

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alabama is amended by removing DTV channel 58 and adding DTV channel 9 at Anniston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03-28463 Filed 11-13-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3534, MB Docket No. 03-230, RM-10816]

Digital Television Broadcast Service; Bloomington, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tribune Broadcast Holdings, Inc., licensee of station WTTV-TV, Bloomington, Indiana, proposing the substitution of DTV channel 48 for DTV channel 53 at Bloomington. DTV Channel 48 can be allotted to Bloomington at reference coordinates 39-24-27 N. and 86-08-52 W. with a power of 840, a height above average terrain HAAT of 357 meters. Since the community of Bloomington is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian must be obtained for this allotment.

DATES: Comments must be filed on or before December 29, 2003, and reply comments on or before January 13, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and

comments in proceedings involving petitions for rule making (except in broadcast allotment proceedings). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas P. Van Wazer, Sidley, Austin, Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005 (Counsel for Tribune Broadcast Holdings, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-230, adopted November 4, 2003, and released November 7, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter

is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Indiana is amended by removing DTV channel 53 and adding DTV channel 48 at Bloomington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03-28462 Filed 11-13-03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 031104274-3274-01; I.D. 101603A]

RIN 0648-AQ83

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

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

ACTION: Proposed rule, 2004 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2004 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish proposed specifications for the upcoming fishing year and to provide an opportunity for public comment. The

intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources. This action also proposes an increase in the *Illex* squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). In addition, this action would correct the regulations implementing the MSB Fishery Management Plan (FMP) by reinserting regulatory text that was incorrectly removed in the final rule that implemented measures contained in the Atlantic Herring FMP, which was published on December 11, 2000.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on December 15, 2003.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), 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>.

Comments on the proposed specifications 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-2004 MSB Specifications." Comments also may be sent via facsimile (fax) to 978-281-9135.

Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273, fax 978-281-9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, 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 initial 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), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.20 also specify that IOY for squid is equal to the combination of research quota 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 Atlantic

mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

In addition, the regulations at § 648.21(g) allow the specification of research set-asides (RSA) to be used for research purposes. For 2004, the Council recommended RSAs of up to 2 percent of IOY for Atlantic mackerel and butterfish; and of up to 3 percent of IOY for squids. The RSAs would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2004 based on research priorities previously identified by the Council (68 FR 3864, January 27, 2003). The deadline for submission was March 28, 2003. On July 19, 2003, NOAA Fisheries convened a Review Panel to review the comments submitted by technical reviewers on proposed research projects that would be funded using RSAs. Based on discussions among participants on the Review Panel, one *Loligo* squid project proposal was recommended for approval and will be forwarded to the NOAA Grants Office for award. Consistent with the Council's recommendations, the quotas in this proposed rule have been adjusted to reflect the project recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish a notice in the **Federal Register** to restore the unused RSA amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2004 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2004

Specifications	<i>Loligo</i>	<i>Illex</i>	Atlantic Mackerel	Butterfish
Max OY	26,000	24,000	1 ¹ N/A	16,000
ABC	17,000	24,000	347,000	7,200
IOY	4 ¹ 16,872.4	24,000	3 ¹ 170,000	5,900
DAH	16,872.4	24,000	3 ¹ 170,000	5,900
DAP	16,872.4	24,000	150,000	5,900
JVP	0	0	5,000	0
TALFF	0	0	0	0

¹ Not applicable.

² IOY may be increased during the year, but the total ABC will not exceed 347,000 mt

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

⁴ Excludes 127.6 mt for RSA.

2004 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When

spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is F_{MSY} (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the

biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (1/2 B_{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2004 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, derived by subtracting the estimated Canadian catch of 22,000 mt from the yield estimate. The proposed IOY for the 2004 Atlantic mackerel fishery is 170,000 mt, which is equal to the proposed DAH. The specification of DAH is computed by totaling the estimated recreational catch, the proposed DAP, and the proposed JVP. The 170,000-mt proposed DAH is comprised of 15,000 mt recreational, 150,000 mt DAP, and 5,000 mt JVP.

The JVP of 5,000 mt that the Council recommends, and NMFS proposes, is a reduction from the amount specified for 2003 (10,000 mt, with the Administrator, Northeast Region, NMFS (Regional Administrator) authorized to increase it to 20,000 mt). The DAP and JVP components of DAH were historically estimated using the Council's annual processor survey, which was intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, from 1994 through 2002, response to this voluntary survey was incomplete and did not contain projections from some large processors. For 2003 and 2004, in place of the survey, the Council relied on testimony concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003 and 2004 presented by domestic processors during its annual specification meetings. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic processors' capacity to process mackerel. Therefore, the Council has recommended, and NMFS proposes, a specification of 5,000 mt of JVP for the 2004 fishery. In

previous years, to expedite an inseason adjustment to JVP, the Council specified in advance that NMFS could implement a specified inseason increase in JVP. This year there is no recommendation to expedite an inseason adjustment. However, if additional applications for JVP are received, § 648.21(e) authorizes inseason adjustments by the Regional Administrator, in consultation with the Council, during the fishing year by publishing a notification in the **Federal Register** and providing a 30-day comment period.

The Council also recommended, and NMFS proposes to maintain, a TALFF of zero. The Council believes that the development of the domestic mackerel fishery results in the greatest resource benefits to the nation. With DAP set at 150,000 mt, the Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of domestic mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2004 Atlantic mackerel fishery, as follows: (1) JVs would be 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 optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JV allocation for 2004 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the

catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy, F_{MAX} . Max OY is specified as the catch associated with F_{MAX} . The biomass target is specified as B_{MSY} .

The most recent stock assessment for *Loligo* squid (the 34th Northeast Regional Stock Assessment Workshop, 2002 (SAW-34)) concluded overfishing is not occurring and recommended that the Council maintain the catch of 20,000 mt (to include both landings and discards). Based on that advice and the assumption that the stock will be at or near B_{msy} in 2004, the Council recommended no changes from the 2003 quota level. The 2004 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy} , or 17,000 mt, based on projections from SAW-34. The regulations continue to specify Max OY as the yield associated with F_{max} , or 26,000 mt. Thus, the 2004 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2004 fishery is 17,000 mt.

The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, JVP and TALFF are zero.

Distribution of the Annual *Loligo* Squid Quota

Since 2001, the annual DAH for *Loligo* squid has been allocated into quarterly periods. The Council and NMFS recommend no change from the 2003 quarterly distribution system. Due to the recommendation of one research project that would utilize *Loligo* squid RSA, this proposed rule would adjust the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2004 quarterly allocations would be as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Per-cent	Metric tons ¹	Research set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II(Apr-Jun)	17.61	2,971.2	N/A
III(Jul-Sep)	17.3	2,918.9	N/A
IV(Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.4	127.6

¹Quarterly allocations after 127.5 mt RSA deduction.

Also unchanged from 2003, the Council recommended that the 2004

directed fishery be closed in Quarters I-III when 80 percent of the period

allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo*

squid trip limit per single calendar day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calendar day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent is applied to Quarter III.

Illex

The overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Max OY is specified as the catch associated with a fishing mortality rate of F_{MSY} , while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75 percent F_{msy} . The biomass target is specified as B_{MSY} . The minimum biomass threshold is specified as $\frac{1}{2} B_{MSY}$.

The Council recommended annual measures for the *Illex* fishery at its June 2003 meeting. At that time, the most recent stock assessment information dated from 1999 (the 29th Stock Assessment Workshop; SAW 29). SAW 29 concluded that the stock was not in an overfished condition and that overfishing was not occurring. Due to the lack of adequate data, the estimate of yield at F_{msy} was not updated in the assessment so there were no yield estimates corresponding to the target fishing mortality rate. However, an upper bound on annual fishing mortality was computed for the US EEZ portion of the stock based on a model which incorporated weekly landings, relative fishing effort, and mean squid weights during 1994–1998. These estimates of the fishing mortality rate were well below the biological reference points. Therefore, the Council recommended that DAH should continue to be specified at 24,000 mt.

In September 2003, subsequent to the Council action, the results of an updated assessment of the *Illex* squid stock (the 37th Northeast Regional Stock Assessment Workshop; SAW–37) were released. SAW–37 concluded that overfishing was not likely to have occurred during the period 1992–2002.

SAW–37 found that it was not possible to evaluate the current biomass status for *Illex* squid relative to B_{msy} because the size of the stock could not be reliably estimated. SAW 37 noted that since 1999, NEFSC autumn survey abundance indices have been below the 1982–2002 average, but that it could not determine whether this trend is due to low abundance, low availability or both. The assessment noted that surface and bottom water temperatures in the mid-Atlantic Bight have been warmer than average during recent years, and that *Illex* abundance and biomass indices from the autumn surveys were significantly negatively correlated with bottom water temperature anomalies from the autumn surveys. SAW 37 concluded that this likely indicates an environmental effect on productivity. While landings have been below the 1982–2002 average since 1998, SAW 37 found that this could be due to the reduced effort observed during the time period, low biomass or both factors.

SAW 37 cautioned that, under current stock conditions, a DAH of 24,000 mt, which assumes a stock at B_{msy} , may not be sufficient to prevent overfishing. It also cautioned that the existing overfishing definition, which is based on F_{msy} , is not only difficult to estimate given the available information, but may also perform poorly given the stock's production dynamics. In addition, SAW 37 recommended that, given uncertainties in the stock distribution and population biology, the fishery should be managed in relation to the proportion of the stock on the continental shelf and available to U.S. fisheries. However, SAW 37 did not recommend specific action, and the assessment also noted that more knowledge of *Illex* is necessary to respond to these concerns. While cooperative research efforts are underway, there is currently no information to use to construct an alternative recommendation.

Despite the cautions within SAW 37, the assessment also concluded that it was unlikely that overfishing occurred during 1999–2002 for several reasons. Many of these reasons remain applicable to the proposal to maintain DAH at 24,000 mt for 2004. The reasons are: (1) The current small fleet size and effort levels make it unlikely that the fishery could exert the very high fishing mortality rate required to exceed the level recommended in the assessment ($F_{50\%}$), (2) the short fishing season makes high annual average fishing mortality rates unlikely, (3) the restricted geographical distribution of the fishery makes high annual average fishing mortality rates for the entire

stock unlikely, (4) relative exploitation indices have declined considerably since 1999 and have been below the 1982–2002 median since then, and (5) preliminary model results indicate that fishing mortality rates as high as $F_{50\%}$ are unlikely to have occurred even during 1999, when relative fishing mortality was the highest in recent years.

Therefore, NMFS proposes that the annual specifications for *Illex* squid should remain unchanged for 2004, agreeing with the Council that there is no basis for concluding that the specification are likely to result in overfishing. The specification of Max OY, ABC and DAH would remain unchanged from 2003 at 24,000 mt. As the Council noted, the management program for *Illex* requires the directed fishery to be closed when 95 percent of the quota is harvested (22,800 mt). While incidental landings are allowed following this closure, the amount of *Illex* caught incidentally by vessels targeting other species is limited due to the specialized nature of the *Illex* fishery. *Illex* is harvested offshore near the edge of the continental shelf during the summer. The species spoils quickly, so freezing or refrigerated seawater equipment must be utilized to prevent spoilage. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than the specified amount in a single calendar day. Few vessels are expected to invest in the necessary equipment to pursue *Illex* under the the incidental catch allowance.

The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Increase in the *Illex* Squid Catch Limit for Squid/Butterfish Incidental Catch Permit Holders

The Council has also recommended, and NMFS proposes, to increase the *Illex* squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). This also represents the trip limit in effect when the directed fishery is closed. *Illex* squid is a high volume, low value species, which is taken offshore near the edge of the continental shelf during the summer. The species also spoils rapidly, so either freezing or refrigerated seawater equipment is necessary to hold the catch and deliver it shoreside in a marketable condition. Given the substantial capital investment required to prosecute this fishery, the Council

does not expect that squid/butterfish incidental catch permit holders will target *Illex* squid as result of the increase in the bycatch allowance. Rather, this measure will provide some positive economic benefit by allowing these incidental catch permit holders to retain more of the *Illex* squid taken as bycatch in other directed fisheries.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2004 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low, at 1,964 mt, 2,116 mt, 1,432 mt, 4,373 mt and 841 mt for the 1998 through 2002 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have constrained this fishery.

For the 2004 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. The regulations found in § 648.20 authorize the specification of JVP or TALFF specifications for butterfish only for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Correcting Amendment

On December 11, 2000, NMFS published a final rule at 65 FR 77450 to implement management measures contained in the Atlantic Herring FMP. However, the final rule removed § 648.6 (a)(2), because the measures were thought to also pertain to Atlantic herring vessels and, therefore, were thought to be redundant with the Atlantic herring processing permit provisions specified at § 648.4(a)(10)(ii). The text previously codified at § 648.6 (a)(2) allowed any Atlantic mackerel vessel that exceeded the size or horsepower restrictions specified at § 648.4 (a)(5)(iii), to be issued an at-sea processor permit to receive over the side, possess and process Atlantic mackerel harvested in or from the Exclusive Economic Zone. However, this measure does not pertain to Atlantic herring vessels and is not redundant with the provision that was established under § 648.4(a)(10)(ii). Therefore, this rule would reinsert § 648.6 (a)(2), which was incorrectly removed on December 11, 2000.

Classification

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, in section 3.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. 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 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 the Preferred Alternatives or any of the alternatives considered for this action. 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>. A summary of the analysis follows:

The number of potential fishing vessels in the 2003 fisheries are 381 for *Loligo* squid/butterfish, 72 for *Illex* squid, 2,407 for Atlantic mackerel, and 2,119 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed DAH specifications of 170,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2004 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1998–2002, *Loligo* squid landings averaged 16,631 mt. If the 2004 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1998–2002. NMFS also proposes to increase the *Illex* squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) per trip to 10,000 lb (4.54 mt) per trip. This measure would provide some positive economic benefit by allowing these incidental catch permit holders to retain more of the *Illex* squid taken as bycatch in other directed fisheries. *Illex* squid is a high volume, low value species, which is taken offshore near the edge of the continental shelf during the summer. The species spoils rapidly, so either

freezing or refrigerated seawater equipment is necessary to hold the catch and deliver it shoreside in a marketable condition. Therefore, given the substantial capital investment required to prosecute this fishery, the Council does not expect that squid/butterfish incidental catch permit holders will target *Illex* squid as a result of the increase in the bycatch allowance. Since this measure is not expected to increase fishing effort in the *Illex* squid fishery, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to specify the 2004 specifications at the same level as 2003. This option would set JVP at 10,000 mt. The Council rejected this option because of concerns it could negatively impact the potential for expansion of the shore-side processing sector of this industry in 2003. Preliminary 2003 commercial landings through June 2003, (30,347 mt) have exceeded the total landing for 2002 (26,192 mt) and are almost three times the average commercial landings for 1997–2001 (11,583 mt). The Council felt that specifying JVP at 10,000 mt was unnecessary and could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2003 annual specifications for Atlantic mackerel in 2004. Maintaining a JVP allocation of 5,000 mt allows JVP operations to continue at recent levels, as JVP landings in recent years have been less than 5,000 mt. A second alternative considered for Atlantic mackerel was to set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The Council considered the level of foregone yield under this alternative unacceptable because population modeling of the Atlantic mackerel stock dynamics indicate that the safe level of removals from the current mackerel stock size is considerably higher than the level proposed under this alternative.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 20.1-percent reduction from the 2002 level. If the 13,000-mt alternative was

adopted for the 2004 fishing year, 110 of the 426 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 316 vessels would experience a less than 5-percent reduction in revenue or an increase in revenue.

A second alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock is technically not protected from overfishing, some negative economic and social impacts could be expected from this alternative in the long term, if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the proposed 2004 annual specifications for *Loligo*.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt, and a second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The first alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the Council considered the first alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, the second alternative, an ABC of 19,000 mt would not allow the

fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected as having unnecessary negative economic impacts.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications both exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected by the Council.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 8, 2003.

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 first sentence of paragraph (a)(5)(ii) is amended to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(ii) *Squid/butterfish incidental catch permit.* Any vessel of the United States

may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish, or up to 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. * * *

* * * * *

3. In § 648.6, paragraph (a)(2) is added to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(2) *At-sea processors.*

Notwithstanding the provisions of § 648.4 (a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

* * * * *

4. In § 648.22, paragraph (c) is added to read as follows:

§ 648.22 Closure of the fishery.

* * * * *

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the possession limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the possession limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the possession limit for *Illex* is 10,000 lb (4.54 mt). Vessels may not land more than these limits during any single calendar day, which is defined as the 24-hour period beginning at 0001 hours and ending at 2400 hours.

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