

Act to achieve the optimum yield from a fishery on a continuing basis, resulting in a negative economic impact on vessels permitted to fish in this fishery.

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

Dated: August 2, 2011.

**Margo Schulze-Haugen,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110218149-1182-01]

**RIN 0648-BA86**

#### **Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fishery; Emergency Rule Extension, Revision of 2011 Butterfish Specifications**

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

**ACTION:** Temporary final rule; emergency action extension and request for comments.

**SUMMARY:** NMFS extends the emergency revision to the butterfish allowable biological catch (ABC) implemented on March 15, 2011, which is scheduled to expire on September 12, 2011. Specifically, this temporary rule maintains the increase in the butterfish ABC from 1,500 mt to 1,811 mt, and applies the increase to the butterfish mortality cap in the *Loligo (Doryteuthis)* squid fishery, based on the most recent and best available scientific information. The increase is extended for an additional 186 days to maintain the increased butterfish ABC through the end of the 2011 fishing year (*i.e.*, through December 31, 2011), or until superseded by 2012 MSB specifications.

**DATES:** The effective date of the interim rule published March 15, 2011 (76 FR 13887), is extended through March 16, 2012, unless superseded by another action. NMFS will accept comments through September 6, 2011.

**ADDRESSES:** The supplemental EA is available by request from: Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930-2276, or via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by RIN 0648-BA86, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>;

- **Fax:** (978) 281-9135, **Attn:** Aja Szumylo;

- **Mail to NMFS,** Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Extension of the Emergency Rule to Revise the Butterfish Specifications."

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may 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). You may submit attachments to electronic comments in Microsoft Word, 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**

This temporary final rule extends the emergency measures implemented on March 15, 2011 (76 FR 13887), as authorized by section 305(c) of the Magnuson-Stevens Act, to increase the butterfish ABC from 1,500 mt to 1,811 mt. The March 15, 2011, emergency rule included detailed information on purpose and need to revise the butterfish ABC that was initially set in the final 2011 specifications for the MSB Fishery Management Plan (FMP) (76 FR 8306; February 14, 2011). There was one anonymous comment submitted on the emergency rule. NMFS will again accept public comment on both the appropriateness of the emergency action to date, and its extension.

The emergency specifications extended through this final rule maintain the 2011 butterfish ABC at 1,811 mt, with the increase applied to the butterfish mortality cap on the *Loligo* fishery. Other specifications for butterfish, specifically initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign

fishing (TALFF), and research set-aside (RSA), are unchanged from those set in the final 2011 specifications. Specifications for Atlantic mackerel, *Loligo* squid, and *Illex* squid also remain unchanged.

Amendment 10 to the MSB FMP specified that the butterfish mortality cap is to be set equal to 75 percent of the butterfish ABC, with the remaining 25 percent of the butterfish ABC allocated to account for butterfish catch in other fisheries, but noted that this apportionment may be revised as necessary to accommodate the *Loligo* squid fishery. The additional 311-mt ABC allotment extended through this action is entirely allocated to the mortality cap. Under the 2011 specifications, the butterfish mortality cap was 1,125 mt (75 percent of 1,500 mt); this extension maintains the increase in the 2011 butterfish mortality cap at 1,436 mt that was implemented in the emergency action.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the March 15, 2011, emergency rule, NMFS determined that it was necessary to modify the butterfish specifications, consistent with new scientific advice, in a timely manner in order allow the *Loligo* squid fleet to optimize *Loligo* squid harvest with reduced concern that the fishery would be closed due to the butterfish mortality cap.

##### **Comments**

**Comment:** One anonymous individual opposed the increase in the butterfish ABC and stated that this level of taking is not sustainable.

**Response:** As discussed in the background section of the March 2011 emergency rule, the increased butterfish

ABC NMFS implemented in the emergency action is consistent with the best scientific information available. The analysis presented in the supplemental EA concludes that increasing the butterfish ABC to 1,811 mt is not expected to have any adverse impact on the butterfish stock when compared to the original 1,500-mt butterfish ABC.

#### Classification

NMFS has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that it is impracticable and contrary to the public interest to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest. This action provides the benefit of allowing the *Loligo* fleet to optimize its harvest, with less concern that the fishery could be closed due to the butterfish mortality cap. The initial emergency action did not allow for prior public comment because the scientific review process and determination could not have been completed any earlier, due to the inherent time constraints associated with the process and the fact that the information on which this action is based became available after 2011 specifications were finalized.

For the reason above, the Assistant Administrator for Fisheries finds good cause under section 553(d) of the APA to waive the 30-day delay in effectiveness.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The EA prepared for the initial emergency rule analyzed the impacts of the emergency specifications for the duration of a year (Supplemental Environmental Assessment for 2011 Atlantic Mackerel, Squid, and Butterfish Specifications; February 2011). Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

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

Dated: August 2, 2011.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

**RIN 0648-XA209**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands King and Tanner Crabs

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

**ACTION:** Notice of agency decision.

**SUMMARY:** NMFS announces approval of Amendments 38 and 39 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 38 establishes a mechanism in the FMP to specify annual catch limits and accountability measures for each crab stock. This action is necessary to account for uncertainty in the overfishing limit and prevent overfishing. Amendment 39 modifies the snow crab rebuilding plan to define the stock as rebuilt the first year the stock biomass is above the level necessary to produce maximum sustainable yield. Amendments 38 and 39 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** The amendment was approved on August 2, 2011.

**ADDRESSES:** Electronic copies of Amendments 38 and 39 and the Environmental Assessment prepared for this action may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of

Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

NMFS published the notice of availability for Amendments 38 and 39 to the FMP on May 4, 2011 (76 FR 25295), with a comment period that ended on July 5, 2011. NMFS received one comment letter. NMFS summarized this letter into two separate comments, and responds to them under Response to Comments, below.

NMFS determined that Amendments 38 and 39 to the FMP are consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendments 38 and 39 on August 2, 2011. The May 4, 2011, notice of availability (76 FR 25295) contains additional information on this action. No changes to Federal regulations are necessary to implement these FMP amendments.

The crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The FMP establishes a cooperative management regime that defers many aspects of crab fisheries management to the State of Alaska (State) with Federal oversight. State crab fishery management action must be consistent with the FMP, Magnuson-Stevens Act, and other applicable Federal laws.

#### Annual Catch Limits and Acceptable Biological Catch

In October 2010, the Council unanimously recommended Amendments 38 and 39 to the FMP. Amendment 38 establishes a mechanism in the FMP for the Council to specify annual catch limits (ACLs) and accountability measures. Amendment 39 modifies the snow crab rebuilding plan to establish that the stock will be rebuilt when the snow crab biomass is estimated to reach the level necessary to produce maximum sustainable yield.

Amendment 38 satisfies requirements of the Magnuson-Stevens Act, as amended in 2007, while maintaining the FMP's cooperative management regime that relies on State expertise in collecting and analyzing scientific data on crab and in establishing the total allowable catches (TACs). Amendment 38 establishes acceptable biological catch (ABC) control rules in the FMP