little and insufficient support for reconsidering the coastal California gnatcatcher's subspecies classification. Our recent status review also concluded that the coastal California gnatcatcher represents a valid subspecies (Service 2010, pp. 1–51).

The petitioners also assert that the Service should overturn the classification of the coastal California gnatcatcher as a subspecies due to inappropriate techniques used in Atwood's (1991) statistical analysis of morphological data and present a review and interpretation of two journal articles in support of their claim. The Service reviewed the articles and determined that they do not present new information; instead they consist of an incomplete interpretation of old data. Moreover, the concerns raised by petitioners regarding ''foxing'' and the statistical technique utilized to analyze the data, were previously considered and rejected in our March 27, 1995, **Federal Register** publication affirming that the coastal California gnatcatcher meets the definition of a ''species'' under the Act (60 FR 15693), a Service status review (Service 2010, pp. 1–51), and a peer-reviewed journal (Mellink and Rea 1994, pp. 50–62).

Morphological variation within the California gnatcatcher species has been recognized as an indicator of the distinctiveness of populations and subspecific groups by numerous biologists, publications, and the AOU before and after Atwood's conclusion that the coastal California gnatcatcher is a valid subspecies (Brewster 1881, p. 103; Brewster 1902, p. 210; Thayer and Bangs 1907, p. 138; Grinnell 1926, p. 496; Grinnell 1928, p. 227; van Rossem 1931, p. 35; Hellmayer 1934, p. 508; AOU 1957, p. 451; Miller *et al.* 1957, pp. 204–205; Paynter 1964, pp. 449–450; Atwood 1988, p. 61; Atwood 1991, p. 127; Phillips 1991, p. 25; Mellink and Rea 1994, p. 53; Howell and Webb 1995, p. 578). Thus, we conclude that the best information available indicates that the coastal California gnatcatcher is a valid subspecies and that the original scientific data evaluated and methods of analysis used at the time of listing were not in error as suggested by the petitioners.

The sole focus of the petition is the contention that the coastal California gnatcatcher is not a valid subspecies and therefore should be delisted. Petitioners do not provide any information related to the other relevant factors that the Service considers when reviewing proposals to list or delist a species, including the factors provided under subsection 4(a)(1) of the Act. The information in Service files, including our recent 5-year review of the species (Service 2010, pp. 1–51), confirms that threats to the coastal California gnatcatcher remain.

We have reviewed the petition, as well as the literature cited in the petition, and we have evaluated that information and information in our files. Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information to indicate that removal of the coastal California gnatcatcher from the List may be warranted. Although we will not commence a status review in response to this petition, we will continue to monitor the population status and trends of the coastal California gnatcatcher, potential threats to the coastal California gnatcatcher, and ongoing management actions that might be important with regard to the conservation of the coastal California gnatcatcher across its range.

Because we conclude that the coastal California gnatcatcher is a valid subspecies under the Act, we are no longer considering whether to propose its reclassification to a DPS under the Act. This document reaffirms our recognition of the coastal California gnatcatcher as a subspecies. We encourage interested parties to continue to gather data that will assist with the conservation of the subspecies. If you wish to provide information regarding the coastal California gnatcatcher, you may submit your information or materials to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 14, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–27644 Filed 10–25–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110707371–1617–01]

RIN 0648–BB28

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 2012 specifications and management measures for Atlantic mackerel and butterfish, and 2012–2014 specifications for *Illex* and longfin squid. This is the first year that the specifications are being recommended for Atlantic mackerel and butterfish under the provisions of the Mid-Atlantic Fishery Management Council's (Council) Annual Catch Limit and Accountability Measure Omnibus Amendment (Omnibus Amendment). The two squid species are exempt from these requirements because they have a life cycle of less than 1 year. This action also proposes to adjust the closure threshold for the commercial mackerel fishery to 95 percent (from 90 percent), to allow the use of jigging gear to target longfin squid if the longfin squid fishery is closed due to the butterfish mortality cap, and to require a 3-inch (76-mm) minimum codend mesh size in order to possess more than 2,000 lb (0.9 mt) of butterfish (up from 1,000 lb (0.45mt)). Finally, this rule proposes minor corrections in existing regulatory text intended 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 (MSB) resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on November 25, 2011.

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–2011–0245, by any one of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0245 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 NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2012 MSB Specifications.''

• *Fax:* (978) 281–9135, *Attn:* Aja Szumylo.

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 *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: Aja Szumylo, Fishery Policy Analyst, 978–281–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Specifications, as referred to in this proposed rule, 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 Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the 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 26 and 27, 2011, to recommend ABCs for the 2012 Atlantic mackerel (mackerel) and butterfish specifications, and the 2012–2014 *Illex* and longfin squid specifications.

The 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 fishery. The MSB Monitoring Committee met on May 27, 2011, to discuss specification related recommendations for the 2012 mackerel and butterfish fisheries, and the 2012–2014 *Illex* and longfin squid fisheries.

Following the meetings described above, the Council considered the recommendations of the SSC, the Monitoring Committee, and public comments at its June 14–16, 2011, meeting in Port Jefferson, NY, and made their specification recommendations. The Council submitted these recommendations, along with the required analyses, for agency review on August 9, 2011, with final submission on September 15, 2011. NMFS must review the Council's recommendations to assure that they comply with the FMP and applicable law, and conduct notice-and-comment rulemaking to propose and implement the final recommendations.

The structure of specifications for the mackerel and butterfish fisheries was revised by the Council's recently finalized regulations implementing the Omnibus Amendment (76 FR 60606, September 29, 2011), which established annual catch limit (ACL) and accountability measure (AM) provisions for all of the Council's FMPs. Following the specification of ABC, the revised regulations at § 648.22 require the specification of ACLs, which, if exceeded, require payback deductions from the subsequent year's catch limit. In order to avoid ACL overages, and the associated paybacks when ACLs are exceeded, the regulations also require the specification of annual catch targets (ACTs) to provide a buffer for management. Several specifications, including domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and joint venture processing for mackerel (JVP), were previously required in the implementing regulations for the FMP, and remain unchanged by the Omnibus Amendment.

For mackerel, the Omnibus Amendment and Amendment 11 to the MSB FMP (approved on September 30, 2011) created distinct allocations for the commercial and recreational mackerel fisheries. The revised mackerel regulations require the specification of ACTs for both the commercial and recreational mackerel fisheries. For butterfish, the regulations require specification of the mortality cap on the longfin squid fishery.

The regulations governing specifications for *Illex* and longfin squid are largely unchanged; both squid species are exempt from ACL/AM requirements because they have a life cycle of less than 1 year. For both squid species, regulations at § 648.22 require the specification of ABC, initial optimum yield (IOY), DAH, and DAP.

TABLE 1—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR MACKEREL AND BUTTERFISH FOR THE 2012 FISHING YEAR, AND FOR ILLEX AND LONGFIN SQUID FOR THE 2012–2014 FISHING YEARS

Specifications	Mackerel	Butterfish	*Illex*	Longfin
OFL	Unknown	Unknown	Unknown	Unknown
ABC	43,781	3,622	24,000	23,400
ACL	43,781	3,622	N/A	N/A

TABLE 1—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR MACKEREL AND BUTTERFISH FOR THE 2012 FISHING YEAR, AND FOR ILLEX AND LONGFIN SQUID FOR THE 2012–2014 FISHING YEARS—Continued

Specifications	Mackerel	Butterfish	*Illex*	Longfin
Commercial ACT	34,907	3,260	N/A	N/A
Recreational ACT/RHL	2,443	N/A	N/A	N/A
IOY	N/A	N/A	22,915	22,445
DAH/DAP	33,821	1,087	22,915	22,445
JVP	0	N/A	N/A	N/A
TALFF	0	0	N/A	N/A

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 and butterfish, and up to 3 percent of the IOY for *Illex* and longfin squid, may be set aside to fund projects selected under the 2012 Mid-Atlantic RSA Program. NMFS solicited research proposals under the 2012 Mid-Atlantic RSA Program through a Federal Funding Opportunity announcement that published on January 6, 2011. The project selection and award process for the 2012 Mid-Atlantic RSA Program has not concluded. However, three projects have been preliminarily selected for approval by the Northeast Fisheries Science Center. These projects have collectively requested 250,580 lb (113,681 kg) of longfin squid, 200,000 lb (90,718 kg) of butterfish, 689,932 lb (312,948 kg) of summer flounder, 509,160 lb (230,951 kg) of scup, 184,280 lb (83,588 kg) of black sea bass, and 200,000 lb (90,718 kg) of bluefish. Project awards are pending a review by the NOAA Grants Office. If any portion of the MSB RSA is not awarded, NMFS will return it to the general fishery either through the final 2012 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 preliminarily selected 2012 Mid-Atlantic RSA projects, including a description of applicable MSB exemptions that will likely be required to conduct the proposed research and compensation fishing. 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. Vessels harvesting RSA 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, 2012.

Project #1: The proposed project is the continuation of a scup survey of 10 hard-bottom sites in Southern New England (SNE) that are not sampled by current state and Federal finfish trawl surveys. Unvented fish pots will be fished on each site from June through October in coastal waters of Nantucket Sound, Martha's Vineyard Sound, and Buzzard's Bay, MA, and Rhode Island Sound, RI. The length frequency distribution of the catch will be compared statistically to each of the other collection sites, and to finfish trawl data collected by the NMFS and state agencies to gain greater understanding of the scup stock structure. Vessels conducting research would not require any exemptions from regulations implemented under the MSB FMP. Vessels harvesting RSA quota would require the aforementioned closure and possession limit exemptions to facilitate compensation fishing activities.

Project #2: The proposed project is a black sea bass survey of sites in SNE and Mid-Atlantic waters. Unvented black sea bass pots will be fished on each site, which will include one in Massachusetts, one south of Rhode Island, one south of New Jersey, and one south of Virginia, for 5 months from June through October in SNE, and April through August in the Mid-Atlantic. The project is designed to collect black sea bass from sites that are un-sampled by current state and Federal finfish bottom trawl surveys. The length frequency distribution of the catch will be compared to each of the other collection sites, and to finfish trawl data collected by NMFS and state agencies to gain greater understanding of the black sea bass stock structure. Vessels conducting research would not require any exemptions from regulations implemented under the MSB FMP. Vessels harvesting RSA quota would require the aforementioned closure and possession limit exemptions to facilitate compensation fishing activities.

Project #3: The proposed project would continue a spring and fall trawl survey in shallow waters between Martha's Vineyard, MA, and Cape Hatteras, NC, that are not sampled by the NMFS trawl survey. The project investigators plan to provide stock assessment data for Mid-Atlantic RSA species, including summer flounder, scup, black sea bass, longfin squid, butterfish, and Atlantic bluefish, and assessment-quality data for weakfish, Atlantic croaker, spot, several skate and ray species, smooth dogfish, horseshoe crab, and several unmanaged but important forage species. Vessels conducting this near-shore trawl survey would not require any exemptions from regulations implemented under the MSB FMP. Vessels harvesting RSA quota would require the aforementioned closure and possession limit exemptions to facilitate compensation fishing activities.

2012 Proposed Specifications and Management Measures for Mackerel and Butterfish

Atlantic 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. According to the FMP, mackerel ABC must be calculated using

the formula U.S. ABC = Stock-wide ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year. 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 SSC recommended specifying the stock-wide ABC for 2012 at 80,000 mt, consistent with the TRAC recommendation. The Council recommended a U.S. ABC of 43,781 mt (80,000 mt − 36,219 mt (estimated 2012 Canadian catch)).

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 2012 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 U.S. 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 8 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 2012 the commercial fishery has the ability to harvest 33,821 mt of mackerel.

Finally, this rule proposes that the commercial fishery be closed at 95 percent of the DAH, as recommended by the Council. The current closure threshold of 90 percent of the DAH was designed to accommodate misreporting in the commercial fishery, and the lack of a distinct allocation for the recreational fishery. A 95-percent closure threshold should be sufficient to prevent overages, given that a recreational allocation is now required by the FMP.

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). Though the butterfish population appears to be declining over time, fishing mortality does not seem to be the major cause. Butterfish have a high natural mortality rate, and the current estimated fishing mortality (F = 0.02) is well below all candidate overfishing threshold reference points. The assessment report noted that predation is likely an important component of the butterfish natural mortality rate (currently assumed to be 0.8), but also noted that estimates of consumption of butterfish by predators appear to be very low. In short, the underlying causes for population decline are unknown.

The SSC recommended an ABC of 3,622 mt (100 percent increase from 2011) because butterfish survey indices appear stable or increasing, there have been anecdotal observations of increased butterfish abundance, and fishing mortality appears low when compared to natural mortality.

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 3,260 mt. Since discards have been roughly ⅔ of catch (1999–2008 average), the Council recommended setting the DAH and DAP at 1,087 mt (3,260 mt − 2,173 mt discards). Butterfish TALFF is only specified to address bycatch by foreign fleets targeting mackerel TALFF. Because there is no mackerel TALFF, butterfish TALFF would also be set at zero.

The Council recommended setting the butterfish mortality cap on the longfin squid fishery at 2,445 mt (75 percent of 3,260 mt). If the butterfish mortality cap is harvested during Trimester I (January–April) or Trimester III (September–December), the directed longfin squid fishery will close for the remainder of that trimester.

NMFS proposes specifications, consistent with the Council's recommendation, that would set the butterfish ABC/ACL at 3,622 mt, the ACT at 3,260 mt, the DAH and DAP at 1,087 mt, and the butterfish mortality cap on the longfin squid fishery at 2,445 mt. Additionally, consistent with MSB regulations, NMFS is proposing zero TALFF for butterfish in 2010 because mackerel TALFF is also specified at zero. Consistent with 2011, NMFS proposes that the 2012 butterfish mortality cap be allocated by Trimester as follows:

TABLE 2—PROPOSED TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY FOR 2012

Trimester	Percent	Metric tons
I (Jan–Apr)	65	1,589.25
II (May–Aug)	3.3	80.69
III (Sep–Dec)	31.7	775.06
Total	100	2,445

Finally, the Council recommended, and NMFS proposes, that a 3-inch (76-mm) minimum codend mesh size requirement apply for vessels

possessing 2,000 lb (0.9 mt) or more of butterfish (up from 1,000 lb (0.45 mt) in 2011) in order to allow some portion of butterfish discards to be landed.

2012–2014 Proposed Specifications and Management Measures for *Illex* Squid and Longfin Squid

Illex Squid

The *Illex* stock was most recently assessed at SARC 42 in late 2005. While it was not possible to evaluate current stock status because there are no reliable current estimates of stock biomass or F, qualitative analyses determined that overfishing had not likely been occurring. The SSC recommended the status quo ABC of 24,000 mt based on observations that catches in this range, and up to 26,000 mt, have not caused any apparent harm to the stock.

The Council recommended that the ABC be reduced by a revised discard rate of 4.52 percent (the mean plus one standard deviation of the most recent 10 years of observed discards), which results in an IOY, DAH, and DAP for recommendation of 22,915 mt for the 2012–2014 fishing years.

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 2012–2014 fishing years. The FMP does not authorize the specification of JVP and TALFF for the *Illex* fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Longfin Squid

The 51st Northeast Regional Stock Assessment Workshop (SAW 51), published in January 2011, found that the longfin squid stock is not overfished, but that the overfishing status is unknown. The SSC used the updated stock assessment information to recommend an ABC of 23,400 mt for the 2012–2014 fishing years, subject to annual review. 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). The SSC interpreted this level of exploitation to be sustainable over the long term.

The Council recommended that the ABC be reduced by a revised discard rate of 4.08 percent (mean plus one standard deviation of the most recent 10 years of observed discards), which results in an IOY, DAH, and DAP for recommendation of 22,445 mt for the 2012–2014 fishing years.

NMFS concurs with the Council's recommendation; therefore, this action proposes an ABC of 23,400 mt, and an IOY, DAH, and DAP of 22,445 mt for the 2012–2014 fishing years. The FMP does not authorize the specification of JVP and TALFF for the longfin squid fishery because of the domestic industry's capacity to harvest and process the OY for this fishery.

Distribution of the Longfin DAH

The proposed 2012–2014 longfin DAH would be allocated into trimesters, according to percentages specified in the FMP, as follows:

TABLE 3—PROPOSED TRIMESTER ALLOCATION OF LONGFIN QUOTA FOR 2012–2014

Trimester	Percent	Metric tons
I (Jan–Apr)	43	9,651
II (May–Aug)	17	3,816
III (Sep–Dec)	40	8,978
Total	100	22,445

Longfin Squid Jigging Exemption

The Council recommended, and NMFS proposes, to allow Longfin Squid/Butterfish moratorium permit holders to possess longfin squid in excess of the 2,500-lb (0.93-mt) possession limit during any closures of the longfin squid fishery resulting from the butterfish mortality cap, provided that all trawl gear is appropriately stowed. The butterfish mortality cap was designed to limit butterfish bycatch in the longfin squid trawl fishery, and jigging for squid is not expected to result in substantial butterfish bycatch.

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 intent of existing regulations by correcting technical errors. The proposed regulatory text restructures § 648.23(a). In addition, the *Illex* fishery gear exemption in § 648.23(a) (formerly at § 648.23(a)(3)(ii)) would be revised to clarify the timing of the exemption, and to match the stated gear requirements to those implemented for the longfin squid fishery through Amendment 10 to the MSB FMP. Finally, longfin squid was previously referred to as *Loligo* squid. Due to a recent change in the scientific name of longfin squid from *Loligo pealeii* to *Doryteuthis (Amerigo) pealeii,* the Council will now use the common name ''longfin squid'' in all official documents to avoid confusion. Accordingly, the regulatory text is amended to replace all references to ''*Loligo''* squid with the term ''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 2012 specifications for mackerel and butterfish, and 2012–2014 specifications for *Illex* and longfin squid. It also proposes to modify the closure threshold for the commercial mackerel fishery, to adjust the gear requirements for the butterfish fishery, to create an exemption for the use of jigs, should the longfin squid fishery be closed due to reaching the butterfish mortality cap. 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, the numbers of potential fishing vessels in the 2012 fisheries are as follows: 351 Longfin squid/butterfish moratorium permits; 76 *Illex* moratorium permits; 2,201 mackerel permits; 1,904 incidental squid/butterfish permits; and 831 MSB party/charter permits. 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 $6.5 million, respectively. There are no large entities participating in this fishery, as that term is 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

There are no new reporting or record keeping 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 recently finalized Omnibus Amendment, which applies to mackerel and butterfish, changes the structure of specifications compared to that used in past years. In order to facilitate comparison of alternatives, the discussions of mackerel and butterfish specifications below will focus on the effective limit on directed harvest, regardless of the terminology used for the specification. The specifications and terminology for *Illex* and longfin squid are unchanged from those used in 2011.

The mackerel commercial DAH proposed in this action (33,821 mt) represents a reduction from status quo (2011 DAH = 46,779 mt). Despite the reduction, the proposed DAH is above recent U.S. landings; mackerel landings for 2008–2010 averaged 18,830 mt. Thus, the reduction does not pose a constraint to vessels relative to the landings in recent years. In 2011, there was a soft allocation of 15,000 mt of the mackerel DAH for the recreational mackerel fishery. The Omnibus Amendment and MSB Amendment 11 established an explicit allocation for the recreational fishery, and this action proposes a Recreational ACT/RHL of 2,443 mt. Because recreational harvest from 2008–2010 averaged 738 mt, it does not appear that the new, explicit allocation for the recreational fishery will constrain recreational harvest. Overall, the proposed action is not expected to result in any reductions in revenues for vessels that participate in either the commercial or recreational mackerel fisheries.

The proposed change to the mackerel closure threshold, which would require the closure of the commercial mackerel fishery at 95 percent of the DAH, is a preventative measure intended to ensure that the commercial catch limit is not exceeded. The economic burden on fishery participants associated with this measure is expected to be minimal.

The butterfish DAH proposed in this action (1,087 mt) represents a 117-percent increase over the 2011 DAH (500 mt). Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. The proposed increase in the DAH has the potential to increase revenue for permitted vessels.

The proposed adjustment to the gear requirement for the butterfish fishery, which would require vessels possessing 2,000 lb (0.9 mt) or more of butterfish to fish with a 3-inch (76-mm) minimum codend mesh, is expected to result in a modest increase in revenue for fishery participants. This adjustment would enable additional retention of butterfish by vessels using small-mesh fishing gear. Previously, the mesh size requirement applied to vessels possessing 1,000 lb (0.45 mt) or more of butterfish.

The *Illex* IOY (22,915 mt) proposed in this action represents a slight decrease compared to status quo (23,328 mt). Though annual *Illex* landings have totaled over ⅔ of the IOY in the past 3 years (15,900 mt for 2008, 18,419 mt for 2009, and 15,825 for 2010), the landings were lower than the level being proposed. Thus, implementation of this proposed action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2012.

The longfin squid IOY (22,445 mt) represents an increase from the status quo (20,000 mt). Because longfin squid landings from 2008–2010 averaged 9,182 mt, the proposed IOY provides an opportunity to increase landings, though if recent trends of low landings continue, there may be no increase in landings despite the increase in the allocation. No reductions in revenues for the longfin squid fishery are expected as a result of this proposed action.

As discussed in the Final Regulatory Flexibility Analysis (FRFA) for MSB Amendment 10, the butterfish mortality cap has a potential for economic impact on fishery participants. The longfin squid fishery will close during Trimesters I and III if the butterfish mortality cap is reached. If the longfin squid fishery is closed in response to butterfish catch before the entire longfin squid quota is harvested, then a loss in revenue is possible. The potential for longfin squid revenue loss is dependent upon the size of the butterfish mortality cap. The proposed 2012 butterfish mortality cap of 2,445 mt represents a 70-percent increase over status quo (1,436 mt). The 2011 butterfish mortality cap did not result in a closure of the longfin squid fishery in Trimester I. At the start of Trimester III, over 55 percent of the butterfish mortality cap (compared to 31.7 percent allocated at the start of the fishing year) was available for the longfin squid fishery for the duration of the fishing year. Though a majority of the cap is still available, it could still result in a closure of the longfin squid fishery late in the fishing year. Nonetheless, given that the lower cap has not yet constrained the longfin squid fishery, it is reasonable to expect that the proposed increase to the cap will also not constrain the longfin squid fishery. For that reason, additional revenue losses are not expected as a result of this proposed action.

The proposed jigging measure would allow Longfin Squid/Butterfish moratorium permit holders to possess longfin squid in excess of the possession limit during any closures of the longfin squid fishery resulting from the butterfish mortality cap. Jigging for longfin squid has been shown to be commercially infeasible. However, because butterfish bycatch in jig gear is expected to be very minimal, it seems reasonable to allow jig fishing for squid. If attempts to use jig gear for commercial longfin squid fishing are successful, the use of this gear could help mitigate economic impacts on fishery participants if the longfin squid fishery is closed due to the mortality cap.

Alternatives to the Proposed Rule

The Council analysis evaluated four alternatives to the proposed specifications for mackerel. The first (status quo) and second non-selected alternatives were based on the specifications structure that existed prior to the implementation of the Omnibus Amendment, and were not selected because they are no longer in compliance with the MSB FMP. The other alternatives differ in their specification of the stockwide ABC (80,000 mt in the preferred alternative). The same amount of expected Canadian catch (36,219 mt) was subtracted from the stockwide ABC in each alternative. The third alternative (least restrictive) would set the U.S. ABC and ACL at 63,781 mt (100,000 mt stockwide ABC minus 36,219 mt Canadian catch), the Commercial ACT at 50,853 mt, the DAH and DAP at 49,271 mt, and the Recreational ACT at 3,559 mt. The fourth alternative (most restrictive) would set the U.S. ABC and ACL at 23,781 mt (60,000 mt stockwide ABC minus 36,219 mt Canadian catch), the Commercial ACT at 18,961 mt, the DAH and DAP at 18,371 mt, and the Recreational ACT at 1,327 mt. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The status quo closure threshold for the commercial mackerel fishery (90 percent) was considered overly precautionary when compared to the proposed closure threshold (95 percent). The status quo closure threshold, which was designed in part because there was no distinct allocation for the recreational mackerel fishery, is no longer considered appropriate.

There were four alternatives to the preferred action for butterfish that were not selected by the Council. The first (status quo) and second non-selected were based on the specifications structure that existed prior to the implementation of the Omnibus Amendment, and were not selected because they are no longer in compliance with the MSB FMP. The third alternative (least restrictive) would have set the ABC and ACL at 4,528 mt, the ACT at 4,075 mt, the DAH and DAP at 1,358 mt, and the butterfish mortality cap at 3,056 mt. The fourth alternative (most restrictive) would have set the ABC and ACL at 2,717 mt, the ACT at 2,445 mt, the DAH and DAP at 815 mt, and the butterfish mortality cap at 1,834 mt. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

There were two alternatives regarding proposed adjustment to the butterfish gear requirement. 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 preferred alternative (3-inch (76-mm) mesh to possess 2,000 lb (0.9 mt)) is expected to create some additional revenue in the form of butterfish landings for vessels using mesh sizes smaller than 3 inches (76 mm).

Three alternatives to the preferred action were considered for *Illex,* but were not selected by the Council. All alternatives would establish specifications for the 2012–2014 fishing years. The first alternative (status quo), shared the same 24,000-mt ABC as the proposed action. However, a discard rate of 2.8 percent was deducted to reach an IOY, DAH, and DAP at 23,328 mt rather than the 22,915 mt specified in this proposed action. The Council did not select the status quo alternative because it found the updated discard rate of 4.52 percent to be a more appropriate representation of discards in the *Illex* fishery. The second alternative (least restrictive) would have set ABC at 30,000 mt, and IOY, DAH, and DAP at 28,644 mt (ABC reduced by 4.52 percent for discards). This alternative was not selected because the higher specifications were inconsistent with the results of the most recent stock assessment. The third alternative (most restrictive) would have set ABC at 18,000 mt, and IOY, DAH, and DAP at 17,186 mt (ABC reduced by 4.52 percent for discards). The Council considered this alternative unnecessarily restrictive.

There were three alternatives to the proposed action evaluated for longfin squid. All alternatives would establish specifications for the 2012–2014 fishing years. The first alternative (status quo) would have set the ABC at 24,000 mt, and the IOY, DAH and DAP at 20,000 mt. The second alternative (least restrictive) would have set the ABC at 29,250 mt, and the IOY, DAH, and DAP at 28,057 mt (ABC reduced by 4.08 percent for discards). The third alternative (most restrictive) would have set the ABC at 17,550 mt, and the IOY, DAH and DAP at 16,834 mt (ABC reduced by 4.08 percent for discards). These three alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The alternatives for longfin squid RSA would allow up to 1.65 percent (status quo) or up to 3 percent (preferred) of the longfin squid IOY to be used to fund research projects for the 2012–2014 fishing years. In 2011, butterfish RSA was only awarded to cover butterfish discards by vessels fishing for longfin squid RSA. The small amount of butterfish RSA available in 2011 (15 mt, or 3 percent of 500 mt butterfish DAH) was only sufficient to cover discards for an amount of longfin squid RSA equal to 1.65 percent of the IOY. The recommended increase in the 2012 butterfish quota will allow for enough butterfish RSA (3 percent of the 1,087 mt butterfish DAH) to accommodate discards for longfin squid RSA equal to 3 percent of the IOY.

For the jigging exemption, the status quo alternative prevents Longfin squid/Butterfish moratorium permit holders from possessing or landing over 2,500 lb (1.13 mt) of longfin squid if the directed fishery is closed because of the butterfish mortality cap. The preferred alternative would allow such vessel to posses and land over 2,500 lb (1.13 mt) if using jigging gear. If the use of jigs for commercial longfin squid fishery proves successful, the preferred alternative may help reduce the economic impacts of closures of the longfin squid fishery resulting from the butterfish mortality cap.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 21, 2011.

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, as amended at 76 FR 60649, September 29, 2011, 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 § 648.2, remove the definition for *Loligo,* revise the definition of *Squid,* and add the definition for *Longfin squid* in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Longfin squid means *Doryteuthis (Amerigo) pealeii* (formerly referred to as *Loligo pealeii*).

* * * * *

Squid means longfin squid (*Doryteuthis (Amerigo) pealeii,* formerly *Loligo pealeii*) or *Illex illecebrosus.*

* * * * *

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

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) *Mesh restrictions and exemptions.* Vessels subject to the mesh restrictions 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 specified in paragraphs (a)(1) and (a)(2) of this section.

(1) *Butterfish fishery.* Owners or operators of otter trawl vessels possessing 2,000 lb (0.9 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.

(2) *Longfin squid fishery.* Owners or operators of otter trawl vessels possessing longfin squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), 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 longfin squid 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 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), 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 longfin squid 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 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Jigging exemption.* During closures of the longfin squid fishery resulting from the butterfish mortality cap, described in § 648.26(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed as specified in paragraph (b) of this section.

(3) *Illex fishery.* Seaward of the following coordinates, otter trawl vessels possessing longfin squid harvested in or from the EEZ and fishing for *Illex* during the months of June, July, August, in Trimester II, and September in Trimester III are exempt from the longfin squid gear requirements specified in paragraph (a)(2) of this section, provided that landward of the specified coordinates 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 1⅞ inches (48 mm) diamond mesh in Trimester II, and 2⅛ inches (54 mm) diamond mesh in Trimester III, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(2) of this section.

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′

* * * * *

4. In § 648.24, paragraph (b)(1) is revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) *Mackerel commercial sector EEZ closure.* NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

* * * * *

5. In the table below, for each section in the left column, remove the text from whenever it appears throughout the section and add the text indicated in the right column.

Section	Remove	Add	Frequency
§ 648.4(a)(5)(i)	*Loligo*	longfin	1
§ 648.4(a)(5)(i)(A)	*Loligo*	longfin	2
§ 648.4(a)(5)(i)(L)(ii)	*Loligo*	longfin	1
§ 648.4(a)(10)(iv)(C)(*1*)(*i*)	*Loligo*	longfin	1
§ 648.4(a)(10)(iv)(C)(*1*)(*ii*)	*Loligo*	longfin	1
§ 648.13(a)	*Loligo*	longfin squid	2
§ 648.14(g)(1)(ii)(B)	*Loligo*	longfin squid	2
§ 648.14(g)(1)(iii)	*Loligo*	longfin squid	1
§ 648.14(g)(2)(ii)	*Loligo*	longfin	2
§ 648.14(g)(2)(iii)	*Loligo*	longfin squid	1
§ 648.14(o)(1)(vi)	*Loligo*	longfin	1
§ 648.22(a)(2)	*Loligo*	longfin squid	1
§ 648.22(a)(4)	*Loligo*	longfin	1
§ 648.22(a)(5)	*Loligo*	longfin	1
§ 648.22(b)(1)	*Loligo*	longfin	1
§ 648.22(b)(1)(i)(A)	*Loligo*	longfin squid	1
§ 648.22(b)(3)(v)	*Loligo*	longfin squid	1
§ 648.22(c)(1)(i)	*Loligo*	longfin squid	1
§ 648.22(c)(3)	*Loligo*	longfin squid	1
§ 648.22(c)(6)	*Loligo*	longfin squid	1
§ 648.22(f)	*Loligo*	longfin	2
§ 648.24(a)	*Loligo*	longfin squid	4
§ 648.24(c)(3)	*Loligo*	longfin squid	2

Section	Remove	Add	Frequency
§ 648.26(b)	*Loligo*	longfin squid	7
§ 648.27 (heading)	*Loligo*	longfin squid	1
§ 648.27(a)	*Loligo*	longfin squid	1
§ 648.27(b)	*Loligo*	longfin squid	5
§ 648.27(c)	*Loligo*	longfin squid	3
§ 648.27(d)	*Loligo*	longfin squid	2
§ 648.124(a)(2)	*Loligo*	longfin	1
§ 648.124(b)(2)	*Loligo*	longfin	1

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