removal of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this Federal Register.


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Acting Regional Administrator, Region 5.

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accountability measures, control catch, and potentially provide a more consistent bait supply to the lobster fishery. Generally, these changes are intended to slow fishing effort and catch to prevent or reduce the need for a lengthy fishery closure while still allowing the fishery to catch its TAL. Figure 2 shows how in-season accountability measures would be implemented if Framework 4 were approved. We are proposing the following measures, as recommended by the Council.

1. Reduce the Season 3 Bait Skate Possession Limit

This measure would reduce the Season 3 (November through April) possession limit from 25,000 lb (11,340 kg) to 12,000 lb (5,443 kg). Because Season 3 is the longest season in the bait fishery (6 months), reducing the trip limit should slow the catch rate and lessen the chance of closing the fishery.

2. Reduce the Season 3 Bait Skate TAL Threshold Trigger

This measure would change the Season 3 TAL threshold trigger at which the incidental possession limit would become effective. Similar to the proposed trip limit reduction, dropping the TAL threshold trigger from 90 to 80 percent means that the incidental possession limit would be enacted sooner, which would slow catch rates and diminish the likelihood of closing the fishery.

3. Establish a Separate Bait Skate Incidental Possession Limit

As previously explained (and detailed in Figure 1), the current regulations link the bait skate incidental possession limit to the skate wing fishery possession limit. Currently, the bait skate incidental possession limit is equivalent to the skate wing possession limit. This action proposes to de-couple the in-season accountability measures for the two fisheries and establish an 8,000-lb (3,629-kg) incidental possession limit whenever the skate bait fishery is projected to reach a seasonal threshold trigger.

Once implemented, an incidental possession limit could be removed and the standard trip limit reinstated if catch projections indicate the TAL will not be harvested and removing the limits are not expected to result in exceeding the TAL.

4. Implement a Bait Skate Fishery Closure When the TAL Is Harvested

This measure would close the bait fishery when 100 percent of the bait TAL is projected to be harvested.

Currently, there is no measure to close the fishery; the incidental possession limits for the bait fishery are linked to the wing fishery. Adding this measure would better ensure that the skate bait fishery does not exceed its TAL.

5. Removal of Incidental Possession Limit if Necessary To Achieve TAL

This action would also clarify, under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, regulations pertaining to in-season possession limit reductions (incidental possession limits) in the skate fishery. If NMFS determines that an in-season possession limit reduction could prohibit the skate bait fishery from achieving its annual TAL, NMFS may remove the in-season reduction and reinstate the standard seasonal possession limit. A similar action was taken during fishing year 2016 (82 FR 13564, March 14, 2017) and language is proposed at 50 CFR 648.322(f) to better clarify the regulations to be consistent with the intent of the Council.

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Figure 1. Flow Chart Depicting Skate Bait and Skate Wing Season 2 and 3 In-Season Closures During Fishing Year 2016.

Skate Bait Possession Limit
25,000 lb (11,340 kg)
Season 2
90 percent Skate Bait TAL
(October 18, 2016)
Skate Wing Possession Limit
9,307 lb (4,222 kg)
85 percent Skate Wing TAL
Incidental Limit
1,135 lb (515 kg)
Season 3 Simultaneous Trigger
(January 30, 2017)

Figure 2. Flow Chart Depicting Changes Proposed in Framework Adjustment 4 for Skate Bait Season 3.

Skate Bait Possession Limit
12,000 lb (5,443 kg)
80 percent Skate Bait TAL
Incidental Limit
8,000 lb (3,629 kg)
100 percent Skate Bait TAL
Skate Bait Fishery Closure
Skate Wing Possession Limit
9,307 lb (4,222 kg)
85 percent Skate Wing TAL
Incidental Limit
1,135 lb (515 kg)
is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The Council’s analysis indicates the maximum number of small fishing entities that may be affected by this action is 69 (71 vessels), based on 2015 data. During fishing year 2015, only 69 affiliated groups landed any amount of skate for bait. At the permit level, every skate landing permit is defined as a small business according to size standards (the top five vessels have total revenues between 600 thousand and 1.9 million dollars in 2015).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council considered revising the skate bait fishery effort controls would impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery or affiliated groups that hold multiple open access commercial skate permits that participate in the skate fishery. Within the skate bait fishery, the majority of affiliated groups consist of a single permit-holder, or 71 vessels in fishing year 2015. Four vessels belong to affiliated groups that hold two or more permits. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411)
(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 80 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 8,000 lb (3,629 kg) of whole skates 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) *In-season closure of skate bait fishery.* When the Regional Administrator projects that 100 percent of the skate bait fishery TAL will be landed, the Regional Administrator shall, through a notice in the *Federal Register* consistent with the Administrative Procedure Act, close the skate bait fishery, unless such a closure would be expected to prevent attainment of the annual TAL. During a skate bait fishery closure all skate bait LOAs as described in paragraph (c) of this section are void. All skates harvested and landed during a skate bait fishery closure will be attributed towards the skate-wing TAL as described in this section.

(f) *Removal of in-season possession limit reductions.* If it is determined that an in-season trip limit reduction as described in paragraphs (d) and (e) of this section could prohibit the skate bait fishery from achieving its annual TAL, the in-season reduction may be removed.

(g) *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).