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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180807736-8999-02]

RIN 0648-BI41

Fisheries of the Northeastern United States; Framework Adjustment 12 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements Framework Adjustment 12 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This rule allows the possession of Atlantic mackerel after of the domestic annual harvest is projected to be caught instead of prohibiting the possession of Atlantic mackerel for the rest of the calendar year. This final rule implements this measure because it is necessary to prevent unintended negative economic impacts to other fisheries, such as Atlantic herring.

DATES: This rule is effective [*insert date of publication in the **FEDERAL REGISTER***].

ADDRESSES: The Mid-Atlantic Fishery Management Council (Council) prepared a supplemental environmental assessment (SEA) for Framework Adjustment 12 that describes the Council's preferred management measure and other alternatives considered and provides a thorough analysis of the impacts of the all alternatives considered. Copies of the Framework 12 SEA and the preliminary Regulatory Impact Review (RIR) analysis

are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The SEA/RIR is accessible via the Internet at <http://www.greateratlantic.fisheries.noaa.gov/> or <http://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Alyson Pitts, Fishery Management Specialist, (978) 281-9352, alyson.pitts@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2018, the Council adopted a final measure under Framework Adjustment 12 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). On August 17, 2018, the Council submitted the framework and draft SEA to NMFS for preliminary review, with final submission on October 18, 2018. NMFS published a proposed rule that included implementing regulations on October 3, 2018 (83 FR 50059). The public comment period for the proposed rule ended on October 19, 2018.

The Council developed Framework Adjustment 12 and the measure described in the proposed rule under the discretionary provision specified in section 303(b)(12) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*; 1853(b)(12)). The objective of this action is to change to possession limits when 100 percent of the domestic annual harvest (DAH) is landed, from zero possession to 5,000 lb (2,268 kg). The primary purpose of this action is to avoid adverse economic impacts to the commercial fishing industry once the DAH is projected to be harvested. Details concerning the development of these measures are contained in

the SEA prepared for this action and summarized in the preamble of the proposed rule, therefore they are not repeated here.

Approved Measure

The approved measure will allow the possession of up to 5,000 lb (2,268 kg) of Atlantic mackerel after 100 percent of the DAH has been projected to be harvested for the remainder of the 2018 fishing year and moving forward. Current regulations prohibit the possession of Atlantic mackerel after 100 percent of the DAH is harvested.

Comments and Responses

NMFS received four comments on this action, one was unrelated to the action, and is not addressed here. One was in favor of the proposed action and two were in opposition to this action.

Comment 1: One individual commented that quotas have been large and that there is no reason to increase the quota.

Response: Framework 12 does not increase the annual quota for Atlantic mackerel. This action allows for a small possession limit of Atlantic mackerel after the DAH has been caught. We do not expect this action will result in an overage of the ACL. Atlantic mackerel quotas have been greatly reduced since 2010. The Atlantic mackerel acceptable biological catch (ABC) was reduced by 70 percent from 2010 (156,000 mt) to 2011 (47,395 mt) and the 2016 ABC (19,898 mt) dropped by 87 percent compared to 2010 (156,000 mt).

Comment 2: One individual commented in support of this action because it would provide economic benefits for the industry. The commenter raised concern that over harvesting could result in a deduction of quota from the following fishing year, even

though the 5,000 lb (2,268 kg) possession limit is smaller compared to the current possession limit of 20,000 lb (9.08 mt).

Response: NMFS agrees that approval of this action will provide economic opportunities for the commercial fishing industry in the region. While there is potential for an over harvest of the DAH, there are additional accountability measures that would deduct an overage from the DAH in the following year, as required under § 648.24(b)(2) and (3). There is also a 10-percent uncertainty buffer of 2.2 million lb (997 mt) in the current specifications. Council staff have projected that even if 100 percent of the DAH is harvested, only about 17 percent (374,000 lb, 169 mt) of the management uncertainty buffer would be landed with a 5,000 lb (2,268 kg) possession limit. This action is not expected to compromise conservation while maintaining economic opportunities for fishing communities.

Comment 3: One industry participant expressed opposition to Framework 12, as the current measure has been set to prohibit the possession of mackerel when 100 percent of the DAH is harvested in order not to exceed the management uncertainty buffer. The commenter said that the uncertainty buffer was meant for uncertainty in biomass and for food to be set aside for predators. The commenter also suggested that NMFS should shift quota from the Tier 1 and 2 permit category, if this measure is intended for smaller commercial fishing entities, in order to prevent further overfishing. The commenter also claimed that Atlantic mackerel, river herring, and shad are overfished, and Framework 12 does not improve chances for the fishery to rebuild.

Response: The 10-percent management uncertainty buffer was designed because of the high volume nature of the fishery. The management uncertainty buffer is utilized in

the event that the Regional Administrator does not close the commercial mackerel fishery in time. Because of this, this action is not expected to compromise conservation or result in overfishing. If there is an over harvest of the DAH, there are additional accountability measures that would deduct an overage from the DAH in the following year, as required under § 648.24(b)(2) and (3). The 10 percent uncertainty buffer is 2.2 million lb (997 mt) and Council staff have projected that even if 100 percent of the DAH is harvested, only about 17 percent of the management uncertainty buffer would be landed.

The tiered permit system allows vessels to possess a certain amount of mackerel based on permit category, not quota allocation. There is no quota allocation in the Atlantic mackerel fishery. The stock is managed by an annual quota and monitored as a whole. Therefore, it is not possible to “shift” quota among permit categories. The implementation of Framework 12 may result in more mackerel catch and the potential for more river herring and shad catch. However, it does not address the catch caps that control bycatch of river herring and shad in the mackerel fishery. This action is not expected to compromise conservation of these species, as the caps will continue to limit bycatch.

Corrections

The proposed rule included a correction to § 648.14(g)(2)(ii)(D). However, the correction to that regulation has already been made in a final rule to implement Amendment 20 to the Atlantic Mackerel, Squid, and Butterfish FMP (December 14, 2018; 83 FR 64257). Therefore, this correction is no longer necessary as part of the current rulemaking.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this final rule is consistent with Framework Adjustment 12, other provisions of the Magnuson-Stevens Act, and other applicable laws.

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

Because this rule relieves a restriction by lifting the prohibition of the possession of Atlantic mackerel after the DAH has been caught, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Data and other information indicate that 100 percent of the 2018 DAH quota may be landed before the end of the fishing year. Landings data are updated on a weekly basis, and NMFS monitors catch data on a daily basis as catch increases toward the limit. The high-volume nature of this fishery, and other fisheries that cannot avoid mackerel, such as Atlantic herring, increase catch quickly relative to the quota. If implementation of this action is delayed, the quota for the 2018 fishing year may be exceeded, thereby prohibiting the possession on Atlantic mackerel, under the current regulations found at § 648.24(b)(1)(i), which would hinder the prosecution of fisheries unnecessarily in light of the current rulemaking.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received that would change the certification that this action will not have a significant economic impact on a

substantial number of small entities regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 14, 2018.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 648.14 [Amended]

2. In § 648.14, remove and reserve paragraph (g)(2)(ii)(F).

3. In § 648.24, revise paragraph (b)(1)(i) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1)(i) *Mackerel commercial sector EEZ closure.* NMFS will close the commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the Atlantic mackerel DAH is harvested if such a closure is necessary to

prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that 100 percent of the Atlantic mackerel DAH will be landed, NMFS will reduce the possession of Atlantic mackerel in the EEZ for the remainder of the fishing year to the amount specified in § 648.26(a)(2)(ii).

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4. In § 648.26, revise paragraphs (a)(1) introductory text and (a)(2) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(1) *Initial possession limits.* A vessel must be issued a valid limited access mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed, as specified in § 648.24(b)(1).

* * * * *

(2) *Closure possession restrictions--(i) Limited access fishery.* During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 95 percent of the DAH is harvested, vessels issued a limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. Pursuant to § 648.24(b)(1)(ii), when 90 percent of the Tier 3 allocation is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land

more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours

(ii) *Entire commercial fishery.* During a closure of the directed commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 100 percent of the DAH is harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.26 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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