

**Authors**

The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see ADDRESSES).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, mountain yellow-legged (southern California DPS).	<i>Rana muscosa</i> .....	U.S.A. (California, Nevada).	U.S.A., southern California.	E	728	NA	NA
*	*	*	*	*	*		*

Dated: June 20, 2002.  
**Steve Williams,**  
 Director, Fish and Wildlife Service.  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 020508113–2151–02; I.D. 090501D]

RIN 0648–AP12

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 2 (Framework 2) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action extends the limited entry program for the *Illex* squid fishery for an additional year; allows for the roll-over of the annual specifications for these fisheries (with the exception of total allowable landings of foreign

fishing (TALFF)) in the event annual specifications are not published prior to the start of the fishing year; and allows *Loligo* squid specifications to be set for up to 3 years, subject to annual review. NMFS has disapproved the proposed framework measures to modify the *Loligo* squid overfishing definition and control rule; and to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. This action is necessary and is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective August 1, 2002, except that the amendment to § 648.4 is effective on June 27, 2002.

**ADDRESSES:** Copies of Framework 2, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA), are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

**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:** 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 were concerns 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, and it was scheduled to end July 1, 2002. However, in recent years the limited entry fleet has demonstrated that it has sufficient capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) must prepare an amendment to the FMP to evaluate whether or not the limited entry program should be extended permanently. In the meantime, this action extends the *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the amendment is being prepared and considered by the Council. This extension complies with the criteria in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act. The extension will 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.

This action also authorizes the roll-over of the annual specifications for the Atlantic mackerel, squid, and butterfish fisheries. In recent years, publication of the annual specifications for those fisheries has occurred after the start of the fishing year on January 1, resulting in inefficient management and industry uncertainty. This action allows the annual Atlantic mackerel, squid, and butterfish specifications from the previous fishing year to roll-over into the next fishing year (excluding TALFF), in the event that annual specifications for that year have not been published. The rolled-over specifications will be superseded by the publication of the current year's annual specifications.

This action also allows maximum optimum yield (Max OY), allowable biological catch (ABC), optimum yield (OY) and domestic annual harvest (DAH) for *Loligo* squid to be specified for up to 3 years. If the annual review conducted by the Council through its Monitoring Committee indicates that it is necessary, such a multi-year specification will be revised in the annual specification process.

This action also outlines a timeframe to be followed for in-season adjustments to the annual specifications for *Loligo* squid. The Council's Monitoring Committee will meet in late spring each year to review available Northeast Fisheries Science Center (NEFSC) survey data and to develop recommendations for the annual harvest for the following year. In addition, at that meeting, the Monitoring Committee will make recommendations regarding inseason adjustments to the annual *Loligo* squid specifications for consideration by the Atlantic Mackerel, Squid, and Butterfish Committee and the Council. Upon review of the recommendations from the Council, the Administrator, Northeast Region, NMFS (Regional Administrator) may make inseason adjustments through the process specified in the regulations.

#### Disapproved Measures

While the primary components of the overfishing definition for *Loligo* squid (the maximum fishing mortality rate threshold and the minimum biomass threshold) remained unchanged, Framework 2 proposed to modify the control rules that guide the Council in making harvest recommendations based upon those definitions. However, in December 2001, subsequent to the Council's adoption of Framework 2, *Loligo* squid was reassessed by the 34th Stock Assessment Workshop (SAW 34). Based on the results of that stock assessment, NEFSC found that the

proposed overfishing definition did not comply with the 50 CFR part 600 guidelines because it has insufficient scientific merit and is not likely to result in effective management. Therefore, NMFS has disapproved the proposed modification to the control rules because they are not consistent with the best scientific information available and do not comply with National Standard 2 of the Magnuson-Stevens Conservation and Management Act.

SAW 34 noted that the apparent resilience of the stock of the last two decades suggested reexamination of the fundamental approach to determining Fishing Mortality (F) reference points. SAW 34 suggested that a threshold F could be set at the 75<sup>th</sup> percentile of the observed F over the time series and that a reasonable target F might be the mean value of the series. Amending the reference points along the lines suggested by SAW 34 will require further Council action.

NMFS noted in the proposed rule that it had disapproved the proposed measure to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The reasons for the disapproval of the measure were discussed fully in the preamble to the proposed rule and are not repeated here.

#### Changes From the Proposed Rule

As a result of the disapproval of the proposed change to the control rule for *Loligo* squid, the regulatory text at § 648.4 is not modified as was indicated in the proposed rule.

#### Comments and Responses

The Council developed Framework 2 under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart B. This procedure provided the public with the opportunity to comment on the proposed actions at Council meetings held February, March, and May 2001. In addition, the proposed rule provided an opportunity for public comment. No comments were received in response to the proposed rule, but two written comments were received during the Council process and are responded to here.

*Comment 1:* One commenter opposed allowing an increase of the *Loligo* squid target F from 75 percent of  $F_{msy}$  up to 90 percent of  $F_{msy}$  until the Council has had an opportunity to evaluate the ecological relationships between squid and its major predators, and how these relationships might change as rebuilding plans are implemented. The

commenter advocated that the Council maintain the target F of 75 percent of  $F_{msy}$ , pending the results of such an analysis.

*Response:* NMFS agrees and has disapproved the proposed framework measure to modify the *Loligo* squid overfishing definition and control rule.

*Comment 2:* One commenter opposed the provision to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The commenter believed that the Council's analysis underestimated the total amount of *Loligo* squid bycatch that may be landed under this exemption.

*Response:* NMFS agrees and has disapproved the provision that would have allowed vessels fishing in the directed *Illex* squid fishery during a closure of the *Loligo* fishery to land *Loligo* squid taken seaward of the 50-fathom (91-m) curve in an amount not to exceed 10 percent of the total weight of *Illex* squid on board the vessel.

#### Classification

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

The need to implement these measures in a timely manner in order to have management measures for the *Illex* squid moratorium in place and to reduce overfishing at the start of the 2002 mackerel, squid, butterfish fishing year, beginning July 1, 2002, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. This action extends the current *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the Council prepares an amendment to the FMP to extend the moratorium indefinitely.

The current fleet has the capacity to harvest the long term yield from this fishery. If the moratorium lapses for 30 days as the result of delayed effectiveness, it will create confusion among industry participants about their current and future eligibility to fish for *Illex* squid. Those fishermen with incidental catch permits may view the lapse of the moratorium as a dissolution of the distinction between a moratorium and incidental catch permit and begin harvesting amounts of *Illex* above the incidental catch permit. This would put additional pressure on the stock and could result in overfishing.

Similarly, those without either a moratorium or incidental catch permit may view a lapse of the moratorium as the absence of any permit requirement and begin fishing for *Illex* in order to

qualify for a moratorium permit under Amendment 9 to the FMP. It is critical for the moratorium to continue without lapse so that the Council can consider whether or not to extend the limited entry program permanently through the amendment process without jeopardizing the *Illex* stock. Furthermore, this final rule will result in a continuation of the status quo, and imposes no new obligations on persons already fishing for *Illex* squid, or upon those who may wish to fish for *Illex* squid in the future. 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 *Illex* moratorium.

This final rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132.

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. No comments were submitted that pertain to the IRFA, so none of the comments and responses in this final rule are considered to be part of the FRFA. The FRFA consists of the IRFA and a summary of the analyses done in support of this action. A copy of the analyses is available from the Council (see ADDRESSES). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

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

#### Public Comments

Two comments were received on the measures contained in Framework 2. The comments were unrelated to the IRFA.

#### Number of Small Entities

As of January 2001, there were 2,700 distinct vessels with a Federal vessel permit for Atlantic mackerel, *Illex* squid, *Loligo* squid, and/or butterfish. Of these vessels, 2,007 were issued commercial Atlantic mackerel permits, 400 were issued *Loligo*/butterfish moratorium permits, 77 were issued *Illex* moratorium permits, 1,598 were issued incidental catch permits for *Illex*, *Loligo* and butterfish, and 522 were issued party/charter permits. There

were also 352 Federal dealer permits allowing the purchase of these species. All of these entities are potentially affected by this action.

Not all vessels issued permits participate in the fishery, so 1999 landings data was used to estimate the number of vessels that actively participate in the fishery. These vessels will likely be more directly impacted by this action. Atlantic mackerel was landed by a total of 559 vessels, *Loligo* was landed by a total of 523 vessels, *Illex* was landed by a total of 86 vessels, and butterfish was landed by 522 vessels. Many vessels landed more than one of the four species, so are reflected in more than one of the categories.

#### Minimizing Significant Economic Impact on Small Entities

The IRFA analyzed a range of alternatives for each of the management measures considered in Framework 2. The preamble to the proposed rule described the impacts associated with the proposed change to the *Loligo* overfishing definition control rules. That proposed measure was disapproved in this final rule and is not discussed in the FRFA. The IRFA analysis demonstrates that the economic impacts of the measures being enacted by this final rule are being minimized to the extent practicable. The three measures enacted by this rule (the extension of the *Illex* moratorium for one year, the roll-over of annual specifications, and the provision to allow *Loligo* squid specifications to be set for up to 3 years) the measures are expected to have no direct impact on participants in and of themselves as they are primarily administrative in nature. Any direct impacts, such as those associated with setting annual harvest levels, will be evaluated in the annual specifications submissions themselves.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 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 rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic mackerel, squid and butterfish fisheries.

In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 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 to read 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, paragraph (a)(5)(i), the heading 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, 2003).* \* \* \*

\* \* \* \* \*

3. In § 648.21, paragraphs (a)(1) and (d)(1) are revised and paragraphs (a)(4) and (a)(5) are added to read as follows:

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

(a) \* \* \*

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid;

\* \* \* \* \*

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid as specified in paragraph (e) of this section.

\* \* \* \* \*

(d) \* \* \*

(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, on or about November 1 of each year, 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 superseded as of the effective date of the final rule implementing the current year's annual specifications.

\* \* \* \* \*

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