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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301164-6694-02]

RIN 0648-BF87

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Framework Adjustment 3 and 2016-2017 Specifications

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

ACTION: Final rule.

SUMMARY: This rule approves regulations to implement Northeast Skate Complex Fishery Management Plan Framework Adjustment 3 management measures, including fishing year 2016-2017 specifications, and implements a new seasonal quota allocation for the skate wing fishery.

This rule is necessary because it updates the Skate Fishery Management Plan to be consistent with the most recent scientific information and it improves management of the skate fisheries.

The intended effect of this rule is to help conserve skate stocks while maintaining economic opportunities for the skate fisheries.

DATES: Effective on [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of Framework 3, including the Environmental Assessment and Regulatory Impact Review (EA/RIR), and other supporting documents for the action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The framework is also accessible

via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281-9182.

SUPPLEMENTARY INFORMATION:

Background

Approved Measures

On June 6, 2016, we proposed in the **Federal Register** (81 FR 36251) management modifications to implement Framework Adjustment 3 to the Northeast Skate Complex Fishery Management (FMP), which includes catch specifications for fishing years 2016-2017. After reviewing public comments in response to the proposed rule, we are approving Framework 3 and the 2016-2017 specifications as detailed in our proposed rule.

Specifications for Fishing Years 2016-2017

Specifications including the acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TALs) for the skate wing and bait fisheries, as well as possession limits, may be specified for up to 2 years. The 2016-2017 skate complex ABC and ACL is 31,081 metric tons (mt). After removing management uncertainty from the ABC, the ACT that remains is 23,311 mt. After removing discards and state landings from the ACT, the TAL that remains is 12,872 mt. Tables 1 and 2 (below) detail TALs and possession limits for the skate wing and skate bait fisheries – there are no possession limit changes from last year. These specifications and possession limits remain in effect until they are replaced.

Table 1. Total Allowable Landings for Fishing Years 2016-2017

Total Allowable Landings (TAL)		mt
Skate Wing Fishery	Season 1 (May 1 - Aug 31)	4,722
	Season 2 (Sept 1 - Apr 30)	3,600
Skate Bait Fishery	Season 1 (May 1 - Jul 31)	1,299
	Season 2 (Aug 1 - Oct 31)	1,565
	Season 3 (Nov 1 - Apr 30)	1,354

Table 2. Possession Limits for Fishing Years 2016 -2017

Skate Possession Limits*		Trip Limits		
		Skate Wings	Whole Skates	Whole Skate w/Bait Letter of Authorization
NE Multispecies, Scallop, or Monkfish Day-At-Sea (DAS)	Season 1 (May 1 - Aug 31)	2,600 lb <i>1,179 kg</i>	5,902 lb <i>2,677 kg</i>	25,000 lb <i>11,340 kg</i>
	Season 2 (Sept 1 - Apr 30)	4,100 lb <i>1,860 kg</i>	9,306 lb <i>4,221 kg</i>	
NE Multispecies B DAS	May 1 - Apr 30	220 lb <i>100 kg</i>	500 lb <i>227 kg</i>	500 lb <i>227 kg</i>
Non-DAS	May 1 - Apr 30	500 lb <i>227 kg</i>	1,135 lb <i>515 kg</i>	1,135 lb <i>515 kg</i>

*Possession limits may be modified in-season in order to prevent catch from exceeding quotas.

Skate Wing Adjustment Measures

Framework 3 modifies the skate wing TAL so that 57 percent of the skate wing TAL is allocated in Season 1 (May 1–August 31) with the remainder allocated in Season 2 (September 1–April 30). This modification was made because skate fishing effort is higher earlier in the fishing year and a seasonal apportionment with in-season change authority should ensure year-round fishing opportunities. Any portion of the Season 1 TAL that is unused is rolled over into Season 2. From May 1 through August 17, the Regional Administrator is required to reduce the directed skate wing possession limit for vessels fishing under a day-at-sea (DAS) from 2,600 lb (1,179 kg) to an incidental catch level of 500 lb (227 kg) when the fishery is projected to land 85 percent of its Season 1 quota. However, if harvest levels are projected to reach 85 percent

sometime between August 18 and August 31 (the last two weeks of Season 1), the Regional Administrator maintains discretion on whether or not to reduce the directed possession limit. This option is included because it is difficult and sometimes impracticable for the agency to rapidly close a fishery immediately prior to the end of a season.

The DAS possession limit increases to 4,100 lb (1,860 kg) at the start of Season 2 (September 1) with the remainder of the annual skate wing TAL available in Season 2. In Season 2, the Regional Administrator may reduce the possession limit to 500 lb (227 kg) when 85 percent of the annual skate wing TAL is projected to have been landed, consistent with previous regulations. These in-season possession limit reductions are designed to mitigate the potential for prolonged closures for the directed skate fishery while still allowing some incidental catches to be landed.

Comments and Responses on Measures Proposed in Framework 3

We received four public comments on the proposed rule, including submissions on behalf of the Cape Cod Commercial Fishermen's Alliance and Shark Advocates International.

Comment 1: The Cape Cod Commercial Fishermen's Alliance and Shark Advocates International support the proposed seasonal specifications and possession limits.

Response 1: We are approving Framework 3 and the accompanying specifications and possession limits because these measures promote optimum yield, fishery conservation, and are based upon the best available science.

Comment 2: One commenter argued for a dramatic increase in quota while one commenter contended a dramatic decrease in quota is needed.

Response 2: The ABC, ACL, and TAL are based on the best available science with advice from the Council's Scientific and Statistical Committee. Therefore, we are approving this

action because it is based on the best available science consistent with National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and with the Council recommendation. The proposed rule (81 FR 36251, June 6, 2016) details the justifications for modifying the specifications. These specifications are expected to result in optimum yield while ensuring that the stocks are not overfished or subject to overfishing (except for thorny skate, which is a prohibited species), consistent with National Standard 1 of the Magnuson-Stevens Act.

Comment 3: Shark Advocates International urged us to elevate the priority of examining and addressing the severe depletion of thorny skates.

Response 3: Although this comment does not directly apply to Framework 3, we are concerned with the stock status of thorny skates. In May 2015, we received a petition to list thorny skates as threatened or endangered. We found that the petition to list thorny skate presented substantial scientific or commercial information indicating that the petitioned action may be warranted and solicited information from the public that could be included in a candidate species status review (80 FR 65175, October 26, 2015). A thorny skate status review occurred on May 19, 2016, in Gloucester, MA. A report from the review is currently being developed and will undergo peer-review prior to being shared with the public.

Comment 4: The Cape Cod Commercial Fishermen's Alliance offered support for the Council's decision to further pursue limited access for the skate fishery.

Response 4: The Council has prioritized consideration of limiting access to the skate fishery. We will continue working with the Council so that it can research, review, and address its management priorities.

Changes from the Proposed Rule

After further review of the regulatory text deemed by the Council and included in the proposed rule, we are revising the regulatory language previously proposed at § 648.322(b)(2) to be consistent with the Regional Administrator's discretion to reduce the Season 2 skate-wing possession limit as provided in Framework Adjustment 1 to the FMP (76 FR 28328; May 17, 2011). These regulatory language changes do not alter the management measures specified in the proposed rule and are consistent with the intent of Framework 3.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 3 to the FMP is necessary for the conservation and management of the northeast skate complex and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. This final rule reduces TALs which are administered through different fishing seasons. Season 1 for the skate wing fishery began on May 1 and ends on August 31. It is possible that the fishery could approach a seasonal landing limit which would require possession limits to be reduced to avoid overharvesting. Waiving the 30-day implementation delay is necessary to ensure timely implementation of the reduced catch limits. Retaining a 30-day delay in implementation would be contrary to the public interest because it could result in a catch limit being exceeded. Immediate implementation of the new TALs, including the new seasonal measures, will benefit fishermen by helping to prevent overages and potentially providing fishing opportunities more evenly throughout the fishing year. For these reasons, NMFS finds it both contrary to the public interest and unnecessary to provide a 30-day delay in implementation.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments. A copy of this analysis is available from the Council [or NMFS] (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

A description of the action, why it is being considered, and the legal basis were contained in the preamble of the proposed rule (81 FR 36251, June 6, 2016) and are not repeated here. The public did not provide any comments on the IRFA; therefore, there are no changes made in this final rule with regards to the economic analyses and impacts.

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

This final rule would impact fishing vessels, including commercial fishing entities. In 2014, there were 2,012 vessels that held an open access skate permit. However, only 431 of those permit holders were active participants in the commercial skate fishery (*i.e.*, landed any amount of skates). Because there are several ownership affiliate groups (as explained in greater detail in the proposed rule) there are actually 364 active vessels in the skate fishery, only 3 of which qualified as large businesses.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA)

previous standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors, respectively, of the U.S. commercial fishing industry.

An IRFA was developed for this regulatory action prior to July 1, 2016, using SBA's previous size standards. Under the SBA's size standards, 3 of 364 skate fishing entities were determined to be large. NMFS has qualitatively reviewed the analyses prepared for this action using the new size standard. The new standard could result in a few more commercial shellfish businesses being considered small (due to the increase in small business size standards). In addition, the new standard could result in fewer commercial finfish businesses being considered small (due to the decrease in size standards). Skates are only responsible for a small fraction of total landings and revenue for any of these vessels so it is unlikely that these size-standard changes would have any impact on the previously conducted analyses.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Final Rule

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

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

The ACL alternative described in the preambles of the proposed rule and this rule represents an ACL reduction in comparison to previous years' ACLs (maintaining the status quo measures). However, we do not anticipate any significant economic impacts on small entities to result from this action. While there is an overall reduction in the TAL, Framework 3 analyses indicate that actual skate landings in recent years have been close to the TAL we are approving

for fishing years 2016-2017. This suggests that it is unlikely that potential revenue losses would be directly commensurate with the TAL reduction. By contrast, maintaining the status quo ACL is inconsistent with the stated objectives because it does not represent the best available science or the goals and objectives of the FMP. The seasonal allocation for the skate-wing fishery effected by this rule was developed to coincide with fishing effort so that more quota is allocated during the months when there is greater fishing effort. This is expected to reduce the risk of the fishery approaching a seasonal quota and having its possession limits reduced. The Council considered reducing the skate-wing possession limits due to the reduced TAL but elected to keep the status quo possession limits to further mitigate economic impacts from the ACL reductions. For these reasons, we do not expect revenues to be significantly impacted.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide, *i.e.*, permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be posted or publically available on the GARFO website.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 2016

Paul Doremus,

Deputy Assistant Administrator for Operations,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 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 § 648.322, revise paragraphs (a)(1) and (b)(2) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

(a) * * *

(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.

* * * * *

(b) * * *

(2) *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)(4) of this section) for the remainder of the applicable quota season, 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)(2) 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)(2) 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 this paragraph, unless such a reduction would be expected to prevent attainment of the annual TAL.

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[FR Doc. 2016-19601 Filed: 8/16/2016 8:45 am; Publication Date: 8/17/2016]