law federally enforceable by EPA, and allows the Commonwealth to take credit for emissions benefits from the rule as part of future Pennsylvania SIP revisions to demonstrate compliance with CAA National Ambient Air Quality Standards (NAAQS). This action is being taken under the CAA.

In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 31, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0471 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov*

C. *Mail:* EPA–R03–OAR–2011–0471, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0471. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 18, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–19275 Filed 7–29–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0808041037–81092–02]

RIN 0648–AX05

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 11 was developed by the Mid-Atlantic Fishery Management Council (Council) to establish a tiered limited access program for the Atlantic mackerel (mackerel) fishery, and to make other changes to the management of the MSB fisheries. The Amendment 11 management measures include: A limited access program for mackerel; an open access incidental catch permit for mackerel; an update to essential fish habitat (EFH) designations for all life stages of mackerel, *Loligo* squid, *Illex* squid, and butterfish; and the establishment of a recreational allocation for mackerel. This rule also proposes minor, technical corrections to the existing regulations pertaining to the MSB fisheries.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on September 15, 2011.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov.*

You may submit comments, identified by 0648–AX05, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;*

• *Fax:* (978) 281–9135, Attn: Aja Szumylo;

• Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr., Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MSB Amendment 11.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northeast Regional Office and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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

SUPPLEMENTARY INFORMATION:

Background

The Council has considered a limited access program for the mackerel fishery on multiple occasions since 1992, with the most recent control date set as July 5, 2002 (67 FR 44792, later reaffirmed on June 9, 2005, 70 FR 33728). The Council initially notified the public of its intent to consider the impacts of alternatives for limiting access to the mackerel fishery in a Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for Amendment 9 to the MSB FMP (Amendment 9) on March 4, 2005 (70 FR 10605). The Council subsequently conducted scoping meetings in March 2005 on the development of a limited access program through Amendment 9. However, due to unforeseen delays in the development of Amendment 9, the Council notified the public on December 19, 2005 (70 FR 75114), that the mackerel limited access program would instead be analyzed in Amendment 11. The Council notified the public on February 27, 2007 (75 FR 8693), that it would begin the development of Amendment 11 in an SEIS, and finally notified the public on August 11, 2008 (73 FR 46590), that it would be necessary to prepare a full environmental impact statement (EIS) for Amendment 11. During further development of Amendment 11, the Council determined that the additional issues, namely updates to EFH designations and recreational allocations for the mackerel fishery, would also be considered.

The Council conducted public hearings in February 2010 and was originally scheduled to take final action on Amendment 11 in April of 2010, but decided to revise certain alternatives after reviewing public comment. The revisions were deemed to require a Supplement to the Draft Environmental Impact Statement (SDEIS) and an additional comment period through October 12, 2010.

This action proposes management measures that were recommended by the Council in Amendment 11. If implemented, these management measures would:

• Implement a three-tiered limited access system, with vessels grouped based on the following landings thresholds, with all qualifiers required to have possessed a valid permit on March 21, 2007. A vessel must have landed at least 400,000 lb (181.44 mt) in any one year 1997–2005 to qualify for a Tier 1 permit; at least 100,000 lb (45.36 mt) in any one year March 1, 1994—December 31, 2005, to qualify for a Tier 2 permit; or at least 1,000 lb (0.45 mt) in any one year March 1, 1994—December 31, 2005, to qualify for a Tier 3 permit, with Tier 3 allocated up to 7 percent of the commercial quota, through the specifications process;

• Establish an open access permit for all other vessels;

• Establish trip limits for all tiers annually through the specifications process, with possession limits initially set as unlimited for Tier 1; 135,000 lb (61.23 mt) for Tier 2; 100,000 lb (45.36 mt) for Tier 3; and 20,000 lb (9.07 mt) for open access;

• Establish permit application, permit appeal, vessel baseline, and vessel upgrade, replacement, and confirmation of permit history provisions similar to established for other Northeast region limited access fisheries;

• Establish a 10-percent maximum volumetric fish hold upgrade for Tier 1 and Tier 2 vessels;

• Allow vessel owners to retain mackerel fishing history in a purchase and sale agreement and use the history to qualify a different vessel for a mackerel permit (permit splitting);

• Require Tier 3 vessels to submit VTRs on a weekly basis;

• Designate as EFH the area associated with 90 percent of survey catch for each life stage of non-overfished species and the area associated with 95 percent of survey catch for each life stage of overfished or status unknown species (i.e., butterfish, mackerel, *Loligo* squid, and *Illex* squid); and

• Establish an annual recreational mackerel allocation equaling 6.2 percent of the mackerel allowable biological catch.

The Council took final action on October 13, 2010, and submitted Amendment 11 for NMFS review on May 12, 2011. A Notice of Availability (NOA) for Amendment 11, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on July 6, 2011 (76 FR 39374). The comment period on Amendment 11 ends on September 6, 2011. In addition to the implementing measures proposed in this rule, Amendment 11 contains changes in the EFH designations for MSB species that are not reflected in the regulations.

Proposed Measures

The proposed regulations are based on the measures in Amendment 11. NMFS has noted several instances where it has interpreted the language in Amendment 11 to account for any missing details in the Council's description of the proposed measures. In addition, some of the proposed regulations in Amendment 11 are associated with the Council's Omnibus Annual Catch Limit and Accountability Measures (ACL/AM) Amendment, for a proposed rule which published on June 17, 2011 (76 FR 35578). Several sections of regulatory text are affected by both actions. The proposed regulations for both actions will present adjustments to the existing regulatory text. In the likely event that the Omnibus ACL/AM Amendment is finalized prior to Amendment 11, the finalized regulations for Amendment 11 will be presented as modifications to the regulations that will be implemented in the Omnibus ACL/AM Amendment, and will thus differ in structure, but not content, from the regulations presented in this proposed rule. The adjustments will be similar to those in this proposed rule. NMFS seeks comments on all of the measures in Amendment 11.

1. Limited Access Mackerel Permits and Trip Limits

Amendment 11 would implement a three-tiered limited access permit system for the mackerel fishery. Vessels that do not qualify for a limited access mackerel permit would still be able to

receive the open access mackerel permit described below. The initial trip limits proposed for each permit category below would be adjustable through the specifications process.

In order to be eligible for a limited access mackerel permit, applicants would have to meet both a permit history requirement and a landings requirement. The permit history requirement and landings requirement must be derived from the same vessel (i.e., it is not possible to combine the permit criteria from Vessel A with the landings criteria from Vessel B to create a mackerel eligibility).

To qualify for a Tier 1 Limited Access Mackerel permit, a vessel must have been issued a Federal mackerel permit that was valid on March 21, 2007, and must have landed at least 400,000 lb (181.44 mt) of mackerel in any one year between January 1, 1997, and December 31, 2005, as verified by NMFS records or documented through dealer receipts submitted by the applicant. The Tier 1 Limited Access Mackerel permit would allow such vessels to possess and land unlimited amounts of mackerel.

To qualify for a Tier 2 Limited Access Mackerel permit, a vessel must have been issued a Federal mackerel permit that was valid on March 21, 2007, and must have landed at least 100,000 lb (45.36 mt) of mackerel in any one year between March 1, 1994, and December 31, 2005, as verified by NMFS records or documented through dealer receipts submitted by the applicant. The Tier 2 Limited Access Mackerel permit would allow such vessels to possess and land 135,000 lb (61.23 mt) of mackerel per trip.

To qualify for a Tier 3 Limited Access Mackerel permit, a vessel must have been issued a Federal mackerel permit that was valid on March 21, 2007, and must have landed at least 1,000 lb (0.45 mt) of mackerel in any one year between March 1, 1994, and December 31, 2005, as verified by NMFS records or documented through dealer receipts submitted by the applicant. The Tier 3 Limited Access Mackerel permit would allow such vessels to possess and land 100,000 lb (45.36 mt) of mackerel per trip.

The current regulations state that during a closure of the directed mackerel fishery that occurs prior to June 1, vessels issued a mackerel permit may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip, and that during any closure that occurs after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of mackerel per trip. This provision would be maintained for limited access mackerel permit holders.

2. Limited Access Vessel Permit Provisions

Amendment 11 would establish measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures would apply to all limited access mackerel vessels. Except as noted, the provisions proposed in this amendment are consistent with those that govern most of the other Northeast region limited access fisheries; there are some differences in the limited access program for American lobster.

Initial Eligibility and Application

Initial eligibility for a mackerel limited access permit would have to be established during the first year after the implementation of Amendment 11. A vessel owner would required to submit an application for a mackerel limited access permit within 12 months of the effective date of the final regulations. In order to expedite the transition to the limited access mackerel program, NMFS would require applicants wishing to fish for mackerel with a limited access permit after January 1, 2012, to submit an application at least 30 days prior to the start of the 2012 fishing year (November 30, 2011). After January 1, 2012, current mackerel permit holders who have not yet submitted an application for a limited access mackerel permit, and individuals who have submitted incomplete or unsuccessful applications for a limited access mackerel permit, would automatically be re-designated as open access permit holders under the new mackerel permit system, and would be subject to the open access possession limit described in this proposed rule. All applicants would have until December 31, 2012, to submit an initial application.

Initial Confirmation of Permit History (CPH) Application

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, and the applicant has lawfully retained the valid mackerel permit and fishing history, would be required to apply for and receive a CPH. To be eligible to obtain a CPH, the applicant would have to show that the qualifying vessel meets the eligibility requirements for the limited access mackerel permit in question, and that all other permit restrictions described below are satisfied. If the vessel sank, was destroyed, or was transferred before March 21, 2007, the permit issuance criteria may be satisfied if the vessel was issued a valid Federal mackerel permit at any time between March 21, 2006, and March 21, 2007.

Issuance of a valid CPH would preserve the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. A CPH would have to be applied for in order for the applicant to preserve the limited access eligibility of the qualifying vessel. Vessel owners who were issued a CPH could obtain a vessel permit for a replacement vessel, consistent with the vessel size upgrade restrictions, based upon the vessel length, tonnage, and horsepower of the vessel on which the CPH issuance is based.

The Amendment 11 document is unclear regarding application deadline for vessels applying to receive a CPH during the application period. The document states that applications for CPH would have to be submitted no later than 30 days prior to the end of the first full permit year in which a vessel permit cannot be issued. This would mean that, if the limited access program is effective on January 1, 2012, applicants applying directly into CPH would only have until March 31, 2012 (30 days before the end of the permit year) to apply for a CPH, while applicants applying for an active mackerel permit would have until December 31, 2012, to apply. NMFS clarifies that applicants wishing to place their limited access mackerel permit directly into CPH will be given the same initial application deadline as applicants applying for an active limited access mackerel permit, namely from January 1, 2012, to December 31, 2012.

Landings History

NMFS will use dealer data in NMFS's database to determine eligibility. If NMFS data do not demonstrate that a vessel made landings of mackerel that satisfy the eligibility criteria for a limited access permit, applicants would have to submit dealer receipts that verify landings, or use other sources of information (e.g., joint venture receipts) to demonstrate that there is incorrect or missing information in the Federal dealer records via the appeals process described below.

Amendment 11 does not specify a method for dividing qualifying landings between vessels that fished cooperatively for mackerel in pair trawl operations that wish to each use a subset of shared landings history to qualify individual vessels. NMFS proposes that owners of pair trawl vessels may divide the catch history

between the two vessels in the pair through third party verification and supplemental information, such as previously submitted VTRs, or dealer reporting. The two owners must apply for a limited access mackerel permit jointly and must submit proof that they have agreed to the division of landings. This approach was used to qualify pair trawl vessels in Amendment 1 to the Atlantic Herring FMP.

Permit Transfers

An Atlantic mackerel limited access permit and fishing history would be presumed to transfer with a vessel at the time it is bought, sold, or otherwise transferred from one owner to another, unless it is retained through a written agreement signed by both parties in the vessel sale or transfer.

Multiple Vessels With One Owner

The Council proposed a provision specific to multiple vessel ownership, qualification, and replacement. The provision states that, if an individual owns more than one vessel, but only one of those vessels has the permit and landings history required to be eligible for a limited access mackerel permit, the individual can replace the vessel that it determined to be eligible with one of his/her other vessels, provided that the replacement vessel complies with the upgrade restrictions detailed below. The proposed rule does not contain a regulation specific to the Council's proposed measure. Rather, the individual regulations pertaining to qualification, baselines, upgrades, and vessel replacements separately address the Council's proposed measure.

This provision would not exempt owners of multiple vessels from the permit splitting provision, described below. For example, if a vessel owner has a limited access multispecies permit on the same vessel that created the mackerel eligibility, the entire suite of permits would need to be replaced onto the owner's other vessel in order to move the mackerel eligibility. In addition, if an individual owns two vessels, a 50-ft (15.2 m) vessel with a mackerel eligibility, and a 65-ft (19.8 m) vessel, he would not be able to move the mackerel eligibility onto the larger vessel, because it is outside of the vessel upgrade restrictions.

Permit Splitting

Amendment 11 adopts the permit splitting provision currently in effect for other limited access fisheries in the region. Therefore, a limited access mackerel permit may not be issued to a vessel if the vessel's permit history was used to qualify another vessel for any other limited access permit. This means all limited access permits, including limited access mackerel permits, must be transferred as a package when a vessel is replaced or sold.

However, Amendment 11 explicitly states that the permit-splitting provision would not apply to the retention of an open access mackerel permit and fishing history that occurred prior to April 3, 2009, if any limited access permits were issued to the subject vessel. Thus, vessel owners who sold a vessel with limited access permits and retained the open access mackerel permit and landings history prior to April 3, 2009, with the intention of qualifying a different vessel for a limited access mackerel permit, would be allowed to do so under Amendment 11. This differs from the current permit splitting provisions of other limited access fishery regulations, specifically the Atlantic herring limited access permit splitting provision implemented under Amendment 1 to the Atlantic Herring FMP. It is consistent with permit splitting provisions implemented for the scallop limited access general category permit program.

Qualification Restriction

Consistent with previous limited access programs, no more than one vessel would be able to qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history, unless more than one owner has independently established fishing and permit history on the vessel during the qualification period and has either retained the fishing and permit history, as specified above, or owns the vessel at the time of initial application under Amendment 11. If more than one vessel owner claimed eligibility for a limited access permit or CPH, based on a vessel's single fishing and permit history, the NMFS Regional Administrator would determine who is entitled to qualify for the permit or CPH based on information submitted and in compliance with the applicable permit provisions.

Appeal of Permit Denial

Amendment 11 specifies an appeals process for applicants who have been denied a limited access Atlantic mackerel permit. Applicants would have two opportunities to appeal the denial of a limited access mackerel permit. The review of initial application denial appeals would be conducted under the authority of the Regional Administrator at NMFS's Northeast Regional Office. The review of second denial appeals would be conducted by a hearing officer appointed by the Regional Administrator, or through a National Appeals program, which is under development by NMFS and may be utilized for mackerel appeals.

An appeal of the denial of an initial permit application (first level of appeal) must be made in writing to the NMFS Northeast Regional Administrator. Under this amendment, appeals would be based on the grounds that the information used by the Regional Administrator in denying the permit was incorrect. The only items subject to appeal under this limited access program would be the accuracy of the amount of landings, and the correct assignment of landings to a vessel and/or permit holder. Amendment 11 would require appeals to be submitted to the Regional Administrator, postmarked no later than 30 days after the denial of an initial limited access mackerel permit application. The appeal must be in writing, must state the specific grounds for the appeal, the limited access mackerel permit category for which the applicant believes he should qualify, and information to support the appeal. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error. The appeal would not be reviewed without submission of information in support of the appeal. The Regional Administrator would appoint a designee to make the initial decision on the appeal.

Should the appeal be denied, the applicant would be allowed to request a review of the Regional Administrator's appeal decision (second level of appeal). Such a request must be in writing postmarked no later than 30 days after the appeal decision, must state the specific grounds for the appeal, and must include information to support the appeal. A hearing would not be conducted without submission of information in support of the appeal. If the request for review of the appeal decision is not made within 30 days, the appeal decision is the final administrative action of the Department of Commerce. If the National Appeals process is not fully established, the Regional Administrator will appoint a hearing officer. The hearing officer would make findings and a recommendation to the Regional Administrator, which would be advisory only. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

The owner of a vessel denied a limited access mackerel permit could fish for mackerel, provided that the denial has been appealed, the appeal was pending, and the vessel had on

board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category for which the applicant has submitted the appeal. The Regional Administrator would issue such a letter for the pendency of any appeal. If the appeal is ultimately denied, the Regional Administrator would send a notice of final denial to the vessel owner; and the authorizing letter would become invalid 5 days after the receipt of the notice of denial.

Establishing Vessel Baselines

A vessel's baseline refers to those specifications (length overall, gross registered tonnage (GRT), net tonnage (NT), and horsepower (HP)) from which any future vessel size change is measured. The vessel baseline specifications for vessels issued a limited access mackerel permits would be the specifications of the vessel that was initially issued the limited access permit as of the date that the vessel qualifies for such a permit. If a vessel owner is initially issued a CPH instead of a mackerel permit, the attributes of the vessel that is the basis of the CPH would establish the size baseline against which future vessel limitations would be evaluated. If the vessel that established the CPH is less than 20 ft (6.09 m) in length, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. If a vessel owner applying for a CPH has a contract to purchase a vessel to replace the vessel for which CPH was issued prior to the submission of the mackerel limited access permit application (for the CPH), then the contracted vessel would form the baseline specifications for that vessel, provided an initial application for the contract vessel to replace the vessel for which the CPH was issued is received by December 31, 2012 (1 full year after the end of the proposed initial application period).

Vessel Upgrades

A vessel could be upgraded in size, whether through retrofitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with the limitations in Amendment 11. The vessel's HP could be increased only once, whether through refitting or vessel replacement. Such an increase could not exceed 20 percent of the vessel's baseline specifications. The vessel's length, GRT, and NT could be increased only once, whether through refitting or vessel replacement. Any increase in any of these three specifications of vessel size could not exceed 10 percent of the vessel's baseline specifications. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade could be done separately from an engine HP upgrade. Amendment 11 maintains the existing specification of maximum length, size and HP for vessels engaged in the Atlantic mackerel fishery (165 ft (50.02 m), 75 GRT (680.3 mt), and 3,000 HP). Tier 1 and Tier 2 vessels must also comply with the upgrade restrictions relevant to the vessel hold volume certification described below.

Vessel Hold Capacity Certification

In addition to the standard baseline specifications, Tier 1 and Tier 2 vessels would be required to obtain a fish hold capacity measurement from a certified marine surveyor. The hold capacity measurement submitted at the time of application for a Tier 1 or Tier 2 limited access mackerel permit would serve as an additional permit baseline for these permit categories. The hold volume for at Tier 1 or Tier 2 permit could only be increased once, whether through refitting or vessel replacement. Any increase could not exceed 10 percent of the vessel's baseline hold measurement. This type of upgrade could be done separately from the size and HP upgrades.

Amendment 11 does not specify how a hold capacity baseline should be established for vessels whose permits go directly into CPH. In cases where the qualifying vessel has sunk or been destroyed, it will not be feasible for the applicant to obtain a hold capacity certification. NMFS proposes that the hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH.

Vessel Replacements

The term ''vessel replacement,'' in general, refers to replacing an existing limited access vessel with another vessel. In addition to addressing increases in vessel size, hold capacity, and HP, Amendment 11 would establish a restriction that requires that the same entity must own both the limited access vessel (permit and fishing history) that is being replaced, and the replacement vessel.

Voluntary Relinquishment of Eligibility

Amendment 11 includes a provision to allow a vessel owner to voluntarily exit a limited access fishery. Such relinquishment would be permanent. In some circumstances, it could allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permits holders may choose to relinquish their other Northeast Region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel's limited access permit history for the mackerel fishery is voluntarily relinquished to the Regional Administrator, no limited access permit for that fishery may be reissued or renewed based on that vessel's history.

Permit Renewals and CPH Issuance

Amendment 11 specifies that a vessel owner must maintain the limited access permit status for an eligible vessel by renewing the permits on an annual basis or applying for the issuance of a CPH. A CPH is issued to a person who does not currently own a particular fishing vessel, but who has legally retained the fishing and permit history of the vessel for the purposes of transferring it to a replacement vessel at a future date. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel.

A vessel's limited access permit history would be cancelled due to the failure to renew, in which case, no limited access permit could ever be reissued or renewed based on the vessel's history or to any other vessel relying on that vessel's history. All limited access permits must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued. A complete application for such permits must be received no later than 30 days before the last day of the permit year.

3. Tier 3 Allocation and Additional Reporting Requirements

Amendment 11 proposes an allocation for participants in the limited access mackerel fishery that hold a Tier 3 permit. Tier 3 would be allocated a maximum catch of up to 7 percent of the commercial mackerel quota (the remainder of the commercial mackerel quota would be available to Tier 1 or Tier 2 vessels). The Tier 3 allocation would be set annually during the

specifications process. NMFS presumes that, during a closure of the Tier 3 mackerel fishery that occurs prior to June 1, vessels issued a mackerel permit may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip, and that during a closure that occurs after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of mackerel per trip. In order to monitor Tier 3 landings, Amendment 11 would require vessels that hold a Tier 3 limited access mackerel permit to submit vessel trip reports (VTRs) on a weekly basis.

4. Open Access Permit and Possession Limit

Any vessel could be issued an open access mackerel permit that would authorize the possession and landing of up to 20,000 lb (9.07 mt) of mackerel per trip. The open access possession limit would stay the same during a closure of the directed mackerel fishery.

5. Updates to EFH Definitions

Section 600.815(a)(9) of the final rule to revise the regulations implementing the EFH provisions of the Magnuson-Stevens Act requires a complete review of EFH information at least once every 5 years. With the exception of the establishment of *Loligo* egg EFH in Amendment 9 to the MSB FMP in 2008, the EFH information for MSB fisheries has not been updated since the original analysis and designations were done for Amendment 8 to the MSB FMP (Amendment 8) in 1998. Amendment 11 would revise the EFH text descriptions for all MSB species based on updated data from the Northeast Fishery Science Center (NEFSC) trawl survey, the Marine Resources Monitoring Assessment and Prediction Program (MARMAP), state bottom trawl surveys, NOAA's Estuarine Living Marine Resources (ELMR) program, and scientific literature on habitat requirements. Amendment 11 would designate as EFH the area associated with 90 percent of the cumulative geometric mean catches for non-overfished species, and the area associated with 95 percent of the cumulative geometric mean catches for unknown or overfished species. All MSB species currently fall in the latter category. Text descriptions and maps for the new proposed EFH designation can be found in Amendment 11.

6. Recreational Mackerel Allocation

Amendment 11 proposes an allocation to the recreational fishery in order to incorporate recreational mackerel ACLs/AMs into the framework for the Council's Omnibus ACL/AM Amendment. The recreational allocation would be set equal to 6.2 percent of the domestic mackerel allowable biological catch (ABC). This allocation corresponds to the proportion of total U.S. mackerel landings that was accounted for by the recreational fishery from 1997–2007 times 1.5. The Council would be able to take action via specifications, a framework adjustment, or amendment to adjust any disconnect between the recreational allocation and future recreational harvests.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the MSB FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Several of these requirements have been submitted to OMB for approval under the MSB Amendment 10 Family of Forms (OMB Control No. 0648–0601). Under the proposed limited access program, vessel owners would be required to submit to NMFS application materials to demonstrate their eligibility for a limited access permit. The public burden for the application requirement pertaining to the limited access program is estimated to average 45 min per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Only 410 vessels are expected to qualify and consequently renew their limited access mackerel permits via the renewal application each year. The renewal application is estimated to take 30 min on average to complete. Up to 30 applicants are expected to appeal the denial of their permit application. The appeals process is estimated to take an average of 2 hr to complete. Vessels that qualify for a Tier 1 or Tier 2 mackerel permit would be required to submit documentation of hold volume size. The Council estimated that 74 vessels would qualify for either a Tier 1 or Tier 2 limited access mackerel permit. Tier 1 and 2 vessel owners will experience a time burden due to this requirement in the form of travel time to/from a certified marine surveyor. It is not possible to estimate a time burden associated with obtaining a hold volume measurement, as vessels would have to travel varying distances to visit certified marine surveyors. Travel time to a marine surveyor is not an information collection burden, so is not considered a response.

Completion of a replacement or upgrade application requires an estimated 3 hr per response. It is estimated that no more than 40 of 410 vessels possessing these permits will request a vessel replacement or upgrade annually. Completion of a CPH application requires an estimated 30 min per response. It is estimated that no more than 30 of the 410 vessels possessing these limited access permits will request a CPH annually.

The proposed rule also modifies the VTR requirement for Tier 3 mackerel vessel. All mackerel vessels are currently required to submit VTRs on a monthly basis; this requirement is currently approved under the Northeast Region Logbook Family of Forms (OMB Control No. 0648–0212). This proposed rule would require vessels issued a Tier 3 mackerel permit to submit VTRs on a weekly basis. A change request for this requirement has been submitted to OMB for approval. The public burden for the revised VTR requirement is expected to average 5 min for each additional VTR submission.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would

have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

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

The proposed measures in Amendment 11 would primarily affect participants in the mackerel fishery. 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 $4 million annually. There were 2,331 vessels issued open access mackerel permits in 2010. The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is $4 million in sales. Available data indicate that no single fishing entity earned more than $4 million annually. Although there are likely to be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data NMFS cannot apply the business size standard at this time. Data are currently being compiled on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities in the mackerel fishery 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 6.5 in Amendment 11 describes the vessels, key ports, and revenue information for the mackerel fishery, therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements Minimizing Significant Economic Impacts on Small Entities

There will be an estimated 820 applications for a limited access mackerel permit. With an average processing time of 45 min, the total time burden for this application is 615 hr. Only 410 vessels are expected to qualify and consequently renew their permit via the renewal application each year. The renewal application is estimated to take 30 min on average to process, for a burden of 205 hr. Up to 30 applicants are expected to appeal the denial of their permit application (other FMPs estimated between 5–7 percent of applications would move on to the appeal stage). The appeals process is estimated to take 2 hr to complete, on average, with a total burden of 60 hr. The 3-yr average total public cost burden for permit applications, appeals, and renewals is $261, which includes postage and copy fees for submissions.

Each hold volume measurement done by a certified marine surveyor is estimated to cost $4,000. An estimated 74 vessels would qualify for either a Tier 1 or Tier 2 limited access mackerel permit, and would be required to submit a hold volume measurement at the time of permit issuance. Roughly 40 vessels are expected to upgrade or replace vessels each year, and would be required to submit a hold volume measurement for the upgraded or replacement vessel. Therefore, annual average cost over a 3-yr period is estimated to be $258,667 ($98,667 for annualized initial hold volume certifications, plus $160,000 for replacement hold volume certifications), not including travel expenses.

New limited access mackerel vessels would be subject to the same replacement, upgrade, and permit history restrictions as other limited access vessels. Completion of a replacement or upgrade application requires an estimated 3 hr per response. It is estimated that no more than 40 of the 410 vessels possessing these limited access permits will request a vessel replacement or upgrade annually. This resultant burden would be up to 120 hr. Completion of a CPH application requires an estimated 30 min per response. It is estimated that owners of no more than 30 of the 410 vessels possessing a limited access mackerel permit will request a CPH annually. The resultant burden would be up to 15 hr. The total public cost burden for replacement, upgrade, and CPH applications is $140 for postage and copy fees.

An estimated 329 Tier 3 limited access mackerel vessels would be required to submit VTRs on a weekly basis. Completion of a VTR is estimated to take 5 min per submission. The resultant burden would be 1,151.5 hr. The total public cost burden for VTR submission is $5,790.40 for postage.

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

Tiered Limited Access Program

The FEIS estimates the numbers of vessel that would qualify for limited access permits under the different alternatives. In addition to the no action alternative and preferred alternative, six additional alternatives for tiered limited access programs, and two alternatives that would qualify participants in the Atlantic herring fishery for limited access mackerel permits. Information from the dealer weighout database was used to estimate how many vessels would qualify under each of the proposed limited access alternatives. The economic impacts of these alternatives on both individual vessels and the overall capacity of mackerel fleet is described in sections 5.1.4 and 7.5 of the FEIS and are summarized below.

The composition of the qualifying group that results under each of the tiered limited access programs described in this segment changes based on each alternative. In most instances, the quota allocation and trip limit alternatives described below are averages or percentages based on the composition of the qualifying group. Accordingly, the Tier allocation and trip limit alternative sets described below are different for each of the tiered limited access program alternatives.

Under the preferred alternative, 29 vessels would qualify for a Tier 1 permit, 45 vessels would qualify for a Tier 2 permit, and 329 vessels would qualify for a Tier 3 permit, resulting in a total of 403 vessels that would qualify for the various limited access mackerel permits. The preferred alternative would cap Tier 3 with a maximum allocation of up to 7 percent of the commercial mackerel quota, with no other additional allocations for any other Tiers. The economic impacts of the Tier allocations will be discussed separately from the structure of the limited access program.

The eligibility criteria for a Tier 1 permit in Alternative 1B would have required a vessel to possess a mackerel permit and have landed at least 1,000,000 lb (453.6 mt) in any one year between January 1, 1997, and December 31, 2007. To qualify for a Tier 2 permit, a vessel would have been required to possess a permit and have landed at least 100,000 lb (45.36 mt) between January 1, 1988, and December 31, 2007. To qualify for a Tier 3 permit, a vessel would have been required to possess a permit and have landed at least 25,000 lb (11.34 mt) between January 1, 1988,

and December 31, 2007. Under Alternative 1B, 26 vessels would qualify for a Tier 1 permit, 64 vessels would qualify for a Tier 2 permit, and 56 vessels would qualify for a Tier 3 permit, resulting in a total of 146 vessels that would qualify for the various limited access mackerel permits.

The eligibility criteria for a Tier 1 permit in Alternative 1C would have required a vessel to possess a mackerel permit and have landed at least 1,000,000 lb (453.6 mt) in any one year between January 1, 1997, and December 31, 2007. To qualify for a Tier 2 permit, a vessel would have been required to possess a permit and have landed at least 100,000 lb (45.36 mt) between January 1, 1997, and December 31, 2007. To qualify for a Tier 3 permit, a vessel would have been required to possess a permit and have landed at least 1,000 lb (.45 mt) between January 1, 1997, and December 31, 2007. As with the preferred alternative, 1C would have capped Tier 3 with a maximum allocation of up to 7 percent of the commercial mackerel quota, with no other additional allocations for any other Tiers. Under Alternative 1C, 26 vessels would qualify for a Tier 1 permit, 36 vessels would qualify for a Tier 2 permit, and 309 vessels would qualify for a Tier 3 permit, resulting in a total of 371 vessels that would qualify for the various limited access mackerel permits.

The eligibility criteria for a Tier 1 permit in Alternative 1E would have required a vessel to possess a mackerel permit and have landed at least 400,000 lb (181.44 mt) of mackerel in any one year between January 1, 1997, and December 31, 2005. To qualify for a Tier 2 permit, a vessel would have been required to possess a permit and have landed at least 100,000 lb (45.36 mt) of mackerel in any one year between January 1, 1997, and December 31, 2005. To qualify for a Tier 3 permit, a vessel would have been required to possess a permit and have landed at least 25,000 lb (11.34 mt) of mackerel in any one year between January 1, 1997, and December 31, 2007. Under Alternative 1E, 29 vessels would qualify for a Tier 1 permit, 25 vessels would qualify for a Tier 2 permit, and 50 vessels would qualify for a Tier 3 permit, resulting in a total of 104 vessels that would qualify for the various limited access mackerel permits.

The eligibility criteria for a Tier 1 permit in Alternative 1F would have required a vessel to possess a mackerel permit and have landed at least 1,000,000 lb (453.6 mt) in any one year between January 1, 1997, and December 31, 2007. To qualify for a Tier 2 permit, a vessel would have been required to possess a permit and have landed at least 100,000 lb (45.36 mt) between January 1, 1988, and December 31, 2007. To qualify for a Tier 3 permit, a vessel would have been required to possess a permit and have landed at least 10,000 lb (4.5 mt) between January 1, 1988, and December 31, 2007. Under Alternative 1F, 26 vessels would qualify for a Tier 1 permit, 64 vessels would qualify for a Tier 2 permit, and 121 vessels would qualify for a Tier 3 permit, resulting in a total of 211 vessels that would qualify for the various limited access mackerel permits.

Alternative 1G would implement a single-tiered limited access program for which 26 vessels would qualify. The eligibility criteria for a limited access permit would have required a vessel to possess a mackerel permit and have landed at least 1,000,000 lb (453.6 mt) in any one year between January 1, 1997, and December 31, 2007.

The eligibility criteria for a Tier 1 permit in Alternative 1J would have required a vessel to possess a mackerel permit and have landed at least 1,000,000 lb (453.6 mt) of mackerel in any one year between January 1, 1997, and December 31, 2007. To qualify for a Tier 2 permit, a vessel would have been required to possess a permit and have landed at least 100,000 lb (45.36 mt) of mackerel in any one year between March 1, 1994, and December 31, 2007. To qualify for a Tier 3 permit, a vessel would have been required to possess a permit and have landed at least 25,000 lb (11.34 mt) of mackerel in any one year between March 1, 1994, and December 31, 2007. Under Alternative 1J, 26 vessels would qualify for a Tier 1 permit, 55 vessels would qualify for a Tier 2 permit, and 49 vessels would qualify for a Tier 3 permit, resulting in a total of 130 vessels that would qualify for the various limited access mackerel permits.

The number of individual qualifiers resulting from these management alternatives primarily varies based on the start date and end date of the qualifying landings period, and the required landings threshold for each Tier. A comparison of Alternatives 1B and 1C illustrates the effects of different start dates on numbers of qualifiers. Alternative 1C, which has a 1997 start date, results in 42 fewer qualifying vessels (29 fewer vessels in Tier 2, 13 fewer in Tier 3) than Alternative 1B, which has a 1988 start date. While the later start dates result in fewer qualifiers in Tiers 2 and 3, the economic impacts on these individual vessels should not be significant when compared to their recent level of participation in the fishery. Vessels are still placed in a Tier based on their participation in the fishery since 1997, and analysis in Amendment 11 shows that lower Tiers generally derive a small percentage of their revenue (less than 2 percent for all alternatives) from mackerel.

Vessels that had sizable landings in 2006 or 2007 would be most impacted by the use of a 2005 qualifying landings period end date; this can be illustrated by comparing Alternative 1C (2007) and 1E (2005). With the 2007 end date in 1C, there would be 26 Tier 1 vessels and 35 Tier 2 vessels. If the end date is switched to 2005, as in 1E, three Tier 1 vessels and six Tier 2 vessels fall into lower Tiers. These vessels fell into lower Tiers because their best years of participation were more recent. Depending on the trip limits selected for the lower Tiers, these vessels may be negatively impacted by the earlier end date because they would be constrained compared to their recent participation in the mackerel fishery.

The FEIS presents an estimate of the maximum feasible annual capacity for the Tier 1 and Tier 2 vessels projected to qualify in each of proposed alternatives; this estimate indicates the maximum amount of mackerel the fleet could land under the various management alternatives in a single year. Only Tier 1 and Tier 2 were included in the analysis because, with the exception of Alternative 1G, the other tiers in the presented alternatives will be constrained by trip limits or tier allocations. The highest capacity estimates are associated with the no action alternative and Alternative 1G (202,111 mt). The capacity for the open access vessels is included in the estimate for Alternative 1G because of the relatively high open access trip limit alternatives associated with 1G (20,000–121,000 mt). Alternative 1E restricts capacity the most, and results in a 49-percent reduction in capacity compared to the no action alternative. The least restrictive alternatives (1B and 1F) result in a 35-percent capacity reduction. The preferred alternative (1D) is the second most restrictive, and results in a 47-percent capacity reduction compared to no action. Alternatives with lower capacity, such as the preferred alternative, could provide greater long-term economic benefits to the qualifying fleet if reduced capacity contributes to the continued health of the mackerel resource.

Alternative 1H and 1I would grant Tier 3 permits to limited access Atlantic herring vessels that would not otherwise qualify for a limited access mackerel permit. Alternative 1H would award a Tier 3 permit to vessels with Category

A or B herring permits, and Alternative 1I would award Tier 3 permits to vessels with Category A, B, or C herring permits. Individual vessels are known to target both mackerel and Atlantic herring on the same trip. This provision would prevent forced regulatory discards of incidentally captured mackerel on trips primarily targeting Atlantic herring, and would be expected to result in positive economic benefits for the Atlantic herring fleet. The Council ultimately did not select this alternative because it concluded that the preferred open access mackerel possession limit (20,000 lb (9.07 mt) per trip) would be sufficient to prevent regulatory discards. This alternative was not expected to have a large economic impact on the overall mackerel fishery, as this small number of vessels would be granted access to Tier 3, which would be limited by low trip limits or a Tier allocation.

Quota Allocation for Limited Access Tiers

The FEIS describes four alternatives for allocating the commercial mackerel quota between the limited access Tiers. These alternatives were proposed as another mechanism to ensure that each Tier in the limited access program maintained their historical level of participation in the mackerel fishery in the future. The action alternatives would create a shared allocation for Tier 1, Tier 3, and the open access vessels, but allocate Tier 2 the percentage of total landings that Tier 2 landed from 1997–2007 (2B), double the Tier 2 percentage from 1997–2007 (2C), or triple the Tier 2 percentage from 1997–2007 (2D). Alternatives 2C and 2D feature a provision that, if less than half of Tier 2's allocation has been harvested on April 1, would transfer half of the remaining allocation to the Tier 1/Tier 3/open access allocation.

Based on public comment after the Draft Environmental Impact Statement (DEIS) was published, the Council modified alternatives 1C and 1D (preferred) to provide accommodations for smaller, historical participants in the mackerel fishery. These alternatives would result in more Tier 3 qualifiers, and would initially award Tier 3 a fairly high trip limit in order to allow the qualifiers occasional sizeable landings of mackerel. However, these alternatives would also cap Tier 3 at a maximum of 7 percent of the commercial quota, with no additional allocations for any other Tiers. Given the selection of Alternative 1D as preferred, the Council ultimately recommended the no action alternative regarding allocations for Tier 2.

All three action alternatives base the Tier 2 quota on a minimum of 100 percent of their collective landings from 1997–2007. When combined with the tiered limited access alternatives described above, the resulting Tier 2 allocations would range from 3.5 to 3.8 percent of the annual commercial mackerel quota for Alternative 2B; 7.0 to 7.7 percent of the quota for 2C; and 10.5 to 11.5 percent of the quota for 2D. Given the lower 2011 mackerel quotas, these allocations may constrain landings for all Tiers. The quota transfer provisions in 2C and 2D could benefit Tier 1 in that they would help avoid a situation where Tier 1 is closed, but Tier 2 is left open with a significant portion of its allocation unused.

The no action alternative (preferred), which also includes a cap on Tier 3 under preferred Alternative 1D, should not have substantial economic impact on most fishery participants. While Tier 3 would include an estimated 329 vessels with a relatively high trip limit, the Tier would be capped at a maximum of 7 percent of the commercial fishery allocation, so it should not affect the directed fishery. The economic impact of the Tier 2 allocations depends on Tier activity. If fishing opportunities expand for Tier 2, the no action alternative could allow Tier 2 participants to increase their activity, which could negatively impact other Tiers also attempting to access quota. On the other hand, the no action alternative could have negative impacts on Tier 2 if Tier 1 is very active in a given year and accesses a significant amount of the quota before Tier 2 vessels are able to given Tier 1's higher capacity.

Limited Access Trip Limits

Amendment 11 includes five trip limit alternatives in addition to the no action and preferred alternative. The trip limits analyzed in the FEIS are intended to restrict vessels to a range of landings that are characteristic of trips by vessels within a Tier. Under all alternatives, Tier 1 is not constrained by a trip limit, and all other trip limits would be established annually through specifications. The preferred alternative (3F) would initially set the trip limits at 135,000 lb (61.24 mt) for Tier 2; 100,000 lb (45.36 mt) for Tier 3; and 20,000 lb (9.07 mt) for open access. Alternatives 3B, 3C, and 3D would initially set the trip limits for Tier 2, Tier 3, and open access vessels such that 99 percent, 98 percent, and 95 percent of the trips in each would not have been affected, respectively. This would result in initial trip limits ranging from 39,000–553,000 lb (14.6–206.4 mt) for Tier 2; 4,000–100,000 lb (1.5–37.3 mt) for Tier 3; and 1,000–20,000 lb (0.4–7.5 mt) for open access, depending on the selected limited access program. Alternative 3E initially exempts Tier 2 from a trip limit, and sets all other trip limits in the range described in Alternatives 3B–3D. Alternative 3G was designed to be selected with Alternative 1G (single-tiered alternative), and would initially set the open access trip limit in range calculated for Tier 2 with Alternatives 3B–3D under Alternative 1B (61,000–121,000 lb; 22.8–45.2 mt).

The alternatives analyzed in the FEIS where designed to establish a trip limits that would be higher than historical landings for a majority of the fleet. Accordingly, none of the proposed trip limits are expected to have a negative economic impact on most of the mackerel fleet. In addition, the Tiers with trip limits typically derive a small percentage of their revenue from mackerel (less than 2 percent), so the trip limits are not expected to limit the contribution of mackerel to these vessels' annual revenue. In the event that mackerel availability increases in the future, the trip limits will benefit all mackerel fishery participants in that they will keep vessels in one Tier from significantly expanding effort to the point that their activity is characteristic of a higher Tier; put another way, trip limits could reduce additional capitalization, which could have long-term economic benefits if lower fishery capacity helps sustain the mackerel resource.

Limited Access Permit Provisions

Amendment 11 includes most of the provisions adopted in other limited access fisheries in the Northeast Region to govern the initial qualification process, future ownership changes, and vessel replacements. For the most part, there is no direct economic impact. The nature of a limited access program requires rules for governing the transfer of limited access fishing permits. The procedures have been relatively standard for previous limited access programs, which makes it easier for a vessel owner issued permits for several limited access fisheries to undertake vessel transactions. The standard provisions adopted in Amendment 11 are those governing change in ownership; replacement vessels; CPH; abandonment or voluntary relinquishment of permits; and appeal and denial of permits. This action would also allow a vessel owner to retain an open access mackerel fishing history prior to the implementation of Amendment 11 to be eligible for issuance of a mackerel permit based on the eligibility of the vessel that was

sold, even if the vessel was sold with other limited access permits.

The economic impacts of the limited access permit provisions are analyzed in section 7.5.4 of the Amendment 11 document. The preferred alternative that requires hold volume measurements for Tier 1 and Tier 2 vessels would cost qualifiers for these permits an estimated $4,000 per vessel, not including travel expenses, and would prevent such vessels from increasing hold volume by more than 10 percent through refitting or replacement. This provision, and other provisions that restrict vessel upgrades, may constrain future business opportunities for vessels with immediate plans for vessel refitting or replacement. However, these restrictions may have long-term benefits to fishery participants by limiting capitalization in the mackerel fishery. The proposed regulations regarding qualification with retained vessel histories may have positive economic impacts for participants that sold their vessel but retained their mackerel fishing history. However, this provision could result in more vessels qualifying for mackerel permits, which may result in increased fishery capitalization. This could have a negative impact on the mackerel fleet if any additional capitalization impacts the sustained health of the mackerel resource. The preferred alternative requiring weekly VTR submissions from Tier 3 vessels is expected to cost qualifiers an additional $5,790.40 annually for postage.

EFH Updates

EFH designations identify the geographic domain within which fishery management measures that would minimize the adverse impacts of fishing and non-fishing activities could be implemented. The no action alternative would maintain the current text and map designations for EFH for all MSB species and life stages. The preferred alternative would designate as EFH the area associated with 90 percent of the cumulative geometric mean catches for non-overfished species, and the area associated with 95 percent of the cumulative geometric mean catches for unknown or overfished species. The three non-preferred alternatives vary slightly from the preferred, and include: (1) 75 percent area for non-overfished species, 90 percent for unknown or overfished species; (2) 95 percent area for non-overfished species, 100 percent for unknown or overfished species; and (3) 100 percent for all species.

With the exception of egg life stage for *Loligo,* all of the MSB species are pelagic and have life stages that inhabit the water column. Because the fishing gears that have the potential to adversely impact EFH are bottom-tending, the EFH for MSB species is not vulnerable to fishing impacts. None of the EFH alternatives analyzed in Amendment 11 would result in regulations affecting fishing activity. Accordingly, none of analyzed alternatives are expected to have negative economic impact on the fishing industry. Overall, the preferred alternative would allow for more effective consultations on oversight of EFH when compared to current EFH definitions, which could have positive impacts on the MSB resource.

Recreational Mackerel Allocation

The commercial fishery currently closes when it reaches 90 percent of the total mackerel quota (commercial plus recreational). It is assumed that recreational fishery will harvest 15,000 mt of the commercial quota each year, regardless of the total commercial quota, but there is no hard allocation for the recreational fishery. The no action alternative would maintain the assumption that the recreational mackerel fishery could harvest 15,000 mt of the commercial quota. If the mackerel fishery is closed at 90 percent of the commercial quota, and the recreational fishery was actually able to harvest the assumed 15,000 mt, the mackerel quota would be exceeded. For example, the commercial mackerel quota for the 2011 fishing year is 46,779 mt. If the commercial mackerel fishery is closed when 90 percent of this quota is attained (42,101 mt), and the recreational mackerel fishery has harvested the assumed 15,000 mt, then the mackerel quota would be exceeded by 22 percent (42,101 mt + 15,000 mt = 57,101 mt). Mackerel quota overages can compromise the sustainability of the resource, resulting in negative long-term economic impacts on the fishery.

The preferred alternative would designate an allocation for the recreational mackerel fishery that corresponds to the proportion of total U.S. landings that were accounted for by the recreational fishery from 1997–2007 times 1.5 (6.2 percent of total U.S. mackerel landings). Other alternatives include an allocation equal to the proportion of U.S. landings accounted for by the recreational mackerel fishery during this period (4.1 percent), and two times the proportion from this period (8.2 percent).

The proposed allocation is unlikely to constrain the current operations of the recreational mackerel fishery. Recreational landings from 2000–2009 ranged from 530–1,633 mt, with average recreational landings of 774 mt from 2007–2009. Under the preferred alternative, the recreational sector would have received an allocation of 2,900 mt in 2011 (6.2 percent of 46,779 mt). Given recent reduced mackerel quotas, the proposed recreational mackerel allocation could constrain the commercial mackerel fishery compared to the no action alternative. However, the constraint on the commercial fishery is more related to the overall quota than to any of the potential recreational allocations considered in Amendment 11.

At-Sea Processing

Finally, Amendment 11 considered the establishment of a cap for at-sea processing via transfers for the mackerel fishery. The action alternatives included caps on at-sea processing initially set equal to 7 percent, 14 percent, 21 percent, 50 percent, or 75 percent of the mackerel initial optimum yield (IOY), with the cap set annually through specifications. Though there has not been at-sea processing for mackerel by mother ship-type processors since the foreign fishery ended in the early 1990s, the Council developed this set of alternatives in response to public comment about the potential impacts if large-scale at-sea processing of mackerel were to commence in the future. In particular, commenters noted that, if there were significant amounts of at-sea mackerel processing, the disruption of the supply of mackerel to land-based processors could have negative economic impacts on fishing communities.

There is little information available about the possible impacts of at-sea processing in the mackerel fishery. Under the proposed no action alternative, if at-sea processing were to become significant for mackerel, an unlimited portion of the mackerel market share could be transferred to at-sea processors. Land-based mackerel processors, and the shoreside communities in which they reside, would be impacted to the extent that mackerel processing shifts to the at-sea operations. Limiting at-sea processing (action alternatives) could have economic benefits by ensuring a portion of the mackerel supply would still be available to land-based mackerel processors.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 27, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.4, paragraph (a)(5)(iii) is revised, and paragraph (c)(2)(vii) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(iii) *Limited access Atlantic mackerel permits.* (A) *Vessel size restriction.* A vessel of the United States is eligible for and may be issued an Atlantic mackerel permit to fish for, possess, or land Atlantic mackerel in or from the EEZ, except for any vessel that is greater than or equal to 165 ft (50.3 m) in length overall (LOA), or greater than 750 gross registered tons (680.4 mt), or the vessel's total main propulsion machinery is greater than 3,000 horsepower. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified in § 648.6(a)(2)(i).

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

(*1*) *Tier 1 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land unlimited amounts of mackerel, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

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

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

(C) *Eligibility criteria for mackerel permits.* A vessel is eligible for and may be issued a Tier 1, Tier 2, or Tier 3 Limited Access Mackerel Permit if it meets the permit history criteria in paragraph (a)(5)(iii)(C)(*1*) of this section and the relevant landings requirements specified in paragraphs (a)(5)(iii)(C)(*2*) through (*4*) of this section. The permit criteria and landings requirement must either be derived from the same vessel, or joined on a vessel through replacement prior to March 21, 2007.

(*1*) *Permit history criteria for Limited Access Mackerel Permits.* (*i*) The vessel must have been issued a Federal mackerel permit that was valid as of March 21, 2007. The term ''as of'' means that the vessel must have had a valid mackerel permit on March 21, 2007.

(*ii*) The vessel is replacing a vessel that was issued a Federal mackerel permit that was valid as of March 21, 2007. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the mackerel permit and all mackerel landings history.

(*2*) *Landings criteria for Limited Access Mackerel Permits.* (*i*) *Tier 1.* The vessel must have landed at least 400,000 lb (149.3 mt) of mackerel in any one calendar year between January 1, 1997, and December 31, 2005, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(5)(iii)(C)(*2*)(*iv*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section.

(*ii*) *Tier 2.* The vessel must have landed at least 100,000 lb (37.3 mt) of mackerel in any one calendar year between March 1, 1994, and December 31, 2005, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(5)(iii)(C)(*2*)(*iv*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section.

(*iii*) *Tier 3.* The vessel must have landed at least 1,000 lb (0.4 mt) of mackerel in any one calendar year between March 1, 1994, and December 31, 2005, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(5)(iii)(C)(*2*)(*iv*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section.

(*iv*) *Landings criteria for vessels using landings from pair trawl operations.* To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as supported by the required NMFS dealer reports or signed dealer receipts.

(*3*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirement in paragraph (a)(5)(iii)(B)(*1*) and (*2*) of this section that has sunk, been destroyed, or transferred to another person without its fishing and permit history, and that has not been replaced, may apply for and receive a CPH. A CPH allows for a replacement vessel to obtain the relevant limited access mackerel permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section. If the vessel sank, was destroyed, or was transferred before March 21, 2007, the permit issuance criteria may be satisfied if the vessel was issued a valid Federal mackerel permit at any time between March 21, 2006, and March 21, 2007.

(D) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section. Applications for a limited access mackerel permit described in paragraph (a)(5)(iii) of this section must be postmarked no later than December 31, 2012. Applications for limited access mackerel permits that are not postmarked before December 31, 2012, will not be processed because of this regulatory restriction, and returned to

the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce.

(E) *Qualification restrictions.* (*1*) See paragraph (a)(1)(i)(C) of this section. The following restrictions in paragraphs (a)(5)(iii)(E)(*2*) and (*3*) of this section are applicable to limited access mackerel permits.

(*2*) Mackerel landings history generated by separate owners of a single vessel at different times during the qualification period for limited access mackerel permits may be used to qualify more than one vessel, provided that each owner applying for a limited access mackerel permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct. In such a case, each applicant would still need to have been issued a valid mackerel permit as of March 21, 2007, in order to create a full eligibility, as detailed in paragraph (a)(5)(iii)(C) of this section.

(*3*) A vessel owner applying for a limited access mackerel permit who sold or transferred a vessel with non-mackerel limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the mackerel permit and landings history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before April 3, 2009, may use the mackerel history to qualify a different vessel for the initial limited access mackerel permit, regardless of whether the history from the sold or transferred vessel was used to qualify for any other limited access permit. Such eligibility may be used if the vessel for which the initial limited access mackerel permit has been submitted meets the upgrade restrictions described at paragraph (a)(5)(iii)(H) of this section. Applicants must be able to provide baseline documentation for both vessels in order to be eligible to use this provision.

(F) *Change of ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Vessel baseline specification.* (*1*) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be obtained from an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS) or from an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS). Vessels that are sealed by the Maine State Sealer of Weights and Measures will also be deemed to meet this requirement. Vessels that qualify for a Tier 1 or Tier 2 mackerel permit must submit a fish hold capacity measurement to NMFS with the annual permit renewal application for the 2013 fishing year, as specified in paragraph (c)(2)(viii) of this section, or with the first vessel replacement application after a vessel qualifies for a Tier 1 or Tier 2 mackerel permit, whichever is sooner.

(*2*) If a mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the mackerel limited access application. The replacement application to move permits onto the contracted vessel must be received by December 31, 2013. If the vessel that established the CPH is less than 20 ft (6.09 m) in length, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH.

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

(J) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(K) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(L) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(M) *Appeal of denial of permit.* (*1*) *Eligibility.* Any applicant eligible to apply for a limited access mackerel permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(*2*) *Appeal review.* Applicants have two opportunities to appeal the denial of a limited access mackerel permit. The review of initial appeals will be conducted under the authority of the Regional Administrator at NMFS's Northeast Regional Office. The Regional Administrator shall appoint a hearing officer for review of second denial appeals.

(*i*) An appeal of the denial of an initial permit application (first level of appeal) must be made in writing to NMFS Northeast Regional Administrator. Appeals must be based on the grounds that the information used by the Regional Administrator in denying the permit was incorrect. The only items subject to appeal are the accuracy of the amount of landings, and the correct assignment of landings to a vessel and/or permit holder. Appeals must be submitted to the Regional Administrator, postmarked no later than 30 days after the denial of an initial limited access mackerel permit application. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error. The appeal must be in writing, must state the specific grounds for the appeal, the limited access mackerel permit category for which the applicant believes he should qualify, and must include information to support the appeal. The appellant may also request an LOA, as described in paragraph (a)(5)(iii)(M)(*3*) of this section. The appeal will not be reviewed without submission of information in support of the appeal. The Regional Administrator would appoint a designee to make the initial decision on the appeal.

(*ii*) Should the appeal be denied, the applicant may request a hearing to review the Regional Administrator's appeal decision (second level of appeal). Such a request must be in writing, postmarked no later than 30 days after the appeal decision, must state the specific grounds for the hearing request,

and must include information to support the hearing request. If the request for a hearing to review of the appeal decision is not made within 30 days, the appeal decision is the final administrative action of the Department of Commerce. The appeal will not be reviewed in a hearing without submission of information in support of the hearing request. The Regional Administrator will appoint a hearing officer; the hearing process may take place within the National Appeals program. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) A vessel denied a limited access mackerel permit may fish for mackerel, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category for which the applicant has submitted an appeal. A request for a letter of authorization (LOA) must be made at the time of appeal. The Regional Administrator will issue such a letter for the pending period of any appeal. The LOA must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after the receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(iv) *Atlantic mackerel incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 20,000 lb (7.46 mt) of Atlantic mackerel as an incidental catch in another directed fishery, provided that the vessel does not exceed the size restrictions specified in paragraph (a)(5)(iii)(A) of this section. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(v) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for, possess, or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

* * * * *

(c) * * *

(2) * * *

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

* * * * *

3. In § 648.7, paragraph (f)(2)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies permit or a Tier 3 Limited Access mackerel 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 no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit or a Tier 3 Limited Access mackerel permit, fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, 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 that 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 or Tier 3 Limited Access Mackerel Vessel 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 week.

* * * * *

4. In § 648.14, paragraph (g)(1)(iii) is removed; paragraphs (g)(2)(ii)(C), (g)(2)(ii)(D) and (g)(2)(ii)(E) are revised, and paragraphs (g)(2)(ii)(F), (g)(2)(iii)(D) and (g)(2)(iv) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(C) Possess more than the incidental catch allowance of mackerel, unless issued a Limited Access mackerel permit.

(D) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession allowance specified in § 648.25.

(E) Possess 5,000 lb (2.27 mt) or more of butterfish, unless the vessel meets the minimum mesh requirements specified in § 648.23(a).

(F) Take, retain, possess, or land mackerel, squid, or butterfish after a total closure specified under § 648.22.

* * * * *

(iii) * * *

(D) If fishing with midwater trawl or purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

* * * * *

(iv) *Observer requirements for Loligo fishery.* Fail to comply with any of the provisions specified in § 648.26.

* * * * *

6. In § 648.21, paragraphs (a)(3), (b)(2)(iii) introductory text, (c)(3), (c)(6), and (c)(9) are revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(a) * * *

(3) IOY, including RQ, DAH, Tier 3 allocation (up to 7 percent of the DAH), DAP, recreational allocation, joint venture processing (JVP), if any, and TALFF, if any, for mackerel, which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

* * * * *

(b) * * *

(2) * * *

(iii) IOY is composed of RQ, DAH, Tier 3 allocation (up to 7 percent of DAH), recreational allocation, and TALFF. Recreational allocation shall be equal to 6.2 percent of the mackerel ABC. RQ shall be based on request for research quota as described in paragraph (g) of this section. DAH, Tier 3 allocation (up to 7 of the DAH), recreational allocation, DAP, and JVP shall be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other

relevant data, including past domestic landings, projected amounts of mackerel, necessary for domestic processing and for joint ventures during the fishing year, and other data pertinent for such projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY shall be based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

* * * * *

(c) * * *

(3) The amount of *Loligo, Illex,* and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(1)(5)(ii), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(1)(5)(iii) and the incidental mackerel permit at § 648.4(1)(5)(iv).

* * * * *

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex,* and allocation for the Limited Access Mackerel Tier 3.

* * * * *

(9) Recreational allocation for mackerel.

* * * * *

7. In § 648.22, paragraph (a)(1) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) * * *

(1) *Mackerel closures.* (i) NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.25(a)(2)(i). When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25(a)(2)(i) will be prohibited.

(ii) NMFS shall close the Tier 3 commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 mackerel allocation is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the Tier 3 commercial mackerel fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.25(a)(2)(ii).

* * * * *

8. In § 648.24, paragraph (a)(1) is revised to read as follows:

§ 648.24 Framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council 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 Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational allocation, 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, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

* * * * *

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

§ 648.25 Possession restrictions.

(a) *Atlantic mackerel.* (1) A vessel must be issued a valid limited access mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.22(a)(1)(i).

(i) A vessel issued a Tier 1 Limited Access Mackerel Permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2,400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.22(a)(1)(i).

(ii) A vessel issued a Tier 2 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.22(a)(1)(i).

(iii) A vessel issued a Tier 3 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the Tier 3 allocation has been harvested, or 90 percent of the DAH has been harvested, as specified in § 648.22(a)(1)(i) and (ii).

(iv) A vessel issued an open access mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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

(2) *Mackerel closure possession restrictions.* (i) *Commercial mackerel fishery.* During a closure of the commercial Atlantic mackerel fishery, including closure of the Tier 3 fishery, vessels issued a Limited Access Mackerel Permit may not fish for, possess, or land more than 20,000 lb

(9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2,400 hours.

(ii) [Reserved]

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