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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Docket No. 190215125-9125-01

RIN 0648-BI49

Fisheries of the Northeastern United States; Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures to approve and implement Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action proposes to establish a 5-year rebuilding program for Atlantic mackerel, set 2019-2021 Atlantic mackerel specifications and a river herring and shad cap for the Atlantic mackerel fishery, modify the Mid-Atlantic Fishery Management Council's risk policy, and modify in-season closure measures. This action is necessary to prevent overfishing and rebuild the Atlantic mackerel stock based on a recent stock assessment that found the Atlantic mackerel stock to be overfished and subject to overfishing. The intended effect of this rule is to sustainably manage the Atlantic mackerel fishery and achieve optimum yield on a continuing basis.

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

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0113, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0113, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Mackerel Framework 13.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

The Mid-Atlantic Fishery Management Council prepared a draft environmental assessment (EA) for Framework Adjustment 13 that describes the proposed action and other alternatives considered and provides a thorough analysis of the impacts of the proposed action and alternatives considered. Copies of Framework 13, including the draft EA and the preliminary Regulatory Impact Review (RIR) analysis, are available from:

Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA/RIR is accessible via the Internet at <http://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Alyson Pitts, Fishery Management Specialist, (978) 281-9352, Alyson.Pitts@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic mackerel fishery is managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) through an annual quota, possession limits, and a catch cap for bycatch of river herring and shad. In-season accountability measures (AM), including closures of the fishery through possession limit reductions, help ensure catch does not exceed the Atlantic mackerel annual catch limit (ACL) or the river herring and shad catch cap. Reactive AMs require a pound-for-pound payback the following year if landings exceed the Atlantic mackerel ACL.

Current regulations require the Council's Atlantic Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, the Council sets the ACL, domestic annual harvest (DAH), domestic annual processing, total allowable level of foreign fishing, joint venture processing, and commercial and recreational annual catch targets (ACT) for up to 3 years.

These specifications are reviewed annually, and may be revised by the Council based on updated information.

A November 2017 benchmark stock assessment (Stock Assessment Workshop (SAW) 64) concluded that the Atlantic mackerel stock is overfished and subject to overfishing. The final assessment summary report is available on the Northeast Fisheries Science Center (NEFSC) website (www.nefsc.noaa.gov/saw/reports.html). The Atlantic mackerel benchmark assessment identifies an above average year-class in 2015 that drives the rebuilding projections. However, both the SAW 64 report and the SSC note that estimates of the 2015 year-class are highly uncertain, as is typical for terminal year recruitment estimates. If this year-class materializes and results in increased biomass as projected, rebuilding should occur quickly. Projections also indicate there will likely be no overfishing in 2018 and that the stock should have climbed above the overfished threshold in 2018. An assessment update is expected in 2020 to evaluate rebuilding progress and the realized size of the 2015 and subsequent year-classes.

In response to SAW 64, the Council developed Framework Adjustment 13 to create an Atlantic mackerel rebuilding plan that would prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act. Based on the new stock assessment, NMFS declared the Atlantic mackerel stock to subject to overfishing and overfished, and notified the Council of its determination and the requirement for the Council to prepare a rebuilding plan in July 2018. The SSC had already met in May 2018 to review the assessment and develop ABC recommendations for Atlantic mackerel based on the new stock assessment. The Council was already developing a rebuilding plan when it received the formal notification from

NMFS. At its August 2018 meeting, the Council recommended to establish specifications for a 5-year rebuilding plan, including the river herring and shad catch cap and in-season closure measures through Framework 13. On October 12, 2018, the Council submitted the amendment and draft EA to NMFS for preliminary review, with submission of the final draft amendment on February 28, 2019. The Council reviewed the proposed regulations in this rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Act. This action also includes 2019-2021 specifications based on the proposed rebuilding plan and adjustments to in-season closure measures to slow fishery catch and allow Atlantic mackerel bycatch in the Atlantic herring fishery, as described further below.

NMFS closed the limited access Atlantic mackerel fishery on March 12, 2019, due to the river herring and shad catch cap being reached (March 13, 2019; 84 FR 8999). As a result, the mackerel catch in 2019 will be less than the projected 2019 catch allocation under the proposed 5-year rebuilding plan. We anticipate impacts of the 5-year rebuilding plan to be similar to those described in the 3-year rebuilding plan due to the lower catch in 2019. We will not know how the low catch in 2019 will affect the projections after the fishing year. The Council will conduct its annual review of Atlantic mackerel specifications in 2020, taking into account the actual 2019 catch to determine if adjustments should be made to the fishery specifications under the rebuilding plan for 2021 and beyond.

Proposed Measures

Under the Magnuson-Stevens Act, we are required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law.

The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures that the Council proposes based only on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comments on the Council's proposed measures in Framework 13, as described below, and whether they are consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

1. *Atlantic mackerel rebuilding plan.*

For stocks that are overfished, section 304(e)(4) of the Magnuson-Stevens Act requires that a rebuilding program shall be as short as possible, taking into account the status and biology of any overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. The Magnuson-Stevens Act also requires the Council to develop measures for a rebuilding plan as soon as possible and the rebuilding plan must rebuild the stock within 10 years. The Council considered 3-, 5-, and 7-year rebuilding programs in this action. The Council proposed the 5-year rebuilding plan, which ends overfishing immediately and establishes measures that would rebuild the stock within 5 years. The 5-year rebuilding plan is as short as possible while also balancing the needs of the fishing communities and considers the interaction of the overfished stock within the marine ecosystem. The proposed 5-year rebuilding plan would have increased the 2019 DAH by 89 percent relative to the 2018 DAH, but as noted, the limited access fishery closed on March 12, 2019. The proposed 5-year plan would allow for an 124-percent increase in 2020 commercial catch compared to 2018, as described

further below. Even with higher catch, biomass is projected to reach 94 percent of the target biomass by 2021 and target rebuilt levels by 2023.

The Council selected the 5-year rebuilding plan in part because it addresses community needs while still rebuilding the stock in a time period that is well below the maximum 10-year rebuilding time period. The 5-year rebuilding program would result in about an additional \$6.6 and \$6.9 million in fishing revenue in 2020 and 2021, respectively, compared to current specifications. In contrast, the 3-year rebuilding plan would have had a \$5.8 million decrease in revenue in the first year, compared to the 5-year rebuilding program if the fishery was open and the proposed specifications were implemented. The second and third years of the 3-year rebuilding program would have had a difference of \$5.2 and \$3.8 million less revenue, respectively, compared to the 5-year plan. In addition, the Council notes that due to the substantial overlap between the Atlantic herring and Atlantic mackerel fisheries, the expected drastic reductions in Atlantic herring quotas and potential mid-water trawl gear restrictions that may have negative impacts on the Atlantic herring fishery and the stability of associated fishing communities. The higher annual catch associated with the 5-year rebuilding program would help mitigate such economic impacts while still rebuilding the stock within the 10-year maximum allowable rebuilding period. Also, as a precautionary measure, the Council capped ABCs under the 5-year plan at levels associated with the Council's current risk policy for a fully rebuilt Atlantic mackerel stock (33,474 mt), instead of allowing the ABCs to increase in 2021 and beyond (as supported by the SSC).

The Council also considered the interaction of mackerel within the marine ecosystem when considering the rebuilding program. The available information on

Atlantic mackerel predation suggests that the ecosystem would not be disrupted under a longer rebuilding period because of the available species to sample, few were found to rely on Atlantic mackerel as prey. Establishing a 5-year plan would rebuild Atlantic mackerel well within the maximum rebuilding period while balancing the needs of fishing communities with the needs of the ecosystem.

2. Revision to the Mid-Atlantic Council Risk Policy

The Council adopted a standard risk policy in 2011 as part of Amendment 13 to the Atlantic Mackerel, Squid, and Butterfish FMP (September 29, 2011; 76 FR 60606). This risk policy formalized the process of addressing scientific and management uncertainty when setting catch limits for specifications and establishes a comprehensive system of accountability for catch relative to those limits, including catch limits associated with a rebuilding plan for overfished stocks. Due to the dynamic nature of fisheries and the environment, the Council anticipated that the risk policy may need to be revised in the future and allowed the risk policy to be adjusted via a framework adjustment to allow for flexibility in its application.

The Council's risk policy is codified at 50 CFR 648.21. The regulations at § 648.21(c) require the Council's SSC to recommend the lowest ABC between that derived from either the Council's risk policy or a rebuilding plan. The proposed 5-year rebuilding plan would allow catches that are higher than what would occur under the Council's current standard risk policy because the 5-year plan is based on a higher rebuilding F (0.237) than is allowed by the current risk policy (0.14). The higher catches proposed under the 5-year rebuilding plan would allow the stock to be rebuilt by 2023 while providing an additional \$9 million in fishing revenue from 2020-2021. In order to adopt

the 5-year rebuilding plan, Framework 13 includes a measure that would modify the risk policy to allow the SSC to recommend 2019-2023 Atlantic mackerel ABCs based on the higher rebuilding fishing mortality rate. The change to the Council's risk policy proposed in this action is specific to the Atlantic mackerel rebuilding plan, and would not affect the application of the Council's risk policy for any other species or FMP.

3. *Atlantic mackerel specifications.*

The current Atlantic mackerel specifications are for 2016-2018, which means that new specifications are needed for 2019, regardless of the assessment findings. If approved, Framework 13 would replace the current specifications that have rolled over from 2018. Table 1 presents the proposed 2019-2021 Atlantic mackerel specifications. These specifications include 10,000 mt for expected Canadian catch, 1,209 mt for expected recreational catch, a 3-percent management uncertainty buffer, and an assumed 0.37 percent commercial discard rate. The 10,000-mt Canadian catch deduction is based on the 2018 Canadian catch limit set by the Canadian Department of Fisheries and Oceans. The 1,209-mt recreational catch is based on the total median recreational catch from 2013-2017. The 3-percent management uncertainty buffer is a reduction from the 10-percent buffer used in recent specifications due to the in-season closure measures proposed in Framework 13 that would slow the fishery by reducing possession limits in a phased approach. The proposed changes to the in-season measures reduce the need for a larger management uncertainty buffer to achieve optimum yield and facilitate effective operation of the mackerel fishery while reducing the likelihood of exceeding the ACL, and are described in the next section. The 31,764 mt overfishing limit (OFL) is defined for only 2019. The SSC determined that it could not set the OFL for 2020 and 2021 because there is too much

uncertainty in the actual 2019 catch, given the early in-season closure and likely resulting stock size. However, in the temporary absence of an OFL, based on recent catch data and projected trends in stock biomass showing annual growth, the defined ABC for 2020 and 2021 is sufficient to prevent overfishing, when combined with the proposed changes for in-season closure provisions that are described below. In addition, an updated stock assessment for Atlantic mackerel will be completed in 2020, which NMFS expects will enable the SSC and Council to develop and set the OFL for 2021 through 2023. Finally, 0.37 percent of expected commercial catch would be set aside for expected discards based on the 2012-2016 discards, which accounted for 0.37 percent of catch in the recent benchmark assessment. The Council will review each component of the Atlantic mackerel specifications annually, and will consider the results of an updated stock assessment in 2020 to refine future specifications.

Table 1. Proposed 2019-2021 Specifications (mt)

	2019	2020	2021
Overfishing Limit	31,764	N/A	N/A
Total ABC	29,184	32,480	33,474
Canadian Deduction	10,000	10,000	10,000
U.S. ABC-ACL (expected Canadian catch deducted)	19,184	22,480	23,474
Recreational Allocation	1,209	1,209	1,209
Commercial Allocation	17,975	21,271	22,265
Management Uncertainty Buffer 3%	539	638	669
Commercial ACT	17,436	20,633	21,597
DAH (ACT minus 0.37% discard rate)	17,371	20,557	21,517

4. *In-season closure provisions.*

The mackerel fishery is variable in production, especially given its mixed-fishery nature with Atlantic herring. This results in potentially leaving a higher than expected amount of quota uncaught. Setting a larger management uncertainty buffer and lower percentage catch triggers may be more likely to avoid ACL overages (which must be paid back) but also more likely to leave quota uncaught. Smaller management uncertainty buffers and higher percentage catch triggers will be more likely to catch the quota but also more likely to lead to ACL overages.

In order to achieve optimum yield and effectively use the available commercial landings, Framework 13 proposes to adjust the in-season closure measures for the commercial Atlantic mackerel fishery. The proposed measures would require an in-season closure of the limited access commercial fishery when 90 percent of the DAH is

projected to be landed. Once that trigger is reached, the Regional Administrator would reduce Atlantic mackerel possession limits to 40,000 lb (18,144 kg) per trip for Tier 1-3 limited access Atlantic mackerel permits and to 5,000 lb (2,268 kg) for open access permits. When 98 percent of the DAH is projected to be landed, the Regional Administrator would implement a 5,000-lb (2,268-kg) trip limit for all permits for the rest of the fishing year to cover remaining incidental catches. The proposed measures would also give the Regional Administrator the discretion to not implement these triggered possession limit reductions in November and December if landings are not projected to exceed the DAH by the end of the year. This measure is intended to increase the likelihood that optimum yield can be harvested, while still minimizing the likelihood of an overage by limiting this authority to November and December at the end of the fishing year.

The proposed in-season management measures would reduce the possibility of ACL overages and help preserve fishing opportunities for the trawl-based herring fishery. However, we note that it may negatively affect a few participants in a small-scale Atlantic mackerel jig fishery, if the Atlantic mackerel fishery closures are triggered. Using July-December jig/handline landings from 2015-2017, a 5,000-lb (2,268-kg) trip limit would have impacted 21 federally-permitted open access vessels. Twenty-one vessels represent one percent of the entire Atlantic mackerel fleet, two percent of small businesses within the fleet, and seven percent of businesses that rely solely on Atlantic mackerel. Due to the small-scale Atlantic mackerel jig fishery using open access permits, participation in the fishery may increase in the future. It is also possible that with the higher Atlantic mackerel quotas closures would not occur, so the 5,000-lb (2,268-kg) trip limit for incidental

permits may not be triggered. Further, the possession limit after a closure due to the river herring and shad catch cap remains at 20,000 lb (9,071 kg) for all Atlantic mackerel vessels. We have included a summary of the economic impacts on this fleet in the “Classification” section of this rule.

5. River herring and shad catch cap.

In 2014, Amendment 14 to the FMP (February 24, 2014; 79 FR 10029) implemented a catch cap to manage the bycatch of river herring and shad in the Atlantic mackerel fishery. Once reached, Atlantic mackerel possession limits are reduced to 20,000 lb (9,071 kg) for the rest of the year, which effectively closes the limited access Atlantic mackerel fishery. To continue to manage river herring and shad catch in the Atlantic mackerel fishery, this action would revise the existing catch cap based on the proposed 2019-2021 Atlantic mackerel quotas. The catch caps are monitored based on river herring and shad bycatch recorded in observer and portside sampling data for mackerel trips by limited access vessels, or trips in which at least 20,000 lb (9,071 kg) of Atlantic mackerel are landed.

The proposed measures would scale the river herring and shad catch cap with Atlantic mackerel landings. The initial cap would be set at 89 mt for 2019-2021, but could increase if the fishery can first land 10,000 mt of Atlantic mackerel without hitting the initial 89-mt river herring and shad catch cap in each year, which was the cap limit in 2015. The 89-mt cap represents the median annual river herring and shad catch by all vessels landing over 20,000 lb (9,071 kg) of mackerel per trip from 2005-2012. Data used to establish the original river herring and shad catch cap in Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish FMP found that Atlantic mackerel landings would be

limited to around 10,000 mt, the approximate DAH at the time of implementation (February 24, 2014; 79 FR 10029). The catch cap would increase to 129 mt in 2019, 152 mt in 2020, and 159 mt in 2021 due to the proposed increasing Atlantic mackerel DAHs under the proposed rebuilding plan. This scaling provision is meant to provide incentives to reduce river herring and shad bycatch, particularly as the Atlantic mackerel quotas would increase in the next few years, regardless of the rate of mackerel catches. The potential increased catch caps are determined by multiplying each year's Atlantic mackerel DAH by 0.74 percent, which is the same river herring/shad bycatch ratio used in 2015. This is a lower ratio than used in 2018 (0.89 percent), so there would be a strong incentive for the fishery to avoid river herring and shad to increase the likelihood of fully harvesting the available Atlantic mackerel DAH in each year.

5. Corrections and Clarifications to Existing Regulations

This proposed rule includes additional revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions were not adopted by the Council under Framework 13, but are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. This proposed rule would modify § 648.24(b)(1)(i)(A) and § 648.24(b)(6), to reference “limited access” and “open access” permits instead of the “directed” and “incidental” fishery to be clear and consistent with the regulations being added and changed with this action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making a final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a draft EA for this action that analyzes the impact of measures contained in this proposed rule. The EA includes a regulatory flexibility analysis, as required by section 603 of the Regulatory Flexibility Act (RFA), which is supplemented by information contained in the preamble of this proposed rule. The IRFA, as summarized below, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A copy of the RFA analysis is available from the Mid-Atlantic Council (see **ADDRESSES**).

Description of the Reasons Why Action by the Agency Is Being Considered

The purpose of this action is to establish a 5-year rebuilding program for Atlantic mackerel, set 2019-2021 Atlantic mackerel specifications and a river herring and shad cap for the Atlantic mackerel fishery, and modify in-season closure measures. The intended effect of this rule is to sustainably manage the Atlantic mackerel fishery and achieve optimum yield on a continuing basis. Section 4.0 of the EA prepared for this action (see

ADDRESSES) contains a more thorough description of the purpose and need for this action.

Statement of the Objectives of, and Legal Basis for, This Proposed Rule

The legal basis and objectives for this action are contained in the preamble to this proposed rule, and are not repeated here. Sections 4.0 and 5.0 of the EA prepared for this action (see **ADDRESSES**) contains a more thorough description of the purpose and need for this action and the rationale for each measure considered.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

The measures proposed in this action apply to vessels that hold any commercial permit for Atlantic mackerel. We analyzed the impacts using NMFS's database for Atlantic mackerel permit holders in 2017 (the most recent year of full year permit data) cross referenced with NMFS ownership data. Some small entities own multiple vessels with Atlantic mackerel permits. For purposes of the Regulatory Flexibility Act, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available. In 2017, 1,829 separate vessels held Atlantic mackerel permits. These vessels were owned by 1,379 entities, nearly all of which (1,368) were small business entities.

Based on revenue from all species landed, 951 of these were commercial fishing entities, 116 were for-hire entities, and 301 had no revenue, but are considered small businesses. For those small businesses with revenues, average revenues were \$0.6 million in 2017. There were 299 entities that reported revenue from Atlantic mackerel during 2017. Of these entities, 4 were large and 295 were small. In 2017, 145 vessels were issued limited access permits and may be affected by the directed fishery closure measures proposed in this action. They are owned by 105 entities, of which 98 are small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance

Requirements of this Proposed Rule

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

In addition to the no action (no rebuilding, current specifications continue), the Council considered three rebuilding alternatives with time frames of: 3 years; 5 years; and 7 years. All of the rebuilding alternatives allow an increase in landings over time and have positive long-term socio-economic benefits compared to taking no action. The 3-year rebuilding program would require a cut in quota in the first year with increases in the second and third years, compared to the current quota. The 5-year and 7-year rebuilding program specifications would significantly increase the allowable quota by over 8,000 mt in the first year, with increases in subsequent years. The 7-year program would allow a larger quota increase, compared to the 5-year program. The 5-year program was selected

because it would rebuild the fishery within the 5-year timeframe, before the 7-year program, while considering the economic needs of fishing communities. The proposed 5-year rebuilding program would result in an additional \$9 million in fishing revenue annually in 2020-2021, compared to 2020-2021 under the no action alternative (which would continue current specifications).

The in-season closure alternatives would achieve efficient operation of the fishery by allowing most of the DAH to be caught without a high risk of exceeding the annual catch limit. The difference in socioeconomic outcomes is related to the DAHs selected in the proposed rebuilding program and associated specifications in relation to the proposed changes to the in-season closure provisions, which would result in slight changes to fishery operation. Closing the limited access fishery earlier, as proposed and maintaining larger trip limits may benefit smaller scale operators later in the year, but reduces available quota for the larger scale limited access fishery. However, preserving a higher trip limit after an Atlantic mackerel fishery closure may help larger scale entities offset the impacts of an earlier closure by allowing more incidental Atlantic mackerel catch in other fisheries, particularly Atlantic herring.

Limiting incidental landings to 5,000 lb (2,268 kg) once the directed fishery closes is a measure in all of the proposed alternatives other than the no action alternative. While this would reduce the possibility of ACL overages, there is a small-scale directed Atlantic mackerel jig/handline fishery that has developed in recent years by vessels with open access permits. Using July-December jig/handline landings from 2015-2017, a 5,000-lb (2,268-kg) trip limit would have impacted 21 federally-permitted vessels. If those vessels had been limited to 5,000 lb (2,268 kg) during those 3 years, their combined Atlantic

mackerel landings would have been reduced by 17 percent. Individual vessel Atlantic mackerel landings for these 21 vessels would have been impacted with an average and median reduction of 13 percent. Based on the average 2015-2017 price from July-December jig/handline trips of \$0.45 per lb, individual vessels would have approximately lost, over a total of 3 years, an average of \$14,773 and a median of \$5,171. The least impacted would have experienced losses of around \$104 and the most would be around \$108,917 in ex-vessel revenues over three years. The proportion of total revenues from Atlantic mackerel for these 21 vessels was an average of 23 percent and a median of 20 percent, with a range of 1 percent to 93 percent. The 21 vessels that may be impacted are 1 percent of the entire Atlantic mackerel fleet, 2 percent of small businesses within the fleet, and 7 percent of businesses that solely rely on Atlantic mackerel. It is also possible that with the higher Atlantic mackerel quotas closures would not occur, so the 5,000-lb (2,268-kg) trip limit for incidental permits may not be triggered.

The Council considered alternatives for the river herring and shad catch cap for the Atlantic mackerel fishery. The proposed measures are a combination of alternatives that would increase the river herring and shad catch cap but scale the ratio of river herring and shad in the Atlantic mackerel fishery when landings are above 10,000 mt. If the river herring and shad catch triggers a closure under any of the alternatives, the 145 vessels with limited access permits are potentially affected, and they represent 105 entities, of which 98 are small entities. If the river herring and shad encounter rates are relatively low, as in most years the cap has been in operation (2014-2017), then they will not be impacted at all. If river herring and shad catch encounter rates are high, as in 2018 and 2019, then it is possible that a substantial portion of the mackerel DAH could go

unharvested once the directed fishery is closed due to exceeding the river herring and shad catch cap.

Under the proposed action, if the fishery has a similar encounter rate as 2018 and 2019, when the fishery was closed early in the year, Atlantic mackerel landings could still close the limited access fishery with the higher DAHs because the river herring and shad catch cap is scaled up with the quota and landings. The fishery landed about 8,000 mt, or nearly 88 percent of the DAH before the river herring and shad catch cap closed the fishery in 2018. In 2019, the fishery landed about 4,145 mt, or 45 percent of the DAH before the river herring and shad catch cap closed the fishery. The proposed 89 mt river herring and shad catch cap is slightly higher than the current catch cap of 82 mt, so under the proposed action, there would be a closure at approximately 8,700 mt at 2018 catch rates. Atlantic mackerel landings could increase, but they would be limited compared to the proposed 2020-2021 DAHs of 20,557 mt and 21,517 mt, respectively. Looking at the differences, this would leave, for 2020-2021 DAHs, 11,857 mt and 12,817 mt, respectively, unharvested. If high river herring and shad catch rates trigger a closure of the directed fishery, the fishery may experience an opportunity cost of up to \$7.7 million in forgone revenue if the proposed DAHs are not fully landed. This would not be a decrease in revenue, but a limit to a potential increase in revenue if the river herring and shad catch cap were reached. The proposed action combination provides more flexibility to allow the fishery to continue than all of the other alternatives considered.

If the river herring and shad catch cap is triggered, the Atlantic mackerel trip limit for all permits becomes 20,000 lb (9,071 kg), which is not a change from the current measures. Under the proposed changes for in-season closures, if 90 percent of the DAH

was caught, incidental permits would go to 5,000 lb (2,268 kg). In the next in-season closure phase of the fishery, if 98 percent of the DAH was caught, all permits would go to a 5,000-lb (2,268-kg) trip limit. During a river herring and shad catch cap closure, a 20,000-lb (9,071-kg) trip limit would be most likely, which would allow more DAH to be available than in an in-season closure.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 3, 2019.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.21, revise paragraph (c) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(c) *Most restrictive ABC recommendation.*

(1) Unless otherwise allowed in paragraph (c)(2) of this section, for instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of F_{REBUILD} at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(2) The SSC may specify higher 2019-2023 ABCs for Atlantic mackerel based on F_{REBUILD} instead of the methods outlined in paragraph (a) of this section to implement a rebuilding program that would rebuild this stock by 2023.

* * * * *

3. In § 648.24, revise paragraphs (b)(1) and (6) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) *Atlantic mackerel commercial sector EEZ closure.* (i) *First phase commercial closure.* (A) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects that 90 percent of the Atlantic mackerel DAH is harvested if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(B) Unless previously closed pursuant to paragraph (b)(1)(i)(A) of this section, NMFS will close the Tier 3 commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 mackerel allocation will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in §648.26.

(ii) *Second phase commercial quota closure.* When the Regional Administrator projects that 98 percent of the Atlantic mackerel DAH will be landed, NMFS will reduce the possession of Atlantic mackerel in the EEZ applicable to all Atlantic mackerel permits for the remainder of the fishing year as specified in § 648.26(a)(2)(iii)(A).

(iii) *Seasonal management.* NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i)(A) or (b)(1)(ii) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

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(6) *River herring and shad catch cap.* The river herring and shad cap on the mackerel fishery applies to all trips that land more than 20,000 lb (9.08 mt) of mackerel. NMFS shall close the limited access mackerel fishery in the EEZ when the Regional Administrator project that 95 percent of the river herring/shad catch cap has been harvested. Following closures of the limited access mackerel fishery, vessels must adhere to the possession restrictions specified in §648.26.

4. In § 648.26, revise paragraphs (a)(1)(i) through (iii) and paragraph (a)(2) to

read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(1) * * *

(i) A vessel issued a Tier 1 limited access mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i)(A).

(ii) A vessel issued a Tier 2 limited access mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i)(A).

(iii) A vessel issued a Tier 3 limited access mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, or 90 percent of the Tier 3 allocation has been harvested, as specified in § 648.24(b)(1)(i)(A) and (B), respectively.

* * * * *

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before the fishery harvests 90 percent of the Atlantic mackerel DAH, then the Atlantic mackerel possession restrictions specified in paragraph (a)(2)(iii)(B) of this section shall remain in place for the rest of the fishing year unless further reduced by the possession restrictions specified in paragraph (a)(2)(iii)(A) of this section.

(i) *Limited Access Fishery.* (A) During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(A), when 90 percent of the DAH is harvested, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(B), when 90 percent of the Tier 3 allocation is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial

sector pursuant to § 648.24(b)(1)(i)(A), when 90 percent of the DAH is harvested, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iii) *Entire commercial fishery.*

(A) *Commercial quota closure.* During a closure of the entire commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(ii), when 98 percent of the DAH is harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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