

(e)(5)(ii) of this section, that vessel is assumed to be fishing under the requirements of paragraphs (e)(1) through (3) of this section until the vessel owner or operator makes another declaration under this paragraph (e)(5).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100120035-3705-02]

RIN 0648-AY26

#### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 14

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 14 to the Atlantic Mackerel, Squid and Butterfish Management Plan. The Mid-Atlantic Fishery Management Council developed Amendment 14 to improve catch monitoring for the Atlantic mackerel, squid, and butterfish fisheries and to address incidental catch of river herring and shad through responsible management. Amendment 14 management measures include: Revising dealer and vessel reporting requirements, and requirements for vessel monitoring systems; increasing observer coverage on midwater trawl mackerel and Tier 1, 2 and 3 small-mesh bottom trawl mackerel vessels; implementing partial industry funding for observer coverage; revising vessel requirements to improve at-sea sampling by observers; establishing slippage caps to discourage the discarding of catch prior to sampling by observers; and establishing a mortality cap for river herring and shad with amounts to be set during specifications.

**DATES:** Public comments must be received on or before October 11, 2013.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Impact Statement (EIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M.

Moore, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments on this document, identified by NOAA-NMFS-2013-0128, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)/#!docketDetail;D=NOAA-NMFS-2013-0128, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the MSB Amendment 14 Proposed Rule."

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

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northeast Regional Office and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Aja Szumylo, Fishery Policy Analyst, 978-281-9195, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 9, 2010 (75 FR 32745), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 14 to the Atlantic mackerel, squid, and butterfish (MSB) Fishery Management Plan (FMP) to consider measures to: Implement catch share systems for the

squid fisheries, increase fishery monitoring to determine the significance of river herring and shad incidental catch in the MSB fisheries, and measures to minimize bycatch and/or incidental catch of river herring and shad. The Council subsequently conducted scoping meetings during June 2010 to gather public comments on these issues. Based on the comments submitted during scoping, the Council removed consideration of catch shares for squids from Amendment 14 at its August 2010 meeting.

Following further development of Amendment 14, the Council conducted Magnuson-Stevens Fishery Conservation and Management Act (MSA) and National Environmental Policy Act public hearings in April and May 2012, and, following the public comment period on the draft EIS that ended on June 4, 2012, the Council adopted Amendment 14 on June 14, 2012. The Council submitted Amendment 14 to NOAA Fisheries Service (NMFS) for review on February 26, 2012. Following a series of revisions, the Council submitted a revised version of Amendment 14 to NMFS on June 3, 2013. This action proposes management measures that were recommended by the Council in Amendment 14. If implemented, these management measures would:

- Require weekly vessel trip reports (VTRs) for all MSB permits, consistent with VTR provisions for other fisheries;
- Require a 48-hr pre-trip notification in order to retain, possess, or transfer more than 20,000 lb (9.07 mt) of Atlantic mackerel (mackerel) in order to facilitate observer placement;
- Require the use of vessel monitoring systems (VMS), as well as the submission of daily VMS catch reports, for limited access mackerel and longfin squid/butterfish moratorium permits to facility quota monitoring;
- Require a 6-hr pre-landing notification via VMS in order to land more than 20,000 lb (9.07 mt) of mackerel, to facilitate enforcement;
- Expand dealer reporting requirements;
- Increase observer coverage on limited access mackerel vessels using midwater and small-mesh bottom trawl, and require industry contributions of \$325 per day;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available for sampling;
- Require that the Council meet formally to review the results of the

Sustainable Fisheries Coalition/ University of Massachusetts Dartmouth School of Marine Science and Technology river herring and shad bycatch avoidance project, and consider the appropriateness of developing a framework adjustment to implement the catch avoidance strategies suggested in the study;

- Establish a mortality cap for river herring and shad to directly control mortality in the mackerel fishery, with cap amounts set during the development of specifications; and
- Add river herring and shad mortality caps and time/area hotspot closures to the list of measures that can be addressed via framework adjustment.

A Notice of Availability (NOA) for Amendment 14, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on August 12, 2013 (78 FR 48852). The comment period on Amendment 14 NOA ends on October 11, 2013. Comments submitted on the NOA and/or this proposed rule prior to October 11, 2013, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 14. NMFS will consider comments received by the end of the comment period for this proposed rule October 15, 2013 in its decision regarding measures to be implemented.

### Proposed Measures

The proposed regulations are based on the measures in Amendment 14, and contain many measures that would improve data collection and reduce catch of river herring and shad and that can be administered by NMFS. NMFS supports improvements to fishery dependent data collections, either through increasing reporting requirements or expanding the at-sea monitoring of the MSB fisheries. NMFS also shares the Council's concern for reducing incidental catch and unnecessary discarding. However, NMFS believes that a few measures in Amendment 14 may lack adequate rationale or development by the Council, and NMFS has concerns about the potential utility and legality of the approval and implementation of these measures. These measures include: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers to return to port; and a recommended 100-percent observer coverage on midwater trawl and Tier 1 small-mesh bottom trawl mackerel vessels, 50 percent coverage on Tier 2 small-mesh bottom trawl mackerel vessels, and 25 percent on Tier 3 small-mesh bottom trawl mackerel

vessels, with the industry contributing \$325 per day toward observer costs.

The measures NMFS has concern with in Amendment 14 are the same or similar to measures that NMFS disapproved on July 19, 2013, in the New England Fishery Management Council's (NEFMC) Amendment 5 to the Atlantic Herring FMP (Amendment 5). A proposed rule to implement Amendment 5 (78 FR 33020) was published on June 3, 2013, with a comment period ending July 18, 2013. A summary of the comments received, NMFS's responses to those comments, and the full rationale for the disapproval of certain measures, will be published in the final rule implementing Amendment 5.

This proposed rule for Amendment 14 describes potential concerns about these measures' consistency with the MSA and other applicable law, and summarizes the disapproval rationale for similar measures in Amendment 5. While the measures disapproved in Amendment 5 are very similar to measures in Amendment 14, we are considering the two actions and their supporting analyses separately. Following public comment, NMFS will determine if these measures in Amendment 14 can be approved or if they must be disapproved. NMFS seeks public comments on all proposed measures in Amendment 14, and in particular, NMFS seeks public comment on the proposed measures for which NMFS has approvability concerns.

Amendment 14 proposes several measures to address the catch of river herring and shad in the mackerel fishery. River herring (the collective term for alewife and blueback herring) and shad (American shad and hickory shad) are anadromous species that co-occur seasonally with mackerel and are harvested as incidental catch in the mackerel fishery. For the purposes of this rulemaking, the term "river herring and shad" refers to all four species. When river herring are encountered in the mackerel fishery, they are either discarded at sea (bycatch) or retained and sold as part of the mackerel catch (incidental catch). For the purposes of this rulemaking, the terms bycatch and incidental catch are used interchangeably.

Several sections of regulatory text affected by Amendment 14 are also affected by Amendment 5. The proposed regulations for both actions will present adjustments to the existing regulatory text. In the likely event that Amendment 5 is finalized prior to Amendment 14, the finalized regulations for Amendment 14 will be presented as modifications to the

regulations that will be implemented in Amendment 5, and will thus differ in structure, but not content, from the regulations as presented in this proposed rule. The adjustments will be similar to those in this proposed rule.

### 1. Adjustments to the Fishery Management Program

Amendment 14 would revise several existing fishery management provisions, including dealer reporting requirements, VTR requirements, and VMS requirements and reporting.

### VTR Frequency Requirements

Currently MSB permit holders are required to submit fishing vessel logs, known as VTRs, on a monthly basis. Amendment 14 would implement a weekly VTR submission requirement for all MSB permits. This measure would require that VTRs be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If an MSB permit holder did not make a trip during a given reporting week, a vessel representative would be required to submit a report to NMFS stating so by midnight of the first Tuesday following the end of the reporting week. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) would constitute fishing during that reporting week and would eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel began a fishing trip on Wednesday, but returned to port and offloaded its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) would not be required for either earlier week. If implemented, the weekly VTR reporting requirement would bring MSB reporting requirements in line with other Northeast Region fisheries, improve monitoring of directed and incidental catch, and facilitate cross-checking with other data sources.

### VMS Requirement, Daily Catch Reports and Pre-Landing Notifications

Amendment 14 would implement VMS requirements for vessels with limited access mackerel permits and longfin squid/butterfish moratorium permits to improve monitoring of directed and incidental catch. Currently, vessels with these permits are not required to have VMS, to submit catch reports, or to submit pre-landing notifications, although many vessels already possess VMS units due to

requirements for other fisheries for which they hold permits.

Amendment 14 would require limited access mackerel and longfin squid/butterfish moratorium permit holders to purchase and maintain a VMS unit. Vessels would be required to declare into the fishery for trips targeting mackerel or longfin squid, and would be required to transmit location information at least every hour, 24 hours a day, throughout the year (see existing operating requirements at § 648.10(c)(1)(i)). Vessel owners may request a letter of exemption from the NMFS Regional Administrator for permission to power down their VMS units if the vessel is out of the water for more than 72 consecutive hours (see existing Power-down exemption regulations at § 648.10(c)(2)). Vessels that do not already have VMS units installed would have to confirm that their VMS units were operational by notifying the NMFS Office of Law Enforcement (OLE) (see existing installation notification procedures at § 648.10(e)(1)).

Amendment 14 would require daily VMS catch reporting for all limited access mackerel permits and longfin squid/butterfish moratorium permits. Daily VMS catch reports would need to include: The VTR serial number for the current trip; month and day mackerel and/or longfin squid were caught; and total pounds retained and total pounds discarded. Daily mackerel and/or longfin squid VMS catch reports would need to be submitted in 24-hr intervals for each day and would have to be submitted by 0900 hr of the following day. Reports would be required even if mackerel and/or longfin squid caught that day had not yet been landed. Amendment 14 would also require that vessels landing more than 20,000 lb (9.07 mt) of mackerel submit a pre-landing notification, in which the vessel would report the time and place of offloading. That notification must be submitted at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing.

#### **Dealer Reporting Requirement**

During the development of Amendment 14, some stakeholders expressed concern that MSB catch is not accounted for accurately and that there needs to be a standardized method to determine catch. In an effort to address those concerns, Amendment 14 would require MSB dealers to accurately weigh all fish or use volume-to-weight conversions for all transactions with

over 2,500 lb (1.13 mt) of longfin squid or 20,000 lb (9.07 mt) of mackerel. If catch is not sorted by species, dealers would be required to document for each transaction how they estimate relative species composition.

During the development of Amendment 14, NMFS identified potential concerns with the utility of this measure. Dealers are currently required to accurately report the weight of fish, which is obtained by scale weights and/or volumetric estimates. Because this proposed measure does not specify how fish are to be weighed, the measure may not change dealer behavior and, therefore, the requirement may not lead to any measureable change in the accuracy of catch weights reported by dealers. Further, this measure does not provide standards for estimating species composition. Without standards for estimating species composition or for measuring the accuracy of the estimation method, NMFS may be unable to evaluate the sufficiency of methods used to estimate species composition. For these reasons, the requirement for dealers to document the methods used to estimate species composition may not improve the accuracy of dealer reporting.

While the measure requiring dealers to document methods used to estimate species composition may not have direct utility in monitoring catch in the mackerel and longfin squid fisheries, it may still inform NMFS' and the Council's understanding of the methods used by dealers to determine species weights. That information may aid in development of standardized methods for purposes of future rulemaking. Furthermore, full and accurate reporting is a permit requirement; failure to do so could render dealer permit renewals incomplete, precluding renewal of the dealer's permit. Therefore, there is incentive for dealers to make reasonable efforts to document how they estimate relative species composition, which may increase the likelihood that useful information will be obtained as a result of this requirement.

Amendment 5 contained a dealer reporting requirement similar to the one proposed here in Amendment 14. The Amendment 5 measure would have required identical reporting measures for herring dealers related to all Atlantic herring transactions. NMFS disapproved this measure in Amendment 5 because we believe that it does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication, and the Paperwork Reduction Act's (PRA) requirement for the utility of the measure to outweigh

the additional reporting and administrative burden on the dealers.

In light of the foregoing, NMFS seeks public comment on the extent to which the proposed Amendment 14 measure has practical utility, as required by the MSA and the PRA, that outweighs the additional reporting and administrative burden on the dealers. In particular, NMFS seeks public comment on whether and how the proposed measure would help prevent overfishing, promote the long-term health and stability of the mackerel and longfin squid resources, monitor the fisheries, facilitate in-season management, or judge performance of the management regime.

#### **2. Adjustments to At-Sea Catch Monitoring**

One of the primary goals of Amendment 14 is to improve catch monitoring in the mackerel and longfin squid fisheries. Amendment 14 would codify a number of requirements to facilitate At-Sea Catch Monitoring, including adding a pre-trip notification for mackerel, observer assistance requirements, and proper notice of pumping and/or net haulback for observers in the mackerel and longfin squid fisheries. Amendment 14 would also revise observer coverage levels and establish new provisions, such as industry funding to pay for increased observer coverage and measures to minimize the discarding of catch before it has been sampled by an observer, to monitor catch in the mackerel fishery.

#### **Pre-Trip Notification in the Mackerel Fishery**

Amendment 14 would require a 48-hr pre-trip notification for all vessels intending to retain, possess or transfer 20,000 lb (9.07 mt) or more of Atlantic mackerel in order to facilitate observer placement. Currently mackerel vessels have no pre-trip notifications. This measure would assist NMFS's scheduling and deployment of observers on directed mackerel trips, with minimal additional burden on the industry, helping ensure that observer coverage target for the mackerel fishery is met. The list of information that must be provided to NMFS as part of this pre-trip observer notification is described in the proposed regulations. If this measure is approved, details of how vessels should contact NMFS will be provided in the small entity compliance guide. If a vessel operator is required to notify NMFS to request an observer before embarking on a fishing trip, but does not notify NMFS before beginning the fishing trip, that vessel would be prohibited from possessing, harvesting,

or landing more than 20,000 lb (9.07 mt) of mackerel on that trip. If a fishing trip is cancelled, a vessel representative must notify NMFS of the cancelled trip, even if the vessel is not selected to carry observers. All waivers or selection notices for observer coverage would be issued by NMFS to the vessel via VMS so the vessel would have an on-board verification of either the observer selection or waiver.

#### Observer Assistance Requirements

Northeast fisheries regulations (found at 50 CFR part 648) specify requirements for vessels carrying NMFS-approved observers, such as providing observers with food and accommodations equivalent to those available to the crew; allowing observers to access the vessel's bridge, decks, and spaces used to process fish; and allowing observers access to vessel communication and navigation systems. Amendment 14 would expand these requirements, such that vessels issued limited access mackerel and longfin squid/butterfish moratorium permits and carrying NMFS-approved observers must provide observers with the following: (1) A safe sampling station adjacent to the fish deck, and a safe method to obtain and store samples; (2) reasonable assistance to allow observers to complete their duties; (3) advance notice when pumping or net haulback will start and end and when sampling of the catch may begin; and (4) visual access to net/codend or purse seine and any of its contents after pumping has ended, including bringing the codend and its contents aboard if possible. These measures are anticipated to help improve at-sea catch monitoring in the mackerel and longfin squid/butterfish fisheries by enhancing the observer's ability to collect quality data in a safe and efficient manner. Currently many vessels already provide this assistance.

#### Observer Coverage Levels

Currently, observer coverage in the MSB fisheries is determined by the Northeast Fisheries Science Center, based on the standardized bycatch reporting methodology (SBRM), after consultations with the Council, and funded by NMFS. In Amendment 14, the Council recommended increases in the observer coverage in the mackerel fishery, specifically 100-percent observer coverage on all limited access mackerel vessels using midwater trawl (i.e., Tiers 1, 2 and 3) and Tier 1 mackerel vessels using small-mesh bottom trawl, 50-percent coverage on Tier 2 mackerel vessels using small-mesh bottom trawl, and 25-percent on

Tier 3 mackerel vessels using small-mesh bottom trawl. Many stakeholders believe that this measure is necessary to accurately determine the extent of incidental catch of river herring and shad in the mackerel fishery. The Council recommended this measure to gather more information on the mackerel fishery so that it may better evaluate and, if necessary, address issues involving catch and discarding. The increased observer coverage recommendations are coupled with a target maximum industry contribution of \$325 per day. The at-sea costs associated with an observer in the mackerel fishery are higher than \$325 per day and, currently, there is no mechanism to allow cost-sharing of at-sea costs between NMFS and the industry.

Throughout the development of Amendment 14, NMFS advised the Council that Amendment 14 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Because Amendment 14 does not identify a funding source to cover all of the increased costs of observer coverage, the proposed increase in coverage levels many not be sufficiently developed to approve at this time.

Amendment 5 contains similar observer coverage measures to those proposed in Amendment 14. NMFS disapproved the 100-percent observer coverage requirement and the \$325 per day industry contribution in Amendment 5 because the amendment did not identify a funding source to cover all of the increased costs of observer coverage. The Amendment 5 measures would have required 100-percent observer coverage on Category A and B herring vessels, with a target maximum industry contribution of \$325 per day. For both the Atlantic herring and mackerel fisheries, the at-sea costs associated with an observer are higher than \$325 per day. The Department of Commerce (DOC) Office of General Counsel has advised that such cost-sharing violates the Anti-Deficiency Act. Based on DOC's advice, there is no current legal mechanism to allow cost-sharing of at-sea costs between NMFS and the industry. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring 100-percent observer coverage would amount to an unfunded mandate.

NMFS is working with both the Mid-Atlantic and New England Fishery Management Councils to address the funding challenges identified in Amendments 14 and 5. A technical

team comprised of Mid-Atlantic Fishery Management Council, New England Fishery Management Council and NMFS staff is currently attempting to develop a legal mechanism to allow the at-sea costs of increased observer coverage to be funded by the industry. Even if the specified recommended observer coverage measures in Amendment 14 cannot be approved at this time, the team will continue to work on finding a funding solution to pay for the at-sea cost of observer coverage in the mackerel fishery. If the technical team can develop a legal way to fund the at-sea costs of increased observer coverage for the mackerel fishery, a measure requiring increased observer coverage in line with the Council's recommendations could be implemented in a future action, subject to NMFS's budget appropriations and other observer data collection needs in the Northeast Region and elsewhere in the country.

Other measures proposed in Amendment 14 would help improve monitoring in the mackerel fishery, regardless of whether the increased observer coverage measure is approved at this time. These proposed measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, and observer sample station and reasonable assistance requirements to improve an observer's ability to collect quality data in a safe and efficient manner.

The same measure that would require increased observer coverage, coupled with a maximum \$325 contribution by the industry, would also require that: (1) The increased observer coverage requirement would be re-evaluated by the Council 2 years after implementation; (2) the increased observer coverage requirement would be waived if no observers were available; and (3) observer service provider requirements for the Atlantic sea scallop fishery would apply to observer service providers for the mackerel fishery. Because these additional measures appear inseparable from the increased observer coverage requirement, their approval or disapproval is dependent upon the approvability of the partially industry-funded increased observer coverage measure.

#### Measures To Prevent Catch Discards Before Observer Sampling

Amendment 14 would require limited access mackerel and longfin squid moratorium vessels to bring all catch aboard the vessel and make it available for sampling by an observer. The Council recommended this measure to

improve the quality of at-sea monitoring data by reducing the discarding of unsampled catch. If catch is discarded before it has been made available to the observer for sampling, that catch is defined as slippage. Fish that cannot be pumped and remain in the net at the end of pumping operations are considered operational discards and not slipped catch. Some stakeholders believe that slippage is a serious problem in the mackerel and longfin squid fisheries because releasing catch before an observer can estimate its species composition undermines accurate catch accounting.

Amendment 14 would allow catch to be slipped if: (1) Bringing catch aboard compromises the safety of the vessel or crew; (2) mechanical failure prevents the catch from being brought aboard; or (3) spiny dogfish prevents the catch from being pumped aboard. If catch is slipped, even for the exempted reasons, the vessel operator would be required to complete a released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit would detail: (1) Why catch was slipped; (2) an estimate of the quantity and species composition of the slipped catch and any catch brought aboard during the haul; and (3) the time and location of the slipped catch. Additionally, Amendment 14 would establish slippage caps for the mackerel fishery. Once there have been 10 slippage events by limited access mackerel vessels that are carrying an observer, limited access mackerel vessels that subsequently slip catch while carrying an observer would be required to immediately return to port. NMFS would track slippage events and notify the fleet once a slippage cap had been reached. The Council recommended these slippage caps to discourage the inappropriate use of the slippage exceptions, and to allow for some slippage, without unduly penalizing the fleet.

Amendment 5 contained a slippage measure similar to that proposed here in Amendment 14. The Amendment 5 measures would prohibit slippage on limited access herring trips with an observer aboard, would require a released catch affidavit to document slippage events, and would require trip termination after 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine). NMFS did approve the prohibition on slippage and the released catch affidavit requirement in Amendment 5. However, we were concerned about the rationale for, and legality of, the slippage caps in Amendment 5, and ultimately

disapproved that aspect of the measure. We found the slippage caps in Amendment 5 to be inconsistent with National Standards 2 and 10. The threshold for triggering a slippage cap (10 slippage events by area and gear type) does not have a strong biological or administrative justification in the supporting analysis in the EIS for Amendment 5, which made approval of this measure inconsistent with National Standard 2. Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. In addition, the structure of this measure in Amendment 5 raises safety concerns, implicating National Standard 10 of the Magnuson-Stevens Act, because a vessel operator may be forced to bring catch aboard, despite dangerous conditions, to avoid returning to port.

Throughout the development of Amendment 14, NMFS expressed concerns with the rationale for, and legality of, the slippage caps for the Atlantic mackerel fleet. The need for, and threshold for triggering, a slippage cap (10 slippage events for the entire fleet) does not have a strong biological or operational basis. From 2006–2010 approximately 26 percent (73 of 277 or 15 per year) of hauls on observed mackerel trips (trips that caught 50 percent or more mackerel or at least 100,000 lb (45.34 mt) of mackerel) had some unobserved catch. Hauls may be unobserved for a variety of reasons—for example, transfer of catch to another vessel without an observer, observers not being on deck to sample a given haul, or hauls released from the net while still in the water. The estimate of 15 unobserved hauls per year would thus be an upper bound on slippage events. Once a slippage cap has been met, vessels that slip catch with an observer aboard for reasons other than safety, mechanical failure, or spiny dogfish in the pump would be required to return to port. Vessels could continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. The Council's analysis noted that while documents slippage events are relatively infrequent, increases above the estimated 15 unobserved hauls per year could compromise observer data because large quantities of fish can be caught in a single tow. However, the Council's analysis does not provide sufficient rationale for why it is biologically or operationally acceptable to allow the fleet 10 un-exempted slippage events

prior to triggering the trip termination requirement.

The measures to minimize slippage are based on the sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I. However, there are important differences between these measures. Under the Closed Area I requirements, if midwater trawl vessels slip catch, they are allowed to continue fishing, but they must leave Closed Area I for the remainder of that trip. The requirement to leave Closed Area I is less punitive than the proposed requirement to return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, inequality among the fleet is not an issue for the Closed Area I requirements, like it appears to be for the proposed slippage caps.

In 2010, the Northeast Fisheries Observer Program (NEFOP) revised the training curriculum for observers deployed on herring vessels to focus on effective sampling in high-volume fisheries. NEFOP also developed a discard log to collect detailed information on discards in the high-volume fisheries, including slippage, such as why catch was discarded, the estimated amount of discarded catch, and the estimated composition of discarded catch. Recent slippage data collected by observers indicate that information about these events, and the amount and composition of fish that are slipped, has improved, and that the number of slippage events has declined. Given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch, rather than released catch affidavits, provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

In summary, NMFS seeks public comment on whether there is a biological need for the proposed slippage cap, whether the trigger (10 slippage events for the entire mackerel fleet) for the proposed slippage cap has adequate justification, and whether the requirement to return to port would be inequitable. After evaluating public comment, NMFS will determine whether the proposed slippage cap can be approved. Even if the slippage cap must be disapproved, the ongoing data collection by NEFOP and the released catch affidavit requirement would still allow for improved monitoring in the mackerel fishery, increased information

regarding discards, and an incentive to minimize the discarding of unsampled catch.

Lastly, Amendment 14 proposes that a number of measures related to at-sea sampling could be modified through the specifications process, including: (1) The observer provisions to maximize sampling; (2) the industry contribution amount for at-sea observer coverage; (3) exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers; and (4) trip termination requirements for mackerel vessels.

### 3. Measures To Address River Herring and Shad Interactions

River herring and shad are managed by the Atlantic States Marine Fisheries Commission (ASMFC) and individual states. According to the most recent ASMFC stock assessments for river herring (May 2012) and shad (August 2007), river herring and shad populations have declined from historic levels and many factors will need to be addressed to allow their recovery, including fishing (in both state and Federal waters), river passageways, water quality, predation, and climate change. In an effort to aid in the recovery of depleted or declining stocks, the ASMFC, in cooperation with individual states, prohibited state waters commercial and recreational fisheries that did not have approved sustainable fisheries management plans, effective January 1, 2012. NMFS recently completed a comprehensive review of the status of river herring (but not shad) in response to a petition submitted by the Natural Resources Defense Council requesting that we list alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*) as threatened under the Endangered Species Act throughout all or a significant portion of their range or as specific distinct population segments identified in the petition. Based on the best scientific and commercial information available, we determined that listing alewife as threatened or endangered under the ESA is not warranted at this time (August 12, 2013; 78 FR 48944).

Amendment 14 would establish a mortality cap on river herring and shad in the mackerel fishery, where the mackerel fishery would close once it has been determined to cause a certain amount of river herring and/or shad mortality. Based on the results of the ASMFC's assessments for river herring and shad, data do not appear to be robust enough to determine a biologically based catch cap for these species, and/or the potential effects on

these populations if a catch cap is implemented on a coast-wide scale. Nevertheless, the Council believes that capping the allowed level of river herring and shad catch in the mackerel fishery would provide a strong incentive for the industry to avoid river herring and shad, and would help to minimize encounters with these species.

The likelihood of a mackerel closure related to the river herring and shad cap would depend on the value the Council proposes for the cap for a given year, the availability of mackerel for that year, and the realized incidental catch of river herring and shad for that year. The analysis presented in Amendment 14 estimated that total ocean fishing mortality (all gear types and fisheries) ranged from 244 to 672 mt for both river herring species (2006–2010), and 47 to 70 mt for both shad species (2007–2010). To qualitatively evaluate the biological and economic impacts of a river herring and/or shad cap, Amendment 14 presented an analysis in which the cap was set equal to 35 percent of total ocean fishing mortality for river herring, and 12 percent of total ocean fishing mortality for shad. These percentages correspond to the estimated amount of mid-water trawl mortality for these species in Quarter 1 of the fishing year, which largely encompasses mackerel fishing activity. The proposed mortality cap on river herring and shad would use a similar method to that used for the butterfish mortality cap in the longfin squid fishery, where the ratio of river herring and shad caught to total catch on observed hauls would be applied to all catch. The analysis in Amendment 14 applies this methodology to mimic low, medium, and high rates of river herring and shad encounters on mackerel trips. If the mackerel fishery had been able to harvest the entire 115,000-mt mackerel quota in any year from 2006 to 2010, a river herring cap equal to 35 percent of total river herring ocean catch would have resulted in closures of the mackerel fishery in 3 of the years if there were low river herring encounter rates, and all of the years if there were medium and high river herring encounter rates. Similarly, a shad cap equal to 12 percent of the total shad ocean catch would not have caused a closure of the mackerel fishery in any of the years if there were low shad encounter rates, but would have resulted in a closure in all of the years with medium and high shad encounter rates. The analysis concluded that, because river herring and shad catch vary substantially from year to year, the realized combination of these factors

may cause an early closure of the mackerel fishery in some years, and in other years may not result in a closure at all.

While the concept of the cap and general methodology are analyzed in Amendment 14, the Council's proposal deferred the establishment of the actual cap amount and other logistical details of the cap (e.g., the closure threshold and post-closure possession limit) to the MSB specifications process for the 2014 fishing year. The process for 2014 MSB specifications began in May 2013 with a MSB Monitoring Committee meeting to develop technical recommendations on the cap level and any necessary management measures. At its June 2013 meeting, the Council selected a combined catch cap for river herring and shad of 236 mt, a closure threshold of 95 percent, and a post-closure incidental trip limit of 20,000 lb (9.07 mt). The Council is finalizing its analysis of these measures and will submit its final recommendation to NMFS shortly as part of the 2014 MSB specifications package. Because the details of the cap are being fully analyzed in a separate action, NMFS only requests comments in this rulemaking on the concept of using a catch cap in the mackerel fishery to limit encounters with river herring and shad. The public will be given the opportunity to comment on the actual proposed cap level and management measures related to the cap in the proposed rule for 2014 MSB specifications. Secretarial approval of both Amendment 14 and the 2014 MSB specifications are necessary for implementation of the river herring and shad caps in the mackerel fishery, which is targeted for the start of the 2014 fishing year (January 1, 2014).

The New England Fishery Management Council is also considering establishing a catch cap for river herring and shad in the Atlantic herring fishery in Framework 3 to the Atlantic Herring FMP. Due to the mixed nature of the herring and mackerel fisheries, especially during the period from January through April, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch and shad cap for both the fisheries. On May 23, 2013, the New England and Mid-Atlantic Councils' technical teams for the herring and mackerel fisheries met to begin development of the catch caps. In addition, at its June 2013 meeting, the New England Council discussed some details of the cap, including the possible division of the cap into areas to match the activity of the herring fishery by

season. The New England Council is working towards a target of implementing the cap in mid-2014.

Amendment 14 would establish a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance strategy in small-mesh pelagic fisheries. The river herring bycatch avoidance strategy would be developed and evaluated by the Council, in cooperation with participants in the mackerel fishery, specifically the Sustainable Fisheries Coalition (SFC); the Massachusetts Division of Marine Fisheries (MA DMF); and the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). This measure is based on the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring and shad bycatch by working within current fisheries management programs, without the need for additional regulatory requirements. The river herring bycatch avoidance program includes portside sampling, real-time communication with the SFC on river herring distribution and encounters in the herring fishery, and data collection to evaluate if oceanographic features may predict high rates of river herring encounters.

Amendment 14 would require that, within 6 months of completion of the existing SFC/MA DMF/SMAST river herring bycatch avoidance project, the Council would review and evaluate the results from the river herring bycatch avoidance project, and consider a framework adjustment to the MSB FMP to establish river herring bycatch avoidance measures. Measures that may be considered as part of the framework adjustment include: (1) Mechanisms to track herring fleet activity, report bycatch events, and notify the herring fleet of encounters with river herring; (2) the utility of test tows to determine the extent of river herring bycatch in a particular area; (3) the threshold for river herring bycatch that would trigger the need for vessels to be alerted and move out of a given area; and (4) the distance and/or time that vessels would be required to move from an area.

The Council considered other measures to address river herring and shad bycatch in Amendment 14, including closed areas. Because the seasonal and inter-annual distribution of river herring and shad is highly variable in time and space, the Council determined that the most effective measures in Amendment 14 to address river herring and shad bycatch would be those that increase monitoring, bycatch accounting, and promote cooperative

efforts with the industry to minimize bycatch to the extent practicable. In order to streamline the regulatory process necessary to adjust the river herring and shad mortality caps, or enact time area management for river herring and shad, should scientific information to support such management measures become available, the Council proposed that Amendment 14 would add river herring and shad catch caps and time/area closures to the list of measures that can be addressed via framework adjustment.

#### *4. Adding Individual River Herring and Shad Species as Stocks in the MSB Fishery*

Initially, the Council considered alternatives in Amendment 14 intended to add, in a future action, alewife, blueback herring, American shad, and/or hickory shad as stocks in the MSB FMP. Instead, the Council decided that it would initiate a future Council amendment that would consider adding these as stocks in the fishery and analyze all of the MSA provisions (i.e., various management reference points, description and delineation of essential fish habitat (EFH), etc.), and initiated Amendment 15 to MSB FMP to explore the need for conservation and management of these species more thoroughly. Scoping for MSB Amendment 15 began in October 2012 (77 FR 65867), and the technical team for the MSB FMP is currently working to develop this action.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 14 to the MSB FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment and the concerns noted in the preamble.

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

The Council prepared a final environmental impact statement (FEIS) for Amendment 14. A notice of availability for the FEIS was published on August 16, 2013 (78 FR 50054). The FEIS describes the impacts of the proposed measures on the environment. Proposed revisions to fishery management program measures, including dealer and vessel reporting requirements and trip notification, are expected to improve catch monitoring in the MSB fisheries with positive biological impacts to the MSB fisheries and minimal negative economic impacts on human communities. Proposed

increases to observer coverage requirements, measures to improve at-sea sampling by observers, and measures to minimize discarding of catch before it has been sampled by observers are also expected to improve catch monitoring and have positive biological impacts on the MSB fisheries. The economic impacts of these proposed measures on human communities are varied, but negative economic impacts may be substantial compared to the status quo. Proposed measures to address bycatch to the extent practicable are expected to have positive biological impacts and moderate negative impacts on human communities. Lastly, all proposed measures are expected to have positive biological impacts on non-target species and neutral impacts on habitat and protected resources.

#### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

The proposed measures in Amendment 14 could affect any vessel holding an active Federal permit to fish for Atlantic mackerel, longfin squid, *Illex* squid, or butterfish. All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines, because they have gross receipts that do not exceed \$19 million annually. In 2012, 1,835 commercial vessels possessed Atlantic mackerel permits (132 limited access permits and 1,703 open access permits), 329 vessels possessed longfin squid/butterfish moratorium permits, 72 vessels possessed *Illex* permits, 1,578 vessels possessed incidental squid/butterfish permits, and 705 vessels possessed squid/mackerel/butterfish party/charter permits. Many vessels participate in more than one of these fisheries;

therefore, permit numbers are not additive.

Available data indicate that no single fishing entity earned more than \$19 million annually. Although there are likely to be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data NMFS cannot apply the business size standard at this time. NMFS is currently compiling data on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities for future actions. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. Therefore, there are no disproportionate economic impacts on small entities. Section 6.7 in Amendment 14 describes the vessels, key ports, and revenue information for the MSB fisheries; therefore, that information is not repeated here.

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

##### Requirements

##### Minimizing Significant Economic Impacts on Small Entities

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. The new requirements, which are described in detail in this preamble, have been submitted to OMB for approval as a new collection.

Amendment 14 would increase VTR reporting submission frequency for all MSB permit holders from monthly to weekly. MSB permit holders currently submit 12 VTRs per year, so the additional cost of submitting VTRs on a weekly basis is \$18. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by \$0.46 to equal \$18. The VTR is estimated to take 5 min to complete. Therefore the total annual burden estimate of weekly VTRs is \$18, and 3 hr and 20 min.

This action proposes that limited access mackerel and longfin squid/butterfish moratorium permit holders purchase and maintain a VMS. Because other Northeast Federal permits require vessels to maintain a VMS, it is estimated that only 80 vessels do not already have a VMS. The average cost of purchasing and installing a VMS is \$3,400, the VMS certification form takes an estimated 5 min to complete and

costs \$0.46 to mail, and the call to confirm a VMS unit takes an estimated 5 min to complete and costs \$1. The average cost of maintaining a VMS is \$600 per year. Northeast regulations require VMS activity declarations and automated polling of VMS units to collect position data. Each activity declaration takes an estimated 5 min to complete and costs \$0.50 to transmit. If a longfin squid/butterfish moratorium permit holder takes 22 trips per year, the burden estimate for activity declarations would be 1 hr and 50 min, and \$11. If a limited access mackerel permit holder takes 8 trips per year, the burden estimate for activity declarations would be 40 min and \$4. Each automated polling transmission costs \$0.06 and a vessel is polled once per hour every day of the year. The annual estimated cost associated with polling is \$526. Vessels may request a power-down exemption to stop position transmission under certain provisions, as described in the preamble. The form to request a power down exemption letter takes 5 min to complete, and costs \$0.46 to mail. If each vessel submits a power down exemption request 2 times a year, the total estimated burden is 10 min and \$1. In summary, the total annual burden estimate for a vessel to purchase and maintain a VMS would be 2 hr 10 min and \$4,540 for a longfin squid/butterfish moratorium permit holder, and 1 hr and \$4,533 for a limited access mackerel permit holder.

Amendment 14 would require that limited access mackerel and longfin squid/butterfish moratorium permit holders submit daily VMS reports. The cost of transmitting a catch report via VMS is \$0.60 per transmission, and it is estimated to take 5 min to complete. If a longfin squid/butterfish moratorium permit holder takes 22 trips per year and each trip lasts an average of 2 days, the burden estimate for activity declarations would be 1 hr and 50 min, and \$14. If a limited access mackerel permit holder takes 8 trips per year and each trip lasts an average of 3 days, the burden estimate for activity declarations would be 40 min, and \$5.

This action would require limited access mackerel vessels to submit a pre-landing notification to NMFS OLE via VMS 6 hr prior to landing. Each VMS pre-landing notification is estimated to take 5 min to complete and cost \$1. Limited access mackerel permit holders are estimated to take 8 trip per year, so the total annual burden estimate is 40 min, and \$8.

Amendment 14 would require MSB dealers to document, for each transaction, how they estimate the relative composition of catch, if catch is

not sorted by species. This requirement would apply to all transactions with over 20,000 lb (9.07 mt) of mackerel, and all transactions with over 2,500 lb (1.13 mt) of longfin squid, and would be in addition to existing dealer reporting requirements. The additional reporting burden of documenting relative species composition of each of the above transactions is expected to take 5 min per transaction. In July 2013, there were 214 entities that held MSB permits. Dealers make an average of 1,700 mackerel or longfin squid transactions meeting the above descriptions per year. Therefore, the annual burden associated with documenting relative species composition for each MSB dealer is estimated to be 142 hr.

Amendment 14 would increase the reporting burden for measures designed to improve at-sea sampling by NMFS-approved observers. Limited access mackerel vessels would be required to notify NMFS to request an observer at least 48 hr prior to beginning a trip where they intend to land over 20,000 lb (9.07 mt) of mackerel. The phone call is estimated to take 5 min to complete and is free. If a vessel has already contacted NMFS to request an observer and then decides to cancel that fishing trip, Amendment 14 would require that vessel to notify NMFS of the trip cancellation. The call to notify NMFS of a cancelled trip is estimated to take 1 min and is free. If a vessel takes an estimated 8 trips per year, the total annual reporting burden associated with pre-trip observer notification would be 40 min.

Amendment 14 would require a released catch affidavit for limited access mackerel and longfin squid/butterfish moratorium permit holders that discard catch before it had been made available to an observer for sampling (slipped catch). The reporting burden for completion of the released catch affidavit is estimated to average 5 min. The cost associated with the affidavit is the postage to mail the form to NMFS (\$0.46). The affidavit requirement would affect an estimated 312 longfin squid/butterfish moratorium permit holders, and 132 limited access mackerel permit holders. If the longfin squid/butterfish moratorium permit holders slipped catch once per trip with an observer aboard, and took an estimated 22 trips per year, the total annual reporting burden for the released catch affidavit would be 1 hr 50 min and \$10. If the limited access mackerel permit holders slipped catch once per trip with an observer aboard, and took an estimated 8 trips per year, the total annual reporting burden for the released catch affidavit would be 40 min, and \$4.

Amendment 14 would require 100-percent observer coverage on all limited access mackerel trips using mid-water trawl and Tier 1 trips using small-mesh bottom trawl; 50-percent coverage on Tier 2 mackerel trips using small-mesh bottom trawl; and 25-percent coverage on Tier 3 mackerel trips using small-mesh bottom trawl. There are an estimated 132 limited access mackerel permit holders that may use midwater trawl to target mackerel. Vessels go on an average of 6 midwater trawl trips per year and spend an average of 3 days at sea. If these permit-holders are responsible for paying for 100-percent of coverage on a total of 18 days at sea per year, the total annual estimated cost would be \$5,850. There are an estimated 30 Tier 1 vessels that spend an average of 16 days at sea per year on small-mesh bottom trawl trips, and if these vessels were responsible for paying for 100 percent of the cost of coverage the total annual estimated cost would be \$5,200. There are an estimated 23 Tier 2 vessels that spend an average of 16 days at sea per year on small-mesh bottom trawl mackerel trips, and if these vessels were responsible for paying for 50 percent of the cost of coverage, the total annual estimated cost would be \$2,600. There are an estimated 79 Tier 3 vessels that spend an average of 16 days at sea per year on small-mesh bottom trawl mackerel trips, and if these vessels were responsible for paying for 25 percent of the cost of coverage, the total annual estimated cost would be \$1,300.

Under the proposed industry-funded observer program, limited access

mackerel permit holders would be required to contact an observer service provider to request an observer. An estimated 132 vessels would be subject to this requirement. If those vessels took an estimated 8 trips per year and the call to the observer service provider took an estimated 10 min to complete and cost \$1, the annual reporting burden of the proposed notification requirement is estimated to be 1 hr 20 min, and \$8. If an observer service provider had no observer available, limited access mackerel permit holders would be required to notify NMFS to request an observer waiver. The likelihood of an observer not being available is anticipated to be low. Therefore, if on two occasions the vessels needed to contact NMFS to request a waiver, and the call took an estimated 5 min to complete and was free, the annual reporting burden to request a waiver is estimated to be 10 min.

NMFS expects that additional observer service providers may apply for certification under the observer certification procedures found at § 648.11(h). NMFS estimates that three additional providers may apply for certification. In addition, existing providers, and the three potential additional providers, would be required to submit additional reports and information required of observer service providers as part of their certification. NMFS expects that six providers would be subject to these new requirements. Observer service providers must comply with the following requirements,

submitted via email, fax, or postal service: Submit applications for approval as an observer service provider; formally request observer training by NEFOP; submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hr of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is "in service." The regulations would also require observer service providers to submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties, as well as all contracts between the service provider and entities requiring observer services for review to NMFS. Observer service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved observer providers. NMFS expects that all of these reporting requirements combined are expected to take 1,734 hr of response time per year, for a total annual cost of \$25,363 for the affected observer providers. The following table provides the detailed time and cost information for each response item.

| Observer provider requirements  | Number of entities | Total Number of items | Time (hours) per response | Total time burden (hours) | Cost per response | Annual cost   |
|---|--------------------|-----------------------|---------------------------|---------------------------|-------------------|---------------|
| Observer deployment report by email .....                               | 6                  | 1,500                 | 0.167                     | 251                       | \$0               | \$0           |
| Observer availability report by email .....                             | 6                  | 900                   | 0.167                     | 150                       | 0                 | 0             |
| Safety refusals by email .....  | 6                  | 150                   | 0.5                       | 75                        | 0                 | 0             |
| Raw observer data by express mail .....                                 | 6                  | 1,500                 | 0.083                     | 125                       | 13                | 19,500        |
| Observer debriefing .....   | 6                  | 420                   | 2                         | 840                       | 12                | 5,040         |
| Other reports .....   | 6                  | 210                   | 0.5                       | 105                       | 0                 | 0             |
| Biological samples .....  | 6                  | 1,500                 | 0.083                     | 125                       | 0.50              | 750           |
| New application to be a service provider .....                          | 3                  | 3                     | 10                        | 30                        | 0.44              | 1             |
| Applicant response to denial .....                                      | 1                  | 1                     | 10                        | 10                        | 0                 | 0             |
| Request for observer training .....                                     | 3                  | 6                     | 0.5                       | 3                         | 1.80              | 11            |
| Rebuttal of pending removal from list of approved observer providers .. | 1                  | 1                     | 8                         | 8                         | 0                 | 0             |
| Observer contact list updates .....                                     | 3                  | 36                    | 0.083                     | 3                         | 0                 | 0             |
| Observer availability updates .....                                     | 3                  | 36                    | 0.017                     | 1                         | 0                 | 0             |
| Service provider material submissions .....                             | 6                  | 12                    | 0.5                       | 6                         | 2.50              | 30            |
| Service provider contracts .....  | 6                  | 12                    | 0.5                       | 6                         | 2.50              | 30            |
| <b>Total .....</b>  | <b>.....</b>       | <b>.....</b>          | <b>.....</b>              | <b>1,736</b>              | <b>.....</b>      | <b>25,363</b> |

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the

collection of information to the Regional Administrator (see **ADDRESSES**), and email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

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.

The Council prepared an IRFA, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>.

#### *Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

##### 1. Adjustments to the Fishery Management Program

Amendment 14 proposes to revise several existing fishery management provisions, including VTR and VMS requirements, and dealer reporting requirements, to better administer the MSB fisheries. The proposed action (Alternative 1c in the FEIS) would require all MSB permit holders to submit VTRs on a weekly basis. The no action (alternative 1a) would have maintained monthly reporting requirements for all MSB permit holders, and two additional alternatives would have instituted weekly reporting for just mackerel permit holders (alternative 1bMack) or longfin squid/butterfish permit holders (alternative 1bLong). Weekly VTRs would cost an additional \$18 per year compared to status quo, but any permit holders already submit weekly VTRs related to other Northeast Region permits. The proposed action could improve data for quota monitoring, and bring VTR requirements in line with those for other Northeast Region permits.

The proposed action requires VMS for limited access mackerel and longfin squid/butterfish moratorium permit holders (alternatives 1eMack and 1eLong), requires trip declarations and daily VMS catch reports for these permit holders (alternatives 1fMack and 1fLong), and requires a pre-landing notifications via VMS in order to land more than 20,000 lb (9.07 mt) of

mackerel (alternative 1gMack). The no action alternative (alternative 1a) would not impose VMS requirements for these permit holders. As with the VTR requirements, many limited access mackerel and longfin squid/butterfish moratorium permit holders already have VMS related to other Northeast Region permits. For permit holders obtaining a new VMS, the proposed VMS requirements would cost roughly \$4,500 for the first year of operation. The FEIS for Amendment 14 discussed that the economic impacts of these reporting requirements is mixed compared to status quo. While short-term operating costs for these fishing vessels is increased compared to status quo, these measures may have long-term positive impacts if they result in less uncertainty and, ultimately, additional harvest being made available to MSB fishery participants.

Amendment 14 would require that MSB dealers weigh all landings related to mackerel transactions over 20,000 lb (9.07 mt) (alternative 2d), and all longfin squid transactions over 2,500 lb (1.13 mt) (alternative 2f), and if these transactions were not sorted by species, would be required to document, with each transaction, how they estimated the relative composition of catch. Dealers would be permitted to use volume-to-weight conversions if they were not able to weigh landings (alternative 2g). Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because the proposed action does not specify how fish are to be weighed, the proposed action is not anticipated to change dealer behavior, and, therefore, is expected to have neutral impacts in comparison to the no action alternative. Amendment 14 considered four alternatives to the proposed action: The no action alternative; and alternatives 2b, 2c and 2e. Alternative 2b would require that a vessel confirm MSB dealer reports for mackerel landings over 20,000 lb (9.07 mt), *Illex* squid landings over 10,000 lb (4.53 mt), and longfin squid landings over 2,500 lb (1.13 mt). Alternatives 2c and 2e are similar to the proposed alternative in that they would require dealers to weigh all landings related to mackerel transactions over 20,000 lb (9.07 mt) (alternative 2c), and all longfin squid transactions over 2,500 lb (1.13 mt) (alternative 2e), but would have required that relative species composition be documented annually instead of at each transaction. Overall, relative to the no action alternative, the proposed action and Alternatives 2c and 2e may have low negative impacts on dealers due to the regulatory burden of

documenting how species composition is estimated. In comparison, Alternative 2b may have a low positive impact on fishery participants, despite an increased regulatory burden, if it minimizes any lost revenue due to data errors in the dealer reports and/or the tracking of MSB catch.

##### 2. Adjustments to At-Sea Catch Monitoring

Amendment 14 would require a 48-hr pre-trip notification for all vessels intending to retain, possess or transfer 20,000 lb (9.07 mt) or more of Atlantic mackerel in order to facilitate observer placement (alternative 1d48). In addition to the no action alternative (alternative 1a), Amendment 14 also considered requiring a 72-hr pre-trip notification requirement (alternative 1d72). Compared to the no action alternative, both action alternatives may mean that fishermen are not able to embark on fishing trips on short notice, especially if they are selected to take an observer. The proposed alternative would, however, improve observer placement compared to the no action alternative.

Amendment 14 recommends increases in the observer coverage in the mackerel fishery, specifically 100-percent observer coverage on all (Tiers 1, 2 and 3) midwater mackerel trawl vessels (alternative 5b4) and Tier 1 small-mesh bottom trawl mackerel vessels, 50-percent coverage on Tier 2 small-mesh bottom trawl mackerel vessels, and 25-percent on Tier 3 small-mesh bottom trawl mackerel vessels (alternative 5c4), with an industry contribution of \$325 per day (alternative 5f). Amendment 14 considers four alternatives to the proposed coverage level recommendations: The no action alternative (alternative 5a); 25-percent (alternative 5b1), 50-percent (alternative 5b2), and 75-percent (alternative 5b3) coverage levels for all (Tiers 1, 2 and 3) mid-water trawl mackerel vessels; 25-percent (alternative 5c1), 50-percent (alternative 5c2), and 75-percent (alternative 5c3) coverage levels for all (Tiers 1, 2 and 3) small-mesh bottom trawl mackerel vessels; and coverage levels necessary to achieve target coefficients of variation for river herring bycatch using midwater trawl gear (alternatives 5e1 and 5e2) and small-mesh bottom trawl gear (5e3 and 5e4). Additionally, Amendment 14 considered a phased-in industry funding option (5g) that would shift the cost of the at-sea portion of observer coverage from NMFS to the industry over a 4-yr period. The specific coverage levels under the no action alternative and the 5e alternatives are unknown at

this time, because they would depend on an analysis of fishery data from previous years, but coverage levels under these alternatives are expected to be less than 100 percent. Compared to the no action alternative, the proposed \$325 contribution per day would increase daily trip costs by 9 percent for single midwater trawl mackerel vessels, and 12 percent for paired midwater trawl mackerel vessels, and 20 percent for small-mesh bottom trawl vessels. In general, higher coverage levels, which would result in higher increases in daily costs for fishery participants, would have a negative economic impact on fishery participants, potentially resulting in less effort and lower catch. In the long-term, increased monitoring and improved data collections for the mackerel fishery may translate to improved management of the mackerel fishery that would benefit fishery-related businesses and communities.

Amendment 14 would require limited access mackerel and longfin squid/butterfish moratorium permit holders to bring all catch aboard the vessel and make it available for sampling by an observer (alternative 3j). Catch slipped before being sampled by an observer would count against a slippage cap and require that a released catch affidavit be completed. If a slippage cap is reached, a vessel would be required to return to port immediately following any additional slippage events (alternative 3l). Amendment 14 considered the no action alternative, and nine other alternatives to the proposed action. The no action alternative would not establish slippage prohibitions, released catch affidavit requirements, slippage caps, or trip termination requirements. The other non-selected alternatives include various elements of the proposed action, including a requirement for mackerel and longfin squid permit holders to complete a released catch affidavit (alternative 3e), a requirement to prohibit mackerel (alternative 3f) and longfin squid (alternative 3g) permit holders from releasing discards before they are bought aboard for sampling, trip termination requirements after 1 (alternative 3h), 2 (alternative 3i), 5 (alternative 3k), or 10 (alternative 3n) fleet-wide slipped hauls on mackerel or longfin squid vessels carrying observers, individual slippage caps resulting in trip termination (alternative 3p), and a requirement that vessels that terminate a trip would have to take observers on the immediate subsequent trip (alternative 3o).

Negative impacts associated with all of these alternatives include increased time spent pumping fish aboard the

vessel to be sampled by an observer, potential decrease in vessel safety during poor operating conditions, and the administrative burden of completing a released catch affidavit. The penalties associated with slippage vary slightly across the alternatives. The overall impacts of the options that propose trip termination (proposed action) are negative in comparison to the no action alternative. Costs associated with mackerel and longfin squid fishing trips are high, particularly with the current cost of fuel. Trips terminated prematurely could result in unprofitable trips, leaving not only the owners with debt, but crewmembers without income, and negative impacts on fishery-related businesses and communities.

### 3. Measures To Address River Herring and Shad Interactions

Amendment 14 would establish catch caps for river herring (alternative 6b) and shad (alternative 6c) in the mackerel fishery. Two alternatives, the proposed action and the no action, were considered. Compared to the no action alternative, the action alternatives have the possibility of resulting in a closure of the directed mackerel fishery before the mackerel quota is reached. This could result in revenue losses as high as \$15 million based on 2010 ex-vessel prices, depending on how early the fishery is closed. While there is no direct linkage between river herring and shad catch and stock status, a closure that results from a catch cap in the mackerel fishery could limit the fisheries mortality on these stocks.

The proposed action also includes support for the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring bycatch with real-time information on river herring distribution and mackerel fishery encounters. This aspect of the proposed action has the potential to mitigate some of the negative impacts of the proposed action by developing river herring bycatch avoidance measures in cooperation with the fishing industry.

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 23, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.2, the definition of “Slippage in the Atlantic mackerel and longfin squid fisheries” is added in alphabetical order to read as follows:

### § 648.2 Definitions.

\* \* \* \* \*

*Slippage in the Atlantic mackerel and longfin squid fisheries* means catch that is discarded prior to being brought aboard a vessel issued an Atlantic mackerel or longfin squid permit and/or prior to making the catch available for sampling and inspection by a NMFS-approved observer. Slippage includes catch released from a codend or seine prior to the completion of pumping catch aboard and catch released from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and that remain in the net at the end of pumping operations are not considered slippage. Discards that occur at sea after the catch is brought on board and sorted are also not considered slippage.

\* \* \* \* \*

■ 3. In § 648.7, paragraphs (a)(1)(iv), (b)(3)(ii), and (b)(3)(iii) are added, and paragraph (f)(2)(i) is revised to read as follows:

### § 648.7 Recordkeeping and reporting requirements.

(a) \* \* \*

(1) \* \* \*

(iv) *Dealer reporting requirements for Atlantic mackerel and longfin squid.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers issued an MSB dealer permit must accurately weigh all fish or use volume-to-weight conversions for all transactions containing more than 2,500 lb (1.13 mt) of longfin squid or 20,000 lb (9.07 mt) of mackerel. If dealers do not sort by species, dealers are required to document, for each report submitted, how the species composition of the catch is determined.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) *Atlantic mackerel owners or operators.* The owner or operator of a vessel issued a limited access mackerel permit must report catch (retained and discarded) of 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 and day mackerel was caught; total pounds of mackerel retained and total pounds of all fish retained. Daily 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 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.

(iii) *Longfin squid/butterfish moratorium permit owners or operators.* The owner or operator of a vessel issued a longfin squid/butterfish moratorium permit must report catch (retained and discarded) of longfin squid 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 and day longfin squid was caught; total pounds longfin squid retained and total pounds of all fish retained. Daily longfin squid 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 longfin squid 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.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfly permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If such a vessel makes no fishing trip during a particular month, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfly permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If such a vessel makes no fishing trip during a reporting week, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this

paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit; Atlantic herring permit; or Atlantic mackerel, longfin squid, *Illex* squid or butterfly permit; begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) would not be required for either earlier week.

\* \* \* \* \*

■ 4. In § 648.10, paragraphs (b)(9), (b)(10), (m), and (n) are added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(9) Vessels issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit; or

(10) Vessels issued a longfin squid/butterfish moratorium permit.

\* \* \* \* \*

(m) *Limited access Atlantic mackerel VMS notification requirements.* (1) A vessel issued a limited access Atlantic mackerel permit intending to declare into the mackerel fishery must notify NMFS by declaring a mackerel trip prior to leaving port at the start of each trip in order to harvest, possess, or land 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 mackerel must notify NMFS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on its return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication in the **Federal Register** consistent with the Administrative Procedure Act.

(n) *Longfin squid/butterfish VMS notification requirements.* A vessel issued a longfin squid/butterfish moratorium permit intending to declare into the longfin squid fishery must notify NMFS by declaring a longfin

squid trip prior to leaving port at the start of each trip in order to harvest, possess, or land longfin squid on that trip.

■ 5. In § 648.11, paragraphs (h)(1), (h)(3)(vi), (h)(3)(ix), (h)(4)(i) through (iii), (h)(5)(i), (h)(5)(ii)(B) and (C), (h)(5)(iii), (h)(5)(vi), (h)(5)(viii)(A), (h)(7), (i)(2), and (i)(3)(ii) are revised, and paragraph (m) is added to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop or Atlantic mackerel fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St. Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop or Atlantic mackerel vessel owners and shall be posted on NMFS's Web page, as specified in paragraph (g)(4) of this section.

\* \* \* \* \*

(3) \* \* \*

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop or Atlantic mackerel fishery observer services provider as set out in paragraph (h)(5) of this section, and the arrangements to be used.

\* \* \* \* \*

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop or Atlantic mackerel High Volume Fisheries Certification Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

\* \* \* \* \*

(4) \* \* \*

(i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop or Atlantic mackerel fishery observer service provider, as demonstrated in the

application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS' Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop or Atlantic mackerel fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop or Atlantic mackerel fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

\* \* \* \* \*

(5) \* \* \*

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop or Atlantic mackerel fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop or Atlantic mackerel fishery, unless the observer service provider does not have an available observer within 24 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified in paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by

NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

\* \* \* \* \*

(ii) \* \* \*

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop or Atlantic mackerel vessel or to attend a NMFS/NEFOP Sea Scallop or Atlantic mackerel High Volume Fisheries Certification Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop and Atlantic mackerel Observer Program, prior to any deployment and/or prior to NMFS observer certification training; and

\* \* \* \* \*

(iii) *Observer deployment logistics.*

Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop or Atlantic mackerel fishery.

(vi) *Observer training requirements.*

The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop or Atlantic mackerel High Volume Fisheries Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

\* \* \* \* \*

(viii) \* \* \*

(A) An observer service provider may refuse to deploy an observer on a requesting scallop or Atlantic mackerel vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a scallop vessel or within 48 hr of receiving a request for an observer from an Atlantic mackerel vessel.

\* \* \* \* \*

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop or Atlantic mackerel trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer

service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

\* \* \* \* \*

(i) \* \* \*

(2) *Observer training.* In order to be deployed on any Atlantic mackerel vessel, a candidate observer must have passed a NMFS/NEFOP or Atlantic mackerel High Volume Fisheries Certification/Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop or Atlantic mackerel vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) \* \* \*

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop or Atlantic mackerel vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

\* \* \* \* \*

(m) *Atlantic mackerel, squid, and butterflyfish observer coverage*—(1) *Pre-trip notification.* (i) A vessel issued a limited access Atlantic mackerel permit or longfin squid/butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or email address for contact; and the date, time, port of departure, gear type (for mackerel trips), and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (m)(1)(iii) of this section.

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (a) of this section may only embark on a mackerel or longfin squid 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 specified mackerel or longfin squid trip, within 24 hr of the vessel representative's notification of the prospective mackerel or longfin squid trip, as specified in paragraph (a) 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 mackerel or longfin squid trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing mackerel or longfin squid except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(iii) *Trip limits.* (A) A vessel issued a longfin squid and butterflyfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) A vessel issued a limited access mackerel permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 20,000 lb (9.07 mt) of mackerel per trip at any time, and may only land 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 longfin squid and butterflyfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 2,500 lb (1.13 mt) of longfin squid per trip or per calendar day, or a vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 20,000 lb (9.07 mt) of 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.

(2) *Sampling requirements for limited access Atlantic mackerel and longfin squid/butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or longfin squid/butterfish moratorium permit on which a NMFS-approved observer is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(3) *Measures to address slippage in the Atlantic mackerel and longfin squid fisheries.* (i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid/butterfish moratorium permit and carrying a NMFS-approved observer may release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If fish are released prior to being brought on board the vessel, including catch released due to any of the exceptions in paragraphs (m)(3)(i)(A)–(C) of this section, the vessel operator must complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board (if only part of the tow was released) or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(4) *At-sea observer coverage requirements for the Atlantic mackerel fishery.* (i) Vessels issued a limited access Atlantic mackerel permit may not fish for, take, retain, possess, or land Atlantic mackerel without carrying a NMFS-approved observer, unless the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of this observer requirement for that trip pursuant to paragraph (m)(4)(iv) of this section.

(ii) An owner, operator, or manager of a vessel required to carry an observer under paragraph (m)(4)(i) of this section must arrange for carrying an observer certified through the Atlantic Mackerel High Volume Fisheries observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 24 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at <http://www.nefsc.noaa.gov/femad/fsb/>.

(iii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 24 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has

contacted all of the available observer service providers to secure observer coverage and no observer is available.

(iv) NMFS/NEFOP shall issue such a waiver within 12 hr if the conditions of paragraph (m)(4) of this section are met. A vessel may not begin the trip without being issued a waiver. All waivers for observer coverage will be issued to the vessel by VMS so a vessel must have on board a verification of the waiver.

(v) When selected to carry an observer on a declared mackerel trip, owners of vessels issued a limited access Atlantic mackerel permit must pay observer service providers \$325 per sea day.

■ 6. In § 648.14, paragraphs (g)(2)(v) through (viii) are added to read as follows:

§ 648.14 Prohibitions.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(v) *Reporting requirements in the limited access Atlantic mackerel and longfin squid/butterfish moratorium fisheries.* (A) Fail to declare via VMS into the mackerel or longfin squid/butterfish fisheries by entering the fishery code prior to leaving port at the start of each trip to harvest, possess, or land Atlantic mackerel or longfin squid, if a vessel has been issued a Limited Access Atlantic mackerel permit or longfin squid/butterfish moratorium permit, pursuant to § 648.10.

(B) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least of 6 hr prior to landing, if a vessel has been issued a Limited Access Atlantic mackerel permit, pursuant to § 648.10.

(vi) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions defined at § 648.11(m)(3) if issued a Limited Access Atlantic mackerel permit, or a longfin squid/butterfish moratorium permit.

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the requirements at § 648.11(m)(3).

(viii) Fail to immediately return to port after slipping catch while carrying a NMFS-approved observer after NMFS has determined that the slippage cap has been reached, pursuant to § 648.24.

\* \* \* \* \*

■ 7. In § 648.22, paragraphs (b)(2)(vi) and (b)(4) are added to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) *River herring and shad catch cap.* The Monitoring Committee shall provide recommendations regarding a cap on the catch of river herring (alewife and blueback) and shad (American and hickory) in the Atlantic mackerel fishery based on best available scientific information, as well as measures (seasonal or regional quotas, closure thresholds) necessary for implementation.

\* \* \* \* \*

(4) *Additional measures.* The Monitoring Committee may also provide recommendations on the following items, if necessary:

(i) Observer provisions to maximize sampling at § 648.11(m)(2);

(ii) Industry contribution amount for at-sea observer coverage at § 648.11(m)(2);

(iii) Exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers in § 648.11(m)(2);

(iv) Trip termination requirements after slippage for mackerel vessels in § 648.24(b)(7).

\* \* \* \* \*

■ 8. In § 648.24, paragraph (b)(7) is added to read as follows:

§ 648.24 Fishery closures and accountability measures.

\* \* \* \* \*

(b) \* \* \*

(7) *Slippage caps.* If NMFS determines that there have been 10 slippage events by vessels issued limited access Atlantic mackerel permits and carrying NMFS-approved observers, vessels with limited access mackerel permits that subsequently slip catch while carrying a NMFS-approved observer must immediately stop fishing and return to port after each slippage event. NMFS shall implement these restrictions in accordance with the Administrative Procedure Act.

\* \* \* \* \*

■ 9. In § 648.25, paragraph (a)(1) is revised to read as follows:

§ 648.25 Atlantic mackerel, squid and butterfish framework adjustments to management measures.

(a) \* \* \*

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The

MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; any other management measures currently included in the FMP, set aside quota for scientific research, regional management; process for inseason adjustment to the annual specification; mortality caps for river herring and shad species; time/area management for river herring and shad species; and provisions for river herring and shad incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s); the threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s). Measures contained within this list that require significant departures from previously contemplated measures or that are

otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

\* \* \* \* \*

#### § 648.27 [Removed]

■ 10. Remove § 648.27.

[FR Doc. 2013-21052 Filed 8-28-13; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-BC39

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 95 to the Fishery Management Plan for Groundfish

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

**ACTION:** Notification of availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the North Pacific Fishery Management Council has submitted Amendment 95 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for review by the Secretary of Commerce. If approved, Amendment 95 would modify the FMP to: establish halibut prohibited species catch (PSC) limits for the Gulf of Alaska (GOA) in Federal regulation; reduce the GOA halibut PSC limits for trawl and hook-and-line gear; reduce trawl halibut PSC sideboard limits for American Fisheries Act, Amendment 80, and Central GOA Rockfish Program vessels; and provide two additional management measures associated with halibut PSC accounting for Amendment 80 vessels subject to halibut PSC sideboards and for halibut PSC made by trawl vessels from May 15 through June 30, which would maintain groundfish harvest while achieving the halibut PSC limit reductions intended by this action. This action is necessary to reduce halibut bycatch in the GOA, and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Comments on Amendment 95 must be received on or before October 28, 2013.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number

NOAA-NMFS-2012-0151, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/)

#!docketDetail;D=NOAA-NMFS-2012-0151 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

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

Electronic copies of Amendment 95 to the FMP, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA), prepared for this action are available from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker or Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register**