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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180130101-8824-02]

RIN 0648-BH57

Fisheries of the Northeastern United States; Northeast Skate Complex; Framework Adjustment 5 and 2018-2019 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS approves regulations to implement Northeast Skate Complex Fishery Management Plan Framework Adjustment 5 management measures and 2018-2019 specifications for the skate fishery. The action is necessary to establish skate specifications to be consistent with the most recent scientific information and improve management of the skate fisheries. This action is intended to establish appropriate catch limits for the skate fishery and to provide additional operational flexibility to fishery participants.

DATES: Effective on September 28, 2018.

ADDRESSES: New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 5 and 2018-2019

Specifications 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, a Regulatory Impact Review, and economic analysis. Copies of the Framework 5 and 2018-2019 Specifications 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-2018-0054.

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 and crab bait (the bait fishery). Additional information on the skate fisheries can be found online at <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/skate/index.html>.

On July 5, 2018, we proposed management modifications to implement Framework Adjustment 5 to the Northeast Skate Complex FMP and

specifications for fishing years 2018-2019 (83 FR 31354). After reviewing public comments in response to the proposed rule, we are approving Framework 5 and 2018-2019 specifications as detailed in our proposed rule.

Specifications for Fishing Years 2018-2019

Specifications including the acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL) for the skate wing and bait fisheries, and possession limits may be specified for up to 2 years. We are approving the Council's recommended specifications for 2018-2019. As recommended, the 2018-2019 skate complex ABC and ACL is 31,327 mt. The ACT is set at 23,495 mt (75 percent of the ACL) to account for management uncertainty. After deducting projected dead discards and state landings, the overall TAL is 13,157 mt. Tables 1 and 2 (below) detail TALs and possession limits for the skate wing and skate bait fisheries. The skate wing and whole skate possession limits are status quo and the possession limits for barndoor skate are described further below.

TABLE 1—TOTAL ALLOWABLE LANDINGS FOR FISHING YEARS 2018-2019

Total allowable landings (TAL)	mt
Skate Wing Fishery:	
Season 1 (May 1–August 31)	4,987
Season 2 (September 1–April 30) ..	3,762
Skate Bait Fishery:	
Season 1 (May 1–July 31)	1,358
Season 2 (August 1–October 31) ...	1,635
Season 3 (November 1–April 30) ...	1,415

TABLE 2—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, 1,179 kg	5,902 lb, 2,677 kg	650 lb, 295 kg	1,476 lb, 670 kg.
Season 2 (September 1–April 30)	4,100 lb, 1,860 kg	9,307 lb, 4,222 kg	1,025 lb, 465 kg	2,327 lb, 1,056 kg.
NE Multispecies B DAS:				
May 1–April 30	220 lb, 100 kg	500 lb, 227 kg	0	0.
Non-DAS:				
May 1–April 30	500 lb, 227 kg	1,135 lb, 515 kg	0	0.
Whole skate with bait Letter of Authorization:				
May 1–October 31	0	25,000 lb, 11,340 kg	0	0.
November 1–April 30	0	12,000 lb, 5,443 kg ...	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.

Measures To Allow Possession of Barndoor Skates

Possession and landing of barndoor skate has been prohibited since 2003, when the Northeast Skate Complex FMP was first implemented, as part of efforts to rebuild the stock. NMFS declared the stock rebuilt in 2016, and Framework 5 allows for limited retention of barndoor skate in the directed wing fishery. This action specifies a proportional possession limit per trip that corresponds to the barndoor skate contribution (25 percent) to the overall skate catch based on observer data. Specifically, vessels fishing under a Northeast multispecies, scallop, or monkfish DAS, may possess and land up to 650 lb (295 kg) of wings per trip in Season 1 and 1,025 lb (465 kg) of wings per trip in Season 2. The possession limits for barndoor skate wings are included within the overall wing possession limit per trip (*i.e.*, total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 2,600 lb (1,179 kg) in Season 1 and 4,100 lb (1,860 kg) in Season 2). NMFS notes that the full barndoor wing possession limit may be retained, even if the full wing possession limit for a trip is not caught. For example, a vessel may possess 650 lb (295 kg) of barndoor skate wings in Season 1, even if the vessel does not reach the full 2,600 lb (1,179 kg) wing possession limit for that trip.

The regulations for the skate wing fishery include in-season adjustments to possession limits once certain trigger points are met (see 50 CFR 600.322(b)(3)). This action specifies that when an in-season adjustment of the skate wing possession limit for the directed wing fishery is needed and the wing possession limit is reduced to 500 lb (227 kg) per trip, the possession limit for barndoor skate wings will be reduced to 125 lb (57 kg) per trip.

This action prohibits the discarding of any skate wings when a vessel is in possession of barndoor skate. This measure is intended to prevent high-grading and thereby minimize bycatch. Further, this action requires that barndoor skate wings and carcasses on board a vessel must be separated from other species of fish (including other skates) and stored so as to be readily available for inspection. This provision was not part of the Council's recommended measures under Framework 5, but we determined it is necessary to aid in the enforcement of barndoor possession trip limits by segregating barndoor skates to facilitate identification and compliance with the trip limit. We are establishing the

measure under the authority of section 305(d) of the Magnuson-Stevens Act.

As described in the proposed rule, Framework 5 did not propose, discuss, or analyze options for allowing barndoor possession for vessels operating under other possession limits for skates, including: Vessels fishing for bait skate under a bait letter of authorization (§ 648.322(c)); vessels fishing under a Northeast multispecies Category B DAS (§ 648.322(b)); vessels fishing under the incidental skate possession limit for vessels not under a DAS (§ 648.322(b)); or when fishing in a Northeast multispecies DAS exemption program area that allows possession and landing of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board (as specified in § 648.80(b)(3)(ii)) without a Northeast multispecies or monkfish DAS. Therefore, this action does not allow vessels operating under the above mentioned scenarios to possess barndoor skates.

Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area Exemption Program

Framework 5 exempts vessels from domestic skate regulations when fishing exclusively within the NAFO Regulatory Area, except for the prohibition on possessing, retaining, or landing prohibited species. U.S. vessels fishing in the NAFO Regulatory Area are currently exempt from domestic Northeast multispecies and monkfish permit, mesh size, effort-control, and possession limit restrictions (see § 648.17). U.S. vessels in the NAFO area are largely targeting yellowtail flounder and Atlantic halibut, and exempting these vessels from domestic skate regulations would provide them additional flexibility to retain and land skates in the United States. NAFO specifies an annual quota and possession limits for skates, and the quota is not allocated to particular countries; access to skates is on a first come, first served basis.

This action specifies that vessels fishing under a High Seas Permit exclusively within the NAFO Regulatory Area are exempt from domestic skate regulations (*e.g.*, skate permit and possession limit restrictions), except for the prohibition on possessing, retaining, or landing prohibited species. U.S. vessels fishing in the NAFO Regulatory Area would be allowed to possess barndoor skate consistent with the NAFO-established incidental possession limits given the aforementioned domestic regulatory changes regarding barndoor skates, but would not be exempt from the

prohibition on possessing, retaining, or landing other prohibited skate species (*i.e.*, thorny skate and smooth skates) specified in §§ 648.14(v) and 648.322(g). Further, the skate catch from the NAFO Regulatory Area would not count against domestic skate TALs.

Comments and Responses

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

Comment 1: The following three commenters expressed support for the action: The Atlantic Offshore Lobstermen's Association; the Cape Cod Commercial Fishermen's Alliance; and Tremont Fisheries LLC. The Atlantic Offshore Lobstermen's Association expressed support for increasing TALs in 2018 and 2019, based on recent updated scientific information about skates. The Cape Cod Commercial Fishermen's Alliance supported the proportional barndoor skate possession limits for the skate wing fishery, measures to prevent high-grading of skate, and the TAL specifications for 2018 and 2019. Lastly, Tremont Fisheries LLC supported the proposed measures to exempt vessels from some domestic skate regulations when fishing exclusively within the NAFO Regulatory Area.

Response: We are approving Framework 5, specifications for 2018 and 2019, and the accompanying measures because the specifications are consistent with the most recent scientific information, and the measures provide additional operational flexibility to fishery participants.

Changes From the Proposed Rule

NMFS has not made any changes to the regulatory text that was specified in the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 5 to the FMP and the 2018–2019 specifications 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 and grants an exemption, it is excepted from the 30-day delay in effectiveness under 5 U.S.C. 533(d)(1). This rule relieves restrictions by increasing the ACL and allowing possession of barndoor skate (previously a prohibited species) in the directed skate wing fishery, and exempts vessels from some specific

domestic skate regulations when fishing exclusively within the NAFO Regulatory Area. The 2018 fishing year began on May 1, 2018, and the skate fishery has been operating under the catch limits implemented as part of Framework Adjustment 3 to the FMP and the 2016–2017 specifications (81 FR 54744; August 17, 2016). Under this action, the ACL for the skate complex will increase from 31,081 mt in 2017 to 31,327 mt in 2018. Further, possession and landing of barndoor skate has been prohibited since 2003. This action will allow possession and landing of barndoor skate in the directed wing fishery and will set possession trip limits for the stock. The price of barndoor skate is expected to be higher than that of other skate species currently landed in the fishery; therefore, allowing barndoor possession is expected to provide positive economic impacts. Lastly, U.S. vessels that are permitted to fish in the NAFO Regulatory Area are currently required to comply with domestic skate regulations (e.g., permit requirements, possession limits) if they were to land skate in the U.S. This action would exempt U.S. vessels from domestic skate regulations when fishing exclusively in the NAFO area, except for the prohibition on possessing, retaining, or landing prohibited species. This additional flexibility for NAFO-participating vessels is also expected to provide additional operational flexibility and result in positive economic impacts.

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: September 25, 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 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 § 648.14, revise paragraphs (v)(2) and (4) 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); when fishing under a NE multispecies Category B DAS as described under § 648.322(b); when fishing under the incidental skate possession limit for vessels not under a DAS as described in § 648.322(b)(4); or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(iii) Discard any skate wings when in possession of barndoor skate wings.

(iv) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

* * * * *

(4) *Presumption.* For purposes of this part, the following presumption applies: All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion (such as fishing within the NAFO Regulatory Area under § 648.17(a)(3)) of

the skate management unit or only in state waters.

* * * * *

■ 3. In § 648.17, add paragraph (a)(3) to read as follows:

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) * * *

(3) *Skates.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from skate permit and possession limit restrictions, specified in §§ 648.4 and 648.322, respectively, and from Atlantic sea scallop, NE multispecies, or monkfish DAS effort control restrictions specified in §§ 648.53, 648.82, and 648.92, respectively, and from mesh size and gear restrictions specified in §§ 648.51, 648.80, and 648.91, respectively, while transiting the EEZ with skates on board the vessel, or landing skates in U.S. ports that were caught while fishing in the NAFO Regulatory Area. These vessels may possess, retain, and land barndoor skate; however, they may not possess, retain, or land other prohibited skate species specified in §§ 648.14(v) and 648.322(g).

* * * * *

■ 4. In § 648.80, revise paragraph (b)(3)(ii) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory

shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

* * * * *

■ 5. In § 648.322, revise paragraphs (b) and (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 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip in Season 1 (May 1 through August 31), and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) 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) When fishing under the possession limits specified in paragraph (b)(1)(i) of this section, a vessel is allowed to possess and land up to 650 lb (295 kg) of barndoor skate wings (1,476 lb (670 kg) whole weight) per trip in Season 1, and 1,025 lb (465 kg) of barndoor skate wings (2,327 lb (1,056 kg) whole weight) per trip in Season 2. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.*, total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 2,600 lb in Season 1 and 4,100 lb in Season 2). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(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 220 lb (100 kg) of skate wings (500 lb (227 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 barndoor skate, or any other 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. When the incidental possession limit is implemented, a vessel is allowed to possess and land up to 125 lb (57 kg) of barndoor skate wings (284 lb (129 kg) whole weight) per trip. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.*, total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 500 lb). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. 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 500 lb (227 kg) of skate wings or 1,135 lb (515 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 barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(5) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at paragraph (c) of this section, a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

* * * * *

(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; when fishing under

a NE multispecies Category B DAS as described under paragraph (b) of this section; when fishing under the incidental skate possession limit for vessels not under a DAS as described in paragraph (b)(4) of this section; or when fishing in a NE multispecies DAS

exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(3) Discard any skate wings when in possession of barndoor skate wings.

(4) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

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