

September 30, 2002. During that comment period, we received information indicating that we had identified only one of the two parasites affecting the catfish, baitfish, sportfish, largemouth bass, and hybrid striped bass aquaculture facilities and that we had underestimated the economic impact that the proposed rulemaking may have on those facilities. However, we did not receive sufficient information on the magnitude of the effects of these parasites on those facilities to complete the economic analysis. We are reopening the comment period to gather more economic and scientific data on black carp. In addition to seeking general scientific and economic information on black carp, we are seeking specific information relative to the magnitude of impact that yellow grubs (*Clinostomum complanatum*) and flatworms (*Bolbophorus confusus*) have had on catfish, baitfish, sportfish, largemouth bass, and hybrid striped bass aquaculture facilities; alternative chemical and/or biological methods used to control the parasites affecting these aquaculture facilities; potential or known distribution of black carp; and potential or known impact of black carp on native species.

Public Comments Solicited

We are reopening the comment period at this time in order to collect the best and most current scientific and economic data available regarding the proposal to add black carp to the list of injurious wildlife under the Lacey Act. Previously submitted comments on the proposed rule need not be resubmitted. We will accept new and/or additional written comments and information during this reopened comment period.

Submit comments as identified in **ADDRESSES**. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018-AG70]" in your e-mail subject line and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our office at telephone number 703-358-2148 during normal business hours. Please note that this e-mail address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will

honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

Dated: May 22, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030519127-3127-01; I.D. 042403A]

RIN 0648-AO10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex (Skate) Fisheries; Skate Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Northeast (NE) Skate Fishery Management Plan (FMP). This proposed rule would establish: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate

vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit. This proposed rule would also implement other measures for administration and enforcement. The purpose of this proposed action is to manage the NE skate complex pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of skate resources.

DATES: Comments must be received at the appropriate address or fax number, (See **ADDRESSES**), on or before 5:00 p.m., local time, on July 7, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate FMP." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Policy Analyst, 978-281-9283, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) in response to concerns that the continued harvest and increased landings in the skate fisheries required implementation of management measures to prevent overfishing and to allow for the collection of catch information on the status of the stocks. A notice of availability for the FMP was published in the **Federal Register** on May 1, 2003 (68 FR 23275). The comment period on the FMP ends on June 30, 2003.

Skates are harvested in two very different fisheries, one for lobster bait and one for wings for human consumption. The fishery for lobster bait is a more traditional and directed skate fishery that lands skates in whole form. The bait fishery involves vessels, primarily from ports in southern New England that target a combination of little skates (estimated to be ≤ 90 percent of landings) and, to a much lesser extent, juvenile winter skates (> 10 percent of landings). Juvenile winter skates and little skates are difficult to differentiate due to their nearly identical appearance. The fishery for skate wings evolved in the 1990s as skates were promoted as an underutilized species, and fishermen shifted effort from groundfish and other troubled fisheries to skates and dogfish. The wing fishery is a more incidental fishery that involves a larger number of vessels located throughout the region. Vessels tend to catch skates when targeting other species such as groundfish, monkfish, and scallops, and land them if the price is sufficient to warrant the labor associated with cutting the wings.

On January 15, 1999, NMFS requested information from the public on barndoor skate for possible inclusion on the list of candidate species under the Endangered Species Act (ESA). In March and April 1999, several petitions were received from conservation groups requesting that NMFS immediately list barndoor skate as an endangered or threatened species and designate Georges Bank and other appropriate areas as critical habitat. This provided the impetus to complete a benchmark stock assessment for the entire skate complex. NMFS identified the need to develop an FMP to end overfishing and rebuild the resources based on the conclusions presented in late 1999 at the 30th Stock Assessment Workshop (SAW 30).

In March 2000, NMFS informed the Council of its decision to designate it as the responsible body for the development and management of the seven species included in the NE skate complex. In November 2000, the Council's Skate Committee approved the scoping document for the FMP. During the development of the FMP, the Skate Plan Development Team (PDT) continued to update the status determinations for the skate species based on the biomass reference points used during SAW 30. Currently (through the autumn 2001 survey), only two species remain in an overfished condition: Barndoor and thorny skates. In January 2001, the Council published a Notice of Intent to Prepare an

Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's FMP scoping process (66 FR 91).

On September 27, 2002, NMFS published its findings relative to the petitions to list barndoor skate as an endangered species as a notice of petition finding in the **Federal Register** at 68 FR 61005. After review of the best available scientific and commercial information, NMFS determined that listing the barndoor skate was not warranted at this time. The following factors all indicate a positive trend for barndoor skate populations: Recent increases in abundance of barndoor skate observed during trawl surveys; the expansion of known areas where barndoor skate have been encountered; increases in size range; and an increase in the number of small barndoor skates collected.

The Council held four public hearings on the draft FMP to provide an opportunity for public testimony by industry and other interested parties. During the public hearings, industry members expressed concerns about species identification problems in relation to the reporting requirements, as well as the species prohibitions (i.e., barndoor and thorny skates throughout their range, and smooth skates in the GOM RMA). Provincetown fishermen supported the lower trip limits, while New Bedford fishermen supported the higher trip limits. In terms of the proposed species prohibitions, many people were concerned about the potential for inadvertent retention of prohibited species that may result in violations, especially on high-volume trips. For this reason, some industry members did not support the prohibitions on possession and instead supported prohibitions on landing or sale. Overall, however, the proposed measures were generally well-supported and everyone who attended the public hearings and commented on the draft FMP agreed that it was important to collect more and better information on the skate resources.

Very little information is available about the individual skate species and the fisheries of which they are a component. Because skates have not been managed through a Federal FMP, few accurate and complete fishery data are available (e.g., landings and discards by species, amount of skate bait sold directly to lobster vessels, etc.). While developing the measures proposed in the FMP, the Council wrestled with difficult issues related to overfishing definition reference points and appropriate management measures to address individual skate species in need

of rebuilding. Moreover, effective plan monitoring and appropriate recommendations for management adjustments, especially for fisheries in which skates are caught incidentally, hinge on the availability of more comprehensive information about these species, which will come once the FMP is implemented.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other FMPs and regulations are discussed in the FMP and FEIS.

Status of the Stock Complex

There are no direct estimates of biomass available for the seven individual skate species in the complex, so biomass indices from the Northeast Fisheries Science Center (NEFSC) trawl surveys have been used to characterize stock size. More specifically, for each species in the complex, information on the weight of the catch per tow (kg/tow) from the most representative trawl survey series over the longest possible time span was assembled. The data in the selected series were then used to characterize the distribution of biomass over the examined time period. Finally, candidate reference points were selected from the distribution so as to provide proxies for biomass targets that have a high probability of correctly characterizing the stock level that produces maximum sustainable yield (MSY).

For the aggregate skate complex, the NEFSC spring survey index of biomass was relatively constant from 1968 to 1980, then increased significantly to peak levels in the mid to late 1980s. The biomass of large-sized skates (barndoor, winter, and thorny) has declined steadily since the mid-1980s, while the recent increase in aggregate skate biomass has been attributed to an increase in little skates.

Overfishing Definitions

This FMP proposes overfishing definitions for each of the seven skate species in the complex, in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) of 1996. Determining the maximum fishing mortality rate (F) threshold for the skate species is problematic, given the current inability to directly estimate fishery exploitation rates. Therefore, the approach chosen by the Council was to use biomass levels indexed by the NEFSC trawl surveys as an indicator of exploitation. More specifically, a decline in the biomass of a species (for several years or based on a moving average), would indicate that current/

recent removals are in excess of the stock's ability to maintain its current population size. If an analysis of biomass levels leads to the determination of overexploitation, the Council would adopt measures to eliminate overfishing via either a framework adjustment or an amendment to the FMP.

The thresholds for F are based on annual percentage declines of the three-year average of the NEFSC trawl survey (spring or autumn, depending on the species). The percentages are specified for each species individually, based on historical variation within the survey. The F thresholds also include a precautionary "backstop" that indicates that overfishing is occurring if the trawl survey mean weight per tow declines for three consecutive years. The reference points and selected time series could be re-specified through a peer-review process and/or as updated stock assessments are completed.

Winter and thorny skates

Winter and thorny skates would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 20 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Smooth and clearnose skates

Smooth and clearnose skates would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Barndoor skate

Barndoor skate would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the mean weight per tow observed in the autumn trawl survey from 1963–1966 (currently 0.81 kg/tow). Overfishing would be

considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

Little skate

Little skate would be considered to be in an overfished condition when the three-year moving average of the spring survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the spring trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the spring survey mean weight per tow declines by 20 percent or more, or when the spring survey mean weight per tow declines for three consecutive years.

Rosette skate

Rosette skate would be considered to be in an overfished condition when the three-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing would be considered to be occurring when the three-year moving average of the autumn survey mean weight per tow declines by 60 percent or more, or when the autumn survey mean weight per tow declines for three consecutive years.

These proposed overfishing definitions incorporate the biomass targets and thresholds that were developed at SAW 30. The FMP contains additional discussion of the rationale for the biomass reference points for each skate species.

Optimum Yield (OY)

The SAW 30 Working Group determined that the traditional approaches that are used to estimate MSY are not appropriate in the case of skates for two principal reasons: There is no reliable time series of commercial fishery landings or discards for any of the individual species, and the time series for the complex as a whole is considered to be incomplete; and, very little reliable and current growth and maturity information is available for any of the species in the complex and very little information is available on the length composition of the landings and discards. Together, these factors preclude the estimation of MSY from sequential population (e.g., age- or length-based virtual population analysis), biomass dynamics (e.g., surplus production models), or dynamic

pool models (e.g., yield-per-recruit analysis). Therefore, MSY for the individual skate species and/or the complex as a whole cannot be estimated at this time. A discussion of the alternative methodologies that were considered to estimate MSY (e.g., sequential population analysis, dynamic pool models, catch history models, etc.) and the conclusions that were drawn are provided in the FMP.

The National Standard Guidelines (NSGs) allow the specification of a fishery-wide OY for a mixed-stock fishery, where management measures for separate target harvest levels for individual stocks may be specified, but are not required. For the same reasons discussed relative to MSY, these approaches cannot be adopted to estimate OY at this time.

The following OY specifications for each species in the NE skate complex are based on the management measures that the Council included in the FMP. Consistent with the NSGs, the Council intends that OY cannot exceed MSY or the allowable portion of MSY necessary to be consistent with the MSY-based control rule. As better fishery information becomes available, these OY specifications may be revised and/or refined.

Winter skate

Because fishery data are lacking, there is currently no time series of catch or landings of winter skate on which to base an absolute specification of OY. The OY for winter skate would therefore be defined as the amount of winter skates that are harvested legally under the provisions of the FMP and the yield that results from the management measures in other fisheries, to the extent that these measures further impact (and likely reduce) the harvest of winter skates.

Little skate

Since abundance of the little skate resource has increased considerably over a time period that coincides with the operation of the bait fishery, it can be assumed that the resource is being harvested at an F that is below FMSY. The OY for little skate would therefore be defined as the amount of little skates that are harvested for bait legally under the provisions of the FMP.

Smooth, thorny, and barndoor skates

The interaction of skate fishing and multispecies fishing suggests that even more benefits will be afforded to smooth, thorny, and barndoor skates as fishing effort is reduced further in the NE multispecies fishery. Moreover, the year-round groundfish closed areas in

the GOM, as they are currently defined, provide a great deal of protection to smooth, thorny, and barndoor skates.

Because barndoor and thorny skates are currently in an overfished condition, the Council is proposing management action to rebuild these resources to their long-term sustainable level. Smooth skate is not overfished, but it has not yet rebuilt to its long-term biomass target. Therefore, to be as precautionary as possible, the Council proposes to set the OY for smooth, thorny, and barndoor skates at zero.

Clearnose and rosette skates

Since abundance of the clearnose and rosette skates have increased considerably over a time period and in an area that coincides with the operation of many fisheries, it can be assumed that the resources are being harvested at an F that is below FMSY. Therefore, the OY for clearnose and rosette skates is proposed to be defined as the amount of clearnose and rosette skates that are harvested legally under the provisions of the FMP.

Even in this situation of extremely sparse data, it is possible to judge whether current management strategies are sustainable or whether fishing effort needs to be curtailed to facilitate rebuilding. The Council has specified management measures in this FMP and in other fisheries that enhance the probability of future stock increases, with the expectation that progressively more data will become available to continually evaluate management strategies and more reliably estimate SFA reference points over time. Therefore, the specification of MSY and OY would be items that the Council could adjust through a framework adjustment to the FMP, provided that the specifications would not require management adjustments that are outside of the range of management measures that may be changed under the framework adjustment process.

Management Area

The boundaries of the management area, also called the management unit, would be limited to the waters north of 35° 15.3' N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and the seaward extent of the U.S. exclusive economic zone (EEZ) in the east. These boundaries for the management unit are consistent with other relevant NE FMPs.

Fishing Year

The skate fishing year would be the same as the NE multispecies fishing year, currently May 1 April 30. If the

multispecies fishing year changes in the future, the skate fishing year would change automatically to remain consistent with the NE multispecies fishing year.

Essential Fish Habitat (EFH)

The Council proposes to use relative abundance data to differentiate areas with relatively greater abundance of a species to identify EFH in contrast to areas with relatively lower abundance. Typically, areas of relatively high abundance or density are indicative of more suitable habitats. Research has demonstrated that, as populations decline, their range contracts and they are most abundant in available areas of best suited habitat.

The Council proposes to use the best available information on the distribution and relative abundance of the skate species as reflected in the NMFS otter trawl survey data. There are data available from the Massachusetts Inshore Trawl Survey on all but barndoor skate, and there are data available from the Hudson-Raritan Trawl Survey for little and clearnose skates. The NOAA Estuarine Living Marine Resources Program (ELMR) information does not differentiate between different species of skates, but provides information on the occurrence of skate species in the estuaries and embayments of New England and the Mid-Atlantic for the skate complex (identified as *Raja* spp.) as a whole.

Permitting Requirements

The owners of any commercial vessel that intends to fish for, catch, possess, transport, land, sell, trade, or barter skates in or from the skate management unit would be required to obtain an annual Federal skate permit (open-access).

Dealers who purchase or receive skates or skate parts from any vessel would be required to obtain a Federal dealer permit on an annual basis. Skates harvested from the skate management unit could only be sold to federally permitted dealers.

Operators of vessels issued a Federal skate vessel permit would be required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery would not need to reapply, since there is no qualification or test for this permit.

Vessel and Dealer Reporting Requirements

The Council clearly recognizes the problems associated with skate species identification. Because species-specific information is critical to the long-term

success of this FMP, the Council is working closely with NMFS and the NEFSC to develop a species identification guide for skate vessels and dealers, as well as sea samplers and enforcement agents. Vessels holding skate permits and dealers authorized to purchase skates would be required to report species-level information on skates in existing Vessel Trip Reports.

The Council recognizes that mandating the reporting of discards by individual species may not be practical and may actually increase discard mortality for some species of skates. It is likely that unwanted skates would stay on the deck of a fishing vessel longer if the crew is required to sort the bycatch and differentiate the species that are being discarded. For this reason, the Council proposes that vessels holding Federal permits (regardless of the fishery) report skate discards by size category only (i.e., large and small skates).

Skate Wing Possession Restrictions

The retention and landing of skate wings would be limited to 10,000 lb (4,536 kg) per trip of less than or equal to 24 hours duration (and a limit of one trip per day) and 20,000 lb (9,072 kg) per trip exceeding 24 hours. The days-at-sea (DAS) call-in programs (groundfish, scallop, and monkfish) would be used to determine whether a vessel's trip is less than or greater than 24 hours.

By discouraging large-scale directed fishing for skate wings, the possession limit is expected to reduce overall fishing mortality on winter skates. However, the benefits of a wing possession limit include not only fishing mortality reductions for winter skate, but also long-term benefits to the wing species if the possession limit can discourage expansion of the fishery and/or an influx of new entrants into the fishery.

Bait-only Letter of Authorization (LOA)

This action would allow vessel owners and operators that fish for skates as bait only to be exempt from the wing possession limits, provided they obtain an LOA from the Regional Administrator. Vessel owners/operators that fish for a combination of bait and wings and vessels that do not obtain the LOA would be subject to the wing possession limits.

Skate Possession Prohibitions

Barndoor and thorny skates are in an overfished condition, so, in addition to the benefits that are likely to accrue to these species as a result of the NE multispecies regulations (closed areas,

DAS reductions, mesh increases), this action proposes to prohibit the possession of thorny skates and barndoor skates on all vessels fishing from, and all dealers who would purchase skates caught in, the EEZ portion of the Skate Management Unit. Although no longer considered to be in an overfished condition, the smooth skate resource is depleted and still well below its target biomass level. Therefore, in addition to the benefits that are likely to accrue to this species as a result of the NE multispecies regulations, this action proposes a prohibition on possession of smooth skates in the GOM RMA to conserve the smooth skate resource and promote the rebuilding of its biomass to target levels.

Annual Monitoring and Framework Adjustment Measures

The skate fishery would be monitored on at least an annual basis starting 1 year after the implementation of the FMP. The status of the resource and the fishery would be reviewed by the Council, its Skate Oversight Committee and Advisory Panel, and the Skate PDT. The Council would prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. If the Council determined that an adjustment to the measures is needed, it would implement either a framework adjustment or an amendment to the FMP.

The framework adjustment process would be similar to that used in other NE Region fisheries. This process would allow changes to measures below, as appropriate, to be made to the FMP or regulations in a timely manner, without going through the plan amendment process. The framework adjustment process may not be appropriate when it is determined that a proposed change would not be within the scope of the FMP, or the amendment process would be better suited to implement the proposed change. The framework process would provide a formal opportunity for public comment to supplement the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP, and if sufficient opportunity for public comment on the framework action existed, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act. The management measures and/or changes to them that could be implemented and adjusted through the framework process include

the following: (1) Skate permitting and reporting requirements; (2) overfishing definitions and related targets and thresholds; (3) prohibitions on possession and/or landing of individual skate species; (4) skate possession limits; (5) skate closed areas (and consideration of exempted gears and fisheries); (6) seasonal skate fishery restrictions and specifications; (7) target TACs for individual skate species; (8) hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries; (9) establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons; (10) onboard observer requirements; (11) gear modifications, requirements, restrictions, and/or prohibitions; (12) minimum and/or maximum sizes for skates; (13) adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP; (14) measures to address protected species issues, if necessary; (15) description and identification of EFH; (16) description and identification of habitat areas of particular concern; (17) measures to protect EFH; (18) adjustments and or/resetting of the "baseline" of management measures in other fisheries; (19) OY and/or MSY specifications; and (20) any other measures contained in the FMP.

Baseline Trigger and Review

The FMP identifies and characterizes a "baseline" of management measures in other fisheries that provide conservation benefits to skate species. The FMP also establishes a process for reviewing changes to the management measures included in this baseline, particularly changes that make the measures less restrictive. This approach allows adjustments to management measures in other fisheries while ensuring that skate rebuilding is not compromised. The proposed baseline measures and review process are described in detail in the FMP and Classification section of this rule.

The baseline review is intended to address potential significant impacts to skate mortality. Total skate mortality should be considered, including mortality resulting in increased directed fishing effort on skates and mortality resulting from the bycatch of skates. Therefore, this approach addresses National Standard 9, as considerations of bycatch and bycatch mortality are incorporated into the assessment of whether or not changes to the baseline measures will result in significant changes to skate mortality.

The lack of fishery-specific data precludes a quantitative assessment of the impacts of current baseline measures on skates and is likely to preclude such an assessment of the impacts of changes to these measures, at least in the near future. Over time, as data are collected through the FMP permit and reporting requirements, increased observer coverage, study fleets, and efforts to collect better information in other fisheries, the Skate PDT's ability to quantify the impacts of management measures on skates should improve greatly. However, qualitative assessments must suffice in the short-term, as quantitative assessments cannot be completed at this time.

Classification

At this time, NMFS has not determined that the FMP, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the FMP; a notice of availability for the DEIS was published on August 30, 2002 (67 FR 55858). A copy of the FEIS may be obtained from the Council (*see ADDRESSES*). The Council has selected a set of preferred alternatives intended to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the skate resources and their environment. Overall, the proposed action is expected to have significant positive effects on the skate resources relative to the no action alternative.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action, are contained in the preamble to this rule and in the SUMMARY. This rule does not duplicate, overlap, or conflict with any relevant Federal rules.

Quantitative information is limited for the NE skate fisheries because the detailed reporting requirements necessary to collect sufficient quantitative information do not currently exist. When possible, the quantitative impacts of the alternatives were considered, but in many instances it was only possible to describe potential impacts qualitatively. Because

costs of individual vessel operations were not available, gross revenues were used as a proxy for vessel profitability.

The proposed measures, and the alternatives, for addressing management of the NE skate fisheries could affect any commercial vessel holding an active Federal NE fishing permit. Data from the NE permit application database show that 4,828 vessels are currently permitted to fish in Federal waters, with 1,722 vessels permitted to fish for NE multispecies, monkfish, and/or sea scallops. Of these vessels, the Council considered the economic impacts on 775 vessels that have reported landings of skates or skate parts at least once in the last 3 years, and on another 120 from which skates or skate parts were reported to have been purchased at least once in the last 3 years. These 895 vessels are considered the universe of vessels most likely to be directly affected by the proposed action. All of the federally permitted vessels considered in this analysis readily fall within the Small Business Administration's (SBA's) definition of small business and the RFA's definition of "small entity." Therefore, there are no disproportionate economic impacts between large and small entities.

In addition to the proposed action, the Council considered alternatives to the management measures, including a "no action" alternative. The "no action" alternative represents the regulatory environment that would exist if the Council did not initiate management of the NE skate complex and develop an FMP. A summary of the IRFA follows:

The proposed action would establish a skate wing possession limit of 10,000 lb (4,536 kg) per day and 20,000 lb (9,072 kg) per trip. Possession limits of 10,000 lb (4,536 kg), 20,000 lb (9,072 kg), and 30,000 lb (13,608 kg) were considered for both daily and trip limits. Based on the average ex-vessel price received for wings in 2000 (\$0.36/lb (\$0.16/kg)), the expected per trip revenue loss for vessels that would have exceeded the limit would be approximately \$2,500 with a 10,000-lb (4,536-kg) possession limit, \$2,400 with a 20,000-lb (9,072-kg) possession limit, and \$2,700 with a 30,000-lb (13,608-kg) possession limit. Per vessel, the expected revenue loss would be approximately \$3,100/year with a 30,000-lb (13,608-kg) possession limit, approximately \$5,000/year with a 20,000-lb (9,072-kg) possession limit, and approximately \$8,500/year with a 10,000-lb (4,536-kg) possession limit. The Council chose a combination of the 10,000-lb (4,536-kg) and 20,000-lb (9,072-kg) options to provide limits on landings in the wing fishery and protect

winter skate while minimizing economic impacts on the industry. Impacts on annual vessel revenues are likely to be even smaller than these data might suggest, once the landings of other species on the same trips and in other fisheries are considered. For example, the potential revenue loss for the 18 vessels that landed more than 20,000 lb (9,072 kg) of skate wings on at least one trip during 2000 was less than 5 percent of total annual revenues for each vessel; the impact was less than 1 percent for 14 of these vessels.

The Council rejected the 30,000-lb (13,608-kg) possession limit because the analysis showed that only a very small conservation benefit could be expected with such a high possession limit. Options 1 and 2, when combined, were shown to produce up to a 14-percent reduction in landings and yet maintain income for both nearshore and offshore fishermen.

The impacts of the prohibitions on possession of barndoor skate, thorny skate, and smooth skate in the GOM cannot be quantified, but the status of these resources and information provided by industry suggest little, if any, impact would be expected on fishermen.

The options to prohibit either the landing or sale of these skate species, rather than the proposed prohibition on possession, would not be expected to make any difference from an economic perspective, as under all three options, the sale of these species would be prohibited and any potential revenue from these species would be foregone. Only the no action alternative could mitigate any adverse economic impacts, but this option was not acceptable from a conservation perspective.

The proposed action would also establish a geographical limit for the prohibition on possession of smooth skate. The overlap of the smooth skate resource with the skate bait fishery is unknown; for this reason, the prohibition would be limited to the GOM RMA. The majority of smooth skates are distributed in the GOM, so the geographical limitation should not compromise the conservation benefits of this action. Because smooth skates are not targeted in the GOM/GB skate fishery and are therefore not a significant component of the skate landings, this is expected to have only minimal economic impacts on vessels fishing in the GOM.

The proposed action would require Federal open-access skate permits for vessels, operators, and dealers engaged in any aspect of the skate fisheries. Some vessels, operators, and dealers are currently issued permits as a result of

their participation in other managed fisheries. For these entities, the skate fishery would be added to an existing permit and there would be no additional impacts. Some vessel owners, operators, and dealers may have to obtain Federal permits for the first time. In these instances, the estimated costs associated with completing the necessary applications would be: Vessel permit, \$4.50/applicant; dealer permit, \$2.00/applicant; and operator permit, \$30.00/applicant.

In order to collect information necessary to monitor the effectiveness of the FMP and to better understand the skate species and the skate fisheries, vessels landing skates or skate parts would need to submit logbook reports, and dealers purchasing skates or skate parts would need to submit dealer reports. Annual costs associated with completing vessel trip reports are estimated at \$30.00/vessel. Annual costs associated with dealer reporting are estimated at \$13.00/dealer.

The proposed action would allow vessels that fish for skates as bait only to obtain an LOA from NMFS so as to be exempt from the skate wing possession limits, but would require these vessels to only land whole skates smaller than 23 inches (58.42 cm) total length. This action would not have an economic impact on fishing vessels. The only significant alternative to this measure considered by the Council was to not implement the LOA program. This would have resulted in adverse economic impacts because bait-only vessels would have been subject to the potentially restrictive skate wing possession limit.

The FMP and FEIS discuss alternatives to the proposed action, including those considered by the Council but ultimately not recommended. The potential impacts of several of the proposed measures were mitigated by the Council's recommendations, as follows:

1. The proposed prohibition on possession of smooth skates was restricted to the GOM RMA, thus mitigating the potential adverse economic impact to vessels participating in the southern New England bait fishery.

2. The Council combined two of the possession limit options for the skate wing fishery. The 10,000-lb (4,536-kg) limit applies to short trips (24 hours or less) where it would be much less likely to result in adverse economic impacts to fishermen.

3. Requirements to land skates whole for identification purposes would create significant amounts of shoreside waste for processors. The additional cost

borne by dealers and processors would reduce dockside prices for fishermen. For these reasons, the Council did not recommend this measure.

4. The Council recommended against restricting the bait fishery to little skates only (as a method of protecting small winter skates) because it is too difficult to tell the two species apart. The time required to differentiate these two species in the high-volume bait fishery would have resulted in an adverse economic impact on fishing operations.

5. Potential possession limits in the bait-only fishery were rejected due to potential adverse economic impacts on the lobster fishery, which utilizes skates as bait.

6. A proposal to require heavier twine in sink gillnet fisheries to reduce incidental catches of skates was rejected because gillnet fishermen land only about 20 percent of total skates and the added costs to gillnet fisheries were perceived to be out of proportion with the expected conservation benefits.

Collection-of-Information Requirements

This rule contains eight collection-of-information requirements, which have been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new and revised reporting requirements and the estimated time for a response are as follows: 8 minutes for a vessel trip report; 3 minutes for a dealer purchase report; 15 minutes for an open access vessel permit; 5 minutes for a dealer permit; 60 minutes for an operator permit; 2 minutes for a notification for observer deployment; 2 minutes for a bait-only fishery exemption notification (Letter of Authorization); and 2 minutes for bait transfer-at-sea documentation.

Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES) and to OMB at the Office of

Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: May 23, 2003.

Rebecca Lent,

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 § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). * * *

3. In § 648.2, the definitions of "Council" and "fishing year" and "skate" are revised, and new definitions for "NE skate complex (skates)", and "Skate Management Unit" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies and monkfish fisheries; and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish.

* * * * *

Fishing year means: (1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year. (2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year. (3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturus laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturus laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate Management Unit means an area of the Atlantic Ocean from 35°15.3' N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught or retained in or from such area.

* * * * *

4. In § 648.4, paragraph (a)(14) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) * * * Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

7. In 648.7, paragraphs (a)(1)(iii) and (b)(1)(iii) are added, and the last sentence of paragraph (b)(1)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(a) * * *

(1) * * *

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Dealers will be provided with a skate species identification guide.

* * * * *

(b) * * *

(1) * * *

(i) * * * With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(2)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All

other vessel reporting requirements remain unchanged. Vessel owners or operators that intend to land skates will be provided with a skate identification guide to assist in this data collection program.

* * * * *

8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

* * * * *

9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such

exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

10. In § 648.13, paragraph (h) is added to read as follows:

§ 648.13 Transfers at sea.

(h) Skates. (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, or at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of one year from the date of the transfer, a copy of said documentation.

11. In § 648.14, paragraphs (x)(13), (ee), and (ff) are added to read as follows:

§ 648.14 Prohibitions.

(x) ***

(13) Skates. All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to

fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel in possession of whole skates less than the maximum size specified at § 648.322(b)(2) for use as bait only.

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.82, 648.53, and 648.92, for the multispecies, scallop, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.322(c).

(8) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

(9) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

12. In § 648.80, paragraphs (b)(5)(i)(C) and (b)(6)(i)(D) are added and paragraphs (b)(5) introductory text, (b)(5)(i)(A), (b)(6) introductory text, (b)(6)(i)(A), and (h)(2)(i)(8) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) ***

(5) SNE Monkfish and Skate Trawl Exemption Area. Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish and skate regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *** (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section;

* * * * *

(C) A vessel not operating under a multispecies DAS may fish for, possess on board or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(6) SNE Monkfish and Skate Gillnet Exemption Area. Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section, the monkfish regulations, as applicable under §§ 648.91 through 648.94, and the skate regulations, as applicable under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the

outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * * (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(D) A vessel not operating under a multispecies DAS may fish for, possess on board or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent by weight of all other species on board.

* * * * *

13. Subpart O is added to read as follows:

Subpart O—Management Measures for the NE Skate Complex Fisheries

Sec.

648.320 Skate FMP review and monitoring.

648.321 Framework adjustment process.

648.322 Skate possession and landing restrictions.

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review.* The Council, its Skate Plan Development Team (PDT), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions.

(2) If new and/or additional information becomes available, the PDT shall consider it during this annual review. Based on this review, the Skate PDT may provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(b) *Biennial review.* The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review—(1) Baseline review process.* If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or may change one or more of the baseline measures such that the change is likely to have an effect the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management

measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures.* The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) Multispecies year-round closed areas (§ 648.81);

(ii) Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§ § 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.312(b). The Council will publish notice of its intent to take action and provide the public with any

relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting requirements;

(2) Overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession limits;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries;

(9) Establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) Adjustments and or/resetting of the "baseline" of management measures in other fisheries, described in § 648.320(c);

(19) OY and/or MSY specifications; and

(20) Any other measures contained in the FMP.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

§ 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under a multispecies, scallop, or monkfish DAS as specified at §§ 648.82, 648.53, and 648.92, respectively, unless otherwise exempted under paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 1 month.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

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