Act to achieve the optimum yield from a fishery on a continuing basis, resulting in a negative economic impact on vessels permitted to fish in this fishery.

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

Dated: August 2, 2011.

Margo Schulze-Haugen,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 648
[Docket No. 110218149–1182–01]

RIN 0648–BA86

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fishery; Emergency Rule Extension, Revision of 2011 Butterfish Specifications

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

**ACTION:** Temporary final rule; emergency action extension and request for comments.

**SUMMARY:** NMFS extends the emergency revision to the butterfish allowable biological catch (ABC) implemented on March 15, 2011, which is scheduled to expire on September 12, 2011.

Specifically, this temporary rule maintains the increase in the butterfish ABC from 1,500 mt to 1,811 mt, and applies the increase to the butterfish mortality cap in the Loligo (Doryteuthis) squid fishery, based on the most recent and best available scientific information. The increase is extended for an additional 86 days to maintain the increased butterfish ABC through the end of the 2011 fishing year (i.e., through December 31, 2011), or until superseded by 2012 MSB specifications.

**DATES:** The effective date of the interim rule published March 15, 2011 (76 FR 13887), is extended through March 16, 2012, unless superseded by another action. NMFS will accept comments through September 6, 2011.

**ADDRESSES:** The supplemental EA is available by request from: Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2276, or via the Internet at http://www.nero.noaa.gov. You may submit comments, identified by RIN 0648–BA86, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal http://www.regulations.gov.
- **Fax:** (978) 281–9135, Attn: Aja Szumylo;
- **Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930.** Mark the outside of the envelope “Comments on Extension of the Emergency Rule to Revise the Butterfish Specifications.”

**Instructions:** All comments received are a part of the public record and will generally be posted to http://www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Aja Szumylo, Fishery Policy Analyst, (978) 281–9195; fax: (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

This temporary final rule extends the emergency measures implemented on March 15, 2011 (76 FR 13887), as authorized by section 305(c) of the Magnuson-Stevens Act, to increase the butterfish ABC from 1,500 mt to 1,811 mt. The March 15, 2011, emergency rule included detailed information on purpose and need to revise the butterfish ABC that was initially set in the final 2011 specifications for the MSB Fishery Management Plan (FMP) (76 FR 8306; February 14, 2011). There was one anonymous comment submitted on the emergency rule. NMFS will again accept public comment on both the appropriateness of the emergency action to date, and its extension.

The emergency specifications extended through this final rule maintain the 2011 butterfish ABC at 1,811 mt, with the increase applied to the butterfish mortality cap on the Loligo fishery. Other specifications for butterfish, specifically initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and research set-aside (RSA), are unchanged from those set in the final 2011 specifications.

Specifications for Atlantic mackerel, Loligo squid, and Illex squid also remain unchanged.

Amendment 10 to the MSB FMP specified that the butterfish mortality cap is to be set equal to 75 percent of the butterfish ABC, with the remaining 25 percent of the butterfish ABC allocated to account for butterfish catch in other fisheries, but noted that this apportionment may be revised as necessary to accommodate the Loligo squid fishery. The additional 311–mt ABC allotment extended through this action is entirely allocated to the mortality cap. Under the 2011 specifications, the butterfish mortality cap was 1,125 mt (75 percent of 1,500 mt); this extension maintains the increase in the 2011 butterfish mortality cap at 1,436 mt that was implemented in the emergency action.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the March 15, 2011, emergency rule, NMFS determined that it was necessary to modify the butterfish specifications, consistent with new scientific advice, in a timely manner in order allow the Loligo squid fleet to optimize Loligo squid harvest with reduced concern that the fishery would be closed due to the butterfish mortality cap.

**Comments**

*Comment:* One anonymous individual opposed the increase in the butterfish ABC and stated that this level of taking is not sustainable.

*Response:* As discussed in the background section of the March 2011 emergency rule, the increased butterfish
ABC NMFS implemented in the emergency action is consistent with the best scientific information available. The analysis presented in the supplemental EA concludes that increasing the butterfish ABC to 1,811 mt is not expected to have any adverse impact on the butterfish stock when compared to the original 1,500-mt butterfish ABC.

**Classification**

NMFS has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that it is impracticable and contrary to the public interest to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest. This action provides the benefit of allowing the Loligo fleet to optimize its harvest, with less concern that the fishery could be closed due to the butterfish mortality cap. The initial emergency action did not allow for prior public comment because the scientific review process and determination could not have been completed any earlier, due to the inherent time constraints associated with the process and the fact that the information on which this action is based became available after 2011 specifications were finalized.

For the reason above, the Assistant Administrator for Fisheries finds good cause under section 553(d) of the APA to waive the 30-day delay in effectiveness.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The EA prepared for the initial emergency rule analyzed the impacts of the emergency specifications for the duration of a year (Supplemental Environmental Assessment for 2011 Atlantic Mackerel, Squid, and Butterfish Specifications; February 2011). Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

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