



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240222-0056]

RIN 0648-BM84

Fisheries of the Northeastern United States; 2024 and Projected 2025 Specifications for the Atlantic Mackerel Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2024 specifications and projected 2025 specifications for Atlantic mackerel. The implementing regulations for the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require us to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. The proposed specifications are intended to establish allowable harvest levels that will prevent overfishing, consistent with the most recent scientific information.

DATES: Comments must be received on or before March 14, 2024.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2024-0010, 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-2024-0010 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

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 part of the public record and will generally be posted for public viewing on <https://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).

A Supplemental Information Report (SIR) was prepared for these specifications. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the Internet at <https://www.mafmc.org/supporting-documents>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281-9150, or carly.bari@noaa.gov.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish FMP. The regulations implementing the FMP require the Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, the Council sets specifications for up to 3 years. These specifications are reviewed annually and may be revised by the Council based on updated information.

The Council's final action on these specifications was delayed to its December

2023 meeting because the 2023 Atlantic mackerel stock assessment required additional peer review in late fall 2023 after the assessment indicated a change in the stock status. The stock status changed from experiencing overfishing to not experiencing overfishing. Although this change in stock status may appear to reflect an improvement in stock condition, the change is the result of significant catch reductions that were implemented in 2021, 2022, and 2023.

The preliminary stock assessment, which was still subject to peer review, showed an unexpected failure of the Atlantic mackerel stock to rebuild, and updated projections suggested that Atlantic mackerel overfishing could occur in 2023 if the full Atlantic mackerel commercial quota (*i.e.*, 3,639 metric tons (mt)) was harvested. However, because the peer review of the assessment was not complete, the SSC was unable to provide its ABC recommendation and the Council was unable to make its recommendations on the 2024 specifications. Based on the preliminary assessment information, however, the Council requested at its August 2023 meeting that NMFS take emergency action to limit the directed Atlantic mackerel fishery for the remainder of 2023 and until these specifications are implemented. On October 13, 2023 (88 FR 70909), NMFS published an interim rule that reduced the Atlantic mackerel catch by instituting trip limits of 20,000 pounds (lb) (9.08 mt) for limited access permits and 5,000 lb (2.27 mt) for open access permits. These interim measures will expire on April 10, 2024, or when these specifications are finalized, whichever comes first.

Proposed 2024 and Projected 2025 Specifications

The Council's SSC met in October 2023 to review the peer-reviewed management track assessment, which showed an unexpected failure of the Atlantic mackerel stock to rebuild. Based on this information, the SSC recommended an averaged 2024-2025 ABC of 3,200 mt. These specifications also include deductions for the expected Canadian catch of 74 mt, estimated recreational catch of 2,143 mt, and

estimated commercial discards of 115 mt to set a commercial quota of 868 mt. This commercial quota is a 76-percent decrease from the 2023 commercial quota.

Table 1 -- Summary of 2024 and Projected 2025 Atlantic Mackerel Fishery Specifications

Specifications	Metric Ton
ABC/ACL	3,200
Canadian Catch Deduction	74
Recreational Catch Deduction	2,143
Commercial Discards	115
Commercial Quota	868

Because of the low-resulting commercial quota, these specifications also proposed reduced Atlantic mackerel catch by instituting trip limits of 20,000 lb (9.08 mt) for all limited access permits and 5,000 lb (2.27 mt) for all open access permits. These trip limits are unchanged from those in the interim rule. When 80 percent of the commercial quota is harvested, the trip limits will be further reduced to 10,000 lb (4.54 mt) for all limited access permits and 2,500 lb (1.13 mt) for open access permits. The recreational possession limit will remain status quo at 20 fish per person.

On February 1, 2023 (88 FR 6665), NMFS approved Amendment 23 to the Mackerel, Squid, and Butterfish FMP and implemented a revised rebuilding plan for the Atlantic mackerel stock. The reductions in ABC and trip limits included in this proposed rule were determined to be necessary to maintain the timeline by which the Atlantic mackerel stock is rebuilt by 2032 as outlined in Amendment 23.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Mackerel, Squid, and Butterfish FMP, 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 (E.O.) 12866.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to section 553(c) of the Administrative Procedure Act (5 U.S.C. 553(c)), while also ensuring that the final specifications are in place before the interim measures currently in place to reduce Atlantic mackerel catch expire on April 10, 2024. The Council adopted these specifications on December 13, 2023, and submitted a preliminary draft of the supplemental information report on January 3, 2024. Substantial edits to the economic analysis were required for regional economist clearance for the Regulatory Flexibility Act, E.O. 12866, and E.O. 14094. The NMFS regional economist provided clearance on February 9, 2024. After incorporating that economic analysis into the rule document and having the rule reviewed by regional staff, the rule was submitted to NMFS headquarters on February 16, 2024. NMFS then submitted the rule to Commerce's Office of the General Counsel for review on February 20, 2024. Thus, NMFS has taken all diligent steps to promulgate this rule as quickly as possible but could not have published the rule sooner because the data necessary for the Council to develop these specifications was not yet finalized.

A longer comment period and subsequent potential delay in implementation past this date would be contrary to the public interest, as it could create confusion in the industry around current quotas and applicable trip limits. Comments were collected on the interim rule (88 FR 70909, October 13, 2023), which implemented the same trip limits as this action, for 30 days and no comments were submitted. While NMFS is not waiving the comment period in its entirety, a 30-day comment period here could result in the interim measures expiring, at which point the 2023 specifications would return as a

replacement pursuant to the rollover provisions of the Atlantic mackerel regulations found at 50 CFR 648.22(d)(1). As noted above, the 2023 specifications were determined to exceed overfishing levels, and should those measures roll over into the 2024 fishing year there is a risk that in the high-volume Atlantic mackerel fishery there could be overfishing.

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 Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. The proposed action would set the 2024 catch and landings limits for Atlantic mackerel based on the recommendations of the SSC and the Council. This action also provides projected 2025 Atlantic mackerel specifications; however, a future action would be needed to implement these specifications or alternative measures for that year.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with the SIR. This proposed action would affect all vessels that hold any commercial permits for Atlantic mackerel. Some small entities own multiple vessels with Atlantic mackerel permits. In 2023, there were 116 limited access permits, and 1,500 open access/incidental mackerel permits, for a total of 1,616 permits. These permits were held by 1,197 entities, 1,186 of which were small business entities and 11 were classified as large businesses. A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide (North American Industry Classification System Code 11411).

The average commercial landings from 2021-2023 were 3,520 mt (2023 preliminary). This is 2,652 mt more than the proposed 868 mt commercial quota proposed in this rule. At 2022 prices, this could potentially amount to \$2,382,849 less revenue annually (\$1,991 less annually per entity). There is no information to suggest that the 1,186 small business entities would be differentially impacted compared to the 11 large business entities.

Due to declines in the mackerel fishery, relatively few vessels have been active in the Atlantic mackerel fishery. Only 20 vessel permits had more than \$10,000 in Atlantic mackerel revenues in 2022. In 2023, only 12 vessels had more than \$10,000 in Atlantic mackerel revenues and obtained more than 10 percent of their 2023 ex-vessel revenues from mackerel. These vessel can be further grouped into 6 smaller operators that averaged about \$33,000 in 2023 mackerel landings (averaging about \$55,000 in total ex-vessel landings revenues) and 6 larger operators that averaged about \$407,000 in 2023 mackerel landings (averaging about \$1,179,000 in total ex-vessel landings revenues). These 6 larger vessel/operators are likely to be substantially impacted by this action. Three of those vessels belong to small entities but further revenue breakdown would likely violate the spirit of maintaining data confidentiality. Typically, NMFS would disclose data if at least three entities were included because that will usually maintain confidentiality, but in this case, even though there are three entities, NMFS is not disclosing more information because it is concerned it would violate confidentiality for those entities.

Given the relatively few vessels that have been landing more than small values of Atlantic mackerel in recent years, this action is not expected to have a significant adverse impact on a substantial number of small entities. There is no information that the action might impact small businesses differently than large businesses or unduly inhibit the ability of small entities to compete.

There are no new information collection requirements, including reporting or recordkeeping requirements, contained in this action.

List of Subjects in 50 CFR Part 648.

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 22, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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 § 648.24, revise paragraphs (b)(1)(i) and (ii) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) * * *

(i) Unless otherwise determined in paragraph (b)(1)(ii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, in the EEZ when the Regional Administrator projects that 80 percent of the Atlantic mackerel DAH is harvested. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(ii) NMFS has the discretion to not implement measures outlined in paragraph

(b)(1)(i) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

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3. In § 648.26, revise paragraph (a) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) *Atlantic mackerel*—(1) *Initial commercial possession limits*. A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel in or harvested from the EEZ per trip, provided the fishery has not been closed as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1, 2, or 3 limited access mackerel permit is authorized to fish for, possess, or land up to 20,000 lb (9.098 mt) of Atlantic mackerel in or harvested from 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 of a commercial fishery closure, as specified in § 648.24(b)(1).

(ii) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 5,000 lb (2.27 mt) of Atlantic mackerel in or harvested from 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 of a commercial fishery closure as specified in § 648.24(b)(1).

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

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before a commercial fishery closure, then the Atlantic mackerel possession restrictions specified in § 648.26(a)(2)(iii) shall remain in place for the rest of the fishing year.

(i) *Limited Access Fishery.* During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 80 percent of the DAH is harvested, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 10,000 lb (4.54 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.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i), when 80 percent of the DAH is harvested, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 2,500 lb (1.13 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.

(iii) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or 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.

(3) *Recreational possession limits.* The recreational Atlantic mackerel possession limit for charter/party and private recreational anglers is 20 Atlantic mackerel per person per trip, including for-hire crew.

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[FR Doc. 2024-04109 Filed: 2/27/2024 8:45 am; Publication Date: 2/28/2024]