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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170713663-7663-01]

RIN 0648-BH04

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

Fisheries; Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes revised longfin squid, *Illex* squid, and butterfish specifications for the 2018 fishing year and projected specifications for fishing years 2019 and 2020. NMFS previously set specifications for Atlantic mackerel for three years in 2016 (2016-2018) and, therefore, new Atlantic mackerel specifications will not be included in this year's specification rulemaking. This action is necessary to specify catch levels for the squid and butterfish fisheries based upon updated information on stock status. These proposed and projected specifications are intended to promote the sustainable utilization and conservation of the squid and butterfish resources.

DATES: Public comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management

Council, including the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The EA/RIR/RFA analysis is also accessible via the Internet at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0089.

You may submit comments, identified by NOAA-NMFS-2017-0089, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0089, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on 2018 MSB Specifications.”
- *Fax:* 978-281-9135; Attn: Douglas Christel

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, 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. Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management 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, ensuring 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 regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require the Council's Atlantic Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council's SSC. The FMP regulations also require the specification of annual catch limits (ACLs) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than one year. In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), joint venture processing (JVP), commercial and recreational annual catch targets (ACT), the

butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

The Council’s SSC met on May 17 and 18, 2017, and the Monitoring Committee met on June 7, 2017, to recommend revised longfin squid, *Illex* squid, and butterfish specifications for the 2018 and projected specifications for the 2019 and 2020 fishing years. The Council considered the recommendations of the SSC, the Monitoring Committee, and public comments at its June 6-8, 2017, meeting. The Council submitted its recommendations, as summarized below, along with the required analyses, for agency review on August 24, 2017. NMFS must review the Council’s recommendations for compliance with the FMP and applicable law, and conduct notice-and-comment rulemaking to propose and implement the final specifications.

This action does not consider revisions to existing specifications for Atlantic mackerel. On April 26, 2016, we implemented Atlantic mackerel specifications for fishing years 2016-2018 (81 FR 24504). That action implemented a 2018 mackerel ABC of 19,898 mt, an ACL of 11,009 mt, a commercial ACT of 9,294 mt, a commercial DAH of 9,177 mt, and a recreational ACT of 614 mt. A new stock assessment for Atlantic mackerel is expected to be completed as part of Stock Assessment Workshop 64 in November 2017. This will inform updated mackerel specifications starting in fishing year 2019.

Proposed 2018 and Projected 2019-2020 Illex Squid Specifications

Table 1. Proposed 2018 and Projected 2019 and 2020 *Illex* Squid Specifications in metric ton (mt)

OFL	Unknown
ABC	24,000
IOY	22,915
DAH/DAP	22,915

The *Illex* squid stock was most recently assessed at the 42nd Northeast Regional Stock Assessment Workshop in late 2005. The assessment did not generate reliable estimates of stock biomass or fishing mortality. The Northeast Fisheries Science Center conducted a data update for *Illex* squid in April 2017. The update indicated that abundance continues to be highly variable, but that relative abundance was near the long-term median during 2014-2016. The SSC considered the results of this data update in recommending revised 2018 and projected 2019 and 2020 ABCs. In the absence of an updated stock assessment and the inadequacy of information to determine an OFL and assess the probability of overfishing, the SSC recommended maintaining the status quo ABC of 24,000 mt for 2018 and continuing that for 2019 and 2020. The SSC concluded that landings of 24,000-26,000 mt do not appear to have caused harm to the *Illex* stock based on trawl survey indices and landings following years in which the fishery landed 24,000-26,000 mt of *Illex* squid.

The Council recommended that the ABC be reduced by the status quo discard rate of 4.52 percent, which results in an IOY, DAH, and DAP of 22,915 mt for 2018 that would be maintained for the 2019 and 2020 fishing years. These are the same specifications for the *Illex* fishery since 2012. The Council will review this decision during its annual specifications process following annual data updates each spring, and may change its recommendations for 2019 or 2020 if new information is available. Consistent with the Council's recommendation, NMFS proposes to specify the *Illex* ABC as 24,000 mt, and to specify IOY, DAH, and DAP as 22,915 mt for the 2015-2017 fishing years.

Proposed 2018 and Projected 2019-2020 Longfin Squid Specifications

Table 2. Proposed 2018 and Projected 2019 and 2020 Longfin Squid Specifications in

metric tons (mt)

OFL	Unknown
ABC	23,400
IOY	22,932
DAH/DAP	22,932

The most recent longfin squid assessment, the 51st Northeast Regional Stock Assessment Workshop published in January 2011, found that the longfin squid stock was not overfished in 2009 based on recent biomass estimates from NMFS surveys. The Workshop concluded that the overfishing status was unknown in 2009 because the short lifespan of longfin squid and the lack of evidence correlating fishing effort with changes in biomass prevented the estimation of a fishing mortality reference point. The SSC considered the results of an April 2017 assessment update for longfin squid, which included more recent fishery dependent and independent information on longfin catch and abundance. Based on that update, the longfin squid stock was not overfished in 2016 because the average swept-area biomass estimates derived from recent surveys were much higher (73,762 mt) than the threshold biomass proxy (21,203 mt) for determining overfished status and the target biomass proxy at maximum sustainable yield (42,205 mt). Thus, the current stock biomass is estimated to be approximately 174 percent of the biomass target. The assessment concluded that the stock is likely lightly exploited because annual catches since 1987 were less than annual biomass and did not result in a multi-year decrease in biomass. Based on the above, the SSC recommended maintaining current levels for another three years, subject to annual review, resulting in a proposed ABC of 23,400 mt for 2018 and projected ABCs for 2019 and 2020. This recommendation corresponds to catch in the year with the highest observed exploitation fraction (catch divided by estimated biomass) during a

period of light exploitation (1976-2009), interpreting this level of exploitation to be sustainable over the long term.

The Council recommended reducing the ABC by an updated discard rate of 2.0 percent derived from the April 2017 assessment update. This discard rate is lower than previous discard rates estimated at 4.08 percent, and reflects the discards observed since 2007, the year in which the current trimester management approach was implemented. Using this updated discard estimate results in a recommended IOY, DAH, and DAP of 22,932 mt for 2018 and the same projected catch levels for 2019 and 2020. Consistent with the Council’s recommendation, NMFS proposes an ABC of 23,400 mt, and an IOY, DAH, and DAP of 22,932 mt for 2018 and projects the same catch levels for 2019 and 2020.

Distribution of the Longfin DAH

The Council did not recommend any changes to the trimester allocation of the 2018-2020 longfin DAH. Therefore, allocations would remain consistent with the distribution implemented since 2007 according to percentages specified in the FMP, as follows:

Table 3. Proposed 2018 and Projected 2019-2020 Longfin Quota Trimester Allocations

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	9,861
II (May-Aug)	17	3,898
III (Sep-Dec)	40	9,173

Proposed 2018 and Projected 2019-2020 Butterfish Specifications

Table 4. Proposed 2018 and Projected 2019-2020 Butterfish Specifications in Metric Tons (mt)

2018 2019 2020

OFL	28,628	37,637	39,592
ABC	17,801	27,108	32,063
Commercial ACT (ABC - management uncertainty buffers for each year)	16,911	25,075	28,857
DAH (ACT minus butterfish cap and discards)	12,093	20,061	23,752
Directed Fishery closure limit (DAH - 1,000 mt incidental landings buffer)	11,093	19,061	22,752
Butterfish Cap (in the longfin squid fishery)	3,884	3,884	3,884

The status of the butterfish stock was last assessed in the 58th Northeast Regional Stock Assessment Workshop (March 2014), and updated through a March 2017 assessment update. The 2017 assessment update concluded that the stock was neither overfished, nor subject to overfishing. The butterfish stock biomass is estimated to be 64,376 mt, well above the target stock biomass at maximum sustainable yield (45,616 mt). In addition, the fishing mortality rate was estimated to be very low (0.05), well below the overfishing reference point of 0.81. However, trawl survey information suggests that recruitment has been declining in recent years. Due to reduced recruitment, biomass is expected to decline below target levels (45,616 mt) in 2017, but remain above the overfishing threshold (22,808 mt). If recruitment returns to average levels, then the stock is predicted to rebound above the biomass target by 2020.

The SSC derived OFLs for 2018 and projected OFLs for 2019-2020 by applying estimated natural and fishing mortality to the size of the existing stock, assuming the ABCs are fully harvested each year (see Table 4). However, the SSC noted that the estimated uncertainties from the OFLs derived from the assessment make them unrealistic for setting ABCs. In addition, the SSC was concerned about the declining trend in recruitment from recent trawl surveys, suggesting that catch projections may be overly optimistic. As a result, the SSC

recommended an ABC of 17,801 mt in 2018, 27,108 mt in 2019, and 32,063 mt in 2020. The low 2018 ABC is 42 percent below the 2017 ABC and reflects projections using low recruitment estimates from 2016. In contrast, the 2019 and 2020 ABC recommendations are based upon long-term average recruitment. The SSC admitted that these catch levels are very conservative, estimating that the probability of overfishing is very low (8 percent).

At its June 2017 meeting, the Council adopted the SSC's butterfish ABC recommendations subject to annual review, as required by existing regulations. The Monitoring Committee indicated that discards and landings are adequately controlled under existing measures. Accordingly, the Monitoring Committee and the Council recommended using a lower estimate of management uncertainty when setting ACTs, adopting a 5-percent management uncertainty buffer in 2018, a 7.5-percent buffer in 2019, and maintaining the current 10-percent buffer for 2020. The Council reasoned that there is a lower likelihood of an unexpected change in butterfish discarding in the directed fishery with lower catch levels, allowing for a smaller ACT buffer in 2018 and 2019. This results in a proposed commercial ACT of 12,093 mt in 2018, and proposed ACTs of 25,075 mt in 2019 and 28,857 in 2020.

To prevent butterfish catch from exceeding the ACT, the Council subtracts butterfish catch in the longfin squid fishery, catch in other fisheries, and discards in the directed fishery. The Council recommended maintaining the butterfish cap for the longfin squid fishery at the 2014 level of 3,884 mt for 2018 and projected maintaining that level for 2019 and 2020. This cap is not constraining on the longfin fishery and reserves most of the available butterfish quota for the directed butterfish fishery. The maximum amount of butterfish discards in non-longfin fisheries from 2011-2013 was 637 mt. The Council did not indicate that there is a need to revise

this estimate. Therefore, 4,521 mt (the 3,884-mt butterfish cap plus 637 mt of discards) would be subtracted from the ACT, as recommended. Next, the Council deducts an estimate of butterfish discards in the directed fishery to calculate the DAH (i.e., commercial landings). Previous analysis used an assumed discard rate of 11.4 percent. However, updated analysis using more recent observed trips targeting butterfish (trips that landed over 25,000 lb (9.33 mt) of butterfish) suggests that a discard rate of 2.4 percent is more accurate. Using this updated discard estimate results in a Council-recommended DAH of 12,093 mt in 2018, 20,061 mt in 2019, and 23,752 mt in 2020.

Current regulations require butterfish specifications to establish a buffer to account for butterfish landings once the directed fishery is closed and a 5,000-lb (2,268-kg) incidental limit is imposed. Based on previous analysis, if such an incidental limit is implemented, less than 700 mt of butterfish would be landed after the directed fishery is closed. Therefore, the Council recommended closing the directed butterfish fishery once 11,093 mt is caught in 2018, 19,061 mt is caught in 2019, and 22,752 is caught in 2020. This would provide a 1,000-mt set aside in each year to account for incidental landings of butterfish after a closure of the directed fishery.

NMFS proposes specifications, consistent with the Council’s recommendations, as outlined in Table 4. Because the Council did not recommend any changes to the allocation of the butterfish mortality cap on the longfin squid fishery, we also propose that the 2018-2020 butterfish mortality cap be allocated to Trimesters as follows:

Table 5. Proposed Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery for 2018 and Projected Allocations for 2019 and 2020

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	1,670

II	(May-Aug)	17	660
III	(Sep-Dec)	40	1,554
Total		100	3,844

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 provisions 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. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. Business entities affected by this action include vessels that are issued limited access longfin squid/butterfish and *Illlex* squid permits. Although vessels issued open access incidental catch permits for these species are also potentially affected by this action, because these vessels land only small amounts of squid and butterfish and this action would not revise the amount of squid and butterfish that these vessels can land, these entities would not be affected by this proposed rule.

Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity based on standards published in the **Federal Register** (80 FR 81194, December 29, 2015). In 2016, 298 separate vessels were issued longfin squid/butterfish and *Illex* squid limited access permits. These vessels were owned by 222 entities, of which 214 earned less and 8 earned more than \$11 million in revenue. Average revenue among all entities was \$2.1 million in 2016. Therefore, 214 entities affected by this action are classified as small businesses based on current definitions.

The existing *Illex* squid commercial landing limit would not be changed by this proposed action, while the commercial longfin squid landing limit would be slightly increased by 2 percent (487 mt). Fishing revenue and, therefore, economic impacts of yearly squid specifications depend upon species availability. In 2016, the longfin squid fishery landed 81 percent of the 2016 commercial landing limit, resulting in nearly \$50 million in fishing revenue. The *Illex* squid fishery landed just 29 percent of the 2016 commercial landing limit, resulting in a value of \$7.2 million, but landed 100 percent of the 2017 commercial limit as of September 15, 2017. If both fisheries fully harvested proposed 2018 commercial landing limits, the longfin and *Illex* squid fisheries could generate approximately \$63 and \$25 million in fishing revenue, respectively, based on 2016 prices. Because this action would essentially maintain existing landing limits, it imposes no costs and is not expected to alter fishing behavior or resulting revenues.

This action would reduce current commercial butterfish landing limits in 2018 and 2019. Compared to the 2017 commercial butterfish landing limit (20,652 mt), the proposed 2018 and projected 2019 commercial landing limits are 41 and 3 percent lower (12,093 mt and 20,061 mt, respectively), while the projected 2020 landing limit (23,752 mt) is 15 percent higher. Since

2014, the butterfish fishery has not landed more than 3,135 mt in any year. Recent landings peaked at 4,435 mt in 2001, representing only 37 percent of the proposed quota for 2018. Even at its peak, domestic landings reached 11,715 mt in 1984, which is still 3 percent shy of the proposed 2018 commercial quota. It is possible for the fishery to substantially increase butterfish landings compared to recent years without approaching the reduced limits proposed in this action. Therefore, although the proposed action would substantially reduce commercial butterfish landing limits in 2018, such a reduction is unlikely to impede commercial operations or reduce domestic butterfish landings from recent levels. Based on 2016 prices, if the fishery fully harvested the proposed 2018 commercial limit, it may generate nearly \$17 million in fishery revenue, which would be a 41-percent reduction from potential revenue under landing limits consistent with 2017 landing limits. However, because we expect the fishery to land much less than the landing limit, these potential revenues are not realistic. Instead, we expect that the fishery would maintain recent catch levels, which would produce \$2.3 million in fishing revenue based on average landings since 2012 and 2016 price estimates.

In determining the significance of the economic impacts of the proposed action, we considered the following two criteria outlined in applicable National Marine Fisheries Service guidance: Disproportionality and profitability. The proposed measures would not place a substantial number of small entities at a significant competitive disadvantage to large entities; all entities affected by this action would be equally affected. Accordingly, there are no distributional economic effects from this action between small and large entities. Proposed measures would not reduce fishing opportunities based on recent squid and butterfish landings, change any entity's access to these resources, or impose any costs to affected entities. Therefore, it is unlikely that this action would reduce revenues or profit for affected entities. Based on the

above justification, the proposed action is not expected to have a significant economic impact on a substantial number of small entities.

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

Dated: December 7, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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