

OMNIBUS AMENDMENT

**AMENDMENT 13 TO THE
ATLANTIC MACKEREL, SQUIDS, AND BUTTERFISH FISHERY
MANAGEMENT PLAN**

**AMENDMENT 3 TO THE
BLUEFISH FISHERY MANAGEMENT PLAN**

**AMENDMENT 2 TO THE
SPINY DOGFISH FISHERY MANAGEMENT PLAN**

**AMENDMENT 15 TO THE
SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS
FISHERY MANAGEMENT PLAN**

**AMENDMENT 16 TO THE
SURFCLAM AND OCEAN QUAHOG FISHERY MANAGEMENT PLAN**

**AMENDMENT 3 TO THE
TILEFISH FISHERY MANAGEMENT PLAN**

(Includes Environmental Assessment and Essential Fish Habitat Assessment)

April 2011

**Mid-Atlantic Fishery Management Council
in cooperation with
the National Marine Fisheries Service**

**Draft adopted by MAFMC: 15 APRIL 2010
Final adopted by MAFMC: 17 AUGUST 2010
Draft submitted to NOAA: 18 OCTOBER 2010
Final approved by NOAA: 29 SEPTEMBER 2011**

**A Publication of the Mid-Atlantic Fishery Management Council pursuant to
National Oceanic and Atmospheric Administration Award No. NA 10 NMF 4410009**



Excerpt from MAFMC 2011 Omnibus Amendment
5.1 No Action
5.2 Specifying Acceptable Biological Catch

5.0 MANAGEMENT ALTERNATIVES

The selection of the preferred alternatives within section 5.0, taken in conjunction with those existing measures in the FMPs, will provide a comprehensive framework for the catch limit and accountability system recommended in the revised NS1 guidelines provided by NMFS. Each suite of potential options is composed of a status quo/no action alternative, and one or more action alternatives that the Council considered when identifying preferred alternatives. In the case of proactive accountability and performance review alternatives, the Council may identify more than one action alternative as preferred.

5.1 No Action

Section 5.03(b) of NOAA Administrative Order (NAO) 216-6, “Environmental review procedures for implementing the National Environmental Policy Act,” states that “an EA must consider all reasonable alternatives, including the preferred action and the no action alternative.” Consideration of the “no action” alternative is important because it shows what would happen if the proposed action is not taken. Defining exactly what is meant by the “no action” alternative is often difficult. The President’s Council on Environmental Quality (CEQ) has explained that there are two distinct interpretations of the “no action:” One interpretation is essentially the *status quo*, i.e., no change from the current management; and the other interpretation is when a proposed project, such as building a railroad facility, does not take place. In the case of the proposed action alternatives contained within this document to specify mechanisms to set ABC, ACLs, and AMs, and future review and modification of those actions for the managed resources of this Omnibus Amendment, it is slightly more complicated than either of these interpretations suggest. There is no analogue for these fisheries to the railroad project described above, where no action means nothing happens. The management regimes and associated management measures within the FMPs (section 4.2) 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 they are even if the actions contained within this document 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 (i.e., Status quo/no action alternative) for comparative impact analysis relative to the action alternatives.

5.2 Specifying Acceptable Biological Catch

This section is comprised of two subsections which address the establishment of ABC controls rule methods in the FMP and a Council risk policy. Box 5.2 provides a brief overview of the alternatives contained within this section.

Box 5.2. Brief description of the alternatives included in section 5.2.				
Issue	Sub-Issue	Alternative	Status	Description of Action
Acceptable Biological Catch (ABC) (Section 5.2)	<i>ABC Alternatives</i> (Section 5.2.1)	ABC-A	Status quo/no action	No action to establish ABC control rule methods in FMP
		ABC-B (Council-Preferred)	Proposed	Council establishes ABC control rule methods in FMP
	<i>Council Risk Policy</i> (Section 5.2.2)	RISK-A	Status quo/no action	No action to establish formal risk policy in FMP
		RISK-B	Proposed	Constant probability of overfishing = 25 Percent
		RISK-C	Proposed	Stock Status, Replenishment Threshold, with Inflection at $B/B_{MSY} = 1.0$
		RISK-D	Proposed	Stock Status/Assessment Level Offset, Replenishment Threshold, with Inflection at $B/B_{MSY} = 1.5$
		RISK-E	Proposed	Stock Status/Assessment Level Offset, Replenishment Threshold, with 2 Inflection Points at $B/B_{MSY} = 1.0$ and $B/B_{MSY} = 2.0$
		RISK-F	Proposed	Categorical (4 x 4) with stock history, life history, and assessment level
		RISK-G (Council-Preferred)	Proposed	Stock Status/Life History, Inflection at $B/B_{MSY} = 1.0$

5.2.1 Acceptable Biological Catch Alternatives

Alternative ABC-A: Status quo/no action

Under this status quo alternative, the process used by the SSC for developing ABC recommendations for the Council would continue. There would be no formalization of the process to address scientific uncertainty and the SSC would continue to apply ad hoc methods to develop ABC recommendations. ABC would continue to be specified for up to three years for each of the managed resources, except spiny dogfish which may be specified up to five years and bluefish specified annually. This ad hoc process would not establish ABC control rules in the FMP for the managed resources consistent with NS1 guidelines (§ 600.310(f)(4)).

Alternative ABC-B (Council-Preferred): ABC Control Rule Methods – Four Assessment Levels

A multi-level approach will be used for setting an ABC for each Mid-Atlantic stock, based on the overall level of scientific uncertainty associated with its assessment. The stock

assessment will be required to provide estimates of the maximum fishing mortality threshold (MFMT) and future biomass, the probability distributions of these estimates, the probability distribution of the overfishing limit (OFL; level of catch that would achieve MFMT given the current or future biomass), and a description of factors considered and methods used to estimate their distributions. The multi-level approach defines four levels of overall assessment uncertainty defined by characteristics of the stock assessment and determination by the SSC that the uncertainty in the probability distribution of OFL adequately represents best available science. The procedure used to determine ABCs is different in each level of the methods framework. The SSC will determine to which level the assessment for a particular stock belongs when setting single or multi-year ABC specifications and a description of the justification for assignment to a level will be provided with the ABC recommendation. The ABC recommendations should be more precautionary as an assessment moves from level 1 to level 4. Recommendations for ABC may be made for up to 3 years for all of the managed resources except spiny dogfish which may be specified for up to 5 years. The rationale for assigning an assessment to a level will be reviewed each time an ABC determination is made.

The levels of stock assessments, their characteristics, and procedures for determining ABCs are defined as follows:

Level 1: Level 1 represents the highest level to which an assessment can be assigned. Assignment of a stock to this level implies that all important sources of uncertainty are fully and formally captured in the stock assessment model and the probability distribution of the OFL calculated within the assessment provides an adequate description of uncertainty of OFL. Accordingly, the OFL distribution will be estimated directly from the stock assessment. In addition, for a stock assessment to be assigned to Level 1, the SSC must determine that the OFL probability distribution represents best available science. Examples of attributes of the stock assessment that would lead to inclusion in Level 1 are:

- Assessment model structure and any treatment of the data prior to inclusion in the model includes appropriate and necessary details of the biology of the stock, the fisheries that exploit the stock, and the data collection methods;
- Estimation of stock status and reference points integrated in the same framework such that the OFL calculations promulgate all uncertainties (stock status and reference points) throughout estimation and forecasting;
- Assessment estimates relevant quantities including F_{MSY} ⁴, OFL, biomass reference points, stock status, and their respective uncertainties; and
- No substantial retrospective patterns in the estimates of fishing mortality (F), biomass (B), and recruitment (R) are present in the stock assessment estimates.

The important part of Level 1 is that the precision estimated using a purely statistical routine will define the OFL probability distribution. Thus, all of the important sources of uncertainty are formally captured in the stock assessment model. When a Level 1 assessment is achieved, the assessment results are likely unbiased and fully consider uncertainty in the precision of estimates. Under Level 1, the ABC will be determined solely on the basis of an

⁴ With justification, F_{MSY} may be replaced with an alternative maximum fishing mortality threshold to define the OFL.

acceptable probability of overfishing (P^*), determined by the Council's risk policy (see alternatives in section 5.2.2), and the probability distribution of the OFL.

Level 2: Level 2 indicates that an assessment has greater uncertainty than Level 1. Specifically, the estimation of the probability distribution of the OFL directly from the stock assessment model fails to include some important sources of uncertainty, necessitating expert judgment during the preparation of the stock assessment, and the OFL probability distribution is deemed best available science by the SSC. Examples of attributes of the stock assessment that would lead to inclusion in Level 2 are:

- Key features of the biology of the stock, the fisheries that exploit it, or the data collection methods are missing from the stock assessment;
- Assessment estimates relevant quantities, including reference points (which may be proxies) and stock status, together with their respective uncertainties, but the uncertainty is not fully promulgated through the model or some important sources may be lacking;
- Estimates of the precision of biomass, fishing mortality rates, and their respective reference points are provided in the stock assessment; and
- Accuracy of the MFMT and future biomass is estimated in the stock assessment by using *ad hoc* methods.

In this level, ABC will be determined by using the Council's risk policy (see alternatives in section 5.2.2), as with a Level 1 assessment, but with the OFL probability distribution based on the specified distribution in the stock assessment.

Level 3: Attributes of a stock assessment that would lead to inclusion in Level 3 are the same as Level 2, except that

- The assessment does not contain estimates of the probability distribution of the OFL or the probability distribution provided does not, in the opinion of the SSC, adequately reflect uncertainty in the OFL estimate.

Assessments in this level are judged to over- or underestimate the accuracy of the OFL. The SSC will adjust the distribution of the OFL and develop an ABC recommendation by applying the Council's risk policy (see alternatives in section 5.2.2) to the modified OFL probability distribution. The SSC will develop a set of default levels of uncertainty in the OFL probability distribution for this level based on literature review and a planned evaluation of ABC control rules. A control rule of 75 percent of F_{MSY} may be applied as a default if an OFL distribution cannot be developed.

Level 4: Stock assessments in Level 4 are deemed to have reliable estimates of trends in abundance and catch, but absolute abundance, fishing mortality rates, and reference points are suspect or absent. Additionally, there are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines (i.e., ABC determination). In these circumstances, the SSC may propose alternative approaches for satisfying the NS1 requirements of the MSA than those set forth in the NS1 guidelines. In particular, stocks in this level do not have point estimates of the OFL or probability distributions of the OFL that are considered best available science. In most

cases, stock assessments that fail peer review or are deemed highly uncertain by the SSC will be assigned to this level. Examples of potential attributes for inclusion in this category are:

- Assessment approach is missing essential features of the biology of the stock, characteristics of data collection, and the fisheries that exploit it;
- Stock status and reference points are estimated, but are not considered reliable;
- Assessment may estimate some relevant quantities including biomass, fishing mortality or relative abundance, but only trends are deemed reliable;
- Large retrospective patterns usually present; and
- Uncertainty may or may not be considered, but estimates of uncertainty are probably substantially underestimated.

In this level, a simple control rule will be used based on biomass and catch history and the Council's risk policy.

The SSC will determine, based on the assessment level to which a stock is classified, the specifics of the control rule to specify ABC that would be expected to attain the probability of overfishing specified in the Council's risk policy. The SSC may deviate from the above control rule methods framework or level criteria and recommend an ABC that differs from the result of the ABC control rule calculation, but must provide justification for doing so.

5.2.2 Risk Policy Alternatives

The Council risk policy alternatives given below would be applied all to the managed resources under MAFMC management jurisdiction. Under any of the action risk alternatives selected below, which excludes alternative RISK-A, the following would also apply.

For managed resources that are under rebuilding plans, the upper limit on the probability of exceeding $F_{REBUILD}$ would be 50 percent unless modified to a lesser value (i.e., higher probability of not exceeding $F_{REBUILD}$) through a rebuilding plan amendment. For example, the Council may conclude through a rebuilding plan Amendment that setting catch limits at the 25th percentile of catch associated with $F_{REBUILD}$ would rebuild the stock more quickly (i.e., provide for 75 percent probability of not exceeding $F_{REBUILD}$). In instances where the SSC derives a more restrictive ABC recommendation, based on the application of the ABC control rule methods framework and risk policy, than the ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level, the SSC shall recommend to the MAFMC the lower of the ABC values.

In addition, 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. This policy is designed to prevent catch limits from being increased when there are no criteria available to determine if overfishing will be occurring for the upcoming fishing year. To reduce the risk of overfishing, the Council policy would be to not increase ABC in the absence of an OFL.

It should be noted in the alternatives below that if the ratio of biomass (B) to biomass at maximum sustainable yield (B_{MSY}) is less than 1.0, then the current stock biomass is less

than B_{MSY} ; if the ratio of B to B_{MSY} is greater than or equal to B , then the current stock biomass is B_{MSY} or greater.

Alternative Risk-A: Status quo/no action

Under this status quo alternative, there would be no formalization of a Council risk policy which expresses the Council tolerance for overfishing. Under this alternative, no policy would be established and provided to the SSC prior to ABC recommendations being developed for the Council. The ad hoc Council process to address risk guided by past precedent would continue. Past precedent from *NRDC et al. versus Daley* (USDC, 1999) identifies catch levels must have at least a 50 percent probability of not overfishing. A 50 percent probability of overfishing is, therefore, the upper limit on the risk of overfishing and serves as the precedent-based default in the absence of any Council action to establish a risk policy. Consistent with the status quo, the Council could recommend catch be reduced to achieve a lower probability of overfishing on an ad hoc basis after ABC recommendation have been provided by the SSC to the Council.

Alternative Risk-B: Constant Probability of Overfishing = 25 Percent

Under this alternative, the probability of overfishing will be 25 percent under all circumstances (i.e., irrespective of stock condition, rebuilding status, life history, etc.).

Alternative Risk-C: Stock Status, Inflection at $B/B_{MSY} = 1.0$

Under this alternative, a stock replenishment threshold defined as the ratio of $B/B_{MSY} = 0.10$, will be utilized to ensure the stock does not reach low levels from which it cannot recover. The probability of overfishing will be 0 percent if the ratio of B/B_{MSY} is less than or equal to 0.10. Probability of overfishing increases linearly as the ratio of B/B_{MSY} increases, until the inflection point of $B/B_{MSY} = 1.0$ is reached and a 40 percent probability of overfishing is utilized for ratios equal to or greater than 1.0.

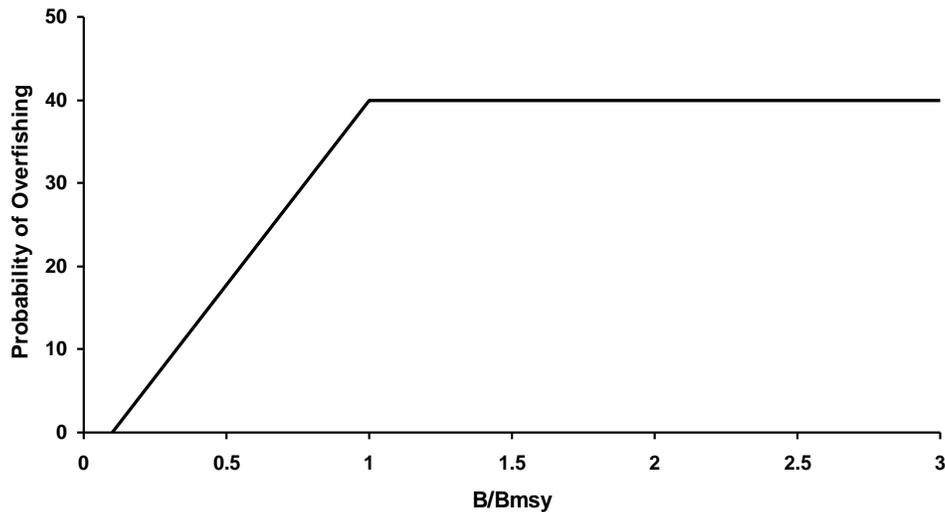


Figure 1. Risk Policy C.

Alternative Risk-D: Stock Status/Assessment Level, Inflection at $B/B_{MSY} = 1.5$

Under this alternative, a stock replenishment threshold defined as the ratio of $B/B_{MSY} = 0.10$, will be utilized to ensure the stock does not reach low levels from which it cannot recover. The probability of overfishing will be 0 percent if the ratio of B/B_{MSY} is less than or equal to 0.10. Probability of overfishing increases linearly at similar rates as the ratio of B/B_{MSY} increases; until the inflection point of $B/B_{MSY} = 1.5$ is reached and a 50 percent probability of overfishing is utilized for assessment level 1 (see section 5.2.1), 45 percent for level 2, 40 percent for level 3, and 35 percent for level 4.

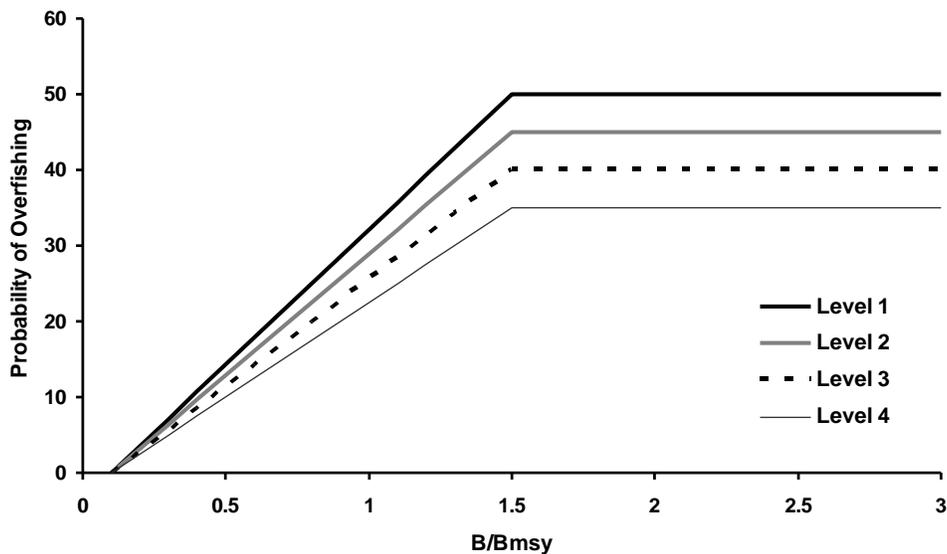


Figure 2. Risk Policy D.

Alternative Risk-E: Stock Status/Assessment Level, 2 Inflection Points at $B/B_{MSY} = 1.0$ and $B/B_{MSY} = 2.0$

Under this alternative, a stock replenishment threshold defined as the ratio of $B/B_{MSY} = 0.10$, will be utilized to ensure the stock does not reach low levels from which it cannot recover. The probability of overfishing will be 0 percent if the ratio of B/B_{MSY} is less than or equal to 0.10. Probability of overfishing increases linearly at similar rates as the ratio of B/B_{MSY} increases; until the inflection point of $B/B_{MSY} = 1.0$ is reached and a 45 percent probability of overfishing is utilized for assessment level 1 (see section 5.2.1), 40 percent for level 2, 35 percent for level 3, and 30 percent for level 4. Probability of overfishing then continues to increase to the inflection point of $B/B_{MSY} = 2.0$, where the probability of overfishing is for level 1 is 50 percent, 45 percent for level 2, 40 percent for level 3, and 35 percent for level 4, for all B/B_{MSY} ratios equal to or greater than 2.0.

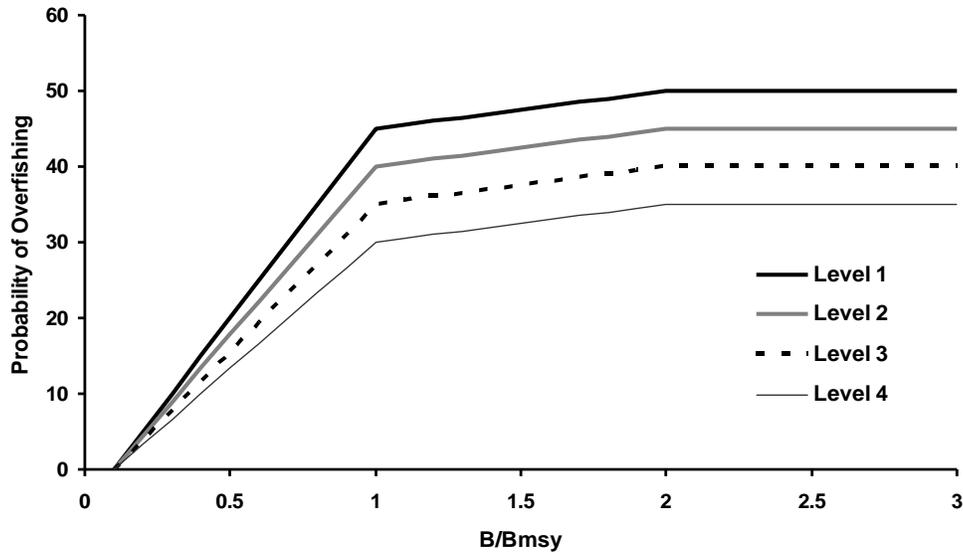


Figure 3. Risk Policy E.

Alternative Risk-F: Categorical, Range from 10 - 50 percent

Under this alternative, specification of the probability of overfishing incorporates assessment level (see section 5.2.1), stock history, and life history patterns. Probability of overfishing is higher for stocks which have not been overfished (either currently or previously based on best available scientific information). Probability of overfishing is also higher for stocks which have typical life history patterns, when compared to atypical life history patterns (e.g., spiny dogfish and black sea bass). In addition, as the assessment level decreases, the probability of overfishing decreases. The SSC will determine whether a stock is typical or atypical each time an ABC is recommended. Generally speaking, an atypical stock has a life history strategy that results in greater vulnerability to exploitation, and whose life history has not been fully addressed through the stock assessment and biological reference point development process.

Table 7. Risk Policy F.

Probability of Overfishing				
Assessment Level	Stock History (Previously Overfished?)			
	<i>Has Never Been Overfished</i>		<i>Has Been Overfished</i>	
	<i>Life History Pattern</i>		<i>Life History Pattern</i>	
	Typical	Atypical	Typical	Atypical
1	50	45	45	40
2	40	35	35	30
3	30	25	25	20
4	20	15	15	10

Alternative Risk-G (Council-Preferred): Stock Status/Life History, Inflection at $B/B_{MSY} = 1.0$

Under this alternative, a stock replenishment threshold defined as the ratio of $B/B_{MSY} = 0.10$, will be utilized to ensure the stock does not reach low levels from which it cannot recover. The probability of overfishing will be 0 percent if the ratio of B/B_{MSY} is less than or equal to 0.10. Probability of overfishing increases linearly for stock defined as typical as the ratio of B/B_{MSY} increases, until the inflection point of $B/B_{MSY} = 1.0$ is reached and a 40 percent probability of overfishing is utilized for ratios equal to or greater than 1.0. Probability of overfishing increases linearly for stock defined as atypical as the ratio of B/B_{MSY} increases, until the inflection point of $B/B_{MSY} = 1.0$ is reached and a 35 percent probability of overfishing is utilized for ratios equal to or greater than 1.0. The SSC will determine whether a stock is typical or atypical each time an ABC is recommended. Generally speaking, an atypical stock has a life history strategy that results in greater vulnerability to exploitation, and whose life history has not been fully addressed through the stock assessment and biological reference point development process.

In addition, under this alternative for managed resources that are under rebuilding plans, the upper limit on the probability of exceeding $F_{REBUILD}$ would be 50 percent unless modified to a lesser value (i.e., higher probability of not exceeding $F_{REBUILD}$) through a rebuilding plan amendment. In instances where the SSC derives a more restrictive ABC recommendation, based on the application of the ABC control rule methods framework and risk policy, than the ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level, the SSC shall recommend to the MAFMC the lower of the ABC values.

In addition, 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.

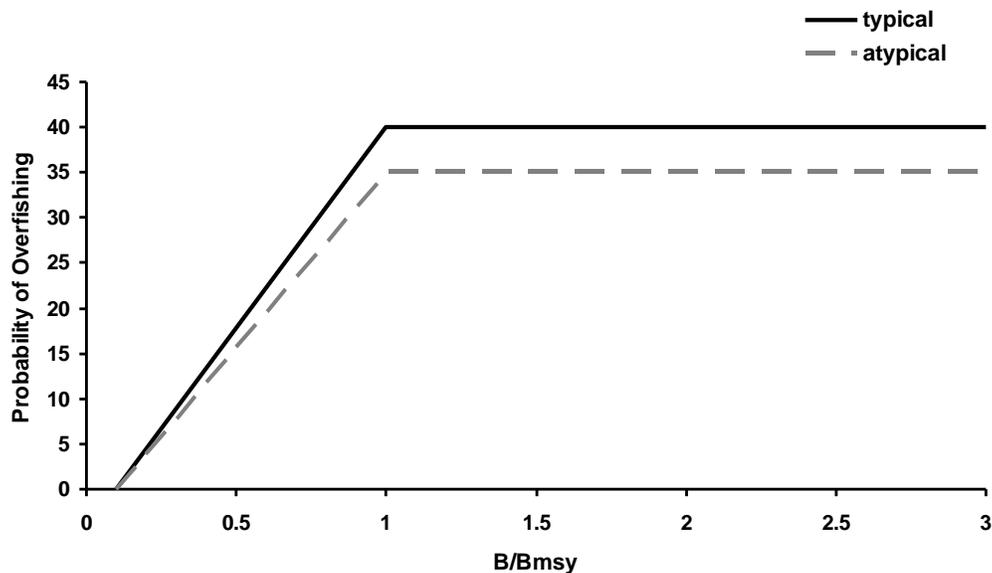


Figure 4. Risk Policy G.