

Comments and Responses

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

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

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

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

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

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

sufficient to protect and rebuild skate species.

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

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

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

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

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

Changes From the Proposed Rule

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

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

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

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

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

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