

TABLE 4—ACCOUNTING STATEMENT—CLASSIFICATION OF ESTIMATED TRANSFERS

Category	Discount rate		Period covered
	7%	3%	
Transfers:			
Annualized Monetized Transfers (\$ in Millions)	\$410	\$433	CYs 2023–2032.
From Whom to Whom	MAOs to Federal Government.		

We estimate that from 2022 through 2031 this final rule will generate Federal annualized monetized transfers of \$410 million and \$433 million, at the 7 percent and 3 percent discount rates respectively, from MAOs back to the Medicare Trust Fund.

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on January 24, 2023.

List of Subjects in 42 CFR Part 422

Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy Reporting and record keeping requirements.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 422 as follows:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

Subpart G—PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS

■ 2. Section 422.300 is revised to read as follows:

§ 422.300 Basis and scope.

This subpart is based on sections 1106, 1128(d), 1852, 1853, 1854, and 1858 of the Act. It sets forth the requirements for making payments to MA organizations offering local and regional MA policies, including calculation of MA capitation rates and benchmarks, conditions under which payment is based on plan bids, adjustments to capitation rates (including risk adjustment), collection of risk adjustment data, conditions for use and disclosure of risk adjustment data, collection of improper payments

and other payment rules. Section 422.458 specifies the requirements for risk sharing payments to MA regional organizations.

■ 3. Section 422.310 is amended by revising paragraph (e) to read as follows:

§ 422.310 Risk adjustment data.

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(e) *Validation of risk adjustment data.* MA organizations and their providers and practitioners are required to submit a sample of medical records for the validation of risk adjustment data, as required by CMS. There may be penalties for submission of false data. MA organizations must remit improper payments based on RADV audits, in a manner specified by CMS. For RADV audits, CMS may extrapolate RADV Contract-Level audit findings for payment year 2018 and subsequent payment years.

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■ 4. Section 422.311 is amended by revising paragraph (a) to read as follows:

§ 422.311 RADV audit dispute and appeal processes.

(a) *Risk adjustment data validation (RADV) audits.* In accordance with §§ 422.2 and 422.310(e), the Secretary annually conducts RADV audits to ensure risk-adjusted payment integrity and accuracy.

(1) Recovery of improper payments from MA organizations will be conducted in accordance with the Secretary's payment error extrapolation and recovery methodologies.

(2) CMS may apply extrapolation to audits for payment year 2018 and subsequent payment years.

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Dated: January 26, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–01942 Filed 1–30–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230126–0026]

RIN 0648–BL75

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This action implements approved measures for Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan. Amendment 23 was developed by the Mid-Atlantic Fishery Management Council to establish a revised Atlantic mackerel rebuilding plan, set the 2023 Atlantic mackerel specifications including a river herring and shad catch cap for the Atlantic mackerel fishery, establish a recreational possession limit, and modify in-season closure measures. This action is necessary to prevent overfishing and rebuild the Atlantic mackerel stock based on a 2021 management track assessment that found that Atlantic mackerel stock remains overfished and overfishing is occurring. Amendment 23 is intended to ensure that Atlantic mackerel are sustainably managed to achieve optimum yield on a continuing basis. Additionally, this action approves the updated management goals and objectives of the Mackerel, Squid, and Butterfish Fishery Management Plan with the purpose of ensuring that management continues to reflect and address the current needs and condition of the mackerel, squid, and butterfish fisheries.

DATES: Effective February 1, 2023.

ADDRESSES: Copies of Amendment 23, including the Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis (EA/RIR/RFAA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: <https://www.mafmc.org/s/Mackerel-Rebuilding-2-2023-01-10.pdf>.

NMFS also prepared a Categorical Exclusion (CE) for this action in compliance with the National Environmental Policy Act, detailing why part of this action is administrative in nature and may be categorically excluded from requirements to prepare either an Environmental Impact Statement or EA. Copies of the CE for this action are available upon request from NMFS.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281-9150.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic mackerel fishery is managed under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) through an annual quota, possession limits, and a catch cap for bycatch of river herring and shad. In-season accountability measures (AM), including closures of the fishery through possession limit reductions, help ensure catch does not exceed the Atlantic mackerel annual catch limit (ACL) or the river herring and shad catch cap. Reactive AMs require a pound-for-pound payback the following year if landings exceed the Atlantic mackerel ACL.

Current regulations require the Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specifications recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, total allowable levels of foreign fishing, joint venture processing, and commercial and recreational annual catch targets (ACT) for up to 3 years. These specifications are reviewed annually, and may be revised by the Council based on updated information.

Atlantic mackerel recruitment has been declining since 1999 and has been

below the long-term average since 2009. On November 29, 2019 (84 FR 58053), as requested by the Council, NMFS implemented a 5-year Atlantic mackerel rebuilding plan. However, using data through 2019, a July 2021 Atlantic mackerel management track assessment concluded that the Atlantic mackerel stock remained overfished and subject to overfishing and that because previous assumptions about potential recruitment that did not come to fruition, the 2019 rebuilding plan no longer provided a realistic rebuilding approach. Stock biomass is estimated to have nearly tripled in size from 2014 to 2019 (from approximately 8 percent to 24 percent of rebuilt), but full rebuilding on the original schedule, by 2023, now appears impossible. The stock is expected to be less than half rebuilt by 2023. The final assessment summary report is available on the Northeast Fishery Science Center website (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic>).

In response to the 2021 Atlantic mackerel management track assessment, the SSC recommended that measures be implemented to eliminate or minimize additional catch to reduce the potential biological impacts of catch levels while the Council developed a revised Atlantic mackerel rebuilding plan. On January 12, 2022 (87 FR 1700), NMFS published an interim rule that reduced the 2022 domestic annual harvest (DAH) of Atlantic mackerel from 17,312 mt to 4,963 mt in order to limit U.S. commercial catch to approximately the levels realized during 2021. These interim measures were extended on July 6, 2022 (87 FR 40139), to remain effective for the entire 2022 Atlantic mackerel fishing year and expired on January 13, 2023.

In response to the 2021 Atlantic mackerel management track assessment, the Council developed Amendment 23 to revise the Atlantic mackerel rebuilding plan to prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At its June 2022 meeting, the Council recommended to establish a 10-year Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specification through Amendment 23. On August 19, 2022, the Council submitted the amendment and draft EA to NMFS for preliminary review. The Council reviewed the regulations in this rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in Section 303(c) of the

Magnuson-Stevens Act. This action also includes 2023 Atlantic mackerel specifications based on the Amendment 23 Atlantic mackerel rebuilding plan, including a modified fishery closure approach, a status quo river herring and shad catch cap, and a new recreational possession limit, as described further below.

A notice of availability (NOA) for the amendment published in the **Federal Register** on October 25, 2022 (87 FR 64430), with a comment period ending on December 27, 2022. We published a proposed rule in the **Federal Register** on November 2, 2022 (87 FR 66120), with a comment period ending on January 3, 2023.

When a Council approves and then transmits a fishery management plan or amendment to NMFS, NMFS publishes a notice of availability in the **Federal Register** announcing a 60-day comment period. Within 30 days of the end of the comment period, NMFS must approve, disapprove, or partially approve the plan or amendment based on consistency with law. After considering public comment on the NOA and proposed rule, we approved Amendment 23. This final rule implements the management measures in Amendment 23. The details of the development of the measures in Amendment 23 were described in the NOA and proposed rule, and are not repeated here.

This final rule also announces previously-approved goals and objectives to the Mackerel, Squid, and Butterfish FMP that were developed in Amendment 22 to the FMP. The focus of Amendment 22 was to revise the number and type of *Illex* squid permits and to update the goals and objectives of the FMP. An NOA for Amendment 22 was published in the **Federal Register** on June 7, 2022 (87 FR 34629). No proposed rule was published for Amendment 22 pending a final decision on the Amendment. On September 6, 2022, NMFS informed the Council that, in accordance with section 304(a)(3) of the Magnuson-Stevens Act, while the management actions of Amendment 22 were disapproved, we would revise the FMP goals and objectives in a future rulemaking. These updates to the FMP do not require associated federal regulations.

Approved Measures

1. Atlantic Mackerel Rebuilding Plan

This action implements an Atlantic mackerel rebuilding plan that is predicted to have a 61-percent probability of rebuilding the Atlantic mackerel stock in 10 years. This

rebuilding plan assumes a fishing mortality rate of 0.12, and that recruitment starts low (similar to recruitment from 2009 to present) and then increases toward long-term typical recruitment as the stock rebuilds. Table 1 shows the projected ABCs for the duration of the rebuilding plan. The 2023 ABC specified in Table 1 is implemented through this action, but the other ABCs provided are projections that will be revisited during future specification setting. A new stock assessment in 2023 will inform the quotas set beyond 2023.

TABLE 1—PROJECTED ATLANTIC MACKEREL ABC AND STOCK BIOMASS

	Catch (mt)	Biomass (mt)
2023	8,094	80,745
2024	9,274	91,738
2025	10,540	103,756
2026	11,906	116,857

TABLE 1—PROJECTED ATLANTIC MACKEREL ABC AND STOCK BIOMASS—Continued

	Catch (mt)	Biomass (mt)
2027	13,408	131,291
2028	15,004	146,553
2029	16,631	162,239
2030	18,261	177,731
2031	19,814	192,045
2032	21,215	204,796

While less or zero catch would rebuild the Atlantic mackerel stock faster, the Council recommended a rebuilding plan that is as short a time as possible given the stock's status, biology, needs of fishing communities, and the interaction of the stock within the marine ecosystem. This rebuilding alternative and associated 2023 ABC will set a quota 41-percent lower than the 2019–2021 average landings of 6,187 mt with an associated \$3.62 million

average ex-vessel revenue. However, given the relatively few vessels participating in the Atlantic mackerel fishery in recent years, the relatively low landings, and the small reduction in quota from recent landings, the impacts would be slightly negative in the short term. However, from a long-term perspective, a rebuilt Atlantic mackerel stock could return about \$7.1 million annually to the Atlantic mackerel fishery.

2. Atlantic Mackerel Specifications

Based on the above Atlantic mackerel rebuilding plan, the 2023 ABC is 8,094 mt. The 2023 Atlantic mackerel specifications include ABC deductions for expected Canadian catch (2,197 mt), recreational catch (2,143 mt), and estimated commercial discards (115 mt) to set a commercial quota of 3,639 mt as shown in Table 2. This commercial quota is a 27-percent decrease from the interim 2022 commercial quota.

TABLE 2—2023 ATLANTIC MACKEREL SPECIFICATIONS

ABC/ACL	8,094 mt	a.
Canadian Catch Deduction	2,197 mt	b.
Recreational Catch Deduction	2,143 mt	c.
Commercial Discards	115 mt	d.
Commercial Quota	3,639 mt	e = a – b – c – d.

The Canadian catch deduction is based on recent Canadian landings. The 2021 Canadian landings were 4,395 mt. Canada closed its directed Atlantic mackerel fishery for 2022 and therefore may have minimal landings in 2022. The Council decided to deduct 2,197 mt from the 2023 ABC, which represents half of the 2021 Canadian landings. The 2,143-mt recreational deduction is the 2019–2021 average recreational catch minus 17 percent to account for an expected reduction in recreational catch due to the new recreational possession

limit. The 115-mt commercial discard deduction is based on the average discard rate from 2017–2019. There have been no ABC overages in the mackerel fishery, so it was determined that a management uncertainty buffer is not necessary at this time, and the modified in-season closure measures below are expected to effectively manage catch and prevent overages.

3. In-Season Closure Provisions

To address the lower quota available to the U.S. commercial Atlantic

mackerel fishery, this action implements a modified closure approach. This modified closure approach includes 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 3). This action retains 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.

TABLE 3—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.

4. Recreational Possession Limit

Because of the low Atlantic mackerel ABCs needed, at least at the beginning of the rebuilding period, a recreational

possession limit was deemed necessary to ensure recreational catch is reduced to commensurate with the reduction in the commercial quota. This action

implements a 20-fish per person Atlantic mackerel possession limit. This limit applies to all Atlantic mackerel charter/party permit holders (including

crew members) and private anglers. The 20-fish recreational possession limit is estimated to reduce recreational catch by 17 percent compared to average 2019–2021 recreational catch which is expected to assist in achieving a rebuilt stock.

The Council has been working closely with the states of Maine, New Hampshire, and Massachusetts, as the majority of recreational Atlantic mackerel catch occurs in these state waters (there has been minimal recreational mackerel catch south of Massachusetts in recent years). The Council has coordinated with the aforementioned states in the development of these recreational measures, and it appears likely that these states will mirror the Federal recreational possession limit. This coordination is needed in order to achieve the necessary reduction in catch.

5. River Herring and Shad Catch Cap

In 2014, Amendment 14 to the FMP (February 24, 2014; 79 FR 10029) implemented a catch cap to manage the bycatch of river herring and shad in the Atlantic mackerel fishery. Once this cap is reached in a given fishing year, Atlantic mackerel commercial possession limits are reduced to 20,000 lb (9.08 mt) for the rest of the year. The catch caps are monitored based on river herring and shad bycatch recorded in observer and portside sampling data for mackerel trips by limited access vessels, or trips in which at least 20,000 lb (9.08 mt) of Atlantic mackerel are landed.

This action implements a river herring and shad catch cap in the Atlantic mackerel fishery of 129 mt.

6. FMP Goals and Objectives

This action announces the previously-approved updated and revised goals and objectives of the Mackerel, Squid, and Butterfish FMP as follows:

Goal 1: Maintain sustainable mackerel, squid, and butterfish stocks.

- **Objective 1.1:** Prevent overfishing and maintain sustainable biomass levels that achieve optimum yield in the mackerel, squid, and butterfish fisheries.

- **Objective 1.2:** Consider and, to the extent practicable, account for the roles of mackerel, squid, and butterfish 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 shorehide infrastructure) of mackerel, squid, and butterfish resources consistent with attainment of the other objectives of this FMP, including minimizing additional restrictions.

- **Objective 2.2:** Allow opportunities for commercial and recreational mackerel, squid, and butterfish 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 mackerel, squid, and butterfish fisheries (commercial including shorehide infrastructure and recreational) as well as other fisheries or concerns that may be ecologically linked to mackerel, squid, and butterfish fisheries.

- **Objective 2.4:** Investigate opportunities to access international/shared resources of mackerel, squid, and butterfish species.

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

- **Objective 3.1:** Improve data collection to better understand the status of mackerel, squid, and butterfish stocks, the role of mackerel, squid, and butterfish 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 mackerel, squid, and butterfish fisheries.

Comments and Responses

We received 11 comments on the NOA and proposed rule from individual constituents and non-governmental organizations including from The Pew Charitable Trusts, Oceans North, Wild Oceans, Conservation Law Foundation, Bennet Nickerson Environmental Consulting, and Natural Resource Defense Council. One comment was not relevant to the proposed rule and is not discussed further. One comment was not relevant to the rule itself, but had questions about how industry is involved in the rule making process. Five comments supported the Atlantic mackerel rebuilding plan, four opposed the rebuilding plan. Those opposed to

the rebuilding plan advocated for disapproval of Amendment 23 and to have the Council select a different rebuilding alternative, and one comment opposed to the action advocated for only subsistence fishing for Atlantic mackerel.

We received zero comments on the updated FMP goals and objectives in response to the Amendment 22 NOA. Some of the comments received in response to the Amendment 22 NOA referenced the updated goals and objectives, but there were no comments on the goals and objectives themselves.

Comment 1: Five commenters support the proposed Atlantic mackerel rebuilding plan. One stated that it was in alignment with the Magnuson-Stevens Act, one noted the importance of protecting historical food sources, and one noted that this action is a good first step, but would like to see more done to protect the long-term population of Atlantic mackerel and to protect other marine species. Additionally, one comment supported the rebuilding plan, but would like to see more animal welfare taken into account.

Response: We have approved the proposed Atlantic mackerel rebuilding plan and the 2023 specifications. We will continue to monitor the Atlantic mackerel stock status through regular stock assessments and base future catch limits on the most recent stock information available.

Comment 2: One comment requested clarification on how commercial and recreational fishermen's input is collected and used during the development of this action.

Response: The public, including industry members, are invited to participate several times through the development of any amendment. For this action, public comments were solicited at Council meetings in August and December 2021 and June 2022; two informational webinars were hosted by Council staff on January 11 and 12, 2021, to provide background and gather public input; the Council also hosted five public hearings throughout April and May of 2022; and, finally, the public was asked to provide comment on the NOA and proposed rule. Comments were accepted both orally and/or written at these various opportunities. Public comments were presented to the Mackerel, Squid, and Butterfish Monitoring Committee and the Council prior to meetings and taken into account by those members when making recommendations and decisions on this action. The comments on the NOA and proposed rule were provided directly to NMFS to ensure the public

had the opportunity to comment and notify the government of any proposed action that would not satisfy applicable statutes.

Comment 3: Three comments opposed the proposed Atlantic mackerel rebuilding plan and advocated that NMFS disapprove this action and either close the fishery, develop a new rebuilding plan, or have the Council select a different alternative. Two of these comments claimed that the best available science was not taken into consideration when selecting the preferred alternatives for this action. One of these comments goes on to further claim that the Council violated the Magnuson-Stevens Act by selecting a rebuilding alternative that was not the recommendation of the SSC. This comment also opined that the EA drafted for this action did not conduct a thorough evaluation of the cumulative impacts of climate change and the Atlantic Ocean ecosystem in the face of a depleted forage base and advocated that the 129-mt river herring and shad catch cap be disapproved and that a 3-inch (7.62-cm) minimum codend mesh size be required for the Atlantic mackerel fishery.

Response: Amendment 23 was developed using the best available science, including new information provided in the 2021 Atlantic mackerel management track assessment results and the 2021 Canadian Atlantic mackerel assessment. The SSC endorsed that all the rebuilding plan alternatives in this action are expected to rebuild Atlantic mackerel within 10 years based on the best scientific information available, which is consistent with the Magnuson-Stevens Act and the National Standards. The SSC also identified that the 2023 ABCs for each potential rebuilding plan were consistent with the best scientific information available.

The EA for this action did evaluate the cumulative impacts of climate change and the Atlantic Ocean ecosystem as describe in section 7.6. Additionally, the Council developed this action under the guidance of their Ecosystem Approach to Fisheries Management and in reference to the most recent State of the Ecosystem Reports.

The river herring and shad catch cap of 129 mt is the No Action alternative and we do not have the authority to select a different alternative through the amendment process. This alternative was selected by the Council because lower caps may be impracticable to monitor. Additionally, the revised commercial fishery closure approach will have added benefits to river herring and shad by lowering the possession

limits for mackerel will below the 20,000-lb (9.08-mt) possession limit required when reaching the river herring and shad catch cap. The 3-inch (7.62-cm) minimum mesh requirement measure that was considered, but ultimately rejected during the development of this action due to the lack of gear selectivity studies for Atlantic mackerel that would allow quantitative analysis of this measure. Additional investigation of the effects of a minimum mesh may be evaluated in the future.

Finally, if this action were to be disapproved, it would have the opposite desired effect of both this action and these comments received. A disapproval of this action would result in the implementation of the No Action alternative that reverts the Atlantic mackerel quota to 2021 levels including a DAH of 17,312 mt due to the rollover provisions found in § 648.22(d)(1) and the expiration of the 2022 interim rule on January 13, 2023. Disapproval of Amendment 23 would be detrimental to the Atlantic mackerel stock because it would allow for potential overfishing to continue throughout the 2023 fishing year. Moreover, the alternative that the commenters prefer has a lower likelihood of accomplishing rebuilding than the one implemented in this final rule.

Comment 4: One comment opposed the proposed action advocating for a closure of the Atlantic mackerel commercial fishery and to only allow subsistence fishing for Atlantic mackerel.

Response: This comment did not supply any rationale or evidence in support of closing the Atlantic mackerel commercial fishery and for subsistence fishing for Atlantic mackerel.

Changes From the Proposed Rule

There are no changes to the regulatory text from the proposed rule, but this final rule announces the approval of the updated FMP goals and objectives which were not included in the proposed rule. The updated goals and objectives were the subject of public notice and comment in the NOA for Amendment 22. This change to the FMP is solely administrative, and does not necessitate associated Federal regulations, and therefore did not require additional public comment.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Mackerel, Squid, and Butterfish FMP,

other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements the Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specifications. This rule is being issued at the earliest possible date following a 2021 Atlantic mackerel management track assessment that identified the need for a revised rebuilding plan. The Council took immediate action to develop this revised rebuilding plan which was developed throughout 2022. Additionally, we implemented an interim rule to reduce the catch limits of Atlantic mackerel for the 2022 fishing year and that interim rule expired January 13, 2023, after which the original 2022 harvest quotas became effective. Failure to implement the new lower quotas of this rule creates a risk of additional overfishing in a stock that is the subject of rebuilding because until this rule is implemented, the Atlantic mackerel quota reverts back to 17,312 mt which is almost five times the quota calculated for this year in order to rebuild the stock. Additionally, approximately 500 mt of Atlantic mackerel has already been harvested for the 2023 fishing year, and a delay in implementation could lead to the 2023 quota being exceeded.

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

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 26, 2023.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14, revise paragraph (g)(1)(ii) and add paragraph (g)(1)(iii), and revise paragraph (g)(4) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *
(1) * * *

(ii) *Recreational possession.* Take and retain, possess, or land Atlantic mackerel in excess of the recreational limits contained in § 648.26(a)(3).

(iii) *Transfer and purchase.* (A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish caught by a vessel that has not been issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

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(4) *Presumption.* For purposes of this part, the following presumption applies: All Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such species were purchased for bait or harvested by a vessel fishing exclusively in state waters or, for Atlantic chub mackerel, outside of the Atlantic Chub Mackerel Management Unit.

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■ 3. In § 648.21, revise paragraph (c)(2) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(c) * * *

(2) The SSC may specify higher 2023–2032 ABCs for Atlantic mackerel based on *F_{REBUILD}* instead of the methods outlined in paragraph (a) of this section to implement a rebuilding program that would rebuild this stock by 2032.

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■ 4. In § 648.24, revise paragraphs (b)(1)(i) through (iii) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * * (1) * * * (i) *First phase commercial closure.* (A) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects before May 1 that 886 mt of the Atlantic mackerel DAH is remaining. 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.

(B) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects on or after May 1 that 443 mt of the Atlantic mackerel DAH is remaining. 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.

(C) Unless previously closed pursuant to paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of this section, NMFS will close the Tier 3 commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 Atlantic mackerel landings cap will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial Atlantic mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

(ii) *Second phase commercial quota closure.* When the Regional Administrator projects that 100 mt of the Atlantic mackerel DAH is remaining, NMFS will reduce the possession of Atlantic mackerel in the

EEZ applicable to all commercial Atlantic mackerel permits for the remainder of the fishing year as specified in § 648.26(a)(2)(iii)(A).

(iii) NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i)(B) or (b)(1)(ii) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

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■ 5. In § 648.26, revise paragraphs (a)(1) introductory text, (a)(1)(i) through (iv), and (a)(2), and add paragraph (a)(3) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

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

(i) A vessel issued a Tier 1 limited access mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(ii) A vessel issued a Tier 2 limited access mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iii) A vessel issued a Tier 3 limited access mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, or 90

percent of the Tier 3 landings cap has been harvested, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iv) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

* * * * *

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before a first phase or second phase commercial fishery closure, then the Atlantic mackerel possession restrictions specified in § 648.26(a)(2)(iii)(B) shall remain in place for the rest of the fishing year unless further reduced by the possession restrictions specified in § 648.26(a)(2)(iii)(A).

(i) *Limited Access Fishery.* (A) During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 886 mt of the

DAH is remaining before May 1 or when 443 mt of the DAH is remaining on or after May 1, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 40,000 lb (18.14 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.

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(C), when 90 percent of the Tier 3 landings cap is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May or when 443 mt of the DAH is remaining on or after May 1, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iii) *Entire commercial fishery—(A) Commercial quota closure.* During a closure of the entire commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(ii), when 100 mt of the DAH is remaining, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 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.

(B) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(3) *Recreational possession limits.* The recreational Atlantic mackerel possession limit for charter/party and private recreational anglers is 20 Atlantic mackerel per person per trip, including for-hire crew.

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