

Dated: November 10, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98-30605 Filed 11-16-98; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981106278-8278-01; I.D. 101598B]

RIN 0648-AL76

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1999 Specifications

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

ACTION: Proposed rule and proposed 1999 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1999 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish

specifications for the upcoming fishing year and to provide an opportunity for the public to comment. This action is intended to fulfill this requirement and promote the development and conservation of the U.S. MSB fisheries. This action also proposes making an inseason adjustment of as much as 15,000 mt to the 1999 mackerel joint venture processing (JVP) annual specifications. Further, it proposes to grant the Administrator, Northeast Region, NMFS (Regional Administrator), the authority to prohibit incidental catches of *Loligo*, *Illex*, or butterfish when the Regional Administrator determines that closure of the incidental fishery is necessary to assure that the *Loligo*, *Illex*, or butterfish annual specifications will not be exceeded.

DATES: Public comments must be received on or before December 14, 1998.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations, the Environmental Assessment, and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

Comments should be sent to Jon C. Rittgers, Acting Regional Administrator,

Northeast Region Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope, "Comments—1999 MSB specifications."

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish a proposed rule specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years. Procedures for determining the initial annual amounts are found in § 648.21.

The following table contains the proposed initial specifications for the 1999 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	¹ N/A	16,000
ABC	21,000	19,000	383,000	7,200
IOY	21,000	19,000	² 75,000	5,900
DAH	21,000	19,000	³ 75,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP	0	0	10,000	0
TALFF	0	0	0	0

¹ Not applicable.

² OY may be increased during the year, but the total will not exceed 383,000 mt.

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

1999 Proposed Specifications

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock size in the year following the year for which catch estimates and quotas are being prepared,

equal to, or greater than, 900,000 mt or a catch associated with $F_{0.1}$, whichever is less. Therefore, the ABC specification for Atlantic mackerel is proposed at 383,000 mt. This level of ABC is the catch associated with a fishing mortality rate of $F_{0.1}$ while taking into account a projected Canadian catch of 22,000 mt. The proposed IOY for the 1999 Atlantic mackerel fishery is set at 75,000 mt, equal to the proposed DAH plus TALFF. The specification for DAH is computed

by adding the estimated recreational catch, the proposed DAP and JVP. The recreational component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 through 1998, response was low and did not contain projections from the large, known processors. In addition, inquiries regarding the utilization of displaced New England

groundfish trawlers for possible entry into the Atlantic mackerel fishery have led the Council to recommend no change to the DAP for the 1999 fishery. This led to the Council recommendation that JVP be reduced to 10,000 mt in 1999 (reduced from 15,000 mt in 1998 and from 25,000 mt in 1997). The Council position was that, even though joint venture (JV)-caught mackerel could negatively effect U.S. processing and exports, some specification of JVP was necessary to support U.S. harvesters who are currently restrained by the limited capacity of the U.S. processing sector. Several years ago, the Council concluded that, even though JVs are necessary in the short term, the long-term policy should be to eliminate JVP to promote the development of the U.S. processing and export industry for Atlantic mackerel, which is one of the primary objectives of the current FMP.

The Council has recommended and NMFS proposes an initial specification of 10,000 mt of JVP for the 1999 fishery. The Council also recommended and NMFS proposes a DAP of 50,000 mt yielding a DAH of 75,000 mt, which includes the 15,000 mt recreational component.

Current MSB regulations allow for inseason adjustments of the annual specifications. These regulations authorize the Regional Administrator, in consultation with the Council, to make adjustments during the fishing year by publication in the **Federal Register** stating the reasons for such action and providing a 30-day public comment period. Therefore, in conjunction with this proposed initial annual specifications action, the Regional Administrator is seeking Council input and public comment on a proposed inseason adjustment to the 1999 mackerel JVP annual specifications of as much as 15,000 mt (with a resultant increase to as much as 15,000 mt in IOY and DAH), in the event additional JV applications are submitted. NMFS believes that announcing this inseason adjustment during this proposed rule process will facilitate more timely use of the existing regulatory provision, allowing inseason increases to specifications including JVP. This action could provide another opportunity for U.S. vessels to participate in JV fisheries without any negative impacts on the Council's long-term goal to Americanize the fishery. If additional JV applications are received, the 1999 mackerel JVP specifications may be increased by as much as 15,000 mt by publication of a final rule in the **Federal Register** without further consultation with the Council.

An IOY level that keeps TALFF at zero is recommended for the 1999 Atlantic mackerel fishery. The Fisheries Act of 1995, P.L. 104-43, prohibits a specification of TALFF unless recommended by the Council and proposed by NMFS. In 1992, the Council used testimony from both the domestic fishing and processing industries and the analysis of nine economic factors found at § 648.21(b)(2)(iii) to determine that mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe and to the recent declines in the North Sea mackerel stock, has resulted in increased opportunities for U.S. producers to increase sales to new markets abroad. The U.S. industry has been successful in capturing an increased market share for mackerel in the Caribbean, North Africa, and Japan over the past several years, and a number of factors indicate that market expansion for U.S. Atlantic mackerel is likely to continue. The U.S. Atlantic mackerel stock abundance remains high. Also, the continued low abundance of several important groundfish stocks in the Gulf of Maine, southern New England, and Georges Bank is causing further restrictions in fishing effort for those species. This increases the need for many fishermen to redirect their effort to underutilized species. Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and marketing.

As a supplement to the quota paper for the 1993 and 1994 fisheries, benefit-cost and sensitivity analyses were prepared by the Council and NMFS. Results of the analyses indicated that, in the long term, a specification of zero TALFF will yield positive benefits to the fishery and to the Nation. In its 1998 and 1999 quota papers, the Council provided additional analyses of the costs and benefits of directed foreign fishing which indicated that the conclusions reached in prior analyses of zero TALFF have not changed.

The Council also recommended and NMFS proposes that four special conditions imposed in previous years continue to be imposed on the 1999 Atlantic mackerel fishery as follows: (1)

JVs are allowed south of 37°30'N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total should not exceed 383,000 mt; and (4) applications from a particular nation for a JV for 1999 will not be decided on until the Regional Administrator determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

The proposed maximum OY (Max OY) for *Loligo* squid is 26,000 mt. It represents the harvest level associated with a fishing mortality rate of F_{50} , which is the management target adopted in Amendment 6 to the FMP (F_{50} is defined as the fishing mortality rate that results in 50 percent of the maximum spawning potential of the stock). The Council recommended and NMFS proposes an IOY of 21,000 mt, which is equal to ABC. In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis: so DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can harvest that portion of the OY that will be harvested by U.S. commercial fishing vessels: so DAP equals DAH and JVP equals zero. Since U.S. fishing vessels have the capacity to harvest the entire OY, there is no portion of the OY that can be made available for foreign fishing: so TALFF equals zero. These determinations were made in Amendment 5 to the FMP. The proposed IOY/DAH/DAP of 21,000 mt for the 1999 fishery represents no change from the final 1998 IOY/DAH/DAP specifications.

The FMP sets the Max OY for *Illex* squid at 24,000 mt. The Council recommended and NMFS proposes an ABC of 19,000 mt (unchanged from 1998), which is equal to the quota associated with the target fishing mortality rate of F_{50} proposed by the 21st Stock Assessment Workshop (SAW 21) and adopted by the Council in Amendment 6 to the FMP. This amendment changed the definitions of overfishing for the squids and butterfish. SAW 21 recommended that the management target for *Illex* squid be a harvest associated with a fishing mortality of F_{50} (a fishing mortality rate that produces 50 percent of the maximum spawning potential of the stock). This recommendation is due, in

part, to the conclusion that *Illex* squid has a life span of only 1 year and is, therefore, susceptible to recruitment overfishing. This level of fishing is analogous to the Falkland Islands *Illex* squid management target of 40 percent proportional escapement. SAW 21 recommended that a real-time management system will be necessary to maximize the utilization of the U.S. squid stocks while preventing recruitment overfishing of the stock. A real-time management system will take several years to develop and implement. In the interim, the management strategy is to specify the allowable harvest for *Loligo* and *Illex* squids at a level associated with F_{50} , which should be sustainable over a wide range of stock levels.

SAW 21 concluded that the U.S. *Illex* squid stock is now fully exploited. As in the case of *Loligo* squid, Amendment 5 eliminated the possibility of JVP and TALFF for the *Illex* squid fishery.

Butterfish

The FMP sets the Max OY for butterfish at 16,000 mt. Based on the most current stock assessments, the Council recommends and NMFS proposes an ABC of 7,200 mt for the 1999 fishery, unchanged since 1996. Commercial landings of butterfish have been low at 2,013 mt, 3,489 mt, and 2,798 mt for the 1995 through 1997 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market size fish have caused severe reductions in the supply of butterfish. Discard data from the offshore fishery is lacking, and high discard rates could be reducing potential yield.

The Council recommended and NMFS proposes an IOY and DAH for butterfish of 5,900 mt. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. However, since the Council recommended and NMFS proposes no TALFF for Atlantic mackerel, no bycatch TALFF is necessary for butterfish.

Closure of the Fishery

Current MSB regulations allow the Assistant Administrator for Fisheries, NOAA, to close the directed fishery in the EEZ for *Loligo* squid, *Illex* squid, or butterfish when 95 percent of DAH has been harvested. The closure would remain in effect for the remainder of the fishing year, with incidental catches allowed. On August 25, 1998, NMFS determined that 95 percent of the DAH for *Illex* squid had been harvested and

closed the directed fishery for *Illex* squid (63 FR 45763, August 27, 1998). An incidental catch trip limit of 5,000 lb (2.27 mt) was then instituted for all vessels issued Federal permits for *Illex* squid. Since the closure, the landings of *Illex* squid have exceeded 100 percent of the DAH for *Illex* squid. During the August 1998 Council meeting, the majority of the Council members agreed by consensus that the provisions for closure of the fishery should also allow for the prohibition of incidental catches when the entire DAH is harvested. Current regulations do not provide for the prohibition of incidental catches of *Loligo* squid, *Illex* squid, or butterfish when 100 percent of the DAH has been harvested. Therefore, in conjunction with this proposed initial annual specifications action, NMFS is seeking public comment on a regulatory change to authorize the Regional Administrator to prohibit incidental catches through publication in the **Federal Register** when the Regional Administrator determines that closure of the incidental *Loligo* squid, *Illex* squid, or butterfish fishery is necessary to assure that 100 percent of DAH will not be exceeded.

Classification

This action is authorized by 50 CFR Part 648 and complies with the National Environmental Policy Act.

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

NMFS has completed an IRFA for this proposed rule, pursuant to 5 U.S.C. 603. The IRFA indicates that the proposed rule could have a significant impact on a substantial number of small entities. A summary of this IRFA follows. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see ADDRESSES).

The IRFA assumes that all vessels prosecuting these fisheries would be impacted by these quota specifications. Therefore, the substantial number (greater than 20 percent) criteria would be met. For *Loligo* squid, butterfish, and Atlantic mackerel, gross revenues are not expected to decrease as a consequence of the proposed actions. In 1997, *Loligo* squid landings were 16,203 mt. The proposed IOY specification for *Loligo* squid in 1999 would be 21,000 mt. In 1997, butterfish landings were 2,797 mt. The proposed IOY specification for butterfish in 1999 would be 5,900 mt. In the case of Atlantic mackerel, the 1999 IOY was reduced from 80,000 mt in 1998 to the proposed level of 75,000 mt in 1999. Both specifications far exceed recent harvest of Atlantic mackerel in the 1997 fishery of 15,406 mt. In addition, the

proposed reduction in IOY in 1999 is due to a reduction in the JV specification by 5,000 mt. The only JV activity in recent years was in 1998, when the JV operation was not able to harvest the entire JV allocation of 10,000 mt. Therefore, the Council concluded that the proposed reduction in the initial JV specification should not affect revenues in the fishery. In addition, the measure to allow an inseason increase in the specification would moderate any unanticipated affects.

In 1997, *Illex* squid landings were 13,632 mt valued at \$6.1 million. The proposed ABC specification for *Illex* squid in 1999 is 19,000 mt. In past years, a surplus existed between the 1998 ABC specification and what has been landed. However, due to overharvesting in 1998, 22,610 mt of *Illex* squid have been harvested as of September 1998. This means that the 1999 proposal equates to a decrease of 7.9 million lb (3,585 mt) from 1998, valued at \$1.975 million. The Council's Amendment 5 document indicates that the directed fishery accounts for 99.7 percent of the total landings, meaning that \$1,969,000 of the revenue associated with the quota overage would be attributed to moratorium vessels and only \$6,000 to incidental catch vessels. According to 1998 NMFS permit records, 75 vessels hold *Illex* squid moratorium permits and 64 had *Illex* squid landings in 1998; 1,504 hold incidental catch permits. This would mean that each moratorium vessel could have revenue losses of \$31,000 and each incidental catch vessel would have negligible revenue losses. This raises the question of the significance of the impact on the moratorium vessels. When dividing the 1998 overage value of \$1.975 million by the 64 moratorium vessels, this leads to an ex-vessel price of \$551 per mt. Multiplying that value by the total harvest in 1998 of 22,610 mt of *Illex* leads to revenues of \$12,458,110. When divided by the 64 moratorium vessels this leads to \$195,000. Dividing the revenue losses of \$31,000 of each moratorium vessel by this value equates to a 16% loss in average gross revenues. Therefore, this loss is anticipated to have a substantial impact on most moratorium vessels, as defined by the Regulatory Flexibility Act (RFA). In light of this impact, the RFA requires alternatives to be considered to moderate the impact. However, while several alternatives were analyzed, they were rejected because the target in the FMP would be exceeded resulting in overfishing. Overfishing cannot be allowed to continue despite the obvious benefits of higher landings.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 10, 1998.

Andrew A. Rosenberg,

Deputy 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 § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When it is projected that DAH will be attained for mackerel, the Assistant Administrator may close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section may be prohibited. The Assistant

Administrator shall close the directed fishery in the EEZ for *Loligo, Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When it is projected that DAH will be attained for *Loligo, Illex*, or butterfish, the Assistant Administrator may close the *Loligo, Illex*, or butterfish fishery in the EEZ, and the incidental catches specified for *Loligo, Illex*, or butterfish in paragraph (c) of this section may be prohibited.

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[FR Doc. 98-30692 Filed 11-12-98; 4:43 pm]

BILLING CODE 3510-22-P