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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 200717-0195]**

**RIN 0648-BJ16**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 21 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:** NMFS approves and implements through regulations measures included in Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, as adopted by the Mid-Atlantic Fishery Management Council. This action is necessary to establish conservation and management measures for Atlantic chub mackerel. It is intended to promote the sustainable utilization and conservation of Atlantic chub mackerel by integrating this species as a stock in the fishery under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This amendment identifies goals and objectives for managing Atlantic chub mackerel; specifies status determination criteria; designates essential fish habitat; establishes a specifications process; sets annual catch limits for 2020-2022; and implements accountability measures, possession limits, permitting and

reporting requirements, exempted fisheries, and other administrative measures for Atlantic chub mackerel caught from Maine through North Carolina.

**DATES:** This final rule is effective [*insert date 30 days after the date of publication in the **FEDERAL REGISTER***].

**ADDRESSES:** The Mid-Atlantic Council prepared an environmental assessment (EA) for Amendment 21 that describes the action and provides a thorough analysis of the impacts of the measures implemented by this rule and other alternatives considered. Copies of Amendment 21, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act analysis, are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA and associated analysis is accessible via the Internet <http://www.mafmc.org/supporting-documents>. Copies of the small entity compliance guide prepared for this action are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at: <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/>.

**FOR FURTHER INFORMATION CONTACT:** Douglas Christel, Fishery Policy Analyst, (978) 281-9141.

**SUPPLEMENTARY INFORMATION:**

**Background**

The purpose of this action is to establish long-term conservation and management measures for Atlantic chub mackerel off the U.S. Atlantic coast by integrating this species as a stock in the fishery under the Atlantic Mackerel, Squid, and Butterfish Fishery

Management Plan (FMP). The FMP will now be referenced as the Mackerel, Squid, and Butterfish FMP to reflect the management of two species of mackerel (Atlantic mackerel and Atlantic chub mackerel). This action is needed to ensure the sustainability of the targeted Atlantic chub mackerel fishery, prevent overfishing, and resolve competing interests that have emerged since landings of Atlantic chub mackerel substantially increased in 2013. The measures implemented through this final rule replace temporary measures to regulate Atlantic chub mackerel catch implemented as part of Amendment 18 to the FMP (82 FR 40721; August 28, 2017). Those temporary measures, including a 1,297-mt annual landing limit, a 40,000-lb (18-mt) possession limit once the annual landing limit is reached, and permitting and reporting requirements, became effective on September 27, 2017, and expire on [*insert date of publication in the **FEDERAL REGISTER***].

On March 7, 2019, the Mid-Atlantic Fishery Management Council (Council) adopted final measures under Amendment 21 to the FMP. The Council reviewed the proposed regulations to implement these measures, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) on December 20, 2019. NMFS published a Notice of Availability (NOA) in the **Federal Register** on February 14, 2020 (85 FR 8534), informing the public that the Council had submitted this amendment to the Secretary of Commerce for review and approval. NMFS published a proposed rule that summarized the background for this action and outlined regulations implementing measures approved by the Council, corrections to existing regulations, and new Atlantic chub mackerel fishery exemptions proposed by the Regional

Administrator (Item 13 of this preamble) on March 9, 2020 (85 FR 13603). The public comment period for the proposed rule ended on April 8, 2020, while NOA comments were accepted through April 14, 2020. After considering public comment on both the NOA and proposed rule, NMFS approved Amendment 21 on May 4, 2020.

### **Approved Measures**

NMFS approved all measures proposed in Amendment 21, as described below. For a more detailed description of each measure, see the proposed rule prepared for this action.

#### *1. Goals and Objectives*

This action adds goals and objectives specific to managing Atlantic chub mackerel to the FMP's current list of goals and objectives. NMFS will use the following goals and objectives to evaluate if changes to Atlantic chub mackerel management measures are consistent with the FMP when deciding whether to approve a future management action:

- *Goal 1: Maintain a sustainable Atlantic chub mackerel stock.*
  - *Objective 1.1: Prevent overfishing and achieve and maintain sustainable biomass levels that achieve optimum yield in the fisheries and meet the needs of Atlantic chub mackerel predators.*
  - *Objective 1.2: Consider and account for, to the extent practicable, the role of Atlantic chub mackerel in the ecosystem, including its role as prey, as a predator, and as food for humans.*
- *Goal 2: Optimize economic and social benefits from utilization of chub mackerel, balancing the needs and priorities of different user groups.*

- *Objective 2.1:* Allow opportunities for commercial and recreational Atlantic chub mackerel fishing, considering the opportunistic nature of the fisheries, changes in availability that may result from changes in climate and other factors, and the need for operational flexibility.
- *Objective 2.2:* To the extent practicable, minimize additional limiting restrictions on the *Illex* squid fishery.
- *Objective. 2.3:* Balance social and economic needs of various sectors of the Atlantic chub mackerel fisheries (*e.g.*, commercial, recreational, regional) and other fisheries, including recreational fisheries for highly migratory species.
- *Goal 3:* Support science, monitoring, and data collection to enhance effective management of Atlantic chub mackerel fisheries.
  - *Objective 3.1:* Improve data collection to better understand the status of the Atlantic chub mackerel stock, the role of Atlantic chub mackerel in the ecosystem, and the biological, ecological, and socioeconomic impacts of management measures, including impacts to other fisheries.
  - *Objective 3.2:* Promote opportunities for industry collaboration on research.

## 2. *Designation of Essential Fish Habitat*

This action defines Atlantic chub mackerel essential fish habitat (EFH) as follows:

- *Eggs:* Pelagic waters throughout the exclusive economic zone (EEZ) from North Carolina to Texas, including intertidal and subtidal areas, at temperatures of 15 - 25° C;

- *Larvae*: Pelagic waters throughout the EEZ from North Carolina to Texas, including intertidal and subtidal areas, at temperatures of 15 - 30 °C; and
- *Juveniles and adults*: Pelagic waters throughout the EEZ from Maine to Texas, including intertidal and subtidal areas, at temperatures of 15 - 30 °C.

### *3. Management Unit*

The Atlantic Chub Mackerel Management Unit is defined as Federal waters from Maine to North Carolina. Management measures, including the permitting and reporting requirements, possession limits, annual catch limit (ACL), and accountability measures (AM) discussed below only apply to vessels operating within the Atlantic Chub Mackerel Management Unit. Annual estimates of expected Atlantic chub mackerel catch from South Carolina through the east coast of Florida (*i.e.*, the area outside of the management unit, but within the geographic area over which the acceptable biological catch (ABC) applies) will be deducted from the overall Atlantic chub mackerel ABC, as discussed further below under Item 6 of this preamble (the specifications process).

### *4. Status Determination Criteria*

Under this action, overfishing is assumed to have occurred if more than 3,026 mt (6,671,188 lb) of Atlantic chub mackerel are caught from Maine through the east coast of Florida in a given year. This will serve as the Atlantic chub mackerel overfishing limit (OFL). If catch exceeds the OFL in 3 consecutive years, then the stock would be presumed to be overfished and the Council would need to develop a rebuilding plan. These status determination criteria will remain in effect until updated criteria are available based on an accepted stock assessment.

### *5. Optimum Yield and Maximum Sustainable Yield*

This action sets Atlantic chub mackerel optimum yield (OY) and maximum sustainable yield (MSY) equal to the ABC (2,300 mt, or 5.07 million lb) until otherwise revised by the Council. Based on available information, the Council may set OY equal to or less than the ABC in future years through the specifications process described in the next section of this preamble.

#### *6. Specifications Process*

The annual specifications process used for other species managed under the FMP, as described at 50 CFR 648.22, also applies to Atlantic chub mackerel. Specifications could be set for up to 3 years at a time, subject to annual review. Under this action, all Atlantic chub mackerel catch counts towards one catch limit for the entire fishery; there is no separation of catch limits into commercial and recreational components. The Atlantic chub mackerel ABC, management uncertainty, discard estimate, and expected Atlantic chub mackerel catch from South Carolina through Florida could be adjusted through the specifications process.

As part of this process, the Council's Scientific and Statistical Committee (SSC) will recommend a stock-wide ABC that must be equal to or less than the OFL after considering scientific uncertainty. Each year, the Monitoring Committee will review fishery catch, survey data, and other available information to provide the Council with the following recommendations:

- An ACL that is calculated by deducting an estimate of expected catch from South Carolina through the east coast of Florida from the ABC;

- An overall annual catch target (ACT) that is equal to or less than the ACL to account for management uncertainty related to the ability of management measures to constrain catch and prevent the ACL from being exceeded; and
- A total allowable landing (TAL) limit derived by subtracting an estimate of expected dead discards from the ACT.

*7. Final 2020 and Projected 2021-2022 Specifications*

Table 1 summarizes the final Atlantic chub mackerel specifications for 2020 and projected specifications for 2021 and 2022 based on a fishing year that runs from January 1 through December 31 of each year. The 2,261.7-mt (4,986,132-lb) ACL results from deducting an estimate of South Carolina – Florida catch (38.3 mt or 84,500 lb) from the ABC. Deducting a 4-percent management uncertainty buffer from the ACL results in a 2,171.2-mt (4,786,687-lb) ACT for catch from Maine through North Carolina. Deducting a 6-percent discard estimate from the ACT results in a 2,040.9-mt (4,499,486-lb) TAL. As noted above, these specifications will be evaluated annually, and the Monitoring Committee could recommend adjustments to South Atlantic catch, management uncertainty, and discard rates based on updated data.

**Table 1—Final 2020 and Projected 2021-2022 Atlantic Chub Mackerel Specifications**

Specification	mt	lb
ABC	2,300	5,070,632
ACL	2,261.7	4,986,132
ACT	2,171.2	4,786,687
TAL	2,040.9	4,499,486

*8. Possession Limits*

At the beginning of each fishing year, all commercial vessels and recreational anglers are not subject to a possession limit for Atlantic chub mackerel. As Atlantic chub mackerel landings approach the TAL, NMFS will implement more restrictive commercial vessel possession limits through the AMs detailed in the next section of this preamble.

#### *9. Accountability Measures*

This action implements two in-season AMs and one post-season AM. To prevent the Atlantic chub mackerel ACT from being exceeded, NMFS will implement an 18.1-mt (40,000-lb) commercial vessel possession limit once 90 percent of the TAL is landed and a 4.5-mt (10,000-lb) possession limit once 100 percent of the TAL is landed. If the ACL is exceeded based on total catch by both the commercial and recreational fisheries within the Management Unit, NMFS will reduce the ACT by the amount of the overage as soon as possible in a subsequent fishing year.

#### *10. Permit and Reporting Requirements*

Any vessel fishing for, possessing, landing, or selling Atlantic chub mackerel from the Atlantic Chub Mackerel Management Unit must be issued either a valid Federal commercial or party/charter permit for any species managed by the FMP (Atlantic mackerel, *Illex* squid, longfin squid, or butterfish). The operator of any such commercial vessel fishing must obtain and retain on board a valid operator permit issued by the Greater Atlantic Regional Fisheries Office (GARFO). Similarly, a dealer purchasing and selling Atlantic chub mackerel must obtain a valid seafood dealer permit issued for these same species from GARFO. Finally, vessel operators must report the catch of Atlantic chub mackerel weekly on existing vessel trip reports (VTR, or logbooks) and comply with any applicable vessel monitoring system (VMS) declaration and reporting requirements

for commercial vessels issued a permit under the FMP. Dealers purchasing Atlantic chub mackerel must report such purchases via existing weekly dealer reports.

#### *11. Transit Provision*

A vessel issued a Federal commercial fishing permit from GARFO that possesses Atlantic chub mackerel in excess of the proposed possession limits may transit the Management Unit in certain circumstances. Transit through the Management Unit is allowed provided Atlantic chub mackerel was harvested outside of the Atlantic Chub Mackerel Management Unit and all gear is stowed and not available for immediate use.

#### *12. Administrative Measures*

The Council's current ABC control rule and risk policy documented in the regulations at §§ 648.20 and 21, respectively, now apply to Atlantic chub mackerel, along with the standardized bycatch reporting methodology regulations specified at § 648.18. This action clarifies that any changes to Atlantic chub mackerel measures must be made through an FMP amendment and cannot be made through the framework adjustment process outlined in § 648.25.

#### *13. Exemption from Northeast Multispecies Mesh Requirements*

This final rule adds Atlantic chub mackerel to the species exemption specified at § 648.80(b)(3)(i) and creates a new Atlantic chub mackerel fishery exemption at § 648.80(c)(5)(iii). These revisions exempt vessels from the Georges Bank and Southern New England (SNE) Regulated Mesh Area gear restrictions and allow vessels to fish for, harvest, possess, and land Atlantic chub mackerel when using small-mesh gear within both the SNE and Mid-Atlantic Exemption Areas defined at §§ 648.80(b)(10) and 648.80(c)(5)(i), respectively. Vessel operators must comply with the Mackerel, Squid,

and Butterfish FMP gear restrictions and possession limits specified at §§ 648.23 and 26, respectively, along with the possession restrictions for other species outlined in § 648.80(b)(3)(ii).

NMFS consulted with the New England Council about these proposed changes to exempted fishing regulations on April 14, 2020, as required by the current regulations at § 648.80(b)(8). The New England Council considered information regarding the bycatch of regulated groundfish species by vessels that catch more than incidental amounts of Atlantic chub mackerel, including vessels targeting *Illex* squid. As summarized in the proposed rule and in the EA prepared for this action, available information indicates the bycatch of regulated groundfish species by vessels catching Atlantic chub mackerel is minimal. Despite expressing some concern regarding the limited data available on Atlantic chub mackerel trips, the New England Council did not oppose the proposed changes to exempted fisheries to facilitate the Atlantic chub mackerel fishery. The Regional Administrator determined that this information is sufficient to demonstrate bycatch levels are below thresholds for authorizing exempted fisheries, and that the exemptions implemented by this final rule would not jeopardize fishing mortality objectives of the Northeast Multispecies FMP.

#### *14. Corrections*

References to “mackerel” are revised to reference Atlantic mackerel throughout part 648 when appropriate; references to “squid” are revised to “*Illex* squid” and “longfin squid” when appropriate; and references to the “Atlantic Mackerel, Squid, and Butterfish” FMP or associated entities such as the Monitoring Committee are revised to the more

general “Mackerel, Squid, and Butterfish” reference that is inclusive of both Atlantic mackerel and Atlantic chub mackerel.

Existing regulations at §§ 648.4(a)(5)(v) and 648.14(g)(4) are revised to make such text consistent with similar text for other fisheries and to incorporate Atlantic chub mackerel.

In § 648.4(a)(15), revisions to existing text ensure that a commercial fishing vessel must be issued a Federal permit for any commercial fishery of the Northeastern United States under part 648 instead of a specific forage species permit under § 648.4(a)(15), which does not actually exist.

In §§ 648.5 and 6, revisions to existing text ensure that the vessel operator and dealer permit requirements adopted by the Council under Amendment 18 are reflected in these sections.

In § 648.22, paragraph (a)(2) is revised to spell out the first use of the term “annual catch limit” and “annual catch target.”

In §§ 648.22(a)(2), 648.22(b)(3)(v), 648.23(a)(2)(ii), and 648.24(c)(3), references to the butterfish “mortality” cap are revised to the butterfish “discard” cap upon the request of Council staff to more accurately reflect how such measures are implemented. Similarly, references to the Atlantic mackerel Tier 3 “allocation” in §§ 648.22(a)(3), 648.22(b)(2)(iv)(A), 648.22(c)(6), 648.24(b)(1)(i)(B), and §§ 648.26(a)(1)(iii) and (a)(2)(i)(B) are revised to reference “catch cap” instead.

### **Comments and Responses**

During the public comment periods for the NOA and the proposed rule for this amendment, we received 5 comment letters from 6 individuals and organizations,

including a letter from Pew Charitable Trusts (Pew) referencing 14,957 form letters submitted before final Council adoption of this action. All comments generally supported integrating this species into the FMP, but specific comments opposed setting OY equal to the ABC and certain deductions for setting catch levels, as detailed below. The following discussion summarizes the issues raised in the comments that were relevant to this action and associated NMFS's responses. Please note that, 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 FMP amendment, and may not change or substitute any measure in a substantive way.

*Comment 1:* Pew supported implementing conservation and management measures for Atlantic chub mackerel by integrating this species into the FMP, suggesting the Council take a precautionary approach to managing this species until sufficient scientific information is available to understand this species' role in the ecosystem. A joint letter from Wild Oceans and Conservation Law Foundation (Wild Oceans/CLF) noted this action demonstrates the Council's commitment to implementing its Ecosystem Approach to Fisheries Management policies by maintaining an adequate forage base to support ecosystem productivity. Lund's Fisheries Incorporated suggested the Council should collect data to better understand the stock throughout its range, including in the Gulf of Mexico and in waters outside of U.S. jurisdiction, to estimate the potential of the stock as ocean temperatures rise.

*Response:* This final rule implements Atlantic chub mackerel conservation and management measures based on the best scientific information available and integrates

this species into the renamed Mackerel, Squid, and Butterfish FMP. As more information becomes available, the Council can revise such measures as appropriate.

*Comment 2:* Wild Oceans/CLF suggested the list of goals and objectives are comprehensive and appropriate, reflecting the role the species plays as prey for predators. Lund's and SeaFreeze Limited supported Objectives 2.1 and 2.2, indicating their vessels need operational flexibility and depend on access to the *Illex* squid fishery.

*Response:* This final rule implements the goals and objectives, as proposed.

*Comment 3:* Lund's and SeaFreeze supported EFH designations for all life history stages. Wild Oceans/CLF indicated that EFH should be based on the best scientific information available and that the proposed broad designations limit effective targeted conservation efforts. They suggest more information is needed on spatial/temporal interactions with predators to inform predator EFH and identify multispecies habitat areas of particular concern. Pew stated that EFH information is limited and should be augmented to accurately determine EFH for all life stages, including spawning times/locations.

*Response:* The Atlantic chub mackerel EFH designations implemented in this action are based on the best scientific information available and encompass the breadth of known distribution of all life stages for this species. EFH designations can be revised through a future action if additional information becomes available to more precisely define EFH for particular life stages. The Council considered depth-specific EFH designations, but adopted more general definitions to include a broader area due to the limited information available for this species. The Council has funded efforts to collect additional information on Atlantic chub mackerel predation by other species, but that

information is not currently available. Because identifying predator EFH and multispecies habitat areas of particular concern are beyond the scope of this action and were not considered by the Council, this final rule implements only the proposed Atlantic chub mackerel EFH designations.

*Comment 4:* Wild Oceans/CLF suggested the Atlantic Chub Mackerel Management Unit should extend to the east coast of Florida consistent with the SSC's recommendation for the ABC. They state this would give the Council the authority to regulate Atlantic chub mackerel throughout its range consistent with an ecosystem-based approach to managing the species. They suggested the proposed Management Unit leaves the stock unmanaged south of North Carolina, stating that it is important to manage a species throughout its range due to climate change. Lund's and SeaFreeze supported the proposed Management Unit.

*Response:* Atlantic chub mackerel landings south of North Carolina all occurred in Florida and accounted for only 0.3 percent of total east coast landings from 1999-2018. Consistent with the National Standard 3 Guidelines at § 600.320, the Council determined that such catch was immaterial to proper management, and that excluding those states from the Management Unit would not impair the Council's ability to sustainably manage the stock or meet the FMP goals and objectives. Atlantic chub mackerel catch south of North Carolina is accounted for through the deduction of estimated catch from South Carolina through the east coast of Florida from the ABC as part of the specifications process. The Council can adjust this catch estimate if catch exceeds the current estimate to ensure total catch does not exceed the ABC specified by the SSC. If the stock shifts due to climate change, it will likely move north due to warming waters, which would

result in a greater portion of the stock covered by the Management Unit. Based on the above, this final rule implements the proposed Atlantic Chub Mackerel Management Unit.

*Comment 5:* One member of the public suggested that Atlantic chub mackerel is subject to overfishing and that the catch limit (presumably ABC) should be reduced to 1,200 mt. Lund's supported the proposed 2,300-mt ABC, recommending the SSC should continue to evaluate the potential to increase the ABC in the future. PEW indicated the ABC should not exceed the 2,300-mt ABC recommended by the SSC.

*Response:* This final rule implements an Atlantic chub mackerel ABC of 2,300 mt, as recommended by the Council's SSC. In July 2018, the Council's SSC concluded that catch levels similar to those recently observed are unlikely to result in overfishing based on expert judgement that the low fishery capacity in this region and generally high productivity of this species in fisheries throughout the world. The SSC noted that it may recommend a lower future ABC if fishing under a 2,300-mt ABC proves too risky to the stock. Any adjustment to the ABC, including both increases and decreases recommended by the SSC and adopted by the Council, could be implemented through a future action.

*Comment 6:* Pew and Wild Oceans/CLF opposed setting Atlantic chub mackerel OY equal to MSY and ABC. Citing National Standard 1 Guidelines and the Council's Ecosystem Approaches to Fisheries Management Guidance Document, they indicated that the Council should set OY lower than the ABC to account for the role this species plays as forage within the ecosystem. Wild Oceans/CLF noted that such guidance suggests that OY should be set further from MSY when MSY estimates and management controls are lacking or unavailable. They also recalled that the SSC's ABC recommendation did not include ecosystem considerations. They opposed the argument that forage/ecosystem

importance has to be quantified by highlighting that krill OY was set to zero in the Coastal Pelagic Species FMP in the Pacific without any quantitative basis. Pew recommended the Council consider the benefits of protecting Atlantic chub mackerel beyond food production and evaluate tradeoffs between the value of chub mackerel as forage for other predators and maintaining trophic balance against their market value. Wild Oceans/CLF indicated that OY should be set at 2.86 million lb (1,297 mt) consistent with the annual landings limit set by Amendment 18.

*Response:* In recommending an ABC, the SSC noted that there is insufficient information on predatory mortality and the role of Atlantic chub mackerel in predator diets to recommend an OY lower than the ABC. The Council acknowledged this deficiency and funded a study to determine the importance of Atlantic chub mackerel to the diets of recreationally-important highly migratory species. This study is expected to be presented to the Council at its August 2020 meeting and could inform future decisions on the appropriate level for which to set OY. Absent information to inform the Council's decision, the Council had no basis for which to set OY lower than the ABC specific to Atlantic chub mackerel's role as forage for other species. The Council considered setting OY at 1,472 mt (3.25 million lb), which would achieve a 1,293 mt (2.85 million lb) TAL similar to temporary measures. However, the Council did not adopt this alternative because it was not supported by analysis or evidence that the foregone yield would result in notable ecosystem benefits. Further, setting OY at a level below ABC without sufficient justification for that lower level would be inconsistent with National Standard 2 of the Magnuson-Stevens Act requirement to use the best scientific information available.

Based on the above, this final rule sets Atlantic chub mackerel OY equal to the ABC, as proposed.

*Comment 7:* Both Lund's and SeaFreeze opposed deductions for Atlantic chub mackerel catch from South Carolina through Florida, stating the catch is negligible and outside of the Management Unit. Lund's also opposed the 4-percent management uncertainty buffer in setting the ACL, stating that it is unnecessary given the low likelihood of overfishing this species. Lund's supported not separating commercial and recreational catch at this time, suggesting that recreational catch could be used as an indicator of stock abundance trends. Citing concerns that the stock was overfished, one member of the public recommended that the maximum catch (presumably TAL) should be set at 1,000 mt.

*Response:* As noted in the response to Comment 4, it is necessary to deduct catch from South Carolina through Florida to fully account for all catch under the ABC. This deduction can be revised during the annual specifications process. Due to concerns regarding accurate species identification and under-reporting, the Council adopted a 4-percent management uncertainty buffer to reduce the likelihood that the ACL would be exceeded. The Council noted there is uncertainty about how the fishery would respond to management measures adopted in this action because they have never been used to constrain Atlantic chub mackerel catch previously. Historically, recreational landings have been less than 1e percent of total Atlantic chub mackerel landings, and discards are not well quantified in part based on difficulty differentiating mackerel species. The Council did not adopt separate commercial and recreational ACLs because recreational fishery sub-ACL would be quite small, difficult to monitor, and be based on uncertain

data. Finally, as discussed above, the SSC does not think that recent catch levels would result in overfishing this stock. Based on the above, this final rule implements the 2020 and projected 2021-2022 catch limits as proposed, including a 4-percent management uncertainty buffer and one ACL that applies to both commercial and recreational catch.

*Comment 8:* Lund's and SeaFreeze supported the proposed possession limits, but one member of the public suggested that an 18,000-lb (8.16-mt) possession limit is sufficient without offering any explanation.

*Response:* This final rule implements the proposed possession limits, including those implemented as an AM. The Council did not consider an 18,000-lb (8.16-mt) possession limit and we cannot implement such a limit through this final rule. The Council can consider revising the possession limit through a future action, including via annual specifications.

*Comment 9:* Wild Oceans/CLF and SeaFreeze supported the proposed status determination criteria, with the former noting that alternative methods for developing these criteria are appropriate given the poor nature of existing science for Atlantic chub mackerel. Lund's, SeaFreeze, and Pew supported the proposed permit and reporting requirements, with Pew recommending collecting tow-by-tow information. Lund's and SeaFreeze supported the transiting provision, indicating that the flexibility is necessary to allow vessels to continue historic operations targeting Atlantic chub mackerel outside of the Management Unit. Lund's supported fishery/species exemptions for Atlantic chub mackerel, administrative measures, and corrections to existing regulations.

*Response:* This final rule implements the proposed status determination criteria, permitting and reporting requirements, transit provision, administrative measures,

fishery/species exemptions for Atlantic chub mackerel, and regulatory corrections. This rule does not implement tow-by-tow data collections. Although the Council's Fishery Management Action Team noted that more information is needed to support the management of Atlantic chub mackerel and understand its role in the ecosystem, it did not recommend the Council adopt tow-by-tow reporting at this time. Because such reporting was not adopted by the Council and the commenter did not provide sufficient justification to warrant the increased time and cost burden to the public, this action implements the reporting requirements as proposed.

### **Changes from the Proposed Rule**

This final rule revises the introductory text in § 648.7(b)(1)(i) to accommodate regulatory changes made by a final rule implementing Amendment 6 to the Tilefish Fishery Management Plan (RIN 0648-BJ38). Reference to the expiration of temporary Atlantic chub mackerel measures on December 31, 2020, included in that paragraph are removed by this final rule. The paragraph header "Jigging exemption" was removed from § 648.23(a)(2)(ii) to maintain consistent format with paragraph (a)(2)(i) of that section which does not have a paragraph header.

### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the Initial Regulatory Flexibility Act (IRFA) analysis, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed in the Amendment 21 EA to support the action. The proposed rule for this action includes a summary of the IRFA. A description of why this action was considered, the objectives of and the legal basis for this rule is contained in Amendment 21 and in the preambles to the proposed and this final rule. All of the documents that constitute the FRFA are available from NMFS (see **ADDRESSES**).

*Summary of the Significant Issues Raised by Public Comments in Response to the IRFA.  
A 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*

For the purposes of the Regulatory Flexibility Act (RFA) analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with Federal

Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For purposes of the RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of \$11 million (NAICS 11411) for all its affiliated operations worldwide. A business primarily engaged in for-hire (charter/party) operations is characterized as annual gross receipts not in excess of \$7.5 million. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used to determine the size of the business entity in this analysis is based on calendar years 2015-2017.

This action affects any commercial or party/charter vessel that catches Atlantic chub mackerel from Maine through North Carolina. Although there is the possibility that a vessel historically caught Atlantic chub mackerel without being issued a Federal permit, the number of such vessels is likely less than 10 based on dealer data. Therefore, for the purposes of this analysis, any vessel that reported any amount of Atlantic chub mackerel landings on VTRs submitted to GARFO during 2008-2017 would be potentially affected by this action. Based on this approach, 86 commercial fishing entities would be affected by this action, 85 of which (99 percent) were categorized as small business entities using the definition specified above. From 2015-2017, these entities averaged \$1,343,855 in annual revenue from commercial fishing. Fewer than three entities depended upon

Atlantic chub mackerel from more than 1 percent of total fishing revenues during 2015-2017. Seventy-seven party/charter entities would be affected by this action, all of which were classified as small businesses. These entities averaged \$316,860 in annual fishing revenues during 2015-2017, with dependence on Atlantic chub mackerel assumed to be low based on available information and public input. Therefore, due to potential overlap between vessels conducting both party/charter and commercial operations, a maximum of 163 entities would be affected by this action, nearly all of which are small entities.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance*

*Requirements of this Proposed Rule*

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0202. The proposed rule included reference to the burdens associated with vessel logbook reports under OMB control number 0648-0212. However, because we ultimately did not change logbook information collections or associated instructions, this final rule removes reference to that information requirement. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

1. Initial Federal vessel permit application, OMB# 0648-0202, (45 minutes/response);
2. Initial Federal dealer permit application, OMB# 0648-0202, (15 minutes/response); and

3. Initial Federal operator permit application, OMB# 0648-0202, (60 minutes/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

*Description of Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

As noted in the proposed rule, although the no-action alternatives for most measures in this action would minimize adverse economic impacts, they do not meet the objectives for this action and would not be consistent with the Magnuson-Stevens Act. This final rule implements long-term measures that enable fishery participants to catch Atlantic chub mackerel at or close to their historic levels, with the TAL implemented by this action representing a 57-percent increase compared to the temporary landing limit implemented by Amendment 18. This action reduces the Atlantic chub mackerel ABC by 84,500 lb (38.3 mt) to fully account for the expected Atlantic chub mackerel catch (landings plus discards) from South Carolina through Florida based on historic data. Similarly, the 6-percent discard rate implemented by this action reflects the long-term discard estimates from available observer data. These measures are necessary to ensure the fishery does not exceed the overall Atlantic chub mackerel ABC and ACL, minimize the potential for overfishing this stock, and prevent overfishing from occurring, as required by the Magnuson-Stevens Act.

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, we prepared a letter to permit holders that also serves as small entity compliance guide (the guide). Copies of the guide (*i.e.*, permit holder letter) will be sent to all entities issued a longfin squid, *Illex* squid, Atlantic mackerel, or butterfish permit. The guide and this final rule are available upon request from the Regional Administrator (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 17, 2020.

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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 § 648.1, revise paragraph (a) to read as follows:

**§ 648.1 Purpose and scope.**

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, Atlantic chub mackerel, longfin squid, *Illex* squid, and butterfish fisheries (Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surfclam and ocean quahog fisheries (Atlantic Surfclam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the golden and blueline tilefish fisheries (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

\* \* \* \* \*

3. Amend § 648.2 by:

a. Revising the definition of “Atlantic mackerel”;

- b. Adding in alphabetical order the definition of “Atlantic Chub Mackerel Management Unit”;
- c. Removing the definition of “Atlantic Mackerel, Squid, and Butterfish Monitoring Committee”; and
- d. Revising the definition of “Council”;
- e. Adding in alphabetical order the definition of “Mackerel, Squid, and Butterfish Monitoring Committee”.

The additions and revisions read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Atlantic Chub Mackerel Management Unit* means an area of the Atlantic Ocean in which the United States exercises exclusive jurisdiction over all Atlantic chub mackerel fished for, possessed, caught, or retained in or from that is bounded on the west and north by the coastline of the United States; bounded on the east by the outer limit of the U.S. EEZ; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33°48'46.37" N. lat., 78°29'46.46" W. long., and then heading due east along 33°48'46.37" N. lat. to the outer limit of the US Exclusive Economic Zone.

\* \* \* \* \*

*Atlantic mackerel* means *Scomber scombrus*.

\* \* \* \* \*

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies,

monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, Atlantic chub mackerel, *Illex* squid, longfin squid, and butterfish; Atlantic surfclam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

\* \* \* \* \*

*Mackerel, Squid, and Butterfish Monitoring Committee* means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

\* \* \* \* \*

4. Amend § 648.4, by revising paragraph (a)(5) introductory text, paragraphs (a)(5)(iii)(B), (C), (H), (I), (v), (15), and (c)(2)(vii) to read as follows:

**§ 648.4 Vessel permits.**

\* \* \* \* \*

(a) \* \* \*

(5) *Mackerel, squid, and butterfish vessels.* Any vessel of the United States, including party and charter vessels, that fishes for, possesses, or lands Atlantic mackerel, *Illex* squid, longfin squid, or butterfish in or from the EEZ or Atlantic chub mackerel in or from the EEZ portion of the Atlantic Chub Mackerel Management Unit must have been issued and carry on board a valid Federal mackerel, squid, or butterfish vessel permit pursuant to this paragraph (a)(5).

\* \* \* \* \*

(iii) \* \* \*

(B) *Limited access mackerel permits.* A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (7.46 mt) of Atlantic mackerel per trip, except vessels that fish exclusively in state waters for Atlantic mackerel, must have been issued and carry on board one of the limited access Atlantic mackerel permits described in paragraphs (a)(5)(iii)(B)(1) through (3) of this section, including both vessels engaged in pair trawl operations.

(1) *Tier 1 Limited Access Atlantic Mackerel Permit.* A vessel may fish for, possess, and land Atlantic mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(2) *Tier 2 Limited Access Atlantic Mackerel Permit.* A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of Atlantic mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(3) *Tier 3 Limited Access Atlantic Mackerel Permit.* A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of Atlantic mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for Atlantic mackerel permits.* To be eligible to apply for a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit to fish for and retain Atlantic mackerel in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit, as applicable, for the preceding year, be replacing a vessel that was issued a limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

\* \* \* \* \*

(H) *Vessel baseline specification.* (1) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access Atlantic mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: An individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(1) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(2) If an Atlantic mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the Atlantic mackerel limited access application. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the Atlantic mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access Atlantic mackerel eligibility was established

on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(I) of this section.

(I) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access Atlantic mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

\* \* \* \* \*

(v) *Party and charter boat permits.* The owner of any party or charter boat that fishes for, possesses, or retains Atlantic mackerel, *Illex* squid, longfin squid, or butterfish in or from the EEZ or Atlantic chub mackerel in or from the EEZ portion of the Atlantic Chub Mackerel Management Unit, while carrying passengers for hire must have been issued and carry on board a valid Federal vessel permit pursuant to this paragraph (a)(5).

\* \* \* \* \*

(15) *Mid-Atlantic forage species.* Any commercial fishing vessel of the United States must have been issued and have on board a valid Federal commercial vessel permit issued by GARFO pursuant to this section to fish for, possess, transport, sell, or land Mid-

Atlantic forage species in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(b). A vessel that fishes for such species exclusively in state waters is not required to be issued a Federal permit.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vii) The owner of a vessel that has been issued a Tier 1 or Tier 2 limited access Atlantic mackerel must submit a volumetric fish hold certification measurement, as described in paragraph (a)(5)(iii)(H) of this section, with the permit renewal application for the 2013 fishing year.

\* \* \* \* \*

5. In § 648.5, revise paragraph (a) to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, *Illex* squid, longfin squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; golden tilefish or blueline tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit; Mid-Atlantic forage species harvested in the Mid-Atlantic Forage Species Management Unit; or Atlantic chub mackerel harvested in or from the EEZ portion of the Atlantic Chub Mackerel Management Unit that is issued a permit, including carrier and processing

permits, for these species under this part must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

\* \* \* \* \*

6. In § 648.6, revise paragraph (a)(1) to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) \* \* \* (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surfclam, ocean quahog, Atlantic mackerel, *Illex* squid, longfin squid, butterfish, scup, bluefish, golden tilefish, blueline tilefish, and black sea bass; Atlantic surfclam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A dealer of Atlantic chub mackerel must have been issued and have in their possession, a valid dealer permit for Atlantic mackerel, *Illex* squid, longfin squid, or butterfish in accordance with this paragraph. A dealer of Mid-Atlantic forage species must have been issued and have in their possession, a valid dealer permit for any species issued in accordance with this paragraph.

\* \* \* \* \*

7. Amend § 648.7, by revising paragraph (a)(1) introductory text, and paragraphs (b)(1)(i), and (3)(ii) to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) \* \* \* (1) Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *General.* If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. Except for vessel owners or operators fishing under a surfclam or ocean quahog permit, or fishing under a private recreational tilefish permit, the owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must:

\* \* \* \* \*

(3) \* \* \*

(ii) *Atlantic mackerel owners or operators.* The owner or operator of a vessel issued a limited access Atlantic mackerel permit must report catch (retained and discarded) of Atlantic mackerel daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other

information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year Atlantic mackerel was caught; total pounds of Atlantic mackerel retained and total pounds of all fish retained. Daily Atlantic mackerel VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if Atlantic mackerel caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

\* \* \* \* \*

8. In § 648.10, revise paragraph (n) to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owners/operators.**

\* \* \* \* \*

(n) *Limited access Atlantic mackerel VMS notification requirements.* (1) A vessel issued a limited access Atlantic mackerel permit intending to declare into the Atlantic mackerel fishery must notify NMFS by declaring an Atlantic mackerel trip prior to leaving port at the start of each trip in order to harvest, possess, or land Atlantic mackerel on that trip.

(2) A vessel issued a limited access Atlantic mackerel permit intending to land more than 20,000 lb (9.07 mt) of Atlantic mackerel must notify NMFS of the time and place of offloading at least 6 hr prior to arrival, or, if fishing ends less than 6 hours before arrival, immediately upon leaving the fishing grounds. The Regional Administrator may adjust the prior notification minimum time through publication in the **Federal Register** consistent with the Administrative Procedure Act.

\* \* \* \* \*

9. In § 648.11, revise paragraphs (n)(1)(ii) through (iv) to read as follows:

**§ 648.11 At-sea sea sampler/observer coverage.**

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (n)(1)(i) of this section may only embark on an Atlantic mackerel trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specific Atlantic mackerel trip, within 24 hr of the vessel representative's notification of the prospective Atlantic mackerel trip, as specified in paragraph (n)(1)(i) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the Atlantic mackerel trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing Atlantic mackerel except as specified in paragraph (n)(1)(iii) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(iii) A vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(iii), that does not have a representative provide the trip notification required in paragraph (n)(1)(i) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 20,000 lb (9.07 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.

(iv) If a vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(iii), intends to possess, harvest, or land more than 20,000 lb (9.07 mt) of Atlantic mackerel per trip or per calendar day, and has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

\* \* \* \* \*

10. In § 648.12, revise the introductory text to read as follows:

**§ 648.12 Experimental fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surfclam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), O (skates), and P (Mid-Atlantic forage species) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the

MAFMC before approving any exemptions for the Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid butterflyfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries, including exemptions for experimental fishing contributing to the development of new or expansion of existing fisheries for Mid-Atlantic forage species.

\* \* \* \* \*

11. Amend § 648.14 by:

- a. Revising paragraphs (g)(1)(i) and (g)(1)(ii)(A);
- b. Revising paragraph (g)(2) introductory text, (g)(2)(ii)(C), (D), (F), and (G);
- c. Revising paragraph (g)(2)(v) introductory text and (g)(2)(v)(A);
- d. Revising paragraph (g)(3) introductory text, (g)(3)(ii) and (iii), and (g)(4); and
- e. Revising paragraph (w).

The revisions read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) *Possession and landing.* Take and retain, possess, or land more Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterflyfish than specified under, or after the effective date of, a notification issued under §§ 648.22 or 648.24(d).

(ii) \* \* \*

(A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or

butterfish caught by a vessel that has not been issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish vessel permit, unless the vessel fishes exclusively in state waters.

\* \* \* \* \*

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person owning or operating a vessel issued a valid Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit, or issued an operator's permit, to do any of the following:

\* \* \* \* \*

(ii) \* \* \*

(C) Possess more than the incidental catch allowance of Atlantic mackerel, unless issued a limited access Atlantic mackerel permit.

(D) Take and retain, possess, or land Atlantic chub mackerel, Atlantic mackerel, squid, or butterfish in excess of a possession limit specified in § 648.26.

\* \* \* \* \*

(F) Take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel after a closure of the entire commercial fishery, as specified under § 648.24(b)(1).

(G) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip; or land, or attempt to land more than 20,000 lb (9.08 mt) of Atlantic mackerel per day after 95 percent of the river herring and shad cap has been harvested, if the vessel holds a valid Atlantic mackerel permit.

\* \* \* \* \*

(v) *VMS reporting requirements in the directed Atlantic mackerel, longfin squid, and *Illex* squid fisheries.*

(A) Fail to declare via VMS into the directed Atlantic mackerel, longfin squid, or *Illex* squid fisheries by entering the fishery code prior to leaving port at the start of each trip if the vessel will harvest, possess, or land more than an incidental catch of Atlantic mackerel, longfin squid, or *Illex* squid and is issued a limited access Atlantic mackerel permit, Tier 1 or Tier 2 longfin squid moratorium permit, or *Illex* squid moratorium permit.

\* \* \* \* \*

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.22(g), it is unlawful for the owner and operator of a party or charter boat issued an Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

\* \* \* \* \*

(ii) Sell or transfer Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish to another person for a commercial purpose.

(iii) Carry passengers for hire while fishing commercially under an Atlantic mackerel, *Illex* squid, longfin squid, or butterfish fishery permit.

(4) *Presumption.* For purposes of this part, the following presumption applies: All Atlantic chub mackerel, Atlantic mackerel and butterfish possessed on board a party or charter boat issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish

fishery permit are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such species were harvested by a vessel without a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit and fishing exclusively in state waters or, for Atlantic chub mackerel, outside of the Atlantic Chub Mackerel Management Unit.

\* \* \* \* \*

(w) *Mid-Atlantic forage species*. It is unlawful for any person owning or operating a vessel issued a valid commercial permit under this part to fish for, possess, transfer, receive, or land; or attempt to fish for, possess, transfer, receive, or land; more than 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(b). A vessel not issued a commercial permit in accordance with §648.4 that fished exclusively in state waters or a vessel that fished Federal waters outside of the Mid-Atlantic Forage Species Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from this prohibition.

\* \* \* \* \*

12. Revise § 648.18 to read as follows:

**§ 648.18 Standardized bycatch reporting methodology.**

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans by the Standardized Bycatch Reporting Methodology: An Omnibus Amendment to the Fishery Management Plans of the Mid-Atlantic and New England Regional Fishery Management Councils, completed March 2015, also known as the SBRM Omnibus Amendment, by the

New England Fishery Management Council, Mid-Atlantic Fishery Management Council, National Marine Fisheries Service Greater Atlantic Regional Fisheries Office, and National Marine Fisheries Service Northeast Fisheries Science Center: Atlantic Bluefish; Mackerel, Squid, and Butterfish; Atlantic Sea Scallop; Atlantic Surfclam and Ocean Quahog; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Monkfish; Northeast Multispecies; Northeast Skate Complex; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; and Tilefish. The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the SBRM Omnibus Amendment from the Greater Atlantic Regional Fisheries Office ([www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov), 978-281-9300). You may inspect a copy at the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

\* \* \* \* \*

13. Under part 648, revise the title of subpart B to read as follows:

**Subpart B—Management Measures for the Mackerel, Squid, and Butterfish**

**Fisheries**

14. Amend § 648.22 by:

- a. Revising the section heading;
- b. Revising paragraph (a) introductory text, (a)(2) and (3);
- c. Adding paragraph (a)(5);

- d. Revising paragraph (b)(2) introductory text, (b)(2)(i) and (ii), (b)(2)(iv)(A) introductory text, (b)(2)(iv)(A)(I) and (2);
- e. Revising paragraph (b)(2)(v) introductory text and (b)(2)(v)(A);
- f. Revising paragraphs (b)(3)(v) and (vii);
- g. Adding paragraph (b)(5);
- h. Revising paragraph (c) introductory text, (c)(1)(ii), (c)(2), (3), (6), (9); and
- i. Revising paragraph (d)(1).

The revisions and additions read as follows:

**§ 648.22 Mackerel, squid, and butterfish specifications.**

(a) *Initial recommended annual specifications.* The Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC:

\* \* \* \* \*

(2) *Butterfish*—Annual catch limit (ACL); Annual catch target (ACT) including RSA, DAH, DAP; bycatch level of the total allowable level of foreign fishing (TALFF), if any; and butterfish discard cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) *Atlantic mackerel*—ACL; commercial ACT, including RSA, DAH, Atlantic mackerel Tier 3 landings cap (up to 7 percent of the DAH), DAP; joint venture processing (JVP) if any; TALFF, if any; and recreational ACT, including RSA for Atlantic mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for

Atlantic mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

\* \* \* \* \*

(5) *Atlantic chub mackerel*—ACL, ACT, and total allowable landings (TAL), which, subject to annual review, may be specified for a period of up to 3 years.

(b) \* \* \*

(2) *Atlantic Mackerel*—(i) *ABC*. The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in §648.20. The stock-wide Atlantic mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *ACL*. The ACL or Domestic ABC is calculated using the formula  $ACL/Domestic\ ABC = stock\ wide\ ABC - C$ , where C is the estimated catch of Atlantic mackerel in Canadian waters for the upcoming fishing year.

\* \* \* \* \*

(iv) \* \* \*

(A) *Commercial sector ACT*. Commercial ACT is composed of RSA, DAH, Tier 3 landings cap (up to 7 percent of DAH), dead discards, and TALFF, if any. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, Tier 3 landings cap (up to 7 of the DAH), DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of Atlantic 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. Economic considerations for the establishment of JVP and TALFF include:

(1) Total world export potential of Atlantic mackerel producing countries.

(2) Total world import demand of Atlantic mackerel consuming countries.

\* \* \* \* \*

(v) *Performance review.* The Mackerel, Squid, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the Atlantic mackerel ACL at least every 5 years.

(A) If the Atlantic mackerel ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any two consecutive years), the Mackerel, Squid, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

\* \* \* \* \*

(3) \* \* \*

(v) *Butterfish discard cap.* The butterfish discard cap will be based on a portion of the ACT (set annually during specifications) and the specified cap amount will be allocated to the longfin squid fishery as follows: Trimester I—43 percent; Trimester II—17 percent; and Trimester III—40 percent.

\* \* \* \* \*

(vii) *Performance review*. The Mackerel, Squid, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterflyfish ACL in conjunction with review for the Atlantic mackerel fishery, as outlined in this section.

\* \* \* \* \*

(5) *Atlantic chub mackerel*—(i) *ABC*. The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide Atlantic chub mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *Maximum sustainable yield (MSY)*. The Atlantic chub mackerel MSY shall be set equal to the Atlantic chub mackerel ABC.

(iii) *OY*. The Atlantic chub mackerel OY shall be set equal to or less than the Atlantic chub mackerel ABC.

(iv) *ACL*. The ACL for the Atlantic Chub Mackerel Management Unit is calculated by subtracting an estimate of Atlantic chub mackerel catch from South Carolina through Florida from the Atlantic chub mackerel ABC or OY, whichever is less. The Monitoring Committee shall recommend an appropriate estimate of such catch on an annual basis through the specifications process. The ACL shall apply to both commercial and recreational catch of Atlantic chub mackerel; there will not be separate ACLs for the commercial and recreational Atlantic chub mackerel fisheries.

(v) *ACT*. The Atlantic chub mackerel ACT shall be equal to or less than the Atlantic chub mackerel ACL after deducting an estimate of management uncertainty. The Monitoring Committee shall identify and review relevant sources of management

uncertainty to recommend an overall ACT to the MAFMC for both the commercial and recreational fishing sectors as part of the specifications process.

(vi) *TAL*. The Atlantic chub mackerel TAL shall be equal to or less than the Atlantic chub mackerel ACT after deducting an estimate of dead discards in both the commercial and recreational fisheries. The Monitoring Committee shall evaluate available data to recommend an estimate of total discards used to calculate the TAL in its recommendation to the MAFMC as part of the specifications process.

(c) *Recommended measures*. Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Mackerel, Squid, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) \* \* \*

(ii) The commercial and/or recreational ACT for Atlantic mackerel.

\* \* \* \* \*

(2) Commercial quotas or total allowable landing limits, set after reductions for research quotas, management uncertainty, discards, an estimate of Atlantic chub mackerel catch from South Carolina through Florida, or any other applicable deduction specified in this section.

(3) The amount of longfin squid, *Illex* squid, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(vi), and the amount of Atlantic mackerel that may be retained, possessed and landed by any of the

limited access Atlantic mackerel permits described at § 648.4(a)(5)(iii) and the incidental Atlantic mackerel permit at § 648.4(a)(5)(iv).

\* \* \* \* \*

(6) Commercial seasonal quotas/closures for longfin squid, *Illex* squid, and Atlantic chub mackerel; and landings cap for the Tier 3 Limited Access Atlantic mackerel permit.

\* \* \* \* \*

(9) Recreational allocation for Atlantic mackerel.

\* \* \* \* \*

(d) \* \* \*

(1) The Mackerel, Squid, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Mackerel, Squid, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the

proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for *Illex* squid, longfin squid, Atlantic mackerel, Atlantic chub mackerel, or butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superseded as of the effective date of the final rule implementing the current year's annual specifications.

\* \* \* \* \*

15. In § 648.23, revise paragraph (a)(2)(ii) to read as follows:

**§ 648.23 Mackerel, squid, and butterfish gear restrictions.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) During closures of the longfin squid fishery resulting from the butterfish discard cap, described in § 648.24(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

16. Amend § 648.24 by:

a. Revising the introductory text to paragraph (b);

b. Revising paragraphs (b)(1)(i)(B), (b)(2), (b)(3), paragraph (b)(4) introductory text, (b)(5), and (6);

c. Revising paragraphs (c)(3) and (5);

d. Revising paragraph (d); and

e. Adding paragraph (e).

The revisions and additions read as follows:

**§ 648.24 Fishery closures and accountability measures.**

\* \* \* \* \*

(b) *Atlantic Mackerel AMs --(1)* \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

(2) *Atlantic mackerel commercial landings overage repayment.* If the Atlantic mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Non-landing AMs.* In the event that the Atlantic mackerel ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described

in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial Atlantic mackerel ACT was exceeded will be deducted from the following year's commercial Atlantic mackerel ACT, as a single-year adjustment.

(4) *Atlantic mackerel recreational AMs.* If the Atlantic mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

\* \* \* \* \*

(5) *Atlantic mackerel ACL overage evaluation.* The Atlantic mackerel ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the Atlantic mackerel ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the Atlantic mackerel ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

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

\* \* \* \* \*

(c) \* \* \*

(3) *Butterfish discard cap on the longfin squid fishery.* NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of each Trimester's butterfish discard cap allocation has been harvested.

\* \* \* \* \*

(5) *Butterfish allocation transfer.* NMFS may transfer up to 50 percent of any unused butterfish allocation from the butterfish DAH to the butterfish discard cap on the longfin squid fishery if the butterfish catch in the longfin squid fishery is likely to result in a closure of the longfin squid fishery, and provided the transfer does not increase the likelihood of closing the directed butterfish fishery. NMFS may instead transfer up to 50 percent of the unused butterfish catch from the butterfish discard cap allocation to the butterfish DAH if harvest of butterfish in the directed butterfish fishery is likely to exceed the butterfish DAH, and provided the transfer of butterfish allocation from the butterfish discard cap allocation does not increase the likelihood of closing the longfin squid fishery due to harvest of the butterfish discard cap. NMFS would make this transfer on or about November 15 each fishing year, in accordance with the Administrative Procedure Act.

(d) *Notification.* Upon determining that a closure or trip limit reduction is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure or trip limit reduction to all holders of Atlantic mackerel, *Illex* squid, longfin squid, and butterfish fishery permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure or trip limit reduction to recreational participants in the fishery; and publish notification of the closure or trip limit reduction in the **Federal Register**.

(e) *Atlantic Chub Mackerel AMs --(1) Commercial fishery closures.*

(i) When the Regional Administrator projects that 90 percent of the Atlantic chub mackerel TAL will be landed, the Regional Administrator will reduce the Atlantic chub mackerel possession limit as specified in § 648.26(e)(2)(i) through notification in the **Federal Register**.

(ii) When the Regional Administrator projects that 100 percent of the Atlantic chub mackerel TAL will be landed, the Regional Administrator will reduce the Atlantic chub mackerel possession limit as specified in § 648.26(e)(2)(ii) for the remainder of the fishing year (December 31) through notification in the **Federal Register**.

(2) *Overage repayment.* The Regional Administrator will evaluate both landings and dead discards in a single year to determine if the Atlantic chub mackerel ACL specified in § 648.22(b)(5) has been exceeded. If the Atlantic chub mackerel ACL has been exceeded, then catch in excess of the Atlantic chub mackerel ACT will be deducted from the Atlantic chub mackerel ACT as soon as possible in a following year as a single-year adjustment to the ACT. The Regional Administrator shall implement any changes to the Atlantic chub mackerel ACT through notification in the **Federal Register** in accordance with the Administrative Procedure Act.

(3) *Transiting.* Any vessel issued a valid commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit in accordance with §648.4 may transit the Atlantic Chub Mackerel Management Unit with an amount of Atlantic chub mackerel on board that exceeds the possession limits specified in this section to land in a port that is within the Atlantic Chub Mackerel Management Unit, provided that all Atlantic chub

mackerel was harvested outside of the Atlantic Chub Mackerel Management Unit and that all gear is stowed and not available for immediate use as defined in § 648.2.

17. Amend § 648.25, by revising the section heading and paragraph (a) introductory text to read as follows:

**§ 648.25 Mackerel, squid, and butterfish framework adjustments to management measures.**

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. However, any changes to Atlantic chub mackerel measures contained in this part 648 must be made through an amendment to the FMP and cannot be conducted through a framework adjustment.

\* \* \* \* \*

18. Amend § 648.26 by revising paragraphs (a)(1) and (a)(2)(i)(B), and adding paragraph (e) to read as follows:

**§ 648.26 Mackerel, squid, and butterfish possession restrictions.**

\* \* \* \* \*

(a) \* \* \*

(1) *Initial possession limits.* A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed, as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1 limited access Atlantic 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 Atlantic 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 Atlantic 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 landings cap has been harvested, as specified in § 648.24(b)(1)(i)(A) and (B), respectively.

(iv) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 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.

(v) Both vessels involved in a pair trawl operation must be issued a valid Atlantic mackerel permits to fish for, possess, or land Atlantic mackerel in the EEZ. Both vessels must be issued the Atlantic mackerel permit appropriate for the amount of Atlantic mackerel jointly possessed by both of the vessels participating in the pair trawl operation.

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(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 landings cap 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.

\* \* \* \* \*

(e) *Atlantic chub mackerel*. A vessel must be issued a valid Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit to fish for, possess, or land any Atlantic chub mackerel from or in the Atlantic Chub Mackerel Management Unit within the EEZ per trip. A vessel not issued a valid Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit in accordance with § 648.4 that is fishing exclusively in state waters or in the EEZ outside of the Atlantic Chub Mackerel Management Unit is exempt from the possession limits specified in this section.

(1) *Initial commercial possession limits*. A vessel issued a valid commercial Atlantic mackerel, *Illex* squid, longfin squid, or butterfish permit is authorized to fish for,

possess, and land an unlimited amount of Atlantic chub mackerel per trip from the EEZ portion of the Atlantic Chub Mackerel Management Unit, provided that the fishery has not been closed, as specified in § 648.24(e)(1).

(2) *Commercial fishery closure possession limits.* Once the commercial fishery is closed in accordance with § 648.24(e)(1), the possession limits specified in this paragraph (e)(2) will apply. A vessel not issued a Federal commercial Atlantic mackerel, *Illlex* squid, longfin squid, or butterfish permit in accordance with § 648.4 that fished exclusively in state waters or a vessel that fished in Federal waters outside of the Atlantic Chub Mackerel Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from the possession limits specified in this paragraph (e)(2).

(i) When the Regional Administrator projects that 90 percent of the commercial Atlantic chub mackerel TAL has been landed, a vessel issued a commercial Atlantic mackerel, *Illlex* squid, longfin squid, or butterfish permit may not fish for, possess, or land more than 40,000 lb (18.14 mt) of Atlantic chub mackerel at any time per trip in the EEZ portion of the Atlantic Chub Mackerel Management Unit.

(ii) When the Regional Administrator projects that 100 percent of the commercial Atlantic chub mackerel TAL has been landed, a vessel issued a commercial Atlantic mackerel, *Illlex* squid, longfin squid, or butterfish permit fish for, possess, or land more than 10,000 lb (4.54 mt) of Atlantic chub mackerel at any time per trip in the EEZ portion of the Atlantic Chub Mackerel Management Unit.

19. Amend § 648.80 by revising paragraph (b)(3)(i) and adding paragraph (c)(5)(iii) to read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* (i) *Species exemption.* Unless otherwise restricted in § 648.86, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (caught by trawl only), herring, Atlantic chub mackerel, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) *Atlantic chub mackerel fishery exemption.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (b)(2) and (c)(2) of this section may fish for, harvest, possess, or land Atlantic chub mackerel with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area when fishing in the MA Exemption Area defined in paragraph (c)(5)(i) of this section, provided such vessels comply with the following requirements:

(A) *Gear restrictions.* A vessel fishing for Atlantic chub mackerel within the MA Exemption Area must comply with the gear restrictions specified in § 648.23.

(B) *Possession limits.* A vessel fishing for Atlantic chub mackerel within the MA Exemption Area may fish for, possess on board, or land Atlantic chub mackerel, Atlantic mackerel, butterfish, *Illex* squid, and longfin squid up to the amount specified in § 648.26, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

\* \* \* \* \*

20. In part 648, revise the heading of subpart P to read as follows:

**Subpart P—Mid-Atlantic Forage Species**

21. In § 648.350:

- a. Revise the section heading; and
- b. Reserve paragraph (b).

The revision reads as follows:

**§ 648.350 Mid-Atlantic forage species landing limits.**

\* \* \* \* \*

22. Amend § 648.351 by revising the section heading and paragraphs (a) through (c) to read as follows:

**§ 648.351 Mid-Atlantic forage species possession limits.**

(a) *Mid-Atlantic forage species.* Unless otherwise prohibited in § 648.80, a vessel issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land up to 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined in

paragraph (b) of this section. A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

(b) *Mid-Atlantic Forage Species Management Unit.* The Mid-Atlantic Forage Species Management Unit is the area of the Atlantic Ocean that is bounded on the southeast by the outer limit of the U.S. EEZ; bounded on the south by 35°15.3' N. lat. (the approximate latitude of Cape Hatteras, NC); bounded on the west and north by the coastline of the United States; and bounded on the northeast by the following points, connected in the order listed by straight lines:

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
1	40°59.32' N.	73°39.62' W.
2	40°59.02' N.	73°39.41' W.
3	40°57.05' N.	73°36.78' W.
4	40°57.87' N.	73°32.85' W.
5	40°59.78' N.	73°23.70' W.
6	41°1.57' N.	73°15.00' W.
7	41°3.40' N.	73°6.10' W.
8	41°4.65' N.	73°0.00' W.
9	41°6.67' N.	72°50.00' W.
10	41°8.69' N.	72°40.00' W.
11	41°10.79' N.	72°29.45' W.
12	41°12.22' N.	72°22.25' W.
13	41°13.57' N.	72°15.38' W.
14	41°14.94' N.	72°8.35' W.
15	41°15.52' N.	72°5.41' W.
16	41°17.43' N.	72°1.18' W.
17	41°18.62' N.	71°55.80' W.

18	41°18.27' N.	71°54.47' W.
19	41°10.31' N.	71°46.44' W.
20	41°2.35' N.	71°38.43' W.
21	40°54.37' N.	71°30.45' W.
22	40°46.39' N.	71°22.51' W.
23	40°38.39' N.	71°14.60' W.
24	40°30.39' N.	71°6.72' W.
25	40°22.38' N.	70°58.87' W.
26	40°14.36' N.	70°51.05' W.
27	40°6.33' N.	70°43.27' W.
28	39°58.29' N.	70°35.51' W.
29	39°50.24' N.	70°27.78' W.
30	39°42.18' N.	70°20.09' W.
31	39°34.11' N.	70°12.42' W.
32	39°26.04' N.	70°4.78' W.
33	39°17.96' N.	69°57.18' W.
34	39°9.86' N.	69°49.6' W.
35	39°1.77' N.	69°42.05' W.
36	38°53.66' N.	69°34.53' W.
37	38°45.54' N.	69°27.03' W.
38	38°37.42' N.	69°19.57' W.
39	38°29.29' N.	69°12.13' W.
40	38°21.15' N.	69°4.73' W.
41	38°13.00' N.	68°57.35' W.
42	38°4.84' N.	68°49.99' W.
43*	38°2.21' N.	68°47.62' W.

\*Point 43 falls on the U.S. EEZ.

(c) *Transiting*. Any vessel issued a valid permit in accordance with §648.4 may transit the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (b) of

this section, with an amount of Mid-Atlantic forage species on board that exceeds the possession limits specified in paragraph (a) of this section to land in a port in a state that is outside of the Mid-Atlantic Forage Species Management Unit, provided that those species were harvested outside of the Mid-Atlantic Forage Species Management Unit and that all gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

23. In § 648.352, revise the section heading to read as follows:

**§ 648.352 Mid-Atlantic forage species framework measures.**

\* \* \* \* \*

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