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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180702599-8599-01]

RIN 0648-BI03

Fisheries of the Northeastern United States; Northeast Skate Complex; Framework Adjustment 6; Revised 2018-2019 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes to approve and implement measures submitted by the New England Fishery Management Council in Framework Adjustment 6 to the Northeast Skate Complex Fishery Management Plan and revise the 2018-2019 specifications. This action would reduce the management uncertainty buffer between the annual catch limit and the annual catch target from 25 to 10 percent, which would result in increasing the annual catch target and total allowable landings for the 2018-2019 fishing years by 20 percent. This action is necessary to allow the skate wing total allowable landing to be achieved while minimizing the need to restrict fishing operations through incidental possession limits. This action intends to extend the directed fishing time for both the skate wing and bait fisheries.

DATES: Public comments must be received by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0123, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0123*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope, “Comments on the Proposed Rule to Skate Framework Adjustment 6.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments submitted as instructed that we receive are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 6 that describes the proposed action and other considered alternatives. The EA provides an analysis of the biological, economic, and

social impacts of the proposed measures and other considered alternatives and economic analysis. Copies of the Framework 6 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> and www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0123.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

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 and crab bait (the bait fishery).

The fishing year for skates is from May 1 to April 30. The directed wing fishery is managed using possession limits in two separate seasons. The bait fishery has possession limits in three separate seasons (Table 1). When catch approaches the seasonal total allowable landings (TAL), a lower, more restrictive incidental limit is implemented to slow harvest and help ensure that seasonal quotas are not exceeded.

TABLE 1 – POSSESSION LIMITS PER TRIP FOR FISHING YEARS 2018-2019.

Skate possession limits*		Trip Limits			
		Skate Wings	Whole Skates	Barndoor** Skate Wings	Whole Barndoor** Skates
NE Multispecies, Scallop, or Monkfish Day-At-Sea (DAS)	Season 1 (May 1 – August 31)	2,600 lb <i>1,179 kg</i>	5,902 lb <i>2,677 kg</i>	650 lb <i>295 kg</i>	1,476 lb <i>670 kg</i>
	Season 2 (September 1 – April 30)	4,100 lb <i>1,860kg</i>	9,307 lb <i>4,222 kg</i>	1,025 lb <i>465 kg</i>	2,327 lb <i>1,056 kg</i>
NE Multispecies B DAS	May 1 – April 30	220 lb <i>100 kg</i>	500 lb <i>227 kg</i>	0	0
Non-DAS	May 1 – April 30	500 lb <i>227 kg</i>	1,135 lb <i>515 kg</i>	0	0
Whole skate with bait Letter of Authorization	May 1 – October 31	0	25,000 lb <i>11,340 kg</i>	0	0
	November 1 – April 30	0	12,000 lb <i>5,443 kg</i>	0	0

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

**Barndoor skate trip limits are within the overall skate possession limit for each trip, not in addition to it.

In recent years, a combination of lower overall catch limits and strong fishery participation has caused the incidental limits in both the wing and bait fisheries to be triggered with several months remaining in the fishing year. To address this issue for the bait fishery, the Council developed and NMFS implemented Framework Adjustment 4 in March 2018 to better control the catch of skate bait throughout the fishing year (83 FR 6133; February 13, 2018). Similarly, in January 2018, the Council initiated Framework Adjustment 6 to adjust measures to extend the directed skate wing fishing year and reduce negative impacts when skate wing incidental limits are triggered. The Council took final action on Framework 6 at its June 2018 meeting.

Proposed Measures

This action would adjust the management uncertainty buffer between the annual catch limit (ACL) and annual catch target (ACT) in the skate FMP. The current uncertainty buffer between the ACL and ACT is 25 percent (*i.e.*, ACT = 75 percent of ACL). This action would reduce this buffer to 10 percent, allowing for an increase in the TALs allocated to both the wing and bait fisheries. Council analysis indicates that this revised buffer would likely delay the need to implement the restrictive incidental limit of 500 lb (227 kg) in the wing fishery until closer to the end of the fishing year. For the bait fishery, this buffer reduction is expected to delay the incidental trigger until around March. The analyses within Framework 6 indicate that the level of management uncertainty within the skate fishery has likely reduced since the implementation of the ACL operational framework in 2010. For example, management controls put in place have been effective at constraining catch; species identification and catch accounting has improved; ACLs have not been exceeded, and only minor overages of fishery TALs have occurred.

Revised 2018-2019 Specifications

The proposed modification to the management uncertainty buffer would result in adjustments to the 2018-2019 specifications implemented through Framework Adjustment 5 (83 FR 48985; September 28, 2018). NMFS is proposing the following revised specifications for the 2018-2019 fishing years as recommended by the Council in Framework 6:

1. The acceptable biological catch and ACL would remain at 31,327 mt;
2. An ACT of 28,194 mt (90 percent of the ACL);
3. A TAL of the 15,788 mt for the entire skate fishery;
4. A TAL of 10,499 mt for the wing fishery, that is divided in two seasons according to the current regulations at 50 CFR 648.322. In season 1 (May 1 – August 31) the TAL would be 5,984 mt (57 percent), and the remainder of the TAL allocated to Season 2 (September 1- April 30). As the 2018 fishing year started on May 1, the wing TALs would be retroactively increased. The regulations for the skate fishery allow for unused wing TAL from Season 1 to be rolled-over to Season 2. NMFS estimates that 4,490 mt of wings were landed in Season 1, and therefore 497 mt can be rolled over to Season 2 in 2018. Given this, the Season 2 wing TAL in 2018 would be approximately 5,012 mt.

5. A TAL of 5,289 mt for the bait fishery that is divided into three seasons according to the current regulations at § 648.322. In Season 1 (May 1 – July 31) the TAL would be 1,629 mt (30.8 percent); in Season 2 (August 1 – October 31) the TAL would be 1,962 mt (37.1 percent), and the remainder (1,698 mt) would be allocated to Season 3 (November 1 – April 30). As the 2018 fishing year started on May 1, the bait TALs would be retroactively increased. The regulations for the skate fishery allow for the unused bait TAL from Seasons 1 and 2 to be rolled-over to Season 3. Therefore, once TALs are revised for Seasons 1 and 2 and landings

have been accounted for, NMFS would adjust the 2018 Season 3 bait TAL accordingly. At a minimum the 2018 Season 3 bait TAL is expected to increase by 598 mt (*i.e.*, the sum of the proposed revised 2018 Season 1 and Season 2 bait TALs under Skate Framework 6, minus the sum of the Season 1 and 2 bait TALs under the 2018-2019 specifications implemented through Skate Framework 5).

The Council reviewed the proposed regulations and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Conservation and Management 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 FMP, Framework 6, provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of this action is to allow the skate wing TAL to be achieved while minimizing the need to restrict fishing operations through incidental possession limits. As proposed, this action would reduce the management uncertainty buffer between the skate ACL and the ACT from 25 to 10 percent, which would result in increasing the ACT and TAL for the

2018-2019 fishing years by 20 percent. This action, if implemented, is expected to extend the directed fishing year for both the skate wing and bait fisheries and allow higher magnitude landings for a longer portion of the fishing year.

The action would impact vessels or affiliated groups that hold Federal skate permits and participate in skate fisheries. The Council's analysis of 2017 data, the most recent complete set of data available, indicates that the skate fishery had 288 affiliated groups with single permits, and another 91 vessels belonged to affiliated groups that hold 2 or more permits. It is difficult to quantitatively analyze the economic impacts of increasing TALs, as economic impacts would have to be compared against 2015 fishing year data (the last year in which the incidental possession limit was not imposed) when TALs were higher than the proposed revised 2018 levels under Framework 6. Therefore, a qualitative analysis is described below.

For Regulatory Flexibility Act (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 \$11.0 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on a 3-year average of annual revenue.

Affiliate data are assembled by NMFS, as of June 1st each year, for analysis required by the RFA. During fishing year 2017, 334 regulated entities landed skates; 330 entities were small and 4 were large. All 334 entities could be directly regulated by this proposed action.

This action, which proposes to increase the ACT and TALs for the 2018-2019 fishing years by 20 percent, is expected to result in increased revenues and economic benefits. This action is not expected to have a significant economic impact on a substantial number of small entities. The effects of this action on the regulated small entities in this analysis are expected to be positive. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce profits for any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This rule would not establish any new reporting or recordkeeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 20, 2018.

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 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 § 648.320, paragraph (a)(4) is revised to read as follows:

§ 648.320 Skate FMP review and monitoring.

(a) * * *

(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 90 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.

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3. In § 648.323, paragraph (b)(1) is revised to read as follows:

§ 648.323 Accountability measures.

* * * * *

(b) * * *

(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.

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