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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191022-0069]

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: Final rule.

SUMMARY: This final rule implements the measures of Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action establishes a 5-year rebuilding program for Atlantic mackerel, sets 2019-2021 Atlantic mackerel specifications and a river herring and shad cap for the Atlantic mackerel fishery, modifies the Mid-Atlantic Fishery Management Council's risk policy, and modifies 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 final rule is to sustainably manage the Atlantic mackerel fishery and achieve optimum yield on a continuing basis.

DATES: Effective [*insert date 30 days after date of publication in the Federal REGISTER*].

ADDRESSES: Copies of this action, including the environmental assessment (EA) and Regulatory Impact Review (RIR) analysis, prepared in support of this action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The small entity compliance guide (bulletin) describing measures approved by this action is available from Michael Pentony, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. Documents are also 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

A November 2017 benchmark stock assessment (Stock Assessment Workshop (SAW) 64) concluded that the Atlantic mackerel stock is overfished and subject to overfishing. The Council developed Framework Adjustment 13 (Framework 13) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) 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 (Magnuson-Stevens Act). This action also includes 2019-2021 specifications based on the proposed rebuilding plan, adjustments to in-season closure measures to slow fishery catch and allow Atlantic mackerel bycatch in the Atlantic herring fishery, and modifications to the river herring and shad catch cap. At its August 2018 meeting, the Council adopted final measures under Framework 13. We published a proposed rule to

implement Framework 13 in the **Federal Register** on June 7, 2019 (84 FR 26634). The comment period ended on July 8, 2019. We received comment submissions from 14 groups and individuals, which are summarized in the Comments and Responses section of this final rule. Pursuant to section 304(a)(3) of the Magnuson-Stevens Act, when NMFS considers the responses to comments, NMFS may only approve or disapprove measures proposed in a particular fishery management plan, amendment, or framework adjustment, and may not change or substitute any measure in a substantive way.

Each year, the Council reviews the Atlantic mackerel specifications based on updated information. At its June 2019 meeting, the Council considered preliminary results of the 2019 Canadian Atlantic mackerel stock assessment. The Canadian assessment suggested that Atlantic mackerel recruitment in 2016 and 2017 was lower than the long-term average recruitment used to develop projections of 2019-2021 Atlantic mackerel specifications under Framework 13. Based on this information, the Council recommended maintaining the 2019 Atlantic mackerel acceptable biological catch (ABC) outlined in Framework 13 for 2020 instead of increasing the ABC in 2020, as included in Framework 13. If this Council-recommended change to the 2020 ABC in Framework 13 is approved in a subsequent regulatory action, this would revise the Atlantic mackerel rebuilding plan included in Framework 13, because the revised 2020 ABC would be 14 percent lower than the 2020 ABC currently being implemented in this final rule.

Approved Measures

This action approves the management measures proposed in Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish FMP. The measures implemented in this final rule are:

1. *Atlantic mackerel rebuilding plan.*

This rule adopts a 5-year rebuilding plan, which ends overfishing immediately and establishes measures that are projected to rebuild the stock within no more than 5 years. The 5-year rebuilding plan is as short as possible, while balancing the needs of the fishing communities and considering the interaction of the overfished stock within the marine ecosystem. The 5-year rebuilding plan will allow for a 125-percent increase in 2020 commercial catch compared to 2018, as described further below under the description of specifications.

In adopting the 5-year rebuilding program, the Council noted the substantial overlap between the Atlantic herring and Atlantic mackerel fisheries, and the expected drastic reductions in Atlantic herring quotas and the stability of associated fishing communities. The 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. 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 Council's Scientific and Statistical Committee (SSC).

We closed the limited access Atlantic mackerel fishery on March 12, 2019, because the fishery harvested the river herring and shad catch cap (84 FR 8999; March 13, 2019). As a result, Atlantic mackerel catch in 2019 will be less than the projected 2019 catch allocation under the 5-year rebuilding plan. We will not know how the low catch in 2019 will affect the projections after the fishing year. Because the 2019 Atlantic mackerel

catch is about 75 percent lower than expected catch used to evaluate the rebuilding program and the Council recommended maintaining the lower 2019 catch levels for 2020, it is possible that such lower levels of catch will help expedite the rebuilding program to rebuild the stock before 2023.

In order to implement this 5-year rebuilding plan, this action modifies the Council’s risk policy to allow a higher fishing mortality rate to establish the increased 2019-2023 Atlantic mackerel ABCs in consideration of the economic needs of fishing communities. The change to the Council’s risk policy in this action is specific to the Atlantic mackerel rebuilding plan, and will not affect the application of the Council’s risk policy for any other species or FMP.

3. *Atlantic mackerel specifications*

Table 1 presents the 2019-2021 Atlantic mackerel specifications. An updated stock assessment for Atlantic mackerel is scheduled to be completed in 2020, which would help the SSC and Council to develop and set the specifications for 2021 through 2023. As noted above, the Council will review each component of the Atlantic mackerel specifications annually, and will consider the results of an updated stock assessment in 2020 and other available information to refine future specifications.

Table 1 -- Final 2019-2021 Atlantic Mackerel 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-Annual Catch Limit (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 percent	539	638	669
Commercial Annual Catch Target (ACT)	17,436	20,633	21,597
Domestic Annual Harvest (DAH) (ACT minus 0.37 percent discard rate)	17,371	20,557	21,517

4. In-season closure provisions

In order to achieve optimum yield and effectively use the available commercial landings, Framework 13 adjusts the in-season closure measures for the commercial Atlantic mackerel fishery. The measures adopted by Framework 13 require the Regional Administrator to close the limited access commercial fishery when 90 percent of the DAH is projected to be landed. Once that trigger is reached, the Regional Administrator will 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 will 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 measures 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 fishing year.

5. River herring and shad catch cap

The initial river herring and shad catch cap for the Atlantic mackerel fishery will be set at 89 mt for 2019-2021. The cap could increase to the overall yearly catch cap 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. The overall yearly catch cap is set at 129 mt in 2019, 152 mt in 2020, and 159 mt in 2021, based on the increasing Atlantic mackerel DAHs approved under the rebuilding plan. The overall yearly catch cap for future years could be revised based on annual Council recommendations of future Atlantic mackerel DAH and river herring and shad bycatch measures.

6. Corrections and Clarifications to Existing Regulations

This final rule includes revisions to correct regulatory text that is unnecessary, outdated, or unclear. These revisions 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. Specifically, this final rule modifies 50 CFR 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 changes being made to the regulations by this action. The language clarification does not change the definition or terms of the permit.

Comments and Responses

We received comment submissions from 14 groups and individuals. This includes comments from nine environmental organizations, two commercial fishing industry groups (SeaFreeze Limited and Garden State Seafood Association), along with two members of the public. Environmental organizations that submitted comments were: Blue Planet Strategies; Conservation Law Foundation; Wild Oceans; Pew Charitable Trusts; Natural Resources Defense Council; Bennett-Nickerson Environmental Consulting; Oceans North; Ecology Action Center; and World Wildlife Federation Canada. One letter from Pew Charitable Trusts was originally submitted on August 9, 2018, and was previously considered by the Council before it adopted final measures under Framework 13. Additionally, the Council received a letter from Oceans North (a Canadian environmental advocacy group), submitted on May 30, 2019, that was not responsive to this action. However, the Council considered this letter at its June 2019

meeting when it adopted 2020 Atlantic mackerel specifications that would be implemented through a separate action. Consolidated responses to similar comments on the proposed measures are provided below.

Atlantic mackerel rebuilding plan

Comment 1: A group letter from several U.S. environmental advocacy groups (Blue Planet Strategies, Conservation Law Foundation, Wild Oceans, Pew Charitable Trusts, Natural Resources Defense Council, and Bennett-Nickerson Environmental Consulting) voiced concern that the proposed 5-year rebuilding period is not legally sufficient to meet the “as short as possible” rebuilding time period standard required by the Magnuson-Stevens Act. Both commercial fishing industry groups support the 5-year rebuilding program because it considers the needs of fishing communities.

Response 1: We disagree that the 5-year rebuilding plan is not legally sufficient. It would rebuild the fishery in as short a period possible and within 10 years, as required by section 304(e)(4) of the Magnuson-Stevens Act. The Council may consider other factors, including the needs of fishing communities, when specifying a rebuilding time period. Furthermore, there are several factors that could expedite the rebuilding timeline. Instead of allowing the ABCs to increase in 2021 and beyond, as suggested by assessment projections, 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) as a precautionary measure. As noted above, the low mackerel catch in 2019 could also reduce the rebuilding period, because realized catch is 75 percent lower than estimated catch used in the rebuilding plan projections. In addition, the Council recommended maintaining the 2019 Atlantic mackerel DAH of 17,371 mt for 2020 instead of increasing it to 20,557 mt,

as originally proposed in the rebuilding plan. The Council will also review the specifications annually in order to adjust the rebuilding program, as necessary, once new information becomes available, including the results from a stock assessment update to be completed in 2020.

The 5-year rebuilding plan is appropriate because it rebuilds the stock as quickly as possible while considering the needs of fishing communities, consistent with National Standard 8 of the Magnuson-Stevens Act. Due to the substantial overlap between the Atlantic herring and Atlantic mackerel fisheries, the expected reduced quotas and potential mid-water trawl gear restrictions in the Atlantic herring fishery may also have negative socioeconomic impacts on the Atlantic mackerel fishery and negatively affect 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.

Comment 2: The Garden State Seafood Association noted the stock status shift from unknown to overfished, which highlights that the information available for making management decisions is more certain now than in the past.

Response 2: We agree that having an approved stock assessment and a definitive stock status determination helps us make better-informed fishery management decisions. The SAW 64 peer review panel concluded that the northwest stock of Atlantic Mackerel is overfished with overfishing occurring. At its May 2018 meeting, the SSC reviewed the SAW 64 report, and approved use of the SAW 64 report as it is the best scientific information available to inform management decisions (<https://www.nefsc.noaa.gov/saw/reports.html>). The current assessment overcomes

many of the problems encountered in the previous assessments. The current assessment does not exhibit a retrospective pattern, and it uses a stockwide egg survey for the first time. The current assessment also differs from previous assessments in that it is able to provide a stock status recommendation based upon biological reference points that were unknown and unavailable for use in previous assessments.

Revision to the Mid-Atlantic Council Risk Policy

Comment 3: Group letters from U.S. and Canadian environmental advocacy groups claim that the Council abandoned its risk policy in order to implement the 5-year rebuilding plan, citing 304(e)(4) of the Magnuson-Stevens Act which requires the Council develop a rebuilding plan that would rebuild the stock in the shortest time possible. The two commercial fishing industry groups support the modification of the Council's risk policy to select a rebuilding plan that allows a higher fishing mortality rate and considers the needs of fishing communities.

Response 3: While the Council did modify its risk policy in order to adopt the 5-year rebuilding plan and accommodate adaptive fisheries management, while considering the needs of fishing communities, this is an appropriate modification. When the Council adopted a standard risk policy in 2011 as part of Amendment 13 to the Atlantic Mackerel, Squid, and Butterfish FMP (76 FR 60605; September 29, 2011), it allowed the risk policy to be revised in the future and allowed the risk policy to be adjusted via a framework adjustment. This allows for flexibility in its application due to the dynamic nature of fisheries and the environment and the uncertainty in available data. The modification to the Council's risk policy approved 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.

Atlantic mackerel specifications

Comment 4: A group letter from the U.S. environmental advocacy groups listed above commented on the uncertainty around the assessment projections used to make decisions for the rebuilding plan, which relies on the strong 2015 year class. Commenters added that historically, high allowable catch has been followed by stock decline. They also highlight that, while the strong 2015 year class was confirmed in the Canadian assessment, subsequent year classes were not as strong, and that the U.S. projections were created based on speculation and not science. Commenters urged NMFS to disapprove the Framework 13 rebuilding plan, and requested that the SSC reconsider the most recent scientific information found in the Canadian stock assessment to develop a new rebuilding plan.

Response 4: We disagree that the Framework 13 rebuilding plan and associated specifications were based on speculation and not science. The measures included in Framework 13 are based on the best available science at the time of decision-making. While there is some uncertainty in catch projections, this uncertainty was accounted for and considered by the SSC and Council. The assessment included a series of workshops to refine models and methods and was approved by the peer review panel and the SSC. The Canadian stock assessment confirms the above average 2015 year class, which was the driver behind NMFS' projections for the 5-year rebuilding plan. Although the Canadian assessment provides additional data regarding more recent recruitment levels, it does not provide definitive information that would require us to disapprove the 5-year rebuilding program for Atlantic mackerel in Framework 13.

The Canadian Atlantic mackerel stock assessment was not completed and the results were unavailable when the Council adopted the Atlantic mackerel rebuilding program under Framework 13, and therefore were not integrated into projections used for the rebuilding plan. Such information is important, and it was considered by the Council in revising its recommendation for the 2020 Atlantic mackerel specifications that will be implemented in a subsequent action. In reviewing the U.S. Atlantic mackerel stock assessment and associated projections, the SSC expressed concern about the use of long-term recruitment in the projections, noting uncertainty in the size of the 2015 year class and the implications of this uncertainty for the projections. This concern regarding the uncertainty associated with the projections prompted the SSC to recommend conservative estimates, which were integrated into the 5-year rebuilding plan and ultimately adopted by the Council in Framework 13. As noted above, the Council considered the results of the Canadian assessment and recommended continuing the 2019 ABC for 2020 in a subsequent action. In addition the Council, with the support of the SSC, also recommended keeping the 10,000 mt Canadian deduction, which is conservative in comparison to the 8,000 mt ABC that was set after the recent Canadian assessment. This will, in effect, provide a 2,000 mt buffer in the U.S. specifications to prevent an ABC overage. The specifications are reviewed annually and will incorporate any new information, including the result of the U.S. Atlantic mackerel management track stock assessment in 2020. Thus, while it was not available when the Council initially developed this rebuilding plan, the new information from Canada was subsequently used to inform the Council's most recent recommendation for the 2020 Atlantic mackerel specifications. These 2020 specifications will be finalized and updated in future rulemaking actions,

consistent with the FMP's requirement to update the specifications yearly, in light of the most recent scientific data. This regular review of the specifications will help ensure that the Framework 13 rebuilding plan approved in this final rule achieves its objectives consistent with applicable law.

Comment 5: A member of the public commented that the Council has the opportunity with Framework 13 to manage forage species in a more sustainable manner and should consider taking actions to manage forage abundance as opposed to increasing the allowable catch amount.

Response 5: The measures approved in this action sustainably manage Atlantic mackerel by ending overfishing and rebuilding the stock, as required by the Magnuson-Stevens Act. The role of Atlantic mackerel as an ecosystem component, that is, as a forage species, was considered in the assessment projections. Analyses of the diets of predator species sampled by the Northeast Fisheries Science Center bottom trawl surveys indicated a low occurrence of Atlantic mackerel in predator diets from 1973-2016, with approximately 0.2 percent of all predator stomachs containing mackerel. Additional potentially important predators of mackerel, including highly migratory species, marine mammals, and seabirds, are not sampled by the NEFSC trawl surveys. Consumption by these predators is more difficult to estimate due to incomplete information on population levels and annual diet information. In addition, predator food habits were not available for the months the northern contingent was outside of the area sampled by the NEFSC trawl survey. Changes in the distribution of Atlantic mackerel to the north and east have been observed. Several working papers suggested that some of these changes could be associated with environmental variables, but cause and effect could not be formally

identified. Thus, assessment upon which Framework 13 is based included consideration of factors such as sustainable forage as one natural cause of Atlantic mackerel mortality.

In-season closure provisions and associated corrections and clarifications to existing regulations

Comment 6: Both commercial fishing industry groups support the phased in-season closure and possession limits that are included in Framework 13.

Response 6: This final rule approves the measures to slow the fishery as catch approaches the DAH in order to achieve optimum yield while reducing the risk to exceed the ABC.

Comment 7: Both commercial fishing groups do not support the correction of terminology in the regulatory language that changes “incidental permits” to “open access permits”. Their rationale for not supporting this change is that the emerging jig fishery is using this type of permit to target Atlantic mackerel, but this use would be inconsistent with the definition of the incidental catch permit at § 648.4(a)(5)(iv). SeaFreeze commented that the segment of the fleet that uses the open access permit for directed fishing may encroach upon quota access that limited access permit holders have qualified for, which may result in less quota access for limited access permit holders. Additionally, Garden State Seafood Association highlighted that Tier 3 permits are available for purchase by those who participate in the open access jig fishery.

Response 7: The language change from “incidental” to “open access” does not change the definition of the permit and does not change any measure controlling operations of such permits. The change was to maintain consistency in the reference to this permit in existing regulations. We disagree that the segment of the fleet that carries

out directed fishing on Atlantic mackerel using the open access permit will encroach upon the limited access quota, as quotas are set annually and possession limits are determined by permit, not by allocation. In addition, this concern reflects permit issues that are beyond the scope of Framework 13 and that could be considered by the Council in a separate action.

River herring and shad catch cap

Comment 8: A member of the public commented on the contrast of the increased river herring and shad catch caps in relation to wetland restoration investments throughout the region that benefit anadromous fish populations with ecosystem consideration.

Response 8: River herring and shad are an important component in the ecosystem. The revised caps in Framework 13 are well within the scope of caps that have been considered since the caps were established in Amendment 14 (79 FR 10029, February 24, 2014). A recent comprehensive status review under the Endangered Species Act (ESA) for alewife and blueback herring (84 FR 28630, June 19, 2019) noted that such caps are an important component in the broader effort to reduce river herring and shad bycatch in federal waters, protect and improve habitat, and rebuild these stocks to sustainable levels. The Council reviews the river herring and shad catch cap annually and can revise such caps for future fishing years based on new information.

Comment 9: The commercial fishing groups both noted that the low river herring and shad catch cap, which is applied to all gear types, is the limiting factor preventing the commercial fishing fleet from achieving optimum yield (OY). Both organizations highlighted that in 2014, the first year the cap was implemented, the cap was 236 mt compared to the 129 mt, 152 mt, and 159 mt cap limits evaluated in Framework 13.

SeaFreeze Limited does not support the initial cap of 89 mt, stating the overall yearly cap of 129 mt itself is a bycatch avoidance factor. The commenters suggested that these caps should be modified after the recent 5-year status review to allow a meaningful increase in order to catch the allowable mackerel quota and achieve OY.

Response 9: When the river herring and shad catch cap was initially set at 236 mt, the DAH was 33,821 mt and was based on the 0.74 percent ratio used in 2015 that is also used in Framework 13 to establish the catch caps of 129 mt in 2019, 152 mt in 2020, and 159 mt, which are relative to the DAH for each year (79 FR 10029; February 24, 2014). The 89 mt catch cap as a scaling provision was established in 2015 and represents the median of actual river herring and shad catches by the Atlantic mackerel fishery from 2005-2012 (80 FR 14870; March 20, 2015). The 89 mt cap was well within the initial river herring and shad catch cap established in Framework 14, as described above. The cap has been reached in 2018 and 2019, effectively closing the directed Atlantic mackerel fishery. The river herring and shad catch cap is intended to create an incentive for industry to avoid river herring and shad bycatch. The Council will review the river herring and shad catch cap for 2020 at its August 2019 meeting.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 13 to the Atlantic Mackerel, Squid, and Butterfish FMP is necessary for the conservation and management of the Atlantic mackerel fishery managed by the Mid-Atlantic Council and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

This final rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

A Final Regulatory Flexibility Act (FRFA) analysis was prepared for this action and is included below. The FRFA incorporates the Initial Regulatory Flexibility Act (IRFA) analysis. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. The FRFA below includes a summary of the significant issues raised by the public comments in response to the IRFA and the NMFS responses to those comments, and a summary of the analyses completed in the Framework 13 EA. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 13 and in the preambles of the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available upon request (see **ADDRESSES**).

Summary of the Significant Issues Raised by Public Comments in Response to the IRFA, Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

The public did not raise any significant issues in response to the IRFA, so no changes were made from the proposed rule.

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

The measures in Framework 13 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 (North American Industry Classification System (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 small business entities 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, which is well under the NMFS threshold of \$11 million. 299 entities 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. Thus, NMFS concluded that almost all (98 entities with

vessels issued limited access permits that could be affected by the directed fishery closure measures, and 295 entities reporting revenue from Atlantic mackerel) of the entities affected by this action 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 Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

There are no significant adverse economic impacts of Framework 13. All of the rebuilding alternatives considered allow an increase in landings over time and have positive long-term socio-economic benefits compared to taking no action. The approved 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 proposed 5-year rebuilding program would result in an additional \$7 million in fishing revenue annually in 2020-2021, compared to 2020-2021 under the no action alternative (which would continue under current specifications), while the 7-year rebuilding plan would result in an additional \$8 million in fishing revenue. While the 7-year program would allow a larger quota increase compared to the 5-year program, the 5-year rebuilding program was selected because it would rebuild the fishery faster than the 7-year rebuilding program.

In conclusion, there are no significant adverse economic impacts on a substantial number of small entities in this action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of the guide (*i.e.*, permit holder letter) will be sent to all entities issued limited and open access Atlantic mackerel permits. The guide and this final rule will be available upon request from the Regional Administrator (see **ADDRESSES**) and online at <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 24, 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 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 Atlantic 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) 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.

* * * * *

(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 (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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