

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 16, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110818511-1510-01]

RIN 0648-BB32

#### Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Secretarial Emergency Action

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

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** NMFS proposes emergency regulations to adjust catch limits in the Northeast Skate Complex Fishery. The proposed action was developed by NMFS to increase the fishing year (FY) 2011 catch limits for the skate fishery, which should extend the fishing season over a longer duration than occurred in FY 2010, thus ensuring a more steady market supply. The proposed increases in catch limits are supported by new scientific information indicating significant increases in skate biomass.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on September 14, 2011.

**ADDRESSES:** A supplemental environmental assessment (EA) was prepared that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the supplemental EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2011-0197, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal,

first click the “submit a comment” icon, then enter “NOAA-NMFS-2011-0197” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Fax:** (978) 281-9135, Attn: Tobey Curtis.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Skate Emergency Action.”

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov>. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. 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 or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

In the Northeast U.S., skate fisheries are managed by the New England Fishery Management Council (Council). In 2003, NMFS implemented the Northeast Skate Complex Fishery Management Plan (Skate FMP) to manage a complex of seven skate species: Winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*) (see 68 FR 49693, August 19, 2003). The FMP established biological reference points and overfishing definitions for each species based on abundance indices in the NMFS Northeast Fisheries Science Center bottom trawl survey.

Amendment 3 to the Skate FMP, which was implemented in July 2010, instituted an annual catch limit (ACL)

and accountability measures (AMs) for the skate fishery (75 FR 34049, June 16, 2010), and set fishery specifications for FY 2010-2011 (through April 30, 2012). The ACL was set equal to the acceptable biological catch (ABC) recommendation of the Council’s Scientific and Statistical Committee (SSC) (41,080 mt). Amendment 3 also implemented an annual catch target (ACT), which is 75 percent of the ACL, and annual total allowable landings (TALs) for the skate wing and bait fisheries (TAL = ACT – dead discards and state landings), and three seasonal quotas for the bait fishery. An incidental possession limit may be implemented when landings approach the TAL, preventing excessive quota overages.

In FY 2010, the combination of increased landings of skate wings and a delay in implementation of Amendment 3 possession limits (5,000 lb (2,270 kg) of wings per trip) resulted in the wing fishery reaching the TAL trigger in early September. Consequently, the wing fishery was limited to the incidental possession limit of 500 lb (227 kg) of skate wings per trip from September 3, 2010, through the end of FY 2010 on April 30, 2011.

Asserting that the imposition of the incidental skate wing possession limit so early in the FY caused disruptions in the supply of skate wings, economic hardship on fishing vessels and dealers, and threatened to undermine the market position of U.S. suppliers, members of the skate wing fishing industry requested that the Council consider options to mitigate the potential for this situation to be repeated in FY 2011. In November 2010, the Council initiated Framework 1 to reduce the skate wing possession limits, and increase the TAL trigger point, in order to maximize the duration of the skate fishing season in FY 2011. Framework 1 was partially approved by NMFS and implemented on May 17, 2011 (76 FR 28328).

Since the implementation of Framework 1, new scientific information on skate catch and biomass became available, which allowed the SSC to revise its recommendation for skate ABC. The ABC is calculated by multiplying the median catch/biomass ratio by the most recent 3-yr average skate biomass. Therefore, significant increases in the survey biomass of little and winter skates through autumn 2010 support increases in the ABC.

Additionally, new research on the discard mortality of winter and little skates in trawl gear indicates that the assumed discard mortality rate of 50 percent is too high, and that the dead discard portion of the catch has been overestimated in the past. Updates to

estimates on state waters and transfer at sea landings were also incorporated. Collectively, this new information resulted in a revised ABC recommendation of 50,435 mt.

This new ABC recommendation is being used by the Council to develop skate fishery specifications for FYs 2012–2013. However, due to continued high rates of skate wing landings under Framework 1 possession limits, and the likelihood that the skate wing fishery would once again be closed early in FY 2011, the Council, at its June 2011 meeting, requested that NMFS take emergency action, pursuant to section

305(c) of the Magnuson-Stevens Act, to implement the revised skate ABC for the remainder of FY 2011. This would increase available landings of skates, and result in the lengthening of the season for the skate wing fishery, thereby helping to avoid the economic impacts associated with a potential closure.

**Proposed Measures**

Based on the new ABC recommendation from the SSC, this emergency action proposes the following changes to the regulations governing the skate fishery (see Table 1):

1. That the skate ABC and ACL be increased from 41,080 mt to 50, 435 mt for FY 2011;

2. That the ACT be increased from 30,810 mt to 37,826 mt; and

3. That the TAL be increased from 13,848 mt to 21,561 mt, reflecting the higher ACT as well as a lower assumed skate discard rate and improved estimates of state landings.

The skate wing fishery would be allocated 66.5 percent of the TAL (14,338 mt) and the skate bait fishery would be allocated 33.5 percent of the TAL (7,223 mt)

TABLE 1—NO ACTION AND PROPOSED FY 2011 SKATE ABC AND ASSOCIATED CATCH LIMITS (MT)

	No action	Preferred	Percent change
ABC .....	41,080	50,435	+23
ACL .....	41,080	50,435	+23
ACT .....	30,810	37,826	+23
TAL .....	13,848	21,561	+56
Wing TAL .....	9,209	14,338	+56
Bait TAL .....	4,639	7,223	+56
Assumed Discard Rate .....	52.0%	36.3%	– 30
Assumed State Landings .....	3.0%	6.7%	+123

This action does not propose changes to any other regulations implemented by Amendment 3 or Framework 1. The wing possession limits would remain at 2,600 lb (1,179 kg) for May 1 through August 31, and 4,100 lb (1,860 kg) for September 1 through April 30. The skate bait possession limit would remain at 20,000 lb (9,072 kg) whole weight per trip for vessels carrying a Skate Bait Letter of Authorization. Finally, if the TAL triggers are reached before the end of the year (85 percent for the wing fishery, 90 percent for the bait fishery), the incidental possession limit would remain at 500 lb (227 kg) of wings (1,135 lb (515 kg) whole wt.). These management measures may be reconsidered as the Council develops fishery specifications for FYs 2012–2013.

The proposed quota increases are expected to result in considerable increases in skate revenues and positive economic impacts for the fishery, while maintaining the conservation objectives of the Skate FMP. Although the landings of skate wings are expected to increase under the proposed changes, overall catch of skates will not likely be significantly affected due to the nature of the skate wing fishery, which is primarily an incidental fishery within the primary fisheries for groundfish and monkfish. Absent this proposed action, once the current, lower possession limit trigger is reached, skates that are caught

above the incidental possession limit of 500 lb (227 kg) in these primary fisheries would be discarded. This proposed action would enable fishermen to retain and land for sale those skates that would otherwise have to be discarded.

**Classification**

NMFS has preliminarily determined that the new assessment of the status of the skate complex being relied on for the significantly higher ABC recommendation for FY 2012–2013 also justifies the emergency in-season adjustment requested by the Council. 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 Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. NMFS has reviewed the Council’s request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997) and determined that the Council’s request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the Magnuson-Stevens Act. Specifically, the SSC’s revision of its previously

recommended ABC was a recent and unforeseen event that cannot be implemented in a timely way through normal Magnuson-Stevens Act and Skate FMP actions. Through this emergency rulemaking, NMFS is increasing the FY 2011 skate complex ABC, ACL, ACT, and TALs, thereby relieving restrictions imposed by the previous, lower catch levels. Doing so will assist in preventing significant direct economic loss for fishery participants and associated industries that would be subject to lower commercial harvest levels.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration (SBA) size standards for

small fishing businesses (less than \$4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

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

The proposed increase in the Skate ACL and TALs would impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery. For the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. According to the Framework 1 final rule and Final Regulatory Flexibility Analysis (76 FR 28328, May 17, 2011), as of December 31, 2010, the maximum number of small fishing entities (as defined by the SBA) that may be affected by this action is

2,607 entities (number of skate permit holders). However, during FY 2010, only 503 vessels landed skates for the wing market, and only 56 landed skates for the bait market.

#### **Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives**

The purpose of the proposed action is to increase the skate ABC and associated catch limits in order to increase landings, thereby extending the duration of the fishing season and helping to prevent the negative economic impacts that would be associated with an early closure of the directed skate fisheries. Compared to the other alternative considered, the proposed action is expected to maximize profitability for the skate fishery by allowing higher levels of landings for the duration of FY 2011. Therefore, the economic impacts resulting from the proposed action as compared to the No Action Alternative are positive, since the action would provide additional fishing opportunity for vessels participating in the skate fishery for FY 2011.

The proposed action is almost certain to result in greater revenue from skate landings. Based on recent landing information, the skate fishery is able to land close to the full amount of skates

allowable under the quotas. The estimated potential revenue from the sale of skates under the proposed catch limits is approximately \$9.0 million, compared to \$5.8 million if this action were not implemented. Due to the implications of closing the directed skate fisheries early in the fishing year, the higher catch limits associated with the proposed action will result in additional revenue if fishing is prolonged. According to analyses in Framework 1, vessels that participate in the skate fishery derive most (an average of 96 percent) of their revenues from other fisheries (*e.g.*, groundfish, monkfish). Therefore, relative to total fishing revenues, catch limits of other species would be expected to have more significant economic impacts than revenues derived from skates alone. However, as skate prices have begun increasing in recent years, more vessels are deriving a greater proportion of their income from skates.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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