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■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	* * * * *	
Sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3).	.....	Surfactants, related adjuvants of surfactants
Sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9).	.....	Surfactants, related adjuvants of surfactants
Sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5).	.....	Surfactants, related adjuvants of surfactants
* *	* * * * *	

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[FR Doc. 2010–14093 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–786; MB Docket No. 05–10; RM–11279]

FM Table of Allotments (The Dalles, Tualatin, Eugene, Albany, Lebanon, Paisley, and Diamond Lake, Oregon and Goldendale, WA)

AGENCY: Federal Communications Commission

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: The Audio Division dismisses a Petition for Reconsideration jointly filed by Portland Broadcasting, LLC ("Portland Broadcasting"), licensee of Station KXPC–FM, Channel 279C, Lebanon, Oregon, Bicoastal Media Licenses IV, LLC ("Bicoastal"), licensee of Station KACI–FM, Channel 249C2, The Dalles, Oregon, and Station KMSW(FM), Channel 224C3, The Dalles, Oregon, and Extra Mile Media, Inc., licensee of Station KHPE(FM), Channel 300C, Albany, Oregon, collectively (the "Joint Petitioners"). In this regard, Portland Broadcasting, Columbia Gorge Broadcasters, Inc., M.S.W Communications, LLC, Bicoastal, and Extra Media, Inc. (the "Joint Parties") filed a Motion to Dismiss the Petition for Reconsideration. The Joint Parties' Motion to Dismiss the Petition for Reconsideration contained a Settlement Agreement between Cumulus and the Joint Parties. In accordance with Section 1.420(j) of the Commission's Rules, we are granting the Joint Parties' Motion to Dismiss. In doing so, we approve the Settlement Agreement. The Joint Parties will collectively and individually receive payments that are less than their respective legitimate and prudent expenses incurred in connection with the preparation, filing and advocacy of the Counterproposal. Each party filed a declaration in accordance with Section 1.420(j), containing an itemization of its respective legal, engineering and other legitimate and prudent expenses. The Joint Parties and Cumulus each state in its respective declaration that aside from the Settlement Agreement, neither respective licensee nor any of its members, officers, or employees is a party to any agreement, written or oral, that will require the respective licensee to pay or receive any monies or provide or receive any other consideration from or to the existing and former licensee for the actions described in each respective declaration.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MB Docket No. 05–10, adopted May 21, 2010, and released May 24, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

The Commission will not send a copy of this Memorandum Opinion and Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was dismissed.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. 2010–14512 Filed 6–15–10– 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080228326–0108–03]

RIN 0648–AW30

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Amendment 3

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is implementing approved measures in Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Skate FMP), including final specifications for the 2010 and 2011 fishing years (FY). Amendment 3 was developed by the New England Fishery Management Council (Council) to rebuild overfished skate stocks and implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 3 implements a rebuilding plan for smooth skate and establishes an ACL and annual catch target (ACT) for the skate complex, total allowable landings (TAL) for the skate wing and bait fisheries, seasonal quotas for the bait fishery, new possession limits, in season possession limit triggers, and other measures to improve management of the skate fisheries. This interim final rule also includes skate fishery specifications for FY 2010 and 2011, pursuant to the specifications process established in Amendment 3.

DATES: Effective July 16, 2010. Comments on the final specifications for the 2010 and 2011 fishing years must be received by 5 p.m. on July 16, 2010.

ADDRESSES: A final environmental impact statement (FEIS) was prepared for Amendment 3 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 Amendment 3, the FEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

An environmental assessment (EA) was prepared for the final 2010 and 2011 specifications. A copy of this EA, and its associated finding of no significant impact, is available from National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also available online at *http://www.nero.noaa.gov/nero/*.

You may submit comments on the final specifications, identified by RIN 0648–AW30, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- 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 Final Specifications for 2010 and 2011."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273, or Allison McHale, Fishery Policy Analyst, (978) 281–9103.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule implements measures contained in Amendment 3, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 23, 2010. A proposed rule to implement the measures contained in Amendment 3 published in the **Federal Register** on January 21, 2010 (75 FR 3434), with public comment accepted through February 22, 2010. Details concerning the development of Amendment 3 were contained in the preamble of the proposed rule and are not repeated here.

The January 21, 2010, proposed rule included proposed specifications for FY 2010 and 2011. The proposed specifications were included in Amendment 3 based on the best available scientific information available at the time the final Amendment 3 document was prepared by the Council. Specifically, the proposed specifications included the following: (1) ACL = 30,643 mt; (2) ACT = 22,982 mt; and (3) TAL = 9,427 mt. These proposed specifications derived from the scientific advice of the Council's Scientific and Statistical Committee (SSC) that the acceptable biological catch (ABC) for the skate complex should not exceed 30,643 mt. This recommendation was developed in September 2009 by the SSC, based on the best information considered appropriate for use at the time, which included data from the Northeast Fisheries Science Center (NEFSC) trawl surveys through spring 2008 for little skate, and through fall 2007 for all other species in the skate complex.

Although this was the best scientific information available at the time the Council prepared and submitted Amendment 3 for review by NMFS, in March 2010, the Council's SSC reconvened to reconsider its ABC recommendation for FY 2010 and 2011. The SSC reconsidered its ABC recommendation to incorporate the fall 2008 NEFSC trawl survey data, which had not been previously incorporated into the SSC's evaluation of an appropriate ABC for the skate complex. As a result of the inclusion of these additional data, which showed a marked increase in the availability of winter skates, the SSC revised its ABC recommendation from 30,643 mt to 41,080 mt. Based on the procedures in Amendment 3, a change in the SSC's ABC recommendation affects the specifications to be implemented, as follows: (1) The ACL is similarly increased to 41,080 mt; (2) the ACT increases to 30,810 mt; and (3) the TAL increases to 13,848 mt (the TAL also reflects an updated analysis by the Council's Skate Plan Development Team (PDT) on estimated discards of skates across all fisheries). The SSC presented its recommendation to revise the skate ABC at the April 28, 2010, meeting of the Council. At this meeting, the Council accepted the revised ABC and requested that NMFS incorporate this new scientific information into the implementation of Amendment 3. Therefore, consistent with the request of the Council, the final specifications implemented in this interim final rule reflect this new scientific information from the Council's SSC, as required under National Standard 2 of the Magnuson-Stevens Act ("any regulation promulgated to implement any such [fishery management] plan . . . shall be based upon the best scientific information available"). But, because the scientific basis for setting the FY 2010 and 2011 specifications changed between the publication of the proposed rule and the publication of this interim final rule, the final specifications are published as an interim final rule in order to provide the public with the

opportunity to provide comment on the revised specifications.

Approved Measures

New Biological Reference Points

For all skate species except barndoor, the B_{MSY} proxy (biomass target; the biomass level at which maximum sustainable yield (MSY) can be attained on a continuing basis) is defined as the 75th percentile of the appropriate NEFSC trawl survey (autumn or spring) biomass index time series for that species: Autumn 1975–2007 for clearnose; spring 1982–2008 for little; autumn 1967–2007 for winter and rosette; and autumn 1963–2007 for smooth and thorny. For barndoor, the B_{MSY} proxy remains unchanged as the average 1963–1966 autumn survey biomass index, because the survey did not catch barndoor skates during a protracted time period of years.

A skate species is considered overfished if its 3-year moving average survey biomass falls below one-half of its B_{MSY} proxy value (biomass threshold). Therefore, because the current biomass indices for thorny and smooth skates are below their respective thresholds, they are considered overfished (Table 1). The current biomass for clearnose and rosette skates are above their respective biomass targets, so they are considered to be above B_{MSY}. Winter, little, and barndoor skates are not overfished, but not completely rebuilt to their biomass targets (Table 1).

Fishing mortality reference points, defined by percentage changes in the survey biomass indices, remain unchanged. No skates are currently subject to overfishing, although thorny skate was considered to be subject to overfishing in 2007. The previous and revised biomass reference points are shown in Table 1, relative to the most recent survey biomass for each species.

TABLE 1. COMPARISON BETWEEN CURRENT SKATE BIOMASS STATUS (THROUGH AUTUMN 2008) WITH PREVIOUS AND REVISED BIOMASS REFERENCE POINTS.

Stratified mean survey biomass (kg/tow)

Skate Species	Current Biomass	Previous Threshold	Revised Threshold	Previous Target	Revised Target
Winter	5.23	3.43	2.80	6.46	5.60
Little	5.04	3.27	3.51	6.54	7.03
Barndoor	1.02	0.81	0.81	1.62	1.62
Thorny	0.42	2.20	2.06	4.41	4.12
Smooth	0.13	0.16	0.14	0.31	0.29
Clearnose	1.04	0.28	0.38	0.56	0.77
Rosette	0.052	0.015	0.024	0.029	0.048

2010–2011 Final Specifications (ACL, ACT, and TAL)

The following final specifications differ from the specifications proposed in the January 21, 2010, proposed rule. The regulation at § 648.320(a)(7) regarding the annual review and specification process provides that "if the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section." As explained above, the final specifications implemented in this interim final rule are based on the revised ABC recommendation of the Council's SSC. The proposed specifications were based on the best information available at the time the Council prepared Amendment 3, but this information changed as a result of the March 17, 2010, meeting of the SSC. Thus, these final specifications differ from those recommended by the Council in Amendment 3 to ensure that the final FY 2010 and 2011 specifications are based on the best available scientific information. Also, because these final specifications were calculated according to the procedures in Amendment 3, stemming from the revised ABC recommendation, the final specifications are determined to satisfy the criteria set forth in Amendment 3.

In each FY, the ACL for the skate complex will be set equal to the ABC recommended by the Council's SSC. Through FY 2011, the SSC has recommended an ABC based on the median catch/biomass exploitation rate of the skate complex multiplied by the 2005–2008 average survey biomass, which is 90.566 million lb (41,080 mt) per year. To account for management uncertainty, an ACT will be set at 75 percent of the ACL, or 67.924 million lb (30,810 mt) per year. Due to the difficulties in monitoring skate discards in all fisheries during a FY, a projection of total annual dead discards will be subtracted from the ACT to generate the TAL for the skate fisheries. After deducting an estimate of skate landings from vessels fishing solely in state waters (approximately 3 percent of the total landings), the remaining TAL for Federal waters in FY 2010 and 2011 will be 30.530 million lb (13,848 mt) per year.

The TAL will be allocated between the skate wing fishery and the skate bait fishery based on historic landings proportions. The skate wing fishery predominantly lands winter skate, while the bait fishery predominantly lands little skate. The skate wing fishery will receive 66.5 percent of the TAL, or 20.302 million lb (9,209 mt), and the skate bait fishery will receive 33.5 percent of the TAL, or 10.227 million lb (4,639 mt). Landings of skates will be monitored and allocated to the appropriate fishery quota through information currently required to be submitted by seafood dealers on a weekly basis.

Because this action was not effective at the start of the FY on May 1, 2010, all skate landings that accrue from May 1, 2010, until the date of implementation of this interim final rule will be counted against the respective skate wing and bait TALs for FY 2010, as described above. The rationale for this attribution of FY 2010 landings was explained in the January 21, 2010, proposed rule.

Possession Limits and Seasons

As part of the final specifications for FY 2010 and 2011, this interim final rule implements a possession limit for the skate wing fishery that differs from the possession limit in Amendment 3 and the proposed rule. The possession limit for the wing fishery is revised in order to reflect the change in TAL allocated to the wing fishery as a result of the ABC. Under Amendment 3, the wing fishery landings are assessed against a yearly TAL that is managed primarily through the use of a possession limit on landings designed to constrain landings such that the TAL is

not exceeded. In Amendment 3, the proposed reduction in allowable landings in the wing fishery to the initial 13.821 million lb (6,269 mt) TAL required a substantial reduction in the possession limit, from the original limits of 10,000 lb (4,536 kg) wing weight for all trips less than 24 hr in duration (and 20,000 lb (9,072 kg) wing weight for all trips greater than 24 hr in duration) to the proposed limit of 1,900 lb (862 kg) wing weight for all trips, regardless of trip duration. Consistent with the new ABC recommendation, and the resultant increase in the wing fishery TAL from the 13.821–million-lb (6,269–mt) TAL in the proposed rule to the 20.302–million-lb (9,209–mt) TAL implemented in this interim final rule, the Skate PDT recently completed an analysis indicating that the proposed 1,900–lb (862–kg) wing possession limit should also be revised.

This change from the proposed rule is necessary to ensure that the management measure is based on the best available scientific information, and to provide an opportunity for the fishery to attain the TAL. Based on PDT analyses, if fishing patterns in FY 2010 and 2011 are similar to those in FY 2007–2009, the proposed 1,900–lb (862–kg) wing possession limit was expected to have constrained total wing landings to approximately two-thirds of the overall TAL, while potentially substantially increasing regulatory discards of marketable skates. An increase in the wing possession limit from the level initially proposed provides a greater likelihood that the fishery will have the opportunity to fully attain the TAL, and reduces the potential for a substantial increase in regulatory discards.

All vessels possessing, retaining, and landing skates will continue to be required to obtain a Federal open access skate permit. Subject to the additional restrictions described in the following sections, a possession limit of 5,000 lb (2,268 kg) wing weight (11,350 lb (5,148 kg) whole weight) is implemented for any vessels in possession of skates, unless the vessel is in possession of a Skate Bait Letter of Authorization (LOA). All skates landed in wing form or sold for use as food will accrue against the skate wing TAL. To ensure that the skate wing TAL is not exceeded, when 80 percent of the annual skate wing TAL is landed, the 5,000–lb (2,268–kg) skate wing possession limit will be reduced to 500 lb (227 kg) wing weight (1,135 lb (515 kg) whole weight) for the remainder of the FY. The purpose of this measure is to reduce incentives to target skates, but allow some incidental catches of skates to be landed, rather than discarded.

This rule retains the requirement that a vessel possessing a valid Federal skate permit must also fish under an Atlantic sea scallop, Northeast (NE) multispecies, or monkfish day-at-sea (DAS) in order to possess, retain, and land skates, unless that the vessel is otherwise exempted under § 648.80.

This action also implements an incidental skate trip limit of 500 lb (227 kg) wing weight, or 1,135 lb (515 kg) whole weight, for any vessel issued a Federal skate permit that is not fishing under a DAS.

A possession limit of 20,000 lb (9,072 kg) whole weight is implemented for vessels participating in the skate bait fishery that also possess a Skate Bait LOA. The existing requirements of the Skate Bait LOA will remain in effect, including the requirement to land skates in only whole form, to be sold only as bait, a maximum skate size limit of 23 inches (58 cm) total length, and a minimum participation period of 7 days. Vessels that do not possess a Skate Bait LOA, or that land any combination of whole skates and skate wings (even if the vessel possesses a Skate Bait LOA) are subject to the appropriate wing fishery possession limit. To help maintain a consistent market supply of bait skates, the skate bait TAL will be split into three quota periods per year. All skates landed in whole form that are sold for use as bait will accrue against the skate bait TAL. When 90 percent of the skate bait quota is harvested in each quota period, the possession limit will be reduced to the whole weight equivalent of the skate wing fishery possession limit until the start of the next period, whether it be 5,000 lb (2,268 kg) or 500 lb (227 kg) wing weight at the time.

The bait skate possession limit implemented in this interim final rule is the same as that recommended by the Council in Amendment 3 and in the proposed rule. Although the TAL allocated to the bait fishery is increased in this interim final rule from the level in Amendment 3 and the proposed rule, similar to the wing fishery TAL, the basis for establishing a possession limit for the bait fishery, and the level at which that possession limit was set, was different than for the wing fishery. Rather than an overall annual TAL, the bait fishery TAL is subdivided into three quota periods. When landings of bait skates are projected to reach 90 percent of the quota for each quota period, the bait fishery possession limit is reduced to the standing wing fishery possession limit, until the start of the next quota period. Because of concerns that derby-style fishing, in conjunction with the open-access nature of the bait fishery, could result in early "closures" of the bait fishery (so-called due to the larger volumes of bait skates needed to supply the bait market) that would disrupt the market for bait skates and have substantial negative consequences for the lobster fishery that is largely dependent on skates for bait, the 20,000–lb (9,072–kg) possession limit was suggested by members of the Council's Skate Industry Advisory Panel as a mechanism to control the pace at which the landings approached the quota period limits.

As an additional conservation measure, vessels declared to be fishing on a Northeast Multispecies Category B DAS will have a skate possession limit of 220 lb (100 kg) wing weight (500 lb (227 kg) whole weight).

Accountability Measures

If the annual TAL allocated to either fishery is exceeded by more than 5 percent in a given year, the possession limit trigger (80 percent in the wing fishery, 90 percent in the bait fishery) will be reduced by 1 percent for each 1–percent overage for that fishery. This measure is intended to help prevent repeated excessive TAL overages.

If it is determined that the ACL for the skate complex was exceeded in a given year, including landings and estimates of discards, then the ACL-ACT buffer (25 percent, initially) will be increased by 1 percent for each 1–percent overage. For example, if the ACL is exceeded by 5 percent, the ACL-ACT buffer will be increased to 30 percent in the subsequent fishing year, which is intended to effectively reduce allowable landings.

Annual Review, SAFE Reports, and Specifications Process

In place of the "Skate Baseline Review" process included in the original Skate FMP, the Skate PDT will convene annually to review skate stock status, fishery landings and discards, and determine if any AMs were triggered by fishing in the previous year. The annual review will also incorporate an assessment of changes to other fishery management plans that may impact skates, and determine if changes to skate management measures may be warranted. If changes to the Skate FMP are warranted, the Skate PDT could then recommend to the Council that changes to the skate management measures be made via specifications or framework adjustment. Specifications for the skate fisheries may be implemented for up to 2 years.

A Stock Assessment and Fishery Evaluation (SAFE) report for the skate complex will be completed every 2 years by the Skate PDT. The SAFE report will be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the skate complex and its associated fisheries, and 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.

Comments and Responses

A total of 11 comments were received on the proposed rule and the amendment from 4 individuals (2 comments from the same individual), 3 industry groups, 2 state agencies (Massachusetts Division of Marine Fisheries (MADMF) and Rhode Island Department of Environmental Protection (RIDEM)), and the Council. Four commenters expressed either general or specific support for the management measures in Amendment 3, one commenter disagreed with NMFS's interpretation of certain provisions necessary to implement the amendment, and four commenters opposed the implementation of Amendment 3. One commenter appeared to be confused about which alternatives were selected by the Council in relation to those that NMFS included in the proposed rule. The comments opposing Amendment 3 and its proposed rule focused on the expected negative economic impacts of the Amendment, particularly the impacts associated with the proposed reductions in the TALs and the possession limits.

This section summarizes the principle comments contained in the individual comment letters that pertained to Amendment 3 and the proposed rule, and NMFS's response to those comments. Any comments received that were not specific to the management measures contained in the Amendment 3 proposed rule, or in the amendment document, are not responded to in this interim final rule.

Comment 1: The Council noted that the regulatory text describing the AMs in § 648.323 required further clarification to clearly reflect the Council's intent. Specifically, the Council proposed that the term "next fishing year" with respect to the description of the AM to address TAL overages described in section 5.1.3.2 of the amendment, should refer to the year immediately following the year in which the TAL overage occurs. Additionally, the Council noted that the AM to adjust the ACL buffer if skate catches exceed the ACL would be applied in the second fishing year following the year in which the overage occurred, and requested that the language in § 648.323(b) be clarified to be consistent with the description provided in section 5.1.3.3 of the amendment.

Response: In this interim final rule, NMFS has revised § 648.323(b) so that it is clear that any adjustment of the ACL buffer made necessary due to an overage of the ACL would be implemented in the second year following the year for which the overage is determined to have occurred. However, with respect to the TAL overage issue raised by the Council, the amendment provides that, if upon review of the complete landings data from a FY it is determined that a TAL is exceeded by more than 5 percent, the trigger point at which the possession limit is reduced would be adjusted by the same percentage "in the next FY." For example, if the skate wing TAL is exceeded by 10 percent in one FY, then the AM requires that the wing possession limit trigger would be changed from 80 percent of the wing TAL to 70 percent of the wing TAL. However, the FMP is vague as to the meaning of the "next" FY. Due to the time lags inherent in data collection, and the time necessary to ensure that complete data are used to determine whether a TAL has been exceeded, including time for late data to be collected and entered into the system, data processing, audits, and analysis, it typically would take several months after the end of a FY before NMFS would be able to determine the full extent to which a TAL may have been exceeded. Thus, in all discussions with the Council on this issue, NMFS staff advised the Council that it would not be practicable to make such an adjustment in the FY that immediately follows the year in which the overage occurred. However, in their comment letter on the proposed rule, the Council states that this was, in fact, their intent, and that such AMs should be imposed in the year immediately following the year in which the overage occurred.

In order to implement such a process, at least two rulemakings would be required: The first would be completed in advance of the start of a FY, and would establish the specifications based on the best available information at the time; and the second would be completed several months (potentially up to 6 months) after the start of the FY, to adjust the TAL trigger points to account for any overages determined to occur in the prior FY. This process, and the implications for disruption to the on-going FY, were never discussed by the Council nor analyzed in the Amendment 3 document. Therefore, under its authority at section 305(d) of the Magnuson-Stevens Act, NMFS retains the language that this AM would be implemented in the FY that follows the year in which the overage is identified (i.e., an overage in 2010 would be identified in 2011, once complete data on FY 2010 are available, and the AM would be implemented in FY 2012).

Comment 2: The Council noted that section 5.1.5 of the amendment recommended that the skate bait fishery TAL be monitored based upon attributing skate landings by vessels with a valid, active Skate Bait LOA to the skate bait fishery, regardless of how those landings are classified by Federal dealers (i.e., as either food or bait). The Council's concern appears to be that dealers may misclassify skates landed in one form as another product form due to processing and/or marketing reasons. The Council further states that the monitoring method proposed by NMFS in § 648.322(a) may lack transparency and result in unexpected possession limit adjustments.

Response: NMFS disagrees that the TAL monitoring method proposed by the Council is the best approach to accurately monitoring the skate TALs being established through this amendment. Council and NMFS staff engaged in several discussions on this issue during the development of Amendment 3. As a result of those discussions, which involved NMFS staff experienced in monitoring landings of other NE fisheries, NMFS determined that using the product classification provided by Federal dealers, as required under § 648.7(a)(1)(i), is the most reliable approach to monitoring the skate TALs, because it most accurately reflects how the product is being utilized, versus the form (wing or whole) in which it was landed. Furthermore, the regulations deemed by the Council to be consistent with Amendment 3 clearly state that the dealer's product classification will be used to allocate skate landings to the appropriate TAL, not possession of the Skate Bait LOA as suggested by the Council in the comments on the proposed rule. Thus, the method described in the proposed rule to monitor skate landings is being implemented in this interim final rule.

Comment 3: The Council further noted that a provision in § 648.322(b) of the proposed regulations would have exempted vessels targeting skate that also participate in an approved sector under the NE Multispecies FMP from the requirement to use either a NE multispecies, monkfish, or scallop DAS

in order to land skate wings was not the intent of the Council in developing Amendment 3. The Council cites the baseline measure identified in section 4.16.1 of the original Skate FMP as evidence that the Skate FMP relies on the DAS mechanism in other fisheries to control access to the skate resource. The Council also notes that section 5.1.8 of Amendment 3 establishes a 500–lb (227–kg) whole weight (200–lb (91–kg) wing weight) possession limit for vessels fishing under a NE multispecies Category B DAS to prevent vessels from using these DAS to target skates because these DAS were originally intended under the NE Multispecies FMP to allow vessels to target stocks at "healthy" biomass levels, while Amendment 3 is intended to reduce skate fishing effort. The Council further cites inequity with non-sector vessels and concern over how the removal of the DAS requirement for sector vessels could increase targeting of skates by these vessels.

Response: The Council's Amendment 3 document is internally inconsistent with respect to this issue, stating that vessels targeting skates must be under a DAS in some sections and not in others. Furthermore, the regulations deemed by the Council to be consistent with Amendment 3 at its April 2009 meeting were silent on this issue. As a result, NMFS included a provision in the proposed rule to address the complicated interaction between the new NE multispecies sectors authorized by Amendment 16 and the skate fishery. However, given the Council's comments on this issue, it is clear that it did not intend for sector vessels to be exempt from DAS requirements for the purpose of targeting skate wings. Thus, it appears the regulations deemed by the Council to be consistent with Amendment 3 were consistent with its intent. Therefore, this interim final rule removes the sector provision in the proposed rule from the regulations. As a result, all vessels landing skate wings in excess of the proposed 500–lb (227–kg) (wing weight) incidental limit will be required to utilize a NE multispecies, monkfish, or scallop DAS. This change is consistent with the Council's comments on this issue, as well as similar comments made by MADMF.

Comment 4: Three industry members and one industry group submitted comments recommending that some form of limited access or history-based allocations be developed and implemented for the bait skate fishery to mitigate the economic impacts of Amendment 3 and ensure a steady supply of bait for the lobster fishery. Three of these individuals specifically asked that such a provision be included in Amendment 3.

Response: This measure was not included nor specifically considered in Amendment 3, and, therefore, NMFS has no legal authority to establish such a measure as part of the implementation of Amendment 3. However, the Council is aware that some members of the bait skate fishery would like such a program, and on July 30, 2009, at the request of the Council, NMFS established a control date for the bait skate fishery for this purpose. The effect of this control date is to preserve the opportunity for the Council, should it elect at some time in the future to develop and implement a limited access program for the bait fishery that may distinguish participation before and after July 30, 2009. The Council may take up this issue at any time deemed appropriate.

Comment 5: One individual, two industry groups, and two state agencies raised concerns about the TALs and possession limits proposed in Amendment 3. The commenters suggest that new scientific information indicates that the TALs proposed in the January 21, 2010, proposed rule, which would have represented substantial reductions from recent landings, along with the proposed possession limits, are unnecessary and would result in economic harm to the fishing industry dependent on skates. These commenters urged NMFS and the Council to incorporate this new scientific information as soon as possible and set FY 2010 total allowable catch and trip limits accordingly.

Response: The "new scientific information" referred to in the comment letters is the 2008 fall trawl survey data, which were reviewed by the SSC at its March 17, 2010, meeting. As explained earlier in this preamble, the SSC reconsidered the FY 2010–2011 ABC recommendation for the skate complex using the updated survey data, and provided a new ABC recommendation of 41,080 mt. Based on the recommendation of the SSC, the Skate PDT met on April 7, 2010, to discuss options for revising the trip limits for the wing fishery to achieve the new target TAL. Therefore, as urged by these commenters, this interim final rule revises the specifications in the proposed rule and implements final specifications that are consistent with the new scientific information. This interim final rule adjusts the ABC, associated TALs, and wing possession limit to be consistent with the most recent recommendation of the SSC, as requested by the Council.

Comment 6: One individual submitted a comment opposing a bait trip limit lower than the amount he currently catches, and stated that the wing fishery should not be included in the bait fishery.

Response: This interim final rule implements a trip limit of 20,000 lb (9,072 kg) of whole skate for the skate bait fishery. Originally, the Council's preferred option had no trip limit for the bait fishery, but relied entirely on a seasonal quota to control landings. However, at the request of members of the bait fishery that serve on the Council's industry advisory panel, the Council adopted a 20,000–lb (9,072–kg) trip limit implemented in this interim final rule as a means of ensuring a steady supply of bait by preventing the seasonal quotas from being reached too quickly. Additionally, NMFS clarifies that the skate wing fishery is not considered part of the bait skate fishery. The Council and NMFS recognize the differences between these two fisheries and, through the Skate FMP, have adopted specific measures to manage these fisheries differently. This individual may be confused as to how the TALs for the skate wing fishery and the bait skate fishery are derived. An overall TAL is established for the NE skate complex, which is then split into specific TALs for the skate wing fishery and bait skate fishery based upon the percentages approved in Amendment 3 and implemented through this interim final rule.

Comment 7: In addition to the comments above regarding the proposed TAL and possession limits, RIDEM also provided several other comments. The RIDEM questioned the rationale for imposing "drastic reductions" on the bait skate fishery, suggested that the proposed rule is contrary to the alternatives selected by the Council, and suggested that steps should be taken to address the seasonality of the bait skate fishery and the need for a steady supply of bait skates.

Response: NMFS is not proposing to implement an alternative not selected by the Council. RIDEM suggests that the Council selected alternative 1B for the wing fishery and alternative 4 for the bait fishery; however, the Amendment 3 document, and the Council record, clearly indicate that the Council's final decision was to select alternative 3B for the wing fishery, along with alternative 4 for the bait fishery. Alternative 1B would have required implementation of time and area closures for all fishing gear capable of catching skates, which would have included gear used in the sea scallop, monkfish, and groundfish fisheries. This alternative was not favored by either the Council or the fishing industry that provided

comments to the Council during the development of Amendment 3.

As to the comments on the measures for the bait fishery, the Amendment 3 document clearly explains that the catch and landings of skates cannot be reliably distinguished by species, and that the best scientific advice from the Council's SSC is to establish catch limits (ABC, ACL, TALs) at the complex level (that is, inclusive of all seven skate species). Therefore, if the complex-level ABC is reduced, or discards of skates increase, then the resulting reduction in the overall skate TAL would necessitate a reduction in the TALs available to both the bait and wing fisheries. Also, RIDEM appears to misunderstand the specific actions proposed in Amendment 3 for the bait fishery. The proposed system of three quota periods (rather than a single annual quota) was designed precisely to maximize the probability of ensuring a steady supply of bait skates when most needed. The annual TAL is not divided equally among the three quota periods, but is allocated based on evidence of the seasonality of this fishery; in fact, 66.7 percent of the annual TAL is allocated to the quota period May-October, which is the season RIDEM indicates has the highest demand for bait skates. Also, the 20,000–lb (9,072–kg) possession limit proposed for the bait skate fishery was suggested initially by members of the bait skate fishing industry as a way to maintain a consistent supply of skates by controlling landings and avoiding a derby fishery.

Changes From Proposed Rule to Interim Final Rule

At its April 2009 meeting, the Council reviewed the draft regulations and deemed them necessary and appropriate for implementation of Amendment 3, as required under section 303(c) of the Magnuson-Stevens Act. Technical changes to the regulations deemed necessary by the Secretary for clarity may be made, as provided under sections 304(b) and 305(d) of the Magnuson-Stevens Act. This interim final rule makes minor technical changes to the proposed rule to address an issue of clarity concerning ACL overages that was raised by the Council in its comments; to clarify the regulatory text concerning the Skate Bait LOA; and to correct an incorrect cross-reference in the proposed rule. These changes are listed below in the order in which they appear in the regulations.

In § 648.322(c), the wording "when a vessel is fishing pursuant to the terms of the authorization" is added to the introductory paragraph for clarity. Additionally, the last sentence under § 648.322(c)(4) is removed and a new § 648.322(c)(5) is added to more clearly reflect the conditions under which a vessel in possession of a Skate Bait LOA may retain skate wings.

In § 648.323(b), the phrase "in the subsequent fishing year" is revised to read "in the second fishing year following the fishing year in which the ACL overage occurred," to more accurately reflect when the intended action will occur.

In § 648.323(c), the cross-reference to paragraph § 648.323(c) is corrected to read paragraph (d).

In addition to the changes identified above, and consistent with the requirement under National Standard 2 of the Magnuson-Stevens Act that "any regulation promulgated to implement any such [FMP] . . . shall be based upon the best scientific information available," NMFS is implementing final specifications for FY 2010 and 2011 that differ from the proposed specifications. The authority for NMFS to deviate from the specifications included in Amendment 3 is provided at § 648.320(a)(7), which stipulates that the specifications published in the **Federal Register** may differ from those recommended by the Council, so long as the reasons for the differences are clearly stated and the revised specifications satisfy the criteria in the regulations. This regulation (§ 648.320(a)(7)) was deemed by the Council to be necessary and appropriate for the implementation of Amendment 3, and was included in the January 21, 2010, proposed rule. The scientific basis for the revised final specifications is provided earlier in the preamble to this interim final rule and is not repeated here. As part of the final specifications for FY 2010 and 2011, the following regulation has been revised.

In § 648.322(b)(1), the skate wing possession limit is revised to read "Up to 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip, except . . ."

Classification

The Administrator, Northeast Region, NMFS, determined that the management measures implemented by this interim final rule are necessary for the conservation and management of the NE skate fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This interim final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

The Council prepared an FEIS for Amendment 3. A notice of availability was published on January 22, 2010 (75 FR 3730). The FEIS describes the impacts of Amendment 3 measures on the environment. Most of these measures were designed to reduce skate landings. As a result, the impacts are primarily social and economic, as well as biological. In general, all biological impacts are expected to be positive. Although some of the economic and social impacts may be negative in the short term, particularly for vessels that have traditionally targeted or relied substantially on sales of skates, the long-term social and economic benefits of sustainable skate fisheries would be positive. In approving the Amendment 3 on March 23, 2010, NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the revised final specifications for FY 2010 and 2011 because it is unnecessary, impracticable, and would be contrary to the public interest. On January 21, 2010, NMFS published a proposed rule in the **Federal Register** for Amendment 3 to the Skate Complex FMP. This proposed rule included proposed specifications for FY 2010 and 2011 that were consistent with the best scientific information available at the time (i.e., the September 2009 recommendations of the Council's SSC) and that were derived according to the protocols in Amendment 3 for calculating an ACT and associated TALs based on the ABC recommendation. After the comment period on the proposed rule closed, but before this interim final rule was prepared, the Council's SSC reconvened in late March 2010 to consider newly available information regarding the status of the skate complex. As a result of this new information, the SSC revised its recommendation for the skate ABC for FY 2010 and 2011. At its April 28, 2010, meeting, the Council accepted the revised ABC and requested that NMFS incorporate this new scientific information into the implementation of Amendment 3. The final specifications implemented in this interim final rule are consistent with the new ABC recommendation, which is now considered to be the best scientific information available.

Providing an additional opportunity for public comment on the final specifications is unnecessary because the public was provided an opportunity to consider, and provide comments on, the changes to the specifications resulting from the revised ABC recommendation in advance of and

during a public meeting of the Council held on April 28, 2010, and NMFS has fully considered those comments in modifying the specifications in this interim final rule.

The April 28, 2010, Council meeting was open to the public, and prior notice of this meeting was announced in the **Federal Register** on April 8, 2010 (75 FR 17901). The meeting notice explained that the Council's SSC would provide its report to the Council on the revised ABC recommendation for skates, and that the Council would consider taking action and potentially revising management measures for the skate fishery. Members of the skate fishing industry and the general public attended the meeting, and several provided comments to the Council on the issue at hand (i.e., revising the FY 2010 and 2011 specifications to be consistent with the new ABC recommendation). At that meeting, following an open public discussion, the Council adopted a motion to incorporate the new ABC from the SSC into Amendment 3 and adjust the skate wing possession limit. The motion passed unanimously, with one abstention. Also, based on the comments received on the proposed rule, and the public review by the Council of the new ABC and its implications for the FY 2010 and 2011 specifications, there is widespread expectation in the skate fishing industry that the specifications will be revised as soon as possible to reflect the new ABC. Therefore, providing an additional opportunity for public comment on the final specifications is unnecessary.

Providing an additional opportunity for public comment on the final specifications is impracticable and contrary to the public interest for two reasons: (1) FY 2010 began on May 1, 2010, and until these final specifications are implemented, there is significant uncertainty and confusion within the fishing industry regarding the regulations to which the fishery is currently subject, and as to the regulations that will be implemented for the remainder of FY 2010; and (2) until these final specifications are implemented, the fishery is subject to the less restrictive measures in place prior to Amendment 3, which are inconsistent with the best available scientific information on the status of the skate resource and could result in disruptions to the fishing industry. Amendment 3 to the Skate FMP represents a significant change in the management regime for the skate fishery. For one, Amendment 3 establishes an ACL and AMs consistent with the reauthorized Magnuson-Stevens Act. As part of the ACL and AM management structure, specific TALs are derived and allocated separately to the skate wing and bait skate segments of the skate fishery. A possession limit is imposed for the first time on the bait skate fishery, which will now operate under three seasonal quotas, with the potential for the possession limit to be reduced if the seasonal quota trigger threshold is reached. Although the skate wing fishery has operated under a possession limit prior to Amendment 3, the amendment proposed a significant reduction in this limit (and although higher than initially proposed, these final specifications implement a possession limit that remains substantially below the pre-Amendment 3 limits), and the wing fishery now faces further restrictions in allowable landings if the TAL trigger threshold is reached too early in the FY. These new measures are necessary for the conservation and management of the skate resources, and are required under the reauthorized Magnuson-Stevens Act. However, until this interim final rule, including the revised final specifications, is implemented, the fishery remains free to operate under the less restrictive pre-Amendment 3 regulations.

Continued operation under the less restrictive pre-Amendment 3 regulations for the time it would take to proceed with an additional proposed rule and opportunity for public comment would significantly increase the risk of substantial disruptions to the skate fishery and the businesses that depend upon it, due to unexpected reductions in possession limits if TAL trigger thresholds are reached earlier than planned. This could also have the effect of limiting the availability of skate products on the market to the detriment not only of skate vessels and dealers, but also of the entire southern New England lobster fishery, which depends almost entirely on skates for use as bait. As noted above, the FY began on May 1, 2010, and the fishery is currently operating under the less restrictive pre-Amendment 3 regulations, which include unlimited possession by the bait fishery and much higher possession limits by the wing fishery than allowed under this rule. However, all landings by the bait and wing fisheries that occur between May 1, 2010, and the effective date of this interim final rule will be counted against the respective fishery TALs once the TALs are implemented. If landings during this interim period exceed those that would be expected under the Amendment 3 measures, then it is likely that the TAL trigger thresholds may be reached earlier in the FY than planned or expected. This could result in disruptions not just to the skate fisheries, which would be subject to earlier than expected reductions in allowable landings, but also to the lobster fishery and the businesses that depend upon it, due to an unexpected reduction in the supply of lobster bait (which is the primary use of bait skates). The lobster fishery, in particular, depends upon a steady, consistent supply of bait skates year round. The measures in Amendment 3, with the bait skate TAL allocated across three quota periods, in combination with a 20,000–lb (9,072–kg) per trip possession limit, were carefully crafted in consultation with the fishing industry to minimize such disruptions. Delaying implementation of the final specifications even longer than has already occurred, in order to solicit additional public comments, would only increase the likelihood of early reductions in allowable landings and disruptions in the fishery that are contrary to the public's interest.

NMFS could not have completed prior notice and comment rulemaking on the final specifications for FY 2010 and 2011 any earlier, because the Council's SSC did not meet until late March 2010 to consider the newly available information on the skate resources, and did not present a final recommendation on the revised ABC until the April 28, 2010, Council meeting. The Council, similarly, did not take a position on incorporating this new ABC into the Amendment 3 specifications process until April 28, 2010, nor did the Council evaluate the analyses completed by its PDT regarding the need to modify the skate wing fishery possession limit to be consistent with the revised specifications until this time. Immediately following the conclusion of the April 2010 Council meeting, and the decisions and recommendations by the Council and its SSC therein, NMFS undertook to revise this interim final rule implementing Amendment 3 to ensure it remains consistent with the best available scientific information and the intent of the Council.

Although prior notice and comment have been waived for the final FY 2010 and 2011 specifications implemented in this rule, NMFS is publishing this rule as an interim final rule and providing an opportunity for additional public comment to be submitted for 30 days following publication. NMFS will consider any comments submitted and may further revise the final specifications based on the comments received.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of Amendment 3. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA, RIR, and FEIS are available upon request (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this interim final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Eleven public comments were submitted on the proposed rule. Although none of these comments were specific to the IRFA, several commenters noted the negative economic effects of the proposed possession limit for the skate wing fishery in Amendment 3. NMFS has responded to these comments in the Comments and Responses section of this preamble. Several changes were made to the final specifications for FY 2010 and 2011 implemented in this interim final rule that are pertinent to some of the comments received. As described earlier in this preamble, the final specifications implemented in this action have been revised to be consistent with the most recent scientific information represented by the new ABC recommendation from the Council's SSC. Thus, consistent with several of the comments on the proposed rule, the final specifications for FY 2010 and 2011 are as follows: (1) An ABC and ACL = 41,080 mt; (2) an ACT = 30,810 mt; (3) a Federal waters TAL = 13,848 mt; (4) wing and bait TALs = 9,209 mt and 4,639 mt, respectively; and (5) a skate wing possession limit of 5,000 lb (2,268 kg) per day (wing weight).

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

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

The participants in the commercial skate fishery were defined using Northeast dealer reports to identify any vessel that reported having landed 1 lb (0.45 kg) or more of skates during calendar year 2007. These dealer reports identified 542 vessels that landed skates in states from Maine to North Carolina out of 2,685 vessels that held a Federal skate permit.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

All of the alternatives considered in this action were developed by the Council based on input from members of the skate fishing industry that serve on the Council's industry advisory panel. Other than the no action alternative, of all the alternatives developed by the Council and considered in Amendment 3, the set of management measures implemented in this interim final rule represent those with the least economic impact on small entities. Based on the best available scientific information on the status of the skate complex, in order to be consistent with the requirements and intent of the ACL provisions of the reauthorized Magnuson-Stevens Act, as well as the National Standard 1 guidelines, the overall catch (inclusive of landings and dead discards) of skates must be reduced up to 26 percent from recent catch levels. All of the alternatives considered in Amendment 3, with the exception of the no action alternative, were designed to achieve this reduction in catch, albeit in different ways. But, because all of the relevant alternatives are designed around a catch reduction, there are economic impacts associated with them that would be borne by the fishing industry. The only alternative considered in Amendment 3 that would not result in any direct economic impacts on the skate fishing industry was the no action alternative; however, this alternative could not be implemented because it is inconsistent with the requirements and intent of the Magnuson-Stevens Act.

Alternatives 1A, 1B, 2, and 4 proposed time and/or area closures for bottom-tending fishing gears in the Gulf of Maine and Southern New England as a method to reduce skate catch in the NE multispecies, monkfish, and scallop fisheries primarily. These closures, however, would have restricted vessels from harvesting their more valuable target species. One reason the preferred alternative was selected (a combination of Alternatives 3B and 4) was that it did not include any time/area closures, and minimized the impact of the Skate FMP on other fisheries that only incidentally catch skates. The preferred alternative puts more focus on reducing only skate landings, and therefore skate revenues, rather than potentially reducing landings and revenues from higher valued species across a broader spectrum of New England fisheries, which would have had a direct economic impact on far more small entities than the preferred alternative. Because skates are a comparatively low value species, the preferred alternative focuses the anticipated economic impacts to the skate fishery, rather than on the NE multispecies, monkfish, or scallop fisheries.

The preferred alternative also attempts to minimize economic impacts by using a target TAC approach rather than a hard TAC approach. Under the target TAC alternatives, landings of skates are never completely prohibited as the TAC is approached. Possession limits will be reduced, but as incidental catch of skates is unavoidable in many fisheries, those catches could be converted to landings rather than to discards. Under the hard TAC alternatives, when the TAC was harvested, all skate catch would have to be discarded.

Dividing the skate bait fishery TAL into three seasons, as described in Alternative 4, in combination with the 20,000–lb (9,072–kg) per trip bait skate possession limit, is anticipated to minimize economic impacts on the skate bait fishery. Due to the market dynamics in the skate bait fishery and the need to fill bait orders for the lobster fishery, a bait fishery closure too early in the year could result in economic hardship for skate bait fishermen as well as lobster fishermen. The three seasonal quotas are intended to help ensure that any skate bait fishery closures would be short term, and landings would be able to continue late in the FY, allowing for

a relatively constant supply of bait year round.

This interim final rule also implements revised final specifications for FY 2010 and 2011, consistent with the best scientific information available, as described above. These final specifications are substantially higher than the specifications described in the proposed rule and IRFA, and are expected to impose less significant costs to the fishing industry in the form of overall landings limits (TALs) 47 percent higher than initially proposed. Also, based in part on comments received on the proposed rule and relevant to the IRFA, this action increases the per-trip possession limit for the skate wing fishery from 1,900 lb (862 kg) to 5,000 lb (2,268 kg) wing weight. This measure will also minimize the economic impacts associated with this action on the participants of the wing fishery.

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. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Northeast skate fishery. In addition, copies of this interim final rule and guide (i.e., permit holder letter) are available from the Regional Administrator, NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 10, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.13, paragraph (h) is revised 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 not issued a Federal skate permit 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 valid letter of authorization issued by the Regional Administrator as specified under § 648.322(c); and

(ii) The transferring vessel and vessel owner or operator comply with the requirements specified at § 648.322(c).

* * * * *

■ 3. In § 648.14, paragraphs (v)(1)(ii), (v)(3)(i), and (v)(3)(ii)(A) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(v) * * *

(1) * * *

(ii) Onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of only whole skates as bait that are less than the maximum size specified at § 648.322(c).

* * * * *

(3) * * *

(i) *Skate wings.* Fail to comply with the conditions of the skate wing possession and landing limits specified at § 648.322(b), unless holding a valid letter of authorization to fish for and land skates as bait at § 648.322(c).

(ii) * * *

(A) Transfer at sea, or attempt to transfer at sea, to any vessel, any skates unless in compliance with the provisions of §§ 648.13(h) and 648.322(c).

* * * * *

■ 4. In § 648.80, paragraphs (b)(5)(i)(C)(*1*) and (*2*), and (b)(6)(i)(D)(*1*) and (*2*) are revised to read as follows:

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

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) * * *

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

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

* * * * *

(6) * * *

(i) * * *

(D) * * *

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

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

* * * * *

■ 5. Section 648.320 is revised to read as follows:

§ 648.320 Skate FMP review and monitoring.

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

(1) 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, fishery landings and discards; a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions; and a determination of whether any of the accountability measures specified under § 648.323 were triggered. The review shall also include an analysis of changes to other FMPs (e.g., Northeast Multispecies, Monkfish, Atlantic Scallops, etc.) that may impact skate stocks, and describe the anticipated impacts of those changes on the skate fishery.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the Skate PDT 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. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, 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 shall 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 shall take management action to ensure that stock rebuilding will achieve target levels.

(4) Based on the annual review described above and/or the Stock Assessment and Fishery Evaluation (SAFE) Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee, and any other relevant information, the Skate PDT shall recommend to the Skate Committee and Council the following annual specifications for harvest of skates: An annual catch limit (ACL) for the skate complex set less than or equal to ABC; an annual catch target (ACT) for the skate complex set less than or equal to 75 percent of the ACL; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each fishing year (May 1–April 30), specified for a period of up to 2 fishing years.

(5) *Recommended measures*. The Skate PDT shall also recommend management measures to the Skate Committee and Council to assure that the specifications are not exceeded. Recommended measures should include, but are not limited to:

(i) Possession limits in each fishery;

(ii) In-season possession limit triggers for the wing and/or bait fisheries; and

(iii) Required adjustments to in-season possession limit trigger percentages or the ACL-ACT buffer, based on the accountability measures specified at § 648.323.

(6) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the Scientific and Statistical Committee, and any other relevant information, the Skate PDT may also recommend to the Skate Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of the skate complex and its component species. These adjustments may be included in the Council's specifications for the skate fisheries.

(7) *Council recommendation*. The Council shall review the recommendations of the Skate PDT, Skate Committee, and Scientific and Statistical Committee, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures, consistent with the Administrative Procedure Act. The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws. If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *Biennial SAFE Report*—(1) The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report 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.

(2) In any year in which a SAFE Report is not completed by the Skate PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

■ 6. Section 648.321 is revised to read as follows:

§ 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 shall develop and analyze appropriate management actions within the scope of measures specified in paragraph (b) of this section. The Council shall 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 framework measures should be issued directly as a final rule, without opportunity for public notice and comment, 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) The Regional Administrator may publish the recommended framework measures 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 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 quotas for non-directed fisheries;

(9) Establishment of a mechanism for TAC set-asides to 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) OY and/or MSY specifications;

(19) Changes to the accountability measures described at § 648.323;

(20) Changes to TAL allocation proportions to the skate wing and bait fisheries;

(21) Changes to seasonal quotas in the skate bait or wing fisheries;

(22) Reduction of the baseline 25–percent ACL-ACT buffer to less than 25 percent; and

(23) Changes to catch monitoring procedures.

(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.

■ 7. Section 648.322 is revised to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

(a) *Allocation of TAL*. (1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market, or classified by Federal dealers as food as required under § 648.7(a)(1)(i), shall count against the skate wing fishery TAL.

(2) A total of 33.5 percent of the annual TAL shall be allocated to the skate bait fishery. All skate products that are landed for the skate bait market, or classified by Federal dealers as bait as required under § 648.7(a)(1)(i), shall count against the skate bait fishery TAL. The annual skate bait fishery TAL shall be allocated in three seasonal quota periods as follows:

(i) Season 1–May 1 through July 31, 30.8 percent of the annual skate bait fishery TAL shall be allocated;

(ii) Season 2–August 1 through October 31, 37.1 percent of the annual skate bait fishery TAL shall be allocated; and

(iii) Season 3–November 1 through April 30, the remainder of the annual skate bait fishery TAL not landed in Seasons 1 or 2 shall be allocated.

(b) *Skate wing possession and landing limits*. 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, or is also a limited access multispecies vessel participating in an approved sector described under § 648.87, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27– for example, 100 lb (45.4 kg) of skate wings X 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits*. When the Regional Administrator projects that 80 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS*. A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, and is not a limited access multispecies vessel participating in an approved sector described under § 648.87, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27), per trip.

(c) *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 for a minimum of 7 consecutive days, provided that when the vessel is fishing pursuant to the terms of authorization at least the following requirements and conditions are met:

(1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner or 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) The vessel owner or operator possesses or lands no more than 20,000 lb (9,072 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) may fish for, possess, or land skates for uses other than bait.

(6) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits*. When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 90 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate bait trip limit to the whole weight equivalent of the skate wing trip limit specified under paragraph (b) of this section for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *Prohibitions on possession of skates*. A vessel fishing in the EEZ portion of the Skate Management Unit may not:

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

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

■ 8. Section 648.323 is added to read as follows:

§ 648.323 Accountability measures.

(a) *TAL overages*. If the skate wing fishery TAL or skate bait fishery TAL is determined to have been exceeded by more than 5 percent in any given year based upon, but not limited to, available landings information, the Regional Administrator shall reduce the in-season possession limit trigger for that fishery, as specified at § 648.322(b) and (d), in the next fishing year by 1 percent for each 1 percent of TAL overage, consistent with the Administrative Procedure Act.

(b) *ACL overages*–(1) If the ACL is determined to have been exceeded in any given year, based upon, but not limited to, available landings and discard information, the percent buffer between ACL and ACT, initially specified at 25 percent, shall be increased by 1 percent for each 1–percent ACL overage in the second fishing year following the fishing year in which the ACL overage occurred, through either the specifications or framework adjustment process described under §§ 648.320 and 648.321.

(2) If the Council fails to initiate action to correct an ACL overage through the specifications or framework adjustment process, consistent with paragraph (b)(1) of this section, the Regional Administrator shall implement the required adjustment, as described under paragraph (b)(1) of this section, consistent with the Administrative Procedure Act.

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