

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600 and 648**

[Docket No. 051209329-6046-02; I.D. 120205A]

RIN 0648-AT19

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2006 Specifications**

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

**ACTION:** Final rule; 2006 Atlantic mackerel, squid and butterfish specifications.

**SUMMARY:** NMFS announces final specifications for the 2006 Atlantic mackerel, squid, and butterfish (MSB) fisheries. The intent of this final rule is to promote the development and conservation of the MSB resources.

**DATES:** Effective April 3, 2006, through December 31, 2006.

**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: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA) and the summary of impacts and alternatives contained in this final rule. No comments were received on the IRFA or the economic impacts of the rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 2298.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Proposed 2006 specifications for the MSB fisheries were published on December 27, 2005 (70 FR 76436), with public comment accepted through January 11, 2006. These final specifications are unchanged from those that were proposed (see Table 1). A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 648.21 and § 600.516(c), 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 amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for Atlantic mackerel. In addition, the regulations at § 648.21(g) allow the specification of research quotas (RQ) to be used for research purposes.

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, 2006.

| Specifications | <i>Loligo</i>         | <i>Illex</i> | Mackerel             | Butterfish |
|----------------|-----------------------|--------------|----------------------|------------|
| Max OY         | 26,000                | 24,000       | N/A                  | 12,175     |
| ABC            | 17,000                | 24,000       | 335,000              | 4,545      |
| IOY            | <sup>1</sup> 16,872.5 | 24,000       | <sup>2</sup> 115,000 | 1,681      |
| DAH            | 16,872.5              | 24,000       | <sup>3</sup> 115,000 | 1,681      |
| DAP            | 16,872.5              | 24,000       | 100,000              | 1,681      |
| JVP            | 0                     | 0            | 0                    | 0          |
| TALFF          | 0                     | 0            | 0                    | 0          |

<sup>1</sup> Excludes 127.5 mt for RQ.

<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.

***Loligo* squid**

The *Loligo* squid quota is divided into quarterly allocations (See Table 2).

TABLE 2. PERCENT ALLOCATIONS OF *Loligo* QUOTA

| Quarter       | Per-cent | Metric Tons <sup>1</sup> | RQ    |
|---------------|----------|--------------------------|-------|
| I (Jan-Mar)   | 33.23    | 5,606.70                 | N/A   |
| II (Apr-Jun)  | 17.61    | 2,971.30                 | N/A   |
| III (Jul-Sep) | 17.30    | 2,918.90                 | N/A   |
| IV (Oct-Dec)  | 31.86    | 5,375.60                 | N/A   |
| Total         | 100      | 16,872.50                | 127.5 |

<sup>1</sup> Quarterly allocations after 127.5 mt RQ deduction.

The 2006 directed fishery for *Loligo* will be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels thereafter 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 thereafter 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 overage 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.

### Comments and Responses

There were five sets of comments received. Four were from industry members and associations: Garden State Seafood Association; the American Pelagic Association; the East Coast Pelagic Association, and Atlantic Pelagic Seafood. The fifth was from a private citizen.

*Comment 1:* Four commenters supported setting JVP and TALFF at zero.

*Response:* This action sets JVP and TALFF for mackerel at zero.

*Comment 2:* Four commenters were concerned about NMFS's ability to use the FMP's in-season adjustment mechanism, should it become necessary to raise mackerel OY, DAH, and DAP based on industry performance, and two of them requested that the final 2006 specifications include a provision that would enable NMFS to implement a speedier in-season adjustment.

*Response:* NMFS will keep close watch on mackerel catch throughout 2006 so that, should an in-season adjustment become necessary, NMFS can get one in place as quickly as possible. The in-season adjustment procedure is the only regulatory mechanism available for making such a modification to the specifications outside of the annual specifications process. This procedure is specified in the FMP, and Council action would be required to enact a modification. NMFS will use all available data sources and projection techniques to identify the need for such an adjustment as early as possible.

*Comment 3:* One commenter stated that the proposed Atlantic mackerel DAH was too low, and should be set at 165,000 mt.

*Response:* The Atlantic mackerel DAH is set at 100,000 mt to take into account the actual performance of the fishery in recent years, which has never exceeded 60,000 mt, and often has fallen well below 50,000 mt; and the industry's expectation of increased harvests in 2006 as a result of recent investments in vessels and shoreside processing facilities. This figure represents a

balance between actual past harvest and reasonably expected increases in harvests for 2006.

### Classification

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

This final rule contains the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA consists of the IRFA and the summary of impacts and alternatives contained in this final rule. No comments were received on the IRFA or the economic impacts of the rule. A copy of the IRFA is available from the Council (see **ADDRESSES**). A summary of the analysis follows:

#### *Statement of Objective and Need*

A statement of the need for and objectives of the rule is contained in the preamble to the proposed rule and is not repeated here.

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

The number of potential fishing vessels in the 2006 fisheries are 406 for Loligo squid/butterfish, 80 for *Illex* squid, 2,414 for Atlantic mackerel, and 2,016 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. Because all entities participating in this fishery are small entities, as defined in Section 601 of the Regulatory Flexibility Act, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

#### *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 IOY specification under the action for Atlantic mackerel (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt; in 2003 they were 30,738 mt; and for 2004 they were 53,781 mt. Therefore, no reductions in revenues for the mackerel

fishery are expected as a result of this action. However, there is the potential for an increase in revenues as a result of this action. Based on 2004 data, the mackerel fishery could increase its landings by 46,219 mt in 2006, if it takes the entire IOY. In 2003, the last year for which there are complete financial data, the average value for mackerel was \$234 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$10,815,246 as a result of this action.

The IOY specification for *Illex* (24,000 mt) represents a slight constraint on revenues in this fishery, as compared to the landings in 2004. *Illex* landings for 2001–2003 averaged 4,350 mt; in 2003 they were 6,389 mt; and in 2004 they were 25,059 mt. Therefore, the proposed action represents a reduction in landings, from 2004, of 1,059 mt. In 2003, the last year for which there are complete financial data, the average value for *Illex* was \$626 per mt. Using this value, the *Illex* fishery could see a decrease in revenues of \$662,934 as a result of the proposed action. But, the *Illex* landings for 2004 were 4.4 percent higher than the approved quota for that year. Thus, the better comparison to use in evaluating the impact of the action is how that action compares to what would have happened had the 2004 landings reached, but not exceeded the quota. If the quota had not been exceeded in 2004, then this action would not represent a potential reduction in *Illex* landings. This action thus represents no constraint on the fishery in 2006.

Under the final specifications for butterfish (IOY = 1,681 mt), landings will not be constrained relative to the 2001–2004 fisheries. During the period 2001–2004, annual butterfish landings averaged 1,535 mt. Compared to the most recent 2 years for which complete information is available, 2003 and 2004, when landings were 473 mt and 422 mt, respectively, the action is not expected to reduce revenues in this fishery, but could increase those revenues. Based on 2003 data, the value of butterfish was \$1,269 per mt.

The Council analysis evaluated two additional alternatives for mackerel. One of these alternatives would have set the ABC at 347,000 mt. This was rejected on biological grounds because that level of ABC is not consistent with preventing overfishing, as defined in the FMP (the overfishing threshold,  $F=0.25$ , results in a yield estimate of 369,000 mt, minus the estimated Canadian catch of 34,000 mt, that is less than 347,000 mt). Both of the alternatives would have set IOY at 165,000 mt. This IOY would not represent a constraint on vessels in this

fishery, so no impacts on revenues in this fishery would be expected as a result of either of these alternatives. However, an IOY of 165,000 mt was rejected by the Council because it was 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.

For *Illlex*, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 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 that alternative. 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 *Illlex* squid.

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

#### *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 butterfly 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.nero.noaa.gov>.

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

Dated: February 24, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 050921244-6049-02; I.D. 091305A]

**RIN 0648-AP38**

#### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Limited Entry Fixed Gear Sablefish Fishery Permit Stacking Program

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing portions of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for 2007 and beyond. Amendment 14, approved by NOAA in August 2001, created a permit stacking program for limited entry permits with sablefish endorsements. Amendment 14 was intended to provide greater season flexibility for sablefish fishery participants and to improve safety in the primary sablefish fishery.

**DATES:** Effective April 3, 2006.

**ADDRESSES:** Copies of Amendment 14 and its Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 866-806-7204. Copies of the Finding of No Significant Impact (FONSI), Supplemental Initial Regulatory Flexibility Analysis (IRFA), Supplemental Final Regulatory Flexibility Analysis (FRFA), and the Small Entity Compliance Guide (SECG) are available from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, phone: 206-526-6150.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to D. Robert Lohn,

Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, and by e-mail to [DavidRostker@omb.eop.gov](mailto:DavidRostker@omb.eop.gov), or by fax to (202) 395-7285.

#### **FOR FURTHER INFORMATION CONTACT:**

Jamie Goen or Kevin Ford (Northwest Region, NMFS), phone: 206-526-4646 or 206-526-6115; fax: 206-526-6736 and; e-mail: [jamie.goen@noaa.gov](mailto:jamie.goen@noaa.gov) or [kevin.ford@noaa.gov](mailto:kevin.ford@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

##### **Background**

Amendment 14 introduced a permit stacking program to the limited entry, fixed gear primary sablefish fishery. Under this permit stacking program, a vessel owner may register up to three sablefish-endorsed permits for use with their vessel to harvest each of the primary season sablefish cumulative limits associated with the stacked permits. Amendment 14 also allows a season up to 7 months long, from April 1 through October 31, which allows an ample period for vessels to pursue their primary season sablefish cumulative limits.

This final rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The portions of Amendment 14 that were implemented for the 2001 primary sablefish season allowed individual fishery participants to more fully use their existing vessel capacity, reduced overall capacity in the primary fixed gear sablefish fishery, and significantly increased safety in the fishery. This rule does not change any of those benefits, but further completes the implementation of Amendment 14 by preventing excessive fleet consolidation, ensuring processor access to sablefish landings from the primary season, and maintaining the character of the fleet through owner-on-board requirements. The background and rationale for the Council's recommendations, as well as an explanation of why NMFS will not be implementing the Council's recommendation for a hail-in requirement and some modifications to the permit stacking program that the Council is considering for future implementation are summarized in the