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Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Authorized officers must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Retention of haddock by herring vessels using midwater trawl gear.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may not discard any haddock that has been brought on the deck or pumped into the hold.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 27485, May 19, 1998; 71 FR 46875, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007; 72 FR 51703, Sept. 11, 2007; 76 FR 56997, Sept. 15, 2011; 76 FR 60649, Sept. 29, 2011]

§ 648.16 Penalties.

See § 600.735.

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Fisheries included under exemption—(1) NE multispecies.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, re-

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spectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements.* (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with the definition of not available for immediate use as defined in § 648.2; and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[70 FR 21942, Apr. 28, 2005, as amended at 79 FR 52580, Sept. 4, 2014]

§ 648.18 [Reserved]

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Mid-Atlantic Fishery Management Council ABC control rules.

The SSC shall review the following criteria, and any additional relevant information, to assign managed stocks to a specific control rule level when developing ABC recommendations. The SSC shall review the ABC control rule level assignment for stocks each time an ABC is recommended. The ABC may be recommended 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 or level criteria and recommend an ABC that differs from the result of the ABC control rule calculation; 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.

(a) *Level 1 criteria.* (1) Assignment of a stock to Level 1 requires the SSC to determine 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 provides an adequate description of 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 alternate 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) *Level 1 ABC determination.* Stocks assigned to Level 1 by the SSC will have the ABC derived by applying 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) *Level 2 criteria.* (1) Assignment of a stock to Level 2 requires the SSC to determine 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 the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncer-

tainty 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; and

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

(2) *Level 2 ABC determination.* Stocks assigned to Level 2 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in §648.21(a) through (d) to the probability distribution of the OFL.

(c) *Level 3 criteria.* (1) Assignment of a stock to Level 3 requires the SSC to determine that the stock assessment attributes are the same as those for a Level 2 assessment listed in §648.20(d)(1) through (4), except that the stock assessment does not contain an estimated probability distribution 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

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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 than 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