

**PART 39—AIRWORTHINESS DIRECTIVES**

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2010-06-01 Airbus:** Amendment 39-16225. Docket No. FAA-2009-0649; Directorate Identifier 2008-NM-218-AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective April 15, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-111, -211, -212, -214, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes; certificated in any category; all manufacturer serial numbers (MSN); equipped with electronic instrument system 1 (EIS1) standard V32 (display management computer (DMC)) part number (P/N) 9615325032), EIS1 standard V40 (DMC P/N 9615325040), or EIS1 standard V50 (DMC P/N 9615325050).

**Subject**

(d) Air Transport Association (ATA) of America Code 31: Instruments.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

“Two incidents [of near mid-air collision] have occurred on Airbus A320 Family aircraft during [a] Resolution Advisory with Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

“This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

“EIS1 software standard V60 introduces modifications to the vertical speed indication to further improve the legibility in the case of TCAS Resolution Advisory. This modification consists of a change in the needle colour and thickness and an increase in width of the TCAS green band.

“For the reasons described above, this AD requires the introduction of the new software standard V60 and prohibits reinstallation of earlier software versions V32, V40 and V50.”

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1) Within 60 months after the effective date of this AD, modify the airplane by installing EIS1 software standard V60 (DMC P/N 9615325060), in accordance with the instructions of Airbus Mandatory Service

Bulletin A320-31-1286, dated January 22, 2008.

(2) After modifying the airplane as required by paragraph (f)(1) of this AD, no person shall install EIS1 software standard V32 (DMC P/N 9615325032), EIS1 software standard V40 (DMC P/N 9615325040), or EIS1 software standard V50 (DMC P/N 9615325050) on that airplane.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Tim Dulin, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008-0198, dated November 4, 2008; and Airbus Mandatory Service Bulletin A320-31-1286, dated January 22, 2008; for related information.

**Material Incorporated by Reference**

(i) You must use Airbus Mandatory Service Bulletin A320-31-1286, dated January 22, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail:

*account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal\_register/code\_of\_federal\_regulations/ibr\_locations.html*.

Issued in Renton, Washington, on February 25, 2010.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No.: 0907021105-0024-03]

RIN 0648-AY00

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing approved measures in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 10 was developed by the Mid-Atlantic Fishery Management Council (Council) to bring the FMP into compliance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements by establishing a rebuilding program that allows the butterfish stock to rebuild and protects the long-term health and stability of the stock; and by minimizing bycatch and the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries. Amendment 10 increases the minimum codend mesh size requirement for the *Loligo* squid (*Loligo*) fishery; establishes a butterfish rebuilding program with a

butterfish mortality cap for the *Loligo* fishery; establishes a 72-hr trip notification requirement for the *Loligo* fishery; and requires an annual assessment of the butterfish rebuilding program by the Council's Scientific and Statistical Committee (SSC). This rule also makes minor, technical corrections to the existing regulations.

**DATES:** Effective April 12, 2010, except for the following:

1. The amendments to § 648.23(a)(3) introductory text and § 648.23(a)(3)(i), which are effective September 13, 2010;

2. The addition of §§ 648.21(b)(3)(iii)–(iv), 648.22(a)(5), and § 648.26, which are effective January 1, 2011.

**ADDRESSES:** A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 10 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the approved measures and alternatives. Copies of Amendment 10, including the FSEIS, the Regulatory Impact Review (RIR), and the 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 FSEIS/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule should be submitted to the Regional Administrator of the Northeast Regional Office at 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

This amendment was developed to bring the MSB FMP into compliance with Magnuson-Stevens Act requirements by: (1) Implementing a rebuilding program that allows the butterfish stock to rebuild, and protects the long-term health and stability of the stock; and (2) minimizing bycatch, and the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries.

In February 2005, NMFS notified the Council that the butterfish stock was overfished, which triggered Magnuson-Stevens Act requirements to implement rebuilding measures for the stock. In

response, an amendment to the MSB FMP was initiated by the Council in October 2005. The Council prepared a Draft Environmental Impact Statement (DEIS) to evaluate various alternatives to rebuild butterfish and reduce bycatch, to the extent practicable. The DEIS comment period ended June 23, 2008. The Council held three public meetings on Amendment 10 during June 2008, and adopted Amendment 10 on October 16, 2008. The Notice of Availability (NOA) for Amendment 10 was published on July 14, 2009 (74 FR 33986), with a comment period ending on September 14, 2009. A proposed rule for Amendment 10 was published on September 3, 2009 (74 FR 45597), with a comment period ending on October 19, 2009. On October 9, 2009, NMFS approved Amendment 10 on behalf of the Secretary of Commerce.

This rule implements a rebuilding program for butterfish with measures that: Increase the minimum codend mesh requirement for the *Loligo* fishery from 1 $\frac{7}{8}$  inches (48 mm) to 2 $\frac{1}{8}$  inches (54 mm) during Trimesters I (Jan–Apr) and III (Sep–Dec), starting in 2010; establish a butterfish mortality cap program for the *Loligo* fishery, starting in 2011; establish a 72-hour trip notification requirement for the *Loligo* fishery, to facilitate the placement of NMFS observers on *Loligo* trips, starting in 2011; and require an annual assessment of the butterfish mortality cap program by the Council's SSC and, if necessary, implementation of additional butterfish rebuilding measures through the annual specifications process. The proposed rule includes detailed information about the Council's development of these measures, and that discussion is not repeated here.

Subsequent to the development, submission and approval of Amendment 10, the 49th Northeast Regional Stock Assessment Workshop (SAW 49) results, published in January 2010, provided updated estimates of butterfish fishing mortality and stock biomass. The results were not available for the Amendment 10 review and approval on October 9, 2009. The estimates of butterfish fishing mortality and total biomass resulting from SAW 49 are highly uncertain, and the final assessment report states that it would be inappropriate to compare the previous status determination criteria from SAW 38 in 2004 with the current assessment estimates of spawning stock biomass and fishing mortality, because measures of population abundance in the current assessment are scaled much higher than those in the previous assessment.

The current status of the butterfish stock is unknown because biomass reference points could not be determined in the SAW 49 assessment. Though the butterfish population appears to be declining over time, fishing mortality does not seem to be the major cause. Butterfish have a high natural mortality rate, and the current estimated fishing mortality rate ( $F = 0.02$ ) is well below all candidate overfishing threshold reference points. The assessment report noted that predation is likely an important component of the butterfish natural mortality rate (currently assumed to be 0.8), but also noted that estimates of consumption of butterfish by predators appear to be very low. In short, the underlying causes for population decline are unknown. Amendment 10 recommends that butterfish acceptable biological catch (ABC) be derived from applying an  $F$  of 0.1 to the most current estimate of stock biomass. In the absence of a current stock biomass estimate and reliable estimate of natural mortality, this methodology will need to be reconsidered when the Council's SSC next recommends a butterfish ABC.

Despite the considerable uncertainty in the recent assessment, there was no evidence presented that suggests that the status of the butterfish stock has improved since the 2004 SAW 38 assessment. Thus NMFS has the responsibility to implement measures to reduce bycatch in MSB fisheries to the extent practicable and that promote the long-term health and stability of the butterfish stock. The approved Amendment 10 butterfish rebuilding program and *Loligo* codend mesh size increase will limit butterfish discards and promote butterfish recruitment over a defined time period, while also reducing the bycatch and discard of other non-target species in the *Loligo* fishery. These measures are necessary to meet the objectives and requirements of the Magnuson-Stevens Act.

**Butterfish Rebuilding Program**

This action establishes a 5-year butterfish rebuilding program, extending from 2010 through 2014. In 2004, when the SAW 38 determined that butterfish was overfished, it advised that rebuilding of the butterfish stock will be dependent upon increases in recruitment, which recently has been low to intermediate. Rebuilding is further complicated because the natural mortality rate of butterfish is high, butterfish have a short lifespan, and fishing mortality is primarily attributed to discards (discards have been estimated to equal twice the annual landings). Analyses have shown that the

primary source of butterfish discards is the *Loligo* fishery because of the use of small-mesh, diamond codends (1 $\frac{7}{8}$ -inches (48-mm) minimum codend mesh size) and the year-round, co-occurrence of butterfish and *Loligo*. Likely due to the lack of a market for butterfish, and sporadic butterfish availability, there has not been a significant butterfish fishery since 2002 (recent annual landings have been 437–544 mt), resulting in the discard of both butterfish juveniles and spawning stock.

In order to rebuild the butterfish stock, a reduction of the amount of butterfish discards and an increase in butterfish recruitment are both necessary. This action implements measures to reduce the fishing mortality on butterfish that occurs as the result of discards in the *Loligo* fishery, which is the primary source of butterfish discard mortality. These measures are expected to also reduce the bycatch of other finfish species.

The Amendment 10 analyses indicate that the stock can be rebuilt by 2014. This conclusion is supported by the SSC-reviewed auto-regressive (AR) time series model output in Amendment 10, which suggests that the butterfish stock is able to rebuild within 1 year, provided long-term average recruitment occurs and F is kept at 0.1. Assuming future butterfish recruitment is similar to butterfish recruitment seen during 1968–2002, implementing the butterfish mortality cap in 2011 achieves an 88-percent probability of at least one large recruitment event occurring during years 2–5 of the butterfish rebuilding period.

During Year 1 (2010) of the rebuilding program, the minimum codend mesh size requirement will increase to 2 $\frac{1}{8}$  inches (54 mm); this rule allows participants in the *Loligo* fishery 6 months to obtain the larger mesh necessary to comply with this requirement, so the provision will initially take effect in Trimester III. This measure allows for increased escapement of some juvenile butterfish.

Starting in Year 2 (2011) of the rebuilding program, the butterfish mortality cap for the *Loligo* fishery will be implemented to directly control butterfish catch (landings and discards of all ages) in the *Loligo* fishery, which is the primary source of butterfish fishing mortality. This will facilitate rebuilding of the stock and protection of the rebuilt stock. Amendment 10 recommends that, during the rebuilding period, the butterfish quota will be set through the specifications process, and that that butterfish ABC will be equal to the yield associated with applying an F of 0.1 to the most current estimate of

stock biomass. As mentioned above, because the SAW 49 butterfish stock assessment did not provide a reliable estimate of stock biomass or natural mortality, this methodology will need to be reconsidered when the SSC recommends butterfish ABC. Once the stock is determined to be rebuilt, ABC will be specified according to the fishing mortality control rule currently specified in the FMP (*i.e.*, the yield associated with 75 of percent  $F_{MSY}$ ). Initial Optimum Yield (IOY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP) and research quota will continue to be specified as they are currently, with DAH equaling the amount available for landings after the deduction of estimated discards from ABC. This process may be modified to more explicitly account for scientific and management uncertainty in the Council's Omnibus Annual Catch Limit and Accountability Measure Amendment, expected to be implemented in 2011.

#### **Minimum Codend Mesh Size Increase for the *Loligo* Fishery**

This action increases the minimum codend mesh size for otter trawl vessels issued Federal permits to possess *Loligo* squid harvested in or from the Exclusive Economic Zone (EEZ), which, with limited exceptions not applicable here, is U.S. waters 3–200 nm from shore. By virtue of being issued a Federal permit, such vessels are subject to this mesh requirement irrespective of whether they fish in the EEZ or in State waters. The minimum mesh size is increased from 1 $\frac{7}{8}$  inches (48 mm) to 2 $\frac{1}{8}$  inches (54 mm) for such vessels during Trimester I (January–April) and Trimester III (September–December). The minimum mesh size of 1 $\frac{7}{8}$  inches (48 mm) is maintained for these vessels during Trimester II (May–August).

Amendment 10 specifies that the Council will re-evaluate the effects of the minimum codend mesh size increase after the measure has been in effect for 2 years. The evaluation will involve the review of Northeast Fisheries Observer Program (NEFOP) catch rate data, before and after the mesh size increase, for both *Loligo* and non-target species, as well as any other new scientific information (*e.g.*, gear selectivity information). The results of the evaluation will be used to maintain or revise the minimum codend mesh size requirement for the *Loligo* fishery through the MSB specifications process.

#### **Butterfish Mortality Cap**

The butterfish mortality cap will account for all butterfish caught by the *Loligo* fishery (discards as well as

landings), and will be specified to equal 75 percent of the butterfish ABC. The remaining 25 percent of the butterfish ABC will be allocated for butterfish catch in other fisheries, including trips landing less than 2,500 lb (1.13 mt) of *Loligo*.

Harvesting in the *Loligo* squid fishery is currently regulated under a commercial quota, which is allocated by trimester (Trimester I = Jan–Apr; Trimester II = May–Aug; Trimester III = Sept–Dec). During each trimester, if *Loligo* landings are projected to reach a specified level, the directed *Loligo* fishery is closed, and vessels with *Loligo* permits are prohibited from landing more than 2,500 lb (1.13 mt) of *Loligo*.

The butterfish mortality cap is also allocated by trimester, as follows: Trimester I–65 percent; Trimester II–3.3 percent; Trimester III–31.7 percent. This action specifies that the directed *Loligo* fishery will close during Trimesters I and III, if the butterfish mortality cap is harvested, but will not close during Trimester II. Because the butterfish mortality cap allocated to Trimester II is relatively small (3.3 percent of the total butterfish mortality cap) and butterfish bycatch during Trimester II has historically been low, closure predictions would be based on limited data. To minimize uncertainty associated with closing the directed *Loligo* fishery during Trimester II, both the butterfish catch and the butterfish mortality cap for Trimester II are applied to Trimester III. Therefore, operationally, the butterfish mortality caps from Trimesters II and III are combined, such that 35 percent of the total butterfish mortality cap is tracked during Trimester III. Additionally, any overages/underages from the butterfish mortality cap during Trimester I apply to Trimester III. As a precaution against exceeding the butterfish quota, the *Loligo* fishery is closed when projections indicate that 80 percent of the butterfish mortality cap for Trimester I is projected to be caught, and/or if 90 percent of the annual total butterfish mortality cap is projected to be harvested in Trimester III. If Trimester II bycatch levels are high, reducing the butterfish mortality cap for Trimester III, the Council may recommend an inseason closure mechanism for Trimester II in future specifications.

The butterfish mortality cap will be monitored by NMFS's Northeast Regional Fishery Statistics Office (FSO). Butterfish catch data from observed trips with 2,500 lb (1.13 mt) or more of *Loligo* onboard will be applied to *Loligo* landings (2,500 lb (1,134 kg) or more) in the dealer database to calculate total

butterfish catch in the *Loligo* fishery. When butterfish catch in the *Loligo* fishery is projected to reach the specified trimester closure thresholds, the directed *Loligo* fishery will close. The Amendment specifies that a weighted average of the current and previous year's observer data will be used to monitor the butterfish catch in the *Loligo* fishery. The exact projection methodology will be developed by FSO, reviewed annually during the MSB specifications process, and be revised as appropriate.

#### Trip Notification Requirement

To facilitate the placement of observers on *Loligo* trips, Amendment 10 establishes a trip notification requirement. In order for a vessel to possess 2,500 lb (1.13 mt) or more of *Loligo*, a vessel representative will be required to phone NMFS to request an observer at least 72 hr prior to embarking on a fishing trip. If the vessel representative does not make this required trip notification to NMFS, the vessel will be prohibited from possessing or landing more than 2,500 lb (1,134 kg) of *Loligo*. If a vessel is selected by NMFS to carry an observer, the vessel will be required to carry an observer (provided an observer is available) or the vessel will be prohibited from possessing or landing more than 2,500 lb (1,134 kg) of *Loligo*. If a trip is cancelled, a vessel representative will be required to notify NMFS of the cancelled trip (even if the vessel was not selected to carry an observer). If a vessel representative cancels a trip after its vessel is selected to carry an observer, that vessel will be assigned an observer on its next trip.

#### Annual Assessment of Butterfish Mortality Cap

The SSC will annually review the performance of the butterfish mortality cap program during the specification process. The items considered by the SSC will include, but are not limited to the: Coefficient of variation (CV) of the butterfish bycatch estimate; estimate of butterfish mortality; and status and trends of the butterfish stock. If the CV of the butterfish mortality estimate or another butterfish mortality cap performance parameter is found to be unacceptable by the SSC, NEFOP will be consulted to evaluate if observer coverage can be increased to acceptable levels. If increasing NEFOP coverage is not possible, the Council would next consider implementation of an industry-funded observer program in a subsequent action. If increased observer coverage proves impractical or ineffective, the SSC could recommend

one or more of following for the upcoming fishing year:

- (1) Modification to the *Loligo* quota;
- (2) Modification to the butterfish quota;
- (3) Increases to minimum codend mesh size for the *Loligo* fishery;
- (4) Establishing Gear Restricted Areas (GRAs); or
- (5) Establishing any measure that could be implemented via the MSB specification process.

If the Council does not adopt the SSC recommendations, then NMFS will implement measures through the MSB annual specifications process to assure the rebuilding of the butterfish stock, consistent with existing MSB regulations at § 648.21(d)(2).

The butterfish mortality cap is allocated 75 percent of the butterfish ABC, which leaves the remaining 25 percent of the butterfish ABC to account for direct harvest and discard mortality in other fisheries. Butterfish landings and observed discards in these fisheries will be reviewed as part of the SSC's annual assessment of the performance of the butterfish mortality cap program during the specification process. If butterfish landings and observed discards in other fisheries are found to exceed the 25-percent allocation, then the allocation of the butterfish quota between the *Loligo* fishery and other fisheries can be revised, or other measures (e.g., reduced trip limits) can be implemented to constrain the butterfish catch in other fisheries to 25 percent of the butterfish ABC.

#### Technical Corrections

This final rule also makes minor technical corrections to existing regulations. These corrections do not revise the intent of any regulations; they only clarify the intent of existing regulations by correcting technical errors. In § 648.48.13(a), transfer-at-sea requirements for squid and butterfish are revised to omit references to a mackerel permit. In § 648.14(g)(2)(ii)(C), the reference to possession allowances is corrected. In § 648.21(f)(1), the description of *Loligo* trimesters is corrected. Lastly, in § 648.25(a), possession restrictions for mackerel is revised to omit references to the butterfish fishery.

#### Comments and Responses

NMFS received two comments during the comment period relating to the NOA, one from an environmental group and the other from an individual. An additional five comment letters were received on the proposed rule for Amendment 10; letters were from two environmental groups, one industry

representative, and two individuals. Several issues that are not relevant to Amendment 10 were raised by various commenters; only the comments relevant to Amendment 10 are addressed below.

*Comment 1:* In a comment relating to the NOA, an environmental group urged NMFS to disapprove Amendment 10 because, in its view, it does not minimize bycatch to the extent practicable. The commenter expressed the view that the butterfish mortality cap and increased minimum mesh size in Amendment 10 are insufficient and do not do enough to address bycatch of species other than butterfish. They noted that the *Loligo* fishery accounts for more than 10 percent of the observed discards of 12 species, including summer flounder, scup, silver hake, red hake, and spiny dogfish. They stated that Amendment 10 indicates that the implementation of the GRAs would reduce discards of several of species other than butterfish. In their view, the implementation of a larger minimum mesh size would allow greater escapement of both squid and finfish, while still allowing capture of both at larger sizes and the mitigation of earlier harvest losses.

The commenters also contended that Amendment 10 fails to demonstrate that the other bycatch reduction measures considered were impracticable, and fails to assess the benefits of other possible alternatives against the potential costs. They cited discussion in the document that indicates that an increase in the minimum mesh size requirement for the *Illex* fishery would have no measurable socioeconomic impacts. They noted their view that the analysis of the GRAs indicates a range of potential economic losses, but also concludes that it is difficult to predict the economic impacts because of uncertainty about the changes in fishing activity that would occur in response to the measure (including effort shifts and the possibility that vessels could continue to fish within the GRAs with the larger mesh size).

The commenters questioned the meaning of the statement in the amendment that the only way to determine practicability of the larger minimum mesh size increases would be to evaluate the impacts of the initial increase for 2 years because they do not understand what information this process will yield concerning the practicability of mesh sizes larger than 2 $\frac{1}{8}$  inches (54 mm). They argued that a commitment to continue to study bycatch reduction measures does not satisfy legal requirements. They also advocated for the implementation of the

butterfish mortality cap in 2010, rather than 2011.

*Response 1:* The points summarized above were considered when NMFS made the decision to approve Amendment 10. The commenters, along with other groups, raised these concerns on many occasions during the development Amendment 10, and included them in comments submitted during the public comment period for the DEIS. The points were considered by the Council and responded to in the FSEIS. The Council explained in that document that the butterflyfish mortality cap and increased minimum mesh size were selected by the Council to rebuild butterflyfish and reduce bycatch, while also avoiding the potential negative revenue impacts associated with GRAs and larger minimum mesh sizes. These include revenue loss due to *Loligo* escapement if a larger minimum mesh size were to be implemented for the entire fishery, and lost revenue related to *Loligo* escapement from the larger mesh sizes imposed in the proposed GRAs.

While the measures were adopted in large part because of the anticipated effect they will have in reducing butterflyfish bycatch and rebuilding the butterflyfish stock, the measures will also reduce bycatch of other species by the *Loligo* fishery. In particular, from 2001 to 2006, the *Loligo* fishery was responsible for 7, 8, 56, 31, and 10 percent of all NEFOP discards of summer flounder, scup, silver hake, red hake and spiny dogfish, respectively. Measures that reduce fishing effort in MSB fisheries, such as the butterflyfish mortality cap, are likely to reduce all non-target species discarding. In addition, available selectivity analyses provide evidence for increased escapement of juvenile butterflyfish (less than 12 cm or 4¾ inches in length) at codend mesh sizes above the current minimum. The combination of measures in Amendment 10 was adopted by the Council because, combined, they have a higher potential to reduce bycatch in MSB fisheries than the measures that would have eliminated exemptions for *Illex* vessels from *Loligo* minimum codend mesh-size requirements and established seasonal GRAs.

The FSEIS analysis suggests that the total or partial elimination of the mesh-size exemption for the *Illex* fishery would only produce modest reductions in bycatch and discards of juvenile butterflyfish. NEFOP data show that the *Illex* fishery accounts for only 7 percent of annual butterflyfish discards. The Council concluded that, though the measure might only have limited impacts on the *Illex* fishery, the

marginal reduction in juvenile butterflyfish discards did not warrant the partial or total discontinuation of the exemption.

The percentage of total bottom otter trawl butterflyfish discards that occur in the proposed GRAs ranged from 16 to 36 percent. These percentages represent the maximum amount of discard reduction that would be associated with the GRAs; the redirection of fishing activity to areas outside of the GRAs would also cause butterflyfish discards. These reductions were found to be insufficient when compared to the potential negative impact on vessels that use bottom otter trawl gear in the proposed GRAs.

NMFS notes that the NOA commenter advocated contradictory positions by seeking to have the butterflyfish mortality cap implemented in 2010, but also to have the amendment disapproved. Under the Magnuson-Stevens Act, NMFS has the authority only to approve, partially approve, or disapprove an FMP amendment. NMFS does not have the authority to select alternatives that were not proposed by the Council, or to modify elements of the measures that were proposed by the Council.

*Comment 2:* Concerns similar to those expressed during the NOA comment period were expressed in comments submitted by this environmental organization on the proposed rule, and in comments submitted by a second environmental group on the proposed rule. Additional points made in these comments included their view that the analysis of the alternatives that would have required a larger minimum mesh for the *Loligo* fishery indicates that the *Loligo* fishery could be profitably engaged in using larger mesh sizes, and they contended that the only argument made in the amendment to the contrary is based on statements by industry representatives that the loss of *Loligo* would be substantial. In addition, they noted that the analyses in the amendment show that the 2¼-inch (54-mm) minimum mesh size is predicted to have limited benefits to butterflyfish because escapement will be low. They argue that the bycatch reduction measures in Amendment 10 violate both the Magnuson-Stevens Act National Standard 2 requirement to use the best scientific information available, and the National Standard 9 requirement to reduce bycatch to the extent practicable.

An individual opposed the continued use of the smaller minimum mesh during Trimester II because most of the smaller fish and squid are caught during this period. The industry group opposed the proposed minimum mesh size

increase on the grounds that the increase will result in reduced efficiency of squid gear, which will translate to higher operating costs for *Loligo* vessels.

*Response 2:* Amendment 10 does indicate that the selected minimum codend mesh size increase (to 2¼ inches (54 mm)) will be less effective than more substantial mesh size increases in rebuilding the butterflyfish stock or minimizing bycatch in the MSB fisheries. However, given the lack of published gear studies on *Loligo* selectivity, the Council decided that the best way to determine the practicability of bycatch reduction associated with the range of mesh size alternatives presented in Amendment 10 would be to proceed with a modest codend mesh size increase, and then use observer data and other available scientific information to evaluate the impacts of the mesh size increase for 2 years. The results of the practicability assessment will be used for subsequent decisions to lower, maintain, or raise the minimum codend mesh size requirements for the *Loligo* fishery.

Amendment 10 specifies that, if the Council selected the butterflyfish mortality cap for implementation, then it would not consider requiring a minimum mesh sizes for the *Loligo* fishery greater than 2½ inches (64 mm) because the butterflyfish mortality cap would provide the primary protection for butterflyfish. The Council was concerned that the mesh size increase would add to the economic burden imposed by the mortality cap program; the mortality cap program alone will reduce general discarding only when the *Loligo* fishery is closed. Analysis of NEFOP and Vessel Trip Report (VTR) data suggests that nearly 40 percent of *Loligo* landings are currently taken by vessels using mesh sizes 2¾ inches (60 mm) and larger, which contradicts the industry claim that larger mesh size increases would affect the profitability of the *Loligo* fishery. Industry members expressed concern throughout the development of Amendment 10 that mesh size increases would affect the profitability of the *Loligo* fishery by reducing *Loligo* catch for the owners of vessels that use smaller mesh sizes.

Originally, the amendment considered a year-round minimum codend mesh size increase for the *Loligo* fishery. During public comment on the amendment, industry members commented that discards were generally low during Trimester II. Analyses in the amendment support the industry's belief that discards of butterflyfish and other finfish species were low during Trimester II. The *Loligo* quota allocated

to Trimester II is only 17 percent of the annual quota, so even if the mesh-size increase is not in effect for Trimester II, it is still in effect during the harvesting of over 80 percent of the quota.

*Comment 3:* Both environmental groups opposed the delay in implementation of the butterfish mortality cap to 2011, noting that this represents additional delay in addressing the need to rebuild butterfish. They noted that the Magnuson-Stevens Act required the Council to develop a rebuilding plan for butterfish within a year of the February 2005 notification that butterfish was overfished. They noted that once the Council had missed this deadline, NMFS should have stepped in and developed a rebuilding plan within 9 months. They contended that the Council's statement that it wanted to use the results of the 2009 butterfish stock assessment is not sufficient argument because they believe that the results of the stock assessment could be available soon enough to implement the mortality cap midyear through the existing inseason quota adjustment provision. One group noted that, because the rebuilding plan relies heavily on improved recruitment, failing to protect a single favorable recruitment event during the rebuilding period could prove disastrous.

*Response 3:* NMFS agrees that the Council did not develop a rebuilding plan for butterfish within 1 year of the notification that the stock was overfished. However, NMFS did not prepare an amendment to institute a rebuilding plan because the Council continued to actively work on the issue. As industry members testified on many occasions, bycatch reduction in the *Loligo* fishery will require the industry to voluntarily use fishing practices that reduce interactions with prohibited or unwanted species. NMFS believes that it was better to allow the Council to complete the public process for Amendment 10, than to intervene.

As explained in Amendment 10, the butterfish mortality cap will be implemented in the second year of the rebuilding plan (2011). The Council had several reasons for this. First, it determined that it was necessary in order to use information from the 2009 updated butterfish stock assessment when setting values for the butterfish mortality cap. The suggestion by the commenter that the new stock assessment information could be effectively used to implement the butterfish mortality cap during the 2010 fishing season is unrealistic, particularly when the Council must begin to develop the 2011 specifications in June 2010.

The butterfish stock was last assessed in 2003 and, using the old assessment data, the butterfish mortality cap for the *Loligo* fishery in 2010 would be fairly low (approximately 580 mt for Trimester I, and 320 mt for Trimester III) and could result in closures of the *Loligo* fishery. While the updated stock assessment might result in similarly restrictive caps, the Council wanted the best available data to serve as the basis of the cap, and NMFS agrees that this results in implementation in 2011.

The Council specified in Amendment 10 that a weighted average of the observed butterfish catch from the current fishing year and the prior fishing year will be used to extrapolate total butterfish catch for comparison to the butterfish mortality cap. The Council assumed that the *Loligo* fishery would be required to use the 2 $\frac{1}{8}$ -inch (54 mm) codend minimum mesh in 2010, and hoped to use that information to monitor the fishery in 2011. Because the mesh size increase is expected to increase the escapement of juvenile butterfish, the Council intended for the data used to monitor the butterfish mortality cap to better reflect the new 2 $\frac{1}{8}$ -inch (54 mm) codend mesh size requirement. NMFS has not relied on this rationale, noting that it is necessary to provide the industry with time to come into compliance with new gear requirements, generally 6 months. While observer data will be available for vessels that currently use 2 $\frac{1}{8}$ -inch (54 mm) mesh, the Council begins developing specifications in June each year, so the amount of data available to the Council during the development of the 2011 specifications would be limited.

*Comment 4:* The industry representative commented that the results of the November 2009 SAW assessment should be finalized before moving forward with the butterfish mortality cap provision. The commenter also questioned several aspects of the rebuilding plan because they were not drawn from citable sources. These included the use of the AR time series model to forecast recruitment, and the selection of a rebuilding target F of 0.1 for butterfish, as too conservative for a stock with a natural mortality rate of 0.8.

*Response 4:* The Council selected a rebuilding F of 0.1 to facilitate rebuilding based on analyses of stock forecasts based on both recent and long-term butterfish recruitment trends. An F of 0.1 simulates the low level of fishing mortality experienced by butterfish in the absence of a directed fishery and as bycatch in the *Loligo* fishery. The results of the stock analyses, presented in

Appendix 2 of the FSEIS, suggest that the butterfish stock can recover in a relatively short period if recruitment is high and mortality is kept to a minimum. An AR model was used to project the rebuilding timeframe because butterfish projections were not generated during the butterfish assessment presented in SAW 38, and the model used to set reference points in SAW 38 did not have projection capabilities. The butterfish rebuilding program was developed by the Council's butterfish technical team (FMAT). Models developed by the Council technical teams do not necessarily appear in citable sources. However, the AR model was reviewed by the Council's SSC and determined to be appropriate for forecasting a butterfish stock rebuilding trajectory.

*Comment 5:* In comments on the proposed rule, both environmental groups expressed concerns about the effectiveness of the butterfish mortality cap provision in the absence of a requirement for real-time monitoring through an industry-funded observer program. Neither group supported the use of the bycatch rate from observed trips to extrapolate overall butterfish catch for comparison to the butterfish mortality cap. They noted that the projection methodology is not described in the amendment, that current observer coverage levels are much lower than SBRM levels, and that the information provided through the low levels of observer coverage is unlikely to be sufficient to support adjustments to calculated bycatch rates. The industry group also expressed concern that the details of the extrapolation methodology are not specified.

*Response 5:* The amendment shows that observer coverage at the same levels as in 2004–2006 can result in CVs at or near the SBRM standard of 30 percent. The amendment specifies that a 2-year weighted average will be used to extrapolate butterfish catch from observed trips. Beyond that, the specifics of the methodology will be developed by FSO, in cooperation with Council staff and in consultation with the Council, and will be reviewed annually during the MSB specifications process, which also incorporates advice from the Council's SSC. The Council will conduct an annual review of the performance of the mortality cap program, will consult with the NEFOP to evaluate the feasibility of increases in observer coverage if butterfish mortality estimates are found to be unacceptable, and can consider the implementation of an industry-funded observer program, and other measures, in subsequent actions to ensure the success of the

rebuilding program. If non-representative observer data are found to have a confounding impact on the monitoring program, the SBRM Omnibus Amendment provides the Council with authority to implement an industry-funded observer program and/or an observer set-aside program for MSB fisheries through a framework adjustment.

*Comment 6:* Two environmental groups noted that the use of the observer program to track butterfish catch will likely exacerbate the “observer effect,” meaning that the data collected by observers may be non-representative of unobserved trips. They stated that, because achieving the mortality cap in Trimesters I or III could shut down the *Loligo* fishery, there will be pressure on the operators of observed vessels to alter their fishing activities to minimize bycatch, without incentive for unobserved vessels to do the same.

*Response 6:* NMFS agrees that it is possible that at least some *Loligo* vessel operators may change their fishing behavior, effort, and location when observers are onboard, and that data recorded on some observed trips may not be representative of the fishery as a whole. However, the NEFOP tries to minimize occurrence of the observer effect by using random selection techniques while maximizing coverage of the full fleet, and is further exploring methods to test for observer bias. If observer bias is found to have a confounding impact on the butterfish rebuilding program, the SBRM Omnibus Amendment would allow the implementation of an industry-funded observer program and/or an observer set-aside program for MSB fisheries through framework adjustments, rather than through FMP amendments. An industry-funded observer program could be used to increase the rate of observer coverage to levels found appropriate for accurately estimating butterfish bycatch. Additionally, observer set-aside programs may actually create incentive for vessels to be observed through granting extra quota or increasing possession limits in exchange for carrying an observer.

*Comment 7:* The industry group opposed the requirement for vessel operators to provide 72-hr advance trip notification to the NEFOP, and believed the NEFOP could be overwhelmed with the high volume of notification calls it would receive prior to *Loligo* trips. The industry group argued that this will delay assigning observers and providing waivers for *Loligo* trips, causing lost opportunities to harvest *Loligo*.

*Response 7:* NMFS finds this concern to be unwarranted. The Council

consulted with the NEFOP throughout the development of the Amendment 10 trip notification requirement. The trip notification requirement will be instrumental in the placement of observers on *Loligo* trips. The requirement was designed so that it can be implemented using existing NMFS resources. The NEFOP currently employs similar notification programs for other fisheries without such problems.

*Comment 8:* Two environmental groups opposed the allocation of 75 percent of the butterfish ABC to the *Loligo* fishery, because they believed it is too high to constrain butterfish mortality. They also commented that the remaining 25-percent allocation is too low to account for the contribution of the directed butterfish fishery and other fisheries to butterfish mortality.

*Response 8:* While the amendment notes a recent increase in the proportion of butterfish landings made by vessels without *Loligo*/butterfish permits, and a concern about monitoring the butterfish catch on such vessels, the amendment notes that Council staff examined several sources of data and concluded that the issue does not appear to be major. The analysis suggests that landings by unpermitted vessels have not increased, but, due to a decrease in landings by permitted vessels, such landings represent a larger proportion of the total. Data indicate that butterfish discards relate more to *Loligo* landings than to butterfish landings, and that most *Loligo* landings are obtained through the vessel and dealer reports required of the *Loligo* fishery. The Council and its MSB Monitoring Committee will closely track the monitoring program data to ensure that this system effectively constrains overall mortality.

As described elsewhere in this preamble, the Council and the SSC will consider changes to the rebuilding program as necessary to ensure the success of the rebuilding program.

*Comment 9:* An environmental organization stated that, if one purpose of the butterfish mortality cap is to provide the *Loligo* industry with incentives to reduce interactions with butterfish through the development of more selective fishing practices, then the amendment should include a plan to collect information about gear innovations from fisherman and incorporate such measures into future regulations.

*Response 9:* Amendment 10 states that, if bycatch reduction devices are developed and peer-reviewed science concludes that they will help reduce butterfish discarding, the Council will

work to require the use of the new gear. NMFS concludes that the amendment does not need to contain a more specific plan in order for innovations to be incorporated into future regulatory actions. There are few gear specifications for the MSB fisheries other than codend mesh requirements, hence it would be possible to incorporate many gear innovations voluntarily. In addition, the Council and NMFS award up to 3 percent of the butterfish and *Loligo* quotas as research set-aside, and requires that proposals for research set-aside grants match Council-identified research priorities. Reduction of bycatch in MSB fisheries will almost certainly be a research priority during the butterfish rebuilding period.

#### Changes From the Proposed Rule

In § 648.26, paragraph (a) is revised to include submission of vessel permit number and trip duration in the 72-hr trip notification; paragraph (b) is revised to state that NMFS will either assign an observer or grant a waiver exempting the vessel from the observer requirement within 24 hr of the vessel representative's notification of the proposed trip, and that a vessel may not fish in excess of the possession limits in paragraph (c) without an observer or waiver confirmation number; and paragraph (d) is revised to state that vessels that cancel trips that are selected for observer coverage must include the submission of the vessel permit number in trip cancellation notification calls.

#### Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Council prepared an FSEIS for Amendment 10. The FSEIS was filed with the EPA on June 26, 2009; a notice of availability was published on July 2, 2009 (74 FR 31733). In approving Amendment 10 on October 7, 2009, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (*see ADDRESSES*).

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments,

and a summary of the analyses completed to support the action. A copy of this analysis is available from the Council (*see ADDRESSES*).

#### Statement of Need

The purpose of this action is to rebuild the overfished butterfish stock and minimize, to the extent practicable, bycatch and discards in the MSB fisheries.

#### A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Seven comment letters were received during the comment periods on the NOA and proposed rule. The majority of the comments were not specifically directed to the IRFA, but the comment from the industry representative did reference the economic impacts of Amendment 10 on small entities. Comments 1, 6, and 7 were directed at potential economic impacts associated with the minimum mesh size increase, the 72-hr trip notification, and the butterfish mortality cap for the *Loligo* fishery. All public comments on issues relative to the IRFA, in which commenters expressed concern directly and indirectly about the economic impacts of the measures in Amendment 10, are described in the "Comments and Responses" section of the preamble of this rule. NMFS's assessment of the issues raised in comments and its responses is also provided in the "Comments and Responses" section of the preamble of this final rule and, therefore, are not repeated here.

#### Description and Estimate of Number of Small Entities To Which the Rule Would Apply

The majority of participants in this fishery are small entities, as only very few grossed more than \$4 million annually; therefore, there are no disproportionate economic impacts on small entities. The measures in Amendment 10 would primarily affect vessels that participate in the *Loligo* fishery. In 2009, there were 426 vessels issued *Loligo*/butterfish moratorium permits. Section 10.10.14 in Amendment 10 describes the vessels, key ports, and revenue information for the *Loligo* fishery; therefore, that information is not repeated here.

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

This action requires a trip notification requirement for the *Loligo* fishery. The rationale for and description of the measures is included in the preamble of this final rule; therefore, that information is not repeated here. The phone call to NMFS to declare a *Loligo* fishing trip is expected to take less than 2 min in duration. If a vessel representative cancels a declared fishing trip, then a trip cancellation call to NMFS would also be required. The 426 vessels issued *Loligo* permits in 2009 averaged 12 *Loligo* trips per year; therefore, each of these permit holders could average about 12 calls per year. Assuming each trip could be cancelled, permit holders could also place an average of 12 additional calls per year. The estimated duration of the cancellation call is expected to be less than 1 min. The cost of these calls would vary, based on where the call originated, but cost is expected to be minimal. This trip notification requirement does not duplicate, overlap, or conflict with any other Federal rules.

#### Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Several of the approved measures in Amendment 10 (*e.g.*, trip notification, minimum mesh size increase, annual assessment of the butterfish mortality cap program) in Amendment 10 are expected to have economic impacts. A detailed economic analysis of the proposed measures, as well as the non-selected alternatives, is in Section 7.5.1 of Amendment 10.

Two of the approved measures in Amendment 10 are not anticipated to have more than minimal economic effects on MSB fishery participants. The requirement that vessels notify NMFS 72 hr prior to embarking on a *Loligo* fishing trip is an administrative measure to facilitate the placement of observers aboard the *Loligo* fleet. As described previously, the economic burden on fishery participants associated with this measure is expected to be minimal. In addition, the annual review of the butterfish mortality cap by the Council's

SSC may result in modifications, which will be implemented through the MSB specifications process. The modification measure itself is also administrative and would have only minimal economic effects on fishery participants.

Implementing a 2 $\frac{1}{8}$  inch (54 mm) minimum codend mesh size requirement for the *Loligo* fishery is expected to have larger economic effects on fishery participants than the no action alternative (maintaining the 1 $\frac{7}{8}$  inches (48 mm) minimum codend mesh size requirement), but less of an economic effect than implementing any of the other action alternatives (minimum mesh size requirements of 2 $\frac{3}{8}$  inches (60 mm), 2 $\frac{1}{2}$  inches (64 mm), or 3 inches (76 mm)). The factors considered in evaluating economic effects of the action alternatives were the cost of replacing a codend and the loss in revenue that may result from *Loligo* escapement through the larger mesh. While the cost of replacing a codend may be substantial, fishery participants routinely replace codends and, as such, the cost of a codend with a larger minimum mesh size may not be a significant additional cost. Replacing a codend can cost between \$200 and \$700, depending on the size of the net; the cost of replacement codends is not anticipated to vary by mesh size. This action is notifying fishery participants 6 months in advance of the regulatory change and may allow participants to plan purchases, thereby minimizing costs associated with a replacement codend.

The loss of revenue associated with *Loligo* escapement is difficult to quantify. There are no published gear studies of *Loligo* selectivity; therefore quantifying the *Loligo* retention associated with the different mesh sizes is difficult. Studies of other squid species suggest that squid, like fish, are size-selected by gear. Given this, it could be expected that economic effects associated with the mesh size action alternatives increase with mesh size. Economic effects associated with an increased mesh size for the *Loligo* fishery are mitigated because the mesh size increase would not be in effect during Trimester II (May–Aug). The rapid growth of *Loligo* may allow fishery participants to minimize *Loligo* escapement by shifting fishing effort to later in the year, when larger squid would have an increased retention rate.

Implementing a butterfish mortality cap for the *Loligo* fishery has the potential for greater economic effects on fishery participants than the no action alternative (no butterfish mortality cap). Under the approved action alternative, the *Loligo* fishery will close when the



butterfish mortality cap is harvested. If the *Loligo* fishery is closed in response to butterfish catch before the entire *Loligo* fishery is harvested, then a loss of revenue is possible. If the *Loligo* fishery can be prosecuted with minimal butterfish catch and without attaining the butterfish mortality cap, then there is no economic difference between the no action and action alternatives. However, there may be additional costs associated with butterfish avoidance strategies. The potential for *Loligo* revenue loss would be dependent upon the size of the butterfish mortality cap. As described previously, the butterfish mortality cap is based on the level of butterfish abundance. As the butterfish stock rebuilds, the mortality cap will increase and the potential for lost *Loligo* revenue should decrease. When the butterfish stock rebuilds, a directed butterfish fishery could resume, provided discards are kept low, and would have economic benefits for fishery participants.

Differences in the economic effects on fishery participants between the butterfish mortality cap alternatives (butterfish mortality cap allocated by trimester in the same proportions as the *Loligo* quota, *Loligo* landings, or butterfish bycatch rates) are anticipated to be minimal. However, because the approved alternative (butterfish mortality cap based on butterfish bycatch rates) best approximates existing fishery conditions, by considering the ratio of butterfish caught to *Loligo* landed, it is anticipated that the approved alternative will be less constraining on the *Loligo* fishery than the non-selected action alternatives, which are butterfish mortality caps based on only *Loligo* information. As described in Section 7.5.1 of the amendment, if the butterfish mortality cap is based on accurate assumptions about the size of the butterfish stock and butterfish bycatch rates by trimester, then potential *Loligo* revenue loss may be relatively small (\$1.0 million), with maximum losses per vessel averaging 0.6 percent and ranging up to 4.1 percent. If assumptions about butterfish stock size and bycatch rates are incorrect, then potential *Loligo* revenue loss may be relatively large (\$15.8 million), with maximum losses per vessel averaging 9.1 percent and ranging up to 65 percent. These ranges assume equal distribution of losses based on distributions of landings, but vessels with access to other fisheries may target those fisheries to mitigate lost *Loligo* revenue.

As a tool to minimize bycatch, Amendment 10 considered eliminating current exemptions from *Loligo*

minimum mesh size requirements for the *Illex* fishery. There is no minimum codend mesh size requirement for vessels retaining *Illex*, but there is a 1 $\frac{7}{8}$  inch (48 mm) minimum mesh size requirement for vessels retaining *Loligo*. Because squid species can seasonally co-occur, during the months of June–September, the *Illex* fishery is exempt from the *Loligo* minimum mesh size requirement on the *Illex* fishing grounds (*i.e.*, the area seaward of 50 fm (91.45 m) depth contour) where *Loligo* is less often present. Because the *Loligo* fishery accounts for more bycatch than the *Illex* fishery, this action maintains the current exemption to the *Loligo* minimum mesh size requirement for the *Illex* fishery. The economic effects on fishery participants of maintaining the no action alternative are expected to be less than the economic effects associated with any of the action alternatives (*Illex* exemption during June–August, *Illex* exemption during June–July, discontinuation of *Illex* exemption). Similar to the economic effects associated with the proposed increase to the minimum mesh size for *Loligo*, costs to *Illex* fishery participants associated with any of the action alternatives would include replacement codends and increased harvesting effort due to *Illex* escapement. While the cost of replacing a codend may be substantial, fishery participants routinely replace codends and, as such, the cost of a codend with a larger minimum mesh size may not be a significant additional cost. Additionally, the rapid growth of *Illex* could allow fishery participants to minimize *Illex* escapement by shifting effort to later in the year, when larger squid would have an increased retention rate.

Lastly, Amendment 10 considered establishing GRAs to reduce butterfish discards in MSB fisheries. The action alternatives included four GRAs, to be effective during January–April, that varied by minimum codend mesh size requirements (*i.e.*, 3 inches (76 mm) or 3 $\frac{3}{4}$  inches (96 mm)) and effective area (*i.e.*, area accounting for 50 percent or 90 percent of MSB discards). Because the GRAs are limited in temporal and geographic scope, the Council concluded they were not a viable solution to butterfish discarding in MSB fisheries and did not recommend establishing butterfish GRAs (no action alternative). Establishing GRAs would likely have resulted in shifts in the distribution of fishing effort with biological effects that would be difficult to predict. Based on average annual revenue from trips that would be affected by GRAs, potential economic

effects associated with the action alternatives per vessel ranged from revenue losses of \$498,000–\$559,000. However, given that fishing vessels are flexible in their fishing practices, these losses would most likely not be fully realized.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0601. Public reporting burden for the phone call to declare a *Loligo* fishing trip is estimated to average 2 min per call per trip, and public burden for the phone call to cancel a *Loligo* trip is estimated to average 1 min. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 5, 2010.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 648 are amended as follows:

#### **PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding an entry for § 648.26 to read as follows:

#### **§ 902.1 OMB control number assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR .....	*
648.26 .....	-0601

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.13, paragraph (a) is revised to read as follows:

**§ 648.13 Transfers at sea.**

(a) Only vessels issued a *Loligo* and butterfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued a squid/butterfish incidental catch permit and authorized in writing by the Regional Administrator to do so, may transfer or attempt to transfer or receive *Loligo*, *Illex*, or butterfish.

■ 5. In § 648.14, paragraph (g)(1)(iii) is added and paragraph (g)(2)(ii)(C) is revised to read as follows:

**§ 648.14 Prohibitions.**

(g) \* \* \*  
(1) \* \* \*

(iii) *Observer requirements for Loligo fishery.* Fail to comply with any of the provisions specified in § 648.26.

(2) \* \* \*  
(ii) \* \* \*

(C) Take, retain, possess or land mackerel, squid, or butterfish in excess of a possession allowance specified in § 648.25.

■ 6. In § 648.21, paragraphs (a)(2) and (f)(1) are revised, and paragraphs (b)(3)(iii) and (b)(3)(iv) are added to read as follows:

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

(a) \* \* \*

(2) IOY, including RQ, DAH, DAP, butterfish mortality cap for the *Loligo* fishery, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish, which, subject to annual review, may be specified for a period of up to 3 years;

(b) \* \* \*  
(3) \* \* \*

(iii) The butterfish mortality cap will be allocated to the *Loligo* fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

(iv) Any underages of the butterfish mortality cap for Trimesters I or II will be applied to Trimester III of the same year, and any overages of the butterfish mortality cap for Trimesters I and II will be applied to Trimester III of the same year.

\* \* \* \* \*  
(f) \* \* \*

(1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

■ 7. In § 648.22, paragraph (a)(5) is added to read as follows:

**§ 648.22 Closure of the fishery.**

(a) \* \* \*  
(5) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 80 percent of the butterfish mortality cap is harvested in Trimester I and/or 90 percent of the butterfish mortality cap is harvested in Trimester III.

■ 8. In § 648.23, paragraphs (a)(3) introductory text and (a)(3)(i) are revised to read as follows:

**§ 648.23 Gear restrictions.**

(a) \* \* \*  
(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 2 1/8 inches (54 mm), during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1 7/8 inches (48 mm), during Trimester II (May–Aug), 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 net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or

chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2 1/8 inches (54 mm), during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1 7/8 inches (48 mm), during Trimester II (May–Aug), diamond mesh, inside stretch measure. “Top of the regulated portion of the net” means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4 1/2 inches (11.43 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

■ 9. In § 648.25, paragraph (a) is revised to read as follows:

**§ 648.25 Possession restrictions.**

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery that occurs prior to June 1, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for mackerel that occurs on or after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day.

■ 10. Section 648.26 is added to subpart B to read as follows:

**§ 648.26 Observer requirements for the Loligo fishery.**

(a) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr prior to beginning any fishing trip, unless it complies with the possession

restrictions in paragraph (c) of this section.

(b) A vessel that has a representative provide notification to NMFS as described in paragraph (a) of this section may only embark on a *Loligo* trip without an observer if a vessel representative has been notified that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specified *Loligo* trip, within 24 hr of the vessel representative's notification of the prospective *Loligo* trip, as specified by paragraph (a) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the *Loligo* trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing *Loligo* except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(c) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing 2,500 lb (1.13 mt) or more of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of *Loligo* per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number for contact, and the intended date, time, and port of departure for the cancelled trip within 72 hr of the initial notification. In addition, if a trip selected for observer coverage is canceled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

[Docket No. FDA-2010-N-0002]

#### New Animal Drugs for Use in Animal Feeds; Zilpaterol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three abbreviated new animal drug applications (ANADAs) filed by Ivy Laboratories, Div. of Ivy Animal Health, Inc. The ANADAs provides for use of single-ingredient Type A medicated articles containing zilpaterol, melengestrol, monensin, and tylosin to make two-way, three-way, and four-way combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter.

**DATES:** This rule is effective March 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** John K. Harshman, Center for Veterinary Medicine (HFV-170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8197, e-mail: [john.harshman@fda.hhs.gov](mailto:john.harshman@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200-483 for use of ZILMAX (zilpaterol hydrochloride) and HEIFERMAX 500 (melengestrol acetate) Liquid Premix single-ingredient Type A medicated articles to make dry and liquid, two way combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200-483 is approved as a generic copy of Intervet, Inc.'s combination medicated feed use of ZILMAX and MGA 500 (melengestrol acetate), approved under NADA 141-284.

Ivy Laboratories also filed ANADA 200-479 for use of ZILMAX, HEIFERMAX 500 Liquid Premix, and RUMENSIN (monensin USP) single-ingredient Type A medicated articles to make dry and liquid, three-way combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200-479 is approved as a generic copy of Intervet, Inc.'s combination medicated feed use of ZILMAX, MGA 500, and RUMENSIN, approved under NADA 141-282.

Ivy Laboratories also filed ANADA 200-480 for use of ZILMAX, HEIFERMAX 500 Liquid Premix, RUMENSIN, and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles to make dry and liquid, four-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200-480 is approved as a generic copy of Intervet, Inc.'s combination medicated feed use of ZILMAX, MGA 500, RUMENSIN, and TYLAN, approved under NADA 141-280.

The abbreviated applications are approved as of December 30, 2009, and the regulations are amended in 21 CFR 558.665 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

#### List of Subject in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

#### § 558.665 [Amended]

■ 2. In § 558.665, in the table in paragraphs (e)(2), (e)(4), and (e)(6), in the "Limitations" column remove "No. 000009" and add in its place "Nos. 000009 or 021641" and in the "Sponsor"