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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180130101-8101-01]

RIN 0648-BH57

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes regulations to approve and implement measures submitted by the New England Fishery Management Council in Framework Adjustment 5 and 2018-2019 Specifications to the Northeast Skate Complex Fishery Management Plan. This action would implement 2018-2019 specifications, allow limited possession of barndoor skate in the skate wing fishery, and exempt vessels from some specific domestic skate regulations when fishing exclusively within the Northwest Atlantic Fisheries Organization Regulatory Area. The action is necessary to establish skate specifications to be consistent with the most recent scientific information, and improve management of the skate fisheries. This proposed action is intended to establish appropriate catch limits for the skate fishery and to provide additional operational flexibility to fishery participants.

DATES: Public comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0054, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0054, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: “Comments on Skate Framework Adjustment 5 and 2018-2019 Specifications.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 5 and 2018-2019 Specifications that describes the proposed action and other considered alternatives. The EA provides an analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives, a preliminary Regulatory Impact Review, and economic analysis. Copies of the

Framework 5 EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: *<http://www.nefmc.org> and [www.regulations.gov/#!docketDetail;D= NOAA-NMFS-2018-0054](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0054).*

FOR FURTHER INFORMATION CONTACT: Debra Lambert, Fishery Policy Analyst, (301) 427-8560.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Skate Complex Fishery Management Plan (FMP), developed by the New England Fishery Management Council and implemented in 2003, manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and mid-Atlantic coasts. Skates are harvested and managed in two different fisheries: One for food (the wing fishery) and one for lobster bait (the bait fishery). Additional information on the skate fisheries can be found online at *<https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/skate/index.html>.*

The regulations implementing the Skate FMP at 50 CFR part 648, subpart O, outline the management procedures and measures for the skate fisheries. Specifications including the annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL) for the skate wing and bait fisheries, and possession limits may be specified for up to 2 years. The current specifications were implemented as part of Framework Adjustment 3 to the FMP and the 2016-2017 Specifications (81 FR 54744; August 17, 2016). The Council is required to develop new specification recommendations for the 2018 and 2019 fishing years. Though the 2018 fishing year began on May 1, 2018, the existing specifications and possession limits remain in

effect until they are replaced. In addition to recommending specifications, the Council has recommended to allow limited possession of barndoor skate given that the stock is now rebuilt, and to exempt vessels from domestic skate regulations when fishing exclusively within the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area, except for the prohibition on possessing, retaining, or landing prohibited species.

Proposed Specifications

In August 2017, the Council's Scientific and Statistical Committee reviewed updated information on the status of the 7 skate species and recommended an acceptable biological catch (ABC) of 31,327 mt for fishing years 2018 and 2019 (a slight increase from 31,081 mt in 2017). This ABC incorporates updated data from NMFS' trawl surveys and the new discard mortality estimate for winter skate in the sink gillnet fishery (14 percent, instead of the previously-assumed 50 percent). The ABC is based on the current default ABC control rule established in Amendment 3. The control rule uses the median catch/biomass ratio as an estimate of exploitation rate applied to the three-year moving average biomass index. For these specifications of ABC, that includes using the 2015-2017 spring survey data for little skate and the 2014-2016 fall survey data for the other managed skates.

Both the Skate Advisory Panel and the Skate Committee met in September 2017 to discuss the skate specifications, following procedures in Amendment 3 to the FMP. The ACL for the skate complex is set equal to the ABC, and the ACT is specified at 75 percent of the ACL to account for scientific and management uncertainty. After deducting amounts for projected dead discards and state landings, the remaining catch is allocated as the wing and bait fisheries TALs. The Advisory Panel and Committee recommended specification measures to the Council

who, in turn, has made recommendations to NMFS. NMFS is proposing the following specifications for the skate fisheries in 2018-2019 as recommended by the Council:

1. An ABC and ACL of 31,327 mt;
2. An ACT at 23,495 mt (75 percent of the ACL);
3. A TAL of 8,749 mt for the wing fishery, that is divided into two seasons according to the current regulations at § 648.322. In Season 1 (May 1–August 31), the TAL will be 4,987 mt (57 percent), and the remainder of the TAL allocated to Season 2 (September 1–April 30);
4. Status quo possession limits for the wing fishery, as defined in § 648.322(b): 2,600 lb (1,179 kg) of skate wings per trip in Season 1, and 4,100 lb (1,860 kg) of wings per trip in Season 2 for vessels fishing on a Northeast multispecies, monkfish, or scallop day-at-sea (DAS). The Northeast Multispecies Category-B DAS possession limit remains at 220 lb (100 kg) skate wings per trip, and incidental possession limit for vessels not on a DAS remains at 500 lb (227 kg) wings per trip;
5. A TAL of 4,408 mt for the bait fishery, that is divided into three seasons according to the current regulations at § 648.322. In Season 1 (May 1–July 31), the TAL will be 1,358 mt (30.8 percent); in Season 2 (August 1–October 31) the TAL will be 1,635 mt (37.1 percent); and the remainder of the TAL (1,415 mt) is allocated to Season 3 (November 1–April 30); and
6. Status quo possession limits for the bait fishery, as defined in § 648.322(c): The possession limit is 25,000 lb (11,340 kg) of whole skates per trip in Seasons 1 and 2, and 12,000 lb (5,443 kg) of whole skates per trip in Season 3, for vessels carrying a Skate Bait Letter of Authorization.

Proposed Measures to Allow Possession of Barndoor Skates

Possession and landing of barndoor skate has been prohibited since 2003, when the Northeast Skate Complex FMP was first implemented, as part of efforts to rebuild the stock. In response to NMFS' declaring the stock rebuilt in 2016, the Committee and Advisory Panel discussed options for allowing limited barndoor skate landings for vessels fishing for skate. The Council ultimately recommended allowing limited retention of barndoor skate in the wing fishery.

NMFS is proposing to establish the Council's recommended proportional possession limit that corresponds to the barndoor skate contribution (25 percent) of overall skate catch based on observer data. To derive the proportional barndoor skate limit, the Council examined data from all observed trips that landed skate wings from 2012 to 2016. For vessels fishing under a Northeast multispecies, scallop, or monkfish DAS, this would result in a barndoor skate possession limit of 650 lb (295 kg) wings in Season 1 and 1,025 lb (465 kg) wings in Season 2. The possession limits for barndoor skate wings are included within the overall wing possession limit (i.e., total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 2,600 lb (1,179 kg) in Season 1 and 4,100 lb (1,860 kg) in Season 2). NMFS notes that the full barndoor wing possession limit may be realized, even if the full wing possession limit is not realized. For example, a vessel may possess 650 lb (295 kg) of barndoor skate wings in season 1, even if the vessel does not reach its full 2,600 lb (1,179 kg) possession limit.

Framework 5 did not directly specify the barndoor possession limit when an inseason adjustment of the skate wing possession limit for the directed wing fishery is needed and the wing possession limit is reduced to 500 lb (227 kg); see current 50 CFR 648.322(b)(2). The inseason adjustment of the possession limit is used to prevent the directed wing fishery from

exceeding seasonal quotas. To ensure the fishery operates consistently when an inseason adjustment is necessary, NMFS applied the same proportionality used to derive the barndoor possession limit under the full skate wing possession limit for directed skate wing fisheries (i.e., 25 percent of the wing possession limit) to specify the incidental barndoor skate wing possession limit. NMFS is proposing that when an incidental possession limit (500 lb (227 kg) of skate wings) is implemented, the possession limit for barndoor skate wings will be 125 lb (57 kg) (see proposed regulatory text at § 648.322(b)(3), below).

Framework 5 did not propose, discuss, or analyze options for allowing barndoor possession for vessels operating under other possession limits for skates, including: Vessels fishing for bait skate under a bait letter of authorization (§ 648.322(c)); vessels fishing under a Northeast multispecies Category B DAS (§ 648.322(b)); vessels fishing under the incidental skate possession limit for vessels not under a DAS (§ 648.322(b)); or when fishing in a Northeast multispecies DAS exemption program area that allows possession and landing of skate or skate parts (as specified in § 648.80(b)(3)(ii)) without a Northeast multispecies or monkfish DAS. Because barndoor possession under these scenarios was not explicitly proposed, considered, or analyzed, NMFS is not proposing to allow vessels operating under the above mentioned scenarios to possess barndoor skates. NMFS seeks comments and input on the proposal to not allow barndoor skate possession and landing by these incidental fisheries that do not operate under the “directed” fishery landing provisions.

Framework 5 also proposes that the body of any skate species already “winged” may not be discarded in order to land barndoor skates (i.e., no high-grading). NMFS considers that the intent of this provision is to prevent high-grading by prohibiting the discarding of skate wings, as opposed to skate bodies, in order to land barndoor skate. The current regulations at §

648.322(b)(4) allow skate bodies to be discarded at sea. NMFS agrees that high-grading is a wasteful practice and should be discouraged; however, it will be difficult to determine if a vessel discarded skate wings of one species at sea with the intention of landing barndoor skate wings. Therefore, we propose prohibiting the discarding of any skate wings when barndoor is in possession. NMFS expects this measure to capture the intent of the no high-grading provision within Framework 5 and seeks comments on this measure.

Lastly, NMFS is proposing that barndoor skate wings and carcasses on board a vessel that is subject to barndoor possession limits must be separated from other species of fish and stored so as to be readily available for inspection. This provision was not part of Skate Framework 5, but NMFS determined it is necessary to aid in the enforcement of barndoor possession limits. This provision is being proposed under the authority of section 305(d) of the Magnuson-Stevens Act. Similar separation provisions exist in other fisheries; for example, scallop dredge vessels that are permitted to possess a limited amount of haddock must separate the haddock from other species on board (see § 648.86(a)(2)(iii)). We are seeking comments on this provision and input as to whether this provision will aid in compliance and enforcement and if it will be logistically challenging for vessels to keep barndoor skate separate from other species on board.

Northwest Atlantic Fisheries Organization Regulatory Area Exemption Program

At their September 2017 meeting, the Council agreed to add the NAFO Regulatory Area exemption program into Framework 5 in response to public comment. The Council took final action to approve the NAFO exemption at their December 2017 meeting. Framework 5 proposes to exempt vessels from domestic skate regulations when fishing exclusively within the NAFO Regulatory Area, except for the prohibition on possessing, retaining, or landing prohibited

species. U.S. vessels fishing in the NAFO Regulatory Area are currently exempt from domestic Northeast multispecies and monkfish permit, mesh size, effort-control, and possession limit restrictions (see § 648.17). U.S. vessels in the NAFO area are largely targeting yellowtail flounder and Atlantic halibut, and exempting these vessels from domestic skate regulations would provide them additional flexibility to retain and land skates in the United States. NAFO specifies an annual quota for skates (in 2018 the quota is 258 mt), and that quota is not allocated to particular countries; access to skates is on a first come, first served basis. The NAFO-specified incidental possession limit for skates is 2,500 kg or 10 percent of the total catch retained; when the skate quota has been reached, the incidental possession limit drops to 1,250 kg or 5 percent of total catch retained.

NMFS is proposing that vessels fishing under a High Seas Permit within the NAFO Regulatory Area are exempt from domestic skate permit and possession limit restrictions. However, vessels will not be exempt from the prohibition on possessing, retaining, or landing prohibited skate species specified in §§ 648.14(v) and 648.322(g). Barndoor skate is currently a prohibited species but, as described above, NMFS is proposing through this action to allow a limited amount of barndoor skate possession within the directed wing fishery. Therefore, we are proposing that U.S. vessels fishing in the NAFO Regulatory Area be allowed to possess barndoor skate consistent with the NAFO-established incidental possession limits, but are not exempt from the prohibition on possessing, retaining, or landing other prohibited skate species (i.e., thorny skate and smooth skates) specified in §§ 648.14(v) and 648.322(g). Further, the skate catch from the NAFO Regulatory Area would not count against domestic skate TALs. To be eligible for this proposed exemption, vessels would be required to: Have on board a letter of authorization (LOA) issued by the Regional Administrator; except for transiting purposes, fish exclusively in

the NAFO Regulated Area and not harvest fish in, or possess fish harvested from, the exclusive economic zone (EEZ); ensure all gear is properly stowed and not available for immediate use when transiting the EEZ; and comply with all High Seas Fishing Compliance Permit and NAFO Conservation and Enforcement Measures while fishing in the NAFO Regulated Area (§ 648.17(b)).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the FMP, Framework 5, provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of this action was previously outlined in the preamble to this proposed rule and is not repeated here. As proposed, the TALs for the wing fishery and bait fishery would increase slightly. This action, if implemented, would provide additional flexibility and opportunities in the fishery by slightly increasing TALs, allowing limited landings of barndoor skate under certain specific circumstances, and by allowing vessels fishing exclusively within the NAFO Regulatory Area the opportunity to retain and land skate in the United States.

The action would impact vessels or affiliated groups that hold Federal skate permits and

participate in skate fisheries, and vessels that fish in the NAFO Regulatory Area. The Council's analysis of 2015 data indicates that the skate fishery had 329 affiliated groups with single permits, and another 89 vessels belonged to affiliated groups that hold 2 or more permits. Because only two vessels participated in the NAFO Regulated Area recently, a quantitative analysis cannot be reported for those vessels because of confidentiality requirements. In addition, because possession of barndoor skates has been prohibited since 2003, the number of vessels that would land barndoor skate and the amount of landings is unknown and cannot be quantitatively analyzed. It is difficult to quantitatively analyze the economic impacts of increasing TALs, as economic impacts would have to be compared against 2015 fishing year data (the last year in which the incidental possession limit was not imposed) when TALs were higher than 2016 and 2017 levels, and proposed 2018 levels. Therefore, a qualitative analysis is described below.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see § 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11.0 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on a 3-year average of annual revenue.

Affiliate data are assembled by NMFS, as of June 1st each year, for analysis required by the RFA. During fishing year 2015, 371 regulated entities landed skates; 369 entities were small and 2 were large. All 371 entities could be directly regulated by this proposed action.

This action, which proposes to slightly increase TALs relative to the 2017 fishing year, allows landing of barndoor skate in the directed skate wing fishery, and allows vessels fishing exclusively within the NAFO Regulatory Area the opportunity to retain and land skate in the United States, would result in increased economic opportunity to regulated entities by providing fishermen with additional fishing opportunities and enhance their operational flexibility. This action is not expected to have a significant economic impact on a substantial number of small entities. The effects on the regulated small entities in this analysis are expected to be positive relative to the no action alternative. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce profits for any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This rulemaking would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 28, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, revise paragraphs (v)(2) and (v)(4) to read as follows:

§ 648.14 Prohibitions.

(v) ***

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

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

(ii) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in § 648.322(c); when fishing under a NE multispecies Category B DAS as described under § 648.322(b); when fishing under the incidental skate possession limit for vessels not under a DAS as described in § 648.322(b)(4); or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

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

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

(4) *Presumption.* For purposes of this part, the following presumption applies: All skates

retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion (such as fishing within the NAFO Regulatory Area under § 648.17(a)(3)) of the skate management unit or only in state waters.

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

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

(a) ***

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

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

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

(b) ***

(3) ***

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in §648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

5. In § 648.322, revise paragraphs (b) and (g) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

(b) *Skate wing possession and landing limits.* (1) *Vessels fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS.* (i) A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows: Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip in Season 1 (May 1 through August 31), and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip in Season 2 (September 1 through April 30), or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section.

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

(2) *NE multispecies Category B DAS.* A vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), is limited to no more than 220 lb (100 kg) of skate

wings (500 lb (227 kg) whole weight) per trip, or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g)).

(3) *In-season adjustment of skate wing possession limits.* The Regional Administrator has the authority, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, to reduce the skate wing possession limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section) for the remainder of the applicable quota season. When the incidental possession limit is implemented, a vessel is allowed to possess and land up to 125 lb (57 kg) of barndoor skate wings (284 lb (129 kg) whole weight) per trip. The possession limits for barndoor skate wings are included within the overall possession limit (i.e., total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 500 lb). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The in-season adjustment of skate wing possession limits will be implemented under the following circumstances:

(i) When 85 percent of the Season 1 skate wing quota is projected to be landed between May 1 and August 17, the Regional Administrator shall reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(ii) When 85 percent of the Season 1 skate wing quota is projected to be landed between August 18 and August 31, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(iii) When 85 percent of the annual skate wing fishery TAL is projected to be landed in Season 2, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in this paragraph, unless such a reduction would be expected to prevent attainment of the annual TAL.

(4) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at §§ 648.53, 648.82, or 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g)).

(5) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at § 648.322(c), a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb

(103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

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

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

(2) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in § 648.322(c); when fishing under a NE multispecies Category B DAS as described under § 648.322(b); when fishing under the incidental skate possession limit for vessels not under a DAS as described in § 648.322(b)(4); or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

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

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

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