

trends, we have determined that the murrelet is likely to become endangered in the foreseeable future unless the current population decline is arrested. Nothing in our assessment indicates that the currently observed population decline is transient. Rather, our threats assessment indicates that it is reasonable to expect that the species will continue to be exposed to a broad range of threats across its listed range. Although some threats have been reduced, most continue unabated and new threats now strain the ability of the murrelet to successfully reproduce. In summary, our analysis indicates that reproductive success is currently too low to sustain the population, manmade and natural threats are likely to continue at current or increased levels, and the population is likely to continue to decline such that the species is likely to become endangered in the foreseeable future and, therefore, continues to warrant threatened status.

Finding

On the basis of the best available scientific and commercial information, as discussed above, we find that the Washington/Oregon/California population of the murrelet is a valid DPS and is likely to become endangered within the foreseeable future (*i.e.*, it is threatened, as defined by the ESA). Therefore, removing this DPS of the murrelet from the List is not warranted.

References Cited

A complete list of all references cited herein is available upon request from the Washington Fish and Wildlife Office (*see ADDRESSES*).

Author

The primary authors of this document are the staff of the U.S. Fish and Wildlife Service (*see ADDRESSES*).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 22, 2009.

Daniel M. Ashe,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 2010-951 Filed 1-20-10; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080228326-91445-02]

RIN 0648-AW30

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Amendment 3

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 measures in Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Skate FMP). Amendment 3 was developed by the New England Fishery Management Council (Council) to rebuild overfished skate stocks and implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 3 would implement a rebuilding plan for smooth skate and establish an ACL and annual catch target (ACT) for the skate complex, total allowable landings (TAL) for the skate wing and bait fisheries, seasonal quotas for the bait fishery, reduced possession limits, in-season possession limit triggers, and other measures to improve management of the skate fisheries. This proposed rule also includes skate fishery specifications for fishing years (FY) 2010 and 2011.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on February 22, 2010.

ADDRESSES: A final environmental impact statement (FEIS) was prepared for Amendment 3 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 3, the FEIS, and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

You may submit comments, identified by 0648-AW30, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Fax:** (978) 281-9135, Attn: Tobey Curtis.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate Amendment 3 Proposed Rule."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

In 2003, NMFS implemented the Skate FMP to manage a complex of seven skate species in the Northeast Region: winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*). The FMP established biological reference points and overfishing definitions for each species based on abundance indices in the NMFS Northeast Fisheries Science Center bottom trawl survey. In February 2007, NMFS informed the Council that, based on trawl survey data updated through 2006, winter skate was considered overfished. The Council was therefore required to initiate a rebuilding plan for winter skate, consistent with the Magnuson-Stevens Act.

After considering a wide range of issues, alternatives, and public input, the Council submitted a draft environmental impact statement (DEIS) for Amendment 3 to NMFS. The Notice of Availability (NOA) for the DEIS published in the **Federal Register** on September 26, 2008 (73 FR 55843). In

October 2008, the Council held four public hearings on the draft amendment, and public comments on the DEIS were accepted through November 10, 2008. At the time the amendment was initiated, the objectives of Amendment 3 were to rebuild winter skate and thorny skate (a species which has been overfished since FMP implementation) to their respective biomass targets, and to implement ACLs and AMs for the skate complex, consistent with the reauthorized Magnuson-Stevens Act. However, over the course of developing the amendment and subsequent to the publication of the DEIS, the objectives were modified to reflect more recent scientific information. Primarily, this includes the results of a new stock assessment completed in December 2008 by the Northeast Data Poor Stocks Working Group (DPWG). This assessment updated the minimum biomass thresholds and biomass targets for six of the seven skate species in the complex, resulting in a change in status for some species.

These new biomass reference points, as well as the most recent trawl survey data, indicate that winter skate is not overfished; however, thorny skates remain overfished, and smooth skates are now also considered to be overfished. Thorny skate was also determined to be experiencing overfishing in 2007 (but not in 2008); therefore, under the requirements of the reauthorized Magnuson-Stevens Act, the Skate FMP must be amended to establish a rebuilding plan for smooth

skate and establish ACLs and AMs by 2011. The final objectives of Amendment 3 are to prevent overfishing of and rebuild smooth and thorny skate, promote biomass increases in other skate stocks, and implement ACLs and AMs for the skate complex.

Proposed Measures

The proposed regulations are based on the description of the measures in Amendment 3. Under section 305(d) of the Magnuson-Stevens Act, the Secretary has general responsibility to promulgate regulations that may be necessary to carry out the provisions of an approved FMP or amendment. NMFS has noted several instances where it has interpreted the language in Amendment 3 to account for any missing detail or ambiguity in the Council’s description of the proposed measures. NMFS seeks comments on all of the proposed measures in Amendment 3.

New Biological Reference Points

Due to the data poor status of skate stocks, including a lack of reliable species-specific information on landings and discards, poor understanding of population dynamics and basic life history, and the inability to estimate the biomass that would support harvest at maximum sustainable yield (B_{MSY}) or the fishing mortality rate that would produce maximum sustainable yield (F_{MSY}) using more traditional methods, the DPWG recommended continued use of trawl survey indices for status determinations. However, they recommended that the time series used to estimate biomass thresholds and

targets be updated to include the most recent years of survey data. For all species except barndoor, the B_{MSY} proxy (biomass target) is defined as the 75th percentile of the appropriate survey (autumn or spring trawl survey) biomass index time series for that species: autumn 1975–2007 for clearnose; spring 1982–2008 for little; autumn 1967–2007 for winter and rosette; and autumn 1963–2007 for smooth and thorny. For barndoor, the B_{MSY} proxy remains unchanged as the average 1963–1966 autumn survey biomass index, because the survey did not catch barndoor skates during a protracted time period of years.

A skate species is considered overfished if its 3-year moving average survey biomass falls below one-half of its B_{MSY} proxy value (biomass threshold). Therefore, since the current biomass indices for thorny and smooth skates are below their respective thresholds, they are considered overfished (Table 1). The current biomass for clearnose and rosette skates are above their respective biomass targets, so they are considered to be above B_{MSY} . Winter, little, and barndoor skates are not overfished, but not yet rebuilt to their biomass targets (Table 1).

Fishing mortality reference points, defined by percentage changes in the survey biomass indices, remain unchanged. No skates are currently subject to overfishing, although thorny skate experienced overfishing in 2007. The existing and proposed biomass reference points are shown in Table 1, relative to the most recent survey biomass for each species.

TABLE 1—COMPARISON BETWEEN CURRENT SKATE BIOMASS STATUS (THROUGH AUTUMN 2008) WITH EXISTING AND PROPOSED BIOMASS REFERENCE POINTS

Skate species	Stratified mean biomass (kg/tow)				
	Current biomass	Threshold	Proposed threshold	Target	Proposed target
Winter	5.23	3.43	2.80	6.46	5.60
Little	5.04	3.27	3.51	6.54	7.03
Barndoor	1.02	0.81	0.81	1.62	1.62
Thorny	0.42	2.20	2.06	4.41	4.12
Smooth	0.13	0.16	0.14	0.31	0.29
Cleanose	1.04	0.28	0.38	0.56	0.77
Rosette	0.052	0.015	0.024	0.029	0.048

2010–2011 ACL, ACT, and TAL

In each fishing year, the ACL for the skate complex would be set equal to the acceptable biological catch (ABC) recommended by the Council’s Scientific and Statistical Committee (SSC). Through FY 2011, the SSC has recommended an ABC based on the median catch/biomass exploitation rate of the skate complex multiplied by the

2005–2007 average survey biomass, which is 67.556 million lb (30,643 mt) per year. To account for management uncertainty, an ACT would be set at 75 percent of the ACL, or 50.667 million lb (22,982 mt) per year. Due to the difficulties in monitoring skate discards in all fisheries during a fishing year, a projection of total annual dead discards would be subtracted from the ACT to

generate the TAL for the skate fisheries. After deducting an estimate of skate landings from vessels fishing solely in state waters (approximately 3 percent of the total landings), the remaining TAL for Federal waters in FY 2010 and 2011 would be 20.783 million lb (9,427 mt) per year.

The TAL would be allocated between the skate wing fishery and the skate bait

fishery based on historic landings proportions. The skate wing fishery predominantly lands winter skate, while the bait fishery predominantly lands little skate. The skate wing fishery would receive 66.5 percent of the TAL, or 13.821 million lb (6,269 mt), and the skate bait fishery would receive 33.5 percent of the TAL, or 6.962 million lb (3,158 mt). Landings of skates would be monitored and allocated to the appropriate fishery quota through information currently required to be submitted by seafood dealers on a weekly basis.

If this action is not effective by the start of the fishing year on May 1, 2010, all skate landings that accrue from May 1, 2010, until the date of implementation of the final rule for this action will count against the respective skate wing and bait TALs for fishing year 2010, as described above.

Possession Limits and Seasons

All vessels possessing, retaining, and landing skates would continue to be required to obtain a Federal open access skate permit. Subject to the additional restrictions described in the following sections, a possession limit of 1,900 lb (862 kg) wing wt. (4,313 lb (1,956 kg) whole wt.) would be implemented for any vessels in possession of skates, unless the vessel is in possession of a Skate Bait Letter of Authorization. All skates landed in wing form or sold for use as food would accrue against the skate wing TAL. To keep the skate wing TAL from being exceeded, when 80 percent of the annual skate wing TAL is landed, the 1,900 lb (862 kg) skate wing possession limit would be reduced to 500 lb (227 kg) wing wt. (1,135 lb (515 kg) whole wt.) for the remainder of the fishing year. This would dilute incentives to target skates but allow some incidental catches of skates to be landed rather than discarded.

This proposed rule retains the requirement that a vessel possessing a valid Federal skate permit must also fish under an Atlantic sea scallop, NE multispecies, or monkfish day-at-sea (DAS) in order to possess, retain, and land skates, with two exceptions: (1) That the vessel possesses a limited access multispecies permit and is enrolled and participating in an approved sector described at § 648.87; or (2) that the vessel is otherwise exempted under § 648.80.

This action would also implement an incidental skate trip limit of 500 lb (227 kg) wing wt. or 1,135 lb (515 kg) whole wt. for any vessel issued a Federal skate permit that is not fishing under a DAS and is not participating in an approved

sector under the Northeast Multispecies FMP.

A possession limit of 20,000 lb (9,072 kg) whole wt. would be implemented for vessels participating in the skate bait fishery that also possess a Skate Bait Letter of Authorization. The existing requirements of the Skate Bait Letter of Authorization would remain in effect, including the requirement to land skates in only whole form, to be sold only as bait, a maximum skate size limit of 23 inches (58 cm) total length, and a minimum participation period of 7 days. To help maintain a consistent market supply of bait skates, the skate bait TAL would be split into three fishing seasons per year. All skates landed in whole form that are sold for use as bait would accrue against the skate bait TAL. When 90 percent of the skate bait quota is harvested in each season, the possession limit would be reduced to the whole weight equivalent of the skate wing fishery possession limit until the next season, whether it be 1,900 lb (862 kg) or 500 lb (227 kg) wing weight at the time.

As an additional conservation measure, vessels declared to be fishing on a Northeast Multispecies Category B Day-at-Sea would have a skate possession limit of 220 lb (100 kg) wing wt. (500 lb (227 kg) whole wt.).

Accountability Measures

If the annual TAL (landings target) allocated to either fishery is exceeded by more than 5 percent in a given year, the possession limit trigger (80 percent in the wing fishery, 90 percent in the bait fishery) would be reduced by 1 percent for each 1-percent overage for that fishery. This would help prevent repeated excessive TAL overages.

If it is determined that the ACL for the skate complex was exceeded in a given year, including landings and estimates of discards, then the ACL-ACT buffer (25 percent, initially) would be increased by 1 percent for each 1-percent overage. For example, if the ACL is exceeded by 5 percent, the ACL-ACT buffer would be increased to 30 percent in the subsequent fishing year, which could effectively reduce allowable landings.

Annual Review, SAFE Reports, and Specifications Process

In place of the "Skate Baseline Review" process included in the original Skate FMP, the Skate Plan Development Team (PDT) would convene annually to review skate stock status, fishery landings and discards, and determine if any AMs were triggered in the previous year. The annual review would also incorporate an assessment of changes to

other fishery management plans that may impact skates, and determine if changes to skate management measures may be warranted. If changes to the Skate FMP are warranted, the Skate PDT would recommend changes via specifications or framework adjustment to the Council. Specifications for the skate fisheries could be implemented for up to 2 years.

A Stock Assessment and Fishery Evaluation (SAFE) report for the skate complex would be completed every 2 years by the Skate PDT. The SAFE report would be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the skate complex and its associated fisheries, and 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.

At its April 2009 meeting, the Council reviewed the draft regulations and deemed them necessary and appropriate for implementation of Amendment 3, as required under section 303(c) of the Magnuson-Stevens Act. Technical changes to the regulations deemed necessary by the Secretary for clarity may be made, as provided under section 304(b) of the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Skate FMP, Amendment 3, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

A NOA for Amendment 3 was published on December 28, 2009. Public comments are being solicited on the amendment through the end of the comment period on February 26, 2010. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the decision to approve or disapprove the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered,

comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

The Council prepared a FEIS for Amendment 3; a NOA was published on January 22, 2010. The FEIS describes the impacts of the proposed Amendment 3 measures on the environment. Because most of the measures were designed to reduce skate landings, the impacts are primarily social and economic, as well as biological. In general, all biological impacts are expected to be positive. Although the economic and social impacts may be negative in the short term, particularly for vessels that have traditionally targeted or relied substantially on sales of skates, the long-term social and economic benefits of sustainable skate fisheries would be positive.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), and is included in Amendment 3 and supplemented by information contained in the preamble to this proposed rule. The IRFA 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 this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (\$4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in

gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The participants in the commercial skate fishery were defined using Northeast dealer reports to identify any vessel that reported having landed 1 lb (0.45 kg) or more of skates during calendar year 2007. These dealer reports identified 542 vessels that landed skates in states from Maine to North Carolina out of 2,685 vessels that held a Federal skate permit.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

The proposed action to establish possession limits for both the wing and bait skate fishery are expected to impact approximately 127 vessels out of the vessels included in the analysis (approximately 25 percent). Collectively, the proposed action would reduce skate revenues by 14.9 percent, and would reduce total revenues by 5.5 percent. Given that skate biomass is not expected to reach optimum yield (OY) without taking any action, the short-term economic losses resulting from the proposed actions are likely to be less than any future losses in yield and revenue.

In terms of impacts to individual vessels, an analysis of dependency on the skate fishery indicates that almost 75 percent of the vessels included in the analysis have less than a 5-percent dependency on the skate fishery. The estimated impact on gross sales increases markedly in relation to dependency on the skate fishery among the 127 vessels estimated to be

adversely affected by this action. The 18 affected vessels that show a less than 1-percent dependency on the skate fishery are estimated to have less than a 2-percent impact on gross revenues. By contrast, estimated revenue loss is 27.8 percent for the 75 affected vessels at the upper end of the dependency spectrum (4.75-percent dependent or greater).

All of the alternatives considered in this action are based on the same TACs. However, some of the alternatives (1A and 3A) utilize a hard TAC approach while others (1B, 2, 3B and 4) use a target TAC approach. Under the hard TAC approach, the Regional Administrator would publish a notice prohibiting skate landings for the remainder of the fishing year once it is determined that skate landings will exceed the overall TAC. Adjustments to the TAC due to an overage would occur in the next fishing year. Under the target TAC approach, the Regional Administrator would determine when landings will meet or are likely to meet the TAL for each fishery (wing or bait), and publish a notice prohibiting landings in excess of the incidental limit for the remainder of the fishing year.

The preferred alternative is basically a modified version of Alternative 2, with slightly higher possession limits for the skate bait fishery (20,000 lb versus 14,200 lb whole weight), a seasonal quota for the bait fishery (similar to Alternative 4), and modified accountability measures. A summary of the possession limits considered under each alternative is provided in Table 2. It should be noted that the Alternatives 1A and 1B propose the same possession limits for both the wing and bait fisheries, while Alternative 4 has the same possession limit for the wing fishery only. Alternatives 2, 3A, and 3B have the same possession limits for both the wing and bait fisheries. Table 2. Comparison of possession limits under each alternative.

Alternative number	Skate wing possession limit		Skate bait possession limit	
	Option 1	Option 2	Option 1	Option 2
1A (Hard TAC, and time/area management).	4,800 wing lb (2,177 kg) 10,896 whole lb (4,942 kg)	3,800 wing lb (1,724 kg) 8,626 whole lb. (3,913 kg).	6,800 lb (3,084 kg)	12,100 lb. (5,488 kg).
1B (Target TAC and time/area management).	4,800 wing lb (2,177 kg) 10,896 whole lb (4,942 kg)	3,800 wing lb (1,724 kg) 8,626 whole lb. (3,913 kg).	6,800 lb (3,084 kg)	12,100 lb. (5,488 kg).
2 (Target TAC with time/area management as accountability measure only).	2,500 wing lb (1,134 kg) 5,675 whole lb (2,574 kg)	1,900 wing lb (862 kg) 4,313 whole lb. (1,956 kg).	8,200 lb (3,719 kg)	14,200 lb. (6,396 kg).

Alternative number	Skate wing possession limit		Skate bait possession limit	
	Option 1	Option 2	Option 1	Option 2
3A (Hard TAC)	2,500 wing lb (1,134 kg)	1,900 wing lb (862 kg)	8,200 lb (3,719 kg)	14,200 lb. (6,396 kg).
3B (Target TAC)	2,500 wing lb (1,134 kg)	1,900 wing lb (862 kg)	8,200 lb (3,719 kg)	14,200 lb. (6,396 kg).
4 (Target TAC)	4,800 wing lb (2,177 kg)	3,800 wing lb (1,724 kg).	Quota managed by season with no possession limit.	
	10,896 whole lb (4,942 kg)	8,626 whole lb. (3,913 kg).		

All of the non-preferred alternatives considered in this action would have resulted in a reduction in revenue. Alternative 4 would affect the least number of vessels (99) and have the least impact on total revenue (2.8 percent), while alternatives 3A and 3B would affect the largest number of vessels (145) and have the greatest impact on total revenue (6.1 percent). The estimated economic impacts associated with Alternatives 1A and 1B are in between the two other non-preferred alternatives and are similar to the preferred alternative—affecting approximately 128 vessels and resulting in an estimated 5.1-percent reduction in total revenues. It should be noted that although Alternative 4 appears to have the least impact on revenue, the quantified economic effects of this alternative are underestimated since it does not include the likely negative impacts associated with quota management for the skate bait fishery. These impacts could not be quantified because the timing and affects are unpredictable and will vary from year to year.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 14, 2010.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, 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 § 648.13, paragraph (h)(2) is revised 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 not issued a Federal skate permit are prohibited from transferring, or attempting to transfer, 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 valid letter of authorization issued by the Regional Administrator as specified under § 648.322(c); and

(ii) The transferring vessel and vessel owner or operator comply with the requirements specified at § 648.322(c).

* * * * *

3. In § 648.14, paragraphs (v)(1)(ii), (v)(3)(i) and (v)(3)(ii)(A) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(v) * * *

(1) * * *

(ii) Onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of only whole skates as bait that are less than the maximum size specified at § 648.322(c).

* * * * *

(3) * * *

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

(ii) * * *

(A) Transfer at sea, or attempt to transfer at sea, to any vessel, any skates unless in compliance with the provisions of §§ 648.13(h) and 648.322(c).

* * * * *

4. In § 648.80, paragraphs (b)(5)(i)(C)(1) and (2) and (b)(6)(i)(D)(1) and (2) are revised to read as follows:

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

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) * * *

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

(2) The vessel has a valid letter of authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(c); or

* * * * *

(6) * * *

(i) * * *

(D) * * *

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

(2) The vessel has a valid letter of authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(c); or

* * * * *

5. Revise § 648.320 to read as follows:

§ 648.320 Skate FMP review and monitoring.

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

(1) 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, fishery landings and discards; a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions; and a determination of whether any of the accountability measures specified under § 648.323 were triggered. The review shall also include an analysis of changes to other FMPs (e.g., Northeast Multispecies, Monkfish, Atlantic Scallops, etc.) that may impact skate stocks, and describe the anticipated impacts of those changes on the skate fishery.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the Skate PDT shall 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. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council shall monitor the trawl survey index as a proxy for stock biomass. As long as the 3-year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3-year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council shall take management action to ensure that stock rebuilding will achieve target levels.

(4) Based on the annual review described above and/or the Stock Assessment and Fishery Evaluation (SAFE) Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee, and any other relevant information, the Skate PDT shall recommend to the Skate Committee and Council the following annual specifications for harvest of skates: An annual catch limit (ACL) for the skate complex set less than or equal to ABC; an annual catch target (ACT) for the skate complex set less than or equal to 75 percent of the ACL; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each fishing year (May 1–April 30), specified for a period of up to 2 fishing years.

(5) *Recommended measures.* The Skate PDT shall also recommend management measures to the Skate Committee and Council to assure that the specifications are not exceeded. Recommended measures should include, but are not limited to:

(A) Possession limits in each fishery;
 (B) In-season possession limit triggers for the wing and/or bait fisheries; and
 (C) Required adjustments to in-season possession limit trigger percentages or the ACL–ACT buffer, based on the accountability measures specified at § 648.323.

(6) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the Scientific and Statistical Committee, and any other relevant information, the Skate PDT may also recommend to the Skate Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of the skate complex and its component species. These adjustments may be included in the Council's specifications for the skate fisheries.

(7) *Council recommendation.* The Council shall review the recommendations of the Skate PDT, Skate Committee, and Scientific and Statistical Committee, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures, consistent with the Administrative Procedure Act. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *Biennial SAFE Report*—(1) 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.

(2) In any year in which a SAFE Report is not completed by the Skate PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

6. Revise § 648.321 to read as follows:

§ 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 shall develop and analyze appropriate management actions within the scope of measures specified in paragraph (b) of this section. The Council shall 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 framework measures should be issued directly as a final rule, without opportunity for public notice and comment, 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) The Regional Administrator may publish the recommended framework measures 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;

(2) Skate 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 quotas for non-directed fisheries;

(9) Establishment of a mechanism for TAC set-asides to 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) OY and/or MSY specifications;

(19) Changes to the accountability measures described at § 648.323;

(20) Changes to TAL allocation proportions to the skate wing and bait fisheries;

(21) Changes to seasonal quotas in the skate bait or wing fisheries;

(22) Reduction of the baseline 25-percent ACL-ACT buffer to less than 25 percent; and

(23) Changes to catch monitoring procedures.

(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.

7. Revise § 648.322 to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

(a) *Allocation of TAL*. (1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market, or classified by Federal dealers as food as required

under § 648.7(a)(1)(i), shall count against the skate wing fishery TAL.

(2) A total of 33.5 percent of the annual TAL shall be allocated to the skate bait fishery. All skate products that are landed for the skate bait market, or classified by Federal dealers as bait as required under § 648.7(a)(1)(i), shall count against the skate bait fishery TAL. The annual skate bait fishery TAL shall be allocated in three seasonal quota periods as follows:

(i) Season 1—May 1 through July 31, 30.8 percent of the annual skate bait fishery TAL shall be allocated;

(ii) Season 2—August 1 through October 31, 37.1 percent of the annual skate bait fishery TAL shall be allocated; and

(iii) Season 3—November 1 through April 30, the remainder of the annual skate bait fishery TAL not landed in Seasons 1 or 2 shall be allocated.

(b) *Skate wing possession and landing limits*. A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is also a limited access multispecies vessel participating in an approved sector described under § 648.87, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 1,900 lb (862 kg) of skate wings (4,313 lb (1,956 kg) whole weight) per trip, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27—for example, 100 lb (45.4 kg) of skate wings \times 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits*. When the Regional Administrator projects that 80 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless

such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, and is not a limited access multispecies vessel participating in an approved sector described under § 648.87, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27), per trip.

(c) *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 for a minimum of 7 consecutive days, provided that at least the following requirements and conditions are met:

(1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner or 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) The vessel owner or operator possesses or lands no more than 20,000 lb (9,072 kg) of only whole skates less than 23 inches (58.42 cm) total length,

and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length. Vessels that 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 (b) of this section for all skates or skate parts on board.

(5) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits.* When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 90 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate bait trip limit to the whole weight equivalent of the skate wing trip limit specified under paragraph (b) of this section for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *Prohibitions on possession of skates.* A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

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

8. Section 648.323 is added to read as follows:

§ 648.323 Accountability measures.

(a) *TAL overages.* If the skate wing fishery TAL or skate bait fishery TAL is determined to have been exceeded by more than 5 percent in any given year based upon, but not limited to, available landings information, the Regional Administrator shall reduce the in-season possession limit trigger for that fishery, as specified at § 648.322(b) and (c), in the next fishing year by 1 percent for each 1 percent of TAL overage, consistent with the Administrative Procedure Act.

(b) *ACL overages.* (1) If the ACL is determined to have been exceeded in any given year, based upon, but not limited to, available landings and discard information, the percent buffer between ACL and ACT, initially specified at 25 percent, shall be increased by 1 percent for each 1-percent ACL overage in the subsequent fishing year, through either the specifications or framework adjustment process described under §§ 648.320 and 648.321.

(2) If the Council fails to initiate action to correct an ACL overage through the specifications or framework adjustment process, consistent with paragraph (b)(1) of this section, the Regional Administrator shall implement the required adjustment, as described under paragraph (b)(1) of this section, consistent with the Administrative Procedure Act.

[FR Doc. 2010-1084 Filed 1-20-10; 8:45 am]

BILLING CODE 3510-22-P