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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Parts 611 and 655

[Docket No. 951208293-6065-02; I.D. 110995B]

RIN 0648-AF01

### Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 5

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement approved measures contained in Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 5 (Amendment) is intended to further the Americanization of the fisheries and to implement measures to prevent overfishing and avoid overcapitalization of the domestic fleet. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

**EFFECTIVE DATE:** May 2, 1996.

**ADDRESSES:** Copies of Amendment 5, final environmental impact statement, regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790.

Comments regarding the collection-of-information requirements contained in

this rule should be sent to Dr. Andrew Rosenberg, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 508-281-9104.

#### SUPPLEMENTARY INFORMATION:

##### Background

Amendment 5 was developed in response to concerns regarding overcapitalization expressed by industry representatives at several meetings of the Mid-Atlantic Fishery Management Council (Council) and its Squid, Mackerel, and Butterfish Committee in the early 1990's. Increases in domestic squid landings and a stagnation in the growth of butterfish landings at well below the maximum sustainable yield (MSY) for that species moved the Council to develop this comprehensive amendment. Details concerning the development of the Amendment are provided in the proposed rule which was published in the Federal Register on December 20, 1995 (60 FR 65618).

Amendment 5, as adopted by the Council, contained moratoria on entry into the *Illex* and the *Loligo* squid and butterfish fisheries based on specified criteria. It also proposed a minimum mesh size for the *Loligo* fishery with an exemption for the sea herring fishery and the summer *Illex* fishery beyond the 50-fathom curve; an annual specification process for all four species; reduction of the MSY for *Loligo* from 44,000 metric tons (mt) to 36,000 mt; a modification of the formula for arriving at the allowable biological catch for Atlantic mackerel; elimination of joint venture processing and total allowable level of foreign fishing for *Loligo* and *Illex* squid and butterfish; and establishment of vessel operator permits, dealer permits and reporting, and vessel reporting requirements.

In the proposed rule, NMFS noted that it had specific concerns about the following proposed measures: (1) The moratorium entry criteria, (2) the proposal to constrain the allowable biological catch (ABC) specified for Atlantic mackerel by the long-term potential catch (LTPC) estimate, and (3) the proposed exemptions from the

*Loligo* minimum mesh requirement. The proposed rule requested the public to comment on all proposed measures, but to focus on these in particular.

NMFS, on behalf of the Secretary of Commerce, reviewed Amendment 5 in light of the administrative record underlying it and the public comments received relative to the Amendment and the proposed rule. NMFS has decided, based upon this review, that several provisions of the Amendment are inconsistent with the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Therefore, the following measures have been disapproved: (1) The *Illex* moratorium, (2) the use of LTPC to cap ABC for Atlantic mackerel, and (3) the exemption from the minimum mesh requirement for the *Loligo* fishery for a vessel fishing for sea herring whose catch is comprised of 75 percent or more of sea herring.

#### Comments and Responses

A total of thirty commenters provided 14 substantively different comments on the proposed rule to implement Amendment 5. The commenters were members of Congress, industry associations, state agencies, the New England Fishery Management Council, and various individuals. Fourteen commenters supported and five opposed the Amendment in its entirety. The remaining eleven commenters opposed at least one management measure.

**Comment 1:** Seventeen commenters supporting the moratoria permit measures believe the fisheries for *Illex* and *Loligo* squid are at full harvesting capacity and urged quick approval.

**Response 1:** The fishery for *Loligo* is considered to be fully utilized or fully exploited while the fishery for *Illex* remains underutilized or underexploited. The *Loligo* moratorium was approved while the *Illex* moratorium was disapproved for the reasons stated in the following response.

**Comment 2:** Three commenters believed the Amendment satisfies National Standards 1, 4, and 5.

**Response 2:** NMFS reviewed the Amendment and determined that most of the Amendment was consistent with the Magnuson Act. However, NMFS determined that three measures were inconsistent with the national standards. NMFS disapproved the *Illex* moratorium, the minimum mesh

exemption for the sea herring fishery, and the use of LTFC to cap Atlantic mackerel ABC. The *Illex* moratorium is not consistent with National Standard 4, because the overall impact of the measure has discriminatory effects that render the allocation of fishing privileges in the *Illex* fishery unfair and inequitable. Specifically, the criteria arbitrarily exclude vessels that may have historically landed *Illex* catches smaller than 5,000 lb (2.27 mt) per trip. These vessels, which may have routinely caught more than the 2,500 lb (1.13 mt) incidental catch allowance specified in the Amendment, would be eliminated from the directed fishery under the threshold catch criterion. Employing a threshold catch criterion to qualify for the *Illex* moratorium that operates on a per/trip basis is less inclusive of such vessels than the *Loligo*/butterfish criteria, which required 20,000 lb (9.07 mt) of cumulative landings within a 30-day period. This discriminatory impact is further exacerbated by the fact that the extension of the qualifying period back to 1981 allows larger-scale past participants to qualify, even if they are not present participants in the fishery, while smaller-scale present participants do not.

The criterion that allows vessels equipped with refrigerated sea water systems (RSW) or plate or blast systems by May 1994 to qualify for a moratorium permit has the effect of revising the control date for a selected portion of the industry. There is no explanation as to why this select group should be treated differently from others in the fishery. As worded, the criterion would allow any vessel equipped with an RSW system or plate or blast freezers before the relevant date to qualify for a moratorium permit if the owner could demonstrate the required number of landings prior to the implementation date of this Amendment. This would allow vessels to enter the fishery that had never fished for *Illex* squid. This is not fair and equitable to those that have participated in the fishery and conflicts with the Council's goal to prevent overcapitalization in the fishery.

NMFS disapproved the sea herring exemption from the minimum mesh size for *Loligo*, because NMFS law enforcement officials advise that this measure is not enforceable. Ascertaining at-sea the percentage of herring in the entire catch is virtually impossible. The cost of establishing a system or procedure to measure the percentage of herring on board would be prohibitive. Consequently, this measure is inconsistent with National Standard 7.

NMFS disapproved the measure to cap the annual ABC specification for Atlantic mackerel, because such a cap on ABC would not allow the annual specifications to reflect variations and contingencies in the stock, which is inconsistent with National Standard 6. The most recent stock assessment estimates mean spawning stock biomass (SSB) at 2,100,000 mt. The annual specifications for 1996, which were calculated to maintain SSB at 900,000 mt, resulted in an ABC specification of 1,175,500 mt. The current stock assessment estimates LTFC at 150,000 mt/year. Consequently, the constrained level of ABC would not be reasonably reflective of the size of the Atlantic mackerel stock.

*Comment 3:* Six commenters want to alter the vessel replacement provisions proposed in Amendment 5 by allowing vessel upgrades to 10 percent and allowing vessel characteristics from multiple vessels to be combined into one vessel. One commenter thought vessel replacement should be based on carrying capacity.

*Response 3:* These proposed changes were not contained in the proposed rule because they were not offered as measures in Amendment 5. A further amendment to the FMP would be needed to accomplish these changes. The commenters should direct these comments to the Council.

*Comment 4:* Ten commenters opposed Amendment 5, believing that the *Illex* moratorium is discriminatory.

*Response 4:* The *Illex* moratorium was disapproved, as noted above.

*Comment 5:* Nine commenters opposed the *Illex* moratorium permit on the basis that *Illex* is underutilized.

*Response 5:* The *Illex* moratorium was disapproved because of its inconsistency with National Standard 4, not because the fishery is not fully utilized. While recent harvest levels have not approached the MSY, recent scientific information strongly suggests that the MSY should be adjusted downward in response to new life history information. This is likely to result in a revised assessment of the utilization status of the species. In any event, the issue of whether or not to impose a moratorium in the *Illex* fishery is within the prerogative of the Council. If the Council believes that a moratorium is necessary and appropriate for the conservation of the *Illex* fishery, and develops an administrative record that leads NMFS to conclude that the moratorium is consistent with the Magnuson Act and other applicable law, it will be approved.

*Comment 6:* Six commenters believed that the moratorium on *Illex* would deprive displaced groundfish vessels of an alternative fishery.

*Response 6:* See response to Comment 5.

*Comment 7:* Three commenters opposed both moratoria permits on the grounds that they do not follow the limited entry guidelines discussed in the Magnuson Act.

*Response 7:* The Council did consider the provisions of section 303(b)(6) expressly in the Amendment. The several factors noted in this section merely have to be taken into account by the Council in determining whether to limit access to a fishery. It is up to the Council what weight, if any, should be accorded to any of these factors or whether or not to make a provision in the Amendment for any of the factors.

*Comment 8:* One commenter opposed the refrigerated seawater/blast freezer provision for the *Illex* moratorium permit.

*Response 8:* The *Illex* moratorium was disapproved, as noted above.

*Comment 9:* One commenter felt that the Council can accomplish its goals only by establishing a moratorium eligibility criterion that considers the three moratorium species together as a unit for purposes of qualifying for a moratorium permit. He proposed raising the criterion to 50,000 lb (22.7 mt) of landings per year, in any 2 years during the qualification period, for any one or any combination of the three species.

*Response 9:* The Council analyzed the impact of using the same qualifying criteria for all three fisheries and determined that it would defeat the purpose of the limited entry provision and increase the chances of overcapitalization in the industry. A 50,000 lb (22.7 mt) criterion as described in the comment, is not discussed as an alternative in the Amendment. The Council may exercise its judgment as to how best to accomplish its management goals. The Secretary will support the Council's judgment if it is consistent with the Magnuson Act and other applicable law.

*Comment 10:* Four commenters believed that the *Illex* moratorium should be disapproved pending further scientific investigation.

*Response 10:* The *Illex* moratorium was disapproved. However, the 21st Northeast Regional Stock Assessment Workshop (SAW 21) reassessed both squid stocks and the results of the assessment and the SAW members' management advice will be available soon.

*Comment 11:* One commenter believed the Council would use the

same qualifying criteria as was used to determine eligibility for the summer flounder moratorium permit and invested money into refitting his vessel. He protested the fact that his vessel will not qualify for the squid fisheries under the criteria specified in the Amendment.

**Response 11:** The Council has the authority to propose regulations that are unique to an individual fishery. It is unfortunate that the commenter invested money without making inquiries about possible qualifying criteria. The fact that the Council intended to use criteria different than those in the summer flounder moratorium was well known before Amendment 5 was taken to public hearings.

**Comment 12:** One commenter stated that Article 1, section 9 of the *United States Constitution* states that "no bill of Attainder or ex-post facto Law shall be passed," yet the time frame for qualifying for the moratorium permits was clearly retroactive, having been announced in June of 1994. The commenter felt that this retroactive date disqualified him for a moratorium permit without due process.

**Response 12:** The rule implementing the moratorium is not a bill of Attainder; it neither rises to the level of a legislative act, nor pronounces an individual guilty of a crime without due process. The use of a date that precedes the publication date of this rule as a basis for qualifying for a moratorium permit does not amount to an "ex-post facto Law." A control date document was published in the Federal Register on August 13, 1992 (57 FR 36384). This legal document advised the public that entry into the fishery after its publication date might not guarantee future access to the fishery if the Council developed an amendment to the FMP that limited access. The control date was later changed by the Council when it adopted August 13, 1993, in the Amendment as the end date for the qualifying period. Consequently, the fact that the control date could be used as a qualifying criterion was announced to the public long before this rule was published.

The publication of the control date signified the inception of a long process that differentiates the legislative from the rulemaking process. During this process, Amendment 5, which included the control date and qualification period, was developed, debated, subjected to public scrutiny, and finally adopted by the Council for submission to NMFS. The control date criterion was not adopted after the fact, as the public was aware of the control date throughout the process. To prevent the

Council from choosing a moratorium qualifying date that preceded the date of the final rule would seriously impair the value of any moratorium; the time needed to bring a fishery management plan or amendment containing a moratorium provision to the implementation stage would allow for a dramatic increase in effort in the fishery affected, thereby thwarting the Council's ability to limit effort and conserve the resource. This result runs contrary to the broad responsibility invested in the Council by the framers of the Magnuson Act.

**Comment 13:** Two commenters believed that a mesh size of 2 $\frac{3}{8}$  inches, as opposed to 1 $\frac{7}{8}$  inches, is needed in the *Loligo* fishery to address issues of juvenile escapement of *Loligo* and discard of small scup and butterfish.

**Response 13:** No mesh selectivity studies have been done to analyze the effect of different mesh sizes and configuration on the escapement of juvenile squid. Thus, no scientific support exists for the commenter's contention. New Jersey fishermen testified that they use 1 $\frac{7}{8}$  inch mesh and experienced no problems of juvenile escapement. The imposition of a minimum mesh size is an important first step in conserving the resource. NMFS has encouraged the Council to investigate the escapement issue and to adjust the mesh size through the framework mechanism in Amendment 5, should the Council's conclusions warrant such action.

**Comment 14:** The overfishing definitions for *Loligo* and *Illex* squid are outdated and meaningless.

**Response 14:** Amendment 5 does not propose new overfishing definitions for the squids. SAW 21 reassessed both squid species and the results of that assessment will be used to establish new overfishing definitions. Such definitions must be implemented by a future plan amendment.

#### Changes From the Proposed Rule

Since three management measures published in the proposed rule are disapproved, the following provisions have been removed: Provisions at § 655.4 and other appropriate sections regarding the issuance or use of a *Loligo* moratorium permit; the provision at § 655.22(b)(2) that would use LTTPC to constrain ABC for Atlantic mackerel; and the sea herring exemption at § 655.25(a)(2).

#### Classification

The Director, Northeast Region, NMFS, determined that the approved measures of Amendment 5 are necessary for the conservation and management of

the Atlantic Mackerel, Squid, and Butterfish Fisheries and that they are consistent with the Magnuson Act and other applicable laws.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule on December 20, 1995 (60 FR 65618). As such, no regulatory flexibility analysis was required and none has been prepared.

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB under control numbers 0648-0229, 0648-0018, 0648-0212, 0648-0202, and 0648-0306. The response times for these requirements are estimated to be: 2 minutes per response for dealer reporting, 6 minutes per response for employment data, 30 minutes per response for vessel permits and vessel permit appeals, 45 minutes per response for vessel I.D. requirements, 1 hour per response for operator permits, 5 minutes per response for dealer permits, and 2 minutes per response for the observer notification requirement.

The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information, including suggestions for reducing burdens, to Dr. Andrew Rosenberg and OMB (see ADDRESSES). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a current valid OMB Control Number.

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

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

**50 CFR Part 655**

Fisheries, Reporting and recordkeeping requirements.

Dated: March 21, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, 50 CFR parts 611 and 655 are amended as follows:

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding in the left column under 50 CFR, in numerical order, “655.4”, “655.5”, “655.6”, “655.7”, and “655.8”, and in the right column, in corresponding positions, the control numbers “and -0212”, “-0202”, “and -0229”, “-0018”, and “-0306”.

**PART 611—FOREIGN FISHING**

3. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

4. In § 611.50, paragraphs (b)(3), (b)(4)(i), and (b)(4)(ii) are revised to read as follows:

**§ 611.50 Northwest Atlantic Ocean fishery.**

\* \* \* \* \*

(b) \* \* \*

(3) **TALFF.** The Atlantic mackerel TALFF for the Northwest Atlantic Ocean fishery is published in the Federal Register. Current TALFFs are also available from the Regional Director. The procedure for determining and adjusting the Atlantic mackerel TALFF is set forth in 50 CFR part 655.

(4) \* \* \*

(i) The other allocated species, namely: Atlantic herring, Atlantic mackerel, butterfish (as a bycatch of Atlantic mackerel), and river herring (including alewife, blueback herring, and hickory shad); and

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail flounder, weakfish, white hake, short-

finned squid, long-fin squid, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except non-allocated squids).

\* \* \* \* \*

5. Part 655 is revised to read as follows:

**PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES**

**Subpart A—General Provisions**

Sec.

- 655.1 Purpose and scope.
- 655.2 Definitions.
- 655.3 Relation to other laws.
- 655.4 Vessel permits.
- 655.5 Operator permit.
- 655.6 Dealer permit.
- 655.7 Recordkeeping and reporting requirements.
- 655.8 Vessel identification.
- 655.9 Prohibitions.
- 655.10 Facilitation of enforcement.
- 655.11 Penalties.

**Subpart B—Management Measures**

- 655.20 Fishing year.
- 655.21 Maximum optimum yields.
- 655.22 Procedures for determining initial annual amounts.
- 655.23 Closure of the fishery.
- 655.24 Time and area restrictions for directed foreign fishing.
- 655.25 Gear restrictions.
- 655.26 Minimum fish sizes. [Reserved]
- 655.27 Possession limits. [Reserved]
- 655.28 At-sea observer coverage.
- 655.29 Transfer-at-sea.
- 655.30 Experimental fishery.

Figure 1 to part 655—Exemption line to minimum net mesh-size requirement for *Loligo* squid.

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

**Subpart A—General Provisions**

**§ 655.1 Purpose and scope.**

(a) The regulations in this part govern the conservation and management of Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish.

(b) The regulations governing fishing for Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish by vessels other than vessels of the United States are contained in 50 CFR part 611.

(c) This part implements the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean.

**§ 655.2 Definitions.**

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Atlantic butterfish* or *butterfish* means the species *Peprilus triacanthus*.

*Atlantic mackerel* or *mackerel* means the species *Scomber scombrus*.

*Atlantic Mackerel, Squid, and Butterfish Monitoring Committee* or *Monitoring Committee* means a committee made up of staff representatives of the Mid-Atlantic and New England Fishery Management Councils, and the Northeast Regional Office and Northeast Fisheries Science Center of NMFS. The Council Executive Director or a designee chairs the Committee.

*Being rerigged* means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for *Loligo* squid or butterfish.

*Charter* or *party boat* means any vessel that carries passengers for hire to engage in fishing.

*Council* means the Mid-Atlantic Fishery Management Council.

*Dealer* means any person who receives squid, mackerel, or butterfish for a commercial purpose, other than solely for transport on land, from the owner or operator of a vessel issued a permit under § 655.4.

*Fishery Management Plan (FMP)* means the Fishery Management Plan for the Atlantic mackerel, squid, and butterfish fisheries of the Northwest Atlantic Ocean, as revised by subsequent amendments.

*Fishing for commercial purposes* means any fishing or fishing activity that results in the harvest of Atlantic mackerel, squid, or butterfish, one or more of which (or parts thereof) is sold, traded, or bartered.

*Fishing trip* or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

*Gross registered tonnage (GRT)* means the gross tonnage specified on the U.S. Coast Guard documentation.

*Illex* means the species *Illex illecebrosus* (short-fin squid or summer squid).

*Joint venture harvest* means U.S.-harvested Atlantic mackerel transferred to foreign vessels in the EEZ.

*Land* means to begin offloading fish or to offload fish at sea or on land, or to enter port with fish.

*Liner* means a piece of mesh rigged inside the main or outer net.

*Loligo* means the species *Loligo pealei* (long-fin squid or bone squid).

*Metric ton (mt)* means 1,000 kg or 2,204.6 lb.

*Operator* means the master, captain, or other individual aboard a fishing vessel and in charge of that vessel's operations.

*Personal use* means use not for sale, barter, or trade.

*Postmark* means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

*Recreational fishing* means fishing that neither is intended to, nor results in, the barter, trade, or sale of fish.

*Recreational fishing vessel* means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

*Regional Director* means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298, or a designee.

*Reporting month* means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

*Reporting week* means a period of time beginning at 0001 hours local time on Sunday and ending at 2400 hours local time the following Saturday.

*Squid* means *Loligo pealei* and *Illex illecebrosus*.

*Substantially similar harvesting capacity* means the same or less GRT and vessel registered length for commercial vessels.

*Transfer* means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

*Under construction* means that the keel has been laid.

*Vessel registered length* means the registered length specified on U.S. Coast Guard Documentation, or state registration if the state registered length is verified by a NMFS authorized official.

#### § 655.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (d) of this section.

(b) Additional regulations governing domestic fishing for Northeast Multispecies, which affect this part, are found at 50 CFR part 651.

(c) Additional regulations governing domestic fishing for summer flounder, which affect this part, are found at 50 CFR part 625.

(d) Nothing in these regulations supersedes more restrictive state management measures.

#### § 655.4 Vessel permits.

(a) *General*—(1) *Requirement*. Beginning on January 1, 1997, any vessel of the United States, including

party or charter vessels, that fishes for, possesses, or lands Atlantic mackerel, squid, or butterfish in or from the EEZ, must have been issued and carry on board a valid *Loligo* squid and butterfish moratorium permit, or a valid incidental catch permit, or a valid Atlantic mackerel and *Illex* squid permit, or a valid party or charterboat permit issued under this section. This requirement does not apply to recreational fishing vessels. Until January 1, 1997, vessels that have been issued 1995 Federal squid, mackerel, and butterfish permits and are not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land squid, Atlantic mackerel or butterfish in or from the EEZ.

(2) *Condition*. Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing activities, catch and pertinent gear (without regard to whether such fishing occurs in or from the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing activities, catch and gear will remain subject to all applicable state requirements. If a requirement of this part differs from a management measure required by state law, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Moratorium permit*—(1) *Loligo squid and butterfish*. A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (c)(1) of this section, if it meets any of the following criteria:

(i) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* or butterfish in any 30-consecutive-day period between August 13, 1981, and August 13, 1993; or

(ii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Loligo* or butterfish fishery during the effective period of the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iii) Vessels that are judged unseaworthy by the U.S. Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity during the effective period of the moratorium.

(2) *Restriction*. No one may apply for the permit specified in paragraph (b)(1) of this section more than 12 months after the effective date of these regulations, or the event specified under paragraph (i)(1) of this section. This section does not affect annual permit renewals.

(3) *Appeal of denial of permit*. (i) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (b)(1)(i) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(ii) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(iii) The hearing officer shall make a recommendation to Regional Director.

(iv) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(c) *Incidental catch permit*. (1) Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish as an incidental catch in another directed fishery.

(2) *Adjustments to the incidental catch*. The incidental catch allowance may be revised by the Regional Director based upon a recommendation by the Council following the procedure set forth in § 655.22. NMFS will publish an adjustment in the Federal Register. The public may comment on the adjustment for 30 days after the date of publication. After consideration of public comments, NMFS may publish a notification of adjustment to the incidental catch allowance in the Federal Register.

(d) *Atlantic mackerel and Illex squid permit*. The owner of any vessel of the United States must obtain a permit under this part to fish for or retain Atlantic mackerel or *Illex* squid in or from the EEZ.

(e) *Party and charter boat permit*. The owner of any party or charter boat must obtain a permit under this part to fish for or retain in or from the EEZ Atlantic mackerel, squid or butterfish while carrying passengers for hire.

(f) *Vessel permit application*. (1) An application for a permit under this section must be submitted and signed by the owner of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will

notify the applicant of any deficiency in the application pursuant to this section. Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets any eligibility requirements. Dealer weighout forms, joint venture receipts, and notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

(2) *Information requirements.* In addition to applicable information required to be provided by paragraph (f)(1) of this section, an application for a permit under this section must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a valid copy of the vessel's U.S. Coast Guard documentation or, if undocumented, the state registration number and a copy of the current state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation showing the principals in the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners that have acquired more than a 25-percent interest; the name and signature of the owner or the owner's authorized representative; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel; and a copy of the charter/party boat license and number of passengers the vessel is licensed to carry (charter and party boats); and any other information required by the Regional Director to manage the fishery.

(g) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook (available from Regional Director) for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the

application will be considered incomplete for purposes of paragraph (h) of this section. Any fee paid by an insufficient commercial instrument shall render any permit issued on the basis thereof null and void.

(h) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit under this section within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application as described in paragraph (f) of this section. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (b)(3) of this section; or

(iii) The applicant has failed to comply with all applicable reporting requirements of § 655.7 during the 12 months immediately preceding the date of the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 655.7 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be deemed abandoned.

(i) *Expiration.* Except as provided in paragraph (b)(1)(ii) of this section, a permit expires:

(1) When the owner retires the vessel from the fishery;

(2) Upon the renewal date specified on the permit; or

(3) When the ownership of the vessel changes; however, the Regional Director may authorize the continuation of a moratorium permit for the *Loligo* squid and butterfish fisheries if the new owner requests. Applications for permit continuations must be addressed to the Regional Director.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (m) of this section.

(k) *Replacement.* Replacement permits for an otherwise valid permit may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the

vessel, and the Federal fisheries permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the fishing vessel and owner for which it is issued.

(m) *Change in application information.* Any change in the information specified in paragraph (f)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is null and void.

(n) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(o) *Display.* The permit must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

#### § 655.5 Operator permit.

(a) *General.* Beginning June 3, 1996, any operator of a vessel issued a valid Federal Atlantic mackerel, *Loligo*, *Illex*, or butterfish permit under this part, or any operator of a vessel fishing for Atlantic mackerel, *Loligo*, *Illex*, or butterfish in the EEZ or in possession of Atlantic mackerel, *Loligo*, *Illex*, or butterfish in or harvested from the EEZ, must have and carry on board a valid operator's permit issued under this part. An operator permit issued pursuant to part 649, 650, or 651 shall satisfy the permitting requirement of this section.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken,

or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 655.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be deemed abandoned.

(g) *Expiration.* A Federal operator permit will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two recent color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

#### **§ 655.6 Dealer permit.**

(a) *General.* Beginning on January 1, 1997, all dealers must have a valid permit issued under this part in their possession.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must

be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s), owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 655.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be deemed abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified

under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

#### **§ 655.7 Recordkeeping and reporting requirements.**

(a) *Dealers—(1) Weekly report.* Beginning on January 1, 1997, dealers must send by mail, to the Regional Director or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided in the report: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by

species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be received, or postmarked if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(6) *At-sea activities.* All persons purchasing, receiving, or processing any mackerel, squid, or butterfish at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) and (2) of this section and provide those reports to the Regional Director or designee on the same frequency basis.

(b) *Vessel owners—(1) Fishing log reports.* Beginning on January 1, 1997, the owner of any vessel issued a Federal Atlantic mackerel, *Loligo* squid, butterfish or *Illex* squid permit under § 655.4 must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name, U.S. Coast Guard (USCG) documentation number (or state registration number if

undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Fishing log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. All information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Upon the request of an authorized officer, or an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(4) *Record retention.* Copies of the fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

#### **§ 655.8 Vessel identification.**

(a) *Vessel name.* Each fishing vessel owner subject to this part must affix permanently the vessel's name on the port and starboard sides of the bow and, if possible, on its stern if the vessel is over 25 ft (7.6 m) in length.

(b) *Official number.* Each fishing vessel owner subject to this section must display the vessel's official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft if the vessel is over 25 ft (7.6 m) in length. The official number is the U.S. Coast Guard documentation number, or the vessel's state registration number for vessels not required to be documented under title 46 of the United States Code.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official

number must be permanently affixed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner.* Any vessel owner subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(e) *Nonpermanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for Atlantic mackerel, squid, or butterflyfish.

#### **§ 655.9 Prohibitions.**

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal Atlantic mackerel, squid, or butterflyfish permit under § 655.4, or issued an operator permit under § 655.5, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* squid or butterflyfish unless issued a moratorium permit pursuant to § 655.4(b).

(2) Use any vessel for taking, catching, harvesting, or landing of any Atlantic mackerel, squid, or butterflyfish, except as provided in § 655.4(a), unless the vessel has on board a valid permit issued under § 655.4.

(3) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 655.4(m).

(4) Falsify or fail to affix and maintain vessel markings as required by § 655.8.

(5) Take, retain, or land Atlantic mackerel, squid, or butterflyfish in excess of a trip allowance specified under § 655.23.

(6) Take, retain, or land Atlantic mackerel, squid, or butterflyfish after a total closure specified under § 655.23.

(7) Make any false statement, written or oral, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any mackerel, squid, or butterflyfish.

(8) Fish with or possess nets or netting that do not meet the minimum

mesh requirement for *Loligo* specified in § 655.25(a) or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 655.25(b) or the vessel is fishing under an exemption specified in § 655.25(a).

(9) Sell or transfer Atlantic mackerel, squid, or butterflyfish to another person for a commercial purpose, other than transport, unless that person has a dealer permit issued under § 655.6.

(10) Falsify information in order to qualify a vessel for a moratorium permit pursuant to § 655.4(b).

(11) Transfer squid, or butterflyfish at sea to another vessel unless that other vessel is issued a valid moratorium permit issued pursuant to § 655.4(b) or a letter of authorization issued by the Regional Director.

(12) Fail to comply with any measures implemented pursuant to § 655.22.

(13) Refuse to embark an observer if requested by the Regional Director.

(14) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance an observer conducting his or her duties aboard a vessel.

(15) Carry passengers for hire while fishing commercially under a permit issued pursuant to § 655.4(b), § 655.4(c), or § 655.4(d).

(16) Fail to carry on board a letter of authorization if fishing in an experimental fishery pursuant to § 655.30.

(17) Employ an operator aboard a vessel who has not been issued an operator permit that meets the requirements of § 655.5.

(b) It is unlawful for the owner and operator of a party or charter boat issued a permit (including a moratorium permit) pursuant to § 655.4, when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 655.22(d)

(2) Sell or transfer Atlantic mackerel, squid, or butterflyfish to another person for a commercial purpose.

(3) Refuse to embark an observer if requested by the Regional Director.

(c) It is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ Atlantic mackerel, squid, or butterflyfish unless the person is operating a vessel, other than a recreational fishing vessel, issued a permit pursuant to § 655.4, and the permit is on board the vessel, and has not been surrendered, revoked, or suspended.

(2) Possess nets or netting with mesh not meeting the minimum size

requirement of § 655.25 that do not meet the net stowage provisions of § 655.25, if the person possesses *Loligo* squid harvested in or from the EEZ.

(3) If subject to the permitting requirements in § 655.4, § 655.5, or § 655.6, to offload, to cause to be offloaded, sell or buy, whether on land or at sea, as an owner, operator, dealer, buyer, or receiver, without accurately and completely preparing and submitting in a timely fashion the documents required by § 655.7.

(4) Transfer *Loligo* squid or butterflyfish within the EEZ, unless the vessels participating in the transfer are issued valid moratorium permits pursuant to § 655.4(b) or valid letters of authorization pursuant to § 655.29.

(5) Purchase or otherwise receive, except for transport on land, Atlantic mackerel, squid, or butterflyfish from the owner or operator of a vessel issued a permit pursuant to § 655.4, unless in possession of a valid permit issued under § 655.6.

(6) Purchase or otherwise receive for a commercial purpose, Atlantic mackerel, squid, or butterflyfish caught by other than a vessel issued a permit pursuant to § 655.4, unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

(7) Make any false statements, oral or written, to an authorized officer concerning the catching, taking, harvesting, landing, purchase, sale, possession, or transfer of any Atlantic mackerel, squid, or butterflyfish.

(8) Fail to report to the Regional Director within 15 days any change in information contained in the permit application.

(9) Assault, resist, impede, oppose, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance to an observer conducting his or her duties aboard a vessel.

(10) Operate a vessel fishing for Atlantic mackerel, squid, or butterflyfish within the EEZ, unless issued an operator permit that meets the requirements of § 655.5.

(11) Violate any other provisions of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(d) All Atlantic mackerel and butterflyfish possessed on board a party or charter boat issued a permit under § 655.4 are deemed to have been harvested from the EEZ.

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 655.30 or to fail to keep such letter on

board the vessel during the period of the experiment.

**§ 655.10 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 655.11 Penalties.**

See § 620.9 of this chapter.

**Subpart B—Management Measures**

**§ 655.20 Fishing year.**

The fishing year is the 12-month period beginning on January 1 and ending on December 31.

**§ 655.21 Maximum optimum yields.**

The optimum yields (OYs) specified pursuant to § 655.22 during a fishing year may not exceed the following amounts:

- (a) Atlantic mackerel: That quantity of mackerel that is less than or equal to ABC specified pursuant to § 655.22;
- (b) *Loligo* squid: 36,000 mt (79,362,000 lb);
- (c) *Illex* squid: 30,000 mt (66,135,000 lb); and
- (d) Butterfish: 16,000 mt (35,272,000 lb).

**§ 655.22 Procedures for determining initial annual amounts.**

(a) *Initial annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) will meet annually to develop specifications regarding:

- (1) The initial optimum yield (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids;
  - (2) The IOY, DAH, DAP and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and
  - (3) The IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for Atlantic mackerel.
- (4) The Monitoring Committee will recommend these specifications to the Mackerel, Squid, and Butterfish Committee (Committee) of the Council. As a basis for establishing these specifications and restrictions, the Monitoring Committee will review available data pertaining to the following:
- (i) Commercial and recreational landings;
  - (ii) Current estimates of fishing mortality;
  - (iii) Stock status;
  - (iv) The most recent estimates of recruitment;
  - (v) Virtual population analysis results;
  - (vi) Levels of noncompliance by harvesters or individual states;
  - (vii) Impact of size/mesh regulations;
  - (viii) The results of a survey of domestic processors and joint venture

operators of estimated Atlantic mackerel processing capacity and intent to use that capacity;

- (ix) The results of a survey of fishermen's trade associations of estimated Atlantic mackerel harvesting capacity and intent to use that capacity;
- (x) Any other relevant information.

(b) *Guidelines.* The specifications determined pursuant to paragraph (a) by the Monitoring Committee will be consistent with the following guidelines:

(1) *Squid.* (i) The most recent biological data, including data on discards, will be reviewed annually under the procedures specified in paragraph (a) of this section. ABC for any fishing year is either the maximum OY specified in § 655.21, 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.

(2) *Atlantic mackerel.* (i) Atlantic mackerel ABC, the allowable biological catch in U.S. waters, is derived using the following terms: C=the estimated catch of mackerel in Canadian waters for the upcoming fishing year; S=the mackerel spawning stock size at the beginning of the year for which quotas are specified; and T=a spawning stock size that must be maintained in the year following the year for which quotas are specified, where  $T \geq 900,000$  mt (1,984,050,000 lbs). Consequently,  $ABC = S - C - T$ .

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

(iii) IOY is composed of DAH and TALFF. DAH, DAP and JVP are projected by reviewing data from sources specified in this paragraph (a) 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 such criteria as contained in the Magnuson Act, specifically section 201(e), and the application of the following economic factors:

- (A) Total world export potential by mackerel producing countries;
- (B) Total world import demand by 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 U.S. 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; and

(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.

(iv) The Council may also recommend that certain ratios of TALFF to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(3) *Butterfish.* (i) The most recent biological data, including data on discards, will be reviewed annually under the procedures specified in paragraph (a) of this section. If this review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Council will 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 is to be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF which is equal to 0.08 percent of the allocated portion of the Atlantic mackerel TALFF.

(c) *Adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the Council, during the fishing year by publishing a notification in the Federal Register stating the reasons for such an action with a 30-day comment period.

(d) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Committee the following measures it determines are necessary to assure that the specifications are not exceeded:

- (1) Commercial quotas;
- (2) The amount of *Loligo* squid and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 655.4(c);
- (3) Commercial minimum fish sizes;

- (4) Commercial trip limits;
- (5) Commercial seasonal quotas;
- (6) Minimum mesh sizes;
- (7) Commercial gear restrictions;
- (8) Recreational harvest limit;
- (9) Recreational minimum fish size;
- (10) Recreational possession limits;
- (11) Recreational season.

(e) *Annual fishing measures.* (1) The Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment, the Committee shall make its recommendations to the Council with respect to the specifications and any other measures necessary to assure that the specifications are not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental, economic, and social impacts of the proposed action. The Regional Director will review these recommendations, and on or about November 1 of each year, and will publish a notification in the Federal Register of proposed specifications and any other measures necessary to assure that the specifications are not exceeded. If the specifications differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The Federal Register notification of proposed specifications will provide for a 30-day public comment period.

(2) The Council's recommendations will be available for inspection at the office of the Regional Director during the public comment period.

(3) On or about December 15 of each year, the Secretary will make a final determination concerning the specifications for each species and the other measures contained in the notification of proposed specifications. After the Secretary considers all relevant data and any public comments, a notification of final specifications and response to public comments will be published in the Federal Register. If the final amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the guidelines set forth in paragraph (b) of this section.

#### **§ 655.23 Closure of the fishery.**

(a) *General.* The Secretary shall close the directed Atlantic mackerel, *Illex* squid, *Loligo* squid, or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, if such closure is necessary to prevent the DAH from being exceeded. The closure will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Secretary shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* The Secretary will take the following actions if it is determined that a closure is necessary:

(1) Notify, in advance, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Councils;

(2) Mail notifications of the closure to all holders of permits issued under §§ 655.4, 655.5 and 655.6 at least 72 hours before the effective date of the closure;

(3) Provide for adequate notification of the closure to recreational participants in the fishery; and

(4) Publish a notification of closure in the Federal Register.

(c) *Incidental catches.* During a period of closure of a directed fishery, the trip limit for the species for which the fishery is closed is 10 percent by weight of the total amount of fish on board for vessels with *Loligo*/butterfish moratorium permits or *Illex* or mackerel commercial permits. During a period of closure of the directed fishery for *Loligo* or butterfish, the trip limit for vessels issued an incidental catch permit for those species is 10 percent by weight of the total amount of fish on board, or the allowed level of incidental catch specified in § 655.4(c)(1), whichever is less.

#### **§ 655.24 Time and area restrictions for directed foreign fishing.**

Foreign fishing is regulated under the provisions specified in § 611.50(b)(2).

#### **§ 655.25 Gear restrictions.**

(a) *Mesh restriction and exemption.* Owners or operators of otter trawl vessels possessing *Loligo* squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 $\frac{7}{8}$  inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net unless they are fishing during the months of June, July, August, and September for *Illex* seaward

of the following coordinates (see Figure 1 to part 655):

Point	Latitude	Longitude
Point M1 .....	43°58.0' N.	67°22.0' W.
Point M2 .....	43°50.0' N.	68°35.0' W.
Point M3 .....	43°30.0' N.	69°40.0' W.
Point M4 .....	43°20.0' N.	70°00.0' W.
Point M5 .....	42°45.0' N.	70°10.0' W.
Point M6 .....	42°13.0' N.	69°55.0' W.
Point M7 .....	41°00.0' N.	69°00.0' W.
Point M8 .....	41°45.0' N.	68°15.0' W.
Point M9 .....	42°10.0' N.	67°10.0' W.
Point M10 .....	41°18.6' N.	66°24.8' W.
Point M11 .....	40°55.5' N.	66°38.0' W.
Point M12 .....	40°45.5' N.	68°00.0' W.
Point M13 .....	40°37.0' N.	68°00.0' W.
Point M14 .....	40°30.0' N.	69°00.0' W.
Point M15 .....	40°22.7' N.	69°00.0' W.
Point M16 .....	40°18.7' N.	69°40.0' W.
Point M17 .....	40°21.0' N.	71°03.0' W.
Point M18 .....	39°41.0' N.	72°32.0' W.
Point M19 .....	38°47.0' N.	73°11.0' W.
Point M20 .....	38°04.0' N.	74°06.0' W.
Point M21 .....	37°08.0' N.	74°46.0' W.
Point M22 .....	36°00.0' N.	74°52.0' W.
Point M23 .....	35°45.0' N.	74°53.0' W.
Point M24 .....	35°28.0' N.	74°52.0' W.

Vessels fishing under this exemption may not have "available for immediate use," as described in paragraph (b) of this section, any net with mesh size less than 1 $\frac{7}{8}$  inches (48 mm) diamond mesh when the vessel is landward of the specified coordinates.

(b) *Net stowage requirements.* Otter trawl vessels possessing *Loligo* squid that are subject to the minimum mesh size may not have "available for immediate use" any net, or any piece of net, not meeting the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use, is considered not to be "available for immediate use":

(1) A net stowed below deck, provided:

(i) It is located below the main working deck from which the net is deployed and retrieved;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) It is fan-folded (flaked) and bound around its circumference; or

(2) A net stowed and lashed down on deck, provided:

(i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net; or

(3) A net that is on a reel and is covered and secured, provided:

(i) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed from the net and stored below deck; or

(4) Nets that are secured in a manner authorized in writing by the Regional Director and published in the Federal Register.

(c) *Mesh obstruction or constriction.* Any combination of mesh or liners that effectively decreases the mesh below the minimum size is prohibited, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel 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 1 $\frac{7}{8}$  inches (48 mm) (inside stretch measure); Net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than an effective mesh opening of 1 $\frac{7}{8}$  inches (48 mm) (inside stretch measure). The "top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net. Net strengtheners (covers) may not have an effective mesh opening of less than 4.5-

inch (11.43-cm) (inside stretch measure).

**§ 655.26 Minimum fish sizes. [Reserved]**

**§ 655.27 Possession limits. [Reserved]**

**§ 655.28 At-sea observer coverage.**

(a) The Regional Director may require observers for any vessel holding a permit issued under § 655.4.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of Atlantic mackerel, *Loligo* squid, *Illex* squid, or butterfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

**§ 655.29 Transfer-at-sea.**

Only vessels issued a moratorium permit under § 655.4(b) may transfer

*Loligo* or butterfish at sea. Unless authorized in writing by the Regional Director, vessels issued an incidental catch permit under § 655.4(c) are prohibited from transferring or attempting to transfer *Loligo* or butterfish from one vessel to another vessel.

**§ 655.30 Experimental fishery.**

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the Atlantic mackerel, squid, or butterfish resource or fishery.

(b) The Regional Director may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic mackerel, squid, or butterfish resource and fishery;

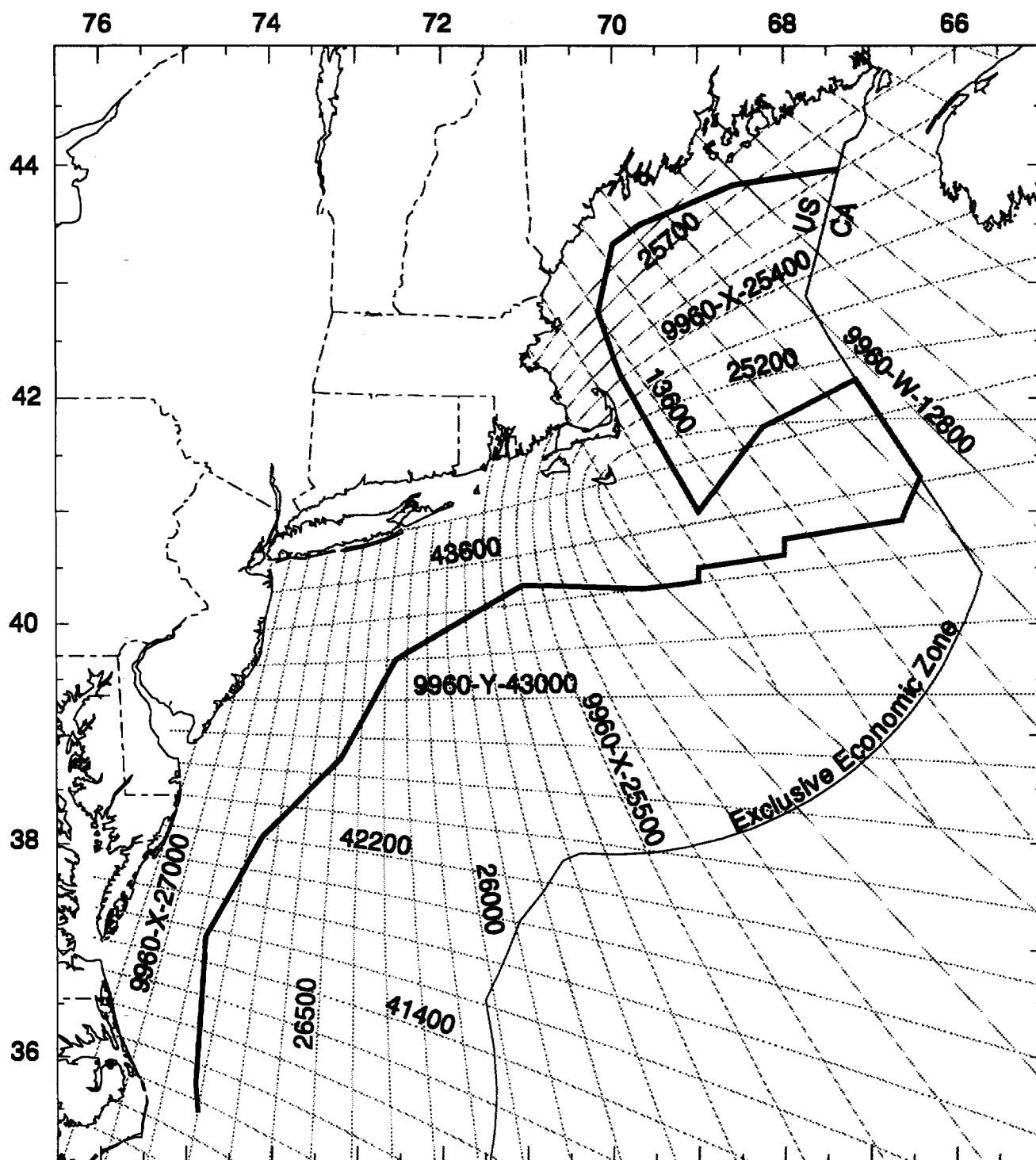
(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

4. Figure 1 to part 655 is added to read as follows:

BILLING CODE 3510-22-P



### Exemption Line to Minimum Net Mesh-size Requirement for Loligo Squid

BILLING CODE 3510-22-C

Figure 1 to Part 655—Exemption Line to Minimum Net Mesh-size Requirement for Loligo Squid

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