



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161025999-7319-01]

RIN 0648-BG42

Fisheries of the Northeastern United States; Mid-Atlantic Forage Species Omnibus Amendment

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement measures included in an omnibus amendment submitted by the Mid-Atlantic Fishery Management Council that would manage forage species within Mid-Atlantic Federal waters. This amendment would implement an annual landing limit, possession limits, and permitting and reporting requirements for Atlantic chub mackerel and certain previously unmanaged forage species and species groups within Mid-Atlantic Federal waters. The purpose of this action is to prevent the development of new, and the expansion of existing, commercial fisheries on certain forage species until the Council has adequate opportunity and information to evaluate the potential impacts of forage fish harvest on existing fisheries, fishing communities, and the marine ecosystem.

DATES: Public comments must be received by May 30, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS- 2017-0013, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0013, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Mid-Atlantic Forage Proposed Rule.”

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

The Council prepared an environmental assessment (EA) for the Unmanaged Forage Omnibus Amendment that describes the proposed action and other alternatives considered and provides a thorough analysis of the impacts of the proposed measures and alternatives considered. Copies of the Unmanaged Forage Omnibus Amendment, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act

analysis are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at <http://www.greateratlantic.fisheries.noaa.gov/> or <http://www.mafmc.org>.

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 the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Mid-Atlantic Council stakeholders identified managing forage species as a key concern for future action during a 2011 strategic planning and visioning process. Forage species are generally considered small, mostly pelagic schooling species that serve as prey for larger species. In 2014, the Council's Scientific and Statistical Committee (SSC) developed a white paper on forage species. The paper indicated that forage species facilitate the transfer of energy from the lowest levels of the food chain to higher levels, highlighting the importance of forage species in maintaining the productivity of marine ecosystems. The Council recognized that although it already manages several forage species that are the target of directed commercial fisheries (Atlantic mackerel, longfin and *Illex* squid, and butterfish), there are other unmanaged species that serve as prey for species important to commercial and recreational fisheries managed within the Mid-

Atlantic. However, the Council was concerned that insufficient information existed to assess the amount of unmanaged forage species currently being harvested and associated impacts to other marine resources. Due to the importance of forage species to the marine ecosystem and the health of important commercial and recreational fisheries, the Council sought to prevent the further expansion of commercial fishing effort on forage species. Therefore, the Council wanted to maintain existing commercial fisheries at recent levels until it could collect more detailed information to evaluate the potential impacts of forage fish harvest on existing fisheries, fishing communities, and the marine ecosystem.

On December 8, 2014, the Council initiated an action to begin protecting previously unmanaged forage species in each fishery management plan (FMP) under its jurisdiction. The purpose of the action is to prevent the development of new, and the expansion of existing, commercial fisheries on certain forage species. Scoping meetings were held from Rhode Island through North Carolina in September and October 2015. These meetings sought public input on the type of action to undertake, which forage species to address, the geographic scope of the action, data needs, possible measures to prevent the expansion of commercial fisheries on forage species, and processes to evaluate the development of commercial fisheries in the future. After further developing proposed measures, the Council conducted public hearings in May and June 2016 to solicit additional input on the range of alternatives under consideration by the Council, with public comments accepted through June 17, 2016. At its August 2016 meeting, the Council adopted final measures under the Unmanaged Forage Omnibus Amendment. On November 23, 2016, the Council submitted the amendment and draft EA to NMFS for preliminary review. The Council submitted the final forage amendment on March 20,

2017. The Council reviewed the proposed regulations to implement these measures, as drafted by NMFS, and, on March 13, 2017, deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Council developed the Unmanaged Forage Omnibus Amendment and the measures described in this proposed rule under the discretionary provision specified in section 303(b)(12) of the Magnuson-Stevens Act. This provision allows a Council to “include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations.” While many forage species are important to the ecosystem, the Council focused its efforts developing measures for a subset of previously unmanaged forages species with a known connection to commercial and recreational fisheries within the Mid-Atlantic. Species with the greatest potential to support future large-scale commercial fisheries and those important to marine mammals and sea birds were prioritized by the Council.

During the development of this action, the Council initially considered Atlantic chub mackerel as a forage species. However, because a directed commercial fishery for Atlantic chub mackerel has recently emerged in Federal waters, the Council believed that this species is in need of specific conservation and management measures of its own. The Council subsequently developed preliminary measures to regulate the catch of this species in this action. The Council intends to formally integrate chub mackerel as a managed species in the Atlantic Mackerel, Squid, and Butterfish FMP through a separate action within 3 years. Accordingly, while the Council considers chub mackerel to be a forage species for the purposes of the Unmanaged Forage Omnibus Amendment, in this proposed

rule, chub mackerel is treated separately from other forage species in the description of proposed measures and in the associated regulations in this rule.

Proposed Measures

1. Designation of Certain Mid-Atlantic Forage Species as Ecosystem Component Species

The Unmanaged Forage Omnibus Amendment proposes to designate the following species and species groups as “ecosystem component species” in all of the FMPs under the Council’s jurisdiction:

- Anchovies (family Engraulidae)
- Argentines (family Argentinidae)
- Greeneyes (family Chlorophthalmidae)
- Halfbeaks (family Hemiramphidae)
- Herrings and Sardines (family Clupeidae)
- Lanternfishes (family Myctophidae)
- Pearlsides (family Sternoptychidae)
- Sand lances (family Ammodytidae)
- Silversides (family Atherinopsidae)
- Cusk-eels (order Ophidiiformes)
- Atlantic Saury-*Scomberesox saurus*
- Bullet Mackerel-*Auxis rochei*
- Frigate Mackerel-*Auxis thazard*
- Pelagic Mollusks (except Sharptail Shortfin Squid)
- Copepods, Krill, Amphipods, and Other Species Under One Inch as Adults

The National Standard Guidelines at 50 CFR 600.305(d)(13) define ecosystem component (EC) species as “stocks that a Council...has determined do not require conservation and management, but desire to list in an FMP in order to achieve ecosystem management objectives.” The overall rationale used to designate the above list as EC species is provided in Section 5.1 of the EA, with additional details in Sections 6.1 and 6.4 for each species. Generally, these species and species groups are small low trophic level organisms that have been documented as bycatch in existing regulated fisheries, or as prey for marine mammals, sea birds, endangered species, and species that are the subject of important Mid-Atlantic commercial and recreational fisheries. No large-scale directed commercial fisheries for these species occur in Federal waters. Most of the proposed EC species have been documented as a bycatch in Federal fisheries or by gear types used in such fisheries, but such observations are rare for several species groups. Over half of these species groups have never been reported in Federal dealer data from 1996-2015 (greeneyes, halfbeaks, herrings and sardines, lanternfish, pearlsides, and cusk-eels), or only in small amounts and by few vessels (anchovies and argentines). A small number of these species are harvested as bait, but mostly in state waters. For example, 96 percent of recorded sand lance landings and 99.6 percent of silverside landings during 1996-2015 were associated with state vessels. Thus, fisheries for these species have not developed to a large degree, particularly in Federal waters, and are not directly important to the national or regional economy. Further, because there is little evidence that these species are predominantly caught in Federal waters, formal integration of these species into a Federal FMP is unlikely to improve the condition of the stock. There are very few data and no stock assessments for these species or species groups to assess the current status of these

organisms, although existing data generally suggest that these stocks are unlikely to become overfished or subject to overfishing unless a directed commercial fishery develops. As a result, while the Council did not believe that the development of a FMP for these species is warranted at this time, the Council took a precautionary approach to implement measures in this action that would restrict future harvest to recent levels and collect more detailed information to inform future scientific assessments and management decisions. This is consistent with the National Standard Guidelines at 50 CFR 600.305(c)(5), which state “management measures can be adopted in order to, for example, collect data on the EC species, minimize bycatch or bycatch mortality of EC species, protect the associated role of EC species in the ecosystem, and/or to address other ecosystem issues.”

During the development of this action, we advised the Council to include in this amendment only species that have a direct connection to species managed by the Council. In a June 17, 2016, letter, we outlined our concerns with including bullet and frigate mackerel as EC species in this action. We recommended that the Council remove bullet mackerel and frigate mackerel from further consideration, as these species do not meet the criteria identifying forage species outlined in the 2014 SSC white paper. Specifically, we noted that these two species are relatively large, high trophic level species. Their adult size (20-24 inches (51-61 cm) total length) exceeds the SSC’s criteria for small forage species (2-10 inches (5-25 cm) total length). The EA notes that bullet and frigate mackerel feed upon other Mid-Atlantic forage species included in the EC species list above. Further, they are not forage species for any other species managed by the Council or caught in managed fisheries. Instead, they serve as the dominant prey for billfish and

tunas, species that are managed by NMFS under the Highly Migratory Species FMP. There are no data indicating frigate mackerel are bycatch in any fishery regulated by the Council. Also, frigate mackerel are not preyed upon by any species regulated by the Council, although the EA notes that some regulated species prey upon mackerels in general. While some justification can be made to include bullet mackerel as an EC species because of its interactions with species managed by the Council, similar justification does not exist for frigate mackerel. Since bullet and frigate mackerel look very similar and are hard to distinguish even by trained biologists, treating these species differently in this amendment would pose administrative and enforcement challenges. This is similar to the rationale offered by the Council for not including sharptail shortfin squid (*Illex oxygonius*) in this amendment due to its similarity to *Illex* squid (*Illex illecebrosus*). Finally, the Council's Fishery Management Action Team (FMAT), Advisory Panel, and Ecosystem and Ocean Planning Committee all recognized that these two species are not linked with any of the Council's FMPs. Several Advisory Panel members and the Committee recommended that the Council remove these species from further consideration in this action. For all of these reasons, we are considering disapproving the inclusion of these two species in this amendment, and we specifically seek public input in this regard. If these species are not included in the amendment, as approved by the Secretary of Commerce, the final rule would reflect that decision through changes to the proposed regulations.

Designation of EC species, in itself, does not carry specific regulatory requirements under the Magnuson-Stevens Act. The term, as described above, is used in the National Standard Guidelines to help Councils distinguish which species require the

development of a FMP and associated conservation and management measures.

Accordingly, we are not proposing to individually list these species as EC species in the regulations. Instead, to reflect the purpose of this action to manage forage species, the proposed EC species will be collectively referred to as “Mid-Atlantic forage species” for the remainder of this preamble discussion and in the proposed regulatory text. This approach will also reduce confusion by helping to distinguish species managed by this action from other forage species designated as EC species by the Pacific Fishery Management Council in a similar action in 2015.

2. Permit and Reporting Requirements

A commercial vessel that possesses, lands, or sells Mid-Atlantic forage species or chub mackerel caught in Federal waters from New York through Cape Hatteras, North Carolina (an area referred to as the “Mid-Atlantic Forage Species Management Unit” below and in the proposed regulations), would be required to obtain any valid commercial fishing vessel permit issued by the Greater Atlantic Regional Fisheries Office (GARFO). Similarly, a dealer purchasing and selling these species would be required to obtain a valid seafood dealer permit issued by GARFO for any species. Any commercial vessel operator fishing for or possessing these species in or from the Mid-Atlantic Forage Species Management Unit would be required to obtain and retain on board a valid operator permit issued by GARFO. Vessel operators and dealers would also be required to report the catch and sale of these species and species groups on existing vessel trip reports (logbooks) and dealer reports, respectively.

3. Annual Landing Limits

The Council is not proposing an annual landing limit for Mid-Atlantic forage species in this action. However, this action would set an annual landing limit of 2.86 million lb (1,297 mt) for Atlantic chub mackerel. This limit represents the average annual chub mackerel landings in the Northeast from 2013 through 2015 based on Federal dealer data. All landings of chub mackerel in ports from Maine through North Carolina would count against the annual landings limit. The Council considered counting only chub mackerel landings in Mid-Atlantic ports against the annual landings limit. However, this would have created a loophole by which vessels could catch chub mackerel in the Mid-Atlantic, but land it in New England ports to avoid counting it against the annual landing limit. The Council thought it would be difficult to effectively enforce the limit without a vessel monitoring system or other similar mechanism that could detect the area fished, but the Council did not require such monitoring mechanisms at this time.

NMFS would close the directed fishery for chub mackerel in the Mid-Atlantic Forage Species Management Unit once the Regional Administrator determines that 100 percent of the chub mackerel annual landing limit has been harvested. After the closure of the directed fishery, vessels would be subject to the chub mackerel incidental possession limit described below.

The chub mackerel annual landing limit would expire 3 years after implementation, unless overwritten by another Council action. This is because the Council intended the measures in this action to be temporary, applying only until the Council is able to develop long-term measures and the scientific information necessary to formally integrate chub mackerel as a stock in the fishery managed under the Atlantic Mackerel, Squid, and Butterfish FMP. Long-term conservation and management

measures required by the Magnuson-Stevens Act, such as biological reference points, an overfishing threshold, and accountability measures, may take several years to develop. At its February 2017 meeting, the Council initiated a separate action to develop these long-term measures for implementation by 2020, if approved.

4. Possession Limits

This action would specify a 1,700 lb (771 kg) combined possession limit for all Mid-Atlantic forage species. This limit would apply to any Mid-Atlantic forage species (see the list of EC species listed above) caught within the Mid-Atlantic Forage Species Management Unit. With the exception of bullet and frigate mackerel, this proposed limit represents 99 percent of trip-level landings of Mid-Atlantic forage species in the Federal dealer database from 1996-2015.

Initially, vessels would not be subject to a possession limit for chub mackerel. Once the chub mackerel annual landing limit is harvested, NMFS would implement a 40,000-lb (18,144-kg) chub mackerel possession limit in the Mid-Atlantic Forage Species Management Unit. This limit reflects the amount of chub mackerel needed to fill a bait truck. Due to low prices and the relatively high volumes landed by the large vessels primarily responsible for recent chub mackerel landings, the Council concluded that vessels are unlikely to target chub mackerel below the proposed incidental possession limit. Similar to the annual landing limit, the chub mackerel incidental possession limit would expire 3 years after implementation unless overwritten by another Council action.

5. Transit Provision

A vessel issued a Federal commercial fishing permit from GARFO that possesses Mid-Atlantic forage species and chub mackerel in excess of the proposed possession

limits would be allowed to transit Mid-Atlantic Forage Species Management Unit in certain circumstances. The following three conditions must be met to transit through the management unit: (1) forage species were harvested outside of the Mid-Atlantic Forage Species Management Unit; (2) the vessel lands in a port that is outside of the Mid-Atlantic Forage Species Management Unit (i.e., north of New York or south of Cape Hatteras, North Carolina); and (3) all gear is stowed and not available for immediate use. Some Mid-Atlantic forage species and chub mackerel are caught outside of Mid-Atlantic Federal waters, including those areas under the jurisdiction of other Councils. This provision would allow vessels that catch forage species and chub mackerel outside of the Mid-Atlantic to land these species in other ports, including those in New England.

6. Administrative Measures

Under this action, the Council would establish a policy that requires use of an experimental fishing permit (EFP) to support any new fishery or the expansion of existing fisheries for Mid-Atlantic forage species. An EFP is a permit issued by GARFO authorizing a vessel to conduct fishing activities that are otherwise prohibited under existing regulations. The Regional Administrator consults with the Council's Executive Director before approving any exemption under an EFP request. The Council would consider the results of any experimental fishing activity and other relevant information before deciding how to address future changes to the management of fisheries for Mid-Atlantic forage species.

This action also would allow the Council to modify annual landing limits and possession limits for Mid-Atlantic forage species and chub mackerel through a framework adjustment to applicable FMPs rather than through an amendment to the FMP. This

would help streamline future development and approval of revisions to these measures because measures revised through a framework adjustment can be implemented more quickly than those implemented through an amendment to a FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with the Mid-Atlantic Forage Species Omnibus Amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making a final determination, NMFS will take into account the data, views, and comments received during the comment period.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. Business entities affected by this action were identified as groups of vessels with shared owners that had landings of species included in this amendment documented in dealer reports from 2006-2015. Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity based on NMFS standards published in the *Federal Register* (80 FR 81194, December 29, 2015). Between 2006 and 2015, 63 businesses and affiliated entities reported fishing revenues from forage species affected by this action. All of these entities had average annual sales during 2013-

2015 that were less than \$11 million. Thus, all 63 entities affected by this action are classified as small businesses.

Mid-Atlantic forage species and chub mackerel accounted for only 0.11-1.76 percent of the average annual gross receipts for all entities landing these species during 2006-2015. Average annual revenue from these species was only \$3,140 per entity. Even those with the highest annual fisheries revenue (greater than \$100,000), averaged only \$10,680 from the sale of forage species during this period. No entity consistently relied on these species for a substantial portion (greater than 10 percent) of their annual income over the past 10 years. Forty-six percent of the entities affected by this action reported landings of these species in only one year during the period from 2006-2015. Three entities indicated that these species represented 100 percent of annual fishing income in one year during this period. These three entities landed less than 1,700 lb of forage species during that one year, and reported fishing revenue from any species in only four or fewer years during the period from 2006-2015. It is likely that they may have taken advantage of high to moderate prices for key forage species on a few occasions, and that they were not likely reliant upon fishing for income over the past 10 years.

In determining the significance of the economic impacts of the proposed action, we considered the following two criteria outlined in applicable NMFS guidance: disproportionality and profitability. The proposed measures would not place a substantial number of small entities at a significant competitive disadvantage to large entities. This is because all entities affected by this action are small entities, as noted above. There are no distributional economic effects from this action, as proposed measures would maintain fishing opportunities for forage species at recent levels and would not change any entity's

access to these resources. For the same reason, the measures also would not significantly reduce profit for a substantial number of small entities. This action would not impose any costs to affected entities or reduce their revenues in comparison to the revenues of recent landings of forage species and chub mackerel. Because the proposed action is not expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

1. Initial Federal vessel permit application, OMB# 0648-0202, (45 minutes/response);
2. Initial Federal dealer permit application, OMB# 0648-0202, (15 minutes/response);
3. Initial Federal operator permit application, OMB# 0648-0202, (60 minutes/response);
4. Vessel logbook report of catch by species, OMB# 0648-0212, (5 minutes/response); and
5. Dealer report of landings by species, OMB# 0648-0229, (4 minutes/response).

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 Greater Atlantic Regional Fisheries Office at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-5806.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 18, 2017.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, add definitions for “Atlantic chub mackerel” and “Mid-Atlantic forage species” in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic chub mackerel means *Scomber colias*.

* * * * *

Mid-Atlantic forage species means the following species and species groups:

(1) Anchovies (family Engraulidae), including but not limited to the following

species:

(i) Striped anchovy-*Anchoa hepsetus*.

(ii) Dusky anchovy-*Anchoa lyolepis*.

(iii) Bay anchovy-*Anchoa mitchilli*.

(iv) Silver anchovy-*Engraulis eurystole*.

(2) Argentines (family Argentinidae), including but not limited to the following

species:

(i) Striated argentine-*Argentina striata*.

(ii) Pygmy argentine-*Glossanodon pygmaeus*.

(3) Greeneyes (family Chlorophthalmidae), including but not limited to the

following species:

(i) Shortnose greeneye-*Chlorophthalmus agassizi*.

(ii) Longnose greeneye-*Parasudis truculenta*.

(4) Halfbeaks (family Hemiramphidae), including but not limited to the following

species:

(i) Flying halfbeak-*Euleptorhamphus velox*.

(ii) Balao-*Hemiramphus balao*.

(iii) Ballyhoo-*Hemiramphus brasiliensis*.

(iv) False silverstripe halfbeak/American halfbeak/Meek's halfbeak-

Hyporhamphus meeki.

(5) Herrings and Sardines (family Clupeidae). With the exception of other herring and sardine species managed under this part, including American shad, Atlantic herring, blueback herring, hickory shad, and river herring/alewife, as defined in this section, the following herring and sardine species are Mid-Atlantic forage species:

(i) Round herring-*Etrumeus teres*.

(ii) Scaled sardine-*Harengula jaguana*.

(iii) Atlantic thread herring-*Opisthonema oglinum*.

(iv) Spanish sardine-*Sardinella aurita*.

(6) Lanternfishes (family Myctophidae), including but not limited to the following species:

(i) Horned lanternfish-*Ceratoscopelus maderensis*.

(ii) Dumril's headlightfish-*Diaphus dumerilii*.

(iii) Crocodile lanternfish-*Lampanyctus crocodilus*.

(iv) Doflein's false headlightfish-*Lobianchia dofleini*.

(v) Spotted lanternfish-*Myctophum punctatum*.

(7) Pearlsides (family Sternoptychidae), including but not limited to the following species:

(i) Atlantic silver hatchetfish-*Argyropelecus aculeatus*.

(ii) Muller's pearlside-*Maurolicus muelleri*.

(iii) Weizman's pearlside-*Maurolicus weitzmani*.

(iv) Slope hatchetfish-*Polyipnus clarus*.

(8) Sand lances (family Ammodytidae), including but not limited to the following species:

(i) American/inshore sand lance-*Ammodytes americanus*.

(ii) Northern/offshore sand lance-*Ammodytes dubius*.

(9) Silversides (family Atherinopsidae), including but not limited to the following species:

(i) Rough silverside-*Membras martinica*.

(ii) Inland silverside-*Menidia beryllina*.

(iii) Atlantic silverside-*Menidia menidia*.

(10) Cusk-eels (order Ophidiiformes), including but not limited to the following species:

(i) Chain pearlfish-*Echiodon dawsoni*.

(ii) Fawn cusk-eel-*Lepophidium profundorum*.

(iii) Striped cusk-eel-*Ophidion marginatum*.

(11) Atlantic saury-*Scomberesox saurus*.

(12) Bullet mackerel-*Auxis rochei*.

(13) Frigate mackerel-*Auxis thazard*.

(14) Pelagic mollusks and cephalopods, excluding sharptail shortfin squid (*Illex oxygonius*), but including the following pelagic mollusc species:

(i) Neon flying squid-*Ommastrephes bartramii*.

(ii) European flying squid-*Todarodes sagittatus*.

(iii) Atlantic brief squid-*Lolliguncula brevis*.

(iv) Bobtail squids (family Sepiolidae), including but not limited to the following species:

(A) Odd bobtail squid-*Heteroteuthis dispar*.

(B) Big fin bobtail squid-*Rossia megaptera*.

(C) Warty bobtail squid-*Rossia palpebrosa*.

(D) Lesser bobtail squid-*Semirossia tenera*.

(E) Butterfly bobtail squid-*Stoloteuthis leucoptera*.

(v) Sea angels and sea butterflies (orders Gymnosomata and Thecosomata).

(vi) Tuberculate pelagic octopus-*Ocythoe tuberculata*.

(15) Species under one inch as adults, including but not limited to the following species groups:

(i) Copepods (subclass Copepoda).

(ii) Krill (order Euphausiacea).

(iii) Amphipods (order Amphipoda).

(iv) Ostracods (class Ostracoda).

(v) Isopods (order Isopoda).

(vi) Mysid shrimp (order Mysidacea).

* * * * *

3. In § 648.4, add paragraph (a)(15) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(15) *Mid-Atlantic forage species and Atlantic chub mackerel*. Any commercial fishing vessel must have been issued and have on board a valid commercial vessel permit

issued in accordance with this paragraph (a)(15) to fish for, possess, transport, sell, or land Mid-Atlantic forage species or Atlantic chub mackerel in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c). A vessel that fishes for such species exclusively in state waters is not required to be issued a Federal permit.

* * * * *

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

§ 648.5 Operator permits.

(a) *General.* (1) Any operator of a vessel issued a permit, carrier permit, or processing permit for, and that fishes for or possesses, the species listed in paragraph (a)(2) of this section, must have been issued, and carry on board, a valid operator permit for these species. An operator's permit issued pursuant to part 622 or part 697 of this chapter, satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(2) Following are the applicable species: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit; or Atlantic chub mackerel or Mid-Atlantic forage species, as defined at § 648.2, harvested in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c).

* * * * *

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

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surfclam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A dealer of Atlantic chub mackerel or Mid-Atlantic forage species, as defined in § 648.2, harvested in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c), must have been issued and have in their possession, a valid dealer permit for any species issued in accordance with this paragraph.

* * * * *

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

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surfclam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N

(tilefish), O (skates), and P (Mid-Atlantic forage species and Atlantic chub mackerel) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC before approving any exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries, including exemptions for experimental fishing contributing to the development of new or expansion of existing fisheries for Mid-Atlantic forage species and Atlantic chub mackerel.

* * * * *

7. In § 648.14, add paragraph (w) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) *Mid-Atlantic forage species and Atlantic chub mackerel.* It is unlawful for any person owning or operating a vessel issued a valid commercial permit under this part to do any of the following:

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

(2) Fish for, possess, transfer, receive, or land; or attempt to fish for, possess,

transfer, receive, or land; more than 40,000 lb (18.14 mt) of Atlantic chub mackerel per trip in or from the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c), after the annual Atlantic chub mackerel landing limit has been harvested and notice has been provided to the public consistent with the Administrative Procedure Act. A vessel not issued a commercial permit in accordance with § 648.4 that fished exclusively in state waters or a vessel that fished in Federal waters outside of the Mid-Atlantic Forage Species Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from this prohibition.

8. Under part 648, add subpart P to read as follows:

Subpart P-Mid-Atlantic Forage Species and Atlantic Chub Mackerel

Sec.

648.350 Mid-Atlantic forage species and Atlantic chub mackerel annual landing limits.

648.351 Mid-Atlantic forage species and Atlantic chub mackerel possession limits.

648.352 Mid-Atlantic forage species and Atlantic chub mackerel framework measures.

§ 648.350 Mid-Atlantic forage species and Atlantic chub mackerel annual landing limits.

(a) *Mid-Atlantic forage species*. There is no annual landing limit for Mid-Atlantic forage species, as defined at § 648.2.

(b) *Atlantic chub mackerel*. Effective through December 31, 2020, the annual landings limit for Atlantic chub mackerel is set at 2.86 million lb (1,297 mt). All landings of Atlantic chub mackerel by vessels issued a Federal commercial permit in accordance with § 648.4 in ports from Maine through North Carolina shall count against the annual landings limit. NMFS shall close the directed fishery for Atlantic chub mackerel in the

EEZ portion of the Mid-Atlantic Forage Species Management Unit in a manner consistent with the Administrative Procedure Act when the Regional Administrator determines that 100 percent of the Atlantic chub mackerel annual landings limit has been harvested.

Following closure of the directed Atlantic chub mackerel fishery, a vessel must adhere to the possession limit specified in § 648.351(b).

§ 648.351 Mid-Atlantic forage species and Atlantic chub mackerel possession limits.

(a) *Mid-Atlantic forage species.* A vessel issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land up to 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (c) of this section. A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

(b) *Atlantic chub mackerel.* Effective through December 31, 2020, a vessel issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land an unlimited amount of Atlantic chub mackerel from the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (c) of this section, provided the Atlantic chub mackerel annual landing limit has not been harvested. Once the Atlantic chub mackerel annual landing limit has been harvested, as specified in § 648.350, a vessel may fish for, possess, and land up to 40,000 lb (18.14 mt) of Atlantic chub mackerel per trip in or from the Mid-Atlantic Forage Species Management Unit for the remainder of the fishing year (until December 31). A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

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

Point	Latitude	Longitude
1	40° 59.32' N	73° 39.62' W
2	40° 59.02' N	73° 39.41' W
3	40° 57.05' N	73° 36.78' W
4	40° 57.87' N	73° 32.85' W
5	40° 59.78' N	73° 23.70' W
6	41° 1.57' N	73° 15.00' W
7	41° 3.40' N	73° 6.10' W
8	41° 4.65' N	73° 0.00' W
9	41° 6.67' N	72° 50.00' W
10	41° 8.69' N	72° 40.00' W
11	41° 10.79' N	72° 29.45' W
12	41° 12.22' N	72° 22.25' W
13	41° 13.57' N	72° 15.38' W
14	41° 14.94' N	72° 8.35' W
15	41° 15.52' N	72° 5.41' W
16	41° 17.43' N	72° 1.18' W
17	41° 18.62' N	71° 55.80' W
18	41° 18.27' N	71° 54.47' W
19	41° 10.31' N	71° 46.44' W
20	41° 2.35' N	71° 38.43' W
21	40° 54.37' N	71° 30.45' W
22	40° 46.39' N	71° 22.51' W
23	40° 38.39' N	71° 14.60' W
24	40° 30.39' N	71° 6.72' W
25	40° 22.38' N	70° 58.87' W
26	40° 14.36' N	70° 51.05' W
27	40° 6.33' N	70° 43.27' W
28	39° 58.29' N	70° 35.51' W
29	39° 50.24' N	70° 27.78' W
30	39° 42.18' N	70° 20.09' W

31	39° 34.11' N	70° 12.42' W
32	39° 26.04' N	70° 4.78' W
33	39° 17.96' N	69° 57.18' W
34	39° 9.86' N	69° 49.6' W
35	39° 1.77' N	69° 42.05' W
36	38° 53.66' N	69° 34.53' W
37	38° 45.54' N	69° 27.03' W
38	38° 37.42' N	69° 19.57' W
39	38° 29.29' N	69° 12.13' W
40	38° 21.15' N	69° 4.73' W
41	38° 13.00' N	68° 57.35' W
42	38° 4.84' N	68° 49.99' W
43*	38° 2.21' N	68° 47.62' W

* Point 43 falls on the U.S. EEZ

(d) *Transiting*. Any vessel issued a valid permit in accordance with § 648.4 may transit the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (c) of this section, with an amount of Mid-Atlantic forage species or Atlantic chub mackerel on board that exceeds the possession limits specified in paragraphs (a) and (b) of this section, respectively, to land in a port in a state that is outside of the Mid-Atlantic Forage Species Management Unit, provided that those species were harvested outside of the Mid-Atlantic Forage Species Management Unit and that all gear is stowed and not available for immediate use as defined in § 648.2.

§ 648.352 Mid-Atlantic forage species and Atlantic chub mackerel framework measures.

(a) *General*. The MAFMC may, at any time, initiate action to add or revise management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Mackerel, Squid, and Butterfish FMP; the Atlantic Surfclam and Ocean Quahog FMP; the Summer Flounder, Scup, and Black Sea Bass FMP; the Atlantic Bluefish FMP; the Spiny Dogfish FMP; and Tilefish FMPs.

(b) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at its first meeting, prior to its second meeting, and at its second meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The list of Mid-Atlantic forage species, possession limits, annual landing limits, and any other measure currently included in the applicable FMPs specified in paragraph (a) of this section. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMPs instead of a framework adjustment.

(c) *MAFMC recommendation.* See § 648.110(a)(2).

(d) *NMFS action.* See § 648.110(a)(3).

(e) *Emergency actions.* See § 648.110(a)(4).

[FR Doc. 2017-08130 Filed: 4/21/2017 8:45 am; Publication Date: 4/24/2017]