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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180702599-9068-02]

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: Final rule.

SUMMARY: NMFS approves and implements measures submitted by the New England Fishery Management Council in Framework Adjustment 6 to the Northeast Skate Complex Fishery Management Plan and revises the 2018-2019 skate fishery specifications. This action is necessary to allow the skate wing total allowable landings 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: Effective on *[insert date of publication in the FEDERAL REGISTER]*.

ADDRESSES: The New England Fishery Management Council (Council) prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 6 that describes the 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, a Regulatory Impact Review, 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>

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

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council’s Northeast Skate Complex Fishery Management Plan (FMP) 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 possession and landing 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
Northeast (NE) Multispecies, Scallop, or Monkfish Day-At-Sea	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>

(DAS)					
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	May 1 – October 31	0	25,000 lb <i>11,340 kg</i>	0	0
Letter of Authorization	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 put into effect with several months remaining in the fishing year. To address this issue for the bait fishery, the Council developed and NMFS implemented Framework 4 in March 2018 to better control the catch of skate bait throughout the fishing year (83 FR 6133; February 13, 2018). Similarly, the Council developed Framework 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. On November 27, 2018, we proposed management modifications to implement Framework Adjustment 6 to the Northeast Skate Complex Fishery Management Plan and revise the 2018–2019 specifications (83 FR 60818).

Final Measures

This action adjusts 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 reduces this buffer to 10 percent, resulting in an increase in the TALs for both the wing and bait fisheries. Council

analysis indicates that this revised buffer will likely delay the need to implement the restrictive incidental limit of 500 lb (227 kg) in the wing fishery until later this spring. For the bait fishery, this buffer reduction is expected to delay enacting the incidental limits 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. This action also makes an administrative change to the accountability measures regulation to be consistent with the uncertainty buffer changes.

Revised 2018-2019 Specifications

The modification to the management uncertainty buffer results in adjustments to the 2018-2019 specifications implemented through Framework 5 (83 FR 48985; September 28, 2018). As a result, this action implements the following revised 2018-2019 specifications (Table 2):

1. The acceptable biological catch (ABC) and ACL remains 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 will 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 will 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

1,494 mt can be rolled over to Season 2 in 2018. Given this, the Season 2 wing TAL in 2018 will be approximately 6,009 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 is 1,629 mt (30.8 percent); in Season 2 (August 1 – October 31) the TAL is 1,962 mt (37.1 percent), and the remainder (1,698 mt) is allocated to Season 3 (November 1 – April 30). As the 2018 fishing year started on May 1, the bait TALs will 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, NMFS will adjust the 2018 Season 3 bait TAL accordingly. The 2018 Season 3 bait TAL will increase by 1,062 mt, resulting in a final season 3 TAL of 2,760 mt.

TABLE 2 – COMPARISON OF THE FRAMEWORK 5 2018-2019 SPECIFICATIONS TO THE REVISED FRAMEWORK 6 2018-2019 VALUES (mt).

	Previous	Revised
ABC = ACL	31,327	31,327
ACT	23,495	28,194
Wing Fishery TAL	8,749	10,499
Bait Fishery TAL	4,408	5,289

The Council reviewed the Framework 6 regulations and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Conservation and Management Act.

Comments and Responses

We received nine public comments on the proposed rule, which we have merged into three comments below.

Comment 1: The Sustainable Fisheries Association (SFA), the Atlantic Offshore Lobstermen’s Association, and one member of the public offered support for this action. The SFA also requested that this final rule be implemented as soon as possible to avoid an

unnecessary closure of the directed wing fishery based on the TALs implemented through Framework 5.

Response: NMFS agrees and is implementing this rule as soon as possible.

Comment 2: Four individuals and Shark Advocates International were not supportive of the reduction in the uncertainty buffer due to concerns over declining skate populations and inadequate fisheries data.

Response: Based on the most recent assessment information, NMFS disagrees that the skate species are depleted. With the exception of thorny skate, the seven other skate species that make up the skate complex are not overfished or experiencing overfishing. Thorny skates are overfished, but overfishing is not occurring and retention and landing of thorny skates is prohibited. This action is based on the best available information and takes into account the status of these stocks when determining appropriate management buffers and specifications. The Council's analysis for Framework 6 indicated that several sources of management uncertainty outlined in the 2010 action that established the 75-percent buffer have been improved such that revising the buffer is appropriate. The Council may adjust the management uncertainty buffer in a future action if it is determined that the buffer should be increased to respond to changes in available data or skate stock status.

Comment 3: We received one additional letter from the New London Seafood Distributors that made no comment on the proposed measures, but requested that additional measures be considered. Specifically, the organization is interested in adjusting seasonal possession limits and allowing for a higher proportion of the TAL in Season 3.

Response: These suggestions are outside the scope of this action but the Council may consider this information in a future action. New specifications for fishing years 2020-2022 are

expected to be developed by the Council in 2019.

Changes from the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 6 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.

The Assistant Administrator for Fisheries, NOAA, finds that because this rule relieves restrictions (i.e., increases the total allowable landings available to the wing and bait fisheries to allow the fisheries to continue uninterrupted), it is excepted from the 30-day delay in effectiveness under 5 U.S.C. 533(d)(1). During the partial government shutdown that began on December 21, 2018, the wing fishery reached 91 percent of its current 2018 TAL, which is above the 85-percent threshold for implementing the incidental possession limit that would essentially close the directed wing fishery by reducing the possession limit to 500 lb (227 kg). Because this action will increase the 2018-2019 TAL by 20 percent, the possession limit threshold would be extended to later in the fishing year. If the 30-day delay of effectiveness is not waived, unnecessarily restrictive incidental limits will need to be implemented and be in effect longer, putting some vessels at a disadvantage. This would be contrary to the public interest because it would undermine the intent of this rule to extend the directed fishing time for both the skate wing and bait fisheries. As a result, NMFS is waiving the requirement.

This final 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 11, 2019.

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 § 648.320, 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, revise the heading for paragraph (b) and paragraph (b)(1) to read as follows:

§ 648.323 Accountability measures.

* * * * *

(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.

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