concerning this proposed rule. We encourage the public's involvement in this matter and therefore have scheduled a public hearing to be held in Honolulu, Oahu, Hawaii. This public hearing will be held on January 20, 2011, at the McCoy Pavilion at the Ala Moana Park, 1201 Ala Moana Blvd, Honolulu, HI 96814 from 6:30 to 9 p.m. NMFS will consider requests for additional public hearings that are made in writing and received (see **ADDRESSES**) by January 31, 2011. If additional public hearings are requested and will be held, details regarding location(s), date(s), and time(s) will be published in a forthcoming **Federal Register** notice.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (*See* NOAA Administrative Order 216–6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, and those states will be invited to comment on this proposal. We have conferred with the state of Hawaii in the course of assessing the status of the Hawaiian insular false killer DPS, and considered, among other things, Federal, state, and local conservation measures. As we proceed, we intend to continue engaging in informal and formal contacts with the state, and other affected local or regional entities, giving careful consideration to all written and oral comments received.

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: November 10, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

2. In § 224.101, amend paragraph (b) by adding, "False killer whale (*Pseudorca crassidens*), Hawaiian insular distinct population segment" in alphabetical order.

[FR Doc. 2010–28843 Filed 11–16–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100804323–0544–01]

RIN 0648–BA03

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 2011 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action proposes to modify the measure that transfers *Loligo* squid (*Loligo*) quota underages from Trimester I to Trimesters II and III by limiting the Trimester II quota increase to no more than 50 percent. This action also proposes to revise the 72-hr pre-trip observer notification requirement for the *Loligo* fishery to accommodate vessels departing for multiple day trips in a week. 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 December 17, 2010.

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: Dr. Christopher M. Moore, 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.noaa.gov.*

You may submit comments, identified by 0648–BA03, 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 Peters-Mason;

Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2011 MSB Specifications."

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed

rule may be submitted to NMFS, Northeast Regional Office and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Aja Peters-Mason, Fishery Policy Analyst, 978–281–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the MSB Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The 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 specifications to be specified for up to 3 years, subject to annual review. The regulations at § 648.21 also specify that IOY for *Illex* and *Loligo* squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

At its June 8–10, 2010, meeting in New York, NY, the Council recommended MSB specifications for the 2011 fishing year. The Council considered the recommendations made by its Monitoring Committee and Scientific and Statistical Committee (SSC). The SSC recommends ABC. SSC advice accounts for scientific uncertainty regarding stock status and biological reference points in recommending the ABC, and the Council relies on that ABC recommendation to set other specifications. In addition to 2011 specifications for each of the MSB species, the Council recommended a modification in the provision that transfers Trimester I quota underages to Trimesters II and III for the *Loligo* fishery. The Council submitted these recommendations, along with the required analyses, for agency review on July 19, 2010, with final submission on September 23, 2010.

Research Quota

The Mid-Atlantic Research Set-Aside (RSA) Program allows research projects to be funded through the sale of fish that has been set aside from the total annual quota. The RQ may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that 3 percent of the 2011 *Illex* squid (*Illex*), butterfish, and Atlantic mackerel (mackerel) IOY be set aside to fund projects selected under the 2011 Mid-Atlantic RSA Program. For *Loligo,* only 330 mt (1.65 percent) is proposed to be available for RSA, to reduce impacts on butterfish from RSA *Loligo* fishing.

NMFS solicited research proposals under the 2011 Mid-Atlantic RSA Program through the **Federal Register** (75 FR 3092, January 19, 2010). The deadline for submission was March 22, 2010. The project selection and award process for the 2011 Mid-Atlantic RSA Program has not concluded and, therefore, the research quota awards are not known at this time. When the selection process has been concluded, projects requesting RQ will be forwarded to the NOAA Grants Office for award. If any portion of the RQ is not awarded, NMFS will return any un-awarded RQ to the commercial fishery either through the final 2011 MSB specification rulemaking process or through the publication of a separate notice in the **Federal Register** notifying the public of a quota adjustment.

Vessels harvesting RQ in support of approved research projects would be issued exempted fishing permits (EFP) authorizing them to exceed Federal possession limits and to fish during Federal quota closures. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that interested parties be provided an opportunity to comment on all proposed EFPs. These exemptions are necessary to allow project investigators to recover research expenses, as well as adequately compensate fishing industry participants harvesting RQ. Vessels harvesting RQ would operate within all other regulations that govern the commercial fishery, unless otherwise exempted through a separate EFP.

2011 Proposed Specifications and Management Measures

TABLE 1—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2011 FISHING YEAR

Specifications	*Loligo*	*Illex*	Mackerel	Butterfish
Max OY	32,000	Unknown	Unknown	Unknown
ABC	24,000	24,000	47,395	1,500
IOY	20,000	23,328	46,779	500
DAH	20,000	23,328	[1] 46,779	500
DAP	20,000	23,328	31,779	500
JVP	N/A	N/A	0	0
TALFF	N/A	N/A	0	0

[1] Includes a 15,000-mt catch of Atlantic mackerel by the recreational fishery.

Atlantic Mackerel

The status of the mackerel stock was assessed by the Transboundary Resources Assessment Committee (TRAC) in March 2010. Though the 2010 TRAC Status Report indicated reduced productivity in the stock and a lack of older fish in both the survey and catch data, the status of the mackerel stock is unknown, because biomass reference points could not be determined. According to the FMP, mackerel ABC must be calculated using the formula U.S. 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 fishing mortality rate (F). Due to uncertainty in the assessment, the TRAC recommended that total annual catches not exceed the average total landings (80,000 mt) over the last 3 years (2006–2008) until new information is available. Since there is no calculation of yield at target F available from the most recent assessment, the Council's SSC recommended specifying the stock-wide ABC for 2011 at 80,000 mt,

consistent with the TRAC recommendation.

Expected Canadian catch (32,605 mt) was derived by examining the relationship between U.S. landings in one year for the years 1994–2008 and the Canadian landings in the next year (1995–2009); the two landings series were found to be strongly correlated (correlation coefficient = 0.86). During this time series, Canadian landings in one year were on average 1.71 times higher than U.S. landings the previous year; the relationship can thus be used as a scaling factor for determining expected Canadian catch. Analysis revealed that multiplying U.S. catch in one year by 3.218 (95th percentile of scaling factors 1994–2009) would have underestimated Canadian catch in the following year in only 1 out of 15 of those "year pairs." The 95th percentile scaling factor was applied to 2010 U.S. mackerel catch (10,000 mt prior to July 1) to derive expected Canadian catch for 2011 (32,180 mt); this was increased to 32,605 mt to account for Canadian mackerel discards. Subtracting the expected 2011 Canadian catch of 32,605 mt from the stock-wide ABC of 80,000 mt yields a proposed 2011 U.S. ABC of 47,395 mt.

The 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 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. While a surplus existed between ABC and DAH for many years, that surplus has disappeared due to downward adjustments of the specifications in recent years. Based on analysis and a review of the state of the world mackerel market and possible increases in U.S. production levels, the Council concluded that specifying an IOY resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons, consistent with the Council's recommendation, 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 support the U.S. mackerel industry. NMFS concurs that it is reasonable to assume that in 2011 the commercial fishery has the ability to harvest 46,779 mt of mackerel.

The 2010 TRAC assessment also estimated U.S. mackerel discards from 1989–2008. For the most recent 5 years for which complete data are available (2004–2008), total discards accounted for 1.3 percent of total catch. In order to account for discards, the Council recommended, and NMFS is proposing, specifying the mackerel IOY and DAH at 46,779 m (ABC minus 1.3 percent for discards). The DAH includes commercial harvest plus the 15,000 mt available for the recreational fishery.

NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004), consistent with the Council's recommendation. In the past, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 7 years, the Council has recommended zero JVP because U.S. shoreside processing capacity for mackerel has expanded. The Council concluded that processing capacity was no longer a limiting factor relative to domestic production of mackerel, even at the higher DAP of 100,000 mt; this is even more true with the proposed DAP of 31,779 mt.

Atlantic Squids

Loligo

Because *Loligo* is a sub-annual species (*i.e.,* has a lifespan of less than 1 year), the stock is solely dependent on sufficient recruitment year to year to prevent stock collapse. Based on advice provided in November 2001 by the most recent *Loligo* stock assessment review committee meeting (SARC 34), the FMP uses fishing mortality rate (F) proxies that are fixed values based on average fishing mortality rates achieved during a time period when the stock biomass was fairly resilient (1987–2000). The use of a proxy is necessary because it is currently not possible to accurately predict *Loligo* stock biomass, because recruitment, which occurs throughout the year, is highly variable inter-annually and influenced by changing environmental conditions. To determine if overfishing is occurring, the $F_{Threshold}$ proxy is the 75th percentile of fishing mortality rates during 1987–2000. The F_{Target} proxy used to determine OY is the average F during the same period.

Using these proxies, the SSC recommended a *Loligo* Max OY of 32,000 mt, and recommended that 75 percent of that value, 24,000 mt, be used for an ABC. SARC 34 also recommended that the Council limit total landings and discards to 20,000 mt. Therefore, the Council proposed that IOY, DAH, and DAP be set at 20,000 mt.

NMFS concurs with the Council's recommendation; therefore, this action proposes a 2011 *Loligo* Max OY of 32,000 mt, an ABC of 24,000 mt, and an IOY, DAH, and DAP of 20,000 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* fishery because of the domestic industry's capacity to harvest and process the OY for this fishery.

Distribution of the *Loligo* DAH

The proposed 2011 *Loligo* DAH would be allocated into trimesters, according to percentages specified in the FMP, as follows:

TABLE 2—PROPOSED TRIMESTER ALLOCATION OF LOLIGO QUOTA IN 2011

Trimester	Percent	Metric tons
I (Jan–Apr)	43	8,600
II (May–Aug)	17	3,400
III (Sep–Dec)	40	8,000
Total	100	20,000

This action proposes to adjust how Trimester I underages would be distributed among the remaining Trimesters. Currently, Trimester I *Loligo* underages greater than 25 percent of the Trimester I quota are distributed evenly between Trimesters II and III. The Council expressed concern that the butterfish mortality cap on the *Loligo* fishery, established in 2010 by MSB Amendment 10 (75 FR 11441, March 11, 2010), could result in a substantial Trimester I underage if the *Loligo* fishery is closed because the Trimester I butterfish catch cap is reached. Under current management, this could result in a large roll-over of *Loligo* quota to Trimester II, when the butterfish catch cap cannot close the fishery. To avoid this situation, the Council recommended, and NMFS is proposing, that the roll-over of quota from Trimester I to Trimester II should be no more than 50 percent of the Trimester II allocation. This proposed adjustment will continue to prevent an underharvest of the annual quota by distributing the quota across the remaining trimesters, while reducing management uncertainty related to the implementation of the butterfish mortality cap for the *Loligo* fishery.

Adjustment to the *Loligo* Pre-trip Trip Notification Requirement

The rule proposes to change the 72-hr pre-trip observer notification requirement established through Amendment 10 for vessels issued a *Loligo* and butterfish moratorium permit. Starting January 1, 2011, such vessels intending to land more than 2,500 lb of *Loligo* will be required to

notify the NMFS Northeast Fishery Observer Program (NEFOP) at least 72 hr prior to departing on a trip. A large number of the *Loligo* vessels embark on multiple trips that last less than 24 hr during a single week. In order to reduce the burden of this requirement for these vessels, this action proposes to streamline the requirement such that vessels must notify NEFOP at least 72 hr, but not more than 10 days before embarking on a *Loligo* trip.

Illex Squid

The *Illex* stock was most recently assessed at SARC 42 in late 2005. While it was not possible to evaluate current stock status because there are no reliable current estimates of stock biomass or F, qualitative analyses determined that overfishing had not likely been occurring. The SSC recommended an ABC of 24,000 mt based on observations that catches in this range, and up to 26,000 mt, have not caused any apparent harm to the stock. The Council recommended that the IOY be reduced to 23,328 mt to account for discards (2.8 percent of catch) based on the discard estimate ratios from the last assessment.

Consistent with the Council's recommendation, NMFS proposes to specify the *Illex* ABC as 24,000 mt, and to specify IOY, DAH, and DAP as 23,328 mt. The FMP does not authorize the specification of JVP and TALFF for the *Illex* fishery because of the domestic fishing industry's capacity to harvest and to process the IOY from this fishery.

Butterfish

The status of the butterfish stock was most recently assessed at SARC 49 in February 2010. The estimates of butterfish fishing mortality and total biomass resulting from SARC 49 are highly uncertain, and the final assessment report states that it would be inappropriate to compare the previous status determination criteria from SARC 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 SARC 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 F (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.

Given the uncertainty in the assessment, the SSC recommended a status quo ABC of 1,500 mt. Assuming that butterfish discards equal twice the level of landings, the amount of butterfish discards associated with 500 mt of landings is approximately 1,000 mt.

Therefore, the proposed specifications would set the ABC at 1,500 mt, and the IOY, DAH, and DAP at 500 mt. Additionally, consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2010 because zero TALFF is proposed for mackerel.

Amendment 10 created a butterfish mortality cap for the *Loligo* fishery which will go into effect on January 1, 2011. If the butterfish mortality cap is harvested during Trimester I (January–April) or Trimester III (September–December), the directed *Loligo* fishery will close for the remainder of that trimester. The mortality cap is equal to 75 percent of the butterfish ABC (1,125 mt).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an 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 summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

Statement of Objective and Need

This action proposes 2011 specifications and management measures for mackerel, squid, and butterfish, proposes to modify accounting procedures for underages of Trimester I quotas in the *Loligo* fishery, and proposes to adjust the 72-hr pre-trip observer notification requirement for *Loligo* vessels. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

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

Based on permit data for 2010, the numbers of potential fishing vessels in the 2011 fisheries are as follows: 360 *Loligo*/butterfish moratorium permits, 76 *Illex* moratorium permits, 2,156 mackerel permits, 1,844 incidental squid/butterfish permits, and 1,844 MSB party/charter permits. 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, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This proposed rule contains a change to an information collection previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0601: Atlantic Mackerel, Squid, and Butterfish Amendment 10 Data Collection. This action proposes to require that vessels intending to embark on *Loligo* trips notify NEFOP at least 72 hr, but no more than 10 days before their intended departure dates. The adjustment will also allow vessels to submit an email address for contact. A change request has been submitted to OMB for approval. This action 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 (46,779 mt, with 15,000 mt allocated to recreational catch) represents a reduction from status quo (115,000 mt). Despite the reduction, the proposed IOY is above recent U.S. landings; mackerel landings for 2007–2009 averaged 23,310 mt. Thus, the reduction does not pose a constraint to vessels relative to the landings in recent years. Accordingly, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action.

The *Loligo* IOY (20,000 mt) represents a slight increase from the status quo (19,000 mt). *Loligo* landings for 2007–2009 averaged 11,019 mt. This provides

an opportunity to increase landings, though if recent trends continue, there may be no increase in landings despite the increase in the allocation. No reductions in revenues for the *Loligo* fishery are expected as a result of this proposed action.

The *Illex* IOY (23,328 mt) proposed in this action represents a slight decrease compared to status quo (24,000 mt). Though annual *Illex* landings have been increasing over the past 3 years (9,002 mt for 2007, 15,900 mt for 2008, and 18,419 mt for 2009), the landings were lower than the level proposed. Thus, implementation of this proposed action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2011.

The butterfish IOY proposed in this action (500 mt) represents status quo, as compared to 2010, and represents only a minimal constraint to vessels relative to the landings in recent years. Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Given the lack of a directed butterfish fishery and low butterfish landings, the proposed action is not expected to reduce revenues in this fishery more than minimally.

As discussed in the Final Regulatory Flexibility Analysis (FRFA) for MSB Amendment 10, the butterfish mortality cap has a potential for economic impact on fishery participants. The *Loligo* fishery will close during Trimesters I and III, if the butterfish mortality cap is reached. If the *Loligo* fishery is closed in response to butterfish catch before the entire *Loligo* quota is harvested, then a loss in revenue is possible. The potential for *Loligo* revenue loss is dependent upon the size of the butterfish mortality cap, which 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.

The accounting methods for *Loligo* trimester underages proposed in this action would distribute any substantial underage in Trimester I (greater than 25 percent of the Trimester I quota) between Trimester II and III, but would limit the transfer of quota such that the Trimester II quota could increase by 50 percent, at most. The proposed adjustment may provide some economic benefit to the fishery during Trimesters II and III because it will allow access to underutilized Trimester I quota later in the fishing year.

The proposed change to the pre-trip observer notification requirement, which would allow vessels to notify at least 72 hr, but no more than 10 days prior to fishing trips, is an administrative measure to facilitate the placement of observers aboard the *Loligo* fleet, and is intended to reduce the burden of the notification requirement for vessels that depart on multiple trips in a short period by allowing for advance notification. The economic burden on fishery participants associated with this measure is expected to be minimal.

Alternatives to the Proposed Rule

The Council analysis evaluated two alternatives to the proposed action for mackerel. Based on recent harvest levels, neither of the ABC and IOY alternatives would represent a constraint on vessels in this fishery. The first alternative (status quo; least restrictive), which would have set the ABC at 156,000 mt, and IOY at 115,000 mt, was not selected because the ABC would have exceeded the SSC's recommendation.

As in the proposed action (intermediately restrictive), the second alternative (most restrictive) started from the SSC recommended stockwide ABC of 80,000 mt, but instead subtracted an estimated 41,556 mt for Canadian landings. This would have resulted in a U.S. ABC of 38,444 mt, and an IOY and DAH of 37,944 mt (U.S. ABC minus 1.3 percent for discards). For this alternative, expected Canadian catch (41,556 mt) was derived by examining the relationship between Canadian landings in one year (*e.g.,* 1994) and the Canadian landings 2 years later (*e.g.,* 1996); this analysis was chosen so that 2009 Canadian landings could be used to determine expected Canadian landings for 2011. The years examined included 1962–2009. Though the two landings series were found to be strongly correlated (correlation coefficient = 0.71), this method of deriving expected Canadian catch (and the resulting specifications alternative) was not selected over the proposed alternative. The landings series compared in the method used to derive 2011 Canadian catch in the proposed alternative (U.S. landings in one year and Canadian landings in the next year) were found to have a stronger correlation (correlation coefficient = 0.86) than the landings series compared in this alternative. Thus, using the Canadian catch derivation method in the proposed alternative provides a more reliable estimate of 2011 Canadian catch.

There were two alternatives to the proposed action evaluated for *Loligo*. Both alternatives set the Max OY at 32,000 mt, the same level as the proposed action. The first alternative (status quo) would have set the ABC and IOY at 19,000 mt; this alternative was not chosen, because it was not consistent with the ABC recommended by the SSC. The second alternative (least restrictive) would have set the ABC at the level recommended by the SSC (24,000 mt), but would have set the IOY at 22,560 mt (ABC reduced by 6 percent to account for discards). This alternative was not adopted by the Council because two sources of uncertainty, namely the uncertainty regarding the discard estimate and the management uncertainty regarding the operation of the *Loligo* fishery in 2011, given the impending implementation of the butterfish mortality cap, warranted setting the IOY at the more precautionary level specified in the proposed action (intermediately restrictive).

The alternatives also differed in how Trimester I underages and overages would be applied to the *Loligo* quotas in the following Trimesters. The first alternative (status quo) would maintain the current measure to distribute an underage in Trimester I greater than 25 percent of the Trimester I quota evenly between Trimesters II and III. The current measure was not considered to be sufficient to address management uncertainty related to the implementation of the butterfish mortality cap in 2011.

Two non-selected alternatives were considered for *Illex;* both would have set the ABC at 24,000 mt. The first alternative would have set IOY, DAH, and DAP at 24,000 mt (status quo; least restrictive) rather than 23,328 mt specified in the proposed action (intermediately restrictive). This alternative was not selected because the higher specifications were inconsistent with the results of the most recent stock assessment. The second alternative (most restrictive) would have set IOY, DAH, and DAP at 22,656 mt (ABC reduced by 5.6 percent, based on double the discard ratio estimate). The Council considered this alternative unnecessarily restrictive.

One non-selected alternative was considered for butterfish that would maintain the status quo, which only differs from the proposed alternative in that it would have set Max OY at 12,175 mt. The proposed alternative would remove the specification of Max OY, because it is no longer supported by available science. All other

specifications are identical to the status quo alternative.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which was previously approved by OMB under OMB Control Number 0648–0601. The public reporting burden for the phone call to declare a *Loligo* fishing trip is estimated to average 2 min per call per trip. 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 *OIRA_Submission@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 in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 12, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, 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 § 648.21, paragraph (f)(2) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

* * * * *

3. In § 648.22, paragraph (a)(2)(i) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) * * *

(2) * * *

(i) If the Regional Administrator determines that the Trimester I closure threshold has been underharvested by 25 percent or more, then the amount of the underharvest shall be reallocated to Trimesters II and III, as specified at § 648.21(f)(2), through notice in the **Federal Register**.

* * * * *

4. Section 648.26 as amended at 75 FR 11450, March 11, 2010, effective January 1, 2011, and is further amended by revising paragraphs (a) and (d) 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 or email address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

* * * * *

(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, then 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 or email for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427–0427–01]

RIN 0648–XY82

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Summer Flounder, Scup, and Black Sea Bass Specifications; 2011 Research Set-Aside Projects

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2011 summer flounder, scup, and black sea bass fisheries and provides notice of three projects that may be requesting Exempted Fishing Permits (EFPs) as part of the Mid-Atlantic Fishery Management Council's (Council) Research Set-Aside (RSA) program. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. Furthermore, regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* require a notice to be published to provide interested parties the opportunity to comment on applications for EFPs. The intent of this action is to establish 2011 specifications for the summer flounder, scup, and black sea bass fisheries, and to provide notice of EFP requests, in accordance with the FMP and Magnuson-Stevens Act.

DATES: Comments must be received on or before December 2, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–XY82, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (978) 281–9135.
- *Mail and Hand Delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Summer Flounder,