

consistent with the Administrative Procedure Act.

(iii) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(iv) If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) **SAFE Report.** (1) The Red Crab PDT shall prepare a SAFE Report at least every 3 yr. Based on the SAFE Report, the Red Crab PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the red crab fishery. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Red Crab PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

8. Section 648.262 is revised to read as follows:

**§ 648.262 Accountability measures for red crab limited access vessels.**

(a) **Closure authority.** NMFS shall close the EEZ to fishing for red crab in excess of the incidental limit by commercial vessels for the remainder of the fishing year if the Regional Administrator determines that the TAL has been harvested. Upon notification of the closure, a vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, in excess of 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit.

(b) **Adjustment for an overage.** (1) If NMFS determines that the TAL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

(2) If NMFS determines that the ACL was exceeded in a given fishing year, the exact amount of an overage that was not already deducted from the TAL under paragraph (b)(i) of this section will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

9. In § 648.263, paragraph (a)(1) is removed and reserved, and paragraphs (a)(3), (a)(5), and (b)(1) are revised to read as follows:

**§ 648.263 Red crab possession and landing restrictions.**

(a) \* \* \*

(3) **Female red crab restriction.** A vessel may not fish for, catch, possess, transport, land, sell, trade, or barter, female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing on a dedicated red crab trip, unless the Council has recommended, and NMFS has implemented, an ACL and specifications, based on a recommendation from the SSC and the procedures specified in § 648.260, that authorizes the landings of female red crabs for a given fishing year.

\* \* \* \* \*

(5) **Mutilation restriction.** A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing on a dedicated red crab trip.

(b) \* \* \*

(1) **Possession and landing restrictions.** A vessel or operator of a vessel that has been issued a red crab incidental catch permit, or a vessel issued a limited access red crab permit not on a dedicated red crab trip, as defined in § 648.2, may catch, possess, transport, land, sell, trade, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

\* \* \* \* \*

10. In § 648.264, paragraphs (a)(1), (a)(2), (a)(3), and (a)(6) are revised to read as follows:

**§ 648.264 Gear requirements/restrictions.**

(a) \* \* \*

(1) Limited access red crab vessel may not harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section.

(2) Limited access red crab vessels may not deploy more than 600 traps/pots in water depths greater than 400 m (219 fath), and may not harvest red crab in water depths less than 400 m (219 fath).

(3) **Parlor traps/pots.** Limited access red crab vessels may not deploy parlor traps/pots in water depths greater than 400 meters (219 fathoms).

\* \* \* \* \*

(6) **Additional gear requirements.** Vessels must comply with the gear regulations found at § 229.32 of this title.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**RIN 0648-AX05**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; 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:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (Amendment 11), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce and is requesting comments from the public.

**DATES:** Comments must be received on or before September 6, 2011.

**ADDRESSES:** A final environmental impact statement (FEIS) was prepared for Amendment 11 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed

measures and alternatives. Copies of Amendment 11, including the FEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The FEIS/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

You may submit comments on this notice of availability, 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 Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.** Mark the outside of the envelope "Comments on MSB Amendment 11."

**Instructions:** No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will 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.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

The goals of Amendment 11 are to: (1) Establish a cap on capacity in the mackerel fishery via a limited access program based on current and historical participation that does not impede optimal U.S. utilization of the fishery; (2) update MSB species' essential fish habitat (EFH) definitions; (3) evaluate fishing-related impacts on *Loligo* egg EFH and, if necessary, minimize any adverse effects on *Loligo* egg EFH caused by fishing; and (4) establish an allocation for the recreational mackerel fishery to facilitate implementation of upcoming Annual Catch Limits (ACLs) and Accountability Measures (AMs).

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 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 that are listed above 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. Following the public comment period that ended on October 12, 2010, the Council adopted Amendment 11 on October 13, 2010. In Amendment 11, measures recommended by the Council 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 (i.e., *Loligo* squid) and the area associated with 95 percent of survey catch for each life stage of overfished or status unknown species (i.e., butterfish, mackerel, *Illlex* squid); and
- Establish a recreational mackerel allocation equaling 6.2 percent of the mackerel allowable biological catch.

Public comments are solicited on Amendment 11 and its incorporated documents through the end of the comment period stated in this notice of availability (NOA). A proposed rule that would implement Amendment 11 may be published in the **Federal Register** for public comment, following NMFS's evaluation under Magnuson-Stevens Act procedures. Public comments on must be received by the end of the comment period provided in this NOA of Amendment 11 to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the NOA of Amendment 11, whether specifically directed to Amendment 11 or the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision of Amendment 11. To be considered, comments must be received by close of business on the last day of the comment period provided in this NOA; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: June 29, 2011.

**Margo Schulze-Haugen,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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