

Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

\* \* \* \* \*

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Clermont County (Cincinnati

Gas & Electric-Beckjord), Cuyahoga County, Franklin County, Lawrence County (Allied Chemical-South Point), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Ross County (Mead corporation), Sandusky County (Martin Marietta Chemicals), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

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**PART 81—[AMENDED]**

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the sulfur dioxide table entry for Lucas County to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

OHIO—SO<sub>2</sub>

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *	*	*	*	*
Lucas County: The area east of Route 23 and west of the eastern boundary of Oregon Township.	.....	.....	.....	X
The remainder of Lucas County:	*	*	*	*

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 031104274-4011-02; I.D. 101603A]

RIN 0648-AQ83

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

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

**ACTION:** Final rule, 2004 specifications.

**SUMMARY:** NMFS announces final specifications for the 2004 fishing year for Atlantic mackerel, squid, and butterfish (MSB). This action also specifies an increase in the Illex squid catch limit for squid/butterfish incidental catch permit holders from

5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). In addition, this action corrects the regulations implementing the MSB Fishery Management Plan (FMP) by reinserting regulatory text that was incorrectly removed in the final rule that implemented measures contained in the Atlantic Herring FMP, which was published on December 11, 2000. The intent of this final rule is to promote the development and conservation of the MSB resource.

**DATES:** Effective February 2, 2004.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/ Final Regulatory Flexibility Analysis (FRFA), are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978-281-9273, fax 978-281-9135, e-mail [paul.h.jones@noaa.gov](mailto:paul.h.jones@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Atlantic

Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of research set-asides (RSA) to be used for research purposes.

Proposed 2004 initial specifications were published on November 14, 2003 (68 FR 64579). Public comments were accepted through December 15, 2003. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

**2004 Final Initial Specifications**

The following table contains the final initial specifications and RSA for the 2004 MSB fisheries.

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2004

Specifications	<i>Loligo</i>	<i>Illex</i>	Atlantic Mackerel	Butterfish
Max OY	26,000	24,000	N/A <sup>1</sup>	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,872.4 <sup>4</sup>	24,000	170,000 <sup>2</sup>	5,900
DAH	16,872.4	24,000	170,000 <sup>3</sup>	5,900
DAP	16,872.4	24,000	150,000	5,900
JVP	0	0	5,000	0
TALFF	0	0	0	0
RSA	127.6	0	0	0

<sup>1</sup> Not applicable.

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

<sup>3</sup> Includes 15,000 mt of Atlantic mackerel recreational allocation.

<sup>4</sup> Excludes 127.6 mt for RSA.

**2004 Final Specifications**

*Atlantic Mackerel*

The final rule specifies an Atlantic mackerel DAH of 170,000 mt, which includes a DAP of 150,000 mt, a JVP of 5,000 mt, and a 15,000-mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2004 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 Administrator, Northeast Region, NMFS (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 2004 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

*Loligo Squid*

This final rule specifies a *Loligo* squid IOY of 16,872.4 mt, which is equal to ABC minus the RSA, and subdivides the annual quota into four 3-month quarters, as in prior years. The 2004 quarterly allocations are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons <sup>1</sup>	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II (Apr-Jun)	17.61	2,971.2	N/A
III (Jul-Sep)	17.3	2,918.9	N/A
IV (Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.4	127.6

<sup>1</sup> Quarterly allocations after 127.6 mt RSA deduction.

Also unchanged from 2003, the 2004 directed fishery will be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb *Loligo* squid trip limit per day until the end of the respective quarter. The annual directed fishery will close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb *Loligo* squid trip limit per day for the remainder of the year. Quota overages from Quarter I will be deducted from the allocation in Quarter III, and any overages from Quarter II will be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent will be applied to Quarter III.

**3-Year *Loligo* Specifications**

As noted in the proposed rule, the regulations allow *Loligo* squid specifications to be established for up to 3 years, subject to annual review. The Council will evaluate the need for any changes in 2005 and 2006 during the

quota setting procedure for those years. If no changes are warranted, then the 2004 quota specifications for *Loligo* will remain in effect in 2005 and 2006.

*Illex Squid*

Increase in the *Illex* Squid Incidental Catch Limit

This final rule specifies an increase from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt) per trip to the *Illex* squid catch limit for squid/butterfish incidental catch permit holders. This also represents the trip limit in effect when the directed fishery is closed.

**Correction**

On December 11, 2000, (65 FR 77450) NMFS published a final rule to implement management measures contained in the Atlantic Herring FMP. However, the final rule inadvertently removed § 648.6(a)(2), because the measures were thought to also pertain to Atlantic herring vessels and, therefore, were thought to be redundant with the Atlantic herring processing permit provisions specified at § 648.4(a)(10)(ii). The text previously codified at § 648.6(a)(2) allowed any Atlantic mackerel vessel that exceeded the size or horsepower restrictions specified at § 648.4(a)(5)(iii) to be issued an at-sea processor permit to receive over the side, possess, and process Atlantic mackerel harvested in or from the Exclusive Economic Zone. There were no public comments received on this provision when it was published in December, 2000. In addition, no comments were received on this provision during the proposed rule comment period to reinsert this measure. This measure does not pertain to Atlantic herring vessels and is not redundant with the provision that was established under § 648.4(a)(10)(ii). Therefore, this rule reinserts § 648.6(a)(2), which was removed on December 11, 2000.

## Comments and Responses

Six commenters commented on two issues in the proposed specifications. One other comment was received on the proposed rule, although the comment did not specifically address the proposed specifications.

*Comment 1:* Five commenters supported the proposed zero allocation of Atlantic mackerel TALFF.

*Response 1:* This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

*Comment 2:* Six commenters opposed the proposed Atlantic mackerel JVP specification of 5,000 mt. Five commenters believe shore-based processors would be negatively affected by joint venture operations and recommended JVP be set at zero for 2004. They stated that mackerel processed by foreign vessels competes with the U.S. product in foreign markets. They also stated that the foreign vessels have a competitive advantage in those markets because they have lower operating costs than U.S. shoreside plants and are not affected by tariffs imposed by other nations on U.S. products. Thus, they favor the elimination of such ventures.

One commenter stated that the proposed specification of 5,000 mt JVP reflects the shore-based processor's efforts to thwart potential competition in the global market at the expense of the harvesting sector. The commenter noted that the allocation would not be sufficient to organize an offshore market for U.S. fishermen during 2004, and that past JVP's often provided a market for 20,000 mt of mackerel, and suggested that an allocation of 20,000 mt should be allocated to a Reserve category to be used, "to respond to foreign proposals involving research, introduction of USA fish into non-competitive markets, technology transfer and other mutual benefits."

*Response 2:* The JVP specification was reviewed and discussed by the Council during the annual specification meeting. The Council relied on testimony by industry members who indicated that there was continued activity underway to expand of domestic shore-side processing capacity for Atlantic mackerel. While domestic processing capacity is increasing, maintaining a JVP allocation of 5,000 mt presents an additional opportunity for U.S. vessels to sell Atlantic mackerel. The allocation of 5,000 mt allows JVP operations to continue at recent levels, as JVP landings in recent years have been less than 5,000 mt.

NMFS notes that there are impediments to the organization of 2004

JVP operations in addition to the level of the JVP allocation. NMFS has not received any submissions from parties interested in conducting joint venture activities. Therefore, it would not be possible to conduct a JVP during the first quarter of 2004. NMFS also notes that there is no FMP provision that would authorize the allocation of tonnage into a Reserve Category for the purposes outlined by the commenter who advocated such an allocation.

*Comment 3:* One commenter expressed general support for marine protected areas, objected to RSAs, and requested a reduction of commercial quotas in general.

*Response 3:* This rule implements measures designed to provide for improved utilization of the Federal commercial MSB quotas, and to improve efficiency of these fisheries. While NMFS acknowledges the importance of the issues raised by the commenter, this rule is not the proper mechanism to address these general issues.

## Classification

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

An FRFA was completed for this action that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the discussion in this section. A copy of the IRFA is available from NMFS (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. The description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and this final rule and those discussions are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements.

## Public Comments

Six comments were submitted on the proposed rule. While none of them were specific to the IRFA, several points related to the economic impacts of the measures on the fishing industry and responded to in the Comments and Responses section of this final rule. No changes were made to the final rule as a result of the comments received.

## Number of Small Entities

The number of fishing vessels issued permits to fish in 2003 represent the small entities potentially affected by these measures: 381 for the *Loligo* squid/butterfish directed fishery, 72 for the *Illex* squid directed fishery, 2,407 for the Atlantic mackerel fishery, and 2,119 vessels with incidental catch permits for the squid/butterfish fishery. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

## Minimizing Significant Economic Impacts on Small Entities

Alternatives that were considered to lessen the impacts on small entities are summarized below. Though alternatives for each species that would have set DAH at levels higher than those in this final rule were analyzed, these alternatives were not necessary to minimize significant economic impacts on small entities, and would violate provisions of the FMP that were established to prevent overfishing. Landings of these species have been lower than the DAH specified for these fisheries in recent years, therefore, the DAH specifications of 170,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, 5,900 mt for butterfish, and 17,000 mt for *Loligo* squid represent no constraint on vessels in these fisheries, and there is no need to implement higher allocations to lessen impacts.

One alternative considered for the Atlantic mackerel fishery would have maintained the 2004 JVP specification at the same level as 2003, 10,000 mt. One comment received on the proposed specifications suggested that the 2004 JVP specification be specified at 20,000 mt. Preliminary 2003 commercial landings through June 2003, have exceeded the total landing for 2002 and are almost three times the average commercial landings for 1997–2001. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2004 specifications for Atlantic mackerel at the 2003 level or by increasing to 20,000 mt. In recent years, JVP operations have landed less than 5,000 mt, even when JVP allocations have been specified at higher levels. Therefore, these alternatives were not deemed necessary to minimize negative impacts. In addition, there was concern that it could negatively impact the potential for expansion of the shore-side processing sector of this industry.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Atlantic mackerel, squid and butterfish fishing vessel or dealer permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following web site: <http://www.nero.noaa.gov/>.

NMFS finds good cause under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. This action establishes annual and seasonal quotas for the managed species, which are used for the purpose of closing the fishery when the quotas are reached, and a delay would prevent the agency from implementing this action in a timely manner to establish these provisions and effectively manage these fishery. This waiver is, therefore, justified under 5 U.S.C. 553(d)(3), because the measures are necessary in order for NMFS to carry out its function of conserving and managing these fisheries. The establishment of the Loligo squid quota, in particular, requires a waiver under this provision because the quota is allocated into quarterly periods, and fishing activity will begin on January 1, 2004. Landings data for Loligo squid in previous years

indicate that landings are highly variable and largely dependent on availability. The unpredictable nature of the landings could compromise the initial quarterly quota if no closure mechanism is in place due to a delay in the effectiveness of the specification. Failure to implement timely closures could result in quota overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Timely harvest closures were required during the early part of the last three years. Furthermore, there is no requirement for vessels to modify fishing gear or come into compliance with new gear requirements thereby lessening the need for the 30-day delayed effectiveness.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 23, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.4, the first sentence of paragraph (a)(5)(ii) is revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(5) \* \* \*

(ii) *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 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. \* \* \*

\* \* \* \* \*

■ 3. In § 648.6, paragraph (a)(2) is added to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) \* \* \*

(2) *At-sea processors.*

Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

\* \* \* \* \*

■ 4. In § 648.22, paragraph (c) is revised to read as follows:

**§ 648.22 Closure of the fishery.**

\* \* \* \* \*

(c) Incidental catches. During the closure of the directed fishery for mackerel, the possession 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 possession limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the possession limit for *Illex* is 10,000 lb (4.54 mt). Vessels may not land more than these limits during any single calendar day, which is defined as the 24-hour period beginning at 0001 hours and ending at 2400 hours.

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**BILLING CODE 3510-22-S**