Atlantic Mackerel and River Herring/Shad Cap 2020 Specifications
Supplemental Information Report (SIR)
and
Regulatory Flexibility Analysis (RFA)

November 2019

Mid-Atlantic Fishery Management Council
in cooperation with the
National Marine Fisheries Service

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1.0 EXECUTIVE SUMMARY

This Supplemental Information Report (SIR) was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the National Marine Fisheries Service (NMFS). The purpose of this SIR is to determine if modifications to the Atlantic mackerel (simply mackerel hereafter) specifications for 2020 including its river herring and shad (RH/S) cap would require a supplement to the environmental assessment (EA) prepared for the mackerel rebuilding framework (“Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan”), which also considered 2019-2021 specifications (MAFMC 2019), in order to maintain adherence with the National Environmental Policy Act (NEPA). After considering the proposed action and new information in section 5.0, and supporting analyses in section 6.0, the Council and NMFS have determined, as documented herein, that a supplement to the EA for the mackerel rebuilding framework is unnecessary.

2.0 LIST OF COMMON ACRONYMS AND CONVERSIONS

Frequently Used Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC</td>
<td>Annual Biological Catch</td>
</tr>
<tr>
<td>ACL</td>
<td>Annual Catch Limit</td>
</tr>
<tr>
<td>ACT</td>
<td>Annual Catch Target</td>
</tr>
<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>DAH</td>
<td>Domestic Annual Harvest</td>
</tr>
<tr>
<td>DAP</td>
<td>Domestic Annual Processing</td>
</tr>
<tr>
<td>EA</td>
<td>Environmental Assessment</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zones</td>
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<tr>
<td>EO</td>
<td>Executive Order</td>
</tr>
<tr>
<td>FR</td>
<td>Federal Register</td>
</tr>
<tr>
<td>FMP</td>
<td>Fishery Management Plan</td>
</tr>
<tr>
<td>MAFMC</td>
<td>Mid-Atlantic Fishery Management Council (Council)</td>
</tr>
<tr>
<td>MSB</td>
<td>Mackerel, Squid, and Butterfish</td>
</tr>
<tr>
<td>MT</td>
<td>Metric Tons</td>
</tr>
<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<tr>
<td>NMFS</td>
<td>National Marine Fisheries Service</td>
</tr>
<tr>
<td>OFL</td>
<td>Overfishing Limit</td>
</tr>
<tr>
<td>OY</td>
<td>Optimal Yield</td>
</tr>
<tr>
<td>RFA</td>
<td>Regulatory Flexibility Analysis</td>
</tr>
<tr>
<td>SSC</td>
<td>Scientific and Statistical Committee</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
</tbody>
</table>

Conversions

1 metric ton (mt) = approximately 2,204.62 pounds (lb)
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4.0 PURPOSE OF THIS SUPPLEMENTAL INFORMATION REPORT (SIR)

The purpose of this SIR is to determine if modifications to the mackerel specifications for 2020 including the river herring and shad (RH/S) cap would require a supplement to the environmental assessment (EA) prepared for the mackerel rebuilding framework, which also considered 2019-2021 specifications (MAFMC 2019), in order to maintain adherence with the National Environmental Policy Act (NEPA).

The regulatory action for the mackerel and RH/S modifications also proposes to implement the projected 2020 longfin squid, Illex squid, and butterfish specifications that have been previously projected and analyzed in other NEPA documents. For longfin squid and butterfish, that document was the 2018-2020 Atlantic Mackerel, Squid, and Butterfish Specifications EA (MAFMC 2017), and for Illex squid that document was a SIR published in 2019 that adjusted the Illex specifications (MAFMC 2019-b).

In making this determination, the Council and NMFS relied on the Council on Environmental Quality NEPA regulations and other applicable case law. The Council on Environmental Quality’s regulations 40 Code of Federal Regulations (CFR) § 1502.09(c) state that “agencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” In addition, the Council on Environmental Quality’s “significance” criteria at 40 CFR §1508.27 which are used to determine whether any new circumstances or information are “significant,” were considered.

This document compares the current management measures and the proposed modifications in the context of the alternatives and analysis presented in the mackerel rebuilding framework EA for the Atlantic Mackerel, Squid, and Butterfish FMP (MAFMC 2019). We then consider whether there are any significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

5.0 THE PROPOSED ACTION

5.1 Background of Original Action

The original action, the mackerel rebuilding framework and 2019-2021 specifications, was developed to begin rebuilding the mackerel stock and control/reduce catch of RH/S. The annual catch limits for those specifications in that framework are those produced by methods accepted as part of the recent mackerel benchmark assessment (NEFSC 2018) to rebuild mackerel by June 2023. This was designed as a 5-year rebuilding plan, although given the date of implementation (mid-to-late 2019), the specifications should help rebuild mackerel within 4 years (i.e. still by June 2023). The associated RH/S cap is based on historical ratios scaled to the mackerel quota so as to create a strong incentive for the fishery to avoid RH/S, or close the fishery early if RH/S are encountered at a relatively high rate (more than 0.74% of the quota).
The Acceptable Biological Catches (ABC) for mackerel in 2019-2021 approved by the Council’s Scientific and Statistical Committee (and certified as representing the best available scientific information – MAFMC SSC 2018), and adopted by the Council were 29,184 MT (2019), 32,480 MT (2020), and 35,195 MT (2021). The Council recommended a slightly more conservative 2021 ABC of 33,474 MT. The associated Domestic Annual Harvests (DAH or “quota”) were 17,371 MT (2019), 20,557 MT (2020), and 21,517 MT (2021). Deductions are made for Canadian catch, recreational catch, and management uncertainty to get from the ABC to the DAH/quota (see Table 1). These specifications were analyzed in the EA prepared for the mackerel rebuilding action (MAFMC 2019).

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Overfishing Limit (OFL) (only available for 2019)</td>
<td>31,764</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total Acceptable Biological Catch (ABC) from</td>
<td>29,184</td>
<td>32,480</td>
<td>33,474</td>
</tr>
<tr>
<td>Canadian Deduction (10,000 MT)</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>U.S. ABC = ACL (Canadian catch deducted)</td>
<td>19,184</td>
<td>22,480</td>
<td>23,474</td>
</tr>
<tr>
<td>Recreational Allocation</td>
<td>1,209</td>
<td>1,209</td>
<td>1,209</td>
</tr>
<tr>
<td>Commercial Allocation (rest of ACL)</td>
<td>17,975</td>
<td>21,271</td>
<td>22,265</td>
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<tr>
<td>Management Uncertainty Buffer = 3%</td>
<td>539</td>
<td>638</td>
<td>668</td>
</tr>
<tr>
<td>Commercial ACT (97% of ACL)</td>
<td>17,436</td>
<td>20,633</td>
<td>21,597</td>
</tr>
<tr>
<td>DAH (0.37% discards)</td>
<td>17,371</td>
<td>20,557</td>
<td>21,517</td>
</tr>
</tbody>
</table>

The associated RH/S caps were 129 MT (2019), 152 MT (2020), and 159 MT (2021) (Table 2). These RH/S caps were generated by multiplying 0.74% times the annual quotas. If the fishery can operate at, or lower than, the RH/S interaction rates in the half of the years from 2005-2012 that had lower interaction rates, then the fishery should be able to catch its quota. If higher rates are achieved, some degree of early closure is likely to occur. The mix of Atlantic herring and mackerel landings also affects cap performance to some degree, but was accounted for in the initial setting of the cap. There is also an 89 MT initial RH/S cap that is in effect each year before mackerel landings reach 10,000 MT, designed to maintain high incentives to avoid RH/S even when the mackerel fishery is relatively inactive.

<table>
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<tbody>
<tr>
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<td>29,184</td>
<td>32,480</td>
<td>33,474</td>
</tr>
<tr>
<td>Canadian Deduction (1/2 of ABC or ABC-10,000)</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
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<tr>
<td>DAH (Commercial Quota)</td>
<td>17,371</td>
<td>20,557</td>
<td>21,517</td>
</tr>
<tr>
<td>RH/S Cap</td>
<td>129</td>
<td>152</td>
<td>159</td>
</tr>
</tbody>
</table>
A proposed rule was published on June 7, 2019, and a final rule published on October 30, 2019 implementing these specifications for 2019 and projecting specifications for 2020 and 2021. Each year, the SSC and Council review projected specifications to see if any changes to those specifications are warranted. In the course of that review, changes were deemed warranted, as discussed next.

5.2 New Action and Any Changes from the Original Action

The proposed action would maintain the previously approved squid and butterfish specifications for 2020, but update the 2020 mackerel specifications (Table 1) using an updated ABC for mackerel and modify the RH/S cap.

Mackerel

Based on the SSC’s recommendation developed in May 2018, the 2020 ABC was set to increase from its 2019 level (Table 1). The 2020 ABC value recommended by the SSC was predicated on a rebuilding strategy that recognized a strong 2015 year class in the assessment results and moderate year classes subsequently. At its May 2019 meeting, the SSC considered preliminary results from the 2019 Canadian Atlantic mackerel assessment, which indicated lower than expected recruitment in 2016-2018. The SSC determined that it would not be appropriate to recommend the original higher 2020 ABC level based on recruitment levels in 2016-2018 that may be lower than those anticipated in the rebuilding plan. Instead, the SSC recommended maintaining the ABC for 2020 at the level established for 2019 (ABC = 29,184 mt). The SSC viewed this as a prudent level given observations indicating potentially lower recent recruitments (see Section 5.3 below), though an assessment update has not been run yet. An assessment update is anticipated in 2020 that will provide a quantitative foundation for future ABC specifications, so only a 1-year ABC for 2020 was provided.

The MSB Monitoring Committee also recommended a slight change to the deduction for recreational catch. Updating the recreational catch accounting methodology from the mackerel rebuilding framework, a new 5-year (2014-2018) median was calculated, 1,270 MT (range was 835 MT to 1,611 MT) versus the previous 1,209 MT. This deduction amount should help avoid ABC/ACL overages. Using this updated value affects the other various mackerel specifications slightly compared to 2019, as described in the table below that compares the implemented 2019 measures with the newly-proposed updated 2020 measures.

Table 3. Implemented 2019 Measures Compared to Proposed/Updated 2020 Measures

<table>
<thead>
<tr>
<th>Specification</th>
<th>Mackerel 2019 (MT)</th>
<th>Mackerel 2020 (MT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overfishing Limit (OFL) (only available for 2019)</td>
<td>31,764</td>
<td></td>
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<td>1,270</td>
</tr>
<tr>
<td>Commercial Allocation (rest of ACL)</td>
<td>17,975</td>
<td>17,914</td>
</tr>
<tr>
<td>Management Uncertainty Buffer = 3%</td>
<td>539</td>
<td>537</td>
</tr>
<tr>
<td>Commercial ACT (97% of ACL)</td>
<td>17,436</td>
<td>17,377</td>
</tr>
<tr>
<td>DAH (0.37% discards)</td>
<td>17,371</td>
<td>17,312</td>
</tr>
</tbody>
</table>
Given the mackerel quota is proposed to stay almost the same as 2019 in 2020, this action is proposing to maintain the 129 MT RH/S cap in 2020. The Council had previously adopted to increase the RH/S cap to 152 MT in 2020, but decided to maintain the RH/S cap at 129 MT since the mackerel quota would not be substantially changing. However, it is proposing to eliminate the 89 MT trigger provision. This approach should provide for some additional landings by the mackerel fishery while also limiting the overall amount of river herring and shad caught by the fishery to the same maximum amount previously adopted and implemented, 129 MT. The 129 MT cap will still maintain a high incentive for the fleet to avoid river herring and shad. In order to land most of the mackerel quota in 2020, the fishery will have to substantially reduce its interaction rate with river herring and shad compared to 2019. So allowing the fishery access to the full 129 MT RH/S cap may allow some additional landings compared to retaining the 89 MT trigger, but still achieves the primary goal of incentivizing RH/S avoidance. The Council also voted to initiate a framework action to establish a long term strategy for biologically-relevant river herring and shad catch caps in the mackerel fishery.

Recall the 129 MT cap was calculated as 0.74% of the 2019 mackerel DAH/Quota (17,371). Since the proposed 2020 mackerel DAH/Quota is slightly lower (17,312), maintaining a 129 MT cap results in the RH/S cap being 0.745% of the proposed 2020 mackerel DAH/Quota (i.e. a slightly higher percentage). Related to the incentive to avoid RH/S this change should have negligible effect (i.e. the incentive will still be high).

The Council did not recommend changes to any other regulations in place for the MSB fisheries. Therefore, any other fishery management measures in place would remain unchanged for the 2020 fishing year. Descriptions of the regulations are available through the website for the Greater Atlantic Regional Fisheries Office (GARFO) of NMFS: https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html.

5.3 New Information and Circumstances

Like any assessment projection, to achieve a rebuilt mackerel stock by June 2023 a variety of assumptions must be met, including A) achieving expected 2017-2022 amounts of catch (or less), B) having the estimate of a good 2015 year class in the assessment be true, and C) getting near median recruitment from the 2016-2022 year classes. Relative to these points, updated information indicates that:

A. Catch levels held to approximately the expected 2017-2018 values. Due to the RH/S closure in the 2019 mackerel fishery, 2019 catch should be substantially lower than projected, which should be a moderate boost to projected biomass.
B. While a quantitative stock-wide assessment update will not be available until 2020, the 2015 year class is generally showing up as expected in the various catch-at-age data provided in the 2019 NEFSC data update (NEFSC 2019) and a recent Canadian Assessment (which only assesses the northern contingent of mackerel) (DFO 2019).
C. The lack of age 1-2 fish in the 2018 Canadian commercial fishery, the low proportion of age 2 fish in the 2018 Bigelow spring survey, and the continued low southern Gulf of St. Lawrence egg density (which has contributed the vast majority of total egg production since 2000) (NEFSC 2019, DFO 2019) combine to raise concern that the 2016-2017 year classes may be relatively weak.
Accordingly, to increase the probability of still achieving rebuilding by June 2023, Council staff, the SSC, and the Council all recommended that the 2020 ABC remain at the 2019 level of 29,184 MT until the planned assessment update is available for review in 2020.

The Council reviewed updated catch and fishery-independent information on RH/S, but the available information is not definitive regarding recent RH/S trends on a coast-wide basis. Based on 2019 performance, keeping the 89 MT trigger would severely limit the mackerel fishery if a similar encounter rate occurs in 2020.

6.0 NEPA COMPLIANCE AND SUPPORTING ANALYSIS

Council on Environmental Quality regulations indicate that a supplemental NEPA analysis must be prepared if a new proposed action is substantially different from a previously completed but related action. However, not every change to a proposed action, including the presence of new information, necessitates the development of a new or supplemental NEPA analysis. NMFS provided guidance to Councils to determine whether a new or supplemental NEPA document is necessary, or if the Council may demonstrate that an original NEPA document sufficiently considered and analyzed the proposed actions and its effects. At this time, it appears that a SIR would be appropriate given the information discussed below. Should this information change or new information become available during the development of the action, this recommendation may no longer be appropriate.

Changes and Their Significance

The proposed measure is a minor variation of the alternatives in the previous EA both in terms of mackerel and RH/S. For mackerel, the proposed specifications would be nearly identical to the 2019 specifications, and this action keeps the specifications at the 2019 levels rather than following the initially projected increase for 2020. For RH/S, the maximum allowed catch in the mackerel fishery would remain the same, so the maximum impacts to RH/S would remain the same. As described in the original EA (MAFMC 2019), the degree of impact of the mackerel fishery on RH/S populations is unknown, but RH/S populations are depleted, and limiting RH/S catch in the mackerel fishery should have a positive, though unquantifiable, directional impact on RH/S populations. Removal of the 89 MT trigger does not change the maximum 129 MT cap for the fishery, and may avoid a very early closure of the mackerel fishery (and related revenue reductions). The original EA included options for using the 89 MT trigger or not, and noted that using the 89 MT trigger would “slightly increase the benefit” for RH/S populations compared to not using the 89 MT trigger. Likewise, removing the trigger would slightly decrease the benefit for RH/S populations of the RH/S cap compared to also using the 89 MT trigger, consistent with the analysis in the original EA. However, since the originally-proposed RH/S cap for 2020 was 152 MT, the maximum catch of RH/S in the mackerel fishery in 2020 would actually be less under the proposed measures (129 MT) than was projected in the original EA. While it’s possible the fishery would have been shut off at 89 MT under the original measures, it’s also possible the fishery would have been shut off at 152 MT under the original measures. With the maximum catch under the proposed measures being in between (129 MT), not only are the impacts within the range
of the measures considered in the original EA, the impacts are within the range of the originally proposed measures.

As discussed in section 5.3 there are some preliminary data indications that additional precaution may be warranted for mackerel, so the SSC and Council recommended maintaining mackerel catch levels in 2020 at the 2019 levels (forgoing the projected increase). The 2019 Canadian Assessment only assesses the northern contingent of the stock but generally confirmed that the 2015 year class is relatively high, and found that biomass increased 31% from 2016 to 2018. Terminal year recruitment estimates, while typically among the most uncertain outputs of assessments, reached a time-series low in 2017 and 2018 was also very low in the Canadian assessment. Variable recruitment is not a new circumstance based on the findings of the recent U.S. stock-wide mackerel benchmark assessment. A new stock-wide assessment update is expected in 2020. The Council also reviewed updated catch and fishery-independent information on RH/S, but the available information is not definitive regarding recent RH/S trends on a coast-wide basis.

The impacts of the proposed action are expected to be consistent with the range of analyses presented in the previous EA (MAFMC 2019). There were no new stock-wide projections; the SSC just recommended maintaining the Atlantic mackerel 2019 ABC for 2020 until new projections associated with an assessment update are available in 2020, due to preliminary data suggesting lower than anticipated mackerel recruitment. The information considered regarding the proposed mackerel changes became available after the previous EA was written. The proposed 129 RH/S cap is also within the range considered in the original EA, which spanned 82 MT to 192 MT, including using or not using the 89 MT trigger. While no new RH/S assessments are available, the Council considered available updated data (recent landings, federal and state surveys, incidental catch trends, etc.), which did not indicate a substantial change in RH/S stocks compared to the information available in the original EA.

Public Comment

The mackerel rebuilding framework EA (MAFMC 2019) was developed through a multi-stage process that was open to review by affected members of the public. In addition, the public had further opportunity to comment during rulemaking when NMFS published a request for comments notice in the Federal Register (FR) for the 2019-2021 mackerel specifications via the mackerel rebuilding framework (https://www.federalregister.gov/documents/2019/06/07/2019-12033/fisheries-of-the-northeastern-united-states-framework-adjustment-13-to-the-atlantic-mackerel-squid). The public also had the opportunity to comment on the proposed updated action for 2020 during the SSC meeting held in May 2019, an MSB Monitoring Committee in May 2019, an MSB Advisory Panel meeting in April 2019, a RH/S Advisory Panel meeting in July 2019, a RH/S Committee meeting in July 2019, and during the Council meetings held in June 2019 for mackerel and August 2019 for RH/S, all of which were noticed in the Federal Register.
7.0 CONCLUSION

After considering the proposed action and new information in section 5.0, and supporting analyses in section 6.0, the Council and NMFS have determined that a supplement to the mackerel rebuilding framework EA (MAFMC 2019) is unnecessary. The proposed mackerel and RH/S specifications for 2020 would implement very similar measures compared to 2019. The small decrease (less than 1%) in mackerel quota (and resulting potential fishery effort) is not expected to substantially change the risk of overfishing, or change landings patterns, prices/revenues, or fishery behavior, so impacts on all VECs would remain similar as previously analyzed.

Elimination of the 89 MT trigger for the RH/S cap may allow more of the mackerel quota to be harvested, but would not allow more than the ABC to be caught. Since the maximum amount of RH/S allowed to be caught by the mackerel fishery would remain at 129 MT (within the range considered in the mackerel rebuilding framework EA), no change in anticipated impacts to RH/S would be expected either.

No new information or circumstances exist that have a substantial bearing on environmental concerns that are significantly different from when the original Finding of No Significant Impact was signed on September 12, 2019 for the mackerel rebuilding framework, so it remains valid to support the proposed action.

8.0 RELATIONSHIP TO APPLICABLE LAWS

8.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA) National Standards

Section 301 of the MSA requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. First and foremost, the Council continues to meet the obligations of National Standard 1 by adopting and implementing conservation and management measures that will continue to prevent overfishing, while achieving, on a continuing basis, the optimum yield for each species. The Council has developed recommendations that do not exceed the ABC recommendations of the SSC, which have been developed to explicitly address scientific uncertainty. In addition, the Council has considered relevant sources of management uncertainty and other social, economic, and ecological factors, which resulted in recommendations for annual DAH/quotas. The Council uses the best scientific information available (National Standard 2) and manages the species throughout its range in US waters (National Standard 3). These management measures do not discriminate among residents of different states (National Standard 4), they do not have economic allocation as their sole purpose (National Standard 5), the measures account for variations in these fisheries (National Standard 6), they avoid unnecessary duplication (National Standard 7), they take into account the fishing communities (National Standard 8) and they promote (or at least do not negatively impact) safety at sea (National Standard 10). Finally, actions taken are consistent with National Standard 9, which addresses bycatch in fisheries (the mackerel fishery has a low percent of bycatch, and the bycatch of most concern, RH/S, is controlled via the RH/S cap). The Council has implemented many
regulations in the past that have indirectly acted to reduce fishing gear impacts on EFH. By continuing to meet the National Standards requirements of the MSA through this and future actions, the Council will insure that cumulative impacts of these actions will remain positive overall for the ports and communities that depend on these fisheries, the Nation as a whole, and for the MSB resources.

8.2 National Environmental Policy Act (NEPA)

The Council has preliminarily determined that the Mackerel Rebuilding Framework EA remains valid for this action. Thus, there is no need to supplement the Mackerel Rebuilding Framework EA and Finding of No Significant Impact.

A review of new information and circumstances (Section 5.0) and their changes from the Mackerel Rebuilding Framework findings (Section 6.0) did not change the conclusions or impacts described in the Mackerel Rebuilding Framework EA. Because the conclusions reached in the Mackerel Rebuilding Framework EA were determined to remain valid, those analyses apply to these specifications.

If NMFS concurs with the Council’s determination, the specifications package will be submitted as a Supplemental Information Report (SIR). The SIR documents NMFS’ rationale for determining if new information, changed circumstances, or changes to the action would require additional NEPA analysis.

If NMFS does not concur, the Council will prepare and submit a new NEPA document, which would include a more in-depth review of the proposed action and its impacts.

8.3 Endangered Species Act

Sections 6 and 7 in the mackerel rebuilding framework EA (MAFMC 2019) should be referenced for an assessment of the impacts of the proposed action on endangered species and protected resources. The proposed action is not expected to substantively alter fishing methods, effort, or activities; the measures proposed for 2020 are very similar to those implemented in prior years and within the range of alternatives previously evaluated (MAFMC 2019). Therefore, this action is not expected to affect endangered or threatened species or critical habitat in any manner not considered in previous consultations on the fisheries.

The batched fisheries Biological Opinion completed on December 16, 2013, concluded that the actions considered would not jeopardize the continued existence of any listed species. On October 17, 2017, NMFS reinitiated consultation on the batched Biological Opinion due to updated information on the decline of North Atlantic right whale abundance.

Section 7(d) of the ESA prohibits federal agencies from making any irreversible or irretrievable commitment of resources with respect to the agency action that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives during the consultation period. This prohibition is in force until the requirements of section 7(a)(2) have been satisfied. Section 7(d) does not prohibit all aspects of an agency action from proceeding
during consultation; non-jeopardizing activities may proceed as long as their implementation would not violate section 7(d). Per the October 17, 2017, memo, it was concluded that allowing those fisheries specified in the batched Biological Opinion to continue during the reinitiation period will not increase the likelihood of interactions with ESA listed species above the amount that would otherwise occur if consultation had not been reinitiated. Based on this, the memo concluded that the continuation of these fisheries during the reinitiation period would not be likely to jeopardize the continued existence of any ESA listed species. Taking this, as well as our analysis of the proposed action into consideration, we do not expect the proposed action, in conjunction with other activities, to result in jeopardy to any ESA listed species.

This action does not represent any irreversible or irretrievable commitment of resources with respect to the FMP that would affect the development or implementation of reasonable and prudent measures during the consultation period. NMFS has discretion to amend its MSA and ESA regulations and may do so at any time subject to the Administrative Procedure Act and other applicable laws. As a result, the Council has preliminarily determined that fishing activities conducted pursuant to this action will not affect endangered and threatened species or critical habitat in any manner beyond what has been considered in prior consultations on this fishery.

8.4 Marine Mammal Protection Act

Sections 6 and 7 in the mackerel rebuilding framework EA (MAFMC 2019) should be referenced for an assessment of the impacts of the proposed action on marine mammals. The proposed action is not expected to substantively alter fishing methods, effort, or activities; the measures proposed for 2020 are very similar to those implemented in prior years and within the range evaluated by the previous EA (MAFMC 2019). Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

8.5 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972, as amended, provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals. The Council has developed this SIR and will submit it to NMFS; NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each relevant state (Maine through North Carolina).

8.6 Administrative Procedure Act

Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.
8.7 Section 515 (Information Quality Act)

Utility of Information Product

This action proposes specifications for 2020 for the mackerel fishery, including its RH/S cap. This document includes: A description of the proposed action and rationale for selection, and any changes to the implementing regulations of the FMP (if applicable). As such, this document enables the implementing agency (NMFS) to make a decision on implementation of annual specifications (i.e., management measures), and this document serves as a supporting document.

The action was developed to be consistent with the FMP, MSA, and other applicable laws, through a multi-stage process that was open to review by affected members of the public. The public had the opportunity to review and comment on the proposed action during a number of public meetings. In addition, the public will have further opportunity to comment on these measures once NMFS publishes a request for comments notice in the Federal Register associated with a proposed rule.

Integrity of Information Product

The information product meets the standards for integrity under the following types of documents: Other/Discussion (e.g., Confidentiality of Statistics of the MSA; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act).

Objectivity of Information Product

The category of information product that applies here is “Natural Resource Plans.” This section (section 8.0) describes how this document was developed to be consistent with any applicable laws, including MSA with any of the applicable National Standards. The analyses used to develop the proposed action are based upon the best scientific information available and the most up to date information is used to develop the EA which evaluates the impacts of those measures (see mackerel rebuilding framework EA (MAFMC 2019)). The specialists who worked with these core data sets and population assessment models are familiar with the most recent analytical techniques and are familiar with the available data and information relevant to the squid and butterfish fisheries.

The review process for the proposed action involves the Council, NMFS-NEFSC, NMFS-GARFO, and NMFS headquarters. The NEFSC technical review is conducted by senior level scientists with specialties in fisheries ecology, population dynamics and biology, as well as economics and social anthropology. The Council review process involves public meetings at which affected stakeholders have the opportunity to comments on proposed management measures. Review by GARFO is conducted by those with expertise in fisheries management and policy, habitat conservation, protected resources, and compliance with the applicable law. Final approval of the proposed action and clearance of the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.
8.8 Paperwork Reduction Act

The Paperwork Reduction Act (PRA) concerns the collection of information. The intent of the PRA is to minimize the federal paperwork burden for individuals, small businesses, state and local governments, and other persons as well as to maximize the usefulness of information collected by the Federal government. There are no changes to the existing reporting requirements previously approved under this FMP for vessel permits, dealer reporting, or vessel logbooks. This action does not contain a collection-of-information requirement for purposes of the PRA.

8.9 Impacts of the Plan Relative to Federalism/EO 13132

This specifications document does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order (EO) 13132.

8.10 Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1)“certify” that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a “factual basis”, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

This document provides the factual basis supporting NMFS determination regarding certification whether the proposed regulations will not have a “significant impact on a substantial number of small entities” and that an IRFA is not needed in this case. Certifying an action must include the following elements, and each element is subsequently elaborated upon below:

A. A statement of basis and purpose of the rule
B. A description and estimate of the number of small entities to which the rule applies
C. Description and estimate of economic impacts on small entities, by entity size and industry
D. An explanation of the criteria used to evaluate whether the rule would impose significant economic impacts
E. An explanation of the criteria used to evaluate whether the rule would impose impacts on a substantial number of small entities

F. A description of, and an explanation of the basis for, assumptions used

A – Basis and purpose of the rule

The basis of the rules proposed in this action are the provisions of the MSA for federal fishery management to prevent overfishing, achieve optimum yield, reduce bycatch to the extent practicable, and conserve non-target species. Optimum yield is defined as the amount of fish which will achieve the maximum sustainable yield, as reduced by any relevant economic, social, or ecological factor. The purpose of the rules associated with the proposed action is to implement specifications for the mackerel fishery that institute quotas that will restrict catch so as to avoid overfishing while facilitating catch within the constraint of avoiding overfishing such that optimum yield is achieved. Failure to implement the proposed actions described in this document could result in failure to reach optimum yield on an ongoing basis. To assist with further evaluation of the measures proposed in this document, a brief summary of the proposed action is provided below.

Proposed Action

Based on the SSC’s recommendation developed in May 2018, the 2020 ABC was set to increase from its 2019 level (Table 1). To increase the probability of still achieving rebuilding by June 2023, Council staff, the SSC, and the Council all recommended that the 2020 ABC remain at the 2019 level of 29,184 MT until the planned assessment update is available for review in 2020.

The MSB Monitoring Committee also recommended a slight change to the deduction for recreational catch. Updating the recreational catch accounting methodology from the mackerel rebuilding framework, a new 5-year (2014-2018) median was calculated, 1270 MT (range was 835 MT to 1,611 MT) versus the previous 1,209 MT. This deduction amount should help avoid ABC/ACL overages. Using this updated value reduces the DAH/Quota from 2019’s 17,371 MT to 17,312 MT, a reduction of less than ½ of one percent (Table 3).

Given the mackerel quota is proposed to stay almost the same as 2019 in 2020, this action is proposing to maintain the 129 MT RH/S cap in 2020. However, it is proposing to eliminate the 89 MT trigger provision. This approach should provide for some additional opportunity for the mackerel fishery while also limiting the overall amount of river herring and shad caught by the fishery to the same maximum amount in both years, 129 MT.

B – Description and estimate of the number of small entities to which the rule applies

The changes to existing mackerel specifications proposed in this action apply to the vessels that hold limited access permits for mackerel. There are also incidental permits that allow small-scale landings, and more vessels hold incidental permits, but no changes are proposed for the incidental trip limits so those vessels would not be impacted.
Many permitted vessels hold multiple permits and some small entities own multiple vessels with limited access permits. Staff used NMFS databases with ownership data provided by the Social Science Branch of NMFS’ Northeast Fisheries Science Center to highlight the vessels that would be most affected by the minor changes proposed in this action.

This analysis found that 126 separate vessels held limited access mackerel permits in 2018. 100 entities owned those vessels, and based on current SBA definitions (under $11 million to be a commercial fishing small business entity), 93 are small business entities. All of the entities that had revenue fell into the commercial fishing category. 4 small business entity had no revenues. For those with revenues, their average revenue was $1.6 million in 2018.

C – Description and estimate of economic impacts on small entities

The less than ½ of one percent DAH reduction should have a negligible impact to these vessels – the slightly reduced DAH/Quota of 17,312 MT is still 75% more than the fishery has landed in any year from 2010-2019. The economic impacts of the 2019 ACL and associated DAHs and RH/S catch cap are described in Section 7.5 of the original EA (MAFMC 2019).

The removal of the trigger will provide for some additional opportunity for the mackerel fishery compared to not removing the trigger, but the extent of the opportunity will depend on the RH/S interaction rate in 2020.

D/E – An explanation of the criteria used to evaluate whether the rule would impose significant economic impacts/ An explanation of the criteria used to evaluate whether the rule would impose impacts on a substantial number of small entities

The criteria used to evaluate whether the rule would impose significant economic impacts was whether the landings (and therefore ex-vessel revenues) from the proposed alternatives would substantially impact fishery participants relative to recent fishery performance. The DAH/Quota change will not impose significant economic impacts because it is higher than recent landings, and the RH/S cap modification will slightly increase opportunities for participants in the mackerel fishery compared to leaving the trigger in place.

F – A description of, and an explanation of the basis for, assumptions

Other than those described directly in the above analyses, there are no additional assumptions made in this analysis.

8.11 Regulatory Planning and Review/EO 12866

This action is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.
9.0 LITERATURE CITED


10.0 LIST OF AGENCIES AND PERSONS CONSULTED

In preparing this document, the Council consulted with NMFS. To ensure compliance with NMFS formatting requirements, the advice of NMFS GARFO personnel was sought. The Council also consulted with the Mid-Atlantic states through their participation on the Council and the New England Fishery Management Council through their liaison.

Copies of the supplemental information report, including the Regulatory Flexibility Analysis and other supporting documents, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901