

provided such exclusion will not result in the extinction of the species.

#### Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of the owl and its habitat, and which habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(4) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs are overlooked;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation; and

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation.

We also are continuing to accept comments on the proposed critical habitat designation. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see ADDRESSES*).

Comments previously submitted on the July 21, 2000, proposed rule (65 FR 45336) or the November 18, 2003, notice (68 FR 65020) need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period and will be fully considered in preparation of the final rule. Comments submitted during this comment period also will be incorporated into the public record and will be fully considered in the final rule. We are required by court order to complete the final designation of critical habitat for the owl by August 20, 2004. To meet this date, all comments or proposed revisions to the proposed rule, associated draft economic analysis, and draft environmental assessment need to be submitted to us during the comment period reopened by this document (*see DATES*).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the New Mexico Field Office (*see ADDRESSES*).

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 22, 2004.

#### David P. Smith,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040302080-4080-01; I.D. 021104C]

RIN 0648-AR44

#### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 4

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement measures contained in Framework Adjustment 4 (Framework 4) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action would extend the limited entry program for the *Illex* squid fishery for an additional 5 years. This action is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on April 26, 2004.

**ADDRESSES:** Comments on Framework 4 should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope, "Comments-SMB Framework Adjustment 4." Comments on Framework 4 may be submitted by e-mail. The mailbox address for providing e-mail comments is [MSBAR44@noaa.gov](mailto:MSBAR44@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments-SMB Framework Adjustment 4." Comments also may be sent via facsimile (fax) to 978-281-9135.

Copies of Framework 4, including the Draft Final Environmental Impact Statement (FEIS) and Regulatory Impact Review (RIR)/Regulatory Flexibility Analysis (RFA), 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 FEIS/RIR/RFA is accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-

281-9259, fax 978-281-9135, e-mail [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In 1997, Amendment 5 to the FMP established a limited entry program for the *Illex* squid fishery in response to a concern that fishing capacity could otherwise expand to overexploit the stock. At the time the program was established, there was a concern that the capacity of the limited entry vessels might prove, over time, to be insufficient to fully exploit the annual quota. In response to this concern, a 5-year sunset provision was placed on the *Illex* squid limited entry program. Frameworks 2 and 3 to the FMP each extended the *Illex* squid moratorium for 1 year, and it is scheduled to expire on July 1, 2004. Since the implementation of the limited entry program, the *Illex* squid fishery's performance has demonstrated that the current fleet possesses the capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) is considering a permanent resolution to the issue of limited entry in an amendment to the FMP (Amendment 9). The Council was planning to present the public hearing document/DEIS for Amendment 9 at its June 2003 meeting, but NMFS review of the draft document indicated that extensive revisions were needed. As a result, the Council developed this action that would extend the moratorium until July 1, 2009, to prevent overcapitalization while Amendment 9 is being revised and considered by the Council. This extension would comply with the criteria in section 303(b)(6) of the Magnuson-Stevens Act. The extension would allow the Council additional time to consider long-term management for the *Illex* squid fishery, including the limited entry program. Vessels that took small quantities of *Illex* squid in the past may continue to do so under the incidental catch provision of the FMP.

#### Classification

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

The Council prepared an FEIS for this action; a notice of availability of the Draft Environmental Impact Statement was published on September 26, 2003 (68 FR 55604). A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping

requirements contained in any of the alternatives considered for this action.

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. There are 72 vessels that have been issued moratorium permits, all of which would be impacted by this action. Since per vessel costs are not available for vessels participating in the *Illex* moratorium fishery, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the aggregate fleet is used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenue losses and gains are shared equally among these vessels. There are no large entities (vessels) participating in this fishery, as defined in section 601 of the Regulatory Flexibility Act. Therefore, there are no disproportionate economic impacts. The preferred alternative is not expected to affect revenues or profits of the vessels that currently participate in the fishery. A copy of the complete analysis can be obtained from the Council (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows.

In addition to the preferred Alternative 1, the Council considered three non-preferred alternatives. Alternative 2 would extend the moratorium on entry to the *Illex* fishery for an additional 2 years (through July 1, 2005); Alternative 3 would allow the moratorium on entry to the *Illex* fishery to expire on July 1, 2004 (no action); and Alternative 4 would extend the moratorium on entry to the *Illex* fishery indefinitely. Alternative 4 was rejected from further consideration and analysis because the Council considered the measure to be beyond the scope of a framework action. The framework adjustment process set forth at 50 CFR 648.24 is a mechanism to add management measures to or adjust management measures in the FMP. As a consequence, the *Illex* squid moratorium limitation in the FMP is subject to an adjustment through this framework adjustment process. As reflected in the administrative record underlying the adoption and implementation of this process, this process was developed to make revisions to the measures in the FMP that did not represent major changes to the cornerstone provisions of the FMP. One of the cornerstone provisions in the FMP is the moratorium on entry into the *Illex* squid fishery, which, by virtue of Amendment 5 to the FMP, is of limited duration. Alternative 4 of Framework Action 4 would eliminate the sunset provision of the moratorium and extend

the moratorium indefinitely. This would ostensibly close the door on new entry into the fishery. Such a change goes beyond an adjustment to the *Illex* squid moratorium provision of the FMP that can be effected through the framework adjustment. This is the basis for the conclusion that Alternative 4 should be rejected. The framework process involves a somewhat truncated administrative process that incorporates the opportunity for public participation at two Council meetings, which are currently held some 6 weeks apart. Consideration of extension of the *Illex* moratorium indefinitely demands a more deliberative and widespread public process. Under the Magnuson-Stevens Act, the process of amending the FMP is the appropriate mechanism to extend the moratorium indefinitely. This alternative is currently being considered in Amendment 9 to the FMP.

The preferred alternative and Alternative 2 would both extend the moratorium on entry of new vessels into the *Illex* fishery; therefore, no impact is expected on vessels in the fishery through 2009, compared to individual vessel revenues in 2002. The Council assumed that the market and prices would remain stable. Therefore, any changes in individual vessel revenues would be the result of factors outside the scope of the moratorium (e.g., change in fishing practices for individual vessels, or changes in abundance and distribution of *Illex* squid).

Under Alternative 3, the no-action alternative, the *Illex* fishery would revert to open access. In 2002, there were 72 vessels permitted to participate in the directed *Illex* fishery, however, only 50 percent of those vessels (36 vessels) landed any *Illex* squid in 2002. The *Illex* squid vessels currently permitted to participate in the fishery have the capability to harvest the total harvest level. In fact, in 1998, permitted vessels were able to land the total harvest level and the fishery was closed early that year. That year, more than 99 percent of the total *Illex* squid landings were made by 37 vessels or about 50 percent of the vessels holding *Illex* moratorium permits. The remaining 1 percent of the *Illex* squid landings were made by 71 vessels holding incidental catch permits. The elimination of the moratorium of entry to the *Illex* fishery will not affect the manner in which the total harvest level for this species is established. The *Illex* fishery is managed through annual specifications and management measures, which are designed to assure that the target harvest level is not exceeded. Thus, overall *Illex*

landings will not be affected. However, if a significant number of additional vessels enter the fishery as a consequence of Alternative 3, it is possible that the open access condition may affect the current revenue structures of participants and/or create derby-style fishing practices which could potentially lead to an early closure. This situation may create market gluts and price instability in the fishery.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, 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 § 648.4, the heading of paragraph (a)(5)(i) is revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(5) \* \* \*

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid moratorium is applicable from July 1, 1997, until July 1, 2009).* \* \* \*

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