20, 1997.

**David L. Evans,**

*Deputy 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—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 § 648.23, paragraph (a) introductory text is revised to read as follows:

##### § 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of other trawl vessels possessing *Loligo* squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 $\frac{7}{8}$  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* squid seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

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