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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 170710645-8098-02]**

**RIN 0648-BH03**

**Fisheries of the Northeastern United States; Northeast Skate Complex; Framework**

**Adjustment 4**

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

**ACTION:** Final rule.

**SUMMARY:** The final rule approves regulations to implement the Northeast Skate Complex Fishery Management Plan Framework Adjustment 4 management measures. This rule implements several measures to reduce the risk of the skate bait fishery from effectively closing down as it did in fishing year 2016. This action will reduce the skate bait season 3 possession limit and establish a separate skate bait incidental possession limit. This action is needed to better control the catch of skate bait and provide a more consistent supply of skate bait to the lobster fishery.

**DATES:** Effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 4 that describes the proposed action and other considered alternatives. The EA provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered

alternatives, a Regulatory Impact Review, and economic analysis. Copies of the Framework 4 EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: <http://www.nefmc.org> or <https://www.regulations.gov/docket?D=NOAA-NMFS-2017-0099>.

**FOR FURTHER INFORMATION CONTACT:** Debra Lambert, Fishery Policy Analyst, (301) 427-8560.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Northeast Skate Complex Fishery Management Plan (FMP), developed by the New England Fishery Management Council and implemented in 2003, manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and Mid-Atlantic coasts. Skates are harvested and managed in two different fisheries: one for food (the wing fishery) and one for lobster bait (the bait fishery). Fishery specific allocations, called total allowable landings (TALs), are set through biennial specifications. Additional information on the skate fisheries can be found online at:

<https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/skate/index.html>.

The bait and wing fisheries have different seasonal quotas and possession limits. Generally, the bait fishery operates under an exemption from the wing fishery possession limits; however, the inseason adjustments to possession limits have been linked between the two fisheries. The bait fishery is managed under a 3-season fishing year: Season 1 is May 1-July 31; Season 2 is August 1-October 31; and, Season 3 is November 1-April 30. Previously, when the bait fishery reached 90 percent of a season's TAL, or 90 percent of the annual bait TAL, the bait

fishery possession limit reverted to the substantially lower wing possession limit. The linked inseason adjustment for these fisheries became problematic in fishing year 2016, as the possession limit in the skate bait fishery was reduced twice, effectively closing the bait fishery. Further background can be found in the proposed rule for Framework Adjustment 4 to the FMP, which published on October 20, 2017 (82 FR 48781). Additional information on previous and current skate management measures can be reviewed through the Council's website at <http://www.nefmc.org/management-plans/skates>.

In response to the closure, the Council developed Framework 4 to reduce the likelihood of a lengthy in-season closure while ensuring bait landings do not exceed the TAL. As mentioned above, on October 20, 2017, NMFS published a proposed rule (82 FR 48781) identifying the measures in Framework 4. Comments on the proposed rule were accepted through November 6, 2017.

### **Approved Measures**

NMFS is approving the regulatory changes for the skate bait fishery as recommended by the Council in Framework 4 and detailed in our proposed rule. The approved measures are:

#### *1. Reduce the Season 3 Bait Skate Possession Limit*

The Season 3 (November 1 through April 30) possession limit is reduced 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*

The trigger for implementing an inseason adjustment to possession limits in Season 3 is reduced from 90 to 80 percent of the TAL (i.e., when 80 percent of the TAL has been reached).

The trigger for implementing an inseason adjustment to possession limits in Season 1 and 2 will remain at 90 percent of the seasonal TAL.

*3. Establish a Separate Bait Skate Incidental Possession Limit*

This action de-couples the inseason adjustments for the skate wing and bait fisheries. Once the trigger for implementing an inseason adjustment to possession limits in the skate bait fishery has been reached, the incidental possession limit will be 8,000 lb (3,629 kg) for the remainder of the season.

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

The bait fishery will be closed when 100 percent of the bait TAL is projected to be harvested. This measure will 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 also clarifies that if NMFS determines that an in-season possession limit reduction (putting in place the incidental possession limit) 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.

**Comments and Responses**

We received four public comments on the proposed rule, two of which were not responsive to the action.

*Comment 1:* Two commenters, the Atlantic Offshore Lobstermen's Association and the Cape Cod Commercial Fishermen's Alliance, support de-coupling the skate wing and bait inseason possession limit adjustments and support the measures in the proposed rule.

*Response:* We are approving Framework 4 and the accompanying measures because they allow the fishery to more effectively harvest its optimum yield. The Framework 4 measures are

expected to better ensure that the skate bait fishery remains open throughout Season 3. If it becomes necessary to implement an incidental possession limit for the skate bait fishery, those measures will function independently of the skate wing fishery, and would allow fishing to continue at a lower level.

### **Changes from the Proposed Rule**

Only two minor revisions were made to the regulatory text that was specified in the proposed rule. Section 648.322(c)(4) was revised to reduce redundancy by deleting the following phrase from the end of the sentence: “or whole skates greater than 23 inches (58.42 cm) total length.” Section 648.322(f) was revised for clarity by adding the phrase “possession limit” towards the end of the sentence.

### **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 4 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 law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. 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, and a summary of the analyses completed to support the action. A copy of this analysis and the EA are available from the Council (see **ADDRESSES**). A description of why this action was

considered, and the objectives of this rule, is contained in the preamble to the proposed rule and this final rule and is not repeated here.

*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*

We received four public comments on the proposed rule, two of which were not responsive to the action. For a summary of the comments, and NMFS' response, see the Comments and Responses section above. The comments did not raise any issues or concerns related to the IRFA or the economic impacts of the rule more generally. In addition, no comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule. No changes were made to the rule as a result of comments.

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

This rule will affect 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, the most recent year for which complete information was available during the Council's impact analyses. 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) 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, Record-Keeping, and Other Compliance Requirements*

This action 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 Council considered revising the skate bait trigger for implementing an inseason adjustment, reduced possession limit, and closure independently, but elected to include all of the measures into a single action. The Council was concerned that, independently, the measures would not restrict catch enough and leave the fishery at risk of a substantial closure with accompanying economic impacts. Incorporating all of the measures accomplishes the goals and objectives of the FMP and minimizes the economic impact on small entities. Retaining the status quo management measures would not slow catch and would result in the fishery having a higher likelihood of closing for an extended period, resulting in greater profit losses to industry and bait shortages to the lobster fishery—both issues the Council sought to avoid by the Framework 4 action.

**Small Entity Compliance Guide**

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 a 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 Web site.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 8, 2018.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.322, revise paragraphs (c) through (e), and add paragraphs (f) and (g) to read as follows:

**§ 648.322 Skate allocation, possession, and landing provisions.**

\* \* \* \* \*

(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 during Seasons 1 or 2 and no more than 12,000 lb (5,443 kg) of whole skates per trip during Season 3.

(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 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 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).

[FR Doc. 2018-02967 Filed: 2/12/2018 8:45 am; Publication Date: 2/13/2018]