

of OFL or the stock assessment provided OFL probability distribution is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) *Level 3 ABC determination.* Stocks assigned to Level 3 will have ABC derived by one of the following two methods:

(i) The SSC will derive the ABC by applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to an SSC-adjusted OFL probability distribution. The SSC will use default levels 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 distribution, a default control rule of 75 percent of the F_{MSY} value will be applied to derive ABC.

(d) *Level 4 criteria.* (1) Assignment of a stock to Level 4 requires the SSC to determine that none of the criteria for Levels 1–3 found in § 648.20(a) through (c) were met.

(2) *Level 4 ABC determination.* Stocks assigned to Level 4 will have ABC derived using control rules developed on a case-by-case basis by the SSC based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

[76 FR 60615, Sept. 29, 2011]

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan.* The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (e.g., 75-percent probability of not exceeding rebuilding F ,

which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan.* (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (i.e., the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (i.e., the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (i.e., the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 40 percent as the B/B_{MSY} ratio becomes less 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(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.

[76 FR 60616, Sept. 29, 2011, as amended at 77 FR 51857, Aug. 27, 2012]

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including Research Set-Aside (RSA), DAH, and DAP for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) ACL; ACT including RSA, DAH, DAP; bycatch level of the TALFF, if any; and butterfish mortality cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) ACL; commercial ACT, including RSA, DAH, Tier 3 allocation (up to 7 percent of the DAH), DAP; JVP if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic

processed fish be established in relation to the initial annual amounts.

(4) IOY, including RSA, DAH, and DAP for longfin squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review the best available data to recommend specifications consistent with the following:

(1) Longfin and/or *Illex squid*. (i) The ABC for any fishing year must be either the maximum OY, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY. The OYs specified during a fishing year may not exceed the following amounts:

(A) Longfin squid—The catch associated with a fishing mortality rate of $F_{Threshold}$.

(B) *Illex*—Catch associated with a fishing mortality rate of F_{MSY} .

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of RSA and DAH. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RSA, if applicable.

(2) *Mackerel*—(i) *ABC*. The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *ACL*. The ACL or Domestic ABC is calculated using the formula $ACL/ Domestic\ ABC = stock\ wide\ ABC - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

(iii) *OY*. OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT*. The Monitoring Committee shall identify and review relevant