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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120731291-2522-01]

RIN 0648-BC40

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: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2013-2015 specifications and management measures for Atlantic mackerel, and 2013 specifications for butterfish. Specifications for longfin squid and Illex squid were set for 3 years in 2012 (2012-2014) and therefore will not be included in this year's specification rulemaking. The proposed specifications would make regulatory changes to the longfin squid fishery, as well as the butterfish mortality cap to avoid 1-2 week closures at the end of a Trimester. Compared to 2012, this proposed action would increase the butterfish quota by 236 percent (recommended 2013 quota of 2,570 mt), and increase the butterfish mortality cap by 184 percent (recommended 2013 quota of 4,500 mt). Due to the increase in the proposed butterfish quota, this action also proposes a variety of management measures for controlling effort in the directed butterfish fishery, including changes to trip limits, the closure threshold for the directed fishery, and post-closure trip limits. Finally, this rule proposes minor corrections to

existing regulatory text, to clarify the intent of the regulations. These proposed specifications and management measures promote the utilization and conservation of the Atlantic mackerel, squid, and butterfish resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on [insert date 20 days after date of publication in the FEDERAL REGISTER].

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: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2012-0184, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0184 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail to NOAA Fisheries, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope “Comments on 2013 MSB Specifications.”
- Fax: (978) 281-9135, Attn: Lindsey Feldman;

Instructions: Comments must be submitted by one of the above methods to ensure that

the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978-675-2179, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

This rule proposes specifications, which are the combined suite of commercial and recreational catch levels established for one or more fishing years. The specification process also allows for the modification of a select number of management measures, such as closure thresholds, gear restrictions, and possession limits. The Council's process for establishing specifications relies on provisions within the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Specifically, section 302(g)(1)(B) of the Magnuson-Stevens Act states that the Scientific and Statistical Committee (SSC) for each Regional Fishery Management Council shall

provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL). The Council's SSC met on May 23 and 24, 2012, confirming 2013 specifications for Illex and longfin squid and recommending ABCs for the 2013 Atlantic mackerel (mackerel) and butterfish specifications.

The MSB FMP's implementing regulations require the involvement of a monitoring committee in the specification process for each species. Since the Magnuson-Stevens Act requirements for the SSC to recommend ABC became effective, the monitoring committees' role has largely been to recommend any reduction in catch limits from the SSC-recommended ABCs to offset management uncertainty, and to recommend other management measures (e.g., gear and/or possession restrictions) needed for the efficient management of the fisheries. The MSB Monitoring Committee met on May 31, 2012, to discuss specification related recommendations for the 2013-2015 mackerel fishery, 2013 butterfish fishery, and changes in management measures for the longfin squid fishery and butterfish mortality cap.

Following the SSC and MSB Monitoring Committee meetings described above, the Council considered the committees' recommendations and public comments at its June 12-14, 2012, meeting in New York, NY, and made their specification recommendations. The Council submitted these recommendations, along with the required analyses, for agency review on July 31, 2012, with final submission on September 30, 2012. NMFS must review the Council's recommendations to ensure that they comply with the FMP and applicable law, and conduct

notice-and-comment rulemaking to propose and implement the final recommendations.

The MSB regulations require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for mackerel and butterfish (both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than 1 year). In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), and total allowable level of foreign fishing (TALFF), along with joint venture processing for (JVP) and commercial and recreational annual catch totals (ACT) for mackerel, the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

Table 1. Proposed Specifications, in Metric Tons (mt), for Mackerel for 2013-2015, and Butterfish for the 2013 Fishing Year.

Specifications	Mackerel	Butterfish
OFL	Unknown	Unknown
ABC	43,781	8,400
ACL	43,781	7,560
Commercial ACT	34,907	7,560
Recreational ACT/RHL	2,443	N/A
IOY	N/A	N/A
DAH/DAP	33,821	2,570
JVP	0	N/A
TALFF	0	0

## Research Set-Aside

The Mid-Atlantic Research Set-Aside (RSA) Program allows research projects to be funded through the sale of fish that has been set aside from the total annual quota. The RSA may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that up to 3 percent of the total ACL for mackerel, up to 3 percent of the IOY for Illex and longfin squid, and up to 2 percent of the butterfish ACT for research, where 59 mt would be set aside for butterfish discard on longfin squid research trips, and 151 mt would be set aside for directed butterfish landings, may be set aside to fund projects selected under the 2013 Mid-Atlantic RSA Program. NMFS solicited research proposals under the 2013 Mid-Atlantic RSA Program through a Federal Funding Opportunity announcement that published on February 17, 2012 (Funding Opportunity Number NOAA-NMFS-NEFSC-2013-2003258 on grants.gov). The project selection and award process for the 2013 Mid-Atlantic RSA Program has not concluded. Awards are expected to be made by the end of 2012 in time for the 2013 fishing year. If any portion of the MSB RSA is not awarded, NMFS will return it to the general fishery either through the final 2013 MSB specification rulemaking process or through the publication of a separate notice in the Federal Register notifying the public of a quota adjustment.

These proposed specifications include a brief description of the applicable MSB exemptions that will likely be required to conduct the compensation fishing to harvest set-aside quota. The Magnuson-Stevens Act requires that interested parties be provided an opportunity to comment on all proposed exempted fishing permits (EFPs).

Vessels harvesting RSA quota in support of approved research projects would be issued EFPs authorizing them to exceed Federal possession limits and to fish during Federal quota

closures. With respect to the MSB FMP, such regulations include closure regulations at § 648.24 and possession restrictions at § 648.26. These exemptions are necessary to allow project investigators to recover research expenses, as well as adequately compensate fishing industry participants harvesting RSA quota. Vessels harvesting RSA quota would operate within all other regulations that govern the commercial fishery, unless otherwise exempted through a separate EFP. Vessels conducting compensation fishing would harvest RSA quota during the fishing year from January 1-December 31, 2013.

#### 2013-2015 Proposed Specifications and Management Measures for Mackerel

The status of the mackerel stock was assessed by the Transboundary Resources Assessment Committee (TRAC) in March 2010. The 2010 TRAC Status Report indicated reduced productivity in the stock and a lack of older fish in both the survey and catch data. However, the status of the mackerel stock is unknown because biomass reference points could not be determined. Due to uncertainty in the assessment, the TRAC recommended that total annual catches not exceed 80,000 mt (average total U.S. and Canadian landings from 2006-2008) until new information is available. The mackerel stock-wide ABC was set at 80,000 mt for 2012, consistent with the TRAC recommendation. Since a new mackerel assessment is not expected for several years, the SSC recommended maintaining the 2012 mackerel specification and specifying the stock-wide ABC for 3 years (2013-2015) at 80,000 mt. The Council recommended a U.S. ABC of 43,781 mt (80,000 mt – 36,219 mt (2010 actual Canadian catch)). Due to the variability in recent Canadian catch, and the inability to predict Canadian catch for 2013, the SSC recommended the use of Canadian catch from 2010 (the same amount used for setting 2012 specifications).

Consistent with MSB Amendment 11, the Council recommended a recreational allocation of 2,714 mt (6.2 percent of the U.S. ABC). The proposed Recreational ACT of 2,443 mt (90 percent of 2,714 mt) is reduced to account for low precision and time lag of recreational catch estimates, as well as lack of recreational discard estimates. The Recreational ACT is equal to the Recreational Harvest Limit (RHL), which would be the effective cap on recreational catch.

For the commercial mackerel fishery, the Council recommended a commercial fishery allocation of 41,067 mt (93.8 percent of the U.S. ABC, the portion of the ACL that was not allocated to the recreational fishery). The recommended Commercial ACT of 34,907 mt (85 percent of 41,067) is reduced to address uncertainty in estimated 2013 Canadian landings, uncertainty in discard estimates, and possible misreporting. The Commercial ACT would be further reduced by a discard rate of 3.11 percent (mean plus one standard deviation of discards from 1999-2008), to arrive at the proposed DAH of 33,821 mt. The DAH would be the effective cap on commercial catch, as it has been in past specifications.

Consistent with the Council's recommendation, NMFS proposes mackerel specifications that would set the US. ABC/ACL at 43,781 mt, the Commercial ACT at 34,907 mt, the DAH and DAP at 33,821 mt, and the Recreational ACT at 2,443 mt.

Additionally, as recommended by the Council, NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004). In the past, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 9 years, the Council has recommended zero JVP because U.S. shoreside processing capacity for mackerel has expanded. The Council concluded that processing capacity was no longer a limiting factor

relative to domestic production of mackerel.

The Magnuson-Stevens Act provides that the specification of TALFF, if any, shall be the portion of the optimum yield (OY) of a fishery that will not be harvested by U.S. vessels.

TALFF would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with U.S. industry efforts to expand exports. While a surplus existed between ABC and the mackerel fleet's harvesting capacity for many years, that surplus has disappeared due to downward adjustments of the specifications in recent years. Based on analysis and a review of the state of the world mackerel market and possible increases in U.S. production levels, the Council concluded that specifying a DAH/DAP resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons, consistent with the Council's recommendation, NMFS proposes to specify DAH at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to support the U.S. mackerel industry. NMFS concurs that it is reasonable to assume that in 2013 the commercial fishery has the ability to harvest 33,821 mt of mackerel.

### Butterfish

The current status of the butterfish stock is unknown because biomass reference points could not be determined in the SAW 49 assessment (February 2010); however, survey trends since the most recent assessment suggest an increase in butterfish abundance. In recommending 2013 specifications, the SSC considered multiple sources of information including a recent analysis of the butterfish stock by Dr. Paul Rago and Dr. Tim Miller from NOAA's Northeast Fisheries Science Center (NEFSC). Because of the uncertainty in the most recent butterfish

stock assessment, on April 6, 2012, the Council requested that NEFSC offer additional analysis of the butterfish stock to aid the SSC in the ABC setting process for the 2013 fishing year. The Rago-Miller analysis applied ranges of a number of different factors (such as natural mortality and survey catchability) to develop a range of likely stock biomasses that would be consistent with recent survey results and observed butterfish catch. The Rago-Miller analysis also examined a range of fishing mortalities that would result from these biomass estimates. The SSC used the Rago-Miller analysis, along with guidance (Patterson, 1992) that suggests maintaining a natural mortality/fishing mortality ratio of 67 percent for small pelagic species, to develop a proxy overfishing limit (OFL) for butterfish. Consistent with the 2010 butterfish assessment, the SSC assumed a high level of natural mortality ( $M = 0.8$ ) and applied the 67-percent ratio to result in a fishing mortality of  $F = 0.536$ , which the SSC used as a proxy maximum fishing mortality rate threshold for butterfish. In the Rago-Miller analysis, a catch of 16,800 mt would only lead to fishing mortality rates higher than  $F = 0.536$  (i.e., rates consistent with overfishing based on the maximum fishing mortality rate threshold proxy) under very extreme assumptions. The SSC therefore adopted 16,800 mt as a proxy OFL and recommended an ABC of 8,400 mt (50 percent of the OFL, and a 232-percent increase from the 2012 ABC). A detailed summary of the SSC's rationale for its 2013 butterfish ABC recommendation is available in its May 2012 Report (available, along with other materials from the SSC discussion, at: [http://www.mafmc.org/meeting\\_materials/SSC/2012-05/SSC\\_2012\\_05.htm](http://www.mafmc.org/meeting_materials/SSC/2012-05/SSC_2012_05.htm)).

The Council recommended setting the butterfish ACL equal to the ABC, and establishing a 10-percent buffer between ACL and ACT for management uncertainty, which would result in an ACT of 7,560 mt. Since discards have been roughly 2/3 of catch (1999-2008 average), the

Council recommended setting the DAH and DAP at 2,570 mt (7,560 mt – 4,990 mt discards). Since up to 3 percent of the ACL for butterfish may be set aside for scientific research, the Council recommended setting aside 2 percent of the butterfish ACT for research, where 59 mt would be set aside for butterfish discard on longfin squid research trips, and 151 mt would be set aside for directed butterfish landings. Finally, the Council recommended setting the butterfish mortality cap on the longfin squid fishery at 4,500 mt (184 percent increase from 2012).

NMFS proposes specifications, consistent with the Council’s recommendation, that would set the butterfish ABC/ACL at 8,400 mt, the ACT at 7,560 mt, the DAH and DAP at 2,570 mt, and the butterfish mortality cap on the longfin squid fishery at 4,500 mt. Additionally, consistent with MSB regulations, NMFS is proposing zero TALFF for butterfish in 2013. Consistent with 2012, NMFS proposes that the 2013 butterfish mortality cap be allocated by Trimester as follows:

Table 2. Proposed Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery for 2013

Trimester	Percent	Metric Tons
I (Jan-Apr)	65	2925
II (May-Aug)	3.3	148.5
III (Sep-Dec)	31.7	1426.5
Total	100	4,500

Due to the increase in the recommended butterfish DAH and butterfish mortality cap, a variety of management measures were recommended by the Council to control fishing effort while allowing the expansion of a profitable directed butterfish fishery. The Council recommended a three-phase management system for the directed butterfish fishery (Table 3) to allow for maximum utilization of the butterfish resource without exceeding the stock-wide ACL.

In phase 1, there would be no trip limit for vessels issued longfin squid/butterfish moratorium permits using mesh greater than or equal to 3 inches (7.62 cm), a 2,500-lb (1.13-mt) trip limit for longfin squid/butterfish moratorium permits using mesh less than 3 inches (7.62 cm), and a trip limit of 600 lb (0.27 mt) for vessels issued squid/butterfish incidental catch permits. Once butterfish harvest reaches the trip hold reduction threshold for phase 2, the trip limit for longfin squid/butterfish moratorium permit holders would be reduced to 5,000 lb (2.27 mt) for vessels using greater than or equal to 3-inch (7.62 cm) mesh and 2,500 lb (1.13 mt) for vessels using under 3-inch (7.62 cm) mesh. When butterfish harvest is projected to reach the trip hold reduction thresholds for phase 3, the trip limit for all longfin squid/butterfish moratorium permit holders would be reduced to 500 lb (0.23 mt) to avoid quota overages. For phases 2 and 3, the quota thresholds to reduce the trip limits are proposed to vary bimonthly throughout the year (Tables 4 and 5).

Table 3. Three-Phase Butterfish Management System

Phase	Longfin squid/butterfish moratorium permit Trip Limit		Squid/butterfish incidental catch permit Trip Limit
	≥ 3 inch (7.62 cm) mesh	<3 inch (7.62 cm) mesh	
1	Unlimited	2,500 lb (1.13 mt)	600 lb (0.27 mt)
2	5,000 lb (2.27 mt)	2,500 lb (1.13 mt)	600 lb (0.27 mt)
3	500 lb (0.23 mt)	500 lb (0.23 mt)	600 lb (0.27 mt)

Table 4. Proposed Butterfish Thresholds for Reducing Trip Limits for Phase 2

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	40	1,028
Mar-Apr	47	1,208
May-Jun	55	1,414
Jul-Aug	63	1,619
Sept-Oct	71	1,825

Nov-Dec	78	2,005
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Table 5. Proposed Butterfish Thresholds for Reducing Trip Limits for Phase 3

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	58	1,491
Mar-Apr	64	1,645
May-Jun	71	1,825
Jul-Aug	78	2,005
Sept-Oct	85	2,185
Nov-Dec	91	2,339

Finally, during phase 3, the NMFS Regional Administrator would have the authority to adjust the phase 3 trip limit for limited access vessels within the range from 250 (0.11 mt) to 750 lb (0.34 mt) so that butterfish harvest does not exceed the annual DAH.

#### Proposed Management Measures for Longfin Squid

The Council recommended regulatory changes for the longfin squid fishery. Currently, vessels that intend to land 2,500 lb (1.13 mt) or more of longfin squid are required to notify the Northeast Fisheries Observer Program (NEFOP) at least 72 hr in advance of the start of a trip. Longfin squid vessel owners have reported that the 72-hr call in notification is burdensome as trips are often planned with reference to weather, sea conditions, and longfin squid movement patterns, which can be highly variable. Therefore, the Council recommended, and NMFS proposes, to change the longfin pre-trip observer notification requirement from 72 to 48 hrs. In addition, to avoid closing the directed longfin fishery close to the end of a trimester, the Council recommended, and NMFS proposes, to change the closure threshold for longfin squid on April 15 (2 weeks prior to the end of Trimester 1) and August 15 (2 weeks prior to the end of Trimester 2) of each year from 90 to 95 percent.

## Proposed Management Measures for the Butterfish Mortality Cap in the Longfin Squid Fishery

NMFS proposes changes to management measures for the butterfish mortality cap in the longfin squid fishery consistent with the Council's recommendations. To avoid closing the directed longfin squid fishery due to the butterfish mortality cap in the last 2 weeks of Trimester 1, NMFS proposes changing the closure threshold on April 15 of each year from 80 to 90 percent. As there is currently no closure mechanism for the butterfish mortality cap in Trimester 2, the entire annual butterfish mortality cap could potentially be harvested in Trimester 2, which would not leave any butterfish mortality cap quota for the Trimester 3 longfin squid fishery. To avoid the entire allocation of the butterfish mortality cap being harvested prior to the start of Trimester 3 on September 1, NMFS proposes to close the directed longfin squid fishery in Trimester 2 if 75 percent of the annual mortality cap is projected to be reached, consistent with the Council's recommendations.

## Corrections

This proposed rule also contains minor corrections to existing regulations. The corrections would not change the intent of any regulations; they would only clarify the existing regulations by correcting minor errors. The current regulations at § 648.24 state that NMFS will implement any changes to the ACL due to overages from the previous year through notification in the Federal Register, by March 31 of the fishing year in which the deductions will be made. However, due to delayed reporting and analysis time to estimate discards in the MSB fisheries, finalized data are not available until April 15 of each year. Therefore, NMFS proposes to change the date a notification will be published in the Federal Register announcing any overage deductions from March 31 to May 1 of the fishing year in which the deductions will be made.

This rule proposes a correction to § 648.22(b)(2) regarding the mackerel ABC. This rule clarifies that the MAFMC's SSC recommends a stock-wide ABC, and that the Domestic ABC or ACL is calculated by deducting Canadian catch from the stock-wide ABC. This rule also proposes a correction to § 648.27(c) to clarify that the pre-trip notification requirement for vessels issued longfin squid/butterfish moratorium permits is for trips with landings greater than 2,500 lb (1.13 mt) and not trips with landings equal to or greater than 2,500 lb (1.13 mt) of longfin squid.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see ADDRESSES) or via the Internet at <http://www.nero.noaa.gov>.

#### Statement of Objective and Need

This action proposes 2013-2015 specifications for mackerel and 2013 specifications for butterfish, along with management measures for longfin squid and butterfish. A complete description of the reasons why this action is being considered, and the objectives of and legal

basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

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

Based on permit data for 2011, 3,405 commercial or charter vessels possessed MSB permits for the 2011 fishing year, and similar numbers of vessels are expected to have MSB permits for 2013. All but a few of these participants can be considered small businesses under the guidelines of the Small Business Administration. Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$7.0 million, respectively. There are no large entities, as that term is defined in section 601 of the RFA, participating in this fishery. 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

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, there are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

#### Minimizing Significant Economic Impacts on Small Entities

##### Proposed Actions

The mackerel commercial DAH (33,821 mt) and recreational ACT/RHL (2,443 mt) proposed in this action represent no change from status quo. Commercial mackerel landings for 2011 were 1,463 mt, and recreational catch was 932 mt, and in both cases, catch was below the

allocation. As of the publication of this rule, mackerel catch is estimated to be 5,266 mt and is not likely to increase significantly for the remainder of the year, which means that 2012 catch will also be below the 2012 DAH. Therefore, this proposed action allows the mackerel fleet the opportunity to harvest more than they have in the previous year. Overall, the proposed action is expected to generate revenue very similar to the 2012 revenue for vessels that participate in the commercial mackerel fisheries.

The butterfish DAH proposed in this action (2,570 mt) represents a 236-percent increase over the 2012 DAH (1,087 mt). Due to market conditions, there has not been a directed butterfish fishery since 2001; therefore, recent landings have been low. The proposed increase in the DAH has the potential to dramatically increase revenue for permitted vessels because it has been an incidental catch fishery for several years.

In addition, the three-phased management system proposed for the directed butterfish fishery, which would allow an unlimited quota until butterfish harvest reaches a particular threshold, would allow vessels to harvest substantially more butterfish during the start of the fishing year, when the market is suspected to be available. The three-phased management system would allow the potentially expanded directed butterfish fishery to increase catch without exceeding the ACL and having to payback overages the following year.

The butterfish mortality cap proposed in this action (4,500 mt) represents a 184-percent increase over the 2012 cap level (2,445 mt). The increase in the butterfish mortality cap will be less restrictive on the longfin squid fishery than in previous years. While longfin squid catch will still be restrained by the longfin squid DAH, there is less of likelihood that the longfin squid fishery will be closed due to the butterfish mortality cap. In addition, the management measures

for the longfin squid fishery are proposed to ensure that the directed longfin squid fishery is not closed during the last two weeks a particular trimester, therefore, causing economic harm to the fishing industry when there is still a small amount of catch available to the fleet. Therefore, the implementation of these actions should result in an increase in revenue for the longfin squid fishery for 2013.

The Illex and longfin squid IOYs proposed in this action (22,915 mt and 22,445 mt respectively) represent no change from status quo. Thus, implementation of this proposed action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2013.

#### Alternatives to the Proposed Rule

The Council analysis evaluated three alternatives to the proposed specifications for mackerel. The first (status quo) alternative differed from the proposed mackerel specifications, only in that the status quo alternative recommends specifications for one year, while the proposed alternative sets mackerel specifications for 3 years (2013-2015). The status quo alternative would set the stock-wide ABC of 80,000 mt, Canadian catch of 36,219 mt, and a U.S. ABC of 43,781 mt. The second alternative (the least restrictive) would set the stock-wide ABC at 100,000 mt, would maintain Canadian catch at 35,219 mt, and would set a U.S. ABC at 63,781 mt. This alternative could generate increased revenue if more mackerel became available to the fishery. The third alternative (the most restrictive) would set the stock-wide ABC at 60,000 mt, would maintain Canadian catch at 36,219 mt, and would set a U.S. ABC at 23,781 mt. This alternative could generate the lowest revenue of all of the alternatives. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

There were three alternatives to the preferred action for butterfish that were not selected by the Council. The first (status quo) alternative would have kept the butterfish ABC and ACL at 3,622 mt, the ACT at 3,260 mt, the DAH and DAP at 1,087, and the butterfish mortality cap at 2,445 mt. The second alternative (least restrictive) would have set the ABC and ACL at 10,500 mt, the ACT at 9,450 mt, the DAH and DAP at 3,213 mt, and the butterfish mortality cap at 5,625 mt, and would generate the highest revenues of all of the alternatives. The fourth alternative (most restrictive) would have set the ABC and ACL at 6,300 mt, the ACT at 5,670 mt, the DAH and DAP at 1,928 mt, and the butterfish mortality cap at 3,375 mt, and would generate the lowest revenue of all of the alternatives. These three alternatives were not selected because they were inconsistent with the ABC recommended by the SSC.

The Council recommended the status quo as an alternative to both the proposed action for changing management measures for the longfin squid fishery and for the butterfish mortality cap. For all proposed management measures, the status quo alternative recommended no changes to the longfin squid or butterfish mortality cap management measures. The status quo alternative requires vessels possessing 1,000 lb (0.45 mt) or more of butterfish to fish with a 3-inch (76-mm) minimum codend mesh. The status quo alternatives were considered, but not selected, because the proposed measures have the potential to increase economic opportunity for the fishing fleet while still ensuring the ACL for the longfin squid fishery and the butterfish mortality cap are not exceeded. There were also two alternatives to the proposed three-phase management system for the directed butterfish fishery. The first (status quo and most restrictive) would maintain the 5,000-lb (2.27-mt) trip limit for vessels issued longfin squid/butterfish moratorium permits using over 3-inch (76-mm) mesh, 2,000-lb (0.91-mt) trip limit for vessels issued longfin

squid/butterfish moratorium permits using under 3-inch (76-mm) mesh, and the 600-lb (0.27-mt) trip limit for vessels issued squid/butterfish incidental catch permits. Even with the proposed increase in quota, the butterfly fishery may not be able to harvest an increased amount of butterflyfish with these restrictive trip limits. Therefore, this alternative could generate the lowest amount of revenue out of all of the alternatives. The second alternative would provide a simpler management system for the directed fishery in which the trip limit for vessels issued longfin squid/butterfish moratorium permits would be 20,000 lb (9.07 mt) for vessels issued longfin squid/butterfish moratorium permits using greater than 3-inch (76-mm) mesh, 2,500 lb (1.13 mt) for permits using under 3-inch (76-mm) mesh, and 1,000 lb (4.54 mt) for vessels issued squid/butterfish incidental catch permits. If 80 percent of the DAH is projected to be harvested before October 1, the trip limit for all vessels would be reduced to 250 lb (0.11 mt), and if the DAH is projected to be harvested on or after October 1, the trip limit for all vessels would be 500 lb (0.23 mt). This alternative would provide the butterfly fishery the opportunity to increased revenues over the first alternative, but not as great as the proposed alternative. While these alternatives were considered, they were not selected because the proposed alternative has the potential to increase economic opportunity for vessels participating in the directed butterflyfish fishery while still ensuring the ACL is not exceeded. The other alternatives would not be as effective for directed butterflyfish vessels to re-establish a butterflyfish market.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 14, 2012

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For the reasons set out in the preamble 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.4, paragraph (a)(5)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(ii) Squid/butterfish incidental catch permit. Any vessel of the United States may obtain a permit to fish for or retain up to 600 lb (0.27 mt) of longfin squid or butterfish, or up to 10,000 lb

(4.54 mt) of Illex squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

\* \* \* \* \*

3. In § 648.14, paragraphs (g)(2)(ii)(E) and (F) are revised to read as follows:

§ 648.14 Prohibitions.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(E) Possess more than 2,500 lb (1.13 mt) of butterfish, unless the vessel meets the minimum mesh requirements specified in § 648.23(a).

(F) Take, retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

\* \* \* \* \*

4. In § 648.22, revise paragraph (b)(2)(i) and (b)(2)(ii), redesignate paragraphs (b)(3)(v) through (b)(3)(vii) as paragraphs (b)(3)(vi) through (b)(3)(viii), respectively, and add new paragraph (b)(3)(v) to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

\* \* \* \* \*

(b) \* \* \*

(2) Mackerel—(i) ABC. The MAFMC's SSC shall recommend a stock-wide ABC to the

MAFMC, as described in § 648.20. The stock-wide mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) ACL. The ACL or Domestic ABC is calculated using the formula  $ACL/Domestic\ ABC = stock-wide\ ABC - C$ , where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

\* \* \* \* \*

(3) \* \* \*

(v) The trip limit reduction thresholds for phase 2 and phase 3 of the butterfish three-phase management system will be modified annually through the specifications process. Trip limit reduction thresholds vary bi-monthly and are set to allow the butterfish fishery to continue to operate without exceeding the stock-wide ACL. An example of the phase 2 and 3 trip limit reduction thresholds is shown in the table below:

Proposed Butterfish Thresholds for Reducing Trip Limits for Phase 2

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	40	1,028
Mar-Apr	47	1,208
May-Jun	55	1,414
Jul-Aug	63	1,619
Sept-Oct	71	1,825
Nov-Dec	78	2,005

\* \* \* \* \*

5. In § 648.23, paragraph (a)(1) is revised to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) \* \* \*

(1) Butterfish fishery. Owners or operators of otter trawl vessels possessing 2,500 lb (1.13 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (7.62 cm) 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.

\* \* \* \* \*

6. In § 648.24, paragraphs (a)(1), (b)(6), (c)(1), (c)(3), and (c)(4) are revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

(a) Fishery closure procedures — (1) Longfin squid. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 90 percent of the longfin squid quota is harvested before April 15 of Trimester I and/or August 15 of Trimester II, and when 95 percent of the longfin squid DAH has been harvested in Trimester III. On or after April 15 of Trimester I and/or August 15 of Trimester II, NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of the longfin squid quota 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 § 648.26.

\* \* \* \* \*

(b) \* \* \*

(6) Mackerel ACL overage evaluation. The ACL will be evaluated based on a single-year

examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

(c) Butterfish AMs — (1) Butterfish three-phase management system. The butterfish fishery operates under a three-phase management system. Phase 1 begins annually at the start of the fishing year on January 1. Trip limit reductions are implemented in phase 2 and 3 dependent upon the amount of butterfish harvest and the trip limit reduction thresholds set during the specification process as described in § 648.22.

(i) Phase 1. During phase 1, vessels issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) have an unlimited trip limit and vessels issued a longfin squid/butterfish moratorium permit fishing with mesh less than 3 inches (76 mm) are prohibited from landing more than 2,500 lb (1.13 mt) of butterfish per trip.

(ii) Phase 2. NMFS shall reduce the trip limit for vessels issued longfin squid/butterfish moratorium permits (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) to 5,000 lb (2.27 mt), when butterfish harvest reaches the relevant phase 2 trip limit reduction threshold. Trip limits for vessels issued longfin squid/butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) will remain at 2,500 lb (1.13 mt) of butterfish per trip.

(iii) Phase 3. NMFS shall subsequently reduce the trip limit for vessels issued longfin

squid/butterfish moratorium permits to 500 lb (0.23 mt), regardless of minimum mesh size, when butterfish harvest is projected to reach the relevant phase 3 trip limit reduction threshold. The NMFS Regional Administrator may adjust the butterfish trip limit during phase 3 of the directed butterfish fishery anywhere from 250 lb (0.11 mt) to 750 lb (0.34 mt) to ensure butterfish harvest does not exceed the specified DAH.

\* \* \* \* \*

(3) Butterfish mortality cap on the longfin squid fishery. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 80 percent of the Trimester I butterfish mortality cap allocation has been harvested in Trimester I, when 75 percent of the annual butterfish mortality cap has been harvested in Trimester II, and/or when 90 percent of the butterfish mortality cap has been harvested in Trimester III.

(4) Butterfish ACL overage evaluation. The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

\* \* \* \* \*

7. In § 648.26, paragraph (d) is revised to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

\* \* \* \* \*

(d) Butterfish. (1) Phase 1. A vessel issued a longfin squid/butterfish moratorium permit

(as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) is authorized to fish for, possess, or land butterfish with no possession restriction in the EEZ per trip, 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, provided that butterfish harvest has not reached the phase 2 trip limit reduction threshold, as described in § 648.24(c). Vessels issued longfin squid/butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 2,500 lb (1.13 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, provided that butterfish harvest has not reached the phase 3 trip limit reduction threshold, as described in § 648.24(c).

(2) Phase 2. When butterfish harvest reaches the phase 2 trip limit reduction threshold for the butterfish fishery (as described in § 648.24), vessels issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) 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. Trip limits for vessels issued butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) will remain at 2,500 lb (1.13) per trip.

(3) Phase 3. When butterfish harvest is projected to reach the trip limit reduction threshold for phase 3 (as described in § 648.24), all vessels issued a longfin squid/butterfish moratorium permit, regardless of mesh size used, may not fish for, possess, or land more than 500 lb (0.23 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. If a vessel has

been issued a longfin squid/butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time.

8. In § 648.27, paragraphs (a), (c), and (d) are revised to read as follows:

§ 648.27 Observer requirements for the longfin squid fishery.

(a) A vessel issued a longfin squid and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

\* \* \* \* \*

(c) A vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing greater than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 2,500 lb (1.13 mt) of longfin squid per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide

notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or e-mail address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

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