



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 240711-0189]**

**RIN 0648-BM96**

#### **Magnuson-Stevens Fishery Conservation and Management Act Provisions;**

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

#### **Adjustment 12**

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

**ACTION:** Final rule.

**SUMMARY:** This action implements approved measures for Framework Adjustment 12 to the Northeast Skate Complex Fishery Management Plan (Northeast Skate Complex FMP), which was developed by the New England Fishery Management Council (Council). This action specifies skate catch limits for fishing years 2024 and 2025, increases seasonal trip limits for the wing fishery, removes possession restrictions for barndoor skate in the wing fishery, and removes possession restrictions for smooth skate in both the wing and bait fisheries. This action is necessary to establish skate specifications consistent with the most recent scientific information. The intent of this action is to establish appropriate catch limits for the skate fishery, while providing additional operational flexibility to fishery participants.

**DATES:** Effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The Council prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 12 that describes the action and other considered

alternatives. The EA provides an analysis of the biological, economic, and social impacts of the preferred measures and other considered alternatives; a Regulatory Impact Review; and an economic analysis. Copies of Framework 12, including the EA and other supporting documents are available upon request from Dr. Cate O’Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at:

<https://www.nefmc.org/library/skate-framework-12>.

**FOR FURTHER INFORMATION CONTACT:** Laura Deighan, Fishery Policy Analyst, (978) 281-9184.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council manages a complex of seven skate species (*i.e.*, barndoor, clearnose, little, rosette, smooth, thorny, and winter) off the New England and mid-Atlantic coasts through the Northeast Skate Complex FMP. Skates are harvested and managed through two different targeted fisheries: (1) food (*i.e.*, the wing fishery); and (2) bait in other fisheries (*i.e.*, the bait fishery). The Northeast Skate Complex FMP requires that annual catch and possession limits for the skate fishery be reviewed annually and specified through the specifications process for up to two fishing years at a time, with the second year subject to review and change during the specifications process. The specifications for fishing year 2023 (revised March 17, 2022, 87 FR 15146) have remained in effect through a rollover provision in the regulations but are now superseded through the implementation of this final rule.

In the fall of 2023, the Northeast Skate Complex FMP underwent a level-3 management track assessment that re-estimated commercial fishery catch data, updated survey biomass indices, added recreational catch to total catch, and updated reference points. The assessment also included projections of total fishery catch of skates for 2024

and 2025. The Council took final action on this framework at its December 2023 meeting in Newport, RI.

NMFS published a proposed rule for this action (89 FR 45621, May 23, 2024) that discussed the proposed measures in detail and included proposed implementing regulations deemed necessary by the Council. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Skate Fishery Management Plan regulations, NMFS may approve, disapprove, or partially approve measures that the Council proposes, based on consistency with the Magnuson-Stevens Act and other applicable law.

NMFS is partially approving Framework 12 and disapproving the Council's recommendation to remove barndoor skate possession restrictions for the bait skate fishery due to new discard information that needs further evaluation and consideration. Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

### **Approved Measures**

Framework 12 sets management measures and specifications for the skate fishery for the 2024 fishing year and projected specifications for the 2025 fishing year. The measures in this action decrease the annual catch limit to 32,155 metric tons (mt) (from 37,236 mt in 2023) and the overall total allowable landings to 15,718 mt (from 21,142 mt in 2023). Table 1 summarizes the 2024–2025 specifications. Specifications for fishing year 2025 are projected to be the same as those for 2024. Framework 12 specifications result in a 26-percent decrease in both the bait and wing fisheries' total allowable landings. Although quotas are decreasing, they remain higher than landings in the bait and wing fisheries for at least the last three years; therefore, NMFS does not expect the quotas to be restrictive to the fishery or to result in reductions in overall revenue. The Council will review the projected 2025 specifications to determine if any changes need to

be made prior to the 2025 fishing year. NMFS will publish a notice prior to the 2025 fishing year to confirm these limits as projected or publish a proposed rule for any necessary changes.

**Table 1. 2024–2025 Skate Fishery Specifications, in metric tons.**

	<b>2024–25</b>
<b>Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL)</b>	32,155
<b>Annual Catch Target (ACT) (90% of ACL)</b>	28,940
<b>Overall Fishery Total Allowable Landings (TAL)</b>	15,718
<b>Wing TAL (66.5% of Overall TAL)</b>	10,453
<b>Wing Season 1 TAL (57% of Wing TAL)</b>	5,958
<b>Wing Season 2 TAL</b>	4,495
<b>Bait TAL (33.5% of Overall TAL)</b>	5,266
<b>Bait Season 1 TAL (30.8% of Bait TAL)</b>	1,622
<b>Bait Season 2 TAL (37.1% of Bait TAL)</b>	1,954
<b>Bait Season 3 TAL</b>	1,690

This action also increases the seasonal skate wing per-trip possession limits when fishing on a day-at-sea (DAS) by 1,000 pounds (lb) (453.6 kilograms (kg)). The wing fishery possession limit in Season 1 (May 1-August 31) increases from 3,000 lb to 4,000 lb (1,360.8 kg to 1,814.4 kg), and the Season 2 (September 1-April 30) wing fishery possession limit increases from 5,000 lb to 6,000 lb (2,268 kg to 2,721.6 kg). This action also increases the incidental skate wing possession limits by 25 percent. For trips fishing on a Northeast multispecies B-DAS, the possession limit increases from 220 lb to 275 lb (99.8 kg to 124.7 kg), and for trips not fishing on a DAS, the possession limit increases from 500 lb to 625 lb (226.8 kg to 283.5 kg). The intent behind increased possession limits is to reduce operational discards in the fishery and provide better economic flexibility and opportunity to vessels. This trip limit increase is not expected to result in

overages or increased effort because the Regional Administrator has the authority to reduce the possession limits to an incidental catch limit level when 85 percent of the quota is projected to be landed.

This action further reintegrates barndoor skate into the skate complex by removing the barndoor skate possession restrictions for the wing fishery. The possession restriction limited possession of barndoor skates to 25 percent, by weight, of the trip limit when fishing under a DAS and prohibited possession of barndoor skate for vessels fishing under a multispecies B-DAS or not on a DAS in the wing fishery. The possession limit was implemented to prevent high grading of catch in the wing fishery, which primarily lands winter and barndoor skates. NMFS declared barndoor skate rebuilt in 2016. There is not a known price difference between barndoor and winter skate, and the removal of the barndoor possession restriction in the wing fishery is not expected to result in high grading.

Additionally, this action fully re-integrates smooth skates into the skate complex by removing smooth skate possession restrictions for both the wing and bait fisheries. NMFS declared smooth skates rebuilt in 2018. Accordingly, the need to manage smooth skates as an individual stock is no longer warranted. Smooth skate will be managed as a component of the skate complex, as intended when the Northeast Skate Complex FMP was developed.

### **Disapproved Measures**

After the publication of the proposed rule and receipt of the final EA, an error in the data regarding barndoor skate discards was identified. As a result, discard data for the bait fishery no longer supports a decision to approve the removal of the barndoor skate possession restriction in the bait fishery at this time. The bait fishery is allowed to land skates with maximum fish size of 23 inches (58.42 cm), which is well under the size at which barndoor skates are considered sexually mature (107.9 cm and 116.3 cm for males

and females, respectively). Data included in the EA indicated that barndoor skates were discarded on only 0.7-percent of observed trips from 2018 to 2022, and none of the discards were below 23 inches (58.42 cm). At the time, this suggested that removing the prohibition on retaining barndoor skates in the bait fishery would have negligible impacts on the barndoor skate resource. The corrected data indicate that the amount of barndoor skate discarded on trips under Skate Bait Letters of Authorization was higher than the amount described in the EA and considered by the Council when recommending the removal of the barndoor skate possession restriction for both the bait and wing fisheries.

The corrected data indicate that barndoor skate was discarded on approximately 33.6 percent of observed bait trips and approximately 68.7 percent of those discards were below the maximum size. Juvenile barndoor skate mortality could increase if these discards are converted to landings due to removing the bait fishery's barndoor skate possession restriction. Therefore, allowing barndoor skates under 23 inches (58.42 cm) to be landed in the bait fishery would increase mortality of juvenile barndoor skate if these discards are converted to landings. Given the potential increase in juvenile barndoor skate mortality, additional analysis is required before determining whether the removal of the barndoor skate possession restriction is supported for the bait fishery. Based on this, the removal of the barndoor skate possession restriction for the bait fishery is disapproved. As a result, the current regulations at 50 CFR 648.14(v)(2)(ii) and § 648.322(g)(2) that prohibit possession of barndoor skate when fishing under a Skate Bait Letter of Authorization remain in effect, but will be updated to reflect the approved measure removing the barndoor skate possession restrictions for the wing fishery.

The Council will be notified of the decision to disapprove the removal of the barndoor skate possession restriction for the bait fishery, consistent with regulations at § 648.321(a)(5). The Council may reconsider this measure in a future action following a review of the corrected discard data and the potential impacts on juvenile barndoor

skates. If the Council reconsiders this measure, the public will have additional opportunities to comment on the potential for removing the restriction on retaining barndoor skate in the bait fishery through the Council and rulemaking processes.

### **Comments and Responses**

The public comment period for the proposed rule ended on June 24, 2024, and two comments were received from the public. No changes to the final rule are necessary as a result of those comments. One of the comments focused on wind development and whales, is not germane to this action, and is not addressed further.

NMFS received one comment from an industry participant in favor of increased possession limits and more dynamic management with possession limits updated throughout the year. No changes were made to the final rule as a result of this comment because the final rule includes increased possession limits for the wing fishery and the possession limits and other management measures are reviewed annually to allow consideration of the most recent information and ensure decisions are made with the best scientific information available. Information on the skate stocks and fishery performance is updated annually to include the most recent landings and annual survey data.

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

This final rule includes one change and two corrections from the proposed rule. The proposed rule would have authorized landing juveniles barndoor skates in the bait fishery; however, for the reasons explained above (see **Disapproved Measures**), we are disapproving that proposed measure.

Although the correct 2024-2025 TAL of 15,718 mt was provided in table 1 in the proposed rule, the text description included the TAL as 15,178 mt. This final rule corrects the text description of the TAL. The proposed rule also described the number of regulated entities as businesses that owned federally permitted skate vessels with skate landings in 2022. However, all vessels with a Federal skate permit are regulated under the Northeast

Skate Complex FMP, regardless of skate landings. This increases the number of regulated entities from 149 businesses owning 244 vessels to 1,332 businesses owning 1,980 vessels. Of these, 154 are for-hire businesses and 11 are classified as large entities per the Small Business Administration guidelines. The economic analysis in the final EA has been updated to reflect this correction. The change to the number of regulated entities does not change the economic impact overall or on small businesses or the certification of the rule under the Regulatory Flexibility Act.

### **Classification**

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that, with the exception of the barndoor skate possession restriction disapproved pursuant to section 304(b)(1)(B), this rule is consistent with the Northeast Skate Complex FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is a need to implement these measures in a timely manner to ensure that these updated specifications and possession restrictions are in place as soon after the start of the 2024 skate fishing year as possible. In addition, this action relieves restrictions pursuant to 5 U.S.C. 553(d)(1) by (1) increasing the per-trip possession limits for the wing fishery by 1,000 lb (453.6 kilograms (kg)) when fishing on a DAS and by 25-percent when fishing on a multispecies B-DAS or not fishing on a DAS and (2) removing possession restrictions for two stocks (*i.e.*, barndoor and smooth skate) for the wing fishery and one stock (*i.e.*, smooth skate) for the bait fishery. Barndoor skate possession, which was limited to 25 percent, by weight, of the trip limit when fishing under a DAS and prohibited when fishing under a multispecies B-DAS or not on a DAS in the wing fishery, would be allowed on all wing trips. Possession of smooth skate, which was previously prohibited in the Gulf of Maine Regulated Mesh Area, would be allowed on all skate trips. Fishermen would continue to be restricted to the lower possession limits in

the wing fishery, restricted to the lower barndoor possession limits on a DAS wing trip and prohibited from possessing barndoor and smooth skate on certain trips, as described above, if the 30-day delay were in place. Therefore, the exception under 5 U.S.C. 553(d)(1) applies to this action.

There is also a sufficient showing under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action for good cause. The 2024 fishing year began on May 1, 2024, and the 2023 specifications have remained in place through a rollover provision in the regulations. This action establishes the final 2024 and projected 2025 specifications (*i.e.*, annual catch limits), increases possession limits in the wing fishery, and removes barndoor skate possession restrictions for the wing fishery and smooth skate possession restrictions for the wing and bait fisheries. A delay in effectiveness would be contrary to the public interest as the updated specifications reflect the best available science, and the increased possession limits and removal of barndoor skate possession restriction for the wing fishery and smooth skate possession restriction for the wing and bait fisheries are intended to give greater flexibility to industry participants and to convert discards to landings. NMFS could not have promulgated this rule sooner due to a necessary revision to the economic analysis to ensure communication of the best available data within data confidentiality requirements.

Furthermore, requiring a 30-day delay before the final rule becomes effective does not provide any benefit to the regulated parties, as no additional time is required to come into compliance with this rule. Unlike actions that require an adjustment period, skate fishing vessels will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the new catch limits and increased possession limits and restrictions for the fishing year. For these reasons, a 30-day delay in effectiveness would

be contrary to the public interest. As a result, NMFS is waiving the requirement, consistent with 5 U.S.C. 553(d)(1) and (d)(3).

This 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, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 11, 2024.

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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, 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 § 648.14, revise paragraph (v)(2) to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(v) \* \* \*

(2) *All Federal permit holders.* It is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(i) Retain, possess, or land thorny skates taken in or from the EEZ portion of the skate management unit specified at § 648.2.

(ii) 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 § 648.322(c).

(iii) [Reserved]

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3. In § 648.322, revise paragraphs (b)(1) through (4), and paragraph (g), to read as follows:

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

\* \* \* \* \*

(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 4,000 lb (1,814 kg) of skate wings (9,080 lb (4,119 kg) whole weight) per trip in Season 1 (May 1 through August 31), and 6,000 lb (2,722 kg) of skate wings (13,620 lb (6,178kg) 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) [Reserved]

(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 275 lb (125 kg) of skate wings (624 lb (283 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 any 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. 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 625 lb (283 kg) of skate wings or 1419 lb (644 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 any prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

\* \* \* \* \*

(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.