



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240405-0100]

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: Final rule.

SUMMARY: NMFS approves and implements the 2024 specifications and projected 2025 specifications for Atlantic mackerel as recommended by the Mid-Atlantic Fishery Management Council. These specifications establish allowable harvest levels that will prevent overfishing, consistent with the most recent scientific information.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: 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>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at <https://www.greateratlantic.fisheries.noaa.gov>.

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 Fishery Management Plan (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, 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 (see 88 FR 70909). These interim measures expire upon publication of this rule or on April 10, 2024, whichever is sooner.

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 original 2023 commercial quota.

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

Specifications	Metric Tons
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 implement 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 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, NMFS approved Amendment 23 to the Mackerel, Squid, and Butterfish FMP and implemented a revised rebuilding plan for the Atlantic mackerel stock (see 88 FR 6665). The reductions in ABC and trip limits included in this 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.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Proposed Rule Comments and Responses

We received six public comments on the proposed rule. Three comments were in support of the proposed specifications to reduce Atlantic mackerel catch to allow the stock to rebuild. One comment asked how we would enforce these trip limits. We will continue to enforce trip limits as we are currently, with enforcement tools on the water and at the docks, and by reviewing landings reports submitted by dealers and permit owners. Three comments were not relevant to this action.

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 final rule is consistent with the Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or “takings” implication, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to

the Paperwork Reduction Act.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. 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 proposed rule document and having the rule reviewed by regional staff, the rule was submitted to NMFS headquarters on February 16, 2024 and the proposed rule was published on February 28, 2024. The comment period for the proposed rule closed on March 14, 2024. Regional staff submitted the final rule to NMFS headquarters on March 28, 2024. NMFS then submitted the rule to Commerce's Office of the General Counsel for review on April 2, 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.

The start of the fishing year began on January 1, 2024, and the interim measures currently in place to reduce Atlantic mackerel catch—including reduced trip limits—will expire on April 10, 2024. A delay in implementing final measures may result in substantial Atlantic mackerel catch because trip limits would revert to the default of unlimited catch for Tier 1 limited access permits, 135,000 lb (61.23 mt) for Tier 2 limited access permits, 100,000 lb (45.36 mt) for Tier 3 limited access permits, and 20,000 lb (9.08 mt) for open access permits. Allowing catch at these levels in the high-volume mackerel fishery, even for a short time period, could result in exceeding the commercial quota and overfishing limit, and have devastating impacts on the rebuilding of the Atlantic mackerel stock. Moreover, unlike actions that require an adjustment period to

comply with new gear requirements, this action does not require permit holders to purchase new equipment or otherwise expend time or money to comply with this action's management measures. Rather, compliance with this final rule simply means adhering to trip limits applicable to permit tiers. It is in the public interest to implement this final action as soon as possible, and the Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness and to implement this rule upon the date of publication in the **Federal Register**.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648.

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 5, 2024.

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 § 648.24, 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 paragraphs (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 paragraphs (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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