Chub Mackerel 2023-2025 Specifications

Butterfish 2023-2024 Specifications

Supplemental Information Report (SIR) and Fishery Specifications Document

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Prepared by the
Mid-Atlantic Fishery Management Council (Council)
in cooperation with
the National Marine Fisheries Service (NMFS)

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Acronyms and Abbreviations

ABC	Acceptable Biological Catch
ACL	Annual Catch Limit
ACT	Annual Catch Target
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Council	Mid-Atlantic Fishery Management Council
DAH	Domestic Annual Harvest
EA	Environmental Assessment
EFH	Essential Fish Habitat
EO	Executive Order
ESA	Endangered Species Act
F	Fishing mortality rate
FMP	Fishery Management Plan
FR	Federal Register
GARFO	Greater Atlantic Regional Fisheries Office
MAFMC	Mid-Atlantic Fishery Management Council
MC	Monitoring Committee
MMPA	Marine Mammal Protection Act
MRIP	Marine Recreational Information Program
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSB	Mackerel, Squid, Butterfish
MSY	Maximum Sustainable Yield
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	National Oceanic and Atmospheric Administration
OFL	Overfishing Limit
PBR	Potential Biological Removal
RHL	Recreational Harvest Limit
SIR	Supplemental Information Report
SSB	Spawning Stock Biomass
SSC	Scientific and Statistical Committee
TAL	Total Allowable Landings

1.0 Introduction and Summary

This document supports implementation of specifications for Atlantic chub mackerel for the 2023-2025 fishing years, including an acceptable biological catch (ABC) limit, an annual catch limit (ACL), an annual catch target (ACT), and a total allowable landings limit (TAL). None of these measures vary across the three years (2023-2025) and all are identical to the measures used during 2020-2022. The Scientific and Statistical Committee (SSC), Monitoring Committee, Advisory Panel, and Council all agreed there is no new information to suggest a change is needed from the previously implemented measures.

All chub mackerel measures are expected to have the same impacts as those analyzed in the Environmental Assessment (EA) for Amendment 21 (MAFMC 2020), which added chub mackerel to the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) and implemented chub mackerel specifications for 2020-2022.[1]

This document also supports implementation of 2023-2024 specifications for butterfish including ABCs, ACLs, ACTs, and commercial quotas and closure provisions. Only minor changes from the previous specifications are proposed for butterfish, as described below.

Sections 1.0 through 8.0 of this document are components of a Supplemental Information Report (SIR) which provides compliance with the National Environmental Policy Act (NEPA). As described in section 2.0, an SIR is used to determine whether a proposed action will require further analysis beyond a prior NEPA analysis for a related action. Section 9.0 demonstrates compliance with other applicable laws.

2.0 Purpose of this Supplemental Information Report

The purpose of this SIR is to determine if the recommended specifications for chub mackerel for 2023-2025 and for butterfish for 2023-2024 (Section 5.0) require further analysis beyond that presented in the Environmental Assessment (EA) for Amendment 21 to the MSB FMP (MAFMC 2020) and the last butterfish specifications EA (MAFMC 2021).

In making a determination on the need for additional analysis under NEPA, we have considered and have been guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The CEQ's regulations state that "[a]gencies 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." 40 Code of Federal Regulations (C.F.R.) § 1502.9(d)(1). Consistent with 40 C.F.R. 1502.9(d)(4) and 1501.3(b) we have determined that any changes to the proposed action or new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement.

The following sections describe the proposed action and compare it to the impacts considered in the previous relevant EAs (MAFMC 2020 and MAFMC 2021). Consideration is given to any significant new circumstances or information relevant to environmental concerns and have a

[1] More information on Amendment 21, including the EA, is available at https://www.mafmc.org/actions/chub-mackerel-amendment

bearing on the proposed action or its impacts. Information considered in the evaluation of new circumstances includes the recommendations of the SSC (MAFMC 2022), Monitoring Committee, Advisory Panel, Council staff, and the Council, recent catch and landings, the 2022 butterfish research track assessment (NEFSC 2022a), and the 2022 butterfish management track assessment (NEFSC 2022b).

3.0 Original Action

3.1 Chub Mackerel Original Action: 2020-2022 Specifications

The Council approved 2020-2022 catch and landings limits for Atlantic chub mackerel in March 2019 (Table 1). These measures were implemented through Amendment 21 and became effective in September 2020 (85 Federal Register 47103, MAFMC 2020).

The ABC is based on the recommendations of the SSC. The SSC first recommended this ABC during their July 2018 meeting. They have reviewed the ABC several times, including most recently in May 2022, and recommended no changes each time. The stock status of chub mackerel in the western Atlantic Ocean is unknown as there have been no quantitative assessments of this species in this region. The SSC concluded that insufficient information exists to assess the status and trends of chub mackerel in the northwest Atlantic. They concluded that an overfishing limit could not be specified and recommended an ABC of 2,300 mt (5.07 million pounds) based on expert judgement. Their ABC recommendation is based loosely on the historic high for commercial and recreational landings (around 5.25 million pounds in 2013) and assumptions about discards. This level of ABC will prevent the fishery from achieving its historic high, but will allow landings to exceed those in every other year over at least the past 20 years (Table 2). The SSC agreed that this level of catch is unlikely to result in overfishing given the general productivity of this species in fisheries throughout the world combined with the relatively low fishery capacity in U.S. Atlantic waters. Based on their recommendations, the ABC applies to total dead catch (i.e., commercial and recreational landings and dead discards) from Maine through the east coast of Florida.

The ACL for chub mackerel is derived by subtracting expected catch in the South Atlantic (in this case, referring to South Carolina through the east coast of Florida) from the ABC. An 84,500 pound buffer for expected South Atlantic catch was used when setting the chub mackerel ACL for 2020-2022. This represents about 2% of the ABC and was intended to be a conservatively high estimate based on the highest annual South Atlantic landings shown in commercial dealer and Marine Recreational Information Program (MRIP) data (i.e., 76,835 pounds of landings in 2011, the vast majority of which were recreational landings), increased by about 10% to account for dead discards. Chub mackerel discards in the South Atlantic are highly uncertain.

The chub mackerel ACT can be set less than or equal to the ACL to account for management uncertainty (Figure 1). The Council adopted a 4% management uncertainty buffer for the 2020-2022 specifications. They did not recommend this buffer based on a quantitative methodology. This buffer was assumed to be sufficient to prevent ACL overages when used in combination with the in-season commercial fishery closure regulations.

Expected commercial and recreational discards in weight are subtracted from the ACT to derive the TAL. There are currently no expanded estimates of total chub mackerel commercial dead discards. MRIP provides estimates of recreational discards in numbers of fish.

When setting 2020-2022 specifications, the Council agreed to reduce the ACT by 6% to account for expected discards. This was based on the commercial discard rate during 2003-2017 according to northeast observer data. The Council selected this as a preferred alternative because it was based on 15 years of data. It does not explicitly account for recreational data; however, based on information available at the time, the volume of recreational chub mackerel discards was assumed to be low compared to commercial discards, especially in years with targeted commercial fishing effort.

Specifications for 2020-2022 included no commercial possession limit until 90% of the TAL is projected to be landed. At that point, a 40,000 pound (18 mt) possession limit would be in effect. Once 100% of the TAL is projected to be landed, commercially permitted vessels would be limited to a 10,000 pound (4.5 mt) possession limit. When setting 2020-2022 specifications, the Council agreed that commercial fishery possession limits prior to in-season closure were unnecessary as the preferred in-season AMs were likely sufficient to constrain the fishery to prevent ACL overages.

Table 1. 2020-2022 catch and landings limits for Atlantic chub mackerel.

Measure	mil lb	mt	Basis
ABC	5.07	2,300	SSC recommendation
Expected SC-FL catch	0.08	38	Highest annual SC-FL landings shown in commercial dealer and MRIP data, increased by about 10% to account for discards, which are not well quantified.
ACL	4.99	2,262	ABC minus expected SC-FL catch.
ACT	4.79	2,171	ACL reduced by a 4% management uncertainty buffer.
Expected dead discards	0.29	130	6% of ACT based on based on the commercial discard rate during 2003-2017 from northeast observer data.
TAL	4.50	2,041	ACT minus expected total dead discards.

3.2 Butterfish Original Action: 2021-2022 Specifications

The original action for butterfish considered in the 2021 EA was developed to avoid overfishing and achieve optimum yield with management measures that included quotas, trip limits, and potential fishery closures. Butterfish ABCs were 11,993 MT in 2021 and 17,854 MT in 2022, based on the then-current butterfish assessment and associated projections. After accounting for management uncertainty and discards, the quota or domestic annual harvests (DAH) were 6,350 MT in 2021 and 11,495 in 2022. In both years the directed fishery would have closed with 1,000 of quota left and a 5,000 pound trip limit would have been instituted for directed permits, but the fishery did not approach that landings level in 2021 and is unlikely to do so in 2022. Incidental permits always have a 600-pound trip limit. The table below summarizes the relevant preferred/implemented specifications.

Table 2. 2021-2022 butterfish specifications based on updated assessment/variable projections (preferred/implemented). All quantities are metric tons.

	Specification	2021	2022	Rationale Summary
	OFL	22,053	24,341	From projections
a	ABC	11,993	17,854	From SSC, scientific uncertainty
b	ACT Buffer %	5%	5%	for management uncertianty
c	ACT Buffer	600	893	a times b
d	ACT (a-c)	11,393	16,961	a-c
e	Assumed discards in directed fishing (7.6%)	522	945	from observer data
f	Assumed other discards	637	637	from cap performance
g	Non-longfin discards	1,159	1,582	e+f
h	Butterfish Cap (longfin discards)	3,884	3,884	set by Council
i	Total discard set-aside	5,043	5,466	g+h
j	Landings or "Domestic Annual Harvest" (DAH)	6,350	11,495	d-i
k	Close primary directed at this amount, i.e. with 1,000 mt left; go to 5,000 pound trip limit	5,350	10,495	j-1000

3.3 Other Alternatives Analyzed for Butterfish

The 2021 EA considered butterfish ABCs ranging from 11,993 MT to 32,063 MT based on various assumptions across the 2021 and 2022 fishing years. The discard deduction and closure approaches were consistent across the alternatives.

4.0 New Information and Circumstances

Determining whether a supplemental NEPA analysis is required involves a two-step process. First, one must identify new information or circumstances. Second, if there is new information, one must analyze whether it is significant to the analysis of the action and relevant to environmental concerns and bearing on the action or its impacts.

The following new information and circumstances, compared to the information considered in the aforementioned EAs, are relevant to this action:

- An additional three years of fishery data for chub mackerel (2019-2021)
- 2022 stock assessment for butterfish

NMFS also recently received information that the estimated incidental bycatch rate of Atlantic sturgeon in gillnet gear through 2021 may be higher than what was expected and authorized in NMFS' 2021 Biological Opinion, which considered the effects of the authorization of ten FMPs including the Mackerel/Squid/Butterfish FMP. NMFS is reviewing this information in order to fully understand the implications on Atlantic sturgeon and is considering if reinitiation of consultation is required. However, the proposed action does not entail making any changes to the MSB fishery that would cause an increase in interactions with or effects to ESA-listed species or their critical habitat. Further, gillnet gear is not used in the MSB fisheries. Therefore, this potential new information is not expected to change any of the impacts previously considered in the EA and Finding of No Significant Impact.

4.1 New Information for Chub Mackerel

Table 3 summarizes recent commercial and recreational chub mackerel landings. As previously stated, the Amendment 21 EA considered fishery data through 2018. Commercial landings during 2019-2021 were similar to levels seen over the past two decades with the exception of 2012-2016 when landings were higher due to some vessels targeting chub mackerel (Table 3). Advisors have indicated that in recent years, the vessels which contributed to most landings during 2013-2016 have focused on *Illex* squid and have not been targeting chub mackerel.

Recreational chub mackerel landings during 2018-2021 were higher than during the previous 15 years. Prior years of recreational data show more variable and sporadic estimates. This may be due to a combination of improved reporting in recent years (Geoff White, personal communication, April 2018) and higher availability (as suggested by advisors).

Additional information on commercial and recreational chub mackerel fisheries can be found in recent Fishery Information Documents and Fishery Performance Reports, available at https://www.mafmc.org/msb.

Chub mackerel discards are not well quantified. Table 4 shows the percentage of chub mackerel on observed commercial trips that was discarded during 2006-2020. Due to the impact of the COVID-19 pandemic on observer coverage, this analysis was not updated with more recent years. Observer data for 2016-2020 show that 43% of total observed chub mackerel catch was discarded, considerably higher than the 6% assumed discard rate previously used to set specifications. However, as shown in Table 3, 2016-2020 were years with comparatively low commercial landings. As previously stated, the ABC is loosely based on the historic high for chub mackerel catch (2013). The average percentages over longer time periods are approximately 3% - 7%, depending on the time period Table 4. After considering similar information in 2020, 2021, and 2022, the Monitoring Committee and Council agreed this did not warrant a change in the chub mackerel specifications.

Table 5 shows summary information on catch, harvest, and the percent of chub mackerel retained in the recreational fisheries. During 2017-2021, an average of 56% of estimated recreational chub mackerel catch (in numbers of fish) was discarded. This is within the range seen in prior years.

Table 3. Commercial and recreational chub mackerel landings, in pounds, 2002-2021, from Maine through North Carolina. Landings in some years are combined to protect confidential data associated with fewer than three vessels and/or dealers.

Year	Commercial landings	Recreational landings	Total landings
2002	471	0	471
2003	488,316	0	488,316
2004	126	0	126
2005	0	0	0
2006	0	0	0
2007-2009	21,039	0	21,039
2010-2011	192,301	355	193,914
2012	164,867	0	164,867
2013	5,249,686	0	5,249,686
2014	1,230,411	48,087	1,280,224
2015	2,108,337	0	2,108,337
2016	610,783	2,093	612,870
2017	2,202	14,831	15,512
2018	22,357	128,949	127,187
2019	60,522	74,462	110,414
2020	56,925	149,578	182,707
2021	37,371	194,771	174,839

Table 4. Percent of total commercial chub mackerel catch that was discarded, based on northeast fisheries observer, 2007-2021, with associated number of trips.

Years	Observer discard %
2006-2020 (15 years)	7% (337 trips)
2011-2020 (10 years)	6% (301 trips)
2016-2020 (5 years)	43% (193 trips)
2013-2015 (top 3)	4% (95 trips)
2013 (historic high)	3% (27 trips)

Table 5. MRIP-estimated recreational catch and harvest of chub mackerel from Maine through North Carolina, 2002-2021.

Year	Recreational catch (# of fish)	Recreational harvest (# of fish)	Recreational harvest (pounds)	% retained
2002-2010	0	0	0	--
2011	1,613	1,613	355	100%
2012	15,569	0	0	0%
2013	0	0	0	--
2014	60,191	49,813	48,087	83%
2015	0	0	0	--
2016	2,575	2,087	2,093	81%
2017	26,061	13,310	14,831	51%
2018	157,471	104,830	128,949	67%
2019	139,282	49,892	74,462	36%
2020*	199,919	125,757	149,578	63%
2021	215,631	137,468	194,771	64%
2017-2021 Avg.	**147,673**	**86,251**	**112,518**	**56%**

* Contribution of imputed data to total values for 2020: 19% for catch, 28% for harvest in numbers of fish, and 25% for harvest in pounds. This imputation method was only needed in 2020 due to COVID-related disruptions to the Access Point Angler Intercept Survey and subsequent data gaps.

4.2 New Information for Butterfish

While there is new assessment information for butterfish, the new information largely confirms the previous assessment of the butterfish stock. The 2022 butterfish management track assessment, building on methods developed for the 2022 butterfish research track assessment, concluded that butterfish was not overfished and that overfishing was not likely occurring, the same finding as the previous assessment. Also, the ABCs recommended by the Council's SSC when considering the new assessments, 17,267 MT for 2023 and 15,764 MT for 2024, are in between the ABCs previously recommended for 2021 and 2022. Recent landings (updated in the 2022 assessment) have also been within the range of landings for the most recent decade. Thus, while there is some new information, the fundamental understanding of the butterfish stock has not changed.

5.0 Proposed New Action

Chub Mackerel

As previously stated, the proposed new action for chub mackerel would maintain the same catch and landings limits in 2023-2025 as in 2020-2022. These measures are summarized in Section 3.1. The SSC, Monitoring Committee, Advisory Panel, and Council agreed there is no new information to suggest a change is needed from the previously implemented measures.

Butterfish

The specifications would be updated based on the new ABC recommendations from the SSC for 2023 and 2024, as shown in Table 6.

The management uncertainty buffer (5%) and closure approach once 1,000 MT of quota is left would remain identical to the previously implemented specifications. A simplified discard accounting is used compared to the last specifications, but the effects and approaches are essentially the same – to set aside enough butterfish discards that may occur in the longfin squid fishery and other fisheries (based on recent data) so that the overall ABC is not exceeded. A very similar total discard amount is proposed to be set aside for 2023/2024 (5,132 MT) as with the 2021/2022 specifications (5,043 MT).

Table 6. Preferred 2023-2024 Butterfish Specifications

	Specification	2023	2024	Rationale Summary
	OFL	17,631	16,096	from projections
a	ABC	17,267	15,764	from SSC, scientific uncertainty
b	ACT Buffer %	5%	5%	for management uncertainty
c	ACT Buffer	863	788	a times b
d	ACT (a-c)	16,404	14,976	a-c
e	Butterfish Cap (longfin discards)	3,884	3,884	set by Council
f	Assumed other discards	1,248	1,248	2013-2021 average plus 1 SD
g	Total discard set-aside	5,132	5,132	e+f
h	Landings or "Domestic Annual Harvest" (DAH)	11,271	9,844	d-g
i	Close primary directed at this amount, i.e. with 1,000 mt left; go to 5,000 pound trip limit	10,271	8,844	h-1000

6.0 NEPA Compliance and Supporting Analysis

In this section, the proposed specifications are compared to those considered through the previous relevant EAs in terms of their expected impacts.

CEQ requirements 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. NOAA Fisheries provided guidance to Councils on the use of "non-NEPA documents" to help determine whether a new or supplemental NEPA document is necessary or if a non-NEPA document (SIR) may be used to demonstrate that an original NEPA document sufficiently considered and analyzed the proposed actions and its effects. At this time, it appears that an SIR would be appropriate given the information discussed below.

6.1 Chub Mackerel

As previously stated, the proposed 2023-2025 catch and landings limits for chub mackerel are identical to those implemented for 2020-2022 and analyzed in the Amendment 21 EA. There is no new information to suggest substantial changes in the biology or operation of the fishery, or that the impacts of the 2023-2025 measures would be different than those previously analyzed. As shown in Section 4.1, total fishery catches (commercial and recreational combined) have not come close to approaching the proposed catch and landings limits for 2023-2025. Although future catch and landings are uncertain, there is currently no indication to suggest that notable changes compared to recent patterns in catch and landings would be expected in 2023-2025. Therefore, implementation of status quo measures for the upcoming three years is not expected to impact commercial or recreational landings, fishing effort, or the spatial distribution of fishing effort.

As summarized in the Amendment 21 EA, the previously implemented specifications were not expected to notably impact fishing effort, fishing mortality, landings, interactions with protected species, or impacts to habitat compared to recent conditions. This is because the fishery appeared to be largely limited by market demand, low historical participation, and trends in the *Illex* squid fishery. However, the implemented specifications were expected to prevent the fishery from expanding beyond historical levels if market conditions, availability, or other factors changed. This was expected to result in moderate to slight positive impacts for chub mackerel and non-target species by maintaining their current positive, presumed positive, or unknown stock status, depending on the species. It was expected to result in slight positive socioeconomic impacts due to status quo levels of commercial and for-hire revenues, angler satisfaction, and spillover benefits to support businesses. Impacts to species listed under the Endangered Species Act (ESA) were expected to be negligible to slight negative, depending on the species. Impacts to marine mammals protected under the Marine Mammal Protection Act were also considered in Amendment 21's EA. Impacts to non-ESA listed marine mammals whose potential biological removal (PBR) levels had been reached or exceeded were expected to be slight negative because any potential for interaction between fishing gear and those species, including status quo levels of interactions, have negative impacts. Impacts to non-ESA listed marine mammals whose PBR levels have not been reached or exceeded were expected to be slight positive as the positive stock status of those species should be maintained. Impacts to habitat were expected to be slight negative as status quo levels of bottom trawl fishing effort would continue to impact habitats.

The proposed 2023-2025 specifications for chub mackerel are identical to the previously implemented specifications. They are not expected to alter the biological, habitat, or socioeconomic impacts previously described in the Amendment 21 EA.

6.2 Butterfish

As with the previous specifications, using updated assessment information to maintain the butterfish stock in a productive and sustainable manner should continue to have a slightly positive impact on the butterfish stock (by avoiding overfishing and development of an overfished condition). Impacts on habitat (slight negative), protected resources (slight negative to slight positive), non-target species (slight negative), and socioeconomics (slight positive) were also not expected to be significant, and should persist in a similar fashion under the new 2023-2024 specifications given their similarity to the 2021-2022 specifications that were previously analyzed, considered, and implemented. The rationale for expecting similar impacts is that effort has not been constrained by recent specifications, and the small changes in the proposed new specifications resulting from the new assessment are unlikely to change this situation. Market forces are likely to result in continued relatively low effort for butterfish compared to the effort that would be needed to catch either the old or new quotas resulting from the respective specifications. The result should be relative stability in both the fishery and the butterfish stock relative to recent history. Therefore, overall, the proposed 2023-2024 specifications for butterfish are not expected to alter the biological, habitat, protected species, or socioeconomic impacts as described in the relevant preceding EA (MAFMC 2021).

6.3 Summary of NEPA Compliance

The proposed specifications are either identical, or very similar to those previously analyzed and implemented for chub mackerel and butterfish. No additional analyses appear warranted beyond what is described above in this section.

7.0 Public Participation

The public had the opportunity to comment during development of the relevant original EAs (MAFMC 2020 and MAFMC 2021). The public also had the opportunity to review and comment on the proposed specifications at advisory panel, SSC, Monitoring Committee, and Council Meetings in 2022. This document will also be subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act and may be improved based on any comments received.

8.0 Conclusion

After considering the proposed action, new information, and new circumstances, NMFS has preliminarily determined that the proposed action and its effects fall within the scope of the preceding relevant EAs (MAFMC 2020 and MAFMC 2021). It is not necessary to supplement the original actions because 1) the proposed actions and their impacts do not differ substantially from what was originally considered and analyzed; and (2) no new information or circumstances exist that are significantly different from when the EA Findings of No Significant Impact were signed on May 1, 2020 (for chub mackerel) and July 8, 2021 (for butterfish). The previous EAs and Findings of No Significant Impact thus remain valid to support the proposed action.

9.0 Compliance with Other Applicable Laws

9.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA)

Section 301 of the MSA requires FMPs to contain conservation and management measures that are consistent with the ten National Standards. The actions taken in this specification document are confined to processes defined within the FMP; therefore, as actions within the FMP have been deemed consistent with the National Standards, these specification actions are similarly consistent. 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 the managed stocks and the U.S. fishing industry, including ACLs and measures to ensure accountability. The Council uses the best scientific information available (National Standard 2) and manages the stocks throughout their range (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). They 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 safety at sea (National Standard 10). The actions taken are consistent with National Standard 9, which addresses bycatch in fisheries. The Council has implemented many regulations that have indirectly acted to reduce fishing gear impacts on essential fish habitat. By continuing to meet the National Standards requirements of the MSA through future FMP amendments, framework actions, and the annual specification setting process, the Council will ensure that cumulative impacts of these actions will remain positive overall for the ports and communities that depend on these fisheries, for the Nation as a whole, and for the resources.

9.2 National Environmental Policy Act (NEPA)

The Council has preliminarily determined that the proposed action and its effects fall within the scope of the previous relevant EAs (MAFMC 2020 and MAFMC 2021), and that these analyses

remain valid for this action. Thus, there is no need to supplement these analyses and their Findings of No Significant Impact.

9.3 Marine Mammal Protection Act (MMPA)

None of the specifications proposed in this document are expected to alter overall effort or fishing methods beyond what has been previously analyzed or anticipated. Therefore, this action is not expected to affect marine mammals in any manner not considered in previous consultations on the fisheries. Further information on the potential impacts of the fisheries and the proposed action on marine mammals can be found in the previous relevant EAs (MAFMC 2020 and MAFMC 2021). These analyses found that the overall catch limits and associated management measures were not expected to affect marine mammals in any manner not considered in previous consultations on the fisheries.

9.4 Endangered Species Act (ESA)

Section 7 of the ESA requires federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species.

Pursuant to section 7 of the ESA, NMFS issued a Biological Opinion (Opinion) on May 27, 2021, that considered the effects of the NMFS' authorization of ten FMPs, NMFS' North Atlantic Right Whale Conservation Framework, and the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2, on ESA-listed species and designated critical habitat. The ten FMPs considered in the Opinion include the: (1) American Lobster; (2) Atlantic Bluefish; (3) Atlantic Deep-Sea Red Crab; (4) Mackerel/Squid/Butterfish; (5) Monkfish; (6) Northeast Multispecies; (7) Northeast Skate Complex; (8) Spiny Dogfish; (9) Summer Flounder/Scup/Black Sea Bass; and (10) Jonah Crab FMPs. The American Lobster and Jonah Crab FMPs are permitted and operated through implementing regulations compatible with the interstate fishery management plans issued under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, the other eight FMPs are issued under the authority of the MSA.

The 2021 Opinion determined that the NMFS' authorization of ten FMPs, NMFS' North Atlantic Right Whale Conservation Framework, and the NEFMC's Omnibus Essential Fish Habitat Amendment 2: (1) may adversely affect, but is not likely to jeopardize, the continued existence of North Atlantic right, fin, sei, or sperm whales; the Northwest Atlantic Ocean distinct population segment (DPS) of loggerhead, leatherback, Kemp's ridley, or North Atlantic DPS of green sea turtles; any of the five DPSs of Atlantic sturgeon; Gulf of Maine DPS Atlantic salmon; or giant manta rays; and, 2)is not likely to adversely affect designated critical habitat for North Atlantic right whales, the Northwest Atlantic Ocean DPS of loggerhead sea turtles, U.S. DPS of smalltooth sawfish, Johnson's seagrass, or elkhorn and staghorn corals. An Incidental Take Statement was issued in the Opinion. The Incidental Take Statement includes reasonable and prudent measures and their implementing terms and conditions, which NMFS determined are necessary or appropriate to minimize impacts of the incidental take in the fisheries assessed in this Opinion.

Given the information provided above, it has been determined that the proposed action is within the scope of the MSB FMP considered in the 2021 Opinion and will not create impacts to ESA-listed species or critical habitat that go above and beyond those considered in the 2021 Opinion completed by NMFS.

9.5 Coastal Zone Management Act

Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, requires that all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The Coastal Zone Management Act 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. Responsible management of coastal zones and fish stocks must involve mutually supportive goals. NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state (Maine through North Carolina). These states also participated in the Council processes that resulted in the proposed action.

9.6 Administrative Procedure Act

Section 553 of the Administrative Procedures 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.

9.7 Information Quality Act

Utility of Information Product

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 and 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 as discussed above.

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 document was developed to be consistent with any applicable laws, including the MSA and its 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 evaluate the impacts of those measures. 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 regarding the relevant fisheries.

The review process for the proposed action involves the MAFMC, 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 MAFMC 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.

9.8 Paperwork Reduction Act

The Paperwork Reduction Act concerns the collection of information. The intent of the Act 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. The Council is not proposing measures under this regulatory action that require review under Paperwork Reduction Act. There are no changes to existing reporting requirements previously approved under this FMP. This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

9.9 Federalism/Executive Order 13132

The proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order (EO) 13132.

9.10 Environmental Justice/Executive Order 12898

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations provides guidelines to ensure that potential impacts on these populations are identified and mitigated, and that these populations can participate effectively in the NEPA process (EO 12898 1994). NOAA guidance NAO 216-6A, Companion Manual, Section 10(A) requires the consideration of EO 12898 in NEPA documents. Agencies should also encourage public participation, especially by affected communities, during scoping, as part of a broader strategy to address environmental justice issues. Minority and low-income individuals or populations must not be excluded from participation in, denied the benefits of, or subjected to discrimination because of their race, color, or national origin. Although the impacts of this action may affect communities with environmental justice concerns, the proposed actions are not expected to adversely affect participation in the relevant fisheries; therefore, no negative economic or social effects in the context of EO 12898 are anticipated.

9.11 Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), codified at 5 U.S.C. 600-611, is 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 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.

9.12 Basis and Purpose of the Rule and Summary of Preferred Alternatives

This action is taken under the authority of the MSA and regulations at 50 CFR part 648. As previously stated, the purpose of this action for chub mackerel is to maintain the same catch and landings limits in 2023-2025 as in 2020-2022. For butterfish, very similar measures are proposed for 2023-2024 as existed for 2021-2022.

9.13 Description and Number of Entities to Which the Rule Applies

The proposed specifications have the potential to impact vessels which participate in the commercial chub mackerel and/or butterfish fisheries in federal waters. For-hire vessels are required to possess the MSB federal for-hire permit to retain chub mackerel in federal waters and the chub mackerel catch and landings limits apply to both commercial and recreational fisheries. However, the proposed specifications are expected to have no impacts on for-hire entities as no proposed measures would apply to for-hire entities beyond the TAL and permit requirement. Therefore, only commercial entities are considered in this section. Staff used NMFS databases with ownership data provided by the Social Science Branch of the NEFSC to identify the vessels/entities that could be affected by this action.

Amendment 21 to the MSB FMP required that all commercial vessels which retain any chub mackerel in federal waters from Maine through North Carolina must have any federal commercial permit for Atlantic mackerel, *Illex* squid, longfin squid, or butterfish. This includes limited access permits for longfin squid, butterfish, *Illex* squid, and Atlantic mackerel (qualification criteria apply), as well as open access incidental permits for squid/butterfish and Atlantic mackerel. Since vessels with butterfish permits are included in this list, the universe of potentially affected entities across both fisheries is the universe of those potentially affected for chub mackerel, i.e., any vessel with any MSB commercial permit. In 2021, that consisted of 1,629 permits. When those permits are grouped according to common owners, and when affiliates which derived most of their revenues in 2021 from for-hire fishing are excluded, this results in 1,094 potentially impacted affiliates, of which 1,083 (99%) qualified as small businesses (combined annual receipts not in excess of $11 million).

9.14 Economic Impacts on Regulated Entities

As previously stated, this action would implement the same chub mackerel catch and landings limits for 2023-2025 as were in place for 2020-2022. Commercial and recreational landings have collectively been well below the TAL since it was first implemented in 2020. Implementation of this same TAL for 2023-2025 is not expected to impact fishing operations, landings, revenues, angler satisfaction, or other socioeconomic impacts. It would allow higher commercial and

recreational landings compared to all past years except for 2013 (Table 3) if market conditions, availability, or other factors change.

For butterfish, the proposed 2023/2024 specifications and associated commercial quotas are slightly lower than the 2022 specifications/quota, but would still be well above any annual butterfish landings over the last 20 years.

For these reasons, this action is not expected to have any adverse impacts on the fisheries for chub mackerel or butterfish or on any relevant small businesses. It is not expected to impact small businesses differently than large businesses and it is not expected to unduly inhibit the ability of small entities to compete.

9.15 Analysis of Non-Preferred Alternatives

When considering the economic impacts of the alternatives under the Regulatory Flexibility Act, consideration should also be given to those non-preferred alternatives which would result in higher net benefits or lower costs to small entities while still achieving the stated objective of the action. The Council did not consider any alternatives other than those described above. The proposed specifications follow previously implemented methods and the FMP, are based on the best available scientific information, and are intended to prevent overfishing.

10.0 Preparers and Persons Consulted

This document was prepared by Julia Beaty and Jason Didden, both MAFMC staff.

NMFS provided guidance and review of this document from procedural, regulatory, and scientific perspectives. The Council also consulted with the Mid-Atlantic and New England states through their participation on the Council and related meetings.

Copies of this 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

11.0 References

MAFMC 2020. Environmental Assessment (EA) for Amendment 21 to the MSB FMP, available at https://www.mafmc.org/msb.

MAFMC 2021. Environmental Assessment (EA) for MSB species including 2021-2022 Butterfish Specifications, available at https://www.mafmc.org/msb.

MAFMC 2022. 2022 Reports of the MAFMC's SSC are available at https://www.mafmc.org/ssc.

NEFSC 2022a. Butterfish 2022 Research Track Assessment. https://apps-nefsc.fisheries.noaa.gov/saw/sasi/sasi_report.php.

NEFSC 2022b. Butterfish 2022 Management Track Assessment. Available at https://apps-nefsc.fisheries.noaa.gov/saw/sasi/sasi_report.php.