

either thirty days after publication in the **Federal Register**, or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104-121" (summary of *R&O* paragraph 49).

2. Under current General Accounting Office ("GAO") procedures, submission to the GAO or publication in the **Federal Register** is sufficient to satisfy the requirements of the Congressional Review Act (formerly known as the Contract with America Advancement Act). The amendments to §§ 73.621, 73.642 and 73.644 of the Commission's rules were submitted to the GAO and to Congress on November 26, 2001, the same day that they were published in the **Federal Register**. Thus, pursuant to the Administrative Procedure Act, the amended §§ 73.621, 73.642 and 73.644 of the Commission's rules will be effective on December 26, 2001, thirty days after publication in the **Federal Register**.

3. Finally, in the same proceeding the Commission amended §§ 73.624(g)(1), (g)(2)(i), and (g)(2)(ii) of its rules to apply to NCE licensees the program for assessing and collecting fees upon feeable ancillary or supplementary services provided on their DTV capacity that it had previously established for commercial licensees, as required by the Telecommunications Act of 1996 ("1996 Act"). Public Law 104-104, 110 Stat. 56 section 201 (1996), codified at 47 U.S.C. 336. In addition, NCE licensees will be required to maintain documentation sufficient to show, at renewal time and in response to any complaint, compliance with the requirement to use their entire bitstream primarily for nonprofit, noncommercial, educational broadcast services on a weekly basis (summary of *R&O* paragraph 16). These requirements were analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Thus, implementation of these requirements is subject to approval by the Office of Management and Budget as prescribed by the PRA (summary of *R&O* paragraphs 46, 50 and

66). The Commission will publish a notice in the **Federal Register** when this approval is received.

#### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02-1811 Filed 1-24-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 011005244-2011-02; I.D. No. 092401D]

RIN 0648-AP08

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

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

**ACTION:** Final rule; specifications for 2002.

**SUMMARY:** NMFS announces final initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2002 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

**DATES:** This rule is effective January 25, 2002. The quotas in Tables 1 and 2 for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish are effective January 25, 2002, through December 31, 2002.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Essential Fish Habitat Assessment, are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

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

#### SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2002 initial specifications were published on October 23, 2001 (66 FR 53575). Public comments were accepted through November 23, 2001. The final specifications are unchanged from those that were proposed except that they reflect the research set-aside (RSA) allocations that have been recommended to the NOAA Grants Office for funding. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

#### 2002 Final Initial Specifications

The following table contains the final initial specifications and RSA for the 2002 MSB fisheries as recommended by the Mid-Atlantic Fishery Management Council (Council).

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	<i>Loligo</i>	<i>Illex</i>		
Max OY	26,000	24,000	N/A <sup>1</sup>	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,898 <sup>5</sup>	24,000	85,000 <sup>2</sup>	5,900
DAH	16,898 <sup>5</sup>	24,000	85,000 <sup>3</sup>	5,900

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002—Continued

Specifications	Squid		Atlantic Mackerel	Butterfish
	<i>Loligo</i>	<i>Illex</i>		
DAP	16,898 <sup>5</sup>	24,000	50,000	5,900
JVP	0	0	20,000 <sup>4</sup>	0
TALFF	0	0	0	0
RSA	102	0	0	0

<sup>1</sup> Not applicable.

<sup>2</sup> IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.

<sup>3</sup> Includes 15,000 mt of Atlantic mackerel recreational allocation.

<sup>4</sup> JVP may be increased up to 30,000 mt at discretion of Regional Administrator.

<sup>5</sup> Excludes 102 mt for RSA.

*Atlantic Mackerel*

This final rule specifies an Atlantic mackerel JVP of 20,000 mt for the 2002 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 30,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, through publication of notification in the **Federal Register**, following consultation with the Council. The action also specifies an Atlantic mackerel DAP of 50,000 mt and a DAH of 85,000 mt, which includes a 15,000-mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2002 Atlantic mackerel fishery, as follows: (1) JVPs 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 Administrator, Northeast Region, NMFS (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 it should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

*Atlantic Squids*

Research Set-Asides

Framework Adjustment 1 to the FMP allows the specification of quota set-asides to be used for research purposes. The Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes for each of the species in the FMP. A Request for Proposals was published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001. On November 8, 2001, NMFS convened

a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panelist comments, two *Loligo* squid project proposals were recommended for approval and forwarded to the NOAA Grants Office for award. Consistent with the recommendations, the quotas in this final rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Distribution of the Annual *Loligo* Squid Quota

Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this final rule adjusts the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2002 quarterly allocations are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons (mt)	Research Set-aside (mt)
I (Jan—Mar)	33.23	5,615	N/A
II (Apr—Jun)	17.61	2,976	N/A
III (Jul—Sep)	17.3	2,923	N/A
IV (Oct—Dec)	31.86	5,384	N/A
Total	100	16,898	102

Carry-over of *Loligo* Squid Quarterly Quota Underages

For the 2001 fishing year, by default, quarterly underages carry over into Quarter IV because the directed fishery in Quarter IV does not close until 95 percent of the total annual quota has been harvested. This final rule modifies the method for carrying over *Loligo* squid quarterly underages for 2002 and

subsequent fishing years by adding a provision stating that, in the event that the Quarter I landings for *Loligo* squid are less than 70 percent of the Quarter I allocation, the underage below 70 percent would be applied to Quarter III. Underages from Quarters II and III would continue to be added to Quarter IV by default, based on the 95-percent closure rule mentioned above.

Comments and Responses

Three commenters made five comments on the proposed specifications.

*Comment 1:* One commenter supported the proposed allocation of Atlantic mackerel JVP.

*Response 1:* This final rule implements the proposed allocation of Atlantic mackerel JVP.

*Comment 2:* One commenter supported the proposed zero allocation of Atlantic mackerel TALFF.

*Response 2:* This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

*Comment 3:* Two commenters instead proposed specifying TALFF at 5,000 mt and a possible JVP increase of up to 20,000 mt (for a total JVP of up to 40,000 mt) later in the fishing year.

*Response 3:* The question of whether or not to recommend a level of optimum yield that provided for an allocation of TALFF, other than zero, was reviewed and discussed by the Council at length before it made its final recommendation to the National Marine Fisheries Service. After extended debate, the Council recommended a level of OY that was a reduction of the maximum sustainable yield based upon all relevant social, economic, and ecological factors. The Council firmly believed that the specification of the OY at a level that resulted in a zero TALFF would provide the greatest overall benefit to the Nation, because it would enhance development of the U.S. domestic mackerel fishery, which is one of the principal objectives of the Magnuson-Stevens Fishery Conservation and Management Act. Even though a zero TALFF would result in an economic loss to the Nation from the loss of any poundage fees collected from foreign fishing vessel owners for allocations of TALFF, the Council was concerned that allocations of TALFF would compete directly with mackerel produced by United States processors for foreign markets. Such competition would impede the expansion of domestic mackerel processing facilities. The expansion of domestic mackerel processing facilities would enable the domestic fleet to use more of their harvesting capacity to land mackerel at shoreside facilities.

*Comment 4:* One commenter opposed the Atlantic mackerel JVP specification of 20,000 mt for the 2002 fishery because he believes shore-based processors would be negatively affected by foreign joint ventures. The commenter believes the foreign at-sea processors can operate at lower cost than U.S. shoreside plants in part due to U.S. legal requirements such as Hazard Analysis Critical Control Point standards.

*Response 4:* The Council's annual processor survey indicates that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 20,000-mt JVP

allocation to provide additional opportunity for U.S. vessels to sell mackerel.

*Comment 5:* One commenter stated that NMFS was utilizing outdated data to set the 2002 *Loligo* squid quota specification. The commenter recommended a *Loligo* quota increase, either in this rule or through an in-season adjustment to the annual specifications.

*Response 5:* The commenter is correct that the most recent stock assessment for *Loligo* squid (29th Northeast Regional Stock Assessment Workshop (SAW-29)) was completed some time ago, in August 1999. However, the Council and NMFS did not rely solely on that information in recommending the 2002 quota. The Council and NMFS also utilized the most recent survey data for *Loligo* squid, which indicates that abundance of this species has increased significantly since SAW-29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near the biomass level that would produce maximum sustainable yield ( $B_{msy}$ ). Based on the assumption that the stock would be at or near  $B_{msy}$  in 2001, the Council recommended, and NMFS implemented, an ABC specification for 2001 that is the yield associated with 75 percent of  $F_{msy}$  at  $B_{msy}$ , or 17,000 mt. Given the high survey index observed in the fall 2000 survey, the quota is being maintained at that level in 2002. The Council and NMFS may adjust the specifications through an in-season adjustment during the 2002 fishing year should the results of the 34th Northeast Regional Stock Assessment Workshop warrant that change.

#### Classification

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

NMFS prepared a FRFA for this action. The FRFA includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see ADDRESSES). A summary of the FRFA follows:

The reasons why action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken

under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (3 and 4) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex* squid, and 2,098 for Atlantic mackerel. 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 ABC specifications of 347,000 mt and DAH of 95,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The levels of landings allowed under the specifications for 2002 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 this action.

From 1996-2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 DAH specification of 16,898 mt for *Loligo* squid is achieved, there would be a slight increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996-2000.

This action modifies the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the Quarter I allocation would be applied to Quarter III. Previously, all underages from Quarter I were applied to Quarter IV because the directed *Loligo* fishery in Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders will be able to fish during a time when the quarter may have otherwise been closed. This could potentially provide an added economic benefit to fishers during Quarter III. This provision will only shift a limited amount of quota from one period to another and does not modify the *Loligo* squid annual quota, so no overall change in revenue is expected.

Three non-selected alternatives were considered for the Atlantic mackerel fishery. The first was to set the 2002

specifications at the same level as 2001. The specifications under this alternative are the same as those established by this action, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher than the specification in the preferred alternative (88,000 mt) because TALFF would be specified at 3,000 mt. However, specifying TALFF at 3,000 mt would be inconsistent with the goal of further developing the U.S. domestic fishery for Atlantic mackerel. This alternative would have had no constraints and consequently no revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been attained in recent years.

The second alternative for Atlantic mackerel was to set ABC at the long-term potential catch, or 134,000 mt. This alternative was found inconsistent with the FMP because it did not consider the variations in the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at 134,000 mt would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The potential level of foregone yield under this alternative was considered unacceptable.

The third alternative considered for mackerel eliminated the JVP allocation for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected because JVPs allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. None of these alternatives were expected to constrain the mackerel fishery and they all were determined to have no impact on the revenues of participants in this fishery.

Two non-selected alternatives were considered for *Loligo* squid. The first would have set the ABC, DAH, DAP, and IOY at 13,000 mt, a 23.3-percent reduction from the 2001 level. This was the same level initially specified for the 2000 fishing year (an in-season adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000)). If the 13,000-mt alternative were adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction of greater than 6 percent (all species combined). The remaining 365 vessels would experience a 4-percent or less reduction in revenue or an increase in revenue. The second alternative would have set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31-percent reduction in landings relative to 2000. Under this

scenario, 170 of the 497 impacted vessels would experience a gross revenue reduction of greater than 6 percent (all species combined). The remaining 327 vessels would experience a 4-percent or less reduction in revenue, or an increase in revenue.

Two non-selected alternatives were considered for *Illex* squid. The first would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and the second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these non-selected specifications.

Two non-selected alternatives were considered for butterfish. The first would have set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed the specifications implemented by this final rule. Recent harvests in the butterfish fishery have been well below the level allowed by this final rule, so none of the alternatives would constrain or impact the industry. However, the non-selected alternatives could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see ADDRESSES).

This final rule establishes annual and seasonal quotas for the managed species, which are used for the purpose of closing the fishery when the quotas are reached and which serve as the basis for issuing joint venture permits. The mackerel specifications have a foreign fishing component. Until the specifications are final, no foreign

fishing permits to authorize joint ventures may be issued. A number of foreign fishing vessels operated in the EEZ in 2001. Some of these foreign vessels have remained in U.S. waters in anticipation of receiving foreign fishing permits authorizing joint ventures for Atlantic mackerel in 2002. Until the mackerel specification are finalized and these foreign vessels are permitted, domestic fishermen cannot deliver mackerel to these foreign vessels. This will have a negative economic impact on domestic fishermen. Therefore, with respect to the mackerel fishery, this final rule relieves a restriction and pursuant to 5 U.S.C. 553(d)(1) the 30-day delay in effectiveness does not apply.

In addition, if implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the loligo squid fishery. The loligo squid fishery covered by this action is already underway. Landings data for loligo squid in previous years reflect that landings are highly variable and largely dependent on availability. Since the loligo squid fishery is now managed on a quarterly quota basis, the unpredictable nature of loligo squid landing could compromise the initial quarterly quota if no closure mechanism is in place due to a delay in the effectiveness of the loligo squid specification. Failure to implement timely closures could result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the mackerel and loligo squid specifications and other management measures.

This final rule does not contain policies with federalism implications under Executive Order 13132.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 22, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out 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 § 648.21, paragraph (f)(3) is added to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

\* \* \* \* \*

(f) \* \* \*

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the

remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

\* \* \* \* \*

[FR Doc. 02-1997 Filed 1-23-02; 1:26 pm]

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