

weather conditions controlling the movement of the oil changed, the oil could have moved in directions not initially predicted. A third emergency rule effective May 11, 2010 (75 FR 27217, May 14, 2010) established regulations allowing NMFS to close and reopen portions of the Gulf, South Atlantic, and Caribbean EEZ to all fishing, as necessary, as new information became available, to respond to the evolving nature of the oil spill. NMFS announced new closed areas via Southeast Fishery Bulletins and NOAA Weather Radio. The public could also receive updated closure information by visiting the Southeast Regional Office Web site, calling the Deepwater Horizon Oil Spill Hotline, signing up to receive a text message about the closure information, or following Twitter to get a tweet when the closed area changed. The largest area of the Gulf EEZ that was closed due to the oil spill covered 88,522 square miles (229,270 square km), representing 37 percent of the Gulf EEZ, on June 2, 2010.

#### Need for Termination of Regulations

On July 22, 2010, NMFS began reopening significant areas of the Gulf that had been previously closed due to the oil spill. The closed area was divided into eight smaller areas, where testing occurred from the outer closed areas in toward the core area surrounding the incident site. NMFS and FDA conducted both sensory and chemical tests in these areas to determine if seafood was safe for human consumption, and reopened areas based on the results of these tests. On April 19, 2011, NMFS reopened the last area surrounding the incident site. NMFS and FDA determined that sensory testing from this last area showed no detectable oil or dispersant odors or flavors in the samples, and the results of chemical analysis were well below levels of concern for oil. Therefore, all portions of the Gulf EEZ previously closed to all fishing due to the oil spill are now open and the seafood has been determined to be safe to eat.

The third emergency rule stated that the emergency regulations codified in Title 50 of the Code of Federal Regulations would remain in effect until terminated by subsequent rulemaking, which would occur once the existing emergency conditions from the oil spill no longer exist. Section 305(c) of the Magnuson-Stevens Act provides the authority for implementing emergency regulations responding to an oil spill, as well as the withdrawal of such regulations. "Any emergency regulation or interim measure promulgated under

this subsection that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published . . ." Because the public was given an opportunity to comment on each emergency rule related to the Deepwater Horizon MC252 oil spill and the circumstances that created the need for emergency short-term fishing closures no longer exist, NMFS withdraws the emergency regulations related to the Deepwater Horizon MC252 oil spill from the codified text. While NMFS and FDA determined that seafood from areas previously closed due to the oil spill is safe for human consumption, NOAA and other natural resource trustees continue to study the impacts of the oil spill through the natural resource damage assessment process to identify the extent of injuries to natural resources and services, as well as the proposed restoration alternatives to compensate for such injuries.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that termination of the emergency regulations related to the Deepwater Horizon MC252 oil spill is consistent with the Magnuson-Stevens Act and other applicable law.

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

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and the opportunity for public comment is unnecessary because the public was given an opportunity to comment on each emergency rule related to the Deepwater Horizon MC252 oil spill, and now the circumstances that created the need for emergency short-term fishing closures no longer exist. NMFS and FDA have determined that seafood from all previously closed areas of the Gulf EEZ due to the oil spill is safe for human consumption. All that remains is to withdraw the now obsolete regulations related to the Deepwater Horizon MC252 oil spill from the codified text.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

#### List of Subjects in 50 CFR Parts 622 and 635

Fisheries, Fishing, Deepwater Horizon.

Dated: February 18, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622 and 635 are amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

- 1. The authority citation for part 622 continues to read as follows:

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

#### § 622.14 [Removed and Reserved]

- 2. Section 622.14 is removed and reserved.

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

- 3. The authority citation for part 635 continues to read as follows:

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

#### § 635.21 [Amended]

- 4. In § 635.21, paragraph (a)(4)(vii) is removed.

[FR Doc. 2014-03914 Filed 2-21-14; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100120035-4085-03]

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:** Final rule.

**SUMMARY:** This rule implements approved measures in Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 14 was developed by the Mid-Atlantic Fishery

Management Council (Council) to improve the catch monitoring program for the MSB fisheries, with a focus on better evaluation of the incidental catch of river herring and shad, and to address river herring and shad bycatch issues in the mackerel fishery. The approved measures include: Revising vessel reporting requirements (vessel trip reporting frequency, pre-trip and pre-landing vessel notification requirements, and requirements for vessel monitoring systems); expanding vessel requirements to maximize observer's ability to sample catch at-sea; minimizing the discarding of unsampled catch; and a measure to allow the Council to set a cap on river herring and shad catch in the Atlantic mackerel fishery. NMFS disapproved three measures in Amendment 14: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a requirement for increased observer coverage on limited access midwater trawl and small-mesh bottom trawl mackerel trips, coupled with an industry contribution of \$325 per day toward observer costs. NMFS disapproved these measures because it determined that they are inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable law. Therefore, these three measures are not implemented in this action.

**DATES:** Effective March 26, 2014, except for the amendments to § 648.7(b)(3)(ii)–(iii) and § 648.10, which are effective April 25, 2014.

**ADDRESSES:** Copies of supporting documents used by the 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 EIS/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202–395–7285.

Information on the Federal Vessel Monitoring System (VMS)

reimbursement program is available from the Pacific States Marine Fisheries Commission, 205 SE Spokane Street, Suite 100, Portland, OR 97202 (Web site: <http://www.psmfc.org/>, Telephone Number: 503–595–3100, Fax Number: 503–595–3232) and from the NMFS VMS Support Center at 888–219–9228.

**FOR FURTHER INFORMATION CONTACT:** Aja Szumylo, Fishery Policy Analyst, phone 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 MSB 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 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 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. A Notice of Availability (NOA) for Amendment 14, as submitted by the Council for review by the Secretary of Commerce (Secretary), was published on August 12, 2013 (78 FR 48852), with a comment period ending September 16, 2013. A proposed rule for Amendment 14 was published on August 29, 2013 (78 FR 53404), with a comment period ending October 11, 2013. On November 7, 2013, NMFS partially approved Amendment 14 on behalf of the Secretary. NMFS sent a letter to the Council on November 7, 2013, informing it of the partial approval of Amendment 14.

The Council spent several years developing this amendment, and it contains many measures that will improve MSB management 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 river herring and shad bycatch and unintended catch, and unnecessary discarding. However, three measures in Amendment 14 lacked adequate rationale or development by the Council, and NMFS had utility and legal concerns with the implementation of these measures. These measures were: A requirement for mackerel and longfin squid dealers to document how they estimated species composition of the weights of the fish they report; a cap that, if reached, would require vessels discarding catch before it had been sampled by observers to return to port; and a recommendation for 100-percent observer coverage on all limited access midwater trawl and Tier 1 small-mesh bottom trawl mackerel trips, 50-percent coverage on Tier 2 small-mesh bottom trawl trips, and 25-percent coverage on Tier 3 small-mesh bottom trawl trips, coupled with an industry contribution of \$325 per day toward observer costs. NMFS expressed potential concerns with these measures throughout the development of this amendment, but these measures have strong support from some stakeholders. The proposed rule for Amendment 14 described NMFS's concerns about these measures' consistency with the MSA and other applicable law. In addition, the proposed rule described the recent disapproval of similar measures in the New England Fishery Management Council's Amendment 5 to the Atlantic Herring FMP. After review of public comments, NMFS determined these three measures had to be disapproved because they are inconsistent with the MSA and other applicable law. In the November 7, 2013, partial approval letter sent to the Council, NMFS detailed recommendations on how these measures could be revised in a future action to address NMFS's concerns. If the Council chooses to revise these measures and submit them in a future action, NMFS will continue to work with the Council to design effective measures to help improve management of the MSB fisheries. Whether those future actions would be amendments or framework adjustments would depend on the scope of the revised measures.

Amendment 14 includes measures to address the catch of river herring and shad in the mackerel fishery. River herring (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 and shad 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.

### Approved Measures

As noted in the proposed rule, some of the regulations implemented through Amendment 14 overlap with the regulations implemented through Amendment 5 to the Atlantic Herring FMP, which will publish as a final rule shortly. Several sections of regulatory text are affected by both actions. Since the Amendment 5 regulatory text is now finalized, the regulatory text presented in this final rule references the updated regulations. Therefore, it differs slightly in structure, but not content, from the regulations presented in the proposed rule.

This final rule implements approved management measures that:

- Institute weekly vessel trip reports (VTRs) for all MSB permits to facilitate quota monitoring and cross-checking with other data sources;
- Require 48-hr pre-trip notification to retain more than 20,000 lb (9.07 mt) of mackerel so NMFS has sufficient notice to assign observers to fishing vessels;
- Require VMS and daily catch reporting via VMS for limited access mackerel vessels to facilitate monitoring and cross-checking with other data sources;
- Require VMS and daily catch reporting via VMS for longfin squid/butterfish moratorium vessels to facilitate monitoring and cross-checking with other data sources;
- Require 6-hr pre-landing notification via VMS to land over 20,000 lb (9.07 mt) of mackerel to allow sufficient notice to facilitate at-sea monitoring, enforcement, and portside monitoring;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Prohibit slippage on limited access mackerel and longfin squid trips, with exceptions for safety concerns, mechanical failure, and when spiny dogfish prevents catch from being pumped aboard the vessel, and require a released catch affidavit (statement by the vessel operator) to be completed for each slippage event;

- Evaluate the existing river herring bycatch avoidance program to investigate providing real-time, cost-effective information on river herring distribution and fishery encounters;
- Implement a mortality cap for river herring and shad in the mackerel fishery; and
- Establish a mechanism within the fishery management plan whereby a river herring and shad catch cap can be developed through future framework actions.

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

Amendment 14 revises several existing fishery management provisions, including 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 implements a weekly VTR submission requirement for all MSB permits and requires 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 is 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) constitutes fishing during that reporting week and eliminates 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. This weekly VTR reporting requirement brings MSB reporting requirements in line with other Northeast region fisheries, improves monitoring of directed and incidental catch, and facilitates cross-checking with other data sources.

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

Amendment 14 implements 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 activity declarations, 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 requires limited access mackerel and longfin squid/butterfish moratorium permit holders to purchase and maintain a VMS unit. Reimbursement for VMS units is available on a first come, first serve, basis until the funds are depleted. More information on the VMS reimbursement program is available from the Pacific States Marine Fisheries Commission (see **ADDRESSES**) and from the NMFS VMS Support Center, which can be reached at 888-219-9228. Information about approved VMS vendors will be provided in the small entity compliance guide for this final rule, which will be mailed to all permit holders and available online at <http://www.nero.noaa.gov>.

Vessels are required to declare into the fishery via VMS for trips targeting mackerel or longfin squid, and are required to transmit location information at least every hour, 24 hr 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 continuously 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 have to confirm that their VMS units are operational by notifying the NMFS Office of Law Enforcement (OLE) (see existing installation notification procedures at § 648.10(e)(1)).

Amendment 14 requires daily VMS catch reporting for all limited access mackerel permits and longfin squid/butterfish moratorium permits when fishing on a declared mackerel or longfin squid trip. Daily VMS catch reports need to include: The VTR serial number for the current trip; month, day, and year the mackerel and/or longfin squid were caught; and total pounds retained. Daily mackerel and/or longfin squid VMS catch reports need to be submitted for each calendar day of the trip (midnight to midnight) and must be submitted by 0900 hr of the following day. Reports are required even if mackerel and/or longfin squid caught that day has not yet been landed.

Amendment 14 also requires that vessels landing more than 20,000 lb (9.07 mt) of mackerel submit a pre-landing notification via VMS. Vessels

must notify NMFS Office of Law Enforcement of the time and place of offloading at least 6 hr prior to arrival or, if fishing ends less than 6 hr before arrival, immediately upon leaving the fishing grounds.

## 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, with a focus on better evaluation of the incidental catch of river herring and shad. Amendment 14 codifies 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 also includes a measure to minimize the discarding of catch before it has been sampled by an observer.

### Pre-Trip Notification in the Mackerel Fishery

Amendment 14 requires 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 notification requirements. This measure assists the NMFS Northeast Fisheries Observer Program (NEFOP) scheduling and deployment of observers on directed mackerel trips, with minimal additional burden on the industry, helping ensure that the observer coverage target for the mackerel fishery is met. The list of information that must be provided to NEFOP as part of this pre-trip observer notification is described in the regulations at § 648.11(n)(1). Details of how vessels should contact NEFOP will be provided in the small entity compliance guide for this final rule, which will be mailed to all permit holders and available online at <http://www.nero.noaa.gov>. If a vessel operator is required to notify NEFOP to request an observer before embarking on a fishing trip, but does not notify NEFOP 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 NEFOP of the cancelled trip, even if the vessel is not selected to carry observers. All waivers or selection notices for observer coverage will be issued by NEFOP 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 navigations systems. Amendment 14 expands 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 of 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. Many vessels already provide this assistance voluntarily.

### Measures To Prevent Catch Discards Before Observer Sampling

Amendment 14 requires 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, that catch is defined as slippage. Fish that cannot be pumped and that remain in the net at the end of pumping operations are considered operational discards and not slippage. 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 allows 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 is 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.

In 2010, the NMFS NEFOP revised the training curriculum for observers deployed on herring and mackerel vessels to focus on effectively sampling in high-volume fisheries. NEFOP also developed a discard log to collect detailed information on discards in the herring fishery, 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 the number of slippage events by limited access herring vessels 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 information regarding the operator's decisions and may help NMFS to understand why slippage occurs.

NMFS expects that prohibiting slippage will help reduce slippage events in the mackerel and longfin squid fisheries, thus improving the quality of observer catch data, especially data on bycatch species encountered in the mackerel and longfin squid fisheries. Additionally, NMFS expects that the slippage prohibition will help minimize bycatch, and bycatch mortality, to the extent practicable in the mackerel and longfin squid fisheries.

Lastly, Amendment 14 allows for a number of measures related to at-sea sampling to be modified through the specifications process, including: (1) Observer provisions to maximize sampling; and (2) exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers.

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

Amendment 14 establishes several measures to address the catch of river herring and shad in the mackerel fishery to minimize bycatch and bycatch mortality to the extent practicable. River herring (the collective term for alewife and blueback herring) are anadromous species that may co-occur seasonally with Atlantic herring and Atlantic mackerel and are harvested as a non-target species in the Atlantic herring and Atlantic mackerel fisheries.

River herring are managed by the Atlantic States Marine Fisheries Commission (ASMFC) and individual states. According to the most recent ASMFC river herring stock assessment (May 2012), river herring 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 water commercial and recreational fisheries that did not have approved sustainable fisheries management plans, effective January 1, 2012. NMFS considers river herring to be a species of concern, but recently (78 FR 48944, August 12, 2013) determined that listing river herring as either threatened or endangered under the Endangered Species Act is not warranted at this time. Following this determination, NMFS established a technical working group and continues to work closely with the ASMFC and others to develop a long-term, dynamic conservation plan for river herring from Canada to Florida. The working group will evaluate the impact of ongoing restoration and conservation efforts, as well as new fisheries management measures, which should benefit the species. It will also review new information produced from ongoing research, including genetic analyses, ocean migration pattern research, and climate change impact studies, to assess whether recent reports showing higher river herring counts in the last 2 yr represent sustained trends. NMFS intends to revisit its river herring status determination within the next 5 yr.

This action establishes 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 should provide a strong incentive for the industry to avoid river herring and shad, and will help to minimize encounters with these species.

While Amendment 14, as approved, includes the measure to allow caps and the general methodology for applying the caps, the MSB specifications process for the 2014 fishing year will establish the actual cap amount and other logistical details of the cap (e.g., the closure threshold and post-closure possession limit). 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 trip limit threshold of 95 percent, and a post-threshold incidental trip limit of 20,000 lb (9.07 mt). The Council finalized its analysis of these measures and submitted its final recommendation to NMFS as part of the 2014 MSB specifications package. The proposed rule for 2014 MSB specifications, which NMFS intends to publish early in 2014, will provide the opportunity for interested parties to comment on the actual proposed cap level and management measures related to the cap. NMFS intends to implement the river herring and shad cap, if approved, in the spring of 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 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. At its September 2013 meeting, the New England Council took final action on Framework 3 and recommended establishing river herring and shad catch caps for midwater and bottom trawl gear in the herring fishery. Framework 3, if approved, is expected to be implemented in the spring or summer of 2014. Based on the ASMFC's recent river herring assessment, data do not appear to be robust enough to

determine a biologically-based river herring catch cap and/or the potential effects on river herring populations of such a catch cap on a coast-wide scale. Still, similar to the Mid-Atlantic Council, the New England Council intends to establish the ability to consider a river herring catch cap and approaches for setting a river herring catch cap in the Atlantic herring fishery as soon as possible.

Amendment 14 establishes a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance strategy in small-mesh pelagic fisheries. A river herring bycatch avoidance strategy will 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 (MADMF), and the University of Massachusetts Dartmouth School of Marine Science and Technology (SMASST). This measure is based on the existing river herring bycatch avoidance program involving SFC, MADMF, and SMASST, which is voluntary and 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 requires that, within 6 months of completion of the existing SFC/MA DMF/SMASST river herring bycatch avoidance project, the Council will 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, if scientific information to support such management measures becomes available, this action adds 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*

Though there are currently no measures in Amendment 14 related to this issue, the Council initially considered alternatives in the Amendment 14 draft EIS to include the four river herring and shad species as stocks in the MSB FMP. Instead, the Council initiated a separate amendment, Amendment 15 to the MSB FMP, to explore the need for conservation and management of these species more thoroughly, and analyze all of the MSA provisions (i.e., management reference points, description and delineation of essential fish habitat, etc.). Scoping for MSB Amendment 15 began in October 2012 (77 FR 65867). Based on NMFS guidance, the Council completed a document that examined a range of issues related to Federal management for river herring and shad. The document presented legal requirements for managing species under the MSA, the existing management and protection of river herring and shad, and the potential benefits of managing them under the MSA in contrast to the other authorities already providing protection. After reviewing the document, the Council determined at its October 2013 meeting that it should not go forward with the development of Amendment 15 at this time. The Council's decision was based on a range of considerations related to ongoing river herring and shad conservation and management efforts, including conservation efforts for river herring and shad at the local, state and Federal level, the pending incidental catch caps for river herring and shad in the Atlantic mackerel and Atlantic herring fisheries, the recent determination by NMFS that river herring are not endangered or

threatened, and the NMFS commitment to expand engagement in river herring conservation following the ESA determination. The Council also decided to re-evaluate Federal management of river herring and shad in 3 yr after a number of other actions related to river herring and shad conservation have been implemented.

#### **Disapproved Measures**

The following sections detail why NMFS's disapproved three measures that were proposed as part of Amendment 14. NMFS disapproved these three measures because it found the measures to be inconsistent with the MSA and other applicable law. The proposed rule for Amendment 14 described NMFS's concerns with these measures' consistency with the MSA and other applicable law. After review of public comments, NMFS, on behalf of the Secretary, disapproved these measures; therefore, this final rule does not include regulations for these measures.

##### *1. Increased Observer Coverage Requirements*

Currently, the NMFS Northeast Fisheries Science Center (NEFSC) determines observer coverage levels in the mackerel fishery based on the standardized bycatch reporting methodology (SBRM) and after consultations with the Council. Observer coverage in the mackerel fishery is currently fully 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 this measure is necessary to accurately determine the extent of bycatch and incidental catch 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, implement additional measures to address catch and discards of river herring and shad. The increased observer coverage level recommendations were coupled with a target maximum industry contribution of \$325 per day. There are two types of costs associated with observer coverage: Observer monitoring costs, such as observer salary and travel costs; and NMFS support and infrastructure costs,

such as observer training, data processing, and infrastructure. The monitoring costs associated with an observer in the mackerel fishery are higher than \$325 per day. Upon legal analysis of this measure, the cost-sharing of monitoring costs between NMFS and the industry would violate the Antideficiency Act. Therefore, based on this analysis, there is no current legal mechanism to allow cost-sharing of monitoring 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. Some commenters asserted that the \$325 per day industry contribution was not a limit, but a target, and that the Council intended the industry to pay whatever is necessary to ensure 100-percent observer coverage. NMFS disagrees, and does not believe the amendment specifies that the industry would pay all the monitoring costs associated with 100-percent observer coverage, nor does the amendment analyze the economic impacts of the industry paying all the monitoring costs. The FEIS for Amendment 14 analyzes the industry paying \$325 per day, and the DEIS analyzes the cost of vessels paying \$800 per day (estimated sum of observer monitoring costs), but it does not analyze a range of that would approximate total monitoring costs. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the mackerel fishery. Requiring NMFS to pay for 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 14 does not identify a funding source to cover the costs of increased observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, NMFS had to disapprove the 100-percent observer coverage requirement. With the disapproval of this measure, this action maintains the existing observer coverage levels and full Federal funding for observer coverage the mackerel fishery.

In 2013, a working group was formed to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring fishery, including staff from the New England and Mid-Atlantic Councils and NMFS. To further explore the legal issues surrounding industry-funded observer coverage, NMFS formed a working group of Greater Atlantic Regional Fisheries Office, NEFSC, General Counsel, and Headquarters staff. The

NMFS working group is currently exploring possibilities.

In the November 7, 2013, partial approval letter to the Council, NMFS offered to be the technical lead on an omnibus amendment to establish an administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs. At its October 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. NMFS expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Additionally, other measures implemented in this action help improve monitoring in the mackerel fishery. These 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, observer sample station and reasonable assistance requirements to improve an observer's ability collect quality data in a safe and efficient manner, and the slippage prohibition and the sampling requirements for midwater trawl vessels fishing in groundfish closed areas to minimize the discarding of unsampled catch.

The same measure that would have required increased observer coverage, coupled with a \$325 contribution by the industry, would have also required that: (1) The Council would re-evaluate the increased observer coverage level 2 yr after implementation; and (2) observer service provider requirements for the Atlantic sea scallop fishery would apply to observer service providers for the mackerel fishery. NMFS believes these additional measures are inseparable from the 100-percent observer coverage requirement; therefore, NMFS also disapproved these measures. With the disapproval of these measures, this action maintains the existing SBRM-based observer coverage provisions for the mackerel fishery.

## 2. Measures To Minimize Slippage

Amendment 14 proposed establishing a slippage cap for the mackerel fishery. Under the proposed measures, once there have been 10 slippage events fleet-wide in the mackerel fishery by vessels carrying an observer, vessels that subsequently slip catch would have been required to immediately return to port. NMFS would have been required to track slippage events and notify the fleet once the slippage cap had been reached. Slippage events due to conditions that may compromise the safety of the vessel or crew, mechanical

failure, or dogfish in the pump would not count against the slippage cap. The Council recommended these slippage caps to discourage the inappropriate use of the slippage exceptions, and to allow for some slippage, but not unduly penalize the fleet.

Throughout the development of Amendment 14, NMFS identified potential concerns with the rationale supporting, and legality of, the slippage caps. The need for, and threshold for triggering, a slippage cap (10 slippage events) does not appear to have a strong biological or operational basis. Under the proposed measure, once a slippage cap had been met, vessels that slip catch with an observer aboard for reasons other than safety, mechanical failure, or spiny dogfish in the pump would have been required to return to port. Vessels could have continued fishing following slippage events 1 through 10, but would have been required to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Conversely, vessels responsible for slippage events 1 through 10, could continue fishing after the 11th slippage event, provided they do not slip catch again. NMFS believes this aspect of the proposed measure is inequitable.

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—e.g., 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. The Council's analysis noted that while documented 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 did 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, as opposed to any other number.

The proposed Amendment 14 measures to minimize slippage were 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, midwater trawl vessels

are allowed to continue fishing if they slip catch, 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 in Amendment 14 to return to port when slippage occurs. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, inequitable application to the fleet is not an issue for the Closed Area I requirements, like NMFS believes it is for the proposed Amendment 14 slippage caps.

If the Council wants to revise the slippage cap, the revisions would need to address the biological/administrative justification for the cap's trigger and equity within the fleet. The slippage cap could be revised to be more similar to the sampling requirements in Groundfish Closed Area I, such that all vessels that slip catch have a consequence. This revision would alleviate NMFS's concern with the equitable application of the slippage cap among those who contribute to reaching the cap, as well as its concern with the basis for triggering the cap. The consequence of slipped catch could be a requirement to return to port, or to leave a defined area, such as a statistical area, where the slippage event occurred.

Even through the slippage cap was disapproved, the prohibition on slippage, the released catch affidavit, and the ongoing data collection by NEFOP still allow for improved monitoring in the mackerel fishery, increased information regarding discards, and an incentive to minimize the discarding of unsampled catch.

## 3. Reporting Requirements for Dealers

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 that concern, Amendment 14 proposed requiring 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 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 the proposed measure did not specify how

fish would be weighed and would still have allowed volumetric estimates, the proposed measure might not change dealer behavior and, therefore, might not lead to any measureable change in the accuracy of catch weights reported by dealers. Further, this proposed measure did not provide standards for estimating species composition. Without standards for estimating species composition or for measuring the accuracy of the estimation method, NMFS would likely be unable to evaluate the sufficiency of the methods used to estimate species composition. For these reasons, the requirement for dealers to document the methods used to estimate species composition might not have improved 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 MSB fisheries, it might still inform NMFS's and the Council's understanding of the methods used by dealers to determine species weights. That information might aid in development of standardized methods for purposes of future rulemaking. Furthermore, full and accurate reporting is a permit requirement; failure to fully and accurately report 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 might increase the likelihood that useful information would be obtained as a result of this requirement.

In light of the foregoing, NMFS evaluated whether the proposed measure had practical utility, as required by the MSA and the Paperwork Reduction Act (PRA), that would have outweighed the additional reporting and administrative burden on the dealers. In particular, NMFS considered whether and how the proposed measure would help prevent overfishing, promote the long-term health and stability of the MSB resource, monitor the fishery, facilitate inseason management, or judge performance of the management regime.

NMFS determined that this measure would not measurably improve the accuracy of dealer reporting or the management of the MSB resources. NMFS also determined that this measure does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication to the extent practicable, and the PRA's requirement for the utility of the measure to outweigh the additional reporting and administrative burden on

the dealers. Therefore, NMFS disapproved the proposed dealer reporting requirements, and this action maintains the existing requirement that dealers accurately report the weight of fish.

If the Council wants to revise dealer reporting requirements in a future action, the revisions would need to address issues concerning accuracy and utility of the information reported and could be addressed in several ways. For example, the Council could select Alternative 2b in Amendment 14 (requiring vessel owners to review and validate data for their vessels in Fish-on-Line). This measure would be a change from status quo, and it has some utility as it helps identify, and possibly reduce, discrepancies between dealer and vessel reports. Another way for the Council to revise the dealer reporting requirement would be to clarify and standardize the methods used to "accurately weigh all fish" by requiring the use of scales or standardized volume measurement. If the methods to "accurately weigh all fish" were specified, it would likely change dealer behavior from status quo, and may, depending on the methods, improve the accuracy of dealer reports.

Alternatively, the Council could take this opportunity to revisit the original concern that sparked the development of the dealer reporting requirement, which was the fact that landing data were not verified by a third-party, and revise the measure to better address that concern. Lastly, the sub-option requiring dealers to document how they estimate the composition of catch was intended to gather information on methods used by dealers to estimate species composition. Another way to obtain that type of information would be to gather it as part of a data collection program that would update community profiles for Northeast fisheries.

#### Comments and Responses

NMFS received 15 comment letters during the comment period for the NOA and proposed rule. Three of the letters were from the general public, and 12 were from environmental advocacy groups. Five of the letters from environmental advocacy groups were form letters that contained signatures and personalized comments, including: 47 total signatures and one personalized comment on a letter from the Natural Resources Defense Council; 1,810 signatures on a letter from the Chesapeake Bay Foundation; 32,219 total signatures with 2,694 personalized comments on a letter from the Pew Charitable Trusts; 1,147 signatures and 279 personalized comments on a letter

from the Ocean River Institute; and 4,716 total signatures with 230 personalized comments on a letter from the National Audubon Society. Only comments relevant to measures considered in Amendment 14 are summarized and addressed below. Comments related to other fishery management actions or general fishery management practices are not addressed here.

#### 1. General Comments

*Comment 1:* Many commenters urged NMFS to approve Amendment 14 in its entirety, but provided no specific comments on the proposed measures. Additional comments acknowledged that the amendment contains many important components, but commenters believe the river herring and shad catch cap, the slippage cap, 100-percent observer coverage on mid-water trawl vessels, and accurate dealer weighing of catch are especially important for reducing bycatch of river herring and shad in the mackerel fishery.

*Response:* NMFS supports improvements to fishery-dependent data collections by expanding, to the extent practicable, at-sea monitoring of the mackerel fishery and reducing bycatch and unnecessary discarding. However, NMFS determined that the increased observer coverage requirements, slippage caps, and dealer reporting alternatives proposed in Amendment 14 were inconsistent with the MSA and other applicable law. Regardless of NMFS's desire to increase monitoring and reduce bycatch in the mackerel fishery, it cannot approve and implement measures it believes are inconsistent with applicable law. Amendment 14 has many tools to improve management of the mackerel fishery (i.e., expanded vessel reporting requirements) and to monitor and mitigate river herring and shad bycatch (i.e., the slippage prohibition and river herring and shad catch caps).

*Comment 2:* Wild Oceans commented that the proposed rule incorrectly states that one of the goals of Amendment 14 is to "improve catch monitoring in the mackerel and longfin squid fisheries." They point out that the Amendment 14 FEIS specifically ties the monitoring improvements for these fisheries to improving the precision of river herring and shad catch estimates, and that the proposed alternatives must be evaluated in this context to determine their utility.

*Response:* NMFS agrees that the goal was not fully stated in some places in the proposed rule. We have clarified the statement of the goal in this final rule. The full statement of the goal was not overlooked in our evaluation of the

Council's proposed alternatives. Again, while we are supportive of improvements to data collection to strengthen our understanding of river herring and shad bycatch in the MSB fisheries, we had to disapprove the slippage caps, increased observer coverage requirements, and dealer reporting requirement because of the inconsistency of these measures with the MSA and other applicable laws.

*Comment 3:* NMFS referenced the Herring Amendment 5 partial approval in the Amendment 14 proposed rule, and linked concerns with the disapproved measures to several measures in the Amendment 14 proposed rule. Several commenters expressed their disagreement with NMFS's approvability concerns, and believe that NMFS fails to recognize the substantial need for these measures, their central role in the overall Amendment 14 reform package, and their strong justification in the FEIS for Amendment 14. A number of other commenters raised similar sentiments, focusing on their belief that the proposed measures strike a carefully designed balance between conservation and industry needs, are consistent with the MSA and other applicable law, and should be approved in full. Some commenters went on to say that, if NMFS disapproves the measures in Amendment 14, it must provide specific and timely recommendations for "fixing" the disapproved measures, consistent with the process for resubmittal of disapproved measures outlined in the MSA.

*Response:* NMFS expressed concerns about the proposed increased observer coverage requirements, the slippage caps, and the dealer reporting requirements throughout the development of this amendment. While these measures have strong support from many stakeholders, they were not modified in a manner to alleviate NMFS's concerns. The proposed rule for Amendment 14 described potential concerns about these measures' consistency with the MSA and other applicable law. No new or additional information was identified by commenters during the public comment period on the NOA and proposed rule for Amendment 14 to address NMFS's concerns with the identified deficiencies of these measures. Therefore, on November 7, 2013, NMFS determined these three measures must be disapproved.

NMFS provided suggestions for alleviating our approvability concerns in both our November 7, 2013, partial approval letter to the Council, and in the preamble to the proposed rule, in

the discussion of the since-disapproved measures. If the Council chooses to revise these measures, NMFS will continue to work with the Council to design effective measures that help improve management of the mackerel fishery. Revised measures could be addressed in upcoming Council actions. Whether such actions would be amendments or frameworks will depend on the scope of the revised measures.

The measures in Amendment 14 that were approved by NMFS are consistent with the MSA and other applicable law, and analysis in the FEIS indicates these measures will improve data quality, as well as bycatch avoidance and minimization.

*Comment 4:* The Herring Alliance and NRDC expressed their view that they support the majority of Amendment 14, but that Amendment 14 should be disapproved to the extent that it fails to include river herring and shad in a Federal FMP. They note that a Federal FMP would enable NMFS to set science-based annual catch limits, identify and protect essential fish habitat, gather better data and improve the population estimates of river herring and shad, and coordinate with state efforts to restore river herring and shad. Several other commenters also expressed their support for including river herring and shad in a Federal FMP as part of Amendment 15 to the MSB FMP.

*Response:* It is not clear what the commenters meant by disapproving Amendment 14 "to the extent that it fails to include river herring and shad in a Federal FMP." Amendment 14 is not required to consider all aspects of management of the MSB fisheries; instead the amendment is focused on considering measures to better evaluate the incidental catch of river herring and shad, and to address river herring and shad bycatch issues in the mackerel fishery. As noted in this preamble, because of the complexity of the issue of Federal management of river herring and shad, the Council voted in June 2012 to move consideration of this issue out of Amendment 14 and into Amendment 15. Thus, considering whether river herring and shad should be stocks in the MSB FMP outside the scope of Amendment 14. If the comment meant that Amendment 14 should be disapproved in its entirety because it does not add river herring and shad to a Federal FMP, then important river herring and shad protection measures implemented through this action, including the increased reporting requirements for mackerel and longfin squid vessels, the slippage prohibitions, and the river herring and shad catch cap, would also be disapproved. NMFS

determined these measures are administratively feasible and offer conservation benefits to river herring and shad, and approved them for implementation.

## 2. Comments on Adjustments to the Fishery Management Program

*Comment 5:* While most commenters expressed their overall support for measures proposed in Amendment 14, Wild Oceans and PEW Charitable Trusts specifically supported the adjustments to vessel reporting requirements, including: Weekly VTR for all MSB permits; the 48-hr pre-trip notification for mackerel; VMS requirements for mackerel and longfin squid; and the 6-hr pre-landing notification for mackerel.

*Response:* NMFS concurs with the commenters, because NMFS believes these measures will help improve monitoring, improve overall management of the MSB fisheries, and are consistent with the MSA and other applicable law. NMFS approved these measures and this action implements them.

*Comment 6:* Wild Oceans expressed disappointment that, given the mixed nature of the herring and mackerel fisheries in Quarter 1, a recommendation raised at a joint meeting of the technical teams for Amendments 5 and 14 to create a "mixed trip" or "pelagic" VMS declaration for these fisheries was not included in the proposed rule. They expressed concern that ambiguity in the VMS declaration procedures could weaken the enforcement of fishery-specific conservation measures, such as the river herring and shad catch caps.

*Response:* NMFS agrees with the commenter's concern, and did move forward with the recommendation to combine the declarations for the herring, mackerel, and longfin squid fisheries to ensure maximum enforceability of fishery-specific conservation measures. While regulations in this action specify that vessel operators must make appropriate trip declarations, NMFS does not include specific declaration types in regulations because regulatory requirements do not provide sufficient flexibility, should specific declaration provisions need to change. NMFS communicates specific details of the requirement, including trip declaration instructions, to industry in bulletins or small entity compliance guides. In this case, instructions on how to comply with the new combined declaration will be sent to industry in the small entity compliance guide for this rule.

*Comment 7:* Wild Oceans, the Herring Alliance, and PEW Environment Group

urged NMFS to approve the requirement that MSB dealers accurately weigh all fish because accurate landings data will ensure catch accountability, including catch estimates for river herring and shad, for the MSB fisheries. These comments also noted that the measure has strong support from stakeholders. The commenters disagreed with NMFS's language in the proposed rule that describe this measure as essentially status quo. They believe this measure is intended to eliminate the practice of dealers reporting visual estimates of catch weight in favor of verifiable methods such as scales or volumetric estimates of fish holds. The commenters also believe that the measure is different than the status quo because they believe it requires dealers to document their volume-to-weight estimation methodology, and to justify its use as opposed to an actual weight, which will improve the Council's understanding of the methods used by dealers to determine species and weight compositions so that appropriate standards can be developed and implemented in future rulemakings.

*Response:* Section 2.2 of the Amendment 14 FEIS notes that, while a majority of MSB dealers weigh their landings using scales, there are some instances, especially with mackerel, where product may be de-watered and shipped by truck before it is weighed. The FEIS goes on to say that, while in some instances the receiver may report back a weight, in other cases weights may be estimated based on the size of the shipping container or truck volume. Because the FEIS, and the Council's proposed alternative 2g, describe using a volume-to-weight conversion, possibly an estimate of a container of fish to generate the weight of any container of a similar size, NMFS believes that the amendment would have allowed for the practice of visual estimates of catch weight, rather than ending it. In Section 7.2, the final EIS concludes that dealers are unlikely to change their current operations without a requirement to do so, therefore it is unlikely that that this measure would have improved the accuracy of weights reported by dealers as compared to the status quo. The requirement would not have asked for dealers to justify why they must use a volume-to-weight estimation methodology, rather than actually weighing fish, and would simply ask for dealers to document the approach they use to determine the composition of mixed catch. Finally, as noted in this preamble, NMFS agrees that collecting information about the methods used by dealers to estimate species weight and

composition could allow for the development of improved standards in future rulemakings. However, if the goal of this measure is to simply take a census of current dealer practices, it is unnecessarily punitive to tie that information collection to permit issuance. Another way to obtain that type of information would be to gather it as part of a data collection program that would update community profiles for Northeast fisheries.

### 3. Comments on Adjustments to At-Sea Monitoring

*Comment 8:* The Herring Alliance, Wild Oceans, PEW Charitable Trusts, and Oceana urged NMFS to approve critical measures in Amendment 14 designed to better monitor catch and bycatch in the mackerel fishery, including the 100-percent coverage requirement on all midwater trawl mackerel trips and Tier 1 small-mesh bottom trawl mackerel trips, 50-percent coverage on Tier 2 small-mesh bottom trawl mackerel trips, and 25-percent on Tier 2 small-mesh bottom trawl mackerel trips. They point out that the Council approved the increased observer coverage requirement with widespread support from commercial and recreational fishermen, eco-tourism and coastal businesses, river herring and coastal watershed advocates, and other members of the public. They believe that increased observer coverage is justified given the fleet's harvesting capacity and its demonstrated bycatch, and makes it possible to document rare bycatch events. Additionally, they believe the increased coverage measures are consistent with the MSA and other applicable law and necessary to improve the accuracy and precision of data used to make management decisions, and ensure that both target and non-target species are effectively administered without regulatory loopholes.

*Response:* Throughout the development of Amendment 14, NMFS advised the Council that Amendment 14 must identify a funding source for increased observer coverage for the types of trips referenced by the commenter because NMFS's annual appropriations for observer coverage are not guaranteed. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring NMFS to pay for increased observer coverage levels would amount to an unfunded mandate, meaning regulations would obligate NMFS to implement something it cannot pay for. Because Amendment 14 does not identify a funding source to cover the

costs of increased observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, NMFS had to disapprove the increased observer coverage requirements. With the disapproval of this measure, this action maintains the existing SBRM observer coverage levels and Federal observer funding for the mackerel fishery. Despite the disapproval of the increased observer coverage requirements, there are many other measures in the MSB FMP (e.g., annual catch limits (ACLs), accountability measures) and implemented in this action (e.g., adjustments to the fishery management program and at-sea monitoring, measures to address river herring interactions) that meet MSA requirements to minimize bycatch and ensure catch accountability.

In 2013, staff from NMFS and the New England and Mid-Atlantic Councils formed a working group to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring and mackerel fisheries. To further explore the legal issues surrounding industry-funded observer coverage, NMFS formed a separate internal working group of Greater Atlantic Regional Fisheries Office, Northeast Fisheries Science Center, General Counsel, and Headquarters staff. The NMFS working group identified an administrative mechanism to allow for industry funding of observer monitoring costs in Northeast fisheries, as well as a potential way to help offset funding costs that would be borne by the industry, subject to available funding. This administrative mechanism would be an option to fund observer coverage targets that are higher than SBRM coverage levels. The mechanism to allow for industry-funded observer coverage is a potential tool for all Northeast FMPs, but it would need to be added to each FMP to make it an available tool, should the Council want to use it. Additionally, this omnibus amendment could establish the observer coverage targets for mackerel vessels using midwater trawl and small-mesh bottom trawl.

In a September 20, 2013, letter to the Council, NMFS offered to be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs. At its October 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. NMFS expects to present a preliminary range of alternatives for the

omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

*Comment 9:* The Herring Alliance and PEW Environment Group do not agree with disapproval of the observer coverage provisions on the grounds that the Council failed to identify a funding source for the increased observer coverage. They assert that the Council clearly identified industry as the funding source.

*Response:* NMFS disagrees with the comment that the Council clearly identified industry as the funding source. The amendment states that the preferred funding option for the increased observer coverage requirement is an industry contribution of \$325 per sea day. NMFS does not believe this description indicates that the industry would be responsible for paying the full costs of the Council's proposed increased observer coverage requirements, and the analysis of impacts in the FEIS fails to examine the effects that paying for observer coverage in full would have on vessel owners, operators, and crews. In addition, approval and implementation of the Council's preferred industry funding option required considerable development that the Council deferred to NMFS to be completed, subsequent to Amendment 14 approval. We communicated the complexities of developing the preferred funding option to the Council before the Council's approval, and, given the complexities and the incompleteness of the measure, NMFS could not approve the amendment in the required timeline.

There are two types of costs associated with observer coverage: Observer monitoring costs, such as observer salary and travel costs, and NMFS support and infrastructure costs, such as observer training and data processing. Monitoring costs can either be paid by industry or paid by NMFS, but they cannot be shared. NMFS support and infrastructure costs can only be paid by NMFS. The monitoring costs associated with an observer in the mackerel fishery are higher than \$325 per day. The FEIS for Amendment 14 analyzed the industry paying \$325 per day, but it did not analyze a range of that would approximate the total monitoring costs.

The amendment does not describe or analyze the industry being responsible for paying all observer monitoring costs. Therefore, Amendment 14 does not identify a funding source to cover the costs of increased observer coverage, and that measure was not sufficiently developed to be approved.

*Comment 10:* The Herring Alliance and PEW Environment Group disagree with NMFS's statement in the proposed rule that there is no legal mechanism to allow timely implementation of the Council's preferred funding options and point to successful precedents set on the West Coast for cost-sharing between NMFS and the industry. The Herring Alliance also suggested that NMFS could simply fund the full number of observer days the budget can accommodate, and require industry to contract with observer service providers to pay in full for the rest.

*Response:* In Amendment 14, the increased observer requirements are coupled with an industry contribution of \$325 per day. The monitoring costs associated with an observer in the mackerel fishery are higher than \$325 per day. The cost-sharing of observer monitoring costs between NMFS and the industry violates the Anti-Deficiency Act and the Miscellaneous Receipts Act. NMFS may pay all the observer monitoring costs (e.g., NEFOP observers) or the industry may pay all the observer monitoring costs directly to a third party (e.g., like in the Atlantic scallop fishery). However, NMFS and the industry cannot both pay towards the same observer monitoring costs. For example, if observer monitoring costs are \$700 per sea day, NMFS and industry cannot split the costs 50/50, or by any other proportion, nor can NMFS accept contributions directly from industry to fund observer monitoring costs. Therefore, there is no current legal mechanism to allow cost-sharing of monitoring costs between NMFS and the industry.

In the Pacific Groundfish Trawl Program, the industry is required to pay all observer monitoring costs directly to a third party. However, as a way to transition the industry to paying all observer monitoring costs, NMFS is reimbursing the observer service providers a percentage of the observer monitoring costs through a time-limited grant with Pacific States Marine Fisheries Commission. The level of reimbursement is contingent on available NMFS funding, is expected to decrease over time, and will end such that eventually the industry will be paying all observer monitoring costs. Subject to NMFS funding, this grant mechanism may also be a temporary option to reimburse the mackerel industry for observer monitoring costs. But this funding mechanism is very different than the measure proposed in Amendment 14, and NMFS cannot modify the proposed measure to make it consistent with the Anti-deficiency Act.

As described previously, NMFS has offered to be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs, and expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

*Comment 11:* The Herring Alliance and PEW Environment Group expressed their view that, consistent with other government programs, vessels should not be allowed to fish if an observer cannot be deployed on a trip due to insufficient funding (either industry or NMFS, or both).

*Response:* Preventing vessels from fishing would be a new policy that was clearly not the intent of the Council in the observer measures in Amendment 14. Implementing such a provision would have required a Council decision and analysis in Amendment 14, or would require future Council action.

*Comment 12:* Several commenters urged NMFS to approve measures prohibiting slippage, requiring a released catch affidavit, and slippage caps to improve catch monitoring and reduce wasteful discarding. They believe slippage caps, and the subsequent trip termination provisions, are critical to the effectiveness of catch monitoring and bycatch estimation in the mackerel fishery, are consistent with the MSA and other applicable law, and necessary to meet requirements to end overfishing, minimize bycatch, and ensure accountability. They believe the proposed cap on the number of slippage events (i.e., 10 non-exempted slippage events fleetwide) is a carefully designed expansion of the regulations in place for Closed Area I for herring vessels or the requirement to stop fishing in an area when the sub-ACL has been harvested, and that the cap amounts are based on existing data and set at levels high enough that allow the fleet to avoid trip termination while preventing unlimited slippage.

*Response:* NMFS approved measures prohibiting slippage on observed mackerel and longfin squid trips and requiring a released catch affidavit for slippage events on such trips. NMFS expects that prohibiting slippage will help reduce slippage events in the mackerel and longfin squid fisheries. NMFS believes this will improve the quality of observer catch data, especially data on bycatch species encountered in both fisheries. NMFS also expects the released catch affidavit to help provide insight into when and why slippage occurs. Additionally, NMFS expects that the slippage prohibition will help

minimize bycatch, and bycatch mortality, to the extent practicable in the mackerel and longfin squid fisheries.

NMFS disapproved the proposed slippage cap on the mackerel fishery, and the associated trip termination requirement, because of concerns about the details of the slippage cap. Under the proposed measure, once a slippage cap had been met, vessels that slip catch would have been required to return to port. Vessels could continue fishing following slippage events 1 through 10, but would have been required to return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Conversely, vessels responsible for slippage events 1 through 10, could have continued fishing after the 11th slippage event provided they did not slip catch again. NMFS believes this aspect of the measure is arbitrary.

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, midwater trawl vessels are allowed to continue fishing if they slip catch, 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 Amendment 14 proposed requirement to return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, or when a closure becomes effective when the ACL has been harvested, inequitable application to the fleet is not an issue for the Closed Area I requirements or closure measures, like NMFS believes it is for the Amendment 14 proposed slippage caps.

Even though NMFS disapproved the slippage caps, the prohibition on slippage in the mackerel and longfin squid fisheries, the released catch affidavit, and the ongoing data collection by NEFOP still provide improved monitoring in the mackerel and longfin squid fisheries, increased information regarding discards, and an incentive to minimize discards of unsampled catch.

*Comment 13:* NMFS received comments from the Herring Alliance, PEW Environment Group, and Wild Oceans that the analysis in the FEIS provides a reasonable basis for capping slippage events at 10 fleet-wide slippage events. The commenters also disagreed with NMFS's statements in the proposed rule that the slippage caps may be punitive or unfair. Wild Oceans

suggested that, if the controversy is around the number of allowed slippage events (i.e., 10 allowed non-exempted slippage events before triggering the cap) as opposed to the need to minimize slippage, then the trip termination penalty should apply after all slippage events.

*Response:* The Amendment 14 FEIS notes that, 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 FEIS discusses that, while documented slippage events are relatively infrequent, increases above the estimated 15 unobserved hauls per year could compromise observer data because “high-volume fisheries . . . can catch large quantities of fish in a single tow.” NMFS agrees that unobserved hauls can compromise observer data, and that limiting the total number of slippage events to 10 does reduce slippage events from the recent average of 15 unobserved hauls on mackerel trips. However, NMFS does not believe the FEIS provides analysis for why it is operationally justified to allow the fleet 10 un-exempted slippage events prior to triggering the trip termination requirement, as opposed to the selection of any other value.

NMFS disapproved the proposed slippage caps, and the associated trip termination requirement, because of concerns with the legality of the slippage cap. Once the slippage cap has been met, vessels that slip catch would be required to return to port. Vessels may 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. Conversely, vessels responsible for slippage events 1 through 10, may continue fishing after the 11th slippage event provided they do not slip catch again. NMFS believes this aspect of the measure is inequitable.

Throughout the development of Amendment 14, NMFS identified potential concerns with the rationale supporting, and legality of, the slippage caps. NMFS highlighted its concerns with these aspects of the slippage cap in the proposed rule. As described in the response to the previous comment, NMFS believes the arbitrary nature of the slippage cap, and the potential for

inequitable application to the fleet as a result of the slippage cap, render the proposed slippage cap inconsistent with the MSA and other applicable law. For these reasons, NMFS disapproved the proposed slippage cap.

NMFS agrees with Wild Ocean's recommendation to make the consequences of the slippage cap apply after every non-exempted slippage event and offered this suggestion to the Council in our November 7, 2013, partial approval letter.

*Comment 14:* The Herring Alliance and PEW Environment Group assert that NMFS stated in the proposed rule that existing procedures in the mackerel fishery are adequate to address slippage. They assert that, though the NEFOP high-volume fishery procedures have been in place for several years, these protocols do not prevent slippage and still allow for significant amounts of catch to be discarded prior to sampling by NEFOP observers. Wild Oceans asserts that NMFS should clarify, through the regulations, the Council's position that slippage is a detrimental practice that should be discouraged, and that simply collecting information on slippage does not convey this message and does not deter its occurrence.

*Response:* NMFS did not characterize the high-volume fishery procedures as a means to prevent slippage. Rather, NMFS noted that, in contrast to the information that would be collected in the proposed released catch affidavits, the discard logs documented as part of the high-volume fishery observation protocol provide more detailed, comprehensive information on discards. However, NMFS notes that there is a compliance benefit to requiring a released catch affidavit because it would provide information regarding the operator's decisions and may help NMFS understand why slippage occurs. NMFS agrees that the high-volume fishery observation protocol does not prevent slippage, and that it only collects information about slippage events. NMFS reflected the Council's intent that slippage is a detrimental practice that must be discouraged by implementing the slippage prohibitions in the mackerel and longfin squid fisheries. NMFS believes that the slippage prohibition and the associated released catch affidavit requirement should provide a strong incentive to minimize the discarding of unsampled catch and provide increased information regarding discards.

*Comment 15:* The Herring Alliance and PEW Environment Group assert that NMFS documented slippage as a problem that directly affects the administration of the butterfish

mortality cap on the longfin squid fishery, where longfin squid hauls have been slipped due to the presence of butterfish.

*Response:* NMFS reiterates that the slippage prohibition and released catch affidavit are also a requirement for longfin squid permit holders, which can help address any issues with the administration of the butterfish mortality cap that may have resulted from past slippage events.

*Comment 16:* Wild Oceans notes that the proposed regulatory definition of slippage (§ 648.2) does not reflect the description of slippage in Amendment 14, which describes transferring of fish to another vessel that is not carrying a NMFS-approved observer as a slippage event.

*Response:* While the fish transfer issue is not described in the definition of slippage, it is described in the measures to address slippage at at § 648.11(n)(3)(i).

*Comment 17:* Commenters support proposed measures requiring limited access mackerel and longfin squid vessels to provide observers with: (1) Safe sampling stations; (2) reasonable assistance; and (3) notification of haulback or pumping.

*Response:* NMFS recognizes the commenters support for these measures and believes these measures will help improve monitoring in the mackerel and longfin squid fisheries. These measures were approved.

*Comment 18:* Wild Oceans believes that Amendment 14 should add regulatory text to require both vessels involved in pair trawl fishing to carry observers.

*Response:* NEFOP randomly assigns observers to mackerel vessels consistent with SBRM coverage requirements to optimize sampling of the mackerel fishery. Because NMFS considered this requirement a directive to NEFOP, rather than as a requirement for pair trawl vessels, it is unnecessary for NMFS to codify the requirement in the regulations. If NEFOP desires to place observers on both vessels in a pair trawl operation, it can do so. The Council will be considering increased observer coverage requirement for the mackerel fishery in the observer-funding omnibus amendment. Until then, NEFOP will continue to assign observers to mackerel vessels in order to best meet SBRM requirements.

#### 4. Comments on Measures To Address River Herring Interactions

*Comment 19:* Several comments express support for establishing catch caps for a river herring and shad catch cap on the Atlantic mackerel fishery as

quickly as possible, and assert that the catch cap is the only measure in Amendment 14 that addresses the National Standard 9 obligation to minimize bycatch to the extent practical. Commenters also stated that, while catch caps and occasional closures can be effective conservation tools for river herring and shad, without increased observer coverage and improved catch monitoring, the caps cannot be effectively administered.

*Response:* NMFS supports the Council in its efforts to establish the river herring and shad catch cap on the mackerel fishery, and is currently reviewing the Council's proposed catch cap allocation in 2014 Specifications and Management Measures for the MSB Fisheries.

Based on the ASMFC's recent river herring and shad assessments, data are not robust enough to determine a biologically-based river herring and shad catch cap and/or the potential effects on river herring and shad populations of such a catch cap on a coast-wide scale. However, both the Council and NMFS believe catch caps would provide a strong incentive for the Atlantic mackerel industry to continue avoiding river herring and shad and reduce river herring and shad catch to the extent practicable.

NMFS disagrees that the river herring/shad catch caps are the only measure in Amendment 14 that will satisfy the MSA's requirement to minimize bycatch to the extent practicable. Rather, Amendment 14 implements several measures to address bycatch in the mackerel and longfin squid fisheries: (1) Prohibiting catch from being discarded prior to sampling by an at-sea observer (known as slippage), with exceptions for safety concerns, mechanical failure, and spiny dogfish preventing catch from being pumped aboard the vessel, and requiring a released catch affidavit to be completed for each slippage event; (2) evaluating the ongoing bycatch avoidance program investigation of providing real-time, cost-effective information on river herring distribution and fishery encounters; and (3) expanding and adding reporting and sampling requirements designed to improve data collection methods, data sources, and applications of data to better determine the amount, type, disposition of bycatch. NMFS believes these measures provide incentives for bycatch avoidance and gather more information that may provide a basis for future bycatch avoidance or bycatch mortality reduction measures. These measures are supported by sufficient analysis and consideration of the best available scientific information and the

MSA National Standards and represent the most practicable bycatch measures for the MSB FMP based on this information at this time.

Finally, while increases to observer coverage may improve the quality of data used to determine the rate of river herring and shad bycatch in the mackerel fishery, NMFS disagrees that the river herring and shad catch cap cannot be administered without the three measures disapproved in Amendment 14. The pre-trip notification requirement for the mackerel fishery that will be implemented through this action will help with the identification of directed mackerel trips and the placement of observers on those trips. The expansion of sampling requirements and the slippage prohibition should help improve data collection on observed trips. Last, as noted in the preamble, we are considering ways for industry-funded observer coverage to help reach the Council's desired coverage increases.

*Comment 20:* The Herring Alliance, PEW Environment Group, Wild Oceans, Oceana, and the NRDC urged disapproval of the voluntary program investigating river herring distribution and fishery encounters because they believe as a voluntary program it has no place in a regulatory action and will not satisfy the MSA's requirement to minimize bycatch to the extent practicable. They assert that this program should not be a substitute for a meaningful catch cap.

*Response:* While the voluntary program for river herring monitoring and avoidance does not include regulatory requirements, we believe the program, along with the Council's formal evaluation of the program, has the potential to help vessels avoid river herring during the fishing season and gather information that may help predict and prevent future interactions. The regulations approved in Amendment 14 allow the Council to complete a framework adjustment to codify certain aspects of this important research to help reduce river herring and shad interactions in the mackerel fishery. This could involve adjustments to fleet tracking mechanisms, the use of test tows to determine the extent of incidental catch, thresholds of river herring and shad catch that would require a vessel to move out of a given fishing area, and lengths of time that vessels would need to move out of the area to allow river herring and shad aggregations to migrate. Allowing for the future consideration of this program is not a substitute for the river herring and shad catch cap in the mackerel fishery.

Instead, NMFS hopes for the avoidance program and the catch cap to work in concert. The overall catch cap on river herring and shad should offer incentive for industry to engage in avoiding the incidental catch.

#### Changes From the Proposed Rule

The proposed rule for Amendment 14 contained all the measures in the amendment that were adopted by the Council in June 2012. As described previously, the proposed rule highlighted NMFS's utility and legal concerns about three measures adopted by the Council. Because the increased observer coverage measure, coupled with a \$325 per day industry contribution, slippage cap, and dealer reporting requirements, were ultimately disapproved by NMFS, the regulatory requirements associated with those three measures are not included in this final rule. Specifically, the following proposed regulations are not being implemented: § 648.7(a)(1)(iv), § 648.11(h), § 648.11(i)(3)(ii), § 648.11(m)(4), § 648.14(g)(2)(viii), § 648.22(b)(4)(ii), § 648.22(b)(4)(iv), and § 648.24(b)(7). Sections 648.10 and 648.22 differ slightly in structure, but not content, from the regulations in the proposed rule.

#### Classification

The Administrator, Greater Atlantic Regional Fisheries Office, NMFS, determined that the approved measures in Amendment 14 to the MSB FMP are necessary for the conservation and management of the MSB fisheries and that they are consistent with the MSA and other applicable laws.

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

The Council prepared a 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. Revisions to fishery management program measures, including 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. 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. Measures to address bycatch are expected to have positive biological impacts and moderate negative economic impacts on fishery participants. Lastly, all measures are expected to have positive biological impacts on non-target species and neutral impacts on habitat. In partially approving Amendment 14 on November 7, 2013, NMFS issued a record of decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses to support this action. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>.

#### Statement of Need

This action helps improve monitoring of the MSB fisheries with a focus on better evaluation of the incidental catch of river herring and shad, and addresses river herring and shad bycatch issues in the mackerel fishery. A description of the action, why it was considered, and the legal authority for the action is contained elsewhere in this preamble and is not repeated here.

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

NMFS received 15 comment letters during the comment periods on the NOA and proposed rule. Those comments, and NMFS's responses, are contained elsewhere in this preamble and are not repeated here. None of the comments are relevant to the analysis of economic impacts on regulated entities.

#### *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 Office of Advocacy at the SBA suggests two criteria to consider in determining the significance of regulatory impacts: Disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. The changes in profits, costs, and net revenues due to Amendment 14 are not expected to be disproportional for small versus large entities, as the proposed action will affect all entities, large and small, in a similar manner. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities.

The 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. Having different size standards for different types of marine fishing activities creates difficulties in categorizing businesses that participate in more than one of these activities. For now, the short-term approach is to classify a business entity into the SBA-defined categories based on which activity produced the highest gross revenue. In this case, Atlantic mackerel is the only species with significant recreational fishing, and in 2012, the charterboat industry harvested only 10,000 lb (4.54 mt). Based on these

assumptions, the finfish size standard would apply and the business is considered large, only if revenues are greater than \$19 million. No MSB vessels total \$19 million in revenues from MSB fishing, but some do have income from other fishing activity. However, it is unlikely that the value exceeds that threshold. 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 final rule contains collection-of-information requirements subject to the PRA and that have been approved by Office of Management and Budget (OMB) under control number 0648-0679. The new requirements, which are described in detail elsewhere in this preamble, were approved as a new collection.

Amendment 14 increases 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 requires limited access mackerel and longfin squid/butterfish moratorium permit holders purchase and maintain a VMS. Because other Northeast 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 fisheries 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 elsewhere in this 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 requires 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 requires 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 trips per year, so the total annual burden estimate is 40 min, and \$8.

Amendment 14 increases 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 requires 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.

Public comment is sought regarding: Whether this 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.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

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

Amendment 14 revises several existing fishery management provisions, including VTR and VMS requirements, to better administer the MSB fisheries. Amendment 14 requires all MSB permit holders to submit VTRs on a weekly basis (Alternative 1c in the FEIS). 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 many permit holders already submit weekly VTRs related to other Northeast permits. Compared to the non-selected alternatives, which would have maintained the monthly VTR reporting requirement, or only extended the weekly reporting requirement to some of the permit categories in this FMP, extending the requirement for weekly VTR reporting to all MSB permit holders improves data for quota monitoring, and brings VTR requirements in line with those for other Northeast permits.

This 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 notification 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, and was rejected because the Council intends to use VMS as a compliance and enforcement tool for area-based management measures currently under consideration. As with the VTR requirements, many limited access mackerel and longfin squid/butterfish moratorium permit holders already have VMS related to other Northeast permits. For permit holders obtaining a new VMS, the new 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. Economic impacts on small entities resulting from the purchase costs of new VMS units have been minimized through a VMS reimbursement program (May 6, 2008; 73 FR 24955) that made grant funds available for vessel owners and/or operators who have purchased a VMS unit for the purpose of complying with fishery regulations. Reimbursement for VMS units is available on a first come, first serve, basis until funds are depleted. More information on the VMS reimbursement program is available from the Pacific States Marine Fisheries Commission (see **ADDRESSES**) and from the NMFS VMS Support Center, which can be reached at 888-219-9228.

Amendment 14 proposed requiring 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). However, NMFS disapproved the proposed measure, so this action maintains the no action alternative. 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), *Illlex* 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 the At-Sea Catch Monitoring

Amendment 14 requires 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 selected alternative would, however, improve observer placement compared to the no action alternative; the no action alternative was rejected for this reason. The 72-hr pre-trip notification requirement (alternative 1d72), is inconsistent in timing with 48-hr pre-trip notification requirements for other fisheries in the Northeast. In addition, the 72-hr requirement is even more likely than the selected 48-hr requirement to prevent vessels from departing quickly to target fleeting aggregations of mackerel.

Amendment 14 proposed 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). However, the proposed measure was disapproved, so this action maintains the no action alternative. Amendment 14 considered 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, 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 requires 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). If catch was slipped before it was sampled by an observer, it would count against a slippage cap and require a released catch affidavit to be completed. Amendment 14 proposed that, if the

slippage cap was reached, a vessel would be required to return to port immediately following any additional slippage events (alternative 3l). However, the proposed slippage cap was disapproved and, instead, this action only implements the slippage prohibition and released catch affidavit. 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, the slippage cap, or trip termination requirements, and was rejected because it was not expected to improve information on catch in the mackerel or longfin squid fisheries or reduce the discarding of catch in these fisheries before it has been sampled. The other non-selected alternatives include various elements of the proposed action. The 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 were rejected because these requirements were already included in the selected alternative (alternative 3j). Alternatives that included trip termination, including trip terminations 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), are structures similarly to the proposed trip termination requirement that was disapproved.

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.

Alternatives 3e and 3j may improve information on catch in the mackerel and longfin squid fisheries by requiring vessels operators to document when and why slippage occurs. Alternatives 3f, 3g, and 3j may improve information by prohibiting catch from being discarded before it was sampled by an observer.

### 3. Measures To Address River Herring Interactions

Amendment 14 establishes 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, and was the reason why the no action alternative was rejected.

The selected 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 selected 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.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as "small entity compliance guides." The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic

Regional Fisheries Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the herring fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.2, 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 (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.

\* \* \* \* \*

- (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, day, and year 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, day, and year 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 butterfish 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 butterfish 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 butterfish 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), (n), and (o) 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.

\* \* \* \* \*

(n) 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 prior to arrival, or, if fishing ends less than 6 hours before arrival, immediately upon leaving the fishing grounds. The Regional Administrator may adjust the prior notification minimum time through publication in the Federal Register consistent with the Administrative Procedure Act.

(o) 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, paragraph (n) is added to read as follows:

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

\* \* \* \* \*

(n) *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 (n)(1)(iii) of this section.

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (i) 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 (i) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the 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 (iii) 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 (i) 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.* (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 (n)(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.

■ 6. In § 648.14, paragraphs (g)(2)(v) through (vii) 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 arrival, or, if fishing ends less than 6 hours before arrival, immediately upon leaving the fishing grounds, 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(n)(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(n)(3).

\* \* \* \* \*

■ 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(n)(2);
- (ii) Exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers in § 648.11(n)(3);

\* \* \* \* \*

■ 8. 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.

\* \* \* \* \*

■ 9. Remove § 648.27.

**§ 648.27 [Removed]**

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**BILLING CODE 3510-22-P**