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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The commercial fishery for Atlantic group king mackerel in the South Atlantic and Mid-Atlantic EEZ is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic Region (FMP). The SAFMC has approval from the Mid-Atlantic Fishery Management Council (MAFMC) to manage Atlantic group king mackerel in the Mid-Atlantic region. The FMP was prepared jointly by the SAFMC and the Gulf of Mexico Fishery Management Council (GMFMC), with the approval of the MAFMC, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The SAFMC anticipates that future action may be necessary to further control effort or participation in the Atlantic group king mackerel fishery through additional management actions. The SAFMC has concerns about future shifts in fishing effort that would increase catches of Atlantic group king mackerel in the South Atlantic and Mid-Atlantic EEZ, and wants to prevent the possibility of excess harvesting capacity developing for the Atlantic group king mackerel fishery. Should the SAFMC and GMFMC take future action to restrict participation in the fishery for Atlantic group king mackerel, they may use June 15, 2004, as a possible control date. This control date replaces an existing control date of October 16, 1995 (60 FR 53567, October 16, 1995). Implementation of any program to restrict access in the Atlantic group king mackerel fishery would require: preparation of an amendment to the FMP and publication of a notice of availability of the amendment with a comment period, publication of a proposed rule with a public comment period, approval of the amendment, and issuance of a final implementing rule.

Consideration of a control date does not commit the SAFMC, the GMFMC, or NMFS to any particular management regime or criteria for entry into the commercial Atlantic group king mackerel fishery. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. Use of the June 15, 2004 control date in future management actions would mean anyone entering the fishery after that date would not be assured of future access. Nevertheless, even fishermen who are permitted prior

to the June 15, 2004 control date are not guaranteed future participation in the fishery. The SAFMC may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry into the fishery. The SAFMC subsequently may choose a different control date or they may choose a management regime without using a control date. The SAFMC also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

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

Dated: November 29, 2006.

Samuel D. Rauch III,

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

[FR Doc. E6-20588 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 061124307-6307-01; I.D. 112106A]

RIN 0648-AT65

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action also proposes to modify existing management measures to improve the monitoring and management of the squid fisheries. Specifically, trimester quota allocations for the *Loligo* squid fishery and an increased *Loligo* squid incidental catch limit for *Illex* squid moratorium vessels are proposed for 2007. This action also requests public comment concerning the possibility of an inseason adjustment to increase the mackerel harvest, if landings approach proposed harvest limits. Lastly, this action would clarify, update, and correct existing regulatory language that

is misleading or incorrect. These proposed specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on January 4, 2007.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (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.nmfs.gov>.

Written comments on the proposed rule may be sent by any of the following methods:

- E-mail to the following address: 2007MSBSpex@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments on 2007 MSB Specifications";

- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>;

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2007 MSB Specifications"; or

- Fax to Patricia A. Kurkul, (978) 281-9135.

FOR FURTHER INFORMATION CONTACT:

Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:**Background**

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 (RQ) and DAH, with no TALFF specified for squid. For butterflyfish, the regulations specify that a butterflyfish bycatch TALFF will be specified only if TALFF is specified for Atlantic mackerel.

For 2007, the Council recommended the consideration of RQ of up to 3 percent of the IOY for *Loligo* and *Illex* squid. The RQ would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2007 based on research priorities previously identified by the Council (70 FR 76253, December 23, 2005). The deadline for submission was February 21, 2006. On May 2, 2006, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panel comments, 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 RQ of up to 510 mt. The commercial *Loligo* squid quota in this proposed rule has been adjusted to allow for RQ. If the award is 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.

At its June 20–22, 2006, meeting in Wilmington, DE, the Council recommended 2007 MSB specifications. The recommended specifications for *Loligo* squid, *Illex* squid, and butterflyfish are the same as those implemented in 2006. For mackerel, the Council recommended a reduced ABC, based on re-estimated biological reference points from the most recent stock assessment and increasing Canadian catch. The IOY, DAH, DAP, JVP, and TALFF are the same as those implemented in 2006. To improve monitoring and management of the squid fisheries, the Council also recommended modifying existing management measures. In brief, it recommended that the 2007 commercial *Loligo* squid quota be divided into trimesters, rather than into quarters as it has been since 2001, and that the *Loligo* squid incidental catch limit for *Illex* squid moratorium vessels fishing seaward of the *Loligo* squid exemption line (approximately the 50–fm (91–m) depth contour) during an

August closure of the *Loligo* squid fishery would increase from 2,500 lb (1.13 mt) up to 10,000 lb (4.54 mt). The Council delayed recommending trimester quota allocations until its August 2006 meeting, when additional information on the seasonality of historic *Loligo* squid landings was presented by the Council staff. The Council also discussed the possibility of an inseason adjustment to the mackerel harvest, if landings approach the proposed IOY. Finally, the Council recommended that up to 3 percent of the ABC, IOY, DAH, and DAP for *Loligo* and *Illex* squid be set aside for scientific research in 2007.

At its August 1–3, 2006, meeting in Philadelphia, PA, the Council recommended trimester quota allocations for the *Loligo* squid fishery and clarified the *Loligo* squid incidental catch limit for *Illex* squid vessels. The Council recommended the following *Loligo* squid trimester allocations: Trimester I (January–April), with 43 percent of the quota; Trimester II (May–August), with 17 percent of the quota; and Trimester III (September–December), with 40 percent of the quota. Because the increased *Loligo* squid limit for *Illex* squid vessels, during an August closure of the directed *Loligo* squid fishery, is intended to be an incidental catch limit, the Council also recommended that the increased limit would only be available to *Illex* squid vessels that had a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

Issue of Concern; Incidental *Loligo* Squid Possession Limit for the *Illex* Squid Vessels

The issue of incidental catch of *Loligo* squid in the *Illex* squid fishery was identified several years ago when large amounts of *Loligo* squid discards were reported in vessel trip reports by *Illex* squid vessels during closures of the directed *Loligo* squid fishery in the summer and fall of 2000. Analyses developed for Amendment 9 to the FMP indicated that the *Illex* squid fishery occurs primarily during June–November in offshore waters and that both squid species can co-occur during September–November on the *Illex* squid fishery grounds when the *Loligo* squid begin to move offshore. Because of the seasonal co-occurrence of the two squid species, members of the directed *Illex* squid fishery testified at Council meetings that the 2,500–lb (1.13–mt) incidental *Loligo* squid possession limit during closures of the *Loligo* squid fishery creates compliance problems for the *Illex* squid fishery because vessels catch more than 2,500 lb (1.13 mt) of *Loligo* squid when the species mix. In an effort to reduce

regulatory discarding and allow more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommends increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery during *Loligo* squid fishery closures. Specifically, for 2007 only, during August closures of the *Loligo* squid fishery, *Illex* squid moratorium vessels fishing seaward of the small mesh exemption line (approximately the 50–fm (91–m) depth contour) would be permitted to possess and land up to 10,000 lb (4.54 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board. This measure is recommended for 1 year only, and the Council intends to re-assess it next year.

The purpose of this proposed measure is to allow *Loligo* squid that would otherwise become regulatory discards to be landed. The Council recommended an increase in the incidental *Loligo* squid trip limit from 2,500 lb (1.13 mt) to 10,000 lb (4.54 mt) because analyses prepared for Amendment 9 suggest a 10,000–lb (4.54–mt) limit would account for 92 percent of observed *Illex* squid trips during which *Loligo* squid were discarded. While *Loligo* and *Illex* squid primarily co-occur during September–November, the Council specified the increased incidental *Loligo* squid trip limit for August because, under the trimester allocations, the directed *Loligo* squid fishery is more likely to be closed in August than during September–November. Additionally, the Council recommends allowing this increased limit only for vessels fishing seaward of the 50–fm (91–m) line that defines the current small mesh exemption area for the *Illex* squid fishery.

Despite the Council's efforts to address regulatory discards of *Loligo* squid in the *Illex* squid fishery, NMFS is concerned about the enforceability of the measure. The small mesh exemption line, which approximates the 50–fm (91–m) depth contour, was implemented for the *Illex* squid fishery because *Illex* squid are not generally available to the fishery shoreward of this line. The *Illex* squid fishery is exempt from the 1–7/8 inch (48–mm) minimum mesh requirement for the *Loligo* squid fishery in the exemption area. However, *Loligo* squid are widely distributed shoreward of this line. The Council recommended no mechanisms to assure that NMFS could determine if vessels issued *Illex* squid permits fish for *Loligo* squid shoreward of the small mesh exemption line (e.g., Vessel Monitoring Systems or trip

declarations). In addition, analyses presented in the development of Amendment 9 suggest that increasing the incidental trip limit to 10,000 lb (4.54 mt) could encourage the targeting of *Loligo* squid, because *Loligo* squid are more valuable than *Illex* squid.

In a letter dated June 13, 2006, NMFS urged the Council to carefully consider implementation aspects associated with this measure, such as monitoring and enforcement. NMFS is including the measure in this proposed rule, but continues to have serious concerns

about the proposal. NMFS will review public comment and make a final determination about the proposed measure in the final specifications.

2007 Proposed Specifications and Management Measures

TABLE 1. PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2007 FISHING YEAR.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	26,000	24,000	N/A	12,175
ABC	17,000	24,000	186,000	4,545
IOY	16,490 ¹	24,000	115,000 ²	1,681
DAH	16,490	24,000	115,000 ³	1,681
DAP	16,490	24,000	100,000	1,681
JVP	0	0	0	0
TALFF	0	0	0	0

¹ Excludes 510 mt for Research Quota (RQ)

² IOY may be increased during the year, but the total ABC will not exceed 186,000 mt.

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

Atlantic Mackerel

The status of the Atlantic mackerel stock was most recently assessed at the 42nd Stock Assessment Review Committee (SARC) in late 2005. SARC 42 reconsidered the biological reference points (BRP) for Atlantic mackerel specified in Amendment 8 to the FMP and provided new estimates for these reference points, including the fishing mortality rate (F) that produces maximum sustainable yield (MSY), or F_{msy} , the spawning stock biomass that produces MSY (SSB_{msy}), and the target F to be used in establishing the annual quota. These reference points were re-estimated to be $F_{msy} = 0.16$ (previously 0.45), $SSB_{msy} = 644,000$ mt (previously 890,000 mt), and $F_{target} = 0.12$ (previously 0.25). F for Atlantic mackerel in 2004 was estimated to be 0.05, and spawning stock biomass was estimated at 2.3 million mt.

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with F_{MSY} is exceeded. SARC 42 concluded that the Atlantic mackerel stock is not overfished and overfishing is not occurring. When SSB is greater than SSB_{msy} , the target F is 0.12. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from F_{msy} at SSB_{msy} to zero at 161,000 mt SSB (1/4 of SSB_{msy}), and the target F decreases linearly from F_{target} at SSB_{msy} to zero at 1/2 SSB_{msy} . Annual quotas are to be specified that correspond to the target F resulting from this control rule.

Based on the most recent stock assessment, the Atlantic mackerel SSB is currently above 644,000 mt, so the target F for 2007 is 0.12. According to

the FMP, mackerel ABC must be calculated using the formula $ABC = T - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target F. The yield associated with the target $F=0.12$ is 238,000 mt. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2007 has been increased from the 2006 estimate of 34,000 mt to 52,000 mt. Thus, 238,000 mt minus 52,000 mt results in a proposed 2007 mackerel ABC of 186,000 mt.

The Council recommended, and NMFS is proposing, an IOY of 115,000 mt. The Council believes that this level of harvest would provide the greatest overall benefit to the Nation with respect to food production and recreational opportunities, and would allow for an increase in domestic landings. In recent years, domestic mackerel landings have been increasing due to major investments in the domestic mackerel processing sector. Mackerel landings in 2003 totaled 34,298 mt, while preliminary landings for 2006 total 58,857 mt. The 115,000 mt IOY is consistent with mackerel regulations at § 648.21(b)(2)(ii), which state that IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides that the specification of TALFF, if any, shall be that portion of the optimum yield

(OY) of a fishery that will not be harvested by vessels of the United States. TALFF catches would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry efforts to expand exports. The Council noted that this would prevent the U.S. industry from taking advantage of declines in the European production of Atlantic mackerel that have resulted in an increase in world demand for U.S. fish. The only economic benefit associated with a TALFF is the foreign fishing fees it generates. On the other hand, there are economic benefits associated with the development of the domestic mackerel fishery. Increased mackerel production generates jobs both for plant workers and other support industries. More jobs generate additional sources of income for people resident in coastal communities and generally enhance the social fabric of these communities.

For these reasons, the Council concluded, and NMFS proposes, to specify IOY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to assist the U.S. mackerel industry to expand. This will yield positive social and economic benefits to both U.S. harvesters and processors. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concurs that it is reasonable to assume that, in 2007, the commercial fishery will harvest 100,000 mt of mackerel. Thus DAH would be 115,000 mt, which is the commercial harvest plus the 15,000 mt allocated for the recreational fishery. Because IOY = DAH, this

specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

NMFS also concurs with the Council's recommendation to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004). In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 2 years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for mackerel has expanded. The Council received testimony from processors and harvesters that the shoreside processing sector of this industry has continued to expand since 2002–2003. Subsequent industry testimony estimated current processing capacity at 2,500 mt per day. In addition, industry members anticipate that an at-sea processing vessel will enter the mackerel fishery in 2007. The Council also heard from the industry that the availability of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded that processing capacity is no longer a limiting factor relative to domestic production of mackerel. Furthermore, the Council concluded that the U.S. mackerel processing sector has the potential to process the DAH, so JVP would be specified at zero.

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) specify that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. At the June 2006 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest in increasing the 2007 mackerel IOY if landings approach 115,000 mt during

the most active part of the fishing year (January–April). However, the mackerel fishing season is short. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, this action is proposing and seeking comment on such an inseason adjustment. In 2007, NMFS's Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office website (<http://www.nero.noaa.gov/>). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. If using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2007 fishing year, to ensure continued fishing opportunities during the 2007 fishing year, the Regional Administrator will make available additional quota for a total IOY of 186,000 mt of Atlantic mackerel for harvest during 2007. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo squid

While the annual quota and other measures for *Loligo* squid can be specified for up to 3 years, the Council chose to recommend *Loligo* specifications and management measures for 1 year only. After a review of available information, the Council recommended no change to the *Loligo* squid Max OY and ABC from 2006; NMFS concurs with this recommendation. Therefore, the proposed 2007 *Loligo* squid Max OY is 26,000 mt and the proposed ABC is 17,000 mt. The Council recommended that the *Loligo* squid RQ for 2007 be up to 3 percent (510 mt) of the ABC. Two scientific research project proposals requesting *Loligo* squid RQ were recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* squid

IOY, DAH, and DAP were adjusted to reflect the RQ and equal 16,490 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, JVP and TALFF are zero.

Distribution of the *Loligo* Squid DAH

Prior to 2000, the DAH for *Loligo* was specified as an annual quota. In 2000, the quota was subdivided into three trimester allocations. Since 2001, the annual DAH for *Loligo* squid has been allocated into four quarter allocations, as follows: Quarter I (January–March) with 33.23 percent of the quota, Quarter II (April–June) with 17.61 percent of the quota, Quarter III (July–September) with 17.30 percent of the quota, and Quarter IV (October–December) with 31.86 percent of the quota. In an effort to improve the monitoring and management of the *Loligo* squid fishery, the Council recommended, and NMFS proposes, that the 2007 DAH be allocated into trimesters. Managing the DAH by trimesters, rather than quarters, results in allocations that are the same or higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information and, perhaps, to be more accurate. Additionally, managing by trimesters rather than quarters is administratively streamlined because only three, rather than four, closures of the directed fishery could occur during a fishing year. For these reasons, this action proposes that the 2007 *Loligo* squid DAH be allocated into trimesters.

Previously, the allocation of *Loligo* squid DAH into quarters (2001–2006) and trimesters (2000) was based on landings data for the period of 1994–1998. Trimester allocations for 2007 were based on the same data as the 2000 *Loligo* squid trimester allocation (1994–1998), but the landings data had been updated since 2000 to remove any landings of squid categorized as “unclassified.” The proposed 2007 trimester allocations would be as follows:

TABLE 2. PROPOSED TRIMESTER ALLOCATION OF *Loligo* SQUID QUOTA IN 2007

Trimester	Percent	Metric Tons ¹	RQ (mt)
I (Jan-Apr)	43.0	7,090.7	NA
II (May-Aug)	17.0	2,803.3	NA
III (Sep-Dec)	40.0	6,596.0	NA
Total	100	16,490	510

¹ Trimester allocations after 510 mt RQ deduction.

For 2007, the Council recommended that the percentage at which the directed *Loligo* squid fishery would close and the handling of quota overages and underages would be the same as in 2000. Therefore, this action proposes the regulatory language that was in effect in 2000, such that the directed *Loligo* squid fishery would close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III, as was done in 2000. Additionally, it proposes that any underages from Trimesters I and II would be applied to Trimester III, and any overages from Trimesters I and II would be subtracted from Trimester III. This language is consistent with the Council motion, but the measure is incorrectly described in the EA for this action, which states that underages from Trimesters I and II would be applied to the next trimester. The Council is encouraged to comment on this inconsistency during the comment period.

During the Council discussion about trimester allocations, some members of the *Loligo* squid industry expressed concern about quota availability during summer months, especially July. Under the 2006 quarterly quota allocation, Quarter III started on July 1. As a result, the directed fishery during the month of July was important to the *Loligo* squid industry, because a new allocation of *Loligo* squid became available on July 1. Under the proposed trimesters, the Trimester II allocation of 17 percent would be available to the directed fishery from May-August, or until the allocation is harvested. Some industry representatives believe that Trimester II's allocation will likely be harvested before July 1. If that were to occur, the directed fishery would close and there would be no directed *Loligo* squid fishery during the month of July. In an effort to ensure that some of the Trimester II quota is available to the directed fishery during the month of July, the Council recommended a measure to suspend the availability of a portion of the quota until July 1. Specifically, the Council proposed that if 45 percent of Trimester II's quota was projected to be landed prior to July 1, then the Regional Administrator would close the directed fishery until July 1, and the fishery would operate under incidental trip limits. On July 1, the remaining Trimester II quota would once again be available to the directed fishery until 90 percent of the quota is projected to be landed. If 45 percent of the Trimester II quota was not projected to be landed prior to July 1, then the directed fishery would close when 90

percent of the quota was projected to be landed.

When the Council discussed this proposed measure, NMFS informed the Council that a closure of the directed *Loligo* squid fishery when Trimester II landings are at 45 percent (i.e., approximately 1,300 mt) could not be effectively administered because of the small size of the quota and the sizable landings that can be made per trip. NMFS representatives explained that it is not possible to monitor landings in near real-time and accurately project closure dates in this type of high-volume fishery. NMFS, therefore, is not proposing this measure, because the proposed quota for Trimester II is small, and the fishing activity is likely to be intense during Trimester II, and there is little likelihood that such small quotas could be effectively monitored in a time frame to prevent significant underages or overages. This proposed measure is also inconsistent with the intent of the trimester approach to quota monitoring.

Landing Frequency of Incidental *Loligo* Squid Possession Limit

The Council clarified the landing requirements for vessels issued an open access permit which is subject to a 2,500-lb (1.13 mt) incidental catch *Loligo* squid possession limit specified at § 648.22(c). The Council voted to clarify permanently that this permit authorizes the landing of an incidental *Loligo* squid possession limit once per calendar day. In previous years, because vessels were landing multiple possession limits per day during closures of the directed fishery, the Council recommended, and NMFS implemented, regulatory language clarifying that only one landing per day was allowed during closures of the directed *Loligo* squid fishery (66 FR 13024, March 2, 2001). At its June 2006 meeting, the Council discussed the fact that vessels issued incidental catch permits were making multiple landings per day when the directed *Loligo* squid fishery was open. The Council recommended, and NMFS proposes, to clarify that vessels subject to the incidental *Loligo* squid possession limits may only land once per calendar day, whether the directed *Loligo* squid fishery is open or closed.

Illex squid

The Council recommended, and NMFS proposes, to maintain the *Illex* squid specifications in 2007 at the same levels as they were for the 2006 fishing year. Specifically, this action proposes that the specification of Max OY, IOY, ABC, and DAH would be 24,000 mt. The 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. Max OY is specified as the catch associated with a fishing mortality rate of F_{MSY} , while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75 percent F_{MSY} . The biomass target is specified as B_{MSY} . The minimum biomass threshold is specified as $1/2 B_{MSY}$. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Butterfish

The Council recommended, and NMFS proposes, to maintain the butterfish specifications in 2007 at the same levels as they were for the 2006 fishing year. Therefore, the proposed specifications would set the IOY, DAH, and DAP at 1,681 mt to achieve the target fishing mortality rate (75 percent of F_{MSY}) specified in the FMP based on the most recent stock assessment for the species (SARC 38) and would set ABC at 4,545 mt. Allowable butterfish landings equals ABC less estimated discards, which are roughly twice landings. Assuming that biomass in 2007 will be similar to biomass during 2000–2002 and that the discard-to-landing ratio remains constant, then landings associated with the target F would be 1,681 mt. Consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2007 because zero TALFF is proposed for mackerel.

NMFS notified the Council in February 2005 that the butterfish stock is overfished. The rebuilding plan for butterfish is being developed in Amendment 10 to the FMP.

Modifications to Existing Regulatory Language

NMFS proposes in this action to permanently update, clarify, and correct existing regulatory language that is misleading or incorrect. As discussed previously, biological reference points for mackerel were re-estimated in the most recent stock assessment and the updated reference points were used to calculate the mackerel ABC proposed for 2007. It is appropriate to use the most recent information when developing annual specifications. To clarify this issue, this action proposes that regulatory language describing the procedure for calculating mackerel ABC (at § 648.21(b)(2)) would describe the reference points and formula, but would

not include any values. This makes it clearer that the values from the most recent stock assessment are to be used to calculate mackerel ABC.

In § 648.21, there are two references to the guidelines used to determine annual initial amounts of harvest. The references cite paragraph (a), but the guidelines are actually located at paragraph (b) of that section. This action proposes to correct those citations.

As discussed previously, the Council explicitly requested action to clarify that the landing frequency for vessels subject to the incidental *Loligo* squid possession limit is once per calendar day. This applies to vessels during closures of the directed *Loligo* squid fishery that participate in the directed fishery and to vessels issued *Loligo* squid incidental catch permits at all times. The regulations at § 648.22(c) specify the incidental possession limits for *Loligo* squid, *Illex* squid, and butterfish. While the Council did not explicitly recommend clarifying the landing frequency for *Illex* squid or butterfish, this action proposes to make the same clarification for those species.

The regulations defining how to obtain incidental catch permits for *Loligo* squid, *Illex* squid, and butterfish are located at § 648.4(a)(5). However, regulations at § 648.21(c)(3) only reference *Loligo* squid and butterfish when describing incidental catch permits. Therefore, this action proposes to list *Illex* squid along with *Loligo* squid and butterfish at § 648.21(c)(3).

Beginning in 2007, the NEFSC Director, rather than the Regional Administrator, will provide final approval for research projects requesting RQ. Therefore, this action proposes that regulations at § 648.21(g) be updated to reflect that change.

Lastly, this action proposes to clarify the reporting requirements for at-sea processors. Regulations at § 648.7(f)(3) describe reporting requirements for at-sea purchases and processors. To clarify that at-sea processors in the Exclusive Economic Zone (EEZ) are bound by the same reporting requirements as shore-based processors, this action proposes removing language suggesting that these reporting requirements only apply if the product is landed in a port in the United States.

Classification

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

The Council prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The

IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows:

Statement of Objective and Need

This action proposes 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish, and modification of existing management measures to improve the monitoring and management of these fisheries. A complete 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 this proposed rule and is not repeated here.

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

Based on permit data, the number of potential fishing vessels in the 2007 fisheries are as follows: 383 for *Loligo* squid/butterfish, 77 for *Illex* squid, 2,528 for mackerel, and 2,016 vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, 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

Proposed Actions

The mackerel IOY proposed in this action (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. Landings in 2004 were 54,296 mt, landings in 2005 were 43,244 mt, and preliminary landings for 2006 were 68,298 mt. Additionally, this action proposes an inseason adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to

the ABC (186,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action, in fact, an increase in revenues as a result of the proposed action is possible. Based on preliminary 2006 data, the mackerel fishery could increase its landings by 46,702 mt in 2007, if it takes the entire IOY. In 2005, the last year with complete financial data, the average value for mackerel was \$261 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$12,189,222 as a result of the proposed 2007 IOY (115,000 mt) and an additional increase in revenues of \$18,531,000 as a result of the proposed adjustment to increase the IOY up to the ABC (186,000 mt).

The *Loligo* squid IOY (17,000 mt) proposed in this action represents status quo as compared to 2006. *Loligo* squid landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 13,322 and landings in 2005 were 16,765 mt. In 2005, the last year with complete financial data, the average value for *Loligo* squid was \$1,703 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2007.

The *Illex* squid IOY (24,000 mt) proposed in this action represents status quo as compared to 2006. *Illex* squid landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 25,059, and landings in 2005 were 11,719 mt. In 2005, the last year with complete financial data, the average value for *Illex* squid was \$715 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2007.

The butterfish IOY (1,681 mt) proposed in this action represents no constraint to vessels relative to the landings in recent years. During the period 2001–2004, butterfish landings averaged 1,535 mt. Compared to the most recent 2 years for which complete information is available, 2004 and 2005, when landings were 422 mt and 393 mt, respectively, the proposed action is not expected to reduce revenues in this fishery, but may increase those revenues. Based on 2005 data, the value of butterfish was \$1,803 per mt.

Alternatives to the Proposed Rule

The Council analysis evaluated three alternatives for mackerel, and all of them would have set IOY at 115,000 mt. This IOY does not represent a constraint on vessels in this fishery, so no impacts on revenues in this fishery is expected as a result of these alternatives. If landings approach the IOY during the early part of the fishing year, the

preferred alternative contains the option of increasing the IOY up to ABC (186,000 mt). Therefore, this action may result in an increase in revenue for this fishery. One of these alternatives (status quo) would have set the ABC at 335,000 mt, and the other could have set the ABC at 204,000 mt. These alternatives were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest that 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 a full discussion of the TALFF issue, see the earlier section on Atlantic mackerel).

For *Loligo* squid, all alternatives set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota. Two alternatives allocate quotas by trimester. Of these, a closure/re-opening provision, to ensure quota is available to the directed fishery in July, is specified in one alternative but not the other. The third alternative allocates quota by quarters (status quo). These differences in seasonal quota distribution may have distributive effects on seasonal participants in the fishery. Additionally, the proposed incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels (up to 10,000 lb (4.54 mt)) during August could, under certain conditions, result in a reduction in the amount of *Loligo* squid quota available during Trimester III. All alternatives are expected to result in the same total landings for 2007.

For *Illex* squid, 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 this 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 *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 represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 29, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, 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 § 648.7, paragraph (f)(3) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(3) *At-sea purchasers and processors.*

With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

* * * * *

3. Section 648.21 is amended as follows:

- a. Paragraphs (b)(1) introductory text, (b)(2)(i), and (b)(2)(iii) introductory text are revised;
- b. Paragraphs (c) introductory text and (c)(3) are revised;
- c. Paragraph (f)(3) is removed and paragraphs (f)(1) and (f)(2) are revised; and
- d. Paragraphs (g)(2)(ii) and (g)(5) introductory text are revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(b) * * *

(1) *Loligo* and/or *Illex* Squid.

* * * * *

(2) * * *

(i) Mackerel ABC must be calculated using the formula $ABC = T - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} at B_{MSY} or greater and decreases linearly to zero at $1/2 B_{MSY}$ or below. Values for F_{target} and B_{MSY} are as calculated in the most recent stock assessment.

* * * * *

(iii) IOY is composed of RQ, DAH and TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

* * * * *

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

* * * * *

(3) The amount of *Loligo*, *Illex*, and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

* * * * *

(f) * * *

(1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods, based on the following percentages:

Trimester	Percent
I. January-April	43.0
II. May-August	17.0
III. September-October	40.0

(2) Any underages of commercial period quota for Trimester I and II will be applied to Trimester III of the same year and any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

* * * * *

(g) * * *

(2) * * *

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

* * * * *

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided:

* * * * *

4. In § 648.22, paragraphs (a) and (c) are revised and paragraph (d) is added to read as follows:

§ 648.22 Closure of the fishery.

(a) *Closing Procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 80 percent of the mackerel DAH is landed, if such a closure is necessary to prevent the DAH from being executed. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that the DAH will be landed for mackerel, NMFS will close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the quota is harvested in Trimesters I and II, and when 95 percent of DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of the fishing period, with incidental catches allowed as specified in paragraph (c) of this section.

(3) NMFS shall close the directed *Illex* or butterflyfish fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* or butterflyfish DAH is landed. The closure of the directed fishery will be in effect for the remainder of the fishing year, with

incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

(c) *Incidental catches.* During a closure of the directed mackerel fishery, the possession limit for mackerel is 10 percent, by weight, of the total amount of fish on board. For vessels that have been issued a *Loligo* or butterflyfish incidental catch permit (as specified at § 648.4(a)(5)(ii)) or during a closure of the directed fishery for *Loligo* or butterflyfish, the possession limit for *Loligo* and butterflyfish is 2,500 lb (1.13 mt) each. For vessels that have been issued an *Illex* incidental catch permit (specified at § 648.4(a)(5)(ii)) or during a closure of the directed fishery for *Illex*, the possession limit for *Illex* is 10,000 lb (4.54 mt). Vessels may not land more than these limits and may only land once during any single calendar day, which is defined as the 24 hr period beginning at 0001 hours and ending at 2400 hours.

(d) *Incidental Loligo Limit for Illex Moratorium Vessels.* During August closures of the directed *Loligo* fishery, *Illex* vessels with moratorium permits fishing seaward of the small mesh exemption line (coordinates found at § 648.23 (a)(3)) may possess and land up to 10,000 lb (4.54 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

[FR Doc. E6-20578 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-22-S