



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231006-0241]

RIN 0648-BM61

Fisheries of the Northeastern United States; Temporary Measures to Reduce 2023

Atlantic Mackerel Catch

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

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements interim measures to reduce Atlantic mackerel catch for the remainder of the 2023 fishing year and the beginning of the 2024 fishing year to reduce the likelihood of overfishing based on new assessment information regarding the status of the Atlantic mackerel stock. This action is intended to reduce potential Atlantic mackerel overfishing through the end of 2023 and the beginning of 2024 while the 2024 specifications are developed. We will be collecting comments on the changes in per-trip catch limits to help inform future decisions on this topic.

DATES: Effective [*insert date of filing for public inspection in the FEDERAL REGISTER*], through April 10, 2024. Comments must be received by November 13, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0119 by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-

0119 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by another 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 part of the public record and will generally be posted for public viewing on <https://www.regulation.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).

The supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281-9150.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows the Secretary to implement interim measures to reduce or address overfishing. In situations such as this, in which the stock assessment has been delayed, section 305(c) allows the Council to request the Secretary to implement interim measures to address overfishing, until these measures can be replaced by the 2024 Atlantic mackerel specifications. As further described below, NMFS implements this

action to reduce the Atlantic mackerel catch for the remainder of 2023 and the beginning of 2024 by reducing mackerel possession limits.

At its July 2023 meeting, the Council's Scientific and Statistical Committee (SSC) reviewed the preliminary updated Atlantic mackerel stock assessment. This stock assessment is considered preliminary until it can be peer reviewed and then the SSC can make allowable biological catch (ABC) recommendations for 2024 and 2025. The preliminary assessment results showed that the stock is no longer experiencing overfishing, but also showed additional concerns in the rebuilding progress of the stock. Although the change in stock status to no longer experiencing overfishing seems to be a positive development, it follows significant reductions in catch associated with limits NMFS implemented in 2022 and 2023. Subsequent projections from the assessment show additional concerns in the rebuilding progress of the stock, warranting additional action to prevent the stock from once again being subject to overfishing.

The preliminary management track assessment showed an unexpected failure of the Atlantic mackerel stock to rebuild, and updated projections suggest Atlantic mackerel overfishing will occur in 2023 if the full Atlantic mackerel quota is landed. Based on this information, at its August 2023 meeting, the Council requested that NMFS take emergency action to limit the directed Atlantic mackerel fishery for the remainder of the 2023 and until the more conservative 2024 Atlantic mackerel specifications are implemented.

Interim Atlantic Mackerel Measures

Based on the recommendations of the SSC and the request by the Council, this action implements incidental Atlantic mackerel catch limits including 20,000 pounds (lb) (9.08 metric tons (mt)) for all limited access permits and 5,000 lb (2.27 mt) for all open access permits. This is a reduction from the current catch limits of unlimited possession for Tier 1 permits, 135,000 lb (61.23 mt) for Tier 2 permits, 100,000 lb (45.36 mt) for

Tier 3, and 20,000 lb (9.08 mt) for open access permits. We will be collecting comments on the changes in per-trip catch limits to help inform future decisions on this topic.

This temporary rule has an effective period limited by the Magnuson-Stevens Act to 180 days, with a potential extension of an additional 186 days. The stock assessment was peer reviewed in September 2023, and the Council will finalize the 2024 and 2025 Atlantic mackerel specifications at its December 2023 meeting. NMFS will work to implement the 2024 specifications as quickly as possible, likely early spring. However, if the expected rulemaking implementing the 2024 specifications is not in place before the expiration of this rule (180 days following publication), an extension of the interim measure for 186 days will be considered.

Justification for Interim Measures

Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) authorizes the Secretary of Commerce to implement interim measures to address overfishing. This action meets the 305(c) requirements for interim measures because it is necessary to reduce overfishing in 2023, and to minimize the likelihood of overfishing occurring again, while the Council finalizes specifications for 2024 with a reduced ABC.

The results of the preliminary 2023 stock assessment were not expected and the severity of the results could not have been foreseen. Given that the new information only recently became available, the Council could not complete an action to develop new specifications and make necessary adjustments in time for the remainder of the 2023 fishing year or the start of the 2024 fishing year. Because of the unforeseen specifications adjustments necessary to address the recent stock assessment, the Council requested that NMFS take action to reduce potential additional Atlantic mackerel harvest in 2023 and the beginning of 2024 via a reduction in the per-trip catch limits.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an overfishing situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The interim measures in this rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds it is contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). This action reduces the per trip catch limits in the Atlantic mackerel fishery. This adjustment is allowed pursuant to section 305(c) of the Magnuson-Stevens Act in order to reduce the likelihood of overfishing while the Council waits for new and updated information to be finalized. A delay would be contrary to the public interest for the Atlantic mackerel fishery, as delay would likely lead to overfishing. Furthermore, NMFS notes that implementation of these reduced catch limits was discussed at the August 2023 Council meeting, and many fishery stakeholders are anticipating action to reduce mackerel harvest in 2023. This rule is being issued at the earliest possible date, as NMFS only received the Council's Supplemental Information Report for this action on August 18, 2023.

Additionally, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness for this rule. Failure to implement this action as quickly as possible for the 2023 fishing year would likely result in 2023 catch that would cause overfishing, which would have potential negative biological impacts on the stock and make it more difficult to achieve rebuilding by 2032. The Atlantic mackerel fishery is most active during the months of November through February. Given the high-volume nature of the fishery, it is likely that, without putting new catch limit in place immediately, the fleet would capture the full 2023 commercial quota and overfishing would result, contrary to the public interest. Therefore, it is in the

public interest to take immediate action to reduce potential mackerel overfishing while the Council develops the 2024 and 2025 Atlantic mackerel specifications.

Therefore, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness, and these specifications shall be made effective on *[insert date of filing for public inspection in the FEDERAL REGISTER]*.

This action is being taken pursuant to the Magnuson-Stevens Act's provisions to establish interim measures to address overfishing and has not been designated as significant under Executive Order 12866.

The procedures of the Regulatory Flexibility Act are not applicable to this rule because it is issued without opportunity for prior notice and public comment.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action would not establish any new reporting or record-keeping requirements.

This temporary rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Fishery possession restrictions.

Dated: October 10, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.26, add paragraph (a)(4) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(4) *2023 and 2024 temporary commercial possession restriction.* For the remainder of the 2023 Atlantic mackerel fishing year and until the 2024 Atlantic mackerel specifications are implemented, commercial vessels issued an open or limited access Atlantic mackerel permit must adhere to the following possession limits.

(i) *Limited access fishery.* Vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open access fishery.* Vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 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 2400 hours.

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