

2024-2025 Atlantic Mackerel Specifications

Supplemental Information Report

February 2024



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

Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201
Dover, DE 19901
(302) 674-2331 tel.
(302) 674-5399 fax

National Marine Fisheries Service

55 Great Republic Drive
Gloucester, MA 01930
(978) 281-9315 tel.
(978) 281-9135 fax

Final action by Council: December 13, 2023
Initial submission to NMFS: January 3, 2024
Final submission to NMFS: February 13, 2024

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Acronyms, Abbreviations, and Wording Conventions

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
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
MAFMC	Mid-Atlantic Fishery Management Council
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
MT	Metric Tons
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
PBR	Potential Biological Removal
SSC	Scientific and Statistical Committee

1.0 Summary

- This document supports implementation of 2024-2025 federal waters specifications for Atlantic mackerel (referred to simply as “mackerel” hereafter).
- The proposed 2024-2025 specifications are designed to rebuild the mackerel stock by 2032, which is the same goal as the previous specifications.
- The Acceptable Biological Catches (ABCs) for 2024 and 2025 would be 3,200 metric tons (MT). The commercial quotas for 2024 and 2025 would be 868 MT.
- No changes are proposed for recreational measures.
- While the proposed ABCs and commercial quotas are lower than the status quo, they maintain the same goal and are expected to have similar impacts as the status quo. These impacts were described in the preceding relevant Environmental Assessment (EA) (MAFMC 2023a), meaning that a supplemental EA is not required to address the requirements of the National Environmental Policy Act (NEPA).

2.0 Purpose of this Supplemental Information Report

This Supplemental Information Report considers if the proposed specifications require further analysis beyond the analyses presented in the preceding relevant Environmental Assessment (EA) (MAFMC 2023a: the Mackerel Rebuilding, Version 2 EA). The MAFMC 2023a EA (referenced simply as the “preceding EA” hereafter) supported continued mackerel rebuilding via the 2023 mackerel specifications.

To determine the potential 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 supplemental EA.

This document describes the proposed action with comparison to the impacts considered in the preceding EA. Consideration is given to significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts. The primary new information considered included the 2023 Atlantic Mackerel Stock Management Track Assessment (“Mackerel MTA” hereafter) (NEFSC 2023) and the SSC’s mackerel Acceptable Biological Catch (ABC) recommendations made in October 2023 (MAFMC 2023b). However, the new information did not cause a significant change in the evaluation of environmental impacts/concerns (details of this conclusion are described below).

3.0 Original Action

3.1 Amendment 23: Mackerel Rebuilding Version 2 and 2023 Specifications

On February 1, 2023 NMFS published a final rule with measures approved by the Council in Amendment 23 that: established a revised mackerel rebuilding plan; set the 2023 mackerel specifications (including a river herring and shad (RH/S) catch cap for the mackerel fishery); modified mackerel in-season closure measures; and established a recreational mackerel possession limit. These components of Amendment 23, which were the preferred alternatives in the 2023 EA, and as they relate to the 2023 specifications, are further described immediately below.

Acceptable Biological Catch (ABC): The rebuilding plan used a *fishing mortality rate* (“F”) of 0.12 to rebuild mackerel by 2032 with a predicted 61% probability of success. That F was used to generate the 2023 specifications, starting with the Acceptable Biological Catch (ABC) and ending with the commercial quota. The F of 0.12 was applied to the mackerel biomass, generating an ABC of 8,094 metric tons (MT).

U.S. Annual Catch Limit (ACL): An expected Canadian catch of 2,197 MT was deducted, generating a U.S. ACL of 5,897 MT. The Council decided to deduct half of Canada’s 2021 landings when calculating the U.S. ACL for 2023. The Canadians had been moving toward more restrictive management but the Canadian outcomes were uncertain, so a 2,197 MT deduction was judged to be a reasonable approach.

Commercial Quota: A commercial quota of 3,639 MT was set after deducting expected recreational catch (2,143 MT) and expected commercial discards (115 MT). The 2,143 MT expected recreational catch was based on the 2017-2021 average minus 17% to account for expected reduced landings due to the new 2023 20-fish recreational limit. The 115 MT expected commercial discards was based on the 2017-2019 discard estimates from the 2021 mackerel assessment (MAFMC 2023a, NEFSC 2021).

129 MT River Herring and Shad (RH/S) Cap: 129 MT was the amount of RH/S if the ratio of cap to all catch on mackerel trips was about 0.53% and applied to the 2019 quota of 17,371 MT. The Council has since kept the RH/S cap at 129 MT despite lower mackerel quotas because lower RH/S caps may be impracticable to monitor. For example, at lower caps the mackerel fishery would be more likely to close before 5 observer trips have occurred, forcing use of prior-year data.

In-season Closure Measures: Due to the lower commercial quota, a modified closure approach included an initial closure with different thresholds based on the time of year, and a final closure when the fishery is close to harvesting the full commercial quota (see Table 1 on next page). The action retained the existing measures in the regulations that provide NMFS with the discretion to not close the fishery in November and December if performance suggests that a quota overage is unlikely.

Recreational Possession Limit: To contribute to rebuilding, a 20-fish recreational possession limit was deemed appropriate and expected to reduce catch in a given year by about 17%.

Table 1. Atlantic Mackerel Commercial Fishery Closure Approach

	Time of year	Unharvested DAH remaining (mt)	2023 Closure threshold amounts (mt)	Possession limit adjustments
Initial Closure	Before May 1	886	2,753	40,000 lb (18.14 mt) for Tier 1, 2, or 3 limited access permits;
	May 1 or after	443	3,196	5,000 lb (2.27 mt) for incidental/open access permits.
Final Closure	Any time of year	100	3,539	5,000 lb (2.27 mt) for all federal Atlantic mackerel permit holders.

3.2 Other Alternatives Analyzed

The Council considered a range of more and less precautionary rebuilding approaches per Table 2 below. The rebuilding approaches resulted in 2023 quota ranges from zero for Alternative 1 to 4,916 MT to Alternative 5. The Council also considered 0-15 fish recreational possession limits, complete closures (commercial and recreational) of the U.S. Exclusive Economic Zone (i.e. federal waters beyond 3 miles), an 89 MT RH/S cap, and scaling the RH/S with the commercial quota.

Table 2. Amendment 23 Rebuilding Approaches

Recruitment Assumptions	Rebuilding Alternative	10-Yr Rebuilding Probability
Poor recruitment for all 10 years	ALTERNATIVE 1: Eliminate most catch to rebuild as much as possible in 10 years. Because poor recruitment is assumed for all 10 years, the 10-year rebuilding probability for this alternative is not directly comparable to the others. It may be useful to think of it as: Alternative 1 has a 57% chance of rebuilding in 10 years even if recruitment stays poor, while the others' probabilities are contingent on recruitment slowly improving.	57%
Recruitment starts low (similar to 2009+) and then increases toward long term (1975+) typical recruitment	ALTERNATIVE 2: Use a risk buffer from a rebuilding fishing mortality rate of 0.14.	62%
	ALTERNATIVE 3: Use the standard Council risk policy to rebuild.	52%
	ALTERNATIVE 4 (PREFERRED): Use a fishing mortality rate of 0.12 to rebuild.	61%
	ALTERNATIVE 5: Use a fishing mortality rate of 0.14. to rebuild.	53%

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 has bearing on the action or its impacts.

The primary new information on mackerel considered included the 2023 Mackerel MTA (NEFSC 2023) and the SSC's Acceptable Biological Catch (ABC) recommendations made in October 2023 for the 2024-2025 specifications considered in this document (MAFMC 2023b). The 2023 Canadian mackerel assessment and preliminary 2023 mackerel catches were also noted. As described below, while these sources of new information contributed to decision-making for mackerel, they were not significant to related analyses or our understanding of environmental effects.

2023 Mackerel MTA (NEFSC 2023): Compared to the 2021 Mackerel MTA used in the preceding EA, which considered data and estimated mackerel stock size through 2019, the 2023 Mackerel MTA found that the stock in 2019 was 45% lower than originally estimated (spawning stock biomass (SSB) of 23,505 MT versus 42,862 MT). The terminal 2022 year in the 2023 Mackerel MTA was estimated at 19,017 MT so the stock remains overfished, with spawning stock biomass estimated to be at about 12% of the biomass target. While not the hoped-for trends, it was previously understood that the terminal year estimates are generally uncertain. The 2011-2015 biomasses were and still are estimated to have been in the 15,000-20,000 MT range, about the same as where the new assessment estimates that mackerel was in 2022 (19,017 MT), its terminal year. So our overall understanding of the mackerel stock has not significantly changed – biomass is very small compared to historical estimates. We have also confirmed our previous understanding that terminal year estimates are relatively more uncertain than preceding years that integrate more data, and that projections are yet even more uncertain than terminal year estimates. These findings are generally true of every stock assessment ever conducted: in general, terminal year estimates are relatively more uncertain than preceding years that integrate more data, and projections are yet even more uncertain than terminal year estimates. The assessment also indicates that overfishing appears to have been barely avoided in 2022, which is a change from the previous assessment considered in the EA. However, this was due to lower catches lowering the expected fishing mortality rate rather than a change in our information about the general condition of the mackerel stock. Thus the updated 2023 Mackerel MTA information is not significantly different from that considered in the preceding EA.

October 2023 SSC ABC Recommendation (MAFMC 2023b): Compared to the standard assessment projections, the SSC recommended adjusting the initial stock size downward by setting the 2022 recruitment to the median of the time series. This adjustment is considered appropriate in view of the overestimation of rebuilding in recent years and the low precision of the estimate of year class strength in the terminal year of the assessment. Based on this scenario, the SSC recommended the following ABCs (Table 3):

Table 3. SSC Mackerel ABCs for 2024-2025.

Projection	2024	2025
Year-specific (mt)	2,726	3,900
Averaged (mt)	3,200	3,200

The year-specific ABCs are based on a rebuilding F of 0.07 with an expected probability of rebuilding of 60.5% (the same goal as the preceding EA). An average quota of 3,200 mt per year also is projected to result in a 60.5% chance of rebuilding if an F of 0.07 is applied to the population in the remainder of the rebuilding period (2026-2032). The SSC noted a variety of sources of uncertainty, which were similar to previous findings in 2021 (MAFMC 2021) and considered in the preceding EA. In 2021 the SSC also noted that previous rebuilding projections had not translated into subsequent estimated biomasses. The importance for rebuilding of seeing typical recruitment and survival into older ages has been a common theme for several iterations of mackerel assessments. Thus the findings of the SSC in 2023 were actually quite similar to the findings of the SSC in 2021. While the recommended 2024-2025 ABCs (3,200 MT) to facilitate rebuilding by 2032 are substantially lower than the 2023 ABC (8,094 MT), there is not really significant new information informing the new lower ABCs, rather the new ABCs are integrating updated information that was known to be a possible outcome given the inherent uncertainty in mackerel stock size projections. These uncertainties were described in the preceding EA and thus the updated 2023 SSC ABC information is not significantly different from that considered in the preceding EA.

2023 Canadian Mackerel Assessment: The 2023 Canadian Mackerel Assessment reached a similar conclusion as the 2021 Canadian Mackerel Assessment: that the mackerel stock was at or near all-time historical lows (DFO 2021, DFO 2023). Thus the updated Canadian information is not significantly different from that considered in the preceding EA.

2023 Preliminary Mackerel Catches: Preliminary data through October of each of the years 2018-2023 indicate that January-October recreational catches of mackerel 2018-2023 were generally similar (Figure 1). Thus the updated recreational catch information is not significantly different from that considered in the preceding EA.

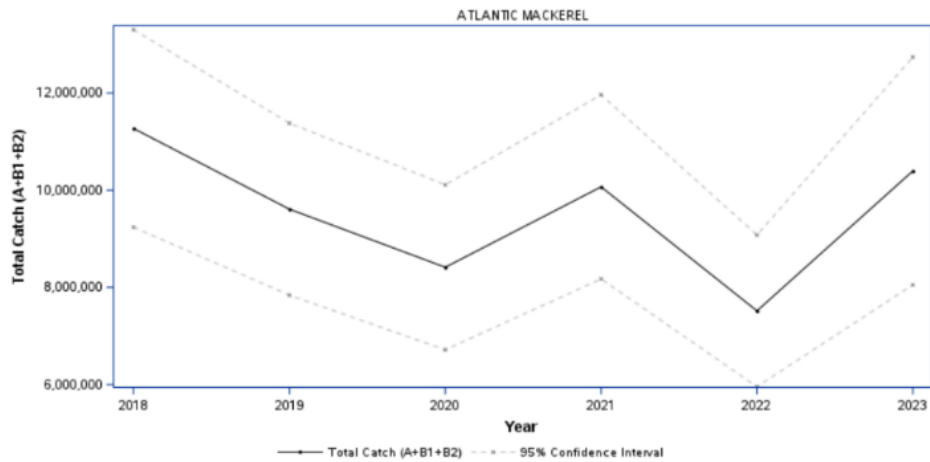


Figure 1. Preliminary 2018-2023 Recreational Mackerel Total Catches¹ Through October of Each Year.

Preliminary 2023 commercial landings were higher than 2022 (Figure 2) and were constrained by an interim rule on October 12, 2023 (<https://www.fisheries.noaa.gov/bulletin/noaa-fisheries-announces-reduced-catch-limits-atlantic-mackerel>). Projections in the 2023 Mackerel MTA indicated that if the 2023 quota was landed, overfishing would occur, so in August 2023 the Council requested NMFS take action to limit landings earlier than would have otherwise occurred (<https://www.mafmc.org/briefing/august-2023>). At the preliminary 2023 landings amount of 3,047 MT, while landings would be slightly higher than 2022, they are not significantly different from other recent landings considered in the preceding EA.

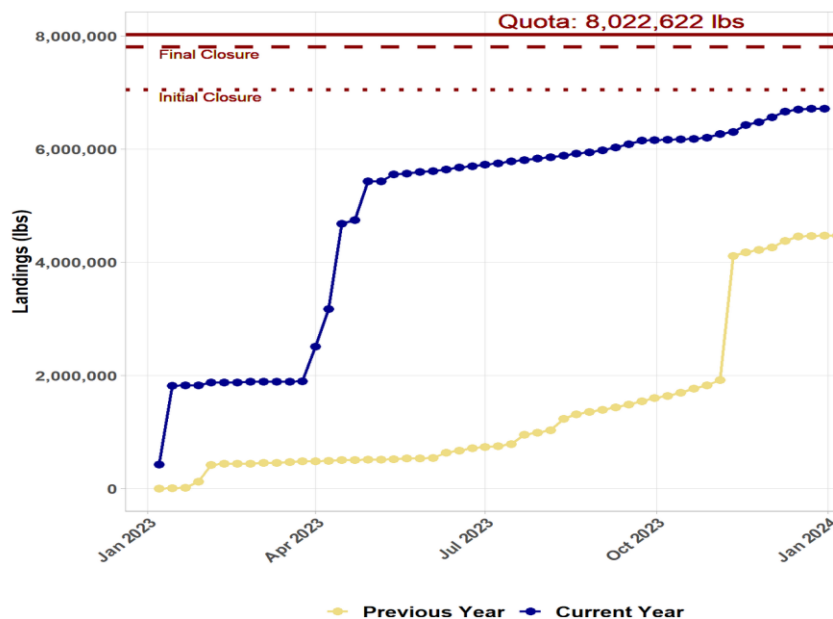


Figure 2. Preliminary 2022 (orange) and 2023 (blue) Mackerel Landings.

¹ Numbers of fish through October of each year; Maine through Virginia; all modes, areas, and types. Source: MRIP online query: <https://www.fisheries.noaa.gov/data-tools/recreational-fisheries-statistics-queries>.

The following represents the primary relevant new protected species information compared to the information considered in the MAFMC 2023a EA:

- On May 27, 2021, NMFS completed formal consultation pursuant to section 7 of the ESA of 1973, as amended, and issued a biological opinion on the authorization of eight fishery management plans (FMPs), two interstate fishery management plans (ISFMP), and the implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat (EFH) Amendment 2.² The 2021 Opinion considered the effects of the authorization of these FMPs, ISFMPs, and the implementation of the Omnibus EFH Amendment on ESA-listed species and designated critical habitat, and determined that those actions were not likely to jeopardize the continued existence of any ESA-listed species or destroy or adversely modify designated critical habitats of such species under our jurisdiction. Along with the ESA-listed species of sea turtles, sturgeon, salmon, and large whales that were considered in previous Opinions on the FMPs in the Greater Atlantic Region, the 2021 Opinion also considered ESA-listed species of giant manta rays.

On January 10, 2024, NMFS issued a 7(a)(2)/7(d) memorandum that reinitiated consultation on the 2021 Biological Opinion. Additional information on the reinitiation is provided in section 9.4.

- Updated information on documented incidences of interactions with gear types similar to those predominantly used in the mackerel fishery. At the time that the MAFMC 2023a EA was issued, depending on species, the best available information on documented gear interactions with specific protected species was provided through 2019. Since issuance of the this EA, there have been updates to the observed/documented interactions between a specific gear type and a protected species in gear similar to that used in mackerel fishery. The updated information continues to reveal interactions occurring with gear types similar to those used in the commercial mackerel fishery, and at rates or numbers that show relatively similar trends as provided in the MAFMC 2023a EA. It's important to note, that depending on species (e.g., sea turtles), modeling methods may have changed since the previous EA was issued. As a result, there may not be a one to one comparison in information provided between the previous and most recent information, and therefore, changes in estimated protected species bycatch rates do not necessarily signify significant changes in interaction risks/rates since the MAFMC 2023a EA was issued.

5.0 Proposed New Action

After reviewing advice from the SSC and considering input from the public, the Council adopted mackerel specifications for the 2024-2025 fishing years at its December 2023 meeting (<https://www.mafmc.org/briefing/december-2023>). To increase year to year stability, the Council

² The eight Federal FMPs considered in the May 27, 2021, Biological Opinion include: (1) Atlantic Bluefish; (2) Atlantic Deep-sea Red Crab; (3) Mackerel, Squid (*Illex* and Longfin), and Butterfish; (4) Monkfish; (5) Northeast Multispecies; (6) Northeast Skate Complex; (7) Spiny Dogfish; and (8) Summer Flounder, Scup, and Black Sea Bass. The two ISFMPs are American Lobster and Jonah Crab

adopted the averaged ABC approach from Table 1 above, so the ABCs for 2024-2025 would be 3,200 MT for both years. The RH/S cap (summarized above) is not proposed to be changed, and would be unlikely to be triggered at the proposed landings limits.

These specifications replaced the preliminary measures approved by the Council in August 2023 pending additional peer review of the 2023 Mackerel MTA, as well as a request by the Council for its SSC to provide an averaged ABC approach recommendation (see Table 1 above). The Council ultimately selected the averaged ABC approach, resulting in ABCs of 3,200 MT for both 2024 and 2025. After accounting for expected Canadian catch, U.S. recreational catch, and U.S. commercial discards, the Council recommended setting the commercial quota at 868 MT (1.9 million pounds) for both years. The rationales for the respective deductions are described next.

For 2024-2025, 74 MT would be deducted for Canada. This is Canada's most recent estimate for 2022 landings. Canada did mostly close their 2022 fishery and maintained that approach for 2023. There is no indication Canada's approach will change in 2024-2025.

For 2024-2025, 2,143 MT would be deducted for recreational catch. While 2022 recreational catch was somewhat lower than 2019-2021, preliminary 2023 data suggests a return to catches similar to 2019-2021 (Figure 1), so maintaining a status-quo recreational deduction of 2,143 MT seems reasonable.

For 2024-2025, 115 MT would be deducted for commercial discards. Recent (2018-2022) discards have been slightly above or below 115 MT (NEFSC 2023) so no changes to the commercial discard set-aside appear warranted.

Given the low resulting quota (868 MT), the commercial fishery would be limited to mostly incidental landings. The Council recommended setting an initial trip limit of 20,000 pounds for limited access permits and 5,000 pounds for open access permits. Once 80% of the quota has been landed, trip limits would change to 10,000 pounds for limited access permits and 2,500 pounds for open access permits. Monitoring Committee Analysis of 2022-2023 data³ suggested these limits would keep landings below or very near the quota. No changes were recommended for the recreational sector; the impacts of recent recreational measures (a first ever 2023 bag-limit of 20 fish per person) will be evaluated in the future. No extra Tier 3 quota limitation is warranted given the entire limited access fishery is generally restricted to incidental levels of landings from the start of the year.

While these measures should support rebuilding across a range of recruitments, achieving a rebuilt mackerel stock that regularly supports optimum yield near the assessment's target fishing rate will depend on getting more typical recruitment and increased survival of more mackerel into older age classes. This is not a different finding from the preceding EA.

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https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/6548fccb822a9a3bb8c77fea/1699282123463/mackerel_trip_limits.pdf

6.0 NEPA Compliance and Supporting Analysis

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 (and/or its impact analyses). 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 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 (for example this Supplemental Information Report) may be used to demonstrate that an original NEPA document sufficiently considered and analyzed the proposed actions and its effects.

Impacts on valued ecosystem components would not appreciably change from what was previously described in preceding EA. Principally, related to the managed resource, the specifications still seek to facilitate mackerel rebuilding by 2032 (with the same 61% probability as the original action) and our understanding of the uncertainty about mackerel rebuilding has not appreciably changed – the substantial uncertainty about mackerel rebuilding was extensively described in the preceding EA. While the new assessment indicated that overfishing was avoided in 2022 (a reflection of recent effort and a change from the previous assessment considered in the EA), this change was minor in the context of overall biological impacts to the target species. Overfishing did not occur by only a very slim margin (2022 F was 0.18 vs overfishing would be above 0.21). Additionally, the stock’s continued low biomass levels and overfished status are more meaningful indicators of mackerel’s similar biological condition and progress toward long-term sustainability under ongoing rebuilding measures, and were the key factors in the EA’s original impact conclusions. Thus the same “slightly positive given the relatively slow pace of rebuilding” conclusion regarding impacts for the mackerel stock would be expected. In addition, alternatives in that EA considered ABCs as low as 703 MT and one alternative (Rebuilding Plan Alternative 2) considered initial 2023-2024 ABCs (2,976 MT and 4,168 MT respectively) very similar to the ABCs now being recommended for 2024-2025. These lower ABCs were considered for the same basic reason as the currently-recommended ABCs – recruitment and survival of recruitment may be lower than originally anticipated/projected. Neither this action nor the new assessment information has appreciably changed the expected impacts to the mackerel resource or other valued ecosystem components noted below.

Further quota reductions are not expected to lead to substantial shifts in fishing effort to other fisheries that could appreciably affect impacts to Valued Ecosystem Components. Under the already relatively small 2023 quota, notable changes in other fisheries were not observed. While an even lower level of mackerel effort would be expected under the proposed measures, this is not expected to translate to substantial changes in the overall amount or nature of effort on other fisheries because the high volume fisheries that relevant vessels might switch to (e.g. Atlantic herring, *Illex* squid, and menhaden) are already quota-limited.

The ABC and quota (and the overall amount of effort associated with those limits) are generally the primary drivers of impacts in the fishery. The changes to trip limits do not have a direct impact on Valued Ecosystem Components but just support achievement of (but not exceedance of) the targeted quotas/ABCs, in the same general fashion as the current trip limits. Likewise, while the recommended deduction for expected Canadian landings has changed, that specification’s purpose is also to maintain adherence to the overall ABC and facilitate stock rebuilding rather than directly affecting the Valued Ecosystem Components separate from the overall quota/ABC specifications.

Non-Target Species Impact Summary

Non-target interactions are relatively low in the mackerel fishery, and the proposed 2024-2025 specifications would reduce landings from no action and recent fishery performance, thereby limiting effort and further slightly reducing the ongoing slight negative impacts on non-target species identified by the preceding EA for the original preferred alternative. While there would be lower mackerel effort overall, no changes in effort would be expected to be so substantial that they could change the stock status of any other managed species. While unlikely to be triggered, the RH/S cap is not being changed, and would continue to help manage impacts on those species.

Habitat Impact Summary

The proposed 2024-2025 specifications would reduce catch from no action and recent fishery performance, thereby limiting effort and slightly reducing the ongoing slight negative impacts on habitat identified by the preceding EA for the original preferred alternative.

Protected Resources Impact Summary

As noted in section 4.0, on January 10, 2024, NMFS issued a 7(a)(2)/7(d) memorandum that reinitiated consultation on the 2021 Biological Opinion. Given the information provided above, the proposed action does not entail making any changes to the mackerel fishery during the reinitiation period that would cause an increase in interactions with or effects to ESA-listed species or their critical habitat beyond those considered in NMFS' January 10, 2024, reinitiation memorandum. Therefore, the proposed action is consistent with NMFS' January 10, 2024, 7(a)(2) determination, and as such, this new information is not expected to change any of the impacts previously considered. In addition, none of the updated information on observed/documented interactions between protected species and gear types similar to those used in the mackerel fishery will change the determination of impacts provided in the previous EA. Taking into consideration the above, this new information is not expected to change any of the impacts previously considered in the preceding EA and/or its finding of no significant impact (FONSI).

The protected resource impacts predicted in the preceding EA for the original preferred alternative would thus be maintained: slight negative impacts to species listed under the Endangered Species Act (ESA) or marine mammals protected under the Marine Mammal Protection Act (MMPA) that are in poor condition (or reinforce the current slight positive impacts for marine mammals in good condition).

Human Communities Impact Summary

While landings may be restricted in the short term, human communities should have moderate positive impacts associated with the ongoing benefits (commercial and recreational) that will be derived from a rebuilding/rebuilt mackerel stock. Due to depletion of the mackerel stock, recent mackerel landings are already a fraction of historic levels (e.g. comparing landings in the 2020s or

2010s to previous decades). These findings are very similar to the predicted impacts of the preceding EA for the original preferred alternative.

7.0 Public Participation

The public had the opportunity to comment at several points during development of the original 2023 specifications including during rulemaking and at relevant Council meetings. Public comments were also collected on the currently effective interim rule (88 FR 70909) as well. Likewise when developing the measures being considered via this document, public comments were taken at several meetings (noticed in the Federal Register) of the Council and/or its committees, including the Council meeting where the proposed specifications were adopted by the Council (December 2023: <https://www.mafmc.org/briefing/december-2023>). There will also be an opportunity for public comment associated with this action's proposed rule publication in the Federal Register.

8.0 Conclusion

After considering the proposed action, new information, and new circumstances, NMFS has determined that it is not necessary to supplement the Atlantic Mackerel Rebuilding, Version 2 EA and FONSI because: (1) the proposed specifications and their impacts are not substantially different from what was originally considered and analyzed; and (2) no new information or circumstances exist that are significantly different from when the FONSI was signed on January 12, 2023. The original EA and FONSI 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 for these specifications 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 to the extent practicable (National Standard 3). These management measures do not discriminate among residents of different states, (National Standard 4), nor do they have economic allocation as their sole purpose (National Standard 5). They account for and can address variations in these fisheries and future actions can do likewise (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 adversely affect, 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 previous regulations that have indirectly acted to reduce fishing gear impacts on essential fish habitat, and nothing in this action should change previous conclusions regarding the fishery's impact on 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)

We have preliminarily determined that the proposed action and its effects fall within the scope of the preceding EA (described above), and that those analyses address this action's impacts. Thus, supplemental NEPA analyses or revisions to the previous finding of no significant impact (FONSI) are unnecessary.

9.3 Marine Mammal Protection Act (MMPA)

None of the measures herein considered 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. Potential impacts to marine mammals from the proposed action are summarized above; additional information supporting these determinations can be found in the preceding EA.

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.

On May 27, 2021, NMFS completed formal consultation pursuant to section 7 of the ESA of 1973, as amended, and issued a biological opinion ([2021 Opinion](#)) on the authorization of eight FMPs, two interstate fishery management plans (ISFMP), and the implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat (EFH) Amendment 2.⁴ The 2021 Opinion considered the effects of the authorization of these FMPs, ISFMPs, and the implementation of the Omnibus EFH Amendment on ESA-listed species and designated critical habitat, and determined that those actions were not likely to jeopardize the continued existence of any ESA-listed species or destroy or adversely modify designated critical habitats of such species under NMFS jurisdiction. An Incidental Take Statement (ITS) was issued in the Opinion. The ITS 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.

⁴ The eight Federal FMPs considered in the May 27, 2021, Biological Opinion include: (1) Atlantic Bluefish; (2) Atlantic Deep-sea Red Crab; (3) Mackerel, Squid, and Butterfish; (4) Monkfish; (5) Northeast Multispecies; (6) Northeast Skate Complex; (7) Spiny Dogfish; and (8) Summer Flounder, Scup, and Black Sea Bass. The two ISFMPs are American Lobster and Jonah Crab.

On January 10, 2024, NMFS issued a 7(a)(2)/7(d) memorandum that reinitiated consultation on the 2021 Biological Opinion. The federal actions to be addressed in this reinitiation of consultation include the authorization of the federal fisheries conducted under the aforementioned eight federal FMPs (see footnote 1). The reinitiated consultation will not include American lobster and Jonah crab fisheries, which are authorized under ISFMPs. On December 29, 2022, President Biden signed the Consolidated Appropriations Act (CAA), 2023, which included the following provision specific to NMFS' regulation of the lobster and Jonah crab fishery to protect right whales, "Notwithstanding any other provision of law ... for the period beginning on the date of enactment of this Act and ending on December 31, 2028, the Final Rule ... shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance with the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)." Given this, the American lobster and Jonah crab fisheries remain in compliance with the ESA through December 31, 2028.

Based on our preliminary assessment of the proposed action, we have determined that the proposed action does not entail making any changes to fishery operations during the reinitiation period that would cause an increase in interactions with, or effects to, ESA-listed species or their critical habitat beyond those considered in NMFS' January 10, 2024, reinitiation memorandum. Therefore, this action is consistent with NMFS' January 10, 2024, 7(a)(2) determination.

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. If any abridgement of the standard rulemaking process is considered for this action (not currently anticipated), NMFS will address the rationale for such abridgement during relevant rulemaking.

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 NMFS to decide on implementation of annual specifications and management measures.

The action was developed to be consistent with the FMP, the 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 considered action 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

This “Natural Resource Plan” 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 relevant 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 Council, NMFS regional offices, and NMFS headquarters. Relevant staff have expertise in fisheries biology/ecology, population dynamics, social sciences, fisheries management, policy analysis, habitat conservation, protected resources, and applicable law. Final approval of the proposed action and clearance of the rule is conducted by staff at NMFS’ 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. There are no changes to existing reporting requirements previously approved under this FMP, so 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 sustainable participation in the relevant fisheries; therefore, no negative economic or social effects in the context of EO 12898 are anticipated. Rather, rebuilding the mackerel stock should result in improved economic opportunities for affected communities.

9.11 EO 12866 Analysis – Regulatory Impact Review

INTRODUCTION

Executive Order 12866 (with a recent amendment of Section 3(f) by Executive Order 14094 on April 6, 2023) defines a “significant regulatory action” as one that is likely to result in:

- i. an annual effect on the economy of \$200 million or more, or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- ii. a serious inconsistency or interference with an action taken or planned by another agency;
- iii. a budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof;
- iv. novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this executive order.

PROBLEM STATEMENT

The current quotas are set too high to achieve timely stock rebuilding, so this action is needed to reduce catch.

OBJECTIVES

The objective of this action is to implement 2024-2025 Atlantic mackerel specifications to facilitate stock rebuilding, in accordance with the objectives of the MSB Fishery Management Plan, which are binned into three goals:

Goal 1: Maintain sustainable MSB stocks.

Objective 1.1: Prevent overfishing and maintain sustainable biomass levels that achieve optimum yield in the MSB fisheries.

Objective 1.2: Consider and, to the extent practicable, account for the roles of MSB species/fisheries in the ecosystem.

Goal 2: Acknowledging the difficulty in quantifying all costs and benefits, achieve the greatest overall net benefit to the Nation, balancing the needs and priorities of different user groups and effects of management on fishing communities.

Objective 2.1: Provide the greatest degree of freedom and flexibility to harvesters and processors (including shoreside infrastructure) of MSB resources consistent with

attainment of the other objectives of this FMP, including minimizing additional restrictions.

Objective 2.2: Allow opportunities for commercial and recreational MSB fishing, considering the opportunistic nature of the fisheries, changes in availability that may result from changes in climate and other factors, and the need for operational flexibility.

Objective 2.3: Consider and strive to balance the social and economic needs of various sectors of the MSB fisheries (commercial including shoreside infrastructure and recreational) as well as other fisheries or concerns that may be ecologically linked to MSB fisheries.

Objective 2.4: Investigate opportunities to access international/shared resources of MSB species.

Goal 3: Support science, monitoring, and data collection to enhance effective management of MSB fisheries.

Objective 3.1: Improve data collection to better understand the status of MSB stocks, the role of MSB species in the ecosystem, and the biological, ecological, and socioeconomic impacts of management measures, including impacts to other fisheries.

Objective 3.2: Promote opportunities for industry collaboration on research.

Objective 3.3: Encourage research that may lead to practicable opportunities to further reduce bycatch in the MSB fisheries.

ANALYSIS AND DETERMINATION OF EXECUTIVE ORDER 12866 SIGNIFICANCE

2021-2023 commercial mackerel landings averaged 3,520 MT (2023 preliminary). This is 2,652 MT more than the proposed 868 MT quota for 2024-2025. At 2022 mackerel prices, this could potentially amount to \$2.4 million less ex-vessel revenues annually. Landings/revenues should increase after 2025 as the stock rebuilds.

In 2023, only 12 vessels had more than \$10,000 in mackerel revenues and obtained more than 10% of their 2023 ex-vessel revenues from mackerel – these are the vessels most impacted by this action. These vessels can be further grouped into 6 smaller operators who averaged about \$33,000 in 2023 mackerel landings (averaging about \$55,000 in total ex-vessel landings revenues) and 6 larger operators who averaged about \$407,000 in 2023 mackerel landings (averaging about \$1,179,000 in total ex-vessel landings revenues).

Examination of landings records indicates the smaller operators could generally still perform similarly under the proposed trip limits they would be subject to (5,000 pounds initially and then 2,500 pounds after 80% of the quota was landed for these open-access permits). Their impacts should be minor, and the trip limits were partially designed to keep impacts on them low given their small contribution to total landings.

Most of the mackerel landings on the 6 larger operators came from trips substantially above the trip limits proposed for the limited access vessels, which most of them operate under (20,000 pounds initially and then 10,000 pounds after 80% of the quota was landed for these open-access

permits). Thus these 6 larger operators would likely see their mackerel ex-vessel revenues fall substantially.

While a reduction in revenues would be expected for these 6 larger operators, the impacts are well below the \$200 million threshold for a significance determination. In addition, there should be no interactions with activities of other agencies and no impacts on entitlements, grants, user fees, or loan programs. The proposed action is also similar to actions taken previously that set Atlantic mackerel specifications, and as such does not raise novel legal or policy issues. The reductions should increase long-term revenues by rebuilding the stock, which should increase sustainable yields even though there are negative short term impacts for these operators/vessels.

There should not be substantial distributional issues (limited access and open access permits have different trip limits but this is typical in fisheries in the region), and impacts on income and employment should mirror the impacts on fishing revenues described in this document. As described in Section 7 of the preceding EA, the Council has concluded that no significant Cumulative effects will result from rebuilding the mackerel stock. There are no other expected social concerns.

Given the above considerations, the proposed action is not considered significant as defined by Executive Order 12866.

9.12 Regulatory Flexibility Act – Initial Regulatory Flexibility Analysis

The purpose of the Regulatory Flexibility Analysis (RFA) is to reduce the impacts of burdensome regulations and record-keeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small business entities. Based on this information, the Regulatory Flexibility Analysis determines whether the preferred alternative would have a “significant economic impact on a substantial number of 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 preliminarily not needed in this case.

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

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR § 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the five years from 2018 through 2022.

The proposed specifications have the potential to impact vessels which have limited access or open access/incidental mackerel permits. As downloaded on August 15, 2023 at

<https://www.greateratlantic.fisheries.noaa.gov/public/public/web/NEROINET/aps/permits/data/index.html>, there were 116 limited access permits and 1,500 open access/incidental mackerel permits, for a total of 1,616 permits. Based on affiliate data provided by NMFS in June 2023, these permits were held by approximately 1,197 entities, and 1,186 were small business entities (11 were classified as large businesses).

Summary of the Proposed Action and significant alternatives

As described in Section 5, the purpose of this action is to facilitate mackerel rebuilding via the 2024-2025 specifications. With a quota of 868 MT, the commercial fishery would be limited to mostly incidental landings. The Council recommended setting an initial trip limit of 20,000 pounds for limited access permits and 5,000 pounds for open access permits. Once 80% of the quota has been landed, trip limits would change to 10,000 pounds for limited access permits and 2,500 pounds for open access permits. No changes were recommended for the recreational sector, including for-hire operations.

It may be relevant to note that the fishery is currently operating under interim measures to avoid overfishing, implemented October 13, 2023 and active through April 10, 2024. These interim measures included trip limits of 20,000 pounds for all limited access permits and 5,000 lb for all open access permits (the same limits that the fishery would open with upon implementation of this action).

Because of the rebuilding requirements of the MSA, and because the Council cannot exceed the ABC recommendations of its SSC, there are not viable alternatives that would lessen impacts on affected entities.

Description and estimate of economic impacts on small entities, by entity size and industry

2021-2023 commercial mackerel landings averaged 3,520 MT (2023 preliminary). This is 2,652 MT more than the proposed 868 MT quota for 2024-2025. At 2022 prices, this could potentially amount to \$2,382,849 less revenue annually, or \$1,991 less annually per the 1,197 entities. There is no information to suggest that the 1,186 small business entities would be differentially impacted versus the 11 large business entities.

Due to declines in the mackerel fishery, relatively few vessels have been active in the mackerel fishery in recent years. Only 20 vessel permits had more than \$10,000 in mackerel revenues in 2022 and while preliminary, only 23 vessel permits had more than \$10,000 in mackerel revenues in 2023.

As described in the Regulatory Impact Review Section above, further examination of 2023 landings data suggests that there are 6 vessels/operators that are likely to be substantially impacted by this action. Three of those vessels belong to small entities but further revenue breakdowns would likely violate the spirit of maintaining data confidentiality even though there are three entities (and the impacts described above for the 6 vessels/operators most impacted still provide an informative description of likely impacts).

Given the relatively few vessels that have been landing more than small values of mackerel in recent years, this action is not expected to have “a significant adverse impact on a substantial number of small entities.” Also, there is no information that the action might impact small businesses differently than large businesses or unduly inhibit the ability of small entities to compete. The Council also attempted to accommodate several smaller businesses who provided comments that their relatively modest operations could be highly impacted by lower trip limits for the open access permits (the Council had initially preferred a lower open access trip limit versus the proposed 5,000 pounds before 80% of the quota is landed and 2,500 pounds after 80% of the quota is landed).

Summary and Conclusions

The purpose of this action is to implement 2024-2025 Atlantic Mackerel specifications in support of rebuilding the stock. While the revenues that result from the proposed quota would be less than recent revenues from Atlantic mackerel, relatively few vessels have been active recently in the fishery, so the action would not have a significant adverse impact on a substantial number of small entities.

10.0 Preparers and Persons Consulted

This document was prepared by Jason Didden, of Council 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

DFO 2021. Fisheries and Oceans Canada. Science Advisory Report 2021/029. Assessment of the northern contingent of Atlantic Mackerel (*Scomber Scombrus*) in 2020. Available at https://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2021/2021_029-eng.html.

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