



Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901

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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman

Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: March 18, 2023
To: Council
From: Jason Didden, staff
Subject: *Illex* Permits/Capacity: April 2023 Agenda

The Council will consider follow-up actions to the disapproval of the *Illex* Permit Amendment. Please find enclosed the following supporting documents.

1. Staff Recommendation Memo
2. November 2022 Joint Committee/Advisory Panel Summary
3. NMFS Response to Council regarding disapproval clarifications
4. Council request for disapproval clarifications
5. NMFS disapproval letter



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Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: March 17, 2023
To: Chris Moore
From: Jason Didden, staff
Subject: *Illex* Permits/Capacity: next steps

Based on staff's understanding of the intent of previous Council action, NMFS' disapproval of the *Illex* Permit Amendment, and subsequent communications with NMFS (enclosed), staff recommends that the Council initiate a Framework Adjustment to the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan. The Framework would consider implementing a volumetric vessel hold baseline requirement and upgrade restriction for all *Illex* limited access permits. A similar volumetric requirement is in place for the directed mackerel fishery (see below), and most regional limited access programs have baselines to control increases in fishing power/capacity (generally horsepower and length).

Overcapacity is a common characteristic of most fisheries except those managed with tradable quota systems (variously known as ITQ¹s (e.g. surfclam/ocean quahog), IFQ²s (e.g. golden tilefish), and/or catch shares). Staff notes that public perspectives on capacity in the *Illex* fishery have been consistently diverse starting from the early 2019 scoping of the *Illex* Permit Amendment through to the November 2022 Joint MSB Committee/Advisory Panel (AP) Meeting (summary enclosed). Comments have ranged from taking no action at all, to measures that would reduce the existing overcapacity by eliminating some existing limited access permits (overcapacity was indicated by NMFS' Northeast Fisheries Science Center staff analyses as part of the *Illex* Permit Amendment).

If the Council decides to initiate this Framework, staff would schedule a Committee/AP meeting to develop alternatives, and bring those alternatives to the Council for Framework Meeting #1 (likely June or August 2023). Any refinements would be addressed, and brought to the Committee/AP for recommendations before a final decision at Framework Meeting #2 (likely October or December 2023).

¹ ITQ = Individual Transferable Quota

² IFQ = Individual Fishing Quota

Mackerel Fish Hold Regulations Overview

Summary: Primary limited access directed mackerel permits must get a fish hold certification and have a 10% upgrade restriction. If a permit was in CPH (not active but has a “Confirmation of Permit History) then the first/next vessel must get a hold certification.

Rationale: The rationale/goal for baselines as described in the 1998 Consistency Amendment developed by NMFS was “capping fishing power.” This aligns with issues mentioned in several national standards guidelines, especially #5 Efficiency: “Efficiency. In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where “conservation” constitutes wise use of all resources involved in the fishery, not just fish stocks.” So capping additional vessel fishing power (“capital”) to catch Optimum Yield (OY) becomes a conservation objective because the “wise use of all resources” is being addressed.

[50 CFR 648.4\(a\)\(5\)\(iii\)](#)

(H) - Vessel baseline specification.

(1) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access Atlantic mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: An individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(1) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(2) [this mostly addressed other baselines when mackerel limited access was initiated, but then for the hold measurement noted: “The hold capacity baseline for such” [confirmation of permit history – CPH]] “vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(1) of this section.

(I) Upgraded vessel. See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access Atlantic mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.



Mackerel, Squid, and Butterfish Committee and Advisory Panel Joint Meeting Summary

November 16, 2022 Webinar

The Mid-Atlantic Fishery Management Council's (Council) Mackerel, Squid, and Butterfish (MSB) Committee and Advisory Panel (AP) met jointly on November 16, 2022 at 9am. The purpose of this meeting was to discuss potential follow-up regarding the disapproved *Illlex* Permit Amendment.

MSB Committee Attendees: Peter Hughes (Chair), Sara Winslow (Vice-Chair), Melanie Griffin, Dan Farnham, Emily Gilbert, Adam Nowalsky, Michelle Duval, Eric Reid, and Joe Cimino,

MSB AP Attendees: Dan Farnham Jr, Drew Minkiewicz, Emerson Hasbrouck, Fred Akers, Gerry O' Neill, Greg DiDomenico, Jeff Kaelin, Katie Almeida, Meghan Lapp, Pam Lyons Gromen, Robert Ruhle, Sam Martin,

Other Attendees: Jason Didden (MAFMC Staff), John Almeida, Alan Bianchi, Alissa Wilson, Carly Bari, Drew Minkiewicz, Maria Fenton, Michael Luisi, Mike Roderick, Ryan Clark, Sarah Bland, Wes Townsend

Jason Didden of Council staff provided an overview of NMFS' disapproval rationale as well as staff input that an individual transferrable quota (ITQ) system may be the most direct way to address excess capacity and the race to fish. The efficiency gains that are a component of ITQs could also address a number of the issues identified by NMFS in their disapproval rationale.

AP perspectives varied and recommendations included: re-submit after further clarifying how the Amendment addresses the issues identified by NMFS; request further detail on NMFS' disapproval rationales; take no further action; ask NMFS what actions are possible to freeze the capacity footprint of the fishery; consider other actions (e.g. a new control date, a separate fish hold alternative, or a fishery start date). There was no support for moving forward with an ITQ.

The Committee discussed the pros and cons of moving forward, and also whether the issues intended to be addressed by the action (excess capacity and rapid use of quota) still apply given recent quota increases and the fishery landing only a small portion of the quota in 2022. NMFS reiterated that any management measures need to link to corresponding purposes and needs, and must also align with the fishery management plan's goals and objectives, as well as relevant National Standards per the Magnuson–Stevens Fishery Conservation and Management Act.

(Committee motions are on next page)

The Committee passed the following motions:

I move that the Committee recommend that the Council request a more detailed explanation of the amendment rejection in terms of all 10 national standards and what NMFS recommends for future amendment development. Reid/Cimino, 7-0-1

I move that the Committee recommend that the Council explore options/requirements for a framework or amendment to implement a fish hold measurement and baseline limitation for the *Illex* fishery. Farnham/Duval 7-0-1



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

March 8, 2023

Dr. Christopher Moore
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street
Suite 201
Dover, DE 19901

Dear Chris:

On September 6, 2022, we disapproved the majority of the measures proposed in Amendment 22 to the Mackerel, Squid, and Butterfish Fishery Management Plan. In the decision letter to the Council, dated September 6, 2022, I provided details on the basis for that determination. The September letter fully described how the action did not meet the purpose and need of the Amendment and was inconsistent with National Standards 4, 5, 6, and 7; there is no further detail I can offer beyond what was specified in that letter. I did not address the other National Standards because our review did not identify any inconsistencies with them.

The Council has requested more information on how the *Illex* permit measures in Amendment 22 differ from the longfin squid measures that were approved in Amendment 20. As you recall, Amendment 20 revised the longfin squid permits, reduced excessive longfin squid catch during Trimester II, and minimized impacts to spawning aggregations and associated egg mops. The three main differences between the measures in Amendment 22 and Amendment 20 are: (1) Amendment 20 included conservation elements important to the target stock; (2) the possession reductions made in the new longfin squid tiered permits (particularly Tier 2 and Tier 3) were moderate relative to the catch that vessels receiving Tier 2 and 3 permits had previously landed, and these changes were less impactful overall to fishery participants than the proposed provision in Amendment 22; and (3) the permit qualification criteria specified in Amendment 20 were substantially lower than proposed in Amendment 22.

I'd like to focus on two specific areas where the amendments stand in stark contrast. First, the qualification criteria in Amendment 20 allowed any vessel with at least 10,000 lb of longfin squid landings from 1997-2013 to qualify for the highest Tier 1 permit. In contrast, Amendment 22 proposed minimum *Illex* qualification criteria of 500,000 lb for Tier 1, 100,000 lb for Tier 2, and 50,000 lb for Tier 3. As such, a vessel with similar *Illex* landings to longfin landings could have qualified for a Tier 1 longfin squid permit but would have been relegated to an "incidental" permit for *Illex*. Amendment 22 did not establish a rational basis for such a significant difference. Second, the stock conditions and resulting quotas were markedly different at the time that we made our decisions on these two amendments. In 2018, when we made the decision to approve Amendment 20, the longfin squid quota had remained relatively constant at approximately 49 million lb from 2013 (the last year to qualify for a Tier 1 permit) to 2018 (notably, in the years since we approved Amendment 20, the quota has remained constant at roughly 50 million lb). In contrast, while the *Illex* quota remained similarly flat at 50 million lb



from 2013 to 2018, between 2018 and 2022 when we made our decision regarding Amendment 22, the quota had increased each year, reaching a peak of 84 million lb, a 67-percent increase. Amendment 22 did not establish a rational basis to conclude that the proposed capacity reductions were still warranted and necessary in the face of increasing quotas.

One final point of difference between the two amendments is the span of time between the qualification time period used and the time at which the Council, and later NOAA's National Marine Fisheries Service, made our decisions on these amendments. Both amendments based permit requalification on the same timespan of 1997-2013, but while we approved Amendment 20 in 2018, it was another four years before we considered Amendment 22, nearly doubling the time between the end of the proposed qualification time period and the decision. Also, although not directly relevant to our approval/disapproval decisions, the public's reactions to and perspectives on the two amendments also differed substantially. Not only was the fishing industry much more split on the *Illex* permit issue, during the comment period for Amendment 22 we received a substantial number of letters, the majority of which opposed the amendment. In contrast, we received no public comments opposing the longfin squid permit revision measures when we were considering Amendment 20.

Should the Council wish to pursue development of an action to require measurement and/or restrictions on vessel hold capacity for the *Illex* fishery as was done for the mackerel fishery, we will continue to participate and engage with the Council as needed. Please reach out to Emily Gilbert, Acting Assistant Regional Administrator for Sustainable Fisheries, if you have further questions.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pentony". The signature is cursive and somewhat stylized.

Michael Pentony
Regional Administrator

cc: Michael Luisi, Council Chair, Mid-Atlantic Fishery Management Council
Peter Hughes, Mackerel, Squid, and Butterfish Committee Chair



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Christopher M. Moore, Ph.D., Executive Director

January 18, 2023

Mr. Michael Pentony
Regional Administrator
National Marine Fisheries Service
Greater Atlantic Region
55 Great Republic Drive
Gloucester, MA 01930

Dear Mr. Pentony:

At the December 2022 Council meeting, the Council discussed NMFS' disapproval of most of the provisions in Amendment 22 to the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) and passed the following motion:

That the Council request a more detailed explanation of the Amendment 22 decision relative to all 10 National Standards and MSB Amendment 20's approval (longfin squid permits) and what NMFS recommends for future Amendment development on fish hold provisions and consideration of historic participants with limited flexibility to pursue other fisheries.

The Council continues to believe that Amendment 22 effectively addressed the FMP's goals/objectives and complied with the National Standards. We also note that the disapproved *Illex* squid permit measures are substantially similar to the longfin squid permit measures contained in Amendment 20, which was approved by NMFS and implemented several years ago. Per the Council motion above, please provide additional detail regarding the National Standards as they relate to your disapproval, including an explanation of how the disapproved *Illex* permit measures in Amendment 22 differ from the longfin squid measures in Amendment 20.

Also, given that the capacity estimates in Amendment 22 indicate that a "race to fish" is likely to occur in the future when *Illex* availability/abundance is high, please provide recommendations on suitable measures to address the needs of those historic participants in the *Illex* fishery who have limited flexibility to pursue other fisheries. These could include fish hold upgrade limitations and/or other measures that you consider approvable.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Moore".

Christopher M. Moore, Ph.D.
Executive Director, Mid-Atlantic Fishery Management Council

CC: M. Luisi, J. Didden, P. Hughes



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