

in Florida as a consequence of the proposed 2005 quota compared to 2003 landings in that state.

Alternative 3 represents a 9 percent decrease in the total allowable commercial landings for bluefish in 2005 versus 2004. The 2004 recreational harvest limit under this alternative would be 34 percent higher than the

estimated recreational landings in 2003. Under this scenario, a total of 61 vessels would incur revenue losses of from 5 to 39 percent due to the reduction in the commercial quota. An additional 244 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. The same

conclusions as were drawn under Alternative 2 for fishermen that land bluefish in North Carolina and Florida can be applied to this alternative. Table 2 (below) contains a summary of the allocations to the recreational and commercial fisheries under the three alternatives.

TABLE 2.—COMPARISON (IN LBS) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	2005 Initial TAL	2005 Initial commercial quota	2005 Initial recreational harvest limit	2005 Research set-aside	2005 Adjusted commercial quota	2005 Adjusted recreational harvest limit
<b>Quota Alternative 1 (Status Quo/No Action)</b>						
Council Preferred Alternative .....	30,853,578	10,500,000	20,353,578	297,750	10,398,671	20,157,157
<b>Quota Alternative 2</b>						
Projection Based Alternative .....	30,853,578	5,245,108	25,608,470	297,750	5,194,491	25,361,337
<b>Quota Alternative 3</b>						
Based on 1995 to 2000 Commercial TAL .....	30,853,578	9,583,000	21,270,578	297,750	9,490,520	21,065,308

The Council further analyzed the impacts on revenues of the proposed RSA specified in all three alternatives. The social and economic impacts of this proposed RSA are expected to be minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as \$86,348 dockside, based on an average 2003 ex-vessel price of \$0.29 per pound for bluefish. Assuming an equal reduction among all 853 active dealer reported vessels, this could mean a reduction of about \$101 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than a 1 percent decrease), if 1 percent of the TAL is used for research. It is unlikely that there would be negative economic impacts as a result of the RSA. A full analysis is available from the Council (see ADDRESSES).

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

Dated: March 15, 2005.

**Rebecca Lent,**

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

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 041221358-5065-02; I.D. 121504A]

**RIN 0648-AR56**

**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, 2005 initial specifications.

**SUMMARY:** NMFS announces final specifications for the 2005 fishing year for the Atlantic mackerel, squid, and butterfish (MSB) fisheries. This action also implements a 3.0-inch (7.62-cm) minimum codend mesh size requirement for butterfish otter trawl trips greater than 5,000 lb (2,268 kg). In addition, this action includes three regulatory language changes that reflect previously approved measures in the FMP. The intent of this final rule is to promote the development and conservation of the MSB resource.

**DATES:** Effective April 20, 2005, through December 31, 2005.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (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/IRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Proposed 2005 initial specifications were published on January 10, 2005 (70 FR 1686). Public comments were accepted through February 9, 2005. 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.

2005 Final Initial Specifications  
The following table contains the final initial specifications and research set aside (RSA) for the 2005 MSB fisheries. For 2005, two project proposals requesting *Loligo* squid set-aside landings were recommended for approval and will be forwarded to the NOAA Grants Office for award, for a total RSA of 255.1 mt. Consistent with the recommendations, the quotas in this final rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA

Grants Office for any reason, NMFS will give notice of an adjustment to the annual quota to return the unawarded set-aside amount to the fishery.

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, 2005.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	26,000	24,000	N/A <sup>1</sup>	12,175
ABC	17,000	24,000	335,000	4,545
IOY	16,744.9 <sup>4</sup>	24,000	115,000 <sup>2</sup>	1,681
DAH	16,744.9	24,000	115,000 <sup>3</sup>	1,681
DAP	16,744.9	24,000	100,000	1,681
JVP	0	0	0	0
TALFF	0	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 335,000 mt.

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

<sup>4</sup>Excludes 255.1 mt for Research Set-Aside.

OY is optimum yield; ABC is allowable biological catch; IOY is initial optimum yield; DAH is domestic annual harvest; DAP is domestic annual processing; JVP is joint venture processing; and TALFF is total allowable level of foreign fishing.

NMFS also implements three clarifications to the Atlantic mackerel, squid, and butterfish regulations. The first, in § 648.21, removes references to the dates on which the proposed and final rules for the annual specifications must be published by the Administrator, Northeast Region, NMFS (Regional Administrator), because it is not necessary to specify these dates in regulatory text. The second clarification, in § 648.23, revises a confusing sentence to make it clearer. The third clarification, in § 648.4(a)(5)(i), clarifies that the *Illex* permit moratorium is in effect until July 1, 2009.

### 2005 Final Specifications

#### *Atlantic Mackerel*

The final rule specifies an Atlantic mackerel IOY of 115,000 mt, as well as a DAH of 115,000 mt (which includes 15,000 mt for the recreational fishery), a JVP of zero, and a TALFF of zero.

#### *Loligo Squid*

In 2004, the Council specified the annual quota and other measures for *Loligo* squid for a period of up to 3 years (i.e., 2004 - 2007). After a review of available information, the Council recommended no change to the *Loligo* quota or other measures in 2005, and NMFS concurs with this recommendation. Based on research projects approved for 2005, the Council recommended that the RSA for scientific research for *Loligo* squid not exceed 255.1 mt. This final rule specifies a 2005 Max OY for *Loligo* squid of 26,000 mt, an ABC of 17,000 mt, and an IOY is 16,744.9, which takes into account the 255.1-mt RSA. The 2005 quarterly allocations for *Loligo* are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons <sup>1</sup>	Research Set-aside
I (Jan-Mar)	33.23	5,564.3	N/A
II (Apr-Jun)	17.61	2,948.8	N/A
III (Jul-Sep)	17.3	2,896.9	N/A
IV (Oct-Dec)	31.86	5,334.9	N/A
Total	100	16,744.9	255.1

<sup>1</sup>Quarterly allocations after 255.1-mt RSA deduction.

Also unchanged from 2004, the 2005 directed fishery will be closed in Quarters I-III when 80 percent of the periods' allocation are 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 will 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 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 will 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.

#### *Illex Squid*

This final rule specifies that Max OY, IOY, ABC and DAH will be 24,000 mt, which maintains the status quo. The *Illex* directed fishery will be closed when 95 percent of the quota (22,800 mt) is harvested. The catch limit for squid/butterfish incidental catch permit

holders will be 10,000 lb (4,536 kg). This also represents the trip limit in effect when the directed fishery is closed.

#### *Butterfish*

This final rule specifies that the IOY will be 1,681 mt, which will achieve the target fishing mortality rate (75 percent of Fmsy) specified in the FMP based on the most recent stock assessment for the species (Stock Assessment Review Committee (SARC) 38). This final rule also implements a 3.0-inch (7.62-cm) minimum codend mesh size requirement for butterfish otter trawl trips greater than 5,000 lb (2,268 kg), the level that would qualify as a directed butterfish trip.

### Comments and Responses

*Comment 1:* Five comments from industry members and associations and one comment from the Council supported the proposed specifications for an IOY/DAH of 115,000 mt, though they believed the industry could potentially harvest the 165,000 mt recommended by the Council. All six commenters raised the same concern about the timeliness of an in-season adjustment for the mackerel OY and DAH, should one become necessary. They requested that the final 2005 specifications include a clear and specific contingency provision that would enable NMFS to implement a timely in-season adjustment. They suggested that NMFS use vessel trip report data and dealer reports, in conjunction with catch-trend analysis from previous years, to track mackerel harvest with a minimum amount of lag time. They also suggested that NMFS initiate the in-season adjustment process when a trigger amount of mackerel is caught; for example, when the 2005 projected catch is equal to the

previous year's catch (roughly 54,000 mt) or some reasonable percentage (e.g., 70 percent of the IOY) of the total available DAH of 100,000 mt.

*Response 1:* NMFS agrees that it is important to keep close watch on the mackerel catch throughout 2005 so that, should an in-season adjustment become necessary, it can be implemented as quickly as possible. NMFS will take advantage of all data sources and projection techniques to ensure that it can achieve that goal. NMFS sees no need to specify the contingency provision that the commenters requested, e.g., a pre-established trigger for increasing OY and DAH. NMFS will closely monitor landings in order to take any necessary action on an in-season adjustment as noted in the proposed rule.

*Comment 2:* One private citizen stated that all quotas should be cut by 50 percent this year and by 10 percent each succeeding year. The commenter added that the maximum sustainable yield (MSY) estimates are too high, but provided no justification for these claims.

*Response 2:* The quotas, as well as the MSY calculations that form the basis of this final rule, are all based on the best available science, as required by National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act.

#### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

##### *Summary of Significant Issues Raised in Public Comments*

Seven sets of comments were submitted on the proposed rule, but none were specific to the IRFA or the economic impacts of the rule.

##### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

The number of potential fishing vessels in the 2005 fisheries are 381 for *Loligo* squid/butterfish, 72 for *Illex* squid, 2,407 for Atlantic mackerel, and 2,119 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. There are no large entities participating in this fishery, as defined in section 601 of the Regulatory Flexibility Act (RFA). Therefore, there are no disproportionate economic impacts on small entities.

##### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

##### *Minimizing Significant Economic Impacts on Small Entities*

The annual setting of the specifications focuses on the allocation of mackerel, squid, and butterfish to various groups and for various purposes. Alternatives that were considered to lessen the impacts on small entities are summarized below.

Three alternatives for mackerel were evaluated. One would have set IOY at 175,000 mt. The two other alternatives would have set IOY at 165,000 mt. Neither of these IOYs would constrain vessels in these fisheries. Absent such a constraint, no impacts on revenues in this fishery would be expected as a result of any of these alternatives. Two of these alternatives one setting IOY at 165,000 mt and the other setting it at 175,000 mt would have set the ABC at 347,000 mt. These two alternatives were rejected on biological grounds because that level of ABC would not be consistent with the overfishing rule adopted in Amendment 8 to the Fishery Management Plan (F=0.25 yield estimate of 369,000 mt minus the estimated Canadian catch of 34,000 mt). Furthermore, the Atlantic mackerel alternative that would have set IOY at 175,000 mt was rejected because it would have been too high in light of social and economic concerns relating to TALFF. The Atlantic mackerel alternative that would set IOY at 175,000 mt would also allocate 5,000 mt for JVP. This allocation of JVP was rejected because it was concluded that

U.S. processing capacity is sufficient to process the entire DAH. The third alternative for mackerel considered was one that would have set IOY at 165,000 mt, and ABC at 335,000 mt. Although this ABC is the same as in the proposed action, this IOY was rejected because it would have been too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors, as explained in detail in the proposed rule.

For *Illex*, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at a level higher than the 24,000 mt established in this rule-30,000 mt. This alternative would allow harvest 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 Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at 9,131 mt. These amounts exceed the landings of this species in recent years. Therefore, neither alternative would constrain vessels in this fishery. In the absence of such a constraint, neither of these alternatives would reduce revenues in the fishery. However, both of these alternatives were rejected because they would likely result in overfishing and additional depletion of the spawning stock biomass.

##### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 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 permits issued for the Atlantic mackerel, squid, and butterfish fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may

be found at the following web site:  
<http://www.nmfs.gov/ro/doc/nero.html>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 15, 2005

**Rebecca Lent**

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

■ For the reasons set out above 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 introductory heading of paragraph (a)(5)(i) is revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(5) \* \* \*

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid moratorium is in effect until July 1, 2009)*—

\* \* \* \* \*

■ 3. In § 648.14, paragraphs (a)(74) and (p)(5) are revised and new paragraph (p)(11) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(74) Possess nets or netting with mesh not meeting the minimum size requirements of § 648.23, and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* or butterflyfish harvested in or from the EEZ.

\* \* \* \* \*

(p) \* \* \*

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterflyfish specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

\* \* \* \* \*

(11) Possess 5,000 lb (2.27 mt) or more of butterflyfish unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

\* \* \* \* \*

■ 4. In § 648.21, paragraph (d) is revised to read as follows:

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

\* \* \* \* \*

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterflyfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the **Federal Register** notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final

specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

\* \* \* \* \*

■ 5. In § 648.23, paragraph (a) is revised to read as follows:

**§ 648.23 Gear restrictions.**

(a) *Mesh restrictions and exemptions.*

(1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 5,000 lb (2.27 mt) or more of butterflyfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 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.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 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 codend to the head rope, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

Point	N. Lat.	W. Long.
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'
M9	42°10.0'	67°10.0'
M10	41°18.6'	66°24.8'
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'

Point	N. Lat.	W. Long.	Point	N. Lat.	W. Long.	
M16	40°18.7'	69°40.0'	M24	35°28.0'	74°52.0'	(48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (c) and (d) of this section, when the vessel is landward of the specified coordinates.
M17	40°21.0'	71°03.0'				* * * * *
M18	39°41.0'	72°32.0'				[FR Doc. 05-5543 Filed 3-18-05; 8:45 am]
M19	38°47.0'	73°11.0'				<b>BILLING CODE 3510-22-S</b>
M20	38°04.0'	74°06.0'				
M21	37°08.0'	74°46.0'				
M22	36°00.0'	74°52.0'				
M23	35°45.0'	74°53.0'				

Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 7/8 inches