

## § 648.18

specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements*. (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[70 FR 21942, Apr. 28, 2005]

## § 648.18 Standardized bycatch reporting methodology.

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans: Atlantic Bluefish; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Mackerel, Squid, and Butterfish; Monkfish; Northeast Multispecies; Northeast Skate Complex; Sea Scallop; Spiny Dogfish; Summer Flounder,

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Scup, and Black Sea Bass; Surfclam and Ocean Quahog; and Tilefish.

[73 FR 4753, Jan. 28, 2008]

## Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

### § 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to § 648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the allowable biological catch (ABC) in U.S. waters specified pursuant to § 648.21.

(b) *Loligo*—the catch associated with a fishing mortality rate of  $F_{\text{Threshold}}$ .

(c) *Illex*—catch associated with a fishing mortality rate of  $F_{\text{MSY}}$ .

(d) Butterfish—the catch associated with a fishing mortality rate of  $F_{\text{MSY}}$ .

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 64 FR 57593, Oct. 26, 1999; 73 FR 37388, July 1, 2008]

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

(a) *Initial recommended annual specifications*. The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC:

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

(2) IOY, including RQ, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish, which, subject to annual review, may be specified for a period of up to 3 years;

(3) IOY, including RQ, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel, which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of

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TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

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

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

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial, recreational, and research project landings; discards; current estimates of fishing mortality; stock status; the most recent estimates of recruitment; virtual population analysis results; levels of non-compliance by harvesters or individual states; impact of size/mesh regulations; results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity; results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Loligo and/or Illex Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ and DAH. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RQ, if applicable.

(2) *Mackerel.* (i) Mackerel ABC must be calculated using the formula  $ABC = T - C$ , where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mor-

tality rate that is equal to  $F_{target}$  at  $B_{MSY}$  or greater and decreases linearly to zero at  $1/2 B_{MSY}$  or below. Values for  $F_{target}$  and  $B_{MSY}$  are as calculated in the most recent stock assessment.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of RQ, DAH, and TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential of mackerel producing countries.

(B) Total world import demand of mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest

equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ, DAH, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RQ, if applicable.

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) Research quotas set from a range of 0 to 3 percent of IOY.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of *Loligo*, *Illex*, and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational harvest limit, set after reductions for research quotas.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommenda-

tions of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the FEDERAL REGISTER notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that

the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the Federal Register stating the reasons for such an action and providing a 30-day public comment period.

(f) *Distribution of annual Loligo squid commercial quota.* (1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods, based on the following percentages:

Trimester	Percent
I. January-April	43.0
II. May-August	17.0
III. September-October	40.0

(2) Any underages of commercial period quota for Trimester I and II will be applied to Trimester III of the same year, and any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research quota.* Prior to the Council's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Council.

(2) NMFS will convene a review panel including the Council's Comprehensive Management Committee, as well as technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each

panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips will have to be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as

part of the annual quota specification packages submitted by the Council; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the Council, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.745(b).

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 64 FR 57593, Oct. 26, 1999; 65 FR 16345, Mar. 28, 2000; 65 FR 55927, Sept. 15, 2000; 66 FR 13028, Mar. 2, 2001; 66 FR 35566, July 6, 2001; 66 FR 42159, Aug. 10, 2001; 67 FR 3627, Jan. 25, 2002; 67 FR 44394, July 2, 2002; 68 FR 60, Jan. 2, 2003; 69 FR 16178, Mar. 29, 2004; 71 FR 63270, Oct. 30, 2006; 72 FR 4216, Jan. 30, 2007; 72 FR 8632, Feb. 27, 2007; 73 FR 4753, Jan. 28, 2008; 73 FR 37388, July 1, 2008]

#### § 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 butterflyfish fishery in the EEZ when the

Regional Administrator projects that 80 percent of the butterflyfish 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.

(b) *Notification.* Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterflyfish permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the FEDERAL REGISTER.

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 65 FR 16345, Mar. 28, 2000; 65 FR 81765, Dec. 27, 2000; 66 FR 13028, Mar. 2, 2001; 69 FR 4864, Feb. 2, 2004; 72 FR 4217, Jan. 30, 2007; 72 FR 8632, Feb. 27, 2007; 73 FR 18449, Apr. 4, 2008]

EDITORIAL NOTE: At 72 FR 4217, Jan. 30, 2007, § 648.22(d) was added; however, the amendment could not be incorporated because the text was not provided.

#### § 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* (1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterflyfish 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