

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No. 030519127-3190-02; I.D. 042403A]

RIN 0648-AO10

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex (Skate) Fisheries; Skate Fishery Management Plan**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement approved measures contained in the Skate Fishery Management Plan (FMP). These regulations implement the following measures: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit. This final rule also implements other measures for administration and enforcement. The intended effect of this final rule is to implement permanent management measures for the Northeast (NE) skate fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of skate resources. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

**DATES:** This rule is effective September 18, 2003.

**ADDRESSES:** Copies of the FMP, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS), as prepared by the New England Fishery Management Council (Council), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Bonnie Van Pelt, Fishery Policy Analyst, 978-281-9244.

**SUPPLEMENTARY INFORMATION:** This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 28, 2003. A notice of availability for the FMP invited comments on the approvability of the FMP. The comment period ending date was June 30, 2003.

Details concerning the justification for and development of the FMP and the implementing regulations were provided in the preamble to the proposed rule (68 FR 33432, June 4, 2003) and are not repeated here.

**Status of Stock Complex**

There are no direct estimates of biomass available for the seven individual skate species in the complex, so biomass indices from the NMFS Northeast Fisheries Science Center (NEFSC) trawl surveys have been used to characterize stock size. More specifically, for each species in the complex, information on the weight of the catch per tow (kg/tow) from the most representative trawl survey series over the longest possible time span was assembled. The data in the selected series were then used to characterize the distribution of biomass over the examined time period. Finally, candidate reference points were selected from the distribution so as to provide proxies for biomass targets that have a high probability of correctly characterizing the stock level that produces maximum sustainable yield (MSY).

For the aggregate skate complex, the NEFSC spring survey index of biomass was relatively constant from 1968 to 1980, then increased significantly to

peak levels in the mid to late 1980s. The biomass of large-sized skates (barndoor, winter, and thorny) has declined steadily since the mid-1980s, while the recent increase in aggregate skate biomass has been attributed to an increase in little skates.

**Overfishing Definitions**

Overfishing definitions are provided for each of the seven skate species in the complex, in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) of 1996. Additional background information relating to difficulties in determining overfishing definitions for the skate stocks is contained in the proposed rule and is not repeated here.

**Winter and Thorny Skates**

Winter and thorny skates are considered to be in an overfished condition when the 3-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3-year moving average of the autumn survey mean weight per tow declines by 20 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

**Smooth and Clearnose Skates**

Smooth and clearnose skates are considered to be in an overfished condition when the 3-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

**Barndoor Skate**

Barndoor skate is considered to be in an overfished condition when the 3-year moving average of the autumn survey mean weight per tow is less than one-half of the mean weight per tow observed in the autumn trawl survey from 1963-1966 (currently 0.81 kg/tow). Overfishing is considered to be occurring when the 3-year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey

mean weight per tow declines for 3 consecutive years.

#### Little Skate

Little skate is considered to be in an overfished condition when the 3-year moving average of the spring mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the spring trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3-year moving average of the spring survey mean weight per tow declines by 20 percent or more, or when the spring survey mean weight per tow declines for 3 consecutive years.

#### Rosette Skate

Rosette skate is considered to be in an overfished condition when the 3-year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3-year moving average of the autumn survey mean weight per tow declines by 60 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

These overfishing definitions incorporate the biomass targets and thresholds that were developed at SAW 30. The FMP contains additional discussion of the rationale for the biomass reference points for each skate species.

#### Optimum Yield (OY)

The following OY specifications for each species in the NE skate complex are based on the management measures that the Council included in the FMP. Consistent with the NSGs, the Council intends that OY cannot exceed MSY or the allowable portion of MSY necessary to be consistent with the MSY-based control rule. As better fishery information becomes available, these OY specifications may be revised and/or refined. Additional background information relating to difficulties in determining MSY and OY for the skate stocks are contained in the proposed rule and is not repeated here.

#### Winter Skate

Because fishery data are lacking, there is currently no time series of catch or landings of winter skate on which to base an absolute specification of OY. The OY for winter skate is therefore defined as the amount of winter skates that are harvested legally under the provisions of the FMP and the yield that

results from the management measures in other fisheries, to the extent that these measures further impact (and likely reduce) the harvest of winter skates.

#### Little Skate

Since abundance of the little skate resource has increased considerably over a time period that coincides with the operation of the bait fishery, it can be assumed that the resource is being harvested at an F that is below FMSY. The OY for little skate is therefore defined as the amount of little skates that are harvested for bait legally under the provisions of the FMP.

#### Smooth, Thorny, and Barndoor Skates

The interaction of skate fishing and multispecies fishing suggests that even more benefits will be afforded to smooth, thorny, and barndoor skates as fishing effort is reduced further in the NE multispecies fishery. Moreover, the year-round groundfish closed areas in the GOM, as they are currently defined, provide a great deal of protection to smooth, thorny, and barndoor skates. Because barndoor and thorny skates are currently in an condition, the Council is proposing management action to rebuild these resources to their long-term sustainable level. Smooth skate is not overfished, but it has not yet rebuilt to its long-term biomass target. Therefore, to be as precautionary as possible, the Council set the OY for smooth, thorny, and barndoor skates at zero.

#### Clearnose and Rosette Skates

Since abundance of clearnose and rosette skates have increased considerably over a time period and in an area that coincides with the operation of many fisheries, it can be assumed that the resources are being harvested at an F that is below FMSY. Therefore, the OY for clearnose and rosette skates is defined as the amount of clearnose and rosette skates that are harvested legally under the provisions of the FMP.

#### Management Area

The boundaries of the management area, also called the management unit, are limited to the waters north of 35° 15.3' N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and the seaward extent of the U.S. Exclusive Economic Zone (EEZ) in the east. These boundaries for the management unit are consistent with other relevant NE FMPs.

#### Fishing Year

The skate fishing year is the same as the NE multispecies fishing year,

currently May 1 April 30. If the NE multispecies fishing year changes in the future, the skate fishing year would change automatically to remain consistent with the NE multispecies fishing year.

#### Essential Fish Habitat (EFH)

Relative abundance data are used to identify EFH for the seven species of skates. EFH for skates includes those areas of the inshore and offshore waters (out to the offshore U.S. boundary of the EEZ), as described in section 4.6.2 of the FMP.

The range of the fishing activity under the FMP occurs across the designated EFH of 11 species managed by the New England, Mid-Atlantic, and South Atlantic Fishery Management Councils. As discussed in section 6.2.9.2 of the FMP, no adverse impacts relative to the baseline conditions established under Amendments 11 and 12 to the NE Multispecies FMP are expected on the EFH of these species and no further mitigation is practicable or necessary. Potential impacts to EFH associated with the skate fishery are expected to remain essentially the same as a result of this action. The FMP measures designed to protect barndoor, thorny, and smooth skates under the incidental catch skate wing fishery, and to control fishing effort in the directed skate wing fishery, are unlikely to change the overall fishing effort in the region that is attributed primarily to the NE Multispecies FMP.

#### Permitting Requirements

The owners of any commercial vessel who intend to fish for, catch, possess, transport, land, sell, trade, or barter skates in or from the skate management unit are required to obtain an annual Federal skate permit (open-access).

Dealers who purchase or receive skates or skate parts from any vessel are required to obtain a Federal dealer permit on an annual basis. Skates harvested from the skate management unit may only be sold to federally permitted dealers.

Operators of vessels issued a Federal skate vessel permit are required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery does not need to reapply, since there is no qualification or test for this permit.

#### Vessel and Dealer Reporting Requirements

Vessels holding skate permits, and dealers authorized to purchase skates, are required to report species-level information on skates in existing Vessel

Trip Reports. Vessels holding Federal permits (regardless of the fishery) are required to report skate discards by size category only (i.e., large and small skates).

#### **Skate Wing Possession Restrictions**

The retention and landing of skate wings is limited to 10,000 lb (4,536 kg) per trip of less than or equal to 24 hours duration (and a limit of one trip per day) and 20,000 lb (9,072 kg) per trip exceeding 24 hours. The days-at-sea (DAS) call-in programs (groundfish, scallop, and monkfish) will be used to determine whether a vessel's trip is less than or greater than 24 hours.

By discouraging large-scale directed fishing for skate wings, the possession limit is expected to reduce overall fishing mortality on winter skates. However, the benefits of a wing possession limit include not only fishing mortality reductions for winter skate, but also long-term benefits to the wing species if the possession limit can discourage expansion of the fishery and/or an influx of new entrants into the fishery.

#### **Bait-only Letter of Authorization (LOA)**

This measure allows vessel owners and operators that fish for skates as bait, only, to be exempt from the wing possession limits, provided they obtain an LOA from the Regional Administrator. Vessel owners/operators that fish for a combination of bait and wings and vessels that do not obtain the LOA are subject to the wing possession limits.

#### **Skate Possession Prohibitions**

Barndoor and thorny skates are in an overfished condition, so, in addition to the benefits that are likely to accrue to these species as a result of the NE multispecies regulations (closed areas, DAS reductions, mesh increases), this action prohibits the possession of thorny skates and barndoor skates on all vessels fishing from, and all dealers who purchase skates caught in, the EEZ portion of the Skate Management Unit. Although no longer considered to be in an overfished condition, the smooth skate resource is depleted and still well below its target biomass level. Therefore, in addition to the benefits that are likely to accrue to this species as a result of the NE multispecies regulations, this action prohibits the possession of smooth skates in the GOM RMA to conserve the smooth skate resource and promote the rebuilding of its biomass to target levels.

#### **Annual Monitoring and Framework Adjustment Measures**

The skate fishery will be monitored on at least an annual basis starting one year after the implementation of the FMP. The status of the resource and the fishery will be reviewed by the Council, its Skate Oversight Committee and Advisory Panel, and the Skate PDT. The Council will prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. If the Council determines that an adjustment to the measures is needed, it will implement either a framework adjustment or an amendment to the FMP.

The framework adjustment process is similar to that used in other NE Region fisheries. This process allows changes to measures below, as appropriate, to be made to the FMP or regulations in a timely manner, without going through the plan amendment process. The framework adjustment process may not be appropriate when it is determined that a proposed change would not be within the scope of the FMP, or the amendment process would be better suited to implement the proposed change. The framework process provides opportunity for public comment to supplement the public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act. The management measures and/or changes to them that could be implemented and adjusted through the framework process include the following: (1) Skate permitting and reporting requirements; (2) overfishing definitions and related targets and thresholds; (3) prohibitions on possession and/or landing of individual skate species; (4) skate possession limits; (5) skate closed areas (and consideration of exempted gears and fisheries); (6) seasonal skate fishery restrictions and specifications; (7) target TACs for individual skate species; (8) hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries; (9) establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons; (10) onboard observer requirements; (11) gear modifications, requirements, restrictions, and/or prohibitions; (12) minimum and/or maximum sizes for skates; (13) adjustments to exemption area

requirements, area coordinates, and/or management lines established by the FMP; (14) measures to address protected species issues, if necessary; (15) description and identification of EFH; (16) description and identification of habitat areas of particular concern; (17) measures to protect EFH; (18) adjustments and or/resetting of the "baseline" of management measures in other fisheries; (19) OY and/or MSY specifications; and (20) any other measures contained in the FMP.

#### **Baseline Trigger and Review**

The FMP identifies and characterizes a "baseline" of management measures in other fisheries that provide conservation benefits to skate species. The FMP also establishes a process for reviewing changes to the management measures included in this baseline, particularly changes that make the existing measures less restrictive. This approach allows adjustments to management measures in other fisheries while ensuring that skate rebuilding is not compromised. The baseline measures and review process are described in detail in the FMP and Classification section of this rule.

The baseline review is intended to address potential significant impacts to skate mortality. Total skate mortality will be considered, including mortality resulting in increased directed fishing effort on skates and mortality resulting from the bycatch of skates. Therefore, this approach addresses National Standard 9, as considerations of bycatch and bycatch mortality are incorporated into the assessment of whether or not changes to the baseline measures will result in significant changes to skate mortality.

The lack of fishery-specific data precludes a quantitative assessment of the impacts of current baseline measures on skates and is likely to preclude such an assessment of the impacts of changes to these measures, at least in the near future. Over time, as data are collected through the FMP permit and reporting requirements, increased observer coverage, study fleets, and efforts to collect better information in other fisheries, the Skate PDT's ability to quantify the impacts of management measures on skates should improve greatly. However, qualitative assessments must suffice in the short-term, as quantitative assessments cannot be completed at this time.

This final rule also revises the definitions of "Council," and "Fishing year," to reflect the approval of the FMP, and establishes new definitions for "NE skate complex (skates)," and "Skate Management Unit."

## Comments and Responses

The deadlines for receiving comments on the FMP and proposed rule were June 30, 2003, and July 7, 2003, respectively. Five comment letters were received on the FMP and proposed rule prior to the close of the comment periods.

*Comment 1:* One commenter recommended that the FMP include additional requirements for vessel strike avoidance, as well as marine trash and debris elimination and awareness similar to those that are imposed upon the offshore gas and oil industry by the U.S. Minerals Management Service.

*Response:* Magnuson-Stevens Act provisions are being implemented under the FMP to prevent overfishing of the skate fisheries. This rule implements the measures that are required to meet the goals and objectives of the FMP. While NOAA Fisheries acknowledges the importance of these issues raised by the commenter, this rule is not the proper mechanism to address vessel strike avoidance, or marine trash/debris elimination and awareness requirements.

*Comment 2:* Two commenters requested that NMFS reduce the wing fishery possession limits by 50 percent.

*Response:* The Council proposed 3 initial alternatives regarding a wing fishery possession limit: 10,000 lb (4,536 kg) per trip; 20,000 lb (9,072 kg) per trip; and 30,000 lb (13,608 kg) per trip. For the purposes of public hearings on the draft FMP, the Council proposed a 20,000-lb (9,072-kg) per trip possession limit for all vessels participating in the wing fishery. During public hearings, the Council received testimony that the proposed possession limit may have been too high. The Council also received testimony that two types of vessels actively participate in the wing fishery: Vessels that make frequent fishing trips of less than 24 hours in duration ("day boats"), and vessels that make extended fishing trips lasting multiple days ("trip boats"). The Council considered this testimony and proposed that the wing possession limit be reduced to 10,000 lb (4,536 kg) for vessels making fishing trips 24 hours or less in duration, and remain at 20,000 lb (9,072 kg) for vessels making fishing trips more than 24 hours in duration. The analysis in the FMP supports the Council's recommendation that these wing possession limits provide sufficient conservation benefit for skates.

*Comment 3:* One commenter expressed concern that the measures proposed in the FMP will not be

sufficient to protect and rebuild skate species.

*Response:* NMFS disagrees that the measures in the Skate FMP will not be sufficient to protect and rebuild skates. Several very restrictive management measures are being implemented under this FMP: The possession of barndoor and thorny skates is completely prohibited, as is the possession of smooth skates in the GOM RMA; and possession limits have been established in the skate wing fishery where none previously existed, restricting the amount of skate wings that may legally be landed on any fishing trip. The FMP recognizes that most conservation and management of the skate resources will come from the management measures and controls on fishing effort implemented for the fisheries that harvest skates incidental to their normal fishing operations--the NE multispecies, scallop, and monkfish fisheries. The FMP implements a formal review process to ensure that future proposed changes to the management measures implemented in these fisheries do not threaten the conservation of skates or undermine the skate rebuilding programs implemented under the FMP.

*Comment 4:* One commenter expressed concern that the FMP fails to propose clear mechanisms to avoid and minimize skate bycatch and discard mortality.

*Response:* NMFS disagrees that the FMP fails to adequately address bycatch. Prohibitions on possession of the three most depleted skate species are being implemented through this final rule as are controls on the harvest of skates for the wing fishery. In addition, these three prohibited species of skates are considered bycatch species of both the wing fishery, which catches primarily winter skates, and the bait fishery, which catches primarily little skates. The prohibition is intended to eliminate landings of these three species, and also to encourage fishermen to return any barndoor, thorny, or smooth skates to the sea as soon as possible. By prohibiting possession, as opposed to prohibiting landing or sale only, there is an incentive to return skates to the sea as quickly as possible. The quicker skates are returned to the sea, the better their expected chance of survival remains.

Unfortunately, there remains a distinct lack of data regarding bycatch rates and discard mortality of skates, so there is no way to determine what those rates are, or to conclude that the existing rates are too high. The reporting requirements included in the FMP will provide previously unavailable species-level catch data, discard data by size

class of skate, and detailed catch and discard data as a result of study fleets. This information, once available, will provide a mechanism for the Council and NMFS to evaluate bycatch and discard mortality rates and to determine whether alternative and/or additional action is necessary. In the meantime, the FMP's prohibition on possessing certain skate species and the wing possession limits, in concert with measures in the Northeast Multispecies FMP (e.g., closure of areas to gear capable of catching groundfish and, by extension, skates), will offer the best overall protection to skates and serve to minimize to the extent practicable, and avoid potential bycatch of those species of skates that are incidental catch in the primary skate fisheries (i.e., the wing and bait fisheries).

## Changes From the Proposed Rule

In § 648.321, paragraph (a)(1) is revised to refer the reader to the appropriate section: § 648.321(b) instead of § 648.312(b).

In § 648.7, paragraph (a)(1)(iii) is revised to refer the reader to the appropriate paragraph of this section: (a)(1)(i) instead of paragraph (i).

In § 648.14(ee), the language describing possession of whole skates less than the specified maximum size is clarified to characterize lobster vessels that possess skate for bait as the receiving vessel in a transfer at sea while being exempt from Federal permitting requirements for skates. Lobster vessels are responsible for ensuring that the skates they receive and possess on board from the Skate Management Unit are not the prohibited species specified at § 648.322(c). An additional prohibition, § 648.13(gg), is added to further clarify this point regarding lobster vessels that are exempt from the skate permitting requirements, where previously § 648.13(ff)(7) and (8) referred to vessels holding only valid Federal skate permits.

In § 648.6, paragraph (a)(1) is revised to include skates as species for which persons receiving aboard vessels for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit.

In § 648.320, paragraph (a)(3) is revised to include language requiring the Council to take action, if such action is required, under the skate rebuilding program identified in section 4.5.6 of the FMP. This change is intended to clarify the FMP review and monitoring procedures.

NOAA codifies its OMB control numbers for information collection in 15 CFR part 902. Part 902 collects and

displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648-0481 for § 648.13, and OMB control number 0648-0480 for § 648.322. Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

### Classification

The Administrator, Northeast Region, NMFS, determined that the FMP implemented by this rule is necessary for the conservation and management of the NE skate fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Council prepared an FEIS for this FMP; a notice of availability was published on May 23, 2003 (68 FR 28213). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent practicable, all possible social and economic adverse effects while minimizing risks to the resource and its environment; and will have significant positive effects on the skate fisheries resource relative to the no action alternative.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (*see ADDRESSES*).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

### Final Regulatory Flexibility Analysis

#### *Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

#### *Summary of Significant Issues Raised in Public Comments*

Comments received prior to the close of the comment period for the proposed rule focused exclusively on conservation of the skate resources, without reference to the analysis contained in the IRFA. For a summary of the comments received, refer to the section above titled "Comments and Responses."

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

The number of small entities to which the rule applies is the same as that identified in the IRFA. The measures for addressing management of the NE skate fisheries could affect any commercial vessel holding an active Federal NE fishing permit. Data from the NE permit application database show that 4,828 vessels are currently permitted to fish in Federal waters, with 1,722 vessels permitted to fish for NE multispecies, monkfish, and/or sea scallops. Of these vessels, the Council considered the economic impacts on 775 vessels that have reported landings of skate or skate parts at least once in the last 3 years. These 895 vessels are considered the universe of vessels most likely to be directly affected by the proposed action.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The projected reporting, recordkeeping, and other compliance requirements to which this rule will apply were identified in the IRFA and remain the same. A description of the projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here. No professional skills are necessary for preparation of the reports or records specified above.

#### **Steps Taken to Minimize Economic Impacts on Small Entities Prohibitions for Barndoor, Thorny, and Smooth Skates**

This rule establishes prohibitions on the possession of barndoor and thorny skates throughout the Skate Management Unit, and a prohibition on the possession of smooth skate throughout the GOM RMA. The potential economic impacts of these measures are described in detail in the IRFA and IRFA summary contained in the Classification section of the proposed rule. Results of the analysis indicate that there will be minimal negative economic impact to affected

vessels as a result of these measures. The FMP also considered alternatives to prohibit the landing and/or sale of these three species of skates, rather than prohibitions on possession. Because all of these alternatives would result in an inability of vessels to sell any catch of barndoor, thorny, or smooth skates, and of dealers to purchase these species, there are no substantive differences between landing, sale, and possession prohibitions relative to the expected economic impacts on small entities. The no action alternative would have resulted in no prohibitions on the possession, landing, and/or sale of these three skate species. Because there would have been no action taken to restrict the ability of small entities to derive revenue from the catch of barndoor, thorny, or smooth skates, the adverse economic impacts associated with these prohibitions would have been mitigated. This alternative was not selected, however, because it would have been inconsistent with the objectives of the FMP to protect overfished species of skates, prevent overfishing on skates, rebuild depleted species of skates, and minimize bycatch and discard mortality rates for skates. This alternative also would not have complied with National Standard 1 of the Magnuson-Stevens Act, which requires that action be taken to prevent overfishing and rebuild overfished stocks.

#### **Possession Limit for Skate Wing Fishery**

This rule establishes a skate wing possession limit of 10,000 lb (4,536 kg) per day and 20,000 lb (9,072 kg) per trip. The potential economic impacts of this measure are described in the IRFA and are not repeated here. The Council considered three additional options for a wing possession limit--10,000 lb (4,536 kg) for all fishing trips, 20,000 lb (9,072 kg) for all fishing trips, and 30,000 lb (13,608 kg) for all fishing trips--as well as the option to take no action regarding a wing possession limit.

The option to restrict possession of skate wings to 10,000 lb (4,536 kg) per fishing trip would have resulted in more significant adverse economic impacts on small entities than the action being implemented. The options to restrict possession of skate wings to either 20,000 lb (9,072 kg) or 30,000 lb (13,608 kg) per fishing trip would have been expected to result in less significant economic impacts on small entities than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here. These options were not selected, however, because they would

not have provided sufficient conservation benefit to winter skates (the primary target of the wing fishery) to be fully consistent with the objectives of the FMP, which include to “reduce fishing mortality on winter skate.” Winter skate, although not overfished, is not yet fully rebuilt, and the Magnuson-Stevens Act requires that conservation measures be implemented to reduce fishing mortality on species under these conditions.

The no action alternative, to implement no restrictions on the possession of winter skate wings, would have minimized, to the greatest extent, the potential adverse economic impacts on small entities associated with this action by allowing fishing vessels to land and sell as much skate wings as was possible, given their vessel and fishing operations. However, for the same reasons described above for the 20,000-lb (9,072-kg) and 30,000-lb (13,608-kg) options, this alternative was not selected due to inconsistencies with the objectives of the FMP and the requirements of the Magnuson-Stevens Act.

*Skate Wing Possession Limit Exemption Program*

This rule implements a provision to allow vessels that fish for skates as bait only to obtain an LOA from NMFS to be exempt from the skate wing possession limits, but requires these vessels to land skates smaller than 23 inches (58.42 cm) total length in whole condition. This measure is not expected to have economic impacts on small entities because the majority of the skates caught (> 90 percent) in the bait fishery are little skates that reach maturity at less than 19.7 inches (50 cm). In addition, as described in the IRFA, this measure is not expected to have an adverse economic impact on small entities, as it relieves a restriction (i.e., vessels would not have to abide by the skate wing possession limits) that would otherwise constrain fishing-related revenues. The only alternative to this measure considered by the Council was the no action alternative to not implement the LOA program. This would have resulted in adverse economic impacts because bait-only vessels would have been subject to the potentially restrictive skate wing possession limit.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to

assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of NE Federal commercial fishing vessel or dealer permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

This final rule contains nine collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB. The public’s reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

Vessel trip reports, OMB control number 0648-0212 (8 minutes per response for a new respondent, an additional 3 minutes per response for skate permit holders already completing a vessel trip report for other fisheries, and 1 minute per response for all other permit holders reporting discards of skates by size class).

Dealer purchase reports, OMB control number 0648-0229 (1 additional minute/response for species identification).

Vessel permits, OMB control number 0648-0202 (15 minutes/response for an initial permit, and 1 minute/response for existing permit holders).

Dealer permits, OMB control number 0648-0202 (5 minutes/response for an initial permit, and 1 minute/response for existing permit holders).

Operator permits, OMB control number 0648-0202 (60 minutes/response).

Observer deployments, OMB control number 0648-0202 (2 minutes/response).

Bait-only fishing exemption notification, OMB control number 0648-0480 (2 minutes/response to enroll or withdraw from exemption).

Bait transfer-at-sea documentation, OMB control number 0648-0481 (2 minutes/response to prepare).

Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES) and to OMB at the Office of Information and

Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

**List of Subjects**

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 14, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 15 CFR chapter IX, part 902, and 50 CFR chapter VI, part 648, are amended as follows:

**PART— 902 NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 350 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entry for 648.13, and adding an entry for 648.322, in numerical order, to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648-)
* * * * *	*
50 CFR * * * * *	*
648.13	-0391 and -0481
648.322 * * * * *	-0480 *

50 CFR Chapter VI

**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 § 648.1, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.1 Purpose and scope.**

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfly fisheries (Atlantic Mackerel, Squid, and Butterfly FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). \* \* \*

\* \* \* \* \*

■ 3. In § 648.2, the definitions of “Council”, “Fishing year”, and “Skate” are revised, and new definitions for “NE skate complex (skates)” and “Skate Management Unit” are added in alphabetical order to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfly; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

\* \* \* \* \*

*Fishing year* means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

\* \* \* \* \*

*NE Skate Complex (skates)* means *Leucoraja ocellata* (winter skate); *Dipturus laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

\* \* \* \* \*

*Skate* means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturus laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

\* \* \* \* \*

*Skate Management Unit* means an area of the Atlantic Ocean from 35° 15.3' N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

\* \* \* \* \*

■ 4. In § 648.4, paragraph (a)(14) is added to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

■ 5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

**§ 648.5 Operator permits.**

(a) \* \* \* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfly, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued

under this section, and carry on board, a valid operator permit. \* \* \*

\* \* \* \* \*

■ 6. In § 648.6, paragraph (a)(1) is revised to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) \* \* \*

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfly, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies, skates, and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies, skates, and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

\* \* \* \* \*

■ 7. In 648.7, paragraphs (a)(1)(iii) and (b)(1)(iii) are added, and the last sentence of paragraph (b)(1)(i) is revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NOAA Fisheries will provide dealers with a skate species identification guide.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \* With the exception of those vessel owners or operators fishing under

a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

\* \* \* \* \*

■ 8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

**§ 648.11 At-sea sampler/observer coverage.**

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer

flounder; to carry a NMFS-approved sea sampler/observer.

\* \* \* \* \*

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

\* \* \* \* \*

■ 9. In § 648.12, the introductory text is revised to read as follows:

**§ 648.12 Experimental fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

\* \* \* \* \*

■ 10. In § 648.13, paragraph (h) is added to read as follows:

**§ 648.13 Transfers at sea.**

\* \* \* \* \*

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or

skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of 1 year from the date of the transfer, a copy of said documentation.

■ 11. In § 648.14, paragraphs (x)(13), (ee),(ff), and (gg) are added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(x) \* \* \*

(13) *Skates.* 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 all submitted 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 of the Skate Management Unit or only in state waters.

\* \* \* \* \*

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of whole skates as bait only less than the maximum size specified at § 648.322(b)(2) and in accordance with § 648.322(c).

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and



landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92, for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(gg) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.2.

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

■ 12. In § 648.80, paragraphs (b)(5)(i)(C) and (b)(6)(i)(D) are added and paragraphs (b)(5) introductory text, (b)(5)(i)(A), (b)(6) introductory text, (b)(6)(i)(A), and (h)(2)(i)(8) are revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(5) *SNE Monkfish and Skate Trawl Exemption Area*. Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the

vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish and skate regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) \* \* \*

(A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

\* \* \* \* \*

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

\* \* \* \* \*

(6) *SNE Monkfish and Skate Gillnet Exemption Area*. Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section, the monkfish regulations, as applicable under §§ 648.91 through 648.94, and the skate regulations, as applicable under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) \* \* \*

(A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the

amounts specified in paragraph (b)(3) of this section.

\* \* \* \* \*

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(i) \* \* \*

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent by weight of all other species on board.

■ 13. Subpart O is added to read as follows:

**Subpart O—Management Measures for the NE Skate Complex Fisheries**

Sec.

648.320 Skate FMP review and monitoring.

648.321 Framework adjustment process.

648.322 Skate possession and landing restrictions.

**Subpart O—Management Measures for the NE Skate Complex Fisheries**

**§ 648.320 Skate FMP review and monitoring.**

(a) *Annual review*. The Council, its Skate Plan Development Team (), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated

survey indices and the FMP's overfishing.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council will monitor the trawl survey index as a proxy for stock biomass. As long as the 3-year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3-year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council is required to take management action to ensure that stock rebuilding will continue to target levels.

(b) *Biennial review.* The Skate shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate. The SAFE shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review*—(1) *Baseline review process.* If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or that may change one or more of the baseline measures such that the change is likely to have an effect on the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures.* The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) NE Multispecies year-round closed areas (§ 648.81);

(ii) NE Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§ 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

#### § 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been

initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.321(b). The Council will publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish

only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

- (1) Skate permitting and reporting;
- (2) Skate overfishing definitions and related targets and thresholds;
- (3) Prohibitions on possession and/or landing of individual skate species;
- (4) Skate possession;
- (5) Skate closed areas (and consideration of exempted gears and fisheries);
- (6) Seasonal skate fishery restrictions and specifications;
- (7) Target TACs for individual skate species;
- (8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;
- (9) Establishing a mechanism for TAC set-asides to mitigate, conduct scientific research, or for other reasons;
- (10) Onboard observer requirements;
- (11) Gear modifications, requirements, restrictions, and/or prohibitions;
- (12) Minimum and/or maximum sizes for skates;
- (13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;
- (14) Measures to address protected species issues, if necessary;
- (15) Description and identification of EFH;
- (16) Description and identification of habitat areas of particular concern;
- (17) Measures to protect EFH;
- (18) Adjustments and/or resetting of the "baseline" of management measures in other, described in § 648.320(c);
- (19) OY and/or MSY specifications; and
- (20) Any other measures contained in the FMP.

(c) Emergency action. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

#### § 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel 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 paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 1 month.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit. (2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 510 and 522

#### Injectable or Implantable Dosage Form New Animal Drugs; Estradiol Benzoate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by PR Pharmaceuticals, Inc. The NADAs provide for subcutaneous injection, in the ear only, of a suspension implant of estradiol benzoate microspheres for increased rate of weight gain in suckling beef calves, and for increased rate of weight gain and improved feed efficiency in steers and heifers fed in confinement for slaughter.

**DATES:** This rule is effective August 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Dubbin, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0232, e-mail: [edubbin@cvm.fda.gov](mailto:edubbin@cvm.fda.gov).

**SUPPLEMENTARY INFORMATION:** PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524, filed NADA 141-040 that provides for use of CELERIN (estradiol benzoate), microspheres for constitution into a suspension, by subcutaneous injection in the ear only for increased rate of weight gain and improved feed efficiency in steers and heifers fed in confinement for slaughter. PR Pharmaceuticals, Inc., also filed NADA 141-041 that provides for use of CELERIN C (estradiol benzoate), also microspheres for constitution, by subcutaneous injection in the ear only for increased rate of weight gain in suckling beef calves. The NADAs are approved as of June 25, 2003, and the regulations are amended in 21 CFR part 522 by adding new § 522.841 to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In addition, PR Pharmaceuticals, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii),