

§ 648.322

50 CFR Ch. VI (10–1–23 Edition)

- (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;
 - (23) Changes to catch monitoring procedures; and
 - (24) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.
- (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.

[75 FR 34059, June 16, 2010, as amended at 80 FR 37199, June 30, 2015]

§ 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. The annual skate wing fishery TAL shall be allocated in two seasonal quota periods as follows:

(i) Season 1—May 1 through August 31, 57 percent of the annual skate wing fishery TAL shall be allocated;

(ii) Season 2—September 1 through April 30, the remainder of the annual skate wing fishery TAL not landed in Season 1 shall be allocated.

(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*—(1) *Vessels fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS.* (i) A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, 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: Up to 3,000 lb (1,361 kg) of skate wings (6,810 lb (3,089 kg) whole weight) per trip in Season 1 (May 1 through August 31), and 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip in Season 2 (September 1 through April 30), or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section.

(ii) When fishing under the possession limits specified in paragraph (b)(1)(i) of this section, a vessel is allowed to possess and land up to 750 lb (340 kg) of barndoor skate wings (1,702 lb (772 kg) whole weight) per trip in Season 1, and 1,250 lb (567 kg) of barndoor skate wings (2,837 lb (1,287 kg) whole weight) per trip in Season 2. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.*, total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 3,000 lb (1,361 kg) in Season 1 and 5,000 lb (2,268 kg) in Season 2). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *NE multispecies Category B DAS*. A vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), 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 the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(3) *In-season adjustment of skate wing possession limits*. The Regional Administrator has the authority, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, to reduce the skate wing possession limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section) for the remainder of the applicable quota season.

When the incidental possession limit is implemented, a vessel is allowed to possess and land up to 125 lb (57 kg) of barndoor skate wings (284 lb (129 kg) whole weight) per trip. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.*, total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 500 lb). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The in-season adjustment of skate wing possession limits will be implemented under the following circumstances:

(i) When 85 percent of the Season 1 skate wing quota is projected to be landed between May 1 and August 17, the Regional Administrator shall reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(ii) When 85 percent of the Season 1 skate wing quota is projected to be landed between August 18 and August 31, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(iii) When 85 percent of the annual skate wing fishery TAL is projected to be landed in Season 2, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section, unless such a reduction would be expected to prevent attainment of the annual TAL.

(4) *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, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at § 648.53, § 648.82, or § 648.92, 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 the allowable landing forms defined at

paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(5) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at paragraph (c) of this section, a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates ($100 \text{ lb (45.4 kg)} \times 2.27$), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses ($100 \text{ lb (45.4 kg)} \text{ of skate wings} \times 1.27$). A vessel may not possess and/or land skate carcasses and only whole skates.

(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 when the vessel is fishing pursuant to the terms of authorization 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 fishes for, possesses, or lands skates only for use as bait.

(3) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of whole skates per trip.

(4) The vessel owner or operator possesses or lands only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) of this section may fish for, possess, or land skates for uses other than bait.

(6) 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 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

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section could prohibit the skate bait fishery from achieving its annual TAL, the in-season possession limit 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 thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in paragraph (c) of this section; when fishing under a NE multispecies Category B DAS as described under paragraph (b) of this section; when fishing under the incidental skate possession limit for vessels not under a DAS as described in paragraph (b)(4) of this section; or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(3) Discard any skate wings when in possession of barndoor skate wings.

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

[75 FR 34060, June 16, 2010, as amended at 76 FR 28331, May 17, 2011; 77 FR 25100, Apr. 27, 2012; 81 FR 54747, Aug. 17, 2016; 83 FR 6135, Feb. 13, 2018; 83 FR 48988, Sept. 28, 2018; 85 FR 23242, Apr. 27, 2020]

§ 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 (d), 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 shall be increased by 1 percent for each 1-percent ACL overage in the second fishing year following the fishing year in which the ACL overage occurred, 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.

[75 FR 34061, June 16, 2010, as amended at 84 FR 4376, Feb. 15, 2019]

Subpart P—Mid-Atlantic Forage Species

SOURCE: 82 FR 40733, Aug. 28, 2017, unless otherwise noted.

§ 648.350 Mid-Atlantic forage species landing limits.

(a) *Mid-Atlantic forage species.* There is no annual landing limit for Mid-Atlantic forage species, as defined at § 648.2.

(b) [Reserved]

[82 FR 40733, Aug. 28, 2017, as amended at 85 FR 47117, Aug. 4, 2020]

§ 648.351 Mid-Atlantic forage species possession limits.

(a) *Mid-Atlantic forage species.* Unless otherwise prohibited in § 648.80, a vessel issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land up to 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (b) of this section. A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

(b) *Mid-Atlantic Forage Species Management Unit.* The Mid-Atlantic Forage Species Management Unit is the area of the Atlantic Ocean that is bounded on the southeast by the outer limit of the U.S. EEZ; bounded on the south by