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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

Fixed Microwave Services

CFR Correction

In Title 47 of the Code of Federal Regulations, Part 80 to End, revised as of October 1, 2007, in § 101.113, on page 660, the following two entries are reinstated in numerical order in the table in paragraph (a):

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP ^{1,2}	
	Fixed ^{1,2} (dBW)	Mobile (dBW)
* * *	*	*
71,000–76,000 ¹³ ...	+55	+55
81,000–86,000 ¹³ ...	+55	+55
* * *	*	*

¹ Per polarization.

² For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station projection system are authorized a maximum of 2 watts.

* * * * *

¹³ The maximum transmitter power is limited to 3 watts (5 dBW) unless a proportional reduction in maximum authorized EIRP is required under § 101.115. The maximum transmitter power spectral density is limited to 150 mW per 100 MHz.

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[FR Doc. E8-7008 Filed 4-3-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717340-8451-02]

RIN 0648-AV40

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

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

ACTION: Final rule.

SUMMARY: This action implements 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB) and modifies existing management measures. Specifically, it clarifies gear requirements for the *Loligo* squid fishery, standardizes procedures for closing the Atlantic mackerel (mackerel) and butterfish fisheries, modifies incidental possession limits for mackerel and butterfish, and establishes a butterfish possession limit. These specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Effective May 5, 2008.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), 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.nmfs.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, and are also available via the Internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 648.21 and § 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (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 § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) 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 mackerel.

The Council adopted 2008 MSB specifications and management measures at its June 2007 meeting and submitted them to NMFS for review and approval. Initial submission was on August 1, 2007, and final submission was on November 9, 2007. A proposed rule for 2008 MSB specifications and management measures was published on December 28, 2007 (72 FR 73749), and a notice to re-open the public comment period on the proposed rule was published on January 29, 2008 (73 FR 5153). The public comment period for the proposed rule ended on February 5, 2008. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Disapproval of Increased Incidental *Loligo* Squid Possession Limit for Illex Squid Vessels

The issue of incidental catch of *Loligo* squid in the *Illex* squid fishery was identified several years ago when large amounts of *Loligo* squid discards were reported in vessel trip reports by *Illex* squid vessels during closures of the directed *Loligo* squid fishery in the summer and fall of 2000. Analyses developed for Amendment 9 to the FMP indicated that the *Illex* squid fishery occurs primarily during June-November

in offshore waters and that both squid species can co-occur during September-November on the *Illex* squid fishery grounds, when the *Loligo* squid begin to move offshore. Because of the seasonal co-occurrence of the two squid species, members of the directed *Illex* squid fishery testified at Council meetings that the 2,500-lb (1.13-mt) incidental *Loligo* squid possession limit during closures of the *Loligo* squid fishery creates compliance problems for the *Illex* squid fishery because vessels catch more than 2,500 lb (1.13 mt) of *Loligo* squid when the species mix. In an effort to reduce regulatory discarding and allow more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommended increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery during *Loligo* squid fishery closures. Specifically, during closures of the *Loligo* squid fishery in August-October, *Illex* squid moratorium vessels

fishing seaward of the small mesh exemption line (approximately the 50-fm (91-m) depth contour) would be permitted to possess and land up to 5,000 lb (2.27 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

This measure is similar to the measure proposed by the Council in the 2007 MSB specifications, but not implemented due to concerns about NMFS's ability to administer the measure effectively. The small mesh exemption line, which approximates the 50-fm (91-m) depth contour, was implemented for the *Illex* squid fishery because *Illex* squid are not generally available to the fishery shoreward of this line. The *Illex* squid fishery is exempt from the 1 $\frac{7}{8}$ -inches (48-mm) minimum mesh requirement for the *Loligo* squid fishery in the exemption area. However, *Loligo* squid are widely distributed shoreward of this line, which would make it difficult to

determine if the *Loligo* squid is truly incidentally caught within the *Illex* squid exemption area. Currently, there is no mechanism to determine if *Illex* squid moratorium vessels fish for *Loligo* squid shoreward of the small mesh exemption line. Tools to collect spatial effort information on the *Illex* squid fleet were discussed by the Council, but implementation of those tools would require an FMP amendment or framework adjustment. Therefore, for 2008, the incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels, during closures of the *Loligo* squid fishery, will remain at 2,500 lb (1.13 mt) per trip per day.

Final MSB Specifications and Management Measures for the 2008 Fishing Year

This action implements the following MSB specifications and management measures for the 2008 fishing year, which are described in detail below.

TABLE 1.—FINAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2008 FISHING YEAR

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	26,000	24,000	N/A	12,175
ABC	17,000	24,000	156,000	1,500
IOY	¹ 16,977	24,000	² 115,000	500
DAH	16,977	24,000	³ 115,000	500
DAP	16,977	24,000	100,000	500
JVP	0	0	0	0
TALFF	0	0	0	0

¹ Excludes 23 mt for Research Quota (RQ).

² IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.

³ Includes a 15,000 mt catch of Atlantic mackerel by the recreational fishery.

Atlantic Mackerel

This action specifies the mackerel ABC at 156,000 mt, based on the formula $ABC = T - C$. T is the yield (211,000 mt) associated with a fishing mortality rate (F) that is equal to target F ($F = 0.12$); C is the estimated catch of mackerel in Canadian waters (52,000 mt) for the upcoming fishing year. Thus, 211,000 mt minus 52,000 mt results in the 2008 mackerel ABC of 156,000 mt. This action also specifies the mackerel IOY at 115,000 mt, a level that can be fully harvested by the domestic fleet, thereby precluding the specification of TALFF, while allowing the U.S. mackerel industry to expand. Given the trends in increasing mackerel landings, NMFS believes that it is reasonable to assume that, in 2008, the commercial fishery will harvest 100,000 mt of mackerel. Therefore, this action specifies the mackerel DAH at 115,000 mt, which is the commercial harvest plus the 15,000 mt anticipated to be

harvested by the recreational fishery. Because IOY = DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for TALFF.

As recommended by the Council, this action specifies the mackerel DAP at 100,000 mt and the mackerel JVP at zero. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past several years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shore-based processing capacity for mackerel has expanded. The Council also heard from the industry that the availability of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded, and NMFS concurs, that processing

capacity is no longer a limiting factor relative to domestic production of mackerel. Consequently, if U.S. harvesters land mackerel in excess of 100,000 mt, should the IOY be adjusted upward, U.S. processors have the capacity and intent to process it.

Closure of the Mackerel Fishery

Regulations at § 648.22(a)(1) specify that NMFS shall close the directed mackerel fishery when the Regional Administrator projects that 80 percent of the mackerel DAH is landed, if such a closure is necessary to prevent the DAH from being exceeded. To facilitate achieving the mackerel DAH and consistent with the Council's recommendation, this action specifies that NMFS will close the mackerel fishery when 90 percent of the mackerel DAH is projected to be landed in 2008.

Mackerel Incidental Possession Limit

Regulations at § 648.22(c) specify that, during closures of the mackerel fishery,

the incidental possession limit for mackerel is 10 percent, by weight, of the total amount of fish on board. In general, possession limits that are a percent of the total catch on board are difficult to estimate and enforce. This action modifies the incidental possession limit for mackerel such that: It is easier to estimate and enforce, and it is more similar to incidental possession limits for squid and butterfish; it is low enough to ensure that the mackerel ABC would not be exceeded; it is high enough to minimize regulatory discarding of mackerel in fisheries where mackerel is taken incidentally, but not so high as to encourage directed fishing; and it is high enough to allow small-scale fisheries to continue after the directed fishery is closed. Consistent with these factors and the Council's recommendation, this action specifies the mackerel incidental possession limit at 20,000 lb (4.54 mt).

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) provide that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. At the June 2007 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest

in increasing the 2008 mackerel IOY if landings approach 115,000 mt during the most active part of the fishing year (January–April). However, the mackerel fishing season is short and it would be difficult to implement a separate inseason action during the fishing season. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, public comment was solicited as part of the 2008 MSB specifications, and this action implements a protocol for an inseason adjustment in 2008. The protocol specifies that, if using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2008 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2008. NMFS's Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office Web site (<http://www.nero.noaa.gov/>). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo Squid

For 2008, this action specifies the *Loligo* squid Max OY at 26,000 mt; the ABC at 17,000 mt; and the research quota (RQ) for up to 3 percent (510 mt) of the ABC. One scientific research project proposal requesting *Loligo* squid RQ was recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* squid IOY, DAH, and DAP were adjusted to reflect the RQ and equal 16,977 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, there would be no JVP and TALFF in 2008.

Distribution of the *Loligo* Squid DAH

For 2008, this action specifies that the *Loligo* squid DAH will be allocated by trimester. Managing the DAH by trimesters, rather than quarters, results in allocations that are the same or higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information and, perhaps, to be more accurate. Additionally, managing by trimesters rather than quarters is administratively streamlined because only three, rather than four, closures of the directed fishery could occur during a fishing year. The 2008 trimester allocations are as follows:

TABLE 2.—TRIMESTER ALLOCATION OF *LOLIGO* SQUID QUOTA IN 2008

Trimester	Percent	Metric tons ¹	RQ (mt)
I (Jan–Apr)	43	7,300	NA
II (May–Aug)	17	2,886	NA
III (Sep–Dec)	40	6,791	NA
Total	100	16,977	23

¹ Trimester allocations after 23 mt RQ deduction.

For 2008, the Council recommended that the percentage at which the directed *Loligo* squid fishery would close and the handling of quota overages and underages would be the same as in 2007. Therefore, this action specifies the directed *Loligo* squid fishery would close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III. Additionally, it specifies that any underages from Trimesters I and II would be applied to Trimester III, and any overages from Trimesters I and II would be subtracted from Trimester III.

Clarification of *Loligo* Squid Gear Requirements

Regulations at § 648.23(d) specify that net strengtheners have a minimum mesh size of 4½ inches (11.43 cm) and that any device, including net strengtheners, may not be used on the top 50 percent of a codend (i.e., the portion of the codend that is not in contact with the ocean floor when the net is fishing) if it constricts the minimum mesh size to less than the required 1⅞ inch (48 mm). However, any time a 1⅞-inch (48-mm) codend is used with a 4½-inches (11.43-cm) net strengthener, the actual mesh size will be less than 1⅞ inches (48

mm) because the meshes from the codend and the net strengthener will not be in alignment and will overlap. The U.S. Coast Guard brought it to NMFS's attention that *Loligo* squid vessels have net strengtheners covering the top 50 percent of the codend. When questioned about the need for and use of net strengtheners, members of the *Loligo* squid fishing industry explained that codends with a minimum mesh size of 1⅞ inches (48 mm) are of such fine gauge that they will burst if a net strengthener does not surround the entire circumference of the codend. To ensure gear regulations are consistent

with the way the *Loligo* squid fishery needs to operate, this action specifies that net strengtheners, splitting straps, and/or bull ropes or wire may be used around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm), diamond mesh, inside stretch measure.

Illex Squid

This action specifies the *Illex* squid Max OY, IOY, ABC, and DAP at 24,000 mt. 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 IOY from this fishery.

Butterfish

The status of the butterfish stock was most recently assessed in late 2004 and that assessment concluded that, while overfishing of the stock is not occurring, the stock is overfished. Based on this information, the Council was notified by NMFS on February 11, 2005, that the butterfish stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Council is developing a rebuilding plan for the butterfish stock in Amendment 10 to the FMP (Amendment 10). While a butterfish rebuilding program is being developed in Amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding stock. Therefore, this action specifies the butterfish Max OY at 12,175 mt, ABC at 1,500 mt, and IOY, DAP, and DAP at 500 mt. Consistent with MSB regulations, this action specifies zero TALFF for butterfish in 2008 because zero TALFF is established for mackerel.

Closure of the Butterfish Fishery and the Incidental Butterfish Possession Limit

Existing regulations specify that NMFS shall close the butterfish fishery when the Regional Administrator projects that 95 percent of the butterfish DAP is projected to be landed, and once the butterfish fishery is closed, the incidental butterfish possession limit is 2,500 lb (1.13 mt) per day. Consistent with the lower butterfish DAP for 2008, this action modifies both the butterfish fishery closure threshold and incidental possession limit. As such, if 80 percent of the butterfish DAP is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish

possession limit would be in effect for the remainder of the year and if 80 percent of the butterfish DAP is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit would be in effect for the remainder of the year. These measures should prevent the 500-mt butterfish DAP from being exceeded, while allowing for butterfish taken incidentally in other fisheries to be landed, thus reducing discards.

Incidental possession limits for butterfish apply not only during a fishery closure but also year-round to vessels issued incidental catch permits. Because the Council did not explicitly recommend a butterfish possession limit for vessels issued a butterfish incidental catch permit during its June 2007 meeting, the proposed rule for the 2008 MSB specifications and management measures proposed a year-round, 250-lb (0.11-mt) butterfish possession limit for vessels issued incidental butterfish catch permits. In response to this proposed measure, the Council discussed this measure at its January 2008 meeting and recommended a revised butterfish incidental possession limit in a letter to NMFS during public comment on the proposed rule. The Council's recommendation was that the butterfish incidental possession limit for incidental permit holders be set at 600 lb (0.27 mt) per day, unless the butterfish fishery closes prior to October 1, then a 250-lb (0.11-mt) butterfish possession limit would be in effect for the remainder of the year. The Council believes this measure provides consistency for all butterfish permit holders (i.e., limited access and incidental), improves the enforceability of the measure, and would reduce regulatory discarding while limiting directed fishing on butterfish by incidental permit holders. NMFS concurs with the butterfish possession limit recommended by the Council in its comment letter; therefore, this action implements that Council-recommended measure.

Butterfish Possession Limits

Regulations at § 648.23(a)(2) specify that trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm). Consistent with the Council's intent to prevent expansion of the butterfish fishery and protect the rebuilding stock as Amendment 10 is being developed, this action specifies that a trawl vessel possessing 1,000 lb (0.45 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm) and that a vessel

issued a butterfish moratorium permit may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip per day.

Comments and Responses

NMFS received five comment letters on the proposed 2008 MSB specifications and management measures; one letter was from the Council, three letters were from industry representatives, and one letter was from an individual. Comments on the FMP that were not specific to the 2008 specifications and management measures described in the proposed rule are not responded to in this final rule.

Comment 1: One commenter indicated general support for a reduction of commercial quotas, the use of accurate harvest information to develop quotas, and the need for protection of the public fishery resource.

Response: NMFS acknowledges the importance of the issues raised by the commenter, which relate generally to 2008 MSB specifications and management measures. As specified in the FMP, the Council developed the 2008 MSB specifications and management measures using the best available data regarding the resource and the fishery. Additionally, the 2008 MSB specifications and management measures are consistent with the rules specified in the FMP to promote utilization and conservation of the MSB resource.

Comment 2: Three industry representatives expressed support for the proposed 2008 MSB specifications, indicating that they are consistent with the best available science and status of the fishery resources.

Response: NMFS concurs with the commenters.

Comment 3: Three industry representatives expressed support for an inseason adjustment of the mackerel IOY, up to the ABC, if landings projections indicate that 70 percent of the IOY will be landed during the fishing year. Additionally, these industry representatives stressed the importance of speedy implementation of an inseason action, if warranted, to prevent any interruption of the fishery.

Response: If information demonstrates an inseason adjustment is necessary, NMFS will make the adjustment in a manner that will avoid interruption in the fishery, as specified in this final rule.

Comment 4: One industry representative supported the proposed change of the mackerel incidental possession limit from an allowable percentage of catch (10 percent, by

weight, of all fish on board) to a fixed limit (20,000 lb (4.54 mt)), while two industry representatives opposed this change. Of those opposed, one industry representative contended that it is not feasible to eliminate mackerel bycatch in the Atlantic herring fishery to conform with a fixed weight standard, and recommended a thorough sampling of both herring and mackerel fisheries, before a 20,000-lb (4.54-mt) mackerel incidental possession limit is established, to ensure the herring fishery is not negatively impacted by the 2008 MSB specifications and management measures. The other industry representative critical of the proposed change argued that the herring fishery is a high-volume fishery, where catch is pumped aboard the vessel, and crew do not have the ability to sort and weigh incidentally caught mackerel, but they can estimate a catch ratio. This commenter believes the enforceability of a limit that is a percentage of catch or a fixed value are equal, and the only feasible way to determine the amount of bycatch is through statistical sub-sampling of the catch and an extrapolation of those data.

Response: At its June 2007 meeting, the Council discussed revising the mackerel incidental possession limit from a percentage of catch to a fixed limit. Council discussion focused on the issue that possession limits that are a percent of the total catch on board are difficult to estimate and enforce because the relative amounts of all species (i.e., target and bycatch) must be known. Therefore, there was support during the meeting to revise the mackerel incidental possession limit, such that it would be easier to estimate and enforce, because it would require only knowing the amount of mackerel bycatch on board, and that it would be similar to the fixed value incidental possession limits for squid and butterfish.

The Council considered several competing objectives in the development of a revised incidental possession limit for mackerel. First, the possession limit needed to be low enough to ensure that the mackerel ABC would not be exceeded. Secondly, the possession limit needed to be set high enough to minimize regulatory discarding of mackerel in fisheries where mackerel is taken incidentally, but not so high as to encourage directed fishing. Lastly, because small-scale mackerel fisheries contribute only minimally to the overall mackerel harvest, the Council wanted the incidental possession limit to be high enough to allow small-scale fisheries to continue after the directed fishery was closed. After considering these factors,

the Council recommended a mackerel incidental possession limit of 20,000 lb (4.54 mt) for 2008.

According to the Magnuson-Stevens Act, NMFS either approves or disapproves a management measure recommended by the Council, but NMFS cannot implement a measure not considered by the Council. Since NMFS concurs with the Council that a possession limit that is a fixed value is easier to estimate and enforce than a percentage of catch, this action implements the Council-recommended mackerel incidental possession limit of 20,000 lb (4.54 mt) rather than disapproving that measure and maintaining the mackerel incidental possession limit of 10 percent, by weight, of all fish on board.

Comment 5: One industry representative expressed support for the measure to clarify the gear requirement for *Loligo* squid, specifically, the provisions that a net strengthener could be used around the entire circumference of the codend and that the minimum mesh size of the net strengthener was 4.5 inches (11.43 cm).

Response: NMFS believes this clarification is appropriate and necessary. Allowing the net strengthener to be used around the entire circumference of the codend, instead of just on the lower 50 percent of the net, is not expected to significantly affect the escapement of small *Loligo* squid from the codend, but it does ensure that *Loligo* squid gear requirements are consistent with the way the fishery is operated.

Changes From the Proposed Rule

In the proposed rule, § 648.25(d)(1) specified that if a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. In response to the Council's comment letter on this limit, NMFS reconsidered this limit, and this action is revising the limit consistent with the Council's recommendation. Therefore, § 648.25(d)(1) will specify that if a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish

per trip at any time, and may only land butterfish once on any calendar day.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a final regulatory flexibility analysis (FRFA), included in this final rule, in support of the 2008 MSB specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed and final rules and is not repeated here.

Statement of Need for This Action

This action specifies 2008 specifications and management measures for MSB fisheries and modifies existing management measures to improve the monitoring and management of MSB fisheries.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A summary of the comments received and NMFS' responses thereto is contained in the preamble and is not repeated here.

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

Based on permit data for 2006, the number of potential fishing vessels in the 2008 fisheries are as follows: 383 for

Loligo squid/butterfish; 78 for *Illex* squid; 2,495 for mackerel; and 2,016 vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

Description of the Steps the Agency Has taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Actions Implemented With the Final Rule

The mackerel IOY specified in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt. Landings in 2004 were 55,528 mt, landings in 2005 were 43,246 mt, and landings for 2006 were 58,279 mt. This action also specifies an inseason adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to the ABC (156,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this action; in fact, an increase in revenues as a result of the action is possible. Based on 2006 data, the mackerel fishery could increase its landings by 56,721 mt in 2008, if it takes the entire IOY. In 2006, the last year with complete financial data, the average value for mackerel was \$418 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$23,709,378 as a result of the 2008 IOY (115,000 mt), and an additional increase in revenues of \$17,138,000 as a result of the inseason

adjustment to increase the IOY up to the ABC (156,000 mt).

Additionally, this action changes the percentage at which the directed mackerel fishery would close (from 80 percent to 90 percent of OY) and the incidental mackerel possession limit after the directed fishery is closed (from 10 percent, by weight, of the total fish on board to a fixed possession limit of 20,000 lb (4.54 mt)). Under these changes, it is likely that a higher level of revenue could be realized by vessels engaged in the directed mackerel fishery compared to the other alternatives. An increase in revenues of 10 percent of OY in the directed fishery could be realized, amounting to a potential increase in landings in the directed fishery on the order about 10,000 mt. Given recent prices, this would translate into increased revenues of about \$4.2 million, or \$15,000 per vessel.

The *Loligo* squid IOY (17,000 mt) specified in this action represents status quo as compared to 2007. *Loligo* squid landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 15,447, landings in 2005 were 16,984 mt, and landings in 2006 were 15,880 mt. In 2006, the last year for which complete financial data are available, the average value for *Loligo* squid was \$1,751 per mt. Implementation of this action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2008.

The *Illex* squid IOY (24,000 mt) specified in this action represents status quo as compared to 2007. *Illex* squid landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 26,098 mt, landings in 2005 were 12,032 mt, and landings in 2006 were 13,944 mt. In 2006, the last year for which complete financial data are available, the average value for *Illex* squid was \$578 per mt. Implementation of this action would not result in a reduction in revenue or a constraint on the fishery in 2008.

The butterfish IOY (500 mt) specified in this action represents no constraint to vessels relative to the landings in recent years. Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Landings in 2004 were 537 mt, landings in 2005 were 437 mt, and landings in 2006 were 554 mt. Given the lack of a directed butterfish fishery and low butterfish landings, this action is not expected to reduce revenues in this fishery. Based on 2006 data, the value of butterfish was \$1,472 per mt.

This action also modifies the trigger for closing the directed butterfish fishery and reduces butterfish possession limits. Specifically, this

action changes the percentage at which the directed butterfish fishery would close (from 95 percent to 80 percent of DAH) and the incidental butterfish possession limit after the directed fishery is closed (from 2,500 lb (1.13 mt) to either 600 lb (0.27 mt) or 250 lb (0.11 mt)). Additionally, this action implements a 5,000-lb (2.27-mt) butterfish possession limit for all trips and reduces the possession limit for trips using small mesh (i.e., less than 3 inches (76 mm)) from 5,000 lb (4.54 mt) to 1,000 lb (0.45 mt). These measures potentially limit the amount of fishing effort for butterfish as the stock rebuilds compared to the other alternatives. Therefore, there could be some minor losses in revenue for vessels that wanted to direct on butterfish in the short term (i.e., during the rebuilding period).

Alternatives to the Actions in the Final Rule

The Council analysis evaluated three alternatives for mackerel, and all of them would have set IOY at 115,000 mt, maintained the status quo trigger for closing the directed fishery, and maintained the status quo incidental mackerel possession limit. This IOY and these management measures do not represent a constraint on vessels in this fishery, so no negative impacts on revenues in this fishery are expected as a result of these alternatives. One of these alternatives (status quo) would have set the ABC at 186,000 mt, and the other could have set the ABC at 335,000 mt. These alternatives were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest that was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, see the earlier section on Atlantic mackerel).

For *Loligo* squid, all alternatives would have set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota and incidental *Loligo* squid possession limit for *Illex* squid vessels. Two alternatives would have allocated quotas by trimester. Of these, both include an increase of the *Loligo*

squid incidental possession limit for *Illex* squid vessels during August–October closures of the *Loligo* squid fishery; one alternative specifies a 5,000-lb (2.27-mt) limit for vessels fishing seaward of the small-mesh exemption line (approximating the 50-fm (91-m) depth contour), and the other specifies a 10,000-lb (4.54-mt) limit for vessels fishing seaward of a boundary approximating the 80-fm (146-m) depth contour. As described in the preamble of this rule, there are no tools in place for NMFS to monitor spatial activities of the *Illex* squid fleet; therefore, this possession limit provision of these alternatives will not be implemented because it cannot be administered effectively. The third alternative would allocate quota by quarters (status quo). Difference in seasonal quota distribution may have distributive effects on seasonal participants in the fishery; however, all alternatives are expected to result in the same total landings for 2008.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This 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 this alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Another alternative considered would have set MAX OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The Council considered this alternative unacceptable because it was unnecessarily restrictive.

For butterfish, one alternative considered would have set the ABC at 4,525 mt and IOY, DAH, and DAP at 1,861 mt, while another would have set ABC at 12,175 mt and IOY, DAH, and DAP 9,131 mt. These amounts exceed the landings of this species in recent years. Both alternatives would have maintained the status quo trigger for closing the directed fishery, incidental possession limit, and possession limit for trips using mesh smaller than 3 inches (76 mm). Therefore, neither alternative represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

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 MSB fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 31, 2008.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, 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 § 648.14, paragraphs (a)(73), (p)(3), (p)(5), and (p)(11) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(73) Take, retain, possess, or land more mackerel, squid, or butterfish than as specified at § 648.25.

* * * * *

(p) * * *

(3) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession allowance specified at § 648.25.

* * * * *

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23, or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless nets or netting are stowed in accordance with § 648.23(b)

or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

* * * * *

(11) Possess 1,000 lb (0.45 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

* * * * *

■ 3. In § 648.22, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *Closing procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25 will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(3) NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(4) NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

* * * * *

■ 4. In § 648.23, paragraphs (a)(4) and (d) are removed and paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 648.23 Gear restrictions.

(a) * * *

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from

the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 $\frac{7}{8}$ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1 $\frac{7}{8}$ inches (48 mm) diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4 $\frac{1}{2}$ inches (11.43 cm) diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements specified at paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section,

any net, or any piece of net, with a mesh size less than 1 $\frac{7}{8}$ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

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

* * * * *

■ 5. Section 648.25 is added to read as follows:

§ 648.25 Possession restrictions.

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Loligo.* During a closure of the directed fishery for *Loligo*, vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001

hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 071211828-8448-02]

RIN 0648-AU22

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures in the Main Hawaiian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and