

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

[Docket No. 900124-0127; I.D. 101906A]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2007

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

ACTION: Temporary rule; suspension of the Atlantic surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surfclams for the 2007 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2007, through December 31, 2007.

ADDRESSES: Written inquiries may be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, (978) 281-9273; fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2004 meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit for the 2005, 2006, and 2007 fishing years. In accordance with the provisions of the FMP, the Regional Administrator will publish the suspension of the surfclam minimum size for the applicable fishing year if the proportion of undersized surfclams is under 30 percent of the total surfclam landings.

Commercial surfclam data for 2006 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 4.80 percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (12.065 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2007, through this temporary rule.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment as notice and comment would be unnecessary and contrary to the public interest. The surfclam minimum size has been suspended consistently for many consecutive years. The industry has repeatedly supported the timely suspension of the size limit, to coincide with the beginning of the fishing year on January 1st, because of the unnecessary costs involved with complying with the minimum size limit if this rule is delayed beyond that date. This action relieves a burden in that, minus this suspension, the catch of clams would have to be inspected on board a vessel in order to cull out clams that did not meet the minimum size limit. This would be difficult because of the current highly mechanized process that removes the clams from the dredge and transports them to the 32-bushel cages, which are then sent to the processing plant. Given poor weather conditions in the fall/early winter, delay of this action beyond January 1, 2007, could also make the culling process dangerous. Culling out small clams will also increase the time it takes for a vessel owner to harvest the allocation for which the vessel is fishing, potentially increasing fuel costs and other vessel operation expenses, as well as the fishing mortality on the stock. Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive

the delayed effectiveness period for the reasons stated above. Delaying effectiveness of this rule would also promote confusion in the industry, which has not had to comply with a minimum size restriction for many years.

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 24, 2006.

James P. Burgess,

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. 060719196-6271-02; I.D. 071106F]

RIN 0648-AU54

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

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

ACTION: Final rule; correction.

SUMMARY: NMFS implements this final rule to clarify the expiration date of the limited entry program for *Illex* squid, reestablish a minimum mesh requirement for the butterfish fishery, and remove a regulatory requirement for annual specifications to be published by a specific date. These measures were initially implemented by the final rule implementing the specifications for the 2005 fishing year for Atlantic mackerel, squid, and butterfish (MSB). These regulatory measures were intended to be of a permanent nature, unlike the 2005 specifications themselves, which were effective through December 31, 2005. An error in the final rule caused these three measures to expire; this rule restores the regulatory requirements. This action is being taken by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective November 29, 2006.

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), for the 2005 specifications are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978-281-9221, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS published final specifications for the 2005 fishing year for MSB in the **Federal Register** on March 21, 2005 (70 FR 13406), and the measures became effective on April 20, 2005. The final rule included regulatory changes that were meant to be permanent, as well as the MSB specifications, which were intended to be effective through December 31, 2005. However, in the dates section of the final rule, the distinction between the effective dates of the 2005 annual specifications and the permanent regulations was not defined and, as a result, all of the measures of the final rule expired on January 1, 2006. This action permanently reestablishes the regulatory measures as intended.

On August 2, 2006, a proposed rule was published in the **Federal Register** (71 FR 43707) soliciting public comment. This final rule addresses the public comment that was received during the comment period which ended on August 17, 2006. No changes were made to the rule.

Comments and Responses

One comment was received in response to the proposed rule. It identified issues about fisheries management that were not relevant to the proposed measures. Therefore, the comment is not responded to in this final rule.

Final Measures

Illex Moratorium Permits

Framework 4 to the MSB Fishery Management Plan (FMP) became effective July 1, 2004 (69 FR 30839, June 1, 2004), and extended the limited entry program for the *Illex* squid fishery through July 1, 2009. In a subsequent regulatory action (March 21, 2005, 70 FR 13406), the text reflecting the extension was not identified as a permanent regulation and, therefore, expired on January 1, 2006. This final rule specifies the July 1, 2009,

expiration date in the regulatory text, as was intended.

Gear Specifications For Otter Trawl Butterfish Trips

The final rule implementing the 2005 MSB specifications included a 3.0-inch (7.62-cm) minimum codend mesh size requirement for butterfish otter trawl trips of greater than 5,000 lb (2,268 kg). The measure was described in detail in the proposed rule for the 2005 MSB specifications (70 FR 1686, January 10, 2005) and is only summarized here. The purpose of this minimum mesh size requirement is to allow for escapement of unmarketable butterfish and butterfish below the size at which 50 percent are sexually mature. This minimum mesh size requirement reduces discards in the directed fishery, especially of small, sexually immature butterfish, which will increase the chance of successful recruitment and aid in stock rebuilding. This final rule re-establishes the minimum mesh size requirements in the regulations.

Annual Specifications

The final rule implementing the 2005 MSB specifications included a clarification to the regulations in § 648.21, removing references to the dates on which the proposed and final rules for the annual specifications must be published by the Administrator, Northeast Region, NMFS (Regional Administrator), because it is not necessary to specify those dates in regulatory text. This rule re-instates that clarification by removing the unnecessary dates.

Classification

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

The final rule contains the FRFA prepared pursuant to 5 U.S.C. 604(a) for these measures, as analyzed in the 2005 MSB specifications. The FRFA consists of the IRFA and the summary of impacts and alternatives contained in this final rule. No comments were received on the IRFA or economic impacts of the rule. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>.

Summary of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this final rule and the proposed rule for the 2005 MSB specifications and is not repeated here.

Summary of Significant Issues Raised by Public Comment

One comment was received in response to the proposed rule. It identified issues about fisheries management that were not relevant to the proposed measures. Therefore, the comment is not responded to in this final rule.

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

The number of potential fishing vessels in the 2005 fisheries were 72 for *Illex* squid, and 2,119 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. There are no large entities participating in this fishery, as defined in section 601 of the Regulatory Flexibility Act. Therefore, there are no disproportionate economic impacts. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The re-establishment of the regulation to specify the expiration date of the limited entry program for *Illex* squid and the removal of the regulatory text that specified dates by which annual specifications must be published have no economic impacts.

The economic impacts of the re-establishment of the measure to require the use of a 3.0-inch (7.62 cm) minimum codend mesh size for otter trawl trips landing more than 5,000 lb (2,278 kg) of butterfish were analyzed. During the period 2001-2003, 16,854 trips landed butterfish, based on unpublished NMFS Vessel Trip Report (VTR) data. More than half (57 percent) of the landings of butterfish during 2001-2003 were taken with mesh sizes less than 3.0 inches (7.62 cm). Within this mesh size range, most were taken with mesh sizes between 2.5 inches (6.35 cm) and 3.0 inches (7.62 cm). The trips using this mesh size range (i.e., less than 3.0 inches (7.62 cm)) could potentially be affected by the proposed mesh size. However, the 3.0-inch (7.62-cm) mesh requirement only applies to otter trawl trips landing 5,000 lb (2,278 kg) or more of butterfish. In terms of

numerical frequency of trips, the vast majority of trips during 2001–2003 landed less than 5,000 lb (2,278 kg) of butterfish, based on NMFS VTR data. While 57 percent of the landings by weight were taken on trips of greater than 5,000 lb (2,278 kg) during the period, fewer than 1 percent of the trips landing butterfish landed more than 5,000 lb (2,278 kg). Only 26 vessels had trips that included landings of butterfish of 5,000 lb (2,278 kg) or more, and also reported using mesh sizes less than 3.0 inches (7.62 cm) on those trips. Therefore, it is expected that the economic impact of this measure will be negligible, because the vast majority of trips and vessels will not be affected. The costs for those vessels that do land butterfish on trips of more than 5,000 lb (2,278 kg) of butterfish should also be negligible because virtually all of those vessels already possess codends with 3.0–inch (7.62–cm) mesh or greater (because they are fishing for butterfish or in another fishery that uses nets of that size, e.g., whiting). Therefore, they should not incur any additional costs due to the 3.0 inch (7.62 cm) minimum mesh size requirement. This mesh size was selected to allow for escapement of unmarketable butterfish and butterfish below the size at which 50 percent are sexually mature. Based on inspection of the size composition of discarded butterfish from unpublished sea sampling data, the minimum marketable size for butterfish is approximately 5.5 inches (14.0 cm). Based on a scientifically supported selection factor of 1.8, the mesh size corresponding to an L50 of 14 cm is 7.78 cm, or about 3.0 inches. When the Council considered implementing a mesh size requirement for butterfish landings, the only alternative to the proposed action considered was not implementing any mesh size requirement. This alternative was rejected because of the need to reduce discards of juvenile butterfish.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 2006.

William T. Hogarth,
*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

■ For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.4, the introductory text of paragraph (a)(5)(i) is added to read as follows:

§ 648.4 Vessel permits.
(a) * * *
(5) * * *
(i) *Loligo squid/butterfish and Illex squid moratorium permits Illex squid moratorium is in effect until July 1, 2009.*
* * * * *

■ 3. In § 648.14, paragraphs (a)(74), (p)(5), and (p)(11) are added to read as follows:

§ 648.14 Prohibitions.
(a) * * *
(74) Possess nets or netting with mesh not meeting the minimum size requirements of § 648.23, and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* or butterfish harvested in or from the EEZ.
* * * * *
(p) * * *
(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).
* * * * *
(11) Possess 5,000 lb (2.27 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).
* * * * *

■ 4. In § 648.21, paragraph (d) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.
* * * * *
(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures

necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the **Federal Register** notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.
* * * * *

■ 5. In § 648.23, paragraph (a) is added to read as follows:

§ 648.23 Gear restrictions.
(a) *Mesh restrictions and exemptions.* (1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 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.

(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 $1\frac{7}{8}$ inches (48 mm) 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 during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

| Point | N. Lat. | W. Long. |
|-------|----------|----------|
| M1 | 43°58.0' | 67°22.0' |
| M2 | 43°50.0' | 68°35.0' |
| M3 | 43°30.0' | 69°40.0' |
| M4 | 43°20.0' | 70°00.0' |
| M5 | 42°45.0' | 70°10.0' |
| M6 | 42°13.0' | 69°55.0' |
| M7 | 41°00.0' | 69°00.0' |
| M8 | 41°45.0' | 68°15.0' |
| M9 | 42°10.0' | 67°10.0' |
| M10 | 41°18.6' | 66°24.8' |
| M11 | 40°55.5' | 66°38.0' |
| M12 | 40°45.5' | 68°00.0' |
| M13 | 40°37.0' | 68°00.0' |
| M14 | 40°30.0' | 69°00.0' |
| M15 | 40°22.7' | 69°00.0' |
| M16 | 40°18.7' | 69°40.0' |
| M17 | 40°21.0' | 71°03.0' |
| M18 | 39°41.0' | 72°32.0' |
| M19 | 38°47.0' | 73°11.0' |
| M20 | 38°04.0' | 74°06.0' |
| M21 | 37°08.0' | 74°46.0' |
| M22 | 36°00.0' | 74°52.0' |
| M23 | 35°45.0' | 74°53.0' |
| M24 | 35°28.0' | 74°52.0' |

(4) Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than $1\frac{7}{8}$ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraphs (c) and (d) of this section, when the vessel is landward of the specified coordinates.

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