



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

September 6, 2022

Mr. Michael Luisi
Council Chair
Mid-Atlantic Fishery Management Council
800 North State Street
Suite 201
Dover, DE 19901

Dear Mike:

By this letter, I am disapproving the majority of the provisions in Amendment 22 to the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). As you know, Amendment 22 intended to revise the number and types of *Illex* squid permits to reduce the negative effects from a race to fish in recent years. This amendment also intended to align the fishery goals and objectives with current Mid-Atlantic Fishery Management Council vision and priorities. I am disapproving the *Illex* permit measures in the amendment, but will be approving the adjusted FMP goals and objectives in a future *Federal Register* notice. Additionally, we intend to make the Council's recommended clarification that *Illex* squid moratorium permits must report daily catch via the vessel monitoring system on *Illex* squid trips in a future action pursuant to our rulemaking authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act.

The Council adopted Amendment 22 for Secretarial review and implementation at its July 2020 meeting. In undertaking this review, section 304(a)(1) of the Magnuson-Stevens Act requires the Secretary of Commerce to make a determination as to whether Amendment 22 is consistent with the Magnuson-Stevens Act and other applicable laws and publish a notice of availability for the amendment in the *Federal Register*. Section 304(a)(2) of the Magnuson-Stevens Act requires the Secretary to take into account the information, views, and comments received on the amendment from interested parties when making a decision to approve, disapprove, or partially approve a Council amendment.

We published a Notice of Availability for Amendment 22 on June 7, 2022 (87 FR 34629), and accepted public comments on the amendment through August 8, 2022. We received 54 comments from commercial fishermen and fishing organizations. Of these comments, 22 were in support of the amendment, 31 comments were in opposition to the action, and 1 comment was not applicable. The *Illex* squid fishing industry participants continue to be split in their support of this action because only some of the industry participants would have benefitted from this action, while other industry participants would have borne the costs.

Our review of Amendment 22 determined the amendment and supporting analyses do not demonstrate how the Council's proposed action (1) meets the purpose and need of the Amendment and the goals and objectives of the FMP; (2) is consistent with National Standard 4 of the Magnuson-Stevens Act, which requires fishery conservation and management measures



allocate fishing privileges fairly and equitably; (3) is consistent with National Standard 5 of the Magnuson-Stevens Act, which requires fishery conservation and management measures consider efficiency in the utilization of fishery resources; (4) is consistent with National Standard 6 of the Magnuson-Stevens Act, which requires fishery conservation and management measures take into account variations and contingencies in a fishery; or (5) is consistent with National Standard 7 of the Magnuson-Stevens Act, which requires fishery conservation and management measures minimizes costs to the extent practicable.

Allocations

National Standard 4 of the Magnuson-Stevens Act requires Councils to assess the effects of allocating or assigning fishing privileges among various United States fishermen to ensure such allocation is: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

As stated above, allocations should be reasonably calculated to promote conservation; however, there is no known conservation issue with the *Illex* squid stock (for which the Council's Scientific and Statistical Committee (SSC) has provided evidence concluding that the stock is lightly exploited and the current fishery footprint is small relative to the fishery potential). Because the stock is lightly exploited, the SSC has recommended increases in the *Illex* squid acceptable biological catch (ABC) in each of the past three years and the quota has increased by 67 percent since Amendment 22 was initiated. When development of this action began in 2018, the *Illex* squid ABC was 24,000 mt, and the 2022 *Illex* squid ABC was recently increased to 40,000 mt (87 FR 48447).

The Council has previously expressed concerns with quota overages; however, we have existing controls in place to address these concerns. The *Illex* squid quota was exceeded in 2018 and 2019, but since then we have been tracking landings closely and using more sophisticated projection models that enable us to close the fishery at Council-prescribed closure thresholds at the appropriate time. These were the only 2 years that the quota was exceeded in the past 11 years, and we have avoided quota overages in 2020 and 2021, despite significant increases in landings to take advantage of increasing quotas.

Efficiency

National Standard 5 requires Councils to consider efficiency in the utilization of fishery resources, as long as no such measure has economic allocation as its sole purpose.

According to the National Standard Guidelines at 50 CFR 600.330(c), a system used for limiting access may be considered to combat overfishing, overcrowding, or overcapitalization in the fishery to achieve OY, or may be appropriate for an underutilized fishery to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. None of these conditions apply to the *Illex* squid fishery as the fishery has not encountered issues in achieving OY in recent years, we have sufficient controls in place, as well as 25 years of experience under the existing limited access program that has functioned well. In fact, it has only been in the last six years (after the proposed cutoff of 2013) that the fishery has consistently approached and achieved full yield.

Additionally, the Guidelines at § 600.330(e), state that National Standard 5 prohibits those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. While the Council contends that the measures included in Amendment 22 are proposed as a way to combat a race to fish, as discussed above, this action does not reduce fishing capacity in a manner that removes potential for a race to fish, and throughout the development of this action public testimony from proponents of the action focused almost entirely on economic allocation, an infringement of National Standard 5.

Variations and Contingencies

National Standard 6 requires Councils to take into account and allow for variation among, and contingencies in, fisheries, fishery resources, and catches.

The *Illex* squid fishery currently operates with 75 limited access vessels that have an unlimited possession limit (all of which qualified under the original limited access program based on fishing history prior to 1997). The proposed action would reduce that to 39 vessels with unlimited possession limits, reducing fishing opportunity for the remaining 36 vessels by imposing fishing limits that could lead to substantial inefficiencies in their fishing operations. Absent any conservation need or other rationale supported by the evidence, to further reduce opportunities for permitted vessels to participate in the *Illex* squid fishery would be contrary to the intent of National Standard 6. Given the unknown and uncertain impacts of climate change on fish stocks in the region, the potential impacts of wind energy development on the squid fishery to conduct operations, and shifting and evolving markets, any reduction in flexibility in the *Illex* squid fishery could have detrimental effects. By consolidating the majority of harvest opportunities into fewer vessels and fishing companies, we would potentially be increasing the risk that the fishery could fail to effectively adapt to changing conditions and continue to achieve OY.

Minimizing Costs

National Standard 7 requires Councils to minimize costs and avoid unnecessary duplication in the development of management measures where practicable.

The economic analysis for Amendment 22 asserts that the proposed action would have resulted in negligible impacts for those vessels that would be reduced to a Tier 3 permit because those vessels do not regularly derive a substantial portion of their revenues from *Illex* squid, with the exception of one vessel in 2019. The vessels that would be reduced to Tier 2 permits would have experienced greater negative economic impacts because they would have been constrained by trip limits and face greater operational and competitive inefficiencies. The vessels that would have retained their unlimited (Tier 1) permits would have been expected to benefit from positive economic impacts because they would have access to a greater amount of the quota with unconstrained fishing opportunity. Therefore, the Council's analysis reached a conclusion that the overall economic impacts for this action would be slightly positive because the increased fishing and revenue opportunities provided to the Tier 1 vessels would cancel out the decreased fishing and revenue opportunities placed on the Tier 2 (and to some extent Tier 3) vessels. However, in terms of costs and benefits, 36 of the 75 permit holders would have face reduced

opportunities and therefore would have borne the costs of the action, but the benefit to the overall community was lacking because the proposed action would have still allowed for a race to fish to persist.

The National Standard 7 Guidelines at § 600.340(c)(1) also direct that “management measures should be designed to give fishermen the greatest possible freedom of action in conducting business ... that are consistent with ensuring wise use of the resources and reducing conflict in the fishery.” Reducing fishing opportunities for almost half of the *Illex* squid fleet when not necessary for conservation, not solving the perceived race to fish, and reducing flexibility through restrictive possession limits was determined to be directly contrary to the intent of National Standard 7.

Conclusion

If a Council FMP or amendment is disapproved based on inconsistencies with the Magnuson-Stevens Act or other applicable laws, section 304(a)(3) of the Magnuson-Stevens Act requires the Secretary to recommend actions the Council could take to conform the amendment to the relevant legal requirements. Section 304(a)(4) provides Councils the opportunity to revise and resubmit amendments for Secretarial review after addressing the relevant legal requirements. As discussed above, to conform Amendment 22 to the requirements of applicable law, the Council must either substantially revise the amendment to clearly articulate how the actions proposed by the Council are consistent with the National Standards and the goals and objectives of the FMP, or reconsider the proposed action and revise the amendment to adopt different measures that address a management need without violating the National Standards. However, given the fundamental flaws and inconsistencies we identified, we suggest the latter approach would be more likely to be successful.

We recognize this action represents a difficult decision for the Council. Since development, there have been proponents and opponents of this action and they have presented compelling arguments for and against the final measures. Council staff, in particular, did an admirable job in presenting the facts and supporting the Council through its deliberations on this challenging action. It is unfortunate that we find ourselves with this outcome, but my staff and I remain able and willing to work with the Council should it wish to reconsider this action.

Sincerely,



Michael Pentony
Regional Administrator

cc: Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council