

1999, we issued a Jeopardy Biological Opinion to the U.S. Army Corps of Engineers (Corps) for the Modified Water Deliveries to Everglades National Park project, Experimental Water Deliveries Program, and the C-111 Project proposed by the Corps in South Florida. This opinion contains Reasonable and Prudent Alternatives (RPAs) that address all of the currently known subpopulations of the Cape Sable seaside sparrow. These RPAs include elements that are designed to protect and improve the habitat of all of these subpopulations, regardless of whether the specific location of that habitat is currently designated as critical habitat. As a result of that Opinion, we have been working with the Corps, Everglades National Park, and the South Florida Water Management District to establish water-management practices that will achieve the aims of the RPAs, including protection and improvement of all known areas where sparrows have been documented since the early 1980s. Efforts for protection of the sparrow and its habitat in the near future will include coordination with the Florida Fish and Wildlife Conservation Commission and the Miccosukee Tribe of Indians. Through this section 7 process and our work with the Federal and State agencies in south Florida, we will continue to protect and improve habitat for the Cape Sable seaside sparrow.

Author

The primary author of this document is David Martin (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

Dated: October 17, 2001.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 01-26746 Filed 10-22-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 011005244-1244-01; I.D. No. 092401D]

RIN 0648-AP08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

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

ACTION: Proposed Rule, 2002 initial specifications; request for comments.

SUMMARY: NMFS announces initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources. This action also proposes an inseason adjustment procedure for the 2002 mackerel joint venture processing (JVP) annual specifications. Finally, NMFS proposes to revise the regulations to add a provision that specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on November 23, 2001.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management 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.gov/ro/doc/nr.htm>.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope, "Comments-2002 MSB Specifications."

Comments also may be sent via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT:

Jennifer L. Anderson, Fishery Management Specialist 978-281-9226, fax 978-281-9135, e-mail jennifer.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. The regulations also specify 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. Procedures for determining the initial annual amounts are found in § 648.21.

On August 10, 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow the specification of quota set-asides to be used for research purposes. For each of the four species managed under the FMP, the Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes. A Request for Proposals has been published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001, and proposals are currently under review. The quota set-asides will be adjusted in the final rule establishing the annual specifications for the MSB fisheries, consistent with projects forwarded to the NOAA Grants Office for award. If the awards are not made for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2002 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	<i>Loligo</i>	<i>Illex</i>		
Max OY	26,000	24,000	N/A ¹	16,000
ABC	17,000	24,000	347,000	7,200
IOY	17,000 ⁵	24,000 ⁵	85,000 ^{2,5}	5,900 ⁵
DAH	17,000	24,000	85,000 ³	5,897
DAP	17,000	24,000	50,000	5,897
JVP	0	0	20,000 ⁴	0
TALFF	0	0	0	0

¹ Not applicable.

² IOY may be increased during the year, but the total ABC will not exceed 347,000 mt

³ Includes 15,000 mt of Atlantic mackerel recreational allocation.

⁴ JVP may be increased up to 30,000 mt at discretion of Regional Administrator.

⁵ If a 2-percent research set-aside is deducted, the total IOY would be as follows: Atlantic mackerel - 83,300 mt, *Loligo* - 16,660 mt, *Illex* - 23,520 mt, and butterfish - 5,782 mt.

Table 2 contains the proposed research set-asides for the 2002 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 2. PROPOSED RESEARCH QUOTA SET-ASIDES, IN MT, FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	<i>Loligo</i>	<i>Illex</i>		
Research Set-aside	340	480	1,700	118
Remaining Quota	16,660	23,520	83,300	5,782
TAL	17,000	24,000	85,000	5,900

2002 Proposed Specifications

Atlantic Mackerel

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

Since SSB is currently above 890,000 mt, the target F for 2002 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt.

The proposed IOY for the 2002 Atlantic mackerel fishery is 85,000 mt, which is equal to the proposed DAH. The specification for DAH is computed by calculating the estimated recreational catch, the proposed DAP and JVP. The recreational catch component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey, which is intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, for the years 1994 through 2002, response to this voluntary survey was low and did not contain projections from some large processors. The Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel.

Therefore, the Council has recommended, and NMFS proposes, a specification of 20,000 mt of JVP for the 2002 fishery, with a possible increase to 30,000 mt later in the year. If additional applications for JVP are received, the Council could authorize NMFS to increase this allocation to 30,000 mt by publishing notification in the **Federal**

Register. The Council also recommended, and NMFS proposes, a TALFF of zero and a DAP of 50,000 mt, yielding a DAH of 85,000 mt, which includes the 15,000-mt recreational catch estimate. The Council chose to specify TALFF at zero despite the minimal loss to the Nation that may result from the loss of poundage fees collected from foreign vessels. The Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2002 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30' N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4)

applications from a particular nation for an Atlantic mackerel JV allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy F_{MSY} . Max OY is specified as the catch associated with F_{MAX} . In addition, the biomass target is specified as B_{MSY} .

The most recent stock assessment for *Loligo* squid (the 29th Northeast Regional Stock Assessment Workshop, August 1999 (SAW-29)) concluded that the stock was approaching an overfished condition and that overfishing was occurring. However, recent survey data

for *Loligo* squid indicate that abundance of this species has increased significantly since SAW 29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center (NEFSC) fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near B_{msy} . The stock is also no longer listed as overfished in NMFS' Report to Congress: Status of the Fisheries of the United States (January 2001).

Based on the assumption that the stock will be at or near B_{msy} in 2002, the Council recommended no changes from the 2001 quota level. The 2002 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy} , or 17,000 mt, based on projections from SAW-29. The regulations continue to specify Max OY as the yield associated with F_{max} , or 26,000 mt. Thus, the 2002 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2002 fishery is 17,000 mt.

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest

the OY on an annual basis, so that DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S.

commercial fishing vessels, so that DAP equals DAH, and JVP is zero. Since U.S. fishing vessels have the capacity to harvest, and are expected to attempt to harvest, the entire OY, there is no portion of the OY that can be made available for foreign fishing, making TALFF zero.

Distribution of the Annual *Loligo* Squid Quota

The *Loligo* squid 2000 annual quota was allocated among three 4-month trimesters. Due to the premature closures and overages that occurred during the 2000 fishing year, the 2001 annual DAH for *Loligo* squid was allocated into quarterly periods. The Council has proposed, and NMFS recommends, no change from the 2001 quarterly distribution system. The 2002 quarterly allocations would be as follows:

TABLE 3. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons	Research Set-aside
I (Jan-Mar)	33.23	5,649	N/A
II (Apr-Jun)	17.61	2,994	N/A
III (Jul-Sep)	17.3	2,941	N/A
IV (Oct-Dec)	31.86	5,416	N/A
Total	100	17,000	340

Also unchanged from 2001, NMFS proposes that the 2002 directed fishery be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calendar day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calendar day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV.

Carry-over of Quarterly Quota Underages

The Council has also recommended, and NMFS proposes, to modify the method for carrying over *Loligo* squid quarterly underages for 2002 and subsequent fishing years. For the 2001 fishing year, by default, quarterly

underages carried over into Quarter IV because the fourth quarter does not close until 95 percent of the total annual quota has been harvested. However, beginning with the 2002 fishing year, NMFS proposes to add a provision under 50 CFR part 648.21 stating that, in the event that the first quarter landings for *Loligo* squid are less than 70 percent of the first quarter allocation, the underage below 70 percent would be applied to Quarter III. Underages from quarters II and III would continue to be added to Quarter IV by default, based on the 95-percent closure rule mentioned above.

Illex

The approved overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Maximum OY is to be specified as the catch associated with a fishing mortality rate of F_{MSY} . In addition, the biomass target is specified as B_{MSY} . The

minimum biomass threshold is specified as $1/2 B_{MSY}$.

The most recent assessment of the *Illex* squid stock (SAW-29) concluded that the stock is not overfished and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* squid stock is fully exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW-29. However, an upper bound on annual F was computed for the U.S. Exclusive Economic Zone portion of the stock, based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994-1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW-29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS

proposes, that the specification of Max OY and ABC remain unchanged from 2001 at 24,000 mt (the yield associated with F_{MSY}). Under this option, the directed fishery for *Illex* squid would remain open until 95 percent of the ABC is taken (22,800 mt). Once 95 percent of the ABC is estimated to have been taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would take effect for the remainder of the fishing year. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than 5,000 lb (2,268 kg) in a single calendar day. Amendment 5 to the FMP eliminated the possibility of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's ability to harvest and to process the OY from this fishery.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2002 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low at 2,798 mt, 1,964 mt, and 2,116 mt for the 1997 through 1999 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have impacted this fishery.

For the 2002 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA in section 5.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section. A summary of the IRFA follows:

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex*

squid, and 2,098 for Atlantic mackerel. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 85,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2002 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1996-2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996-2000. NMFS also proposes to modify the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the first quarter allocation would be applied to Quarter III. Currently, all underages from Quarter I are applied to Quarter IV because Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when the quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2002 specifications at the same level as 2001. The specifications under this alternative were similar to the preferred alternative, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher (88,000 mt) because TALFF would be specified at 3,000 mt. The specification of TALFF above zero was rejected by the Council as inconsistent with the FMP because it would not meet the policy objectives of the Council relative to further development of the U.S. domestic harvest for Atlantic mackerel. NMFS accepted the Council recommendation regarding IOY as accomplishing this objective. However, this alternative would place no constraints, and consequently no

revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been harvested in recent years. A second alternative for Atlantic mackerel was to set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the FMP because it would not allow for variations and contingencies in the status of the stock. For example, the current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The level of foregone yield under this alternative was considered unacceptable, but would not impact the IOY specifications. A third alternative considered for mackerel included the elimination of JVP for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected due to the need for JVP's, which allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. However, these alternatives would not constrain the mackerel fishery and were determined to have no impact on the revenues of participants in this fishery.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 23.3-percent reduction from the 2001 level. This was the same level as the 2000 fishing year until an inseason adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). If the 13,000-mt alternative was adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 365 vessels would experience a less than 5-percent reduction in revenue or an increase in revenue. A second alternative would set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31-percent reduction in landings relative to 2000. Under this scenario, 170 of the 497 impacted vessels would experience gross revenue reductions (all species combined) of greater than 5 percent. The remaining 327 vessels would experience a less than 5-percent reduction in revenue, or an increase in revenue.

For *Illex* squid, one alternative considered would set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and a second alternative would set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent

landings in this fishery. Therefore, there would be no constraints, and, thus, no revenue reductions, associated with these specifications. However, the first alternative was considered unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, under the second alternative an ABC of 19,000 mt would not allow the fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected.

For butterfish, the Council considered two alternatives; the first alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock, and, thus, were rejected by the Council.

It has been determined that this rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 17, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, NOAA, 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)(3) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any

remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

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[FR Doc. 01-26688 Filed 10-22-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 011011249-1249-01; I.D. 092701A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Petition for Emergency Rulemaking for Red Snapper

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

ACTION: Notice of agency decision; denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces the denial of a petition for emergency rulemaking for the red snapper fishery in the Gulf of Mexico that was filed with the U.S. Department of Commerce by the Texas Shrimp Association (TSA). TSA's petition requested emergency rulemaking to reduce the 2001 total allowable catch (TAC) in the fishery and to shorten the associated recreational fishing season.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727-570-5305, fax 727-570-5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: TSA petitioned the U.S. Department of Commerce to promulgate an emergency rule to reduce the 2001 TAC in the directed fisheries for red snapper in the Gulf of Mexico from 9.12 million lb (MP)(4.14 million kg) to not more than 3 million lb (1.36 million kg) and to shorten the recreational fishing season as part of the TAC reduction. The petition alleged that overfishing has been occurring in the fishery and will occur again in 2001 without the requested emergency rulemaking. On April 19, 2001, NMFS published a

notice of receipt of the TSA petition and requested public comments on the petition (66 FR 20129). After thorough consideration of the petition and of all public comments received, NMFS has denied TSA's petition for emergency rulemaking.

Basis for Denial of the Petition

The TSA petition states that the following are causes of previous and continuing overfishing (NMFS responses are provided as appropriate):

(1) TSA asserts that the current definition of "optimum yield" (OY) in the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) does not conform to the more rigorous definition of OY required by the Sustainable Fisheries Act (SFA) of 1996, which amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Response: The current definition of OY in the Reef Fish FMP is "any harvest level which maintains, or is expected to maintain, over time a survival rate or biomass into the stock of spawning age to achieve at least 20 percent spawning potential ratio (SPR)." Additionally, the Reef Fish FMP currently requires that overfished red snapper stocks be restored to a level of 20 percent SPR by 2019. However, the Magnuson-Stevens Act and NMFS' National Standard Guidelines (NSG) (63 FR 24212; May 1, 1998) require that the Councils and NMFS develop new definitions of "overfishing" and "overfished" for managed stocks based on the ability of a stock to produce maximum sustainable yield (MSY) on a continuing basis. While NMFS has approved proposed definitions of overfishing that are based on static SPR as a proxy for fishing mortality rate, definitions of overfished and stock rebuilding targets must be biomass-based, as required by the Magnuson-Stevens Act and the NSG. For overfished stocks, the Magnuson-Stevens Act and the NSG require that a recovery plan must be developed to restore overfished stocks to the biomass level capable of producing MSY on a continuing basis (B_{MSY}).

NMFS agrees that these Magnuson-Stevens Act (as amended by the SFA) and NSG requirements represent a more conservative fishery management approach than is reflected in the Reef Fish FMP's current definition of overfishing (when a reef fish stock or stock complex is overfished, overfishing is defined as harvesting at a rate that is not consistent with a program established to rebuild the stock or stock complex to the 20 percent SPR level), which is estimated to be the minimal