

**FRAMEWORK ADJUSTMENT X**  
**TO THE**  
**ATLANTIC MACKEREL, SQUIDS, AND BUTTERFISH**  
**FISHERY MANAGEMENT PLAN**

**(Supplemental Environmental Assessment, Regulatory Impact  
Review, and Initial Regulatory Flexibility Analysis)**

**February 2012**

**Mid-Atlantic Fishery Management Council**

**in cooperation with**

**the National Marine Fisheries Service**

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## 1.0 EXECUTIVE SUMMARY

This framework supplemental environmental assessment (SEA) updates the previously approved environmental assessment (EA; attached) that analyzed the Omnibus Annual Catch Limit (ACL) and Accountability Measure (AM) Amendment (Omnibus Amendment). This Amendment was published by NOAA's National Marine Fisheries service (NMFS) in the *Federal Register* on September 29, 2011 (76 FR 60606), and became effective on October 31, 2011. This framework document is not a stand-alone document, but rather a SEA, intended to be utilized in conjunction with the attached Omnibus Amendment Environmental Assessment (EA), September 2011 approved version. Unless otherwise noted, the initial EA prepared for this action and attached to this SEA remains applicable, including the affected environment. Therefore, sections addressed in this supplement should be considered within the context of the full EA.

This framework presents and evaluates action intended to provide a more clearly defined management process when applying a single provision of the Mid-Atlantic Fishery Management Council (Council) risk policy on overfishing, while retaining the flexibility afforded to the Scientific and Statistical Committee (SSC) in deriving acceptable biological catch (ABC) recommendations when no overfishing limit (OFL) or OFL proxy has been identified. The specific provision to which this action applies is described in section 5.2.2 of the Omnibus Amendment and implemented in §648.21(d) of the Code of Federal Regulations (CFR). This action describes the limited circumstances under which ABC could be increased for stocks without status determination criteria on overfishing.

In response to the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) that was signed into law by President George W. Bush on January 12, 2007, the Council prepared an Omnibus Amendment to address NOAA's National Marine Fisheries Service (NMFS) revised guidance for implementing National Standard 1 (74 FR 3178; January 16, 2009; NS1 guidelines). To address the MSA<sup>1</sup> requirements and revised guidelines, the Council worked with its SSC to develop recommendations for ABC control rules for all the managed resources subject to this requirement. These ABC control rules establish the pre-agreed process the SSC uses to derive ABC recommendations for the Council that address scientific uncertainty. Scientific uncertainty is essentially imperfect knowledge of the data input into stock assessments, the stock assessment modeling, and the projections to determine what upcoming fishing year catches should be. One required variable in the ABC derivation is the Council tolerance for overfishing of stocks (i.e., probability of overfishing) as expressed through a Council risk policy. Therefore, the Council developed a formal Council risk policy to be used in conjunction with the ABC control rules, and intended to guide the SSC in how to derive ABC. These recommended measures were implemented through the Omnibus Amendment. The ABC control rules and risk policy provisions apply to multiple FMPs and multiple Council species, including Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass,

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<sup>1</sup> Magnuson-Stevens Fishery Conservation and Management Act (MSA), portions retained plus revisions made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA).

Atlantic surfclam, ocean quahog, and tilefish (referred to collectively as “the managed resources”) contained within the six Council Fishery Management Plans (FMPs<sup>2</sup>). The regulations pertinent to the risk policy reside in the CFR Atlantic Mackerel, Squid, and Butterfish section; therefore, the framework would amend that section.

**Summary of Alternatives**

The following section presents a qualitative summary of expected indirect impacts for the alternatives under consideration (Box 1). No direct impacts are expected as a result of the alternatives. For the purpose of impact evaluation, status quo alternatives are compared to the current condition, while all other alternatives are compared to the status quo alternative. When the proposed action is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative; therefore, there are no significant cumulative effects associated with the action proposed in this document

**Box 1. Overall qualitative summary of the expected indirect impacts of alternatives considered in this document.** A minus sign (-) signifies an expected negative impact, a plus sign (+) signifies an expected positive impact, and zero is used to indicate a null impact. A “sl” in front of a sign is used to convey a minor effect, such as slight positive (sl+). An ‘S’ indicates short-term, and an ‘L’ is indicates long-term impacts.

	<b>Biological</b>	<b>EFH</b>	<b>Protected Resources</b>	<b>Economic</b>	<b>Social</b>
<b>Alternative 1</b> (No action/status quo)	S(0)/L(0)	0	0	S(0)/L(0)	S(0)/L(0)
<b>Alternative 2</b> (Clarifies Provision of Council Risk Policy)	S(sl-/0)/L(0)	0	0	S(sl+)/L(0)	S(sl+)/L(0)

<sup>2</sup> Atlantic Mackerel, Squid, and Butterfish FMP, Bluefish FMP, Spiny Dogfish FMP, Summer Flounder, Scup, and Black Sea Bass FMP, Surfclam and Ocean Quahog FMP and Tilefish FMP.

## 2.0 LIST OF ACRONYMS

ABC	Acceptable Biological Catch
ACL	Annual Catch Limit
ACT	Annual Catch Target
AM	Accountability Measure
CZMA	Coastal Zone Management Act
EA	Environmental Assessment
ESA	Endangered Species Act of 1973
F	Fishing Mortality Rate
FR	Federal Register
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
MAFMC	Mid-Atlantic Fishery Management Council
MSY	Maximum Sustainable Yield
NEPA	National Environmental Policy Act
NERO	Northeast Regional Office
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NSI	National Standard 1
MMPA	Marine Mammal Protection Act
MSA	Magnuson-Stevens Act (portions retained plus revisions)
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
OFL	Overfishing limit
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RHL	Recreational Harvest Limit
RIR	Regulatory Impact Review
SSC	Scientific and Statistical Committee

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#### **4.0 PURPOSE AND NEED, MANAGEMENT UNIT, MANAGEMENT OBJECTIVES, AND HISTORY OF FMP DEVELOPMENT**

##### ***Purpose and Need***

The purpose of this framework is to provide a more clearly defined management process when applying a single provision of the Council risk policy for overfishing described in section 5.2.2 of the Omnibus Amendment and implemented in §648.21(d) of the Code of Federal Regulations (CFR). Specifically, this action will define the circumstances under which ABC can be increased if no OFL or OFL proxy is available, and eliminate the conflicting policies that were implemented with a more clearly defined alternative.

Section 5.2.1 of the Omnibus Amendment affords the SSC the flexibility to deviate from the ABC control rule methods framework or level criteria and recommend an ABC that differs from the result of the ABC control rule calculations. The implementing regulations §648.20 state, "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." However, section 5.2.2 indicates that if no OFL is available (i.e., No  $F_{MSY}$  or  $F_{MSY}$  proxy provided through the stock assessment to identify it) and no OFL proxy is provided by the SSC at the time of ABC recommendations, then an upper limit (cap) on allowable increases in ABC will be established. ABC may not be increased until an OFL has been identified. The implementing regulations §648.21(d) state, "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 conflict has resulted in the need to more clearly define the management process relative to this single provision contained within the Council risk policy. The action proposed is needed to provide both clarity and to retain the flexibility afforded to the SSC in deriving ABC recommendations when no OFL or OFL proxy has been identified.

The Council risk policy and the action proposed apply to all the managed resources; therefore, this action would apply to the managed resources contained within the six Council FMPs.

##### ***Management Unit, Management Objectives, and History of FMP Development***

The management units, management objectives, and history of FMP development, as defined in section 4.3 of the EA, for the managed resources and their applicable FMPs is incorporated by reference in this SEA.

## **5.0 MANAGEMENT ALTERNATIVES**

The definition of the no action alternative described in section 5.1 of the EA also applies here and is incorporated by reference in this SEA. The management regimes and associated management measures within the FMPs for the managed resources have been refined over time and codified in regulation. The *status quo* management measures for the managed resources, therefore, each involve a set of indefinite (i.e., in force until otherwise changed) measures that have been established. These measures will continue as implemented, even if the actions contained within this framework are not taken (i.e., no action). The no action alternative for these managed resources is therefore equivalent to *status quo*. On that basis, the status quo and no action are presented in conjunction for comparative impact analysis relative to the action alternative.

### **5.1 Alternative 1 (Status Quo/no action)**

Under this status quo/no action alternative, no action will be taken to more clearly define the management process when no OFL or OFL proxy is available. The measures established in the FMPs by the Omnibus Amendment continue in place as described. As such, if the SSC is unable to establish an OFL or OFL proxy for a stock, then the ABC level may not be increased until an OFL or OFL proxy has been identified by the SSC.

### **5.2 Alternative 2 (Preferred: Clarify Risk Policy Application)**

Under this alternative, the flexibility that the Council intended for the SSC to use with the single provision under §648.21(d) will be more clearly defined. This FMP provision specifically addresses the Council risk policy on increasing ABC when no OFL is available (i.e., No  $F_{MSY}$  or  $F_{MSY}$  proxy provided through the stock assessment to identify it) and no OFL proxy is provided by the SSC.

The SSC already has the flexibility to deviate from the ABC control rule methods, of which the Council risk policy is one component. The SSC must provide 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 Council intent for the application of this risk policy provision is to prevent overfishing on the managed resources when no OFL or OFL proxy is available. This policy was designed to prevent catch from being increased when there are no criteria available to determine if overfishing will be occurring for the upcoming fishing year (as noted in Section 5.2.2 of the EA). However, it is possible that, under limited circumstances, ABC could be increased for stocks without status determination criteria on overfishing, and still would not be expected to result in overfishing.

Therefore the intent of the management process could still be met if ABC was increased in the following two circumstances:

1. Biomass-based reference points suggest that the stock is greater than  $B_{MSY}$ , and the stock biomass is stable or increasing. If biomass-based reference points are not available, best available science indicates that stock biomass is stable or increasing.
2. The SSC must provide a determination that, based on best available science, the proposed increase to the ABC is not expected to result in overfishing of the stock.

Under these circumstances 1 and 2 described above, the SSC must provide a description of why the increase is warranted, describe the method used to derive the increased ABC, and provide a certification that the increase in ABC is not likely to result in overfishing on the stock.

[The Council may also set an upper limit on the allowable increase in ABC under these limited circumstances (1 and 2 described above). The Council would need to indicate what the maximum percentage increase in ABC would be allowed. This provision would be optional as to whether to be included in this alternative]

## **6.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES**

The affected environment and fisheries, as defined in 6.0 of the EA, is incorporated by reference in this SEA. Updates on the status of the stock occur quarterly and are available on the following website:

<http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>

Interactions of the managed resources with non-target species, Endangered Species Act (ESA) listed and Marine Mammal Protection Act (MMPA) protected resources, as well as interactions with Essential Fish Habitat, are described in the EA's affected environment section. The affected environment section also describes the social and economic environment.

## **7.0 SUPPLEMENTAL ENVIRONMENTAL IMPACTS**

Consistent with the findings of the EA, the actions proposed in this SEA are administrative and have no direct impacts on the valued ecosystem components VECs (i.e., biological, habitat, ESA listed and MMPA protected resources, socioeconomic environment). The Omnibus Amendment established measures in the FMPs to formalize the process of addressing scientific and management uncertainty when setting catch limits for the upcoming fishing year(s) and to establish a comprehensive system of accountability for catch for the managed resources. The Council risk policy is one component of that process and intended to be used as a variable in the ABC derivation and recommendation process used by the SSC. Clarification of the application of the Council risk policy through the action contained in this SEA does not result in direct impacts because the existence of the risk policy within the FMP and implementing regulations does not result in direct impacts (as described in the EA). It is through the application of this administrative process in the future with respect to catch limits, that



impacts will be realized; therefore, indirect impacts are anticipated and described in the sections that follow.

## **7.1 Biological Impacts**

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct biological impacts on any of the managed resources. Because alternative 2 more clearly describes the application of a provision of the risk policy that has already been implemented, the indirect impacts of this alternative and the no action/status quo alternative 1 are not expected to differ substantially. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. Neither of these alternatives is expected to alter how the fishery interacts with non-target species in a manner not previously considered nor is it expected to increase encounter rates with other non-target species.

Under the status quo alternative, if a stock does not have an OFL or OFL proxy, the SSC cannot recommend an increase in the ABC relative to the status quo. In addition, the Council would be unable to increase the ACL or associated annual catch targets (ACTs), even if the scientific information suggests the risk of overfishing the stock is sufficiently low and the stock biomass is stable and/or increasing.

Under the action alternative, the SSC can recommend ABC increases for such stocks in limited circumstances with sufficient scientific basis. There could be indirect impacts associated with the resulting catch limits that are derived from the application of a Council risk policy by the SSC that results in higher catch levels relative to the status quo. However, these impacts would not be expected to depart substantially from those levels associated with status quo.

The short-term impacts on the managed resources range from slight negative to neutral, and are directly related to the unquantifiable risk associated with increasing the ABC for such stocks. If the SSC recommends an ABC increase that does not ultimately result in overfishing of the stock, the impacts to the managed resource are neutral as the risk of overfishing was not increased. If the SSC recommends an increase in ABC that does ultimately result in overfishing, the impacts to the managed resource could be negative because this alternative allowed for a higher risk of overfishing. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower. The Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing mitigate these indirect negative biological impacts on the managed resources. As such, the potential indirect biological impacts that result from an increase in ABC would be considered slight negative as the SSC must certify that the proposed increase in ABC is not expected, based on the best scientific information available, to result in overfishing of the stock.

Future catch levels for the managed resources that result from the SSC recommended ABC and reduce the risk of overfishing would be expected to result in indirect long-term positive biological impacts. As such, the anticipated indirect biological impacts associated with alternative 2, would range from slight negative to neutral short-term, and neutral long-term impacts, when compared to the status quo.

## **7.2 Habitat Impacts**

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct impacts on habitat. Because alternative 2 more clearly describes the application of the risk policy, the indirect impacts of this alternative and the no action/status quo alternative 1 are expected to be similar. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. There could be indirect impacts on habitat associated with the resulting catch limits that are derived from the application of a Council risk policy by the SSC that results in lower or higher fishing effort depending on how the managed resource fisheries respond, and associated gear contact with habitat, relative to the status quo. Increases in catch limits (as could occur under alternative 2), do not necessarily translate to increased fishing effort as the fleet may opt to fish more efficiently in response to regulation changes (i.e., catch more fish in fewer trips; less effort) or changes in fish availability may alter the catch per unit effort. Therefore, these habitat impacts would not be expected to depart substantially from those levels associated with status quo. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower, and the Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing would prevent unconstrained increases in catch levels and associated unconstrained fishing effort. As such, the anticipated indirect habitat impacts associated with alternative 2 would be neutral, when compared to the status quo.

## **7.3 Impacts on ESA Listed and MMPA Protected Resources**

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct impacts on ESA listed or MMPA protected resources. Because alternative 2 more clearly describes the application of the risk policy, the indirect impacts of this alternative and the no action/status quo alternative 1 are expected to be similar. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. There could be indirect impacts on ESA listed or MMPA protected resources associated with the resulting catch limits that are derived from the application of a Council risk policy by the SSC that results in lower or higher fishing effort depending on how the fishery responds, and associated interactions with protected resources, relative to the status quo. Increases in catch limits (as could occur under alternative 2), do not necessarily translate to increased fishing effort as the fleet may opt to fish more efficiently in response to regulation changes (i.e., catch more fish in fewer trips; less effort) or changes in fish availability

may alter the catch per unit effort. Therefore, these impacts would not be expected to depart substantially from those levels associated with status quo. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower. The Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing would prevent unconstrained increases in catch levels and associated unconstrained fishing effort. As such, the anticipated indirect ESA listed or MMPA protected resources associated with alternative 2 would be neutral, when compared to the status quo.

#### **7.4 Socioeconomic Impacts**

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct impacts on social and economic environment. Because alternative 2 more clearly describes the application of the risk policy, the indirect impacts of this alternative and the no action/status quo alternative 1 are expected to be similar. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. There could be indirect impacts on fishing vessels, fleets, or ports associated with the resulting catch limits that are derived from the application of the Council risk policy by the SSC, depending on the resulting catch limits that are derived. However, these impacts would be expected to be similar to those under the status quo. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower. The Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing would be expected to ensure the resource is managed sustainably and should result in long-term positive social and economic impacts under either the status quo or alternative 2. Under the action alternative, the SSC can recommend ABC increases under limited circumstances with sufficient scientific basis for the increase, which could result in slight short term positive social and economic impacts. As such, the anticipated indirect impacts on the social and economic environment associated with alternative 2 would be neutral to slight positive short-term, and neutral long-term when compared to the status quo.

#### **7.5 Cumulative Impacts**

Alternative 2 would not have a significant cumulative effect on any of the valued ecosystem components (VECs) outlined and described in section 6.0 of the EA. This is consistent with the findings of the EA, which considered the cumulative effects of the previous Council risk policy, of which the action alternative in this SEA more clearly describes.

When the proposed action in this SEA (i.e., alternative 2) is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably

foreseeable future actions, it is not expected to result in any significant impacts, positive or negative (Box 2).

<b>Box 2.</b> Magnitude and significance of the cumulative effects; the additive and synergistic effects of the proposed action, as well as past, present, and future actions.				
<b>VEC</b>	<b>Status in 2010</b>	<b>Net Impact of P, Pr, and RFF Actions</b>	<b>Impact of the Proposed Action</b>	<b>Significant Cumulative Effects</b>
<b>Managed Resource</b>	Complex and variable (Section 6.1)	Positive (Sections 7.4.4 and 7.4.5.1)	Slight negative to neutral (Sections 7.1-7.3)	<b>None</b>
<b>Non-target Species</b>	Complex and variable (Section 6.2)	Positive (Sections 7.4.4 and 7.4.5.2)	Neutral (Sections 7.1-7.3)	<b>None</b>
<b>Habitat</b>	Complex and variable (Section 6.3)	Neutral to positive (Sections 7.4.4 and 7.4.5.3)	Neutral (Sections 7.1-7.3)	<b>None</b>
<b>Protected Resources</b>	Complex and variable (Section 6.4)	Positive (Sections 7.4.4 and 7.4.5.4)	Neutral (Sections 7.1-7.3)	<b>None</b>
<b>Human Communities</b>	Complex and variable (Section 6.5)	Positive (Sections 7.4.4 and 7.4.5.5)	Short-term negative to neutral; long-term positive (Sections 7.1-7.3)	<b>None</b>

## 8.0 NEPA (FONSI)

*TBD*

## 9.0 LITERATURE CITED

*TBD*

## 10.0 LIST OF AGENCIES AND PERSONS CONSULTED

In preparing this document, the Council consulted with NMFS, New England and South Atlantic Fishery Management Councils, U.S. Fish and Wildlife Service, and the states of Maine through North Carolina through their membership on the Mid-Atlantic and New England Fishery Management Councils. The advice of NMFS NERO personnel was sought to ensure compliance with NMFS formatting requirements.