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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120307159-2155-01]

RIN 0648-BB99

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 6

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a change in the Mid-Atlantic Fishery Management Council's risk policy regarding stocks without an overfishing limit. The current risk policy does not allow increases of the acceptable biological catch for stocks that do not have an overfishing limit derived from the stock assessment. The modification will allow increases of the acceptable biological catch for stocks that have stable or increasing trends in abundance, and for which there is robust scientific information to suggest that an increased acceptable biological catch will not lead to overfishing.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Supplemental Environmental Assessment (EA) and Regulatory

Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for Framework Adjustment 6, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2012-0110, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0110 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope “Comments on MSB Framework Adjustment 6.”
- Fax: (978) 281-9135, Attn: Aja Szumylo.

Instructions: Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected

information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations that implement the Council's risk policy at 50 CFR 648.21 went into effect on October 31, 2011, as part of the Council's Omnibus Amendment to implement annual catch limits and accountability measures (76 FR 60606). Among other measures, the Omnibus Amendment established acceptable biological catch (ABC) control rules (implementing regulations at 50 CFR 648.20) and a risk policy (§ 648.21) to guide the Council's Scientific and Statistical Committee (SSC) in their ABC setting process.

The ABC control rules assign stocks to a certain level (Levels 1-4) based on the amount of uncertainty about the stock, and provide formulas for the establishment of an ABC for stocks at each level. Level 1 refers to stocks that have mostly complete stock status information, while Level 4 refers to data poor stocks. The ABC control rule regulations note that the SSC can deviate from the control rule methods if they describe why the deviation is warranted, describe the methods used to derive the alternative ABC, and explain how the deviation is consistent with National Standard 2. The risk policy works in conjunction with the ABC control rules, and is used to indicate the Council's preferred tolerance for risk of overfishing to the SSC. In general, the Council's risk policy states that ABC should be set so that the risk of overfishing stays below

40 percent, based on a probability distribution for the overfishing limit (OFL).

The existing risk policy is more stringent for stocks that lack an OFL and states that, “If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.” This provision was designed to prevent catch levels from being increased when there are no criteria available to determine if overfishing will occur in the upcoming fishing year. Following one of the first applications of the risk policy for the 2012 fishing year (2012 butterfish specifications; 77 FR 16472; March 21, 2012), the Council found that there are limited circumstances in which the SSC may be scientifically justified in recommending that the ABC be increased for stocks without fishing mortality reference points without resulting in an unacceptably high risk of overfishing. Thus, the Council initiated Framework Adjustment 6 to change the risk policy to allow the SSC to use all available scientific data when recommending ABCs in data poor situations, rather than constraining the SSC in its recommendation when an OFL is not available.

Framework Adjustment 6 proposes to modify the risk policy regarding stocks without an OFL or OFL proxy to allow increase in ABC for stocks that have stable or increasing trends in abundance, and for which the SSC can point to robust scientific information to suggest that an increased ABC will not lead to overfishing. The adjustment to this policy would not change the Council’s approach to stocks without an OFL that have declining biomass, or for which the SSC cannot point to scientific evidence to suggest that the recommended ABC will not result in overfishing.

Though the proposed action only modifies the MSB FMP, it will apply to all of the

Council's managed species, including Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, Atlantic surfclam, ocean quahog, and tilefish. The provisions in the Omnibus Amendment, including the risk policy, do not apply to longfin squid or Illex squid; these species are exempt from these requirements because they have a life cycle of less than 1 year. The regulations for the ABC control rules and risk policy reside in the MSB FMP, but are a product of the Omnibus Amendment, which affected all of the plans for the above listed species. It is only necessary to complete this action as a Framework Adjustment to the MSB FMP because the ABC control rules and risk policy are incorporated by reference into the regulations for all other Council species.

#### Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP; Atlantic Bluefish FMP; Spiny Dogfish FMP; Summer Flounder, Scup, and Black Sea Bass FMP; Surfclam and Ocean Quahog FMP; and Tilefish FMP; other provisions of the MSA; 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.

As outlined in the preamble to this proposed rule, Framework Adjustment 6 proposes to modify the Council's risk policy regarding stocks without an OFL or OFL proxy to allow

increase in ABC for stocks that have stable or increasing trends in abundance, and for which the Council's SSC can point to robust scientific information to suggest that an increased ABC will not lead to overfishing. The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of Framework Adjustment 6 in conjunction with a Supplemental Environmental Assessment analysis.

The formal procedures for addressing both scientific and management uncertainty in the catch limit establishment system implemented through the Omnibus Amendment were administrative, as they were entirely a description of process and have no substantive impact on regulated entities. Framework Adjustment 6 adjusts a feature of the existing catch limit establishment system. While Framework Adjustment 6 adjusts the Council's guidance to the SSC regarding ABC recommendations for stocks without an OFL or OFL proxy, the action contains no actual application of the methods to set ABC, application of the risk policy, or establishment of specific annual catch limits or accountability measures for any of the Council's fishery management plans (FMPs). As a result, there are no immediate economic impacts to evaluate. Should the SSC rely on this provision to recommend ABCs in future specifications, the resulting catch levels derived from its recommendation will have measurable impacts, and the specific impacts associated those catch levels will be evaluated through the Council's specification processes for each FMP and addressed in the resulting NMFS rules.

The Council-conducted analyses identified 2,875 unique fishing entities in the Northeast Region, all of which were determined to be small entities. However, given the purely administrative nature of the proposed measures, there are neither expected direct economic or disproportionate impacts to either small or large regulated entities given the aforementioned adjustment to the administrative process proposed in Framework Adjustment 6. As a result, an

initial regulatory flexibility analysis is not required and none has been prepared. RFA analysis will be conducted, as appropriate, for subsequent actions that establish catch limits for Council-managed species.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 25, 2012.

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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 proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.21, paragraph (d) is revised to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

\* \* \* \* \*

(d) Stock without an OFL or OFL proxy. (1) If an OFL cannot be determined from the

stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

(2) The SSC may deviate from paragraph (d)(1) of this section, provided that the following two criteria are met: Biomass-based reference points indicate that the stock is greater than  $B_{MSY}$  and stock biomass is stable or increasing, or if biomass based reference points are not available, best available science indicates that stock biomass is stable or increasing; and the SSC provides a determination that, based on best available science, the recommended increase to the ABC is not expected to result in overfishing. Any such deviation must include a description of why the increase is warranted, description of the methods used to derive the alternative ABC, and a certification that the ABC is not likely to result in overfishing on the stock.

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