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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150309236-7563-01]

RIN 0648-BE65

**Fisheries of the Northeastern United States; Mid-Atlantic Fishery Management Council;
Omnibus Acceptable Biological Catch Framework Adjustment**

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes regulations to implement an Omnibus Framework Adjustment to the Mid-Atlantic Fishery Management Council acceptable biological catch setting process. This proposed rule is necessary to provide the public with an opportunity to review and comment on the measures recommended by the Mid-Atlantic Council to the National Marine Fisheries Service for implementation. The intended effect of these measures would help bring stability to quotas while accounting for year-to-year changes in stock size projections, and allow the Mid-Atlantic Council's Fishery Management Plans to automatically incorporate the best available scientific information when calculating acceptable biological catches. This action also proposes to revise regulatory language to clarify the Mid-Atlantic Council's acceptable biological catch control rule assessment level designations.

DATES: Comments must be received on or before *[insert date 30 days after date of publication]*

in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2017-0056, by either of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0056, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to John Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the Environmental Assessment and other supporting documents are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The draft Omnibus Framework Adjustment, as submitted by the Council, is also available via the internet at <http://www.greateratlantic.fisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281-9112.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) is required to set annual catch limits (ACLs) that do not exceed the acceptable biological catch (ABC) recommendation of its Scientific and Statistical Committee (SSC) to prevent overfishing. ABCs represent an upper limit for the Council to use when setting catch and landing limits. The 2011 ACL Omnibus Amendment implementing rule (76 FR 60606; September 29, 2011), enacted the Council's risk policy that provides guidance to the SSC on how much overfishing risk the Council will accept when the SSC develops ABC recommendations. The policy also outlines risk tolerance for ensuring stocks under rebuilding plans achieve fishing mortality objectives.

The Council's risk policy for setting ABCs states that for a typical species whose stock size is equal to or greater than a biomass target associated with maximum sustainable yield (B_{MSY}), the acceptable probability of overfishing is 40 percent, i.e., if the fishery catches the ABC then there is a 60-percent probability of not overfishing. If a species is deemed to have an atypical life history, the Council requires at least a 35-percent probability of overfishing (i.e., a 65-percent chance of not overfishing), to create a larger buffer when biomass is at or above B_{MSY} . The SSC determines whether a stock is typical or atypical each time an ABC is recommended. When an overfishing probability is available and considered reliable by the SSC, the applicable tolerance for overfishing risk, as informed by the Council's risk policy, would be selected to derive the ABC recommendation.

For both typical and atypical species, the Council has specified that as stock size biomass or (B) falls below the target (B_{MSY}), then the probability of overfishing decreases, until the probability of overfishing hits zero when the stock is at 10 percent of the target (B_{MSY}). For a stock under a rebuilding plan, the probability of not exceeding the fishing mortality rate (F) within the specified timeframe must be at least 50 percent, unless this probability threshold is modified through a stock rebuilding plan.

The fishery management plans (FMPs) managed by the Council all have provisions for setting specifications for multiple years (five years for dogfish and three years for all other species). Moving to multi-year specifications has not provided the anticipated stability to quotas over a multi-year period. This is because target fishing mortality rates are applied to stock size projections that tend to change from year-to-year, creating varying ABCs within multi-year quotas. The change to constant multi-year ABCs would help bring stability to quotas while accounting for year-to-year changes in stock size projections and prevent overfishing.

Proposed Measures

Overfishing Probability Averaging

The proposed action would, when assessment fishing mortality reference points are accepted by the SSC, average the probability of overfishing (or achieving the target fishing mortality for rebuilding stocks) consistent with the existing risk policy requirements. The constant, multi-year ABCs that would result must continue to meet the Council's risk policy goals, with the probability of overfishing not to exceed 50 percent in any given year. For stocks in a rebuilding plan, the probability of achieving the rebuilding fishery mortality must meet the risk policy objectives when constant, multi-year ABCs are recommended by the SSC.

Under the proposed measures, averaged ABCs could be set at a constant level for up to five years for spiny dogfish and up to three years for all other species managed by the Council. As an example, if the application of the risk policy would result in a 40-percent probability of overfishing in any given year of setting annual quotas, the average probability of overfishing resulting from constant multi-year ABCs cannot exceed 40 percent. For any 3-year period, an average ABC would result in slightly less chance of overfishing in some years and slightly more of a chance of overfishing in other years compared to non-averaged ABCs based on year-to-year projections, but could not, as outlined in the example, exceed 40 percent in any given year. This would result in a minimal difference of overfishing likelihood between the yearly ABCs versus a constant ABC over a 3-year period. As previously noted, the probability of overfishing could not exceed 50 percent in any given individual year of constant multi-year ABCs.

The SSC may provide both a standard 3-year recommendation as well as a constant 3-year recommendation based on the average overfishing probability approach for the Council to consider. The SSC would continue to review fishery performance each year during multi-year specifications, regardless of which multi-year approach is used to determine ABCs. The multi-year averaging of ABCs would not apply to stocks that do not have a quantitative assessment to derive ABCs and could not be used for stocks with an assessment that cannot provide information on the risk of overfishing.

ABC Control Rule Assessment Level Designations

The proposed action would revise some of the regulatory language describing the Council's ABC control rule assessment level designations. These revisions were recommended by the Council to clarify the operation of the Council's ABC control rules, these revisions are

merely clarifications and do not create any regulatory changes in practice.

Notice of Approved Biological Status Criteria

We are also providing notice of the administrative process the Council will use for incorporating the best scientific information available in the development of ABCs for the Atlantic Bluefish, Golden Tilefish, and Atlantic Mackerel, Squid, and Butterfish FMPs. The best available science requirements have dictated that accepted assessment information be utilized by the SSC in setting quotas under National Standard 2. The Council's SSC will utilize peer-reviewed biological reference points (overfishing level, biomass thresholds, etc.) and periodic updates to stock status determination criteria (i.e., biomass and fishing mortality reference points) to define ABCs, consistent with the Council's other FMPs and National Standards 1 and 2 of the Magnuson-Stevens Act. This change in Council operations would improve management efficiency by automatically incorporating new peer-reviewed status determination criteria instead of requiring a separate management action to adopt them within these three FMPs. Because best available science requirements have dictated that accepted assessment information be utilized by the SSC in recommending ABCs, this proposed measure would serve to clarify and simplify the administrative procedures for doing so. This same process has already been identified by the Council for their other FMPs.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with all the Mid-Atlantic Fishery Management Council's FMPs, provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Small Business Administration defines a small business in the shellfish, finfish or other marine fishing sectors as a firm that is independently owned and operated with receipts of less than \$11 million annually (see NMFS final rule revising the small business standard for commercial fishing, 80 FR 81194, December 29, 2015). The measures proposed in this action apply to the vessels that hold permits for Council-managed fisheries because all species have ABCs set by the SSC. According to permit data at the end of 2014, there were 4,712 vessels with at least one active Northeast Federal fishing permit, either commercial or party/charter (some vessels have both commercial and party/charter permits and most vessels have more than one permit).

This proposed action would make it consistent with the Council's risk policy for the SSC to specify constant multi-year ABCs for all the Council's FMPs, provided the average of each year's probability of overfishing adhere to the appropriate overfishing probability goal. This change would help bring stability to fishing quotas while accounting for year-to-year changes in stock size projections and prevent overfishing. Given the inherent uncertainty involved in assessments, the differences are not expected to be meaningful from a biological perspective.

In addition, the proposed action would add regulatory language clarifying the assessment level designations for the Council's ABC control rule. These changes to the regulations were

recommended by the Council to merely clarify the ABC control rule and do not change its function or operation.

This action also provides notice that the Atlantic Bluefish, Golden Tilefish, and Atlantic Mackerel, Squid, and Butterfish FMPs will automatically incorporate the best available scientific information in calculating ABCs. This means the SSC would utilize peer-reviewed biological reference points (overfishing level, biomass thresholds, etc.) and periodic updates to stock status determination criteria (i.e., biomass and fishing mortality reference points) to define ABCs, consistent with the Council's other FMPs and National Standards 1 and 2 of the Magnuson-Stevens Act. Since best available science requirements have dictated that accepted assessment information be utilized by the SSC in setting quotas, this measure would serve to clarify and simplify the administrative procedures for doing so.

These measures are administrative and pertain to how the Council establishes catch limits. There is no reason to believe small entities will be negatively affected by the proposed action given the administrative nature of the changes. The resulting actions to set catch using these new procedures may have an indirect effect on small entities; however, catch setting will occur in separate subsequent actions that will include, as needed, analyses under the Regulatory Flexibility Act. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and Reporting requirements.

Dated: July 12, 2017.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR 648 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. Section 648.20 is revised to read as follows:

§ 648.20 Mid-Atlantic Fishery Management Council Acceptable Biological Catch (ABC) control rules.

The SSC shall review the following criteria, and any additional relevant information, to assign managed stocks to one of four types of control rules based on the species' assessments and its treatment of uncertainty when developing ABC recommendations. The SSC shall review the ABC control rule assignment for stocks each time an ABC is recommended. ABCs may be recommended for up to 3 years for all stocks, with the exception of 5 years for spiny dogfish. The SSC may specify constant, multi-year ABCs, derived from the average of ABCs (or average risk of overfishing) if the average probability of overfishing remains between zero and 40 percent, and does not exceed a 50-percent probability in any given year. The average ABCs may remain constant for up to 3 years for all stocks, with the exception of 5 years for spiny dogfish. The SSC may deviate from the control rule methods and recommend an ABC that differs from the result of

the ABC control rule application; however, any such deviation must include the following: A description of why the deviation is warranted; description of the methods used to derive the alternative ABC; and an explanation of how the deviation is consistent with National Standard 2.

The four types of ABC control rules are described below.

(a) ABC control rule for a stock with an OFL probability distribution that is analytically-derived and accepted by the SSC.

(1) The SSC determines that the assessment OFL and the assessment's treatment of uncertainty are acceptable, based on the following:

(i) All important sources of scientific uncertainty are captured in the stock assessment model;

(ii) The probability distribution of the OFL is calculated within the stock assessment and adequately describes the OFL uncertainty;

(iii) The stock assessment model structure and treatment of the data prior to use in the model includes relevant details of the biology of the stock, fisheries that exploit the stock, and data collection methods;

(iv) The stock assessment provides the following estimates: Fishing mortality rate (F) at MSY or an acceptable proxy maximum fishing mortality threshold (MFMT) to define OFL, biomass, biological reference points, stock status, OFL, and the respective uncertainties associated with each value; and

(v) No substantial retrospective patterns exist in the stock assessment estimates of fishing mortality, biomass, and recruitment.

(2) An ABC for stocks with an accepted OFL probability distribution that is

analytically-derived will be determined by applying the acceptable probability of overfishing from the MAFMC's risk policy found in §648.21(a) through (d) to the probability distribution of the OFL.

(b) ABC control rule for a stock with an OFL probability distribution that is modified by the assessment team and accepted by the SSC.

(1) The SSC determines the assessment OFL is acceptable and the SSC accepts the assessment team's modifications to the analytically-derived OFL probability distribution, based on the following:

(i) Key features of the stock biology, the fisheries that exploit it, and/or the data collection methods for stock information are missing from, or poorly estimated in, the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncertainty is not fully promulgated through the stock assessment model and/or some important sources of uncertainty may be lacking;

(iii) The stock assessment provides estimates of the precision of biomass, fishing mortality, and reference points;

(iv) The accuracy of the minimum fishing mortality threshold and projected future biomass is estimated in the stock assessment using ad hoc methods; and

(v) The modified OFL probability distribution provided by the assessment team acceptably addresses the uncertainty of the assessment.

(2) An ABC for stocks with an OFL probability distribution that is modified by the assessment team and accepted by the SSC will be determined by applying the acceptable probability of overfishing from the MAFMC's risk policy found in §648.21(a) through (d) to the

probability distribution of the OFL as modified by the assessment team.

(c) ABC control rule for a stock with an OFL probability distribution that is modified by the SSC.

(1) The SSC determines the assessment OFL is acceptable but the SSC derives the appropriate uncertainty for OFL based on meta-analysis and other considerations. This requires the SSC to determine that the stock assessment does not contain an estimated probability distribution of OFL or the OFL probability distribution in the stock assessment is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) An *ABC* for stocks with an OFL probability distribution that is modified by the SSC will be determined by either (i) applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the SSC-adjusted OFL probability distribution. The SSC will use default assignments of uncertainty in the adjusted OFL probability distribution based on literature review and evaluation of control rule performance; or,

(ii) If the SSC cannot develop an OFL probability distribution, a default control rule of 75 percent of the F_{MSY} value will be applied to derive ABC.

(d) ABC control rule for when an OFL cannot be specified.

(1) The SSC determines that the OFL cannot be specified given the available information.

(2) An *ABC* for stocks with an OFL that cannot be specified will be determined by using control rules based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

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