

Northeast Skate Complex

Fishery Management Plan

2022 – 2023 Specifications

Including a Supplemental Information Report, Regulatory Impact Review and
Initial Regulatory Flexibility Analysis



DRAFT
for September 2021
Skate Advisory Panel, Skate Committee, and Council meetings

Prepared by the
New England Fishery Management Council
In consultation with the
National Marine Fisheries Service



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**2022-2023 SPECIFICATIONS FOR THE NORTHEAST SKATE COMPLEX
FISHERY MANAGEMENT PLAN**

Proposed Action: Propose skate specifications for fishing years 2022 and 2023

Responsible Agencies: New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950

National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Washington, D.C. 20235

For Further Information: Thomas A. Nies, Executive Director
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, Massachusetts 01950
Phone: (978) 465-0492
Fax: (978) 465-3116

Abstract: The New England Fishery Management Council, in consultation with NOAA's National Marine Fisheries Service, has prepared specifications for the Northeast Skate Complex Fishery Management Plan for fishing years 2022-2023. It addresses the requirements of the National Environmental Policy Act, the Magnuson Stevens Fishery Conservation and Management Act, the Regulatory Flexibility Act, and other applicable laws.

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1.3 ACRONYMS

ABC	Acceptable biological catch	MPA	Marine protected area
ACL	Annual catch limit	MRIP	Marine Recreational Information Program
AM	Accountability measure	MSA	Magnuson-Stevens Fishery Conservation and Management Act
AP	Advisory Panel	MSY	Maximum sustainable yield
APA	Administrative Procedures Act	NEFMC	New England Fishery Management Council
B _{MSY}	Biomass that would allow for catches equal to MSY when fished at the overfishing threshold (F _{MSY})	NEFOP	Northeast Fisheries Observer Program
BiOp	Biological Opinion, a result of a review of potential effects of a fishery on protected resource species	NEFSC	Northeast Fisheries Science Center
CEQ	Council on Environmental Quality	NEPA	National Environmental Policy Act
EA	Environmental assessment	NMFS	National Marine Fisheries Service
EFH	Essential fish habitat	NOAA	National Oceanic and Atmospheric Administration
EO	Executive order	OFL	Overfishing limit
ESA	Endangered Species Act	PDT	Plan Development Team
FEIS	Final environmental impact statement	PRA	Paperwork Reduction Act
FMP	Fishery management plan	RFA	Regulatory Flexibility Act
FW	Framework	SSC	Scientific and Statistical Committee
FY	Fishing year	TAL	Total allowable landings
GARFO	Greater Atlantic Regional Fisheries Office	VEC	Valued ecosystem component
IFM	Industry-funded monitoring	VTR	Vessel trip report
MMPA	Marine Mammal Protection Act		

2.0 PURPOSE OF THIS SUPPLEMENTAL INFORMATION REPORT

The purpose of this Supplemental Information Report (SIR) is to determine if the proposed FY 2022-2023 skate specifications will require a supplement to the Environmental Assessment that was prepared for Framework Adjustment 8 to Northeast Skate Complex Fishery Management Plan (FMP; NEFMC 2020b), as required by the National Environmental Policy Act (NEPA).

In making a determination on the need for additional analysis under the National Environmental Policy Act (NEPA), we have considered and have been guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The CEQ's regulations state that "[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 Code of Federal Regulations (C.F.R.) § 1502.9(d)(1). Consistent with 40 C.F.R. 1502.9(d)(4) and 1501.3(b) we have determined that any changes to the proposed action or new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement.

This document describes the proposed action and compares it to the alternatives and analyses presented in the Framework Adjustment 8 EA. It then considers whether there are any significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts. For the consideration of new circumstances and information, the following have been consulted: the Council's Skate Plan Development Team (PDT), Skate Committee and Advisory Panel, the Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources and Sustainable Fisheries divisions, GARFO Environmental Analyses and NEPA Program, and Council habitat staff.

3.0 PROPOSED ACTION

The proposed action would set the skate specifications for FY 2022-2023 according to the ABC control rule and the specifications setting formula (Figure 1) established through Amendment 3 (NEFMC 2009) but with updated data.

The Council is proposing an ABC/ACL of 37,236 mt (Table 1). The Federal TAL would be 21,142 mt, the wing TAL would be 14,059 mt, and the bait TAL would be 7,082 mt. These specifications were derived from the median catch/biomass exploitation ratio for the NMFS bottom trawl time series up to 2016 and the three-year average stratified mean biomass for skates; using the 2017-2019 spring NEFSC survey data for little skate; the 2018-2019 fall survey data for rosette and clearnose skate; and 2017-2019 fall survey data for barndoor, thorny, smooth, and winter skate (modifications due to some missed fall survey stations in 2017 and 2018). Deductions for expected dead discards and state landings would be 11,856 and 515 mt, respectively (35% and 1.5% of the ACT). These specifications would be a 14% increase over the ABC for FY 2020-2021, largely because of recent increases in the trawl survey biomass for skates.

Table 1. Specifications for FY 2020-2021 (Framework 8) and FY 2022-2023 (proposed action).

		FY 2020-2021 (Implemented through Framework 8)		FY 2022-2023 (Proposed through current action)	
		(mt)	(lb)	(mt)	(lb)
ABC = ACL	live weight	32,715	72,124,143	37,236	82,091,230
ACT (90% of ACL)	live weight	29,444	64,912,831	33,513	73,883,430
Expected Dead Discards (recent 3-year average)	live weight	10,942	24,122,952	11,856	26,137,975
Expected State Landings (recent 3-year average)	live weight	638	1,406,548	515	1,135,379
Federal TAL (ACT – dead discards – state landings)	live weight	17,864	39,383,332	21,142	46,610,076
Wing TAL (66.5% of TAL)	live weight	11,879	26,188,681	14,059	30,994,753
	wing weight	5,233	11,536,864	6,193	13,654,076
Bait TAL (33.5% of TAL)	live weight	5,984	13,192,446	7,082	15,613,119
<i>Note: All values in whole weight.</i>					

4.0 BACKGROUND

The Northeast Skate Complex Fishery Management Plan (Skate FMP) specifies the management measures for seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and Mid-Atlantic coasts. The New England Fishery Management Council (Council) sets specifications every two years for the skate complex, which can include possession limits for the skate wing and bait fisheries. These fisheries have different seasonal management structures and are subject to effort controls and accountability measures (AM).

Principally due to problems with species identification in commercial catches, the Original Skate FMP (implemented in 2003) did not derive or propose an absolute Maximum Sustainable Yield (MSY) estimate for skate species or for the skate complex. Catch histories for individual species were unreliable and probably underreported. Furthermore, the population dynamics of skates was largely unknown, so measures of carrying capacity or productivity were not available on which to base estimates of MSY. Likewise, an OFL is undetermined in the Skate FMP. In their February 11, 2009, report, the SSC recommended that an OFL “cannot be determined, because overfishing reference points are survey proxies, and estimates of fishing mortality or fishing mortality reference points are not available.” These issues are largely why skate specifications apply to the entire complex and are not set for individual species.

Indices of relative abundance (stratified mean weight/tow) have been developed from Northeast Fisheries Science Center’s (NEFSC) bottom trawl surveys for the seven species in the skate complex. These indices and their rates of change form the basis for all the conclusions about the status of the complex. The spring NEFSC survey data is used for little skate and the fall NEFSC survey data is used for the other managed skate species, due to survey catchability.

For all skate species except barndoor, $B_{MSY_{proxy}} = B_{target}$ = the 75th percentile of its survey biomass index. For barndoor skate, $B_{MSY_{proxy}} = B_{target}$ = the average of its survey biomass index. The survey biomass index is measured in kg/tow during a specific set of years for each species (Affected Environment, Table 8).

The skate complex MSY_{proxy} is calculated by first calculating the MSY_{proxy} for each species, which is the median of catch/biomass over the entire time series multiplied by the $B_{MSY_{proxy}}$. Here, “catch” is total landings from dealer data, vessel to vessel transfers from VTR data and dead discards (kg), and “biomass” is the survey biomass index (kg/tow). The MSY_{proxy} for each species is then summed over all seven skate species to calculate the skate complex MSY_{proxy} .

In 2019, for the FY 2020-2021 specifications setting (Framework 8), the MSY_{proxy} was unchanged from the level set in 2017 for the FY 2018-2019 specifications. For both, the catch/biomass indices were calculated using the time series of data through 2016. This resulted in a MSY_{proxy} of 36,794 mt and was a slight decrease relative to MSY_{proxy} was calculated in 2015 for the FY 2016 – 2017, 36,806 mt, due to an update in discard mortality rate assumptions that changed data in the time series. For the FY 2022-2023, the MSY_{proxy} of 36,794 mt is continuing to be used. Rationale includes:

- Only data through 2019 is being used for these specifications due to survey disruptions in 2020.
- Adding three more years of data (2017-2019) to a 50+ year time series for most species (44 for clearnose, 37 for little) is unlikely to substantially change the MSY_{proxy} .
- The approach to calculating MSY will be one of many topics reviewed during the next stock assessment scheduled for 2023, the outcomes of which will inform the development of the FY 2024-2025 specifications.

Acceptable Biological Catch (ABC). The ABC control rule for the Northeast Skate Complex, established through Amendment 3 is:

The skate ABC is the median ratio of catch/biomass of each of the seven skate species multiplied by its three-year moving average stratified mean biomass (weight/tow) for skates, summed over the seven skate species in the management unit. This method is considered an interim proxy for an ABC until an OFL and its uncertainty can be quantified.

More simply, the long-term median catch of each species (landings plus discards) is adjusted by its ratio of short-term over long-term trawl survey biomass (kg/tow). The results are then summed for a complex-wide ABC.

In 2019, for the FY 2020-2021 specifications setting (Framework 8), gaps in survey coverage precluded the exact application of this control rule. Ideally, spring survey data for 2017-2019 would have been used for little skate and fall 2016-2018 data would have been used for all other species. In the 2017 fall survey, southern stations were missed, resulting in no survey indices for rosette and clearnose skate that year, and a two-year average (2016 and 2018) was used instead. To a lesser degree, the missed stations in 2017 also impacted the time series for barndoor, thorny, smooth, and winter skate species, and there were missed stations in the 2018 fall survey that impacted the time series for these species as well. For these species, a three-year average (2016-2018) was used, but the surveys were adjusted to account for the missing strata, using an average of the ratio between the series with all strata and the series with the missing strata dropped. This was consistent with how missing data in the 2017 fall survey were handled for these species in the 2018 stock status update.

For the FY 2022-2023 specifications, if following the control rule exactly, spring survey data for 2019-2021 would be used for little skate and fall 2018-2020 data would be used for all other species. However, due to missed surveys in 2020, the NEFSC has determined that only survey data through 2019 may be used. Also, the missed stations in the fall 2018 survey would still be impacting the

calculations. Due to these factors, an adjustment to the control rule was developed for this action (Section 3.0).

Annual Catch Limit (ACL). The skate ACL is equal to the ABC. The ACL is a limit that will trigger accountability measures if catch exceeds this amount.

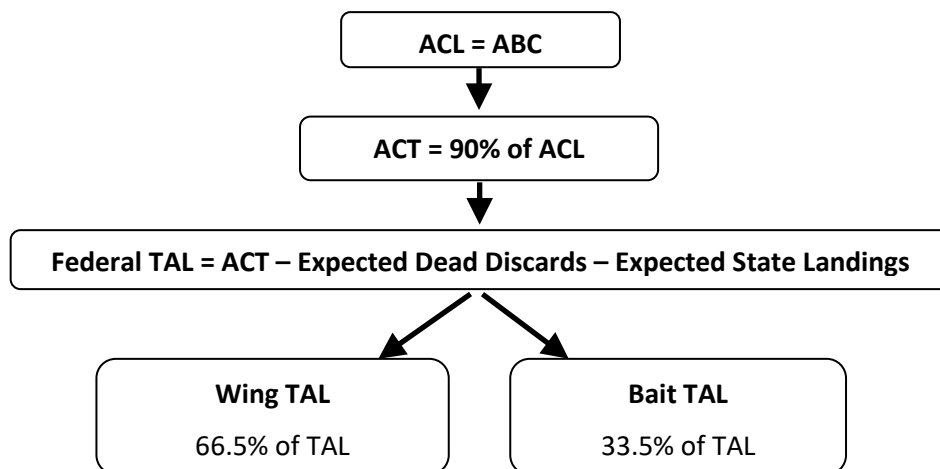
Annual Catch Target (ACT). The skate ACT is 90% of the ACL. There is a 10% uncertainty buffer between the ACL and ACT to account for scientific and management uncertainty (NEFMC 2018b). This buffer is further explained in Section 1.2.4 (in Affected Environment document).

Total Allowable Landings (TAL). The skate TALs is set by subtracting expected dead discards and expected state landings from the ACT. These values are calculated as follows:

- Expected dead discards are calculated by applying the weighted discard mortality rate to the average discards from the most recent three years (using observer and ASM data).
- Expected state landings is equal to the average of the most recent three years of landings by vessels that have never had a federal fishing permit (permit # = 0) from data reported to the federal database. The landings from these vessels are the “state-permitted only vessel landings” in the year-end ACL accounting (Table 14 in Affected Environment document).

Wing and Bait TALs. The Wing and Bait TALs are set at 66.5% and 33.5% of the TAL, respectively.

Figure 1. Formula for skate specifications setting used since Amendment 3.



5.0 NEW INFORMATION AND CIRCUMSTANCES

While this action considers the new information and some additional years of data, included in this section, since the Framework 8 EA, overall, the new information and circumstances represent minor changes to the skate resource and fishery. The fishery generally remains stable and like the conditions evaluated in Framework 8.

5.1 TARGET SPECIES

5.1.1 Stock Status

Indices of relative abundance (stratified mean weight/tow) have been developed from Northeast Fisheries Science Center's (NEFSC) bottom trawl surveys for the seven species in the skate complex. These indices and their rates of change form the basis for all the conclusions about the status of the complex. The spring NEFSC survey data is used for little skate and the fall NEFSC survey data is used for the other managed skate species, due to survey catchability.

In early 2021, the NEFSC determined that only survey data through 2019 will be used for specifications set in 2021 due to survey disruptions in 2020. NEFSC trawl survey indices for 2020 are not available given the lack of surveys that year, so the latest survey data available was from 2019 (Table 1). Thus, the survey indices and stock status determinations for the skate species remain as reported in the 2020 Annual Monitoring Report, based on the updated survey data through fall 2019 (Table 2, Figure 1). For each of the seven skate species, the 2017-2019 moving average of the survey index (used in this action) increased relative to 2016-2018 (used in the Framework 8 EA).

One skate species is overfished (thorny) and has a rebuilding plan, which is to prohibit possession of thorny skate throughout the management unit. Also, if the 3-year moving average of the thorny skate survey mean weight per tow declines below the average for the previous three years, then the Council must take management action to ensure that stock rebuilding will achieve target levels. As of the 2020 Annual Monitoring Report, 17 years into the rebuilding period, the survey biomass had continued to be low overall for thorny skate with no significant signs of rebuilding. The stock had a small uptick in biomass index from 0.14 in FY 2018 to 0.18 in FY 2019, but this is just 4% of $B_{MSYproxy}$. The Skate Affected Environment document provides more information on the rebuilding plan (Section 1.2.3).

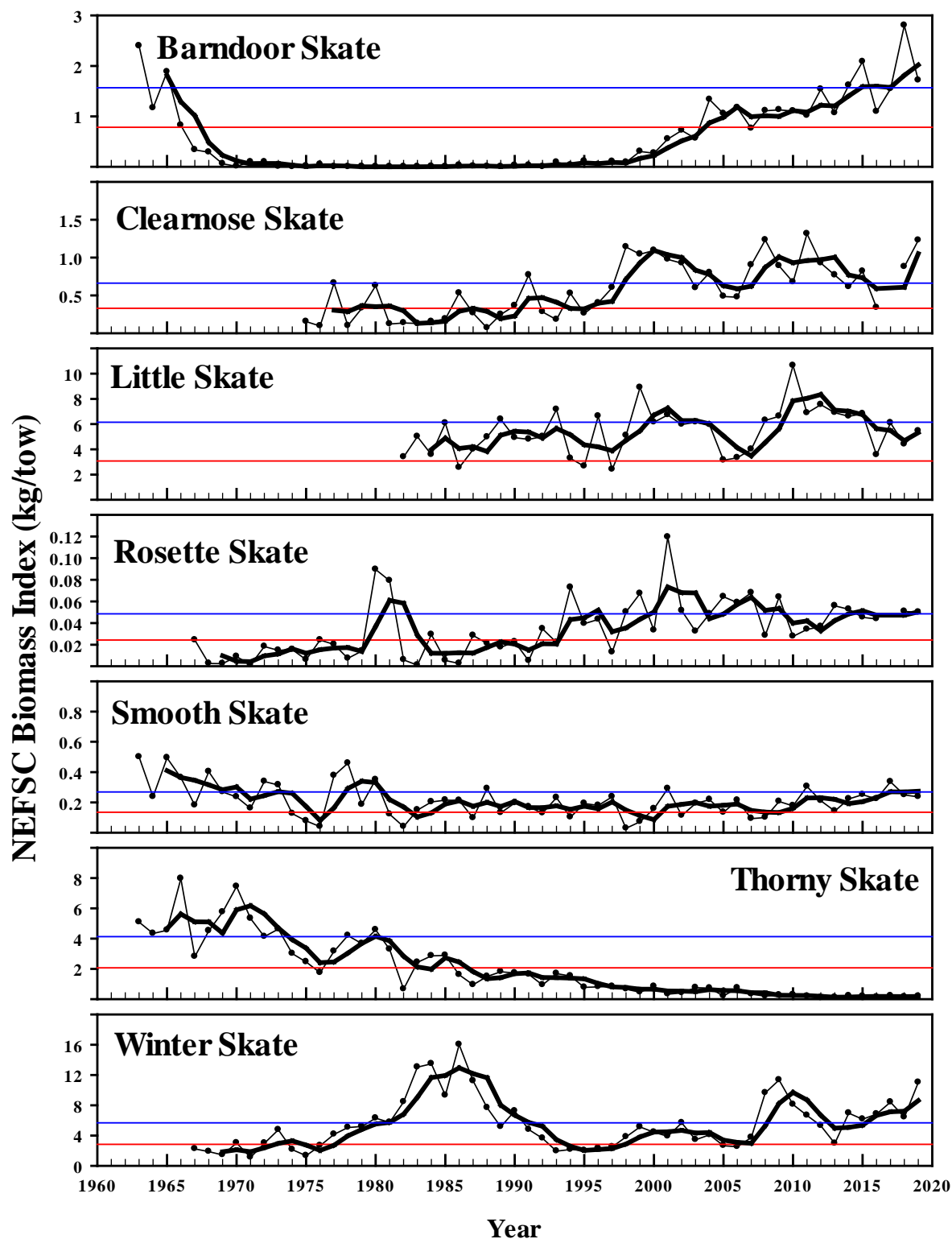
Overfishing is not occurring for any of the seven skate species. Little skate and winter skate continue to dominate the survey biomass.

Table 2. Recent survey indices, survey strata used, and biomass reference points of skate species.

	BARNDOR	CLEARNOSE	LITTLE	ROSETTE	SMOOTH	THORNY	WINTER
Annual survey	Autumn	Autumn	Spring	Autumn	Autumn	Autumn	Autumn
Time Series Basis	1963-1966	1975-2007	1982-2008	1967-2007	1963-2007	1963-2007	1967-2007
Strata Set	Offshore 1-30, 34-40	Offshore 61-76, Inshore 17,20,23,26,29, 32,35,38,41,44	Offshore 1-30, 34-40, 61-76, Inshore 2,5,8,11,14,17,20,23,2 6,29,32,35,38,41,44- 46,56,59-61,64-66	Offshore 61-76	Offshore 1-30, 34-40	Offshore 1-30, 34-40	Offshore 1-30, 34-40, 61-76
Biomass Target	1.57	0.66	6.15	0.048	0.27	4.13	5.66
Biomass Threshold	0.78	0.33	3.07	0.024	0.13	2.06	2.83
Survey Indices (kg/tow)							
2012	1.54	0.93	7.54	0.040	0.21	0.08	5.29
2013	1.07	0.77	6.90	0.056	0.14	0.11	2.95
2014	1.62	0.61	6.54 ^a	0.053	0.22	0.21	6.95
2015	2.08	0.82	6.82	0.045	0.25	0.19	6.15
2016	1.09	0.34	3.56 ^b	0.044	0.27	0.13	6.84
2017	1.54 ^c	c	6.09	c	0.34 ^c	0.21 ^c	8.40 ^c
2018	2.80 ^e	0.88	4.41	0.051	0.25 ^e	0.14 ^e	6.41 ^e
2019	1.71	1.23	5.45	0.050	0.24	0.18	11.00
OVERFISHED METRIC (If 3-year moving average of survey biomass index < B _{threshold} then overfished)							
2012-2014 3-year average	1.41	0.77	6.99 ^a	0.048	0.19	0.13	5.06
2013-2015 3-year average	1.59	0.73	6.75 ^a	0.051	0.21	0.17	5.35
2014-2016 3-year average	1.60	0.59	5.64 ^{a,b}	0.047	0.23	0.176	6.65
2015-2017 3-year average	1.57 ^c	c	5.49 ^b	c	0.27 ^c	0.18 ^c	7.13 ^c
2016-2018 3-year average	1.81 ^{c,e}	0.61 ^d	4.69 ^b	0.047 ^d	0.27 ^{c,e}	0.16 ^{c,e}	7.22 ^{c,e}
2017-2019 3-year average	2.02 ^{c,e}	1.05 ^d	5.32	0.050 ^d	0.27 ^{c,e}	0.18 ^{c,e}	8.61 ^{c,e}
OVERFISHING METRIC (If % change in 3-year moving average of survey biomass index > average coefficient of variation (CV) of the survey time series then overfishing is occurring.)							
% change 2013- 2015 vs. 2012-2014	+12.9	-4.8	-3.4	+6.0	+6.8	+26.3	+5.7
% change 2014- 2016 vs. to 2013- 2015	+0.5	-19.5	-16.8	-7.9	+13.2	+3.7	+24.2
% change 2015- 2017 vs. 2014-2016	-0.1.5		-2.6		+16.3	-0.6	+7.3
% change 2016- 2018 vs. 2015-2017	+15.3	+3.1 ^d	-14.6	+0.1 ^d	-0.2	-8.4	+1.2
% change 2017- 2019 vs. 2016-2018	+11.4	+73.1	+13.4	+6.4	+1.7	+11.4	+19.2
% change for overfishing status determination ^f	-30	-40	-20	-60	-30	-20	-20
<p>a. No survey tows completed south of Delaware in spring 2014. Values for 2014 were adjusted for missing strata (Offshore 61-68, Inshore 32, 35, 38, 41, 44) but may not be fully comparable to other surveys which sampled all strata.</p> <p>b. The 2016 spring survey was later than usual. c. No survey tows completed south of Georges Bank in fall 2017. Values either missing or were adjusted for missing strata (Offshore 1-12, 61-76). d. Two-year average due to missing 2017 survey. e. Values were adjusted for missing Offshore strata 30, 34 and 35.</p> <p>f. This is the average CV of the survey time series.</p> <p>Notes: The full value of the fishing mortality calculations not used in the table, thus, the values used in the calculation are more precise than those in table.</p> <p>Grey shading indicates an overfished species.</p>							

Figure 2. NEFSC survey biomass indices (kg/tow) through fall 2019.

Note: Thin lines with symbols are annual indices. Thick lines are 3-year moving averages. Thin horizontal lines are the biomass thresholds (red) and targets (blue) developed through 2007/2008 with consistent strata sets.



5.1.2 Discards

For assessment and ABC setting purposes, discards are estimated on a calendar year basis, rather than the fishing year, because they rely on the NMFS area allocation landings tables to expand observed discard/kept (D/K)-all ratios to total based on landings by gear, area, and quarter. The observed D/K-all ratios were derived from the Northeast Fishery Observer Program (NEFOP) and the At Sea Monitoring programs. An assumed discard mortality rate of 50% is applied for all gears and species, except in cases where research has provided species and gear specific rates. The Affected Environment document has more information about discard calculation methods.

Total discards for 2019 were 21,086 mt, and dead discards were 6,594 mt, a decrease by 13% from 2018 (Table 3). The weighted aggregate mean discard mortality rate (across all species and gear types) was estimated to be 34%. The assumed dead discard rate (dead discards/total catch) for 2022-2023 is 35% (a three-year average of the rates for 2017-2019).

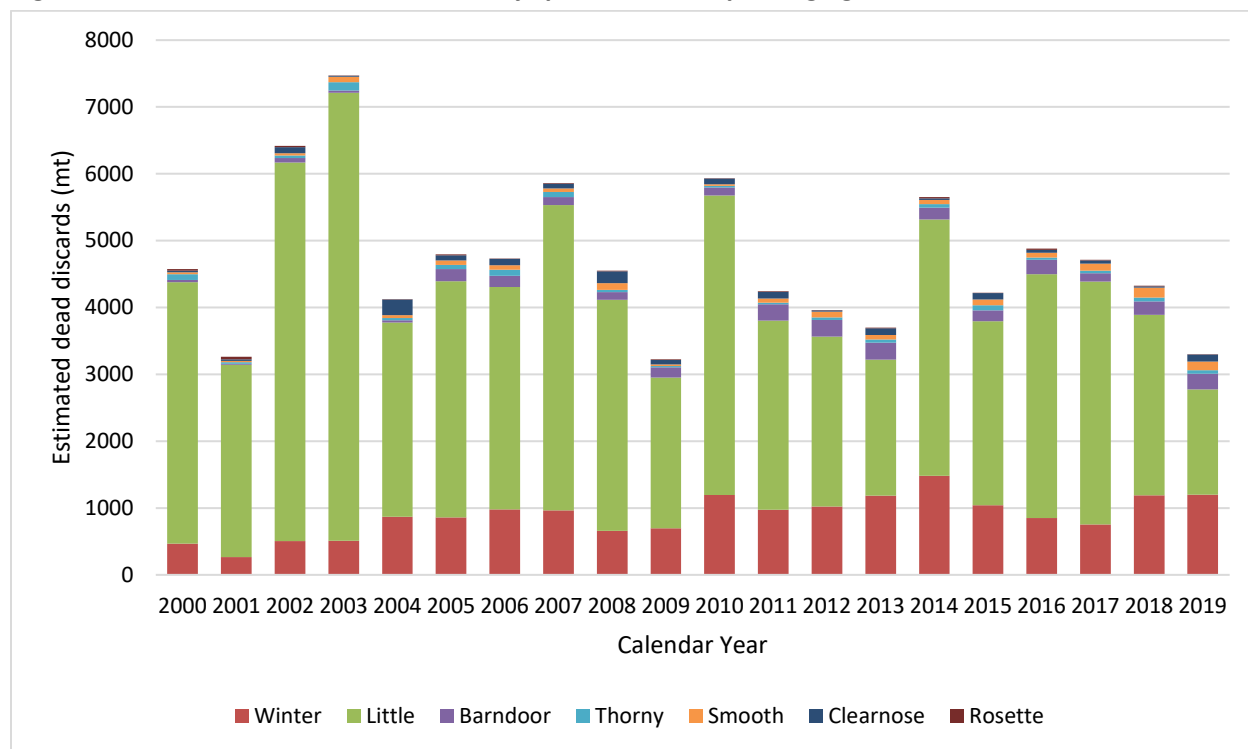
Table 3. Landings, and total and dead discards of skates (all species) for all gear types, calendar year 2000 – 2019.

Year	Landings (mt)	Discards (mt)			Year	Landings (mt)	Discards (mt)		
		Total	Dead	% Dead			Total	Dead	% Dead
2000	16,012	39,961	12,369	31%	2010	18,683	36,766	10,523	29%
2001	15,888	36,041	8,475	24%	2011	16,963	38,760	10,508	27%
2002	14,740	40,094	12,132	30%	2012	17,144	34,274	10,087	29%
2003	16,254	52,204	14,283	27%	2013	14,698	42,674	11,551	27%
2004	17,063	46,823	11,249	24%	2014	15,904	42,758	12,673	30%
2005	14,885	46,474	12,866	28%	2015	15,532	37,894	10,417	27%
2006	17,168	34,565	10,134	29%	2016	15,799	33,271	10,435	31%
2007	20,342	44,920	13,182	29%	2017	14,470	25,884	8,544	33%
2008	20,191	35,031	10,160	29%	2018	14,341	23,000	7,580	33%
2009	19,731	37,441	10,070	27%	2019	12,559	21,086	6,594	31%

Sources: ASM (2010-present), IFM (2006-present), NEFOP (1989-present).

On a species basis, dead discards are largely winter and little skate. In scallop dredge gear, dead discards are almost exclusively little and winter skate (Figure 2), whereas the speciation using otter trawl gear (Figure 3), sink gillnet (Figure 4), and longline (Figure 5) is more mixed. Discards are primarily from scallop dredge and otter trawl gear. Regardless of gear type, dead discards of thorny skate (the only skate species that is overfished in the complex) are minimal. Notice the different scales across gear types; i.e., scallop dredge and otter trawl maximum is 8,000 mt, sink gillnet is 1,200 mt, longline is 400 mt.

Figure 3. Estimated skate dead discards by species in scallop dredge gear, CY 2000-2019



Sources for Figure 2 to Figure 5: ASM (2010-present), IFM (2006-present), NEFOP (1989-present).

Figure 4. Estimated skate dead discards by species in otter trawl gear, CY 2000-2019

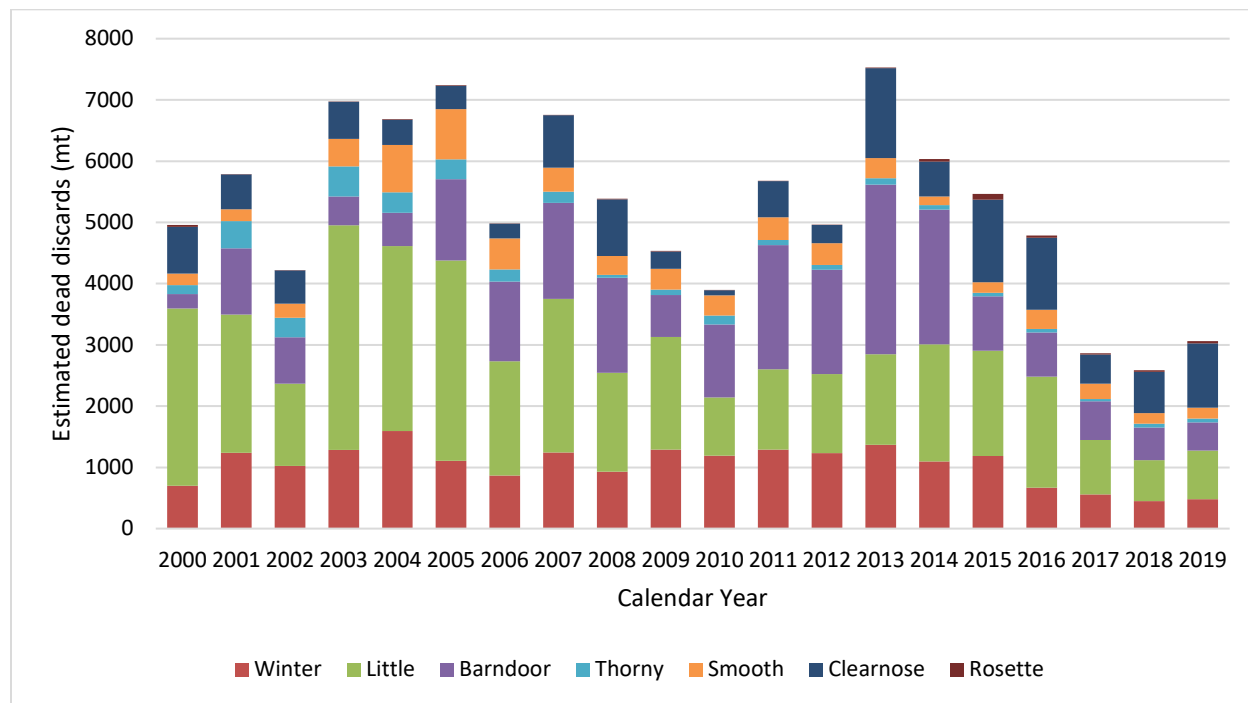


Figure 5. Estimated skate dead discards by species in sink gillnet gear, CY 2000-2019

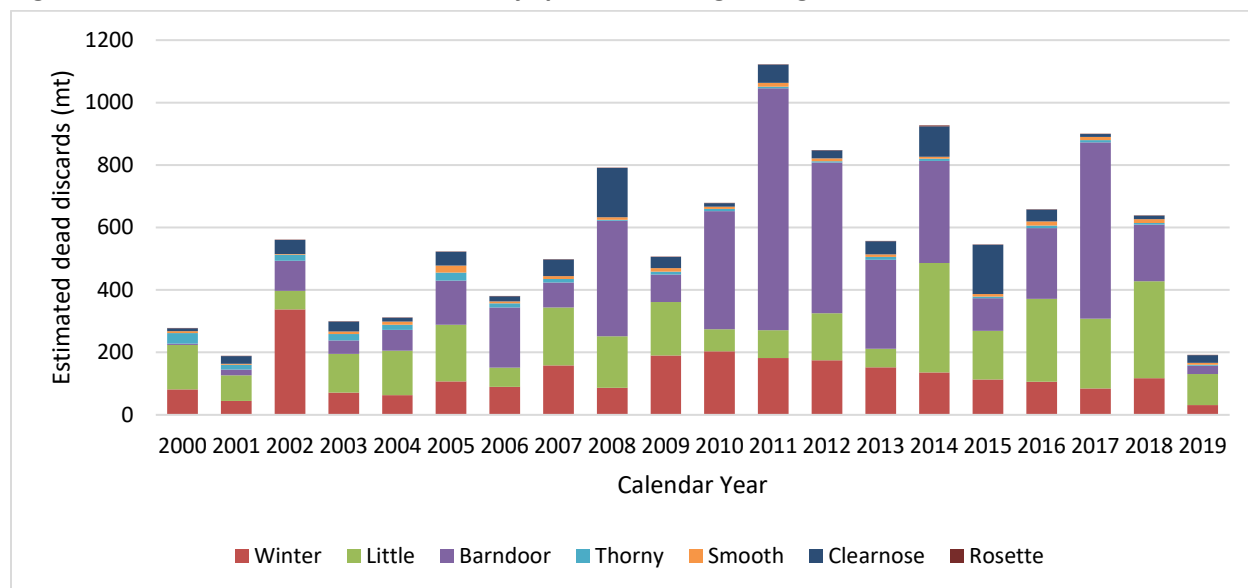
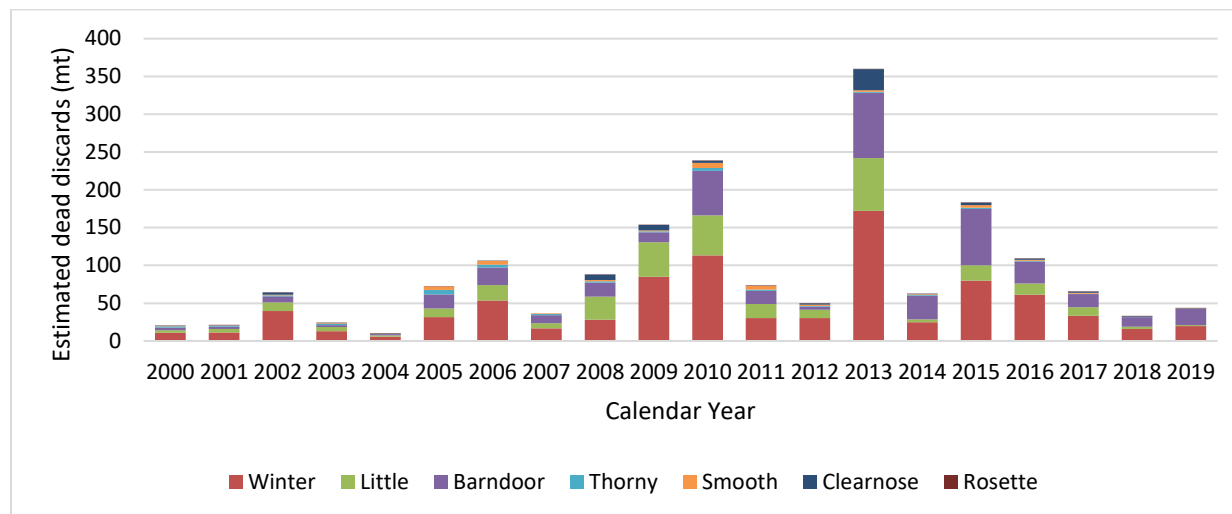


Figure 6. Estimated skate dead discards by species in longline gear, CY 2000-2019



5.2 PROTECTED RESOURCES

Sections 6 and 7 in the Framework 8 EA (NEFMC 2020b) should be referenced for an assessment of the potential risks and impacts of the proposed action on protected species (i.e., ESA-listed and/or MMPA protected), respectively.

Since the publication of the Framework 8 EA, NMFS issued a Biological Opinion on May 27, 2021, that considered the effects of the NMFS' authorization of ten fishery management plans (FMP), including the Northern skate complex, NMFS' North Atlantic Right Whale Conservation Framework, and the NEFMC Omnibus Essential Fish Habitat Amendment 2, on ESA-listed species and designated critical habitat (NMFS 2021).

Within the 2021 Opinion, NMFS considered the impacts of the ten FMPs on numerous ESA listed species of large whales, sea turtles, and fish. In the 2021 Opinion, there is a specific listed species that has not been previously considered in past Biological Opinions, and therefore, in past NEPA documents issued by the Council on the Skate FMP, including Framework 8. Although the 2021 Opinion identified bottom trawl and gillnet gear as posing an interaction risk to giant manta rays, the Opinion considered current fishing behavior and effort in the 10 FMPs, including the Skate FMP, in its assessment of effects to giant manta rays. As fishing behavior and effort under this action, as well as that considered in Framework 8, is consistent with that considered in 2021 Opinion, this action is unlikely to result in impacts to giant manta rays above and beyond that which was considered in the 2021 Opinion. Given this, even with the addition of giant manta rays as another protected species potentially impacted by the proposed action, this new information will not change the overall conclusions for protected resources provided in Framework 8.

5.3 HUMAN COMMUNITIES

A detailed description of the commercial skate fishery and fishing communities may be found in [Framework 8](#) (NEFMC 2020b, with data through FY 2018). Those descriptions of the bait (primarily whole little and small-winter skates) and wing (large-winter and barndoor skates) fisheries are still valid. There are three primary ports in the: Chatham and New Bedford, Massachusetts and Point Judith, Rhode Island; and 11 secondary ports from Massachusetts to New Jersey. The number of vessels landing skate has declined since FY 2011 (567) to 357 in FY 2019. Skate revenue has fluctuated between \$5.1-\$9.1M annually from FY 2010 to 2019, largely due to changes in wing revenue. Additional information is in the draft affected environment of [Amendment 5](#) to the Skate FMP, which the Council is currently developing.

Federal Landings – In-season Quota Monitoring

During the fishing year, the Greater Atlantic Regional Fisheries Office (GARFO) monitors skate landings against the wing and bait TALs, which are managed in season, and produces weekly landing reports on-line. This tally includes commercial skate landings from vessels with a federal fishing permit on the day of landing (dealer data and VTRs). Skate landings excluded from TAL monitoring are those by vessels that do not have any federal fishing permits on the day of landing, landings from research, and recreational landings.

From FY 2017-2020, the overall federal skate TAL (bait plus wing) was not exceeded (Table 4). Federal landings were 99% of the federal TAL in FY 2017 and decreased to 71-79% in subsequent years. The TAL increased for FY 2018 and 2019 over FY 2017 by about 25%, then increased again in FY 2020, yet landings were relatively constant across these years. The two years with just 71% of TAL achieved could be considered extraordinary. FY 2018 began with a delay in specifications until September (causing uncertainty), followed by an increase in TAL in February (due to a decrease in the uncertainty buffer). FY 2020 was affected by the pandemic, acutely in the first few months (May-July).

Table 4. FY 2017 - 2020 in-season monitoring of federal Northeast skate wing and bait landings.

Disposition	Live Landings		TAL (live weight)		Percent of TAL Landed
	(lb)	(mt)	(lb)	(mt)	
FY 2017					
Wing	18,662,000	8,465	18,457,000	8,372	101.1%
Bait	8,769,989	3,978	9,299,098	4,218	94.3%
Total	27,431,989	12,443	27,756,098	12,590	98.8%
FY 2018					
Wing	17,278,000	7,837	23,146,333	10,499	74.6%
Bait	7,398,714	3,356	11,660,249	5,289	63.5%
Total	24,676,714	11,193	34,806,582	15,788	70.9%
FY 2019					
Wing	19,038,306	8,636	23,146,333	10,499	82.3%
Bait	8,515,179	3,862	11,660,249	5,289	73.0%
Total	27,553,485	12,498	34,806,582	15,788	79.2%
FY 2020					
Wing	20,478,599	9,289	26,188,712	11,879	78.2%
Bait	7,453,195	3,381	13,192,462	5,984	56.5%
Total	27,931,794	12,670	39,383,331	17,864	70.9%
Notes:					
<ul style="list-style-type: none">• “Live Landings” aggregates landings from the weekly, in-season quota monitoring reports. Although this is a year-end tally, it only includes the skate landings by vessels with a federal fishing permit on the day of landing, sold to a Federal dealer or reported solely via VTRs (this includes vessel-to-vessel transfers).• “Live Landings” <u>excludes</u> all landings by vessels that do not have any federal fishing permits on the day of landing, landings from research, and recreational landings (e.g., these landings are excluded from TAL monitoring).• These data are pulled a few months after the end of each fishing year and include updates and corrections not in the Table 20 data, pulled right at the end of the fishing year.					
Source: cfders, Vessel Trip Reports, and permit databases. 2020 data accessed 7/02/2021.					

Total Catch – Year-End ACL Accounting

At the end of each fishing year, GARFO tabulates skate catches into a few bins and compares the total to the annual catch limit (ACL, Table 5). The “commercial landings” bin includes all skate landings by vessels with a permit number greater than zero. This includes landings by: 1) vessels with a federal fishing permit on the day of landing, 2) vessels with a federal fishing permit at any time of the year, and 3) vessels without a federal fishing permit that year but had one in the past. The “state-permitted only vessel landings” bin includes landings from vessels that never had a federal fishing permit (so the permit # = 0) that were reported to the federal database; the “recreational catch” bin includes landings from private angler and party/charter and dead discards from MRIP; and the “estimated dead discards” bin is based on landings of all species and skate discards on observed trips (Table 5). The year-end calculation of dead discards is estimated on a fishing year basis, with different methods than those used to estimate the calendar year discards for stock assessment and specification setting purposes.

Excluded from the year-end ACL accounting are the vessel-to-vessel skate transfers reported via VTRs (though included in TAL monitoring), skate for personal use/home consumption, and any skate landings by state-only permitted vessels not reported to the federal database but reported by state dealers to the

Atlantic Coastal Cooperative Statistics Program (ACCSP) at varying frequencies, updated daily (likely minor, but possible).

Table 5. Year-end Northeast skate complex annual catch limit (ACL) accounting, FY2017-2019.

Catch accounting element	Pounds	Metric tons	% of ACL
FY 2017 (ACL = 31,081 mt)			
Commercial landings	31,854,574	14,449	46.5%
State-permitted only vessel landings	1,752,206	795	2.6%
Estimated dead discards	18,790,080	8,523	27.4%
Recreational catch (MRIP landings and dead discards)	3,367,634	1,528	4.9%
Total Northeast skate catch	55,764,494	25,294	81.4%
FY 2018 (ACL = 31,327 mt)			
Commercial landings	32,155,182	14,585	46.9%
State-permitted only vessel landings	1,268,820	576	1.9%
Estimated dead discards	17,369,954	7,879	25.3%
Recreational catch (MRIP landings and dead discards)	2,398,508	1,088	3.5%
Total Northeast skate catch	53,192,464	24,128	77.6%
FY 2019 (ACL = 31,327 mt)			
Commercial landings	29,869,783	13,549	43.2%
State-permitted only vessel landings	383,529	174	0.6%
Estimated dead discards	13,144,115	5,962	19.0%
Recreational catch (MRIP landings and dead discards)	2,229,125	1,011	3.2%
Total Northeast skate catch	45,626,552	20,696	66.1%
FY 2020 (ACL = 32,715 mt)			
Commercial landings	29,457,636	13,362	40.8%
State-permitted only vessel landings	577,288	262	0.8%
Estimated dead discards	18,791,428	8,524	26.1%
Recreational catch (MRIP landings and dead discards)	692,135	314	1.0%
Total Northeast skate catch	49,518,487	22,461	68.7%

Table 5 Notes:

- Live weight is used instead of landed weight to make in-season and year-end accounting more comparable.
- “Commercial landings” includes all skate landings by vessels with a permit number greater than zero. This includes landings by: 1) vessels with a federal fishing permit on the day of landing, 2) vessels with a federal fishing permit at any time of the year, and 3) vessels without a federal fishing permit that year but had one in the past.
- “Northeast skate state-permitted only vessel landings” are landings from vessels that never had a federal fishing permit (so the permit #=0) that were reported to the federal database
- “Northeast skate estimated dead discards” is based on landings of all species and skate discards on observed trips extrapolated to all commercial landings of all species (weighted by area, gear, etc.) to calculate total skate discards. Then, a discard mortality rate is applied to the calculated total skate discards (discard estimation method differs from how discards are estimated during specifications setting, which uses the NEFSC method).
- “Northeast skate recreational catch” includes landings from private angler and party/charter and dead discards from MRIP.
- Not included in the year-end ACL accounting:
 - Vessel-to-vessel skate transfers (e.g., 210 mt in FY 2019, reported via VTRs).
 - Skate for personal use/home consumption (unknown, not reported to a Federal dealer).
 - Skate landings by state-only permitted vessels not reported to the Federal database but reported by state dealers to the Atlantic Coastal Cooperative Statistics Program at varying frequencies, updated daily (likely minor, but possible).

Source: Commercial fisheries dealer database and Northeast Fishery Observer Program database; FY 2020 data accessed June 30, 2021; MRIP reports accessed July 2, 2021.

NMFS estimates Federal commercial skate landings from the dealer weigh-out database and reports total skate landings according to live weight (i.e., the weight of the whole skate). This means that a conversion factor (most commonly 2.27) is applied to all wing landings so that the estimated weight of the entire skate is reported and not just the wings. While live weight must be considered from a biological and stock assessment perspective, vessel revenue from skate landings is for landed weight (vessels in the wing fishery only make money for the weight of wings they sell, not the weight of the entire skate from which the wings came).

From FY 2017-2020, the ACL was not exceeded (and never has been). Total Northeast skate catch (elements as defined above) was 81% of the ACL in FY 2017 (25,294 mt) and decreased to 78%, 66%, and 69% in FY 2018 - 2020, respectively. State landings, defined as vessels that have never had a federal fishing permit, has decreased from 795 mt in FY 2017. Recreational catch has been higher than state landings since FY 2017 (1,528 mt in FY 2017), although it has declined steadily since then (314 mt in FY 2020). Dead discards have been about 19-27% of total catch since FY 2017. In FY 2018, the uncertainty buffer was reduced from 25% to 10%, redefining the ACT as 90% of the ACL (Section 1.6.1.2 of the Affected Environment has data tables).

6.0 NEPA COMPLIANCE – CHANGES TO THE ORIGINAL ACTION

The basis for previously analyzed management measures (Framework Adjustment 8, NEFMC 2020b) is not proposed to be changed in this action. These FY 2022-2023 specifications would use the same ABC control rule and formula for setting specifications as for FY 2020-2021. There would just be data updates and modifications to the control rule based on data availability. This action would only change the ABC and ACL specifications; there would be no modifications to possession limits or other management measures.

The revised ABC is a small increase (14%) relative to the specifications established in Framework 8, which evaluated the impacts on the Valued Ecosystem Components (target species, non-target, protected species, habitat, and human communities) of the skate fishery. Changes in impacts to these VECs are not expected from this proposed action because there is very little change in the specifications beyond what has been previously analyzed. These effort controls have been in place for two fishing years (2020-2021) and the ABC has not been exceeded during that time. The increase in the ABC may result in more directed fishing effort; however, this is unlikely because effort controls are not changing, and vessels are further constrained by regulations set by other FMPs.

The environmental impacts of the proposed action are largely the same as in the previous action (Table 7) (NEFMC 2020b).

Impacts on Target Species

The impacts of the proposed action on target species (skates) would likely remain low positive. The ABC increase it is based on updated survey indices and has been determined to be a sustainable level of harvest. The ACT is substantially below the ABC, minimizing the risk of overfishing. Possession limits would be unchanged and help keep landings within the TAL (and therefore prevent the ABC from being exceeded). The higher TAL would likely cause a minor change in fishing effort and behavior. There would likely be more trips but the proportion of discards to landings on each trip would be unchanged. Thus, landings and discards would increase but are expected to remain within the ABC.

Impacts on Non-Target Species

The impacts of the proposed action on non-target species would likely remain low positive because fishing effort and behavior changes would likely be minor and catch of non-target species is largely controlled through other FMPs. Any increased catches under the proposed action would still likely be at similar levels that have been determined to be sustainable.

Impacts on Protected Species

The impacts of the proposed action on protected species would likely remain low negative to negligible because interaction risk with gillnet and bottom trawl fishing gears remains for some ESA-listed and MMPA protected species. Gillnets and bottom trawls are used to target skate wings, and bottom trawl is primarily used to target bait. In theory, the ABC/ACL increase may increase the time gear spends in the water (or in some cases increased gear in the water). However, the ABC/ACL have not been limiting in recent years and skate is largely incidental catch, therefore, this change is unlikely to result in a substantial change to effort/interaction risk/impacts. Any change would be minor in the context of the fishery. Thus, impacts to protected species are likely remain low negative to negligible, with negligible reflecting the fact that neither ESA listed nor MMPA protected large whales have been observed or documented in bottom trawl gear in the most recent 10 years of data.

Impacts on Physical Environment and Essential Fish Habitat

The impacts of the proposed action on the physical environment and EFH would likely remain low negative because of interactions of mobile bottom tending gear with habitat. Changes to fishing effort would likely be small relative to recent fishing years. Measures approved in Omnibus Habitat Amendment 2 will continue to minimize adverse impacts of trawl gear in all NEFMC fisheries.

Impacts on Human Communities

This impacts of the proposed action on human communities would likely remain low positive. The increase in TAL would lead to opportunities to increase revenue, tempered if an incidental possession limit is triggered during the fishing year. Faced with the same possession limits though, the fleet can only increase the number of trips each year to land more skate than before, so the difference in economic impact may be minor. With the higher TAL, the proposed action less likely to trigger AMs than in FY 2020-2021, preventing economic disruptions, if fishing behavior does not change. In the long-term, if fishing effort does not increase, there could stable or increased skate biomass, which would have low positive economic impacts.

Given the Scientific and Statistical Committee determination that the resource can sustain an increase in the ABC, the industry could realize the benefits of additional yield that is supported by the best available science. The proposed action might cause more trust in management among the industry if fishermen perceive that managers are making use of the best available science in a timely manner; their attitudes, beliefs, and values towards management will be positively impacted. There could be some negative short-term impacts from exceeding TALs and triggering AMs, but that potential is reduced relative to FY 2020-2021. The proposed action would be less likely to constrain operations and limit income potential, which may improve job satisfaction for fishermen, which may increase the well-being of fishermen, their families, and their communities.

Table 6. Summary of FY 2020-2021 ABC/ACL specifications expected for each VEC, as analyzed in Framework 8.

VEC	Expected Impact
Target Species	Low positive
Non-target Species	Low positive
Protected Resources	Low negative to negligible
Physical Environment and Essential Fish Habitat	Low negative
Human Communities	Low positive

7.0 CONCLUSION

After considering the proposed action in Section 3.0 and new information in Section 5.0, NMFS has determined that a supplement to the EA for the 2020-2021 specifications (NEFMC 2020b) is unnecessary because the adjustments are limited to these specifications and have impacts that were analyzed previously on the fishery and the managed stocks. Considerations in support of this conclusion include the following: 1) the changes to the skate specifications are unlikely to substantially change the risk of overfishing, the number or length of trips targeting skates, or the profits or revenue from fishing for skates, and 2) no new information or circumstances exist that have a bearing on environmental concerns that are significantly different from when the original Finding of No Significant Impact was signed on March 31, 2020. The specifications EA (NEFMC 2020b) thus remains valid to support the proposed action.

8.0 APPLICABLE LAWS/EXECUTIVE ORDERS

8.1 MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

8.1.1 National Standards

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that regulations implementing any fishery management plan or amendment be consistent with ten national standards. Below is a summary of how this action is consistent with the National Standards and other required provisions of the Magnuson-Stevens Act.

The Council continues to meet the obligations of National Standard 1 by adopting and implementing conservation and management measures that will continue to prevent overfishing, while achieving optimum yield for managed species and the U.S. fishing industry on a continuing basis. The primary goal of managing the skate fishery is to maintain long-term sustainable catch levels and the second objective of the Northeast Skate Complex FMP is to prevent overfishing. This FMP established a fishery specifications process that ensures a consistent review of stock status, fishery performance, and other factors to manage by annual catch limits (ACLs) and prevent overfishing. The measures implemented through this action should further achieve the goals/objectives and reduce the possibility of overfishing the northeast skate resource. Overfishing is currently not occurring on any of the seven skate species; only thorny skate remains in overfished (Section 5.1).

The Council uses the best scientific information available (National Standard 2). Specifically, this action was informed by fisheries-independent data from several surveys, commercial fishery landings data, stock assessments, and other scientific data sources. The 2022-2023 specifications are supported by the best available scientific information, and recommendations for Northeast skate catch during 2022-2023 are based on advice from the Council's Scientific and Statistical Committee. The supporting science and analyses, upon which the proposed action is based, are described in Sections 5.0 and 6.0.

The Council manages the skate complex throughout the northeast region (Maine – North Carolina; National Standard 3). While most skate are landed in Massachusetts and Rhode Island, skate landings have been reported in every state from Maine through Virginia. To address that portion of the resource that is caught in state waters, the Skate FMP estimates expected state landings based on recent state landings and deducts that amount from the ACT. Furthermore, the management measures proposed in this action do not discriminate among residents of different states (National Standard 4); the measures are intended to be applied equally to Northeast Skate Complex permit holders of the same category, regardless of homeport or location.

The proposed 2022-2023 Northeast Skate Complex fishery specifications divide the overall skate ABC between the wing and bait fisheries in a manner that is intended to maximize opportunities for the fisheries while minimizing the potential for overfishing. The specifications proposed in this document should promote efficiency in the utilization of fishery resources through appropriate measures intended to provide access to the skate fisheries for both current and historical participants while minimizing the race to fish, and they do not have economic allocation as their sole purpose (National Standard 5).

The measures proposed account for variations in the fishery (National Standard 6). The 2020 stock status update for the skate complex noted no significant changes in biomass from previous assessments. Market fluctuations and environmental factors constantly introduce additional variations among, and contingencies in, the skate resource, the fishery, and the available catch. The proposed 2021-2022

Northeast Skate Complex fishery specifications represent a slight increase in allowable catch from recent years.

As always, the Council considered the costs and benefits associated with the proposed 2020-2021 Northeast Skate Complex fishery specifications and revised skate possession limits. Any costs incurred because of the proposed action proposed are necessary to achieve the goals and objectives of the Skate FMP and are outweighed by the benefits of taking the action. Consistent with National Standard 7, the management measures proposed in this document are not duplicative and were developed in close coordination with NMFS, the Mid-Atlantic Fishery Management Council, and other interested entities and agencies to minimize duplicity.

The proposed 2022-2023 Northeast Skate Complex fishery specifications consider the importance of fishery resources to fishing communities (National Standard 8). Section 5.3 has a complete description of the fishing communities participating in and dependent on the skate fisheries. Relative to the no action alternative, the measures proposed would likely have low positive impacts on communities engaged in and dependent on the skate fisheries.

This action also considers National Standard 9; Framework 8 (NEFMC 2020b) has information related to bycatch in the skate fisheries. Skate are typically the non-target species that are caught when fishing effort is being expended on more profitable species managed under other FMPs, e.g., NE Multispecies, Monkfish, and Scallop FMPs. These fisheries have ACLs, effort controls, possession limits, gear restrictions, and other measures that constrain overall effort on skates.

Finally, this action is consistent with National Standard 10 to promote the safety of human life at sea. The Council has the utmost concern regarding safety and understands how important safety is when setting the Northeast Skate Complex ACL. The proposed 2022-2023 Northeast Skate Complex specifications ensure that access to the skate fisheries is provided for vessels of all sizes and gear types.

8.1.2 Other MSA Requirements

This action is also consistent with the fourteen additional required provisions for FMPs. Section 303 (a) of MSA contains required provisions for FMPs.

1. *Contain the conservation and management measures, applicable to foreign fishing ...*
Foreign fishing for the Northeast skate resource is considered during the fishery specifications process. The proposed action does not apply to foreign fishing vessels; the domestic fishery has been shown to have the capacity to fully use the available catch.
2. *Contain a description of the fishery ...*
All the information required by this provision can be found in Framework Adjustment 8 to the Northeast Skate Complex FMP (NEFMC 2020b) submitted in January 2020 and Section 5.3 of this action.
3. *Assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from the fishery ...*
The present and probable future condition of the Northeast skate resource were update in the 2020 Annual Monitoring Report (NEFMC 2020a). MSY_{proxy} was updated during development of the FY 2018-2019 specifications (NEFMC 2018a). Information related to stock status and updated biological reference points are summarized in Section 5.1 of this document.
4. *Assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); etc.*

This MSA provision relates directly to the northeast skate fishery specification process and is addressed when the Council develops the specifications for this fishery.

5. *Specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery ...*

Data regarding the type and quantity of fishing gear used, catch, areas fished, season, sea sampling hauls, and domestic harvesting/processing capacity are updated in Framework 8 (NEFMC 2020b) and in Section 5.3 of this document.

6. *Consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions ...*

The proposed action does not alter any adjustments made in the Northeast Skate Complex FMP that address opportunities for vessels that would otherwise be prevented from harvesting because of weather or other ocean conditions affecting safety aboard fishing vessels. Therefore, consultation with the U.S. Coast Guard was not required relative to this issue.

7. *Describe and identify essential fish habitat for the fishery ...*

Essential fish habitat has been identified for skates in the Northeast Skate Complex FMP and has been addressed through all subsequent related management actions in a manner consistent with the MSA. EFH designations were most recently updated via [Omnibus Habitat Amendment 2](#) (NEFMC 2016). Framework 8 updated the description of the physical environment and EFH (NEFMC 2020b) and evaluated the impacts on EFH of the Proposed Action and other alternatives. Nothing in this action changes those descriptions and evaluations.

8. *In the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan ...*

The [NEFMC Research Priorities and Data Needs for 2021-2025](#) updates the list of data and research needs with respect to the skate fishery and its management program. The 2020 Skate Annual Monitoring Report (NEFMC 2020a) represents the best available information regarding the status of the skate resource currently. No new data is required for the implementation of this action.

9. *Include a fishery impact statement for the plan or amendment ...*

Any additional impacts from measures proposed in this action are evaluated in Section 6.0 of this document.

10. *Specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished ...*

The status determination criteria for skates were established in the Original FMP and revised through Amendment 3 (NEFMC 2009).

11. *Establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery ...*

This action would not change the existing standardized bycatch reporting methodology (SBRM), which helps assesses the amount and type of bycatch in the skate fishery and identify ways the fishery can minimize bycatch and bycatch mortality.

12. *Assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish ...*

The Northeast Skate FMP does not regulate a catch and release recreational fishery management program. There is no specification for recreational fishing, but recreational landings and dead

discards are included in year-end catch accounting. They constitute 1-5% of catches in recent years (Table 5).

13. *Include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery ...*

A brief description is in Section 5.3. Further information is in Framework 8 (NEFMC 2020b).

14. *To the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

The Proposed Action would not change the allocation of catch between the commercial, recreational and charter fisheries. The ABC rule is applied stock-wide, so limits would be distributed across the fishery proportionally.

15. *Establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.*

The Northeast Skate Complex FMP includes a multi-year specifications process for the skate fishery that complies with the ACL/AM provisions of the MSA. Future Council actions for this FMP will continue to address the mechanism for specifying ACLs and the need to ensure accountability in the fishery. The Proposed Action would not change the mechanism for establishing ACLs.

8.2 NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act (NEPA) provides a mechanism for identifying and evaluating the full spectrum of environmental issues associated with federal actions and for considering a reasonable range of alternatives to avoid or minimize adverse environmental impacts. The Council on Environmental Quality has issued regulations specifying the requirements for NEPA documents (40 CFR 1500 – 1508), as has NOAA in its policy and procedures for NEPA (NAO 216-6A §5.04b.1). NEPA reviews initiated prior to the effective date of the 2020 CEQ regulations (September 14, 2020) may be conducted using the 1978 version of the regulations. Since the Framework 8 EA was created earlier within the context of the 1978 CEQ NEPA Regulations, so is the review of this action. Thus, this SIR is designed to meet the requirements of the MSA and NEPA and has been prepared using the 1978 CEQ NEPA Regulations. All NEPA requirements are addressed in this action, as described below.

8.2.1 Point of Contact

Questions concerning this document may be addressed to:

Mr. Thomas A. Nies, Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950 (978) 465-0492

8.2.2 Agencies Consulted

The following agencies were consulted in preparing this document:

- Mid-Atlantic Fishery Management Council
- New England Fishery Management Council, including representatives from:

- Connecticut Department of Environmental Protection
- Maine Department of Marine Resources
- Massachusetts Division of Marine Fisheries
- New Hampshire Fish and Game
- Rhode Island Department of Environmental Management
- National Marine Fisheries Service, NOAA, Department of Commerce
- United States Coast Guard, Department of Homeland Security
- United States Fish and Wildlife Service, Department of Interior

8.2.3 List of Preparers

The following personnel participated in preparing this document:

- ***New England Fishery Management Council.*** Dr. Rachel Feeney (Skate Plan Coordinator), Michelle Bachman, Jennifer Couture, Lou Goodreau, Chris Kellogg, Thomas Nies
- ***National Marine Fisheries Service.*** Dr. Trish Clay, Cynthia Ferrio, Ashleigh McCord, Danielle Palmer, Alicia Schuler, Katherine Sosebee, John Sullivan, Samantha Werner
- ***State agencies.*** Eric Schneider (RIDEM)

8.2.4 Opportunity for Public Comment

This action was developed in 2021, and there were 16 public meetings related to this action (Table 7). Opportunities for public comment occurred at Advisory Panel, Committee, and Council meetings. There were more limited opportunities to comment at PDT meetings. Meeting discussion documents and summaries are available at www.nefmc.org.

Table 7. Public meetings related to FY 2022-2023 Skate Specifications

Date	Meeting Type	Location
1/22/2021	Skate PDT	webinar
3/4/2021	Skate PDT	webinar
3/17/2021	Skate Advisory Panel	webinar
3/25/2021	Skate Committee	webinar
4/9/2021	Skate PDT	webinar
4/14/2021	Council	webinar
4/19/2021	Skate PDT	webinar
5/13/2021	Skate Advisory Panel	webinar
5/18/2021	Skate Committee	webinar
6/24/2021	Council	webinar
7/1/2021	Skate PDT	webinar
7/29/2021	Scientific and Statistical Committee	webinar
8/9/2021	Skate PDT	webinar
9/16/2021	Skate Advisory Panel	webinar
9/16/2021	Skate Committee	webinar
9/??/2021	Council	???

8.3 MARINE MAMMAL PROTECTION ACT (MMPA)

Section 6.0 assesses the impacts of the proposed action on marine mammals. The NEFMC has reviewed the impacts of the proposed 2022-2023 skate fishery specifications on marine mammals and has concluded that the management actions proposed are consistent with the provisions of the MMPA. Although they are likely to affect marine mammals inhabiting the management unit, the specifications will not alter the effectiveness of existing MMPA measures to protect those species, such as take reduction plans, based on the overall reductions in fishing effort and the effectiveness of other management measures that have been implemented through the Northeast Skate Complex FMP.

8.4 ENDANGERED SPECIES ACT (ESA)

Pursuant to section 7 of the Endangered Species Act (ESA), NOAA's National Marine Fisheries Service (NMFS) issued a Biological Opinion (Opinion) on May 27, 2021, that considered the effects of the NMFS' authorization of ten fishery management plans (FMP), including the Northern skate complex, NMFS' North Atlantic Right Whale Conservation Framework, and the NEFMC Omnibus Essential Fish Habitat Amendment 2, on ESA-listed species and designated critical habitat (NMFS 2021).

The 2021 Opinion determined that the proposed action may adversely affect, but is not likely to jeopardize, the continued existence of North Atlantic right, fin, sei, or sperm whales; the Northwest Atlantic Ocean distinct population segment (DPS) of loggerhead, leatherback, Kemp's ridley, or North Atlantic DPS of green sea turtles; any of the five DPSs of Atlantic sturgeon; Gulf of Maine DPS Atlantic salmon; or giant manta rays. The Opinion also concluded that the proposed action is not likely to adversely affect designated critical habitat for North Atlantic right whales, the Northwest Atlantic Ocean DPS of loggerhead sea turtles, U.S. DPS of smalltooth sawfish, Johnson's seagrass, or elkhorn and staghorn corals. An Incidental Take Statement (ITS) was issued in the Opinion. The ITS includes reasonable and prudent measures and their implementing terms and conditions, which NMFS determined are necessary or appropriate to minimize impacts of the incidental take in the fisheries assessed in this Opinion.

Given the information provided above, the proposed action is not expected to alter overall fishing operations, lead to a substantial increase of fishing effort, or alter the spatial and/or temporal distribution of current fishing effort in a manner that would increase interaction risks with ESA-listed species or cause adverse effects to critical habitat. Based on this, it has been determined that fishing activities pursuant to this action will not affect endangered and threatened species or critical habitat in any manner not considered in Framework 8 or the 2021 Opinion on this fishery.

8.5 ADMINISTRATIVE PROCEDURE ACT (APA)

Sections 551-553 of the Administrative Procedure Act established procedural requirements applicable to informal rulemaking by federal agencies. The purpose is to ensure public access to the federal rulemaking process, and to give public notice and opportunity for comment. The Council did not request relief from notice and comment rule making for this action and expects that NOAA Fisheries will publish proposed and final rule making for this action.

8.6 PAPERWORK REDUCTION ACT

The purpose of the Paperwork Reduction Act is to minimize paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. It also ensures that the Government is not overly burdening the public with

information requests. This action does not propose to modify any existing collections, or to add any new collections; therefore, no review under the Paperwork Reduction Act is necessary.

8.7 COASTAL ZONE MANAGEMENT ACT (CZMA)

Section 307 of the Coastal Zone Management Act (CZMA) is known as the federal consistency provision. Federal Consistency review requires that “federal actions, occurring inside or outside of a state's coastal zone, that have a reasonable potential to affect the coastal resources or uses of that state's coastal zone, to be consistent with that state's enforceable coastal policies, to the maximum extent practicable.” The Council previously made determinations that the FMP was consistent with each state's coastal zone management plan and policies, and each coastal state concurred in these consistency determinations (in the Skate FMP). Since the proposed action does not propose any substantive changes from the FMP, the Council has determined that this action is consistent with the coastal zone management plan and policies of the coastal states in this region. Once the Council has adopted final measures and submitted this action to NMFS, NMFS will request consistency reviews by CZM state agencies directly.

8.8 INFORMATION QUALITY ACT (IQA)

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, also known as the Data Quality Act or Information Quality Act) directed the Office of Management and Budget (OMB) to issue government-wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.” OMB directed each federal agency to issue its own guidelines, establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with the OMB guidelines, and report periodically to OMB on the number and nature of complaints. The NOAA Section 515 Information Quality Guidelines require a series of actions for each new information product subject to the Data Quality Act. Information must meet standards of utility, integrity and objectivity. This section provides information required to address these requirements.

Utility of Information Product

The proposed document includes a description of the management issues and the reasons for selecting the proposed action. The proposed action implements conservation and management goals of the FMP consistent with the Magnuson-Stevens Fishery Conservation and Management Act and all other existing applicable laws.

Utility means that disseminated information is useful to its intended users. “Useful” means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use. The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the proposed action, the measures proposed, and the impacts of those measures. A discussion of the reasons for selecting the proposed action is included so that intended users may have a full understanding of the proposed action and its implications. The intended users of the information contained in this document are participants in the skate fishery and other interested parties and members of the public. The information contained in this document may be useful to owners of vessels holding a Northeast skate permit as well as skate dealers and processors since it serves to notify these individuals of any potential changes to management measures for the fishery. This information will enable these individuals to adjust

their fishing practices and make appropriate business decisions based on the new management measures and corresponding regulations.

The information being provided in this action is based on landings and effort information through the 2020 fishing year when possible. Information presented in this document is intended to support this action, which has been developed through a multi-stage process involving all interested members of the public. Consequently, the information pertaining to management measures contained in this document has been improved based on comments from the public, fishing industry, members of the Council, and NOAA Fisheries.

Until a proposed rule is prepared and published, this document is the principal means by which the information herein is publicly available. The information provided in this document is based on the most recent available information from the relevant data sources, including detailed and relatively recent information on the skate resource and, therefore, represents an improvement over previously available information. This document will be subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act and, therefore, may be improved based on comments received.

This document is available in several formats, including printed publication, and online through the NEFMC's web page (www.nefmc.org). The *Federal Register* notice that announces the proposed rule and the final rule and implementing regulations will be made available in printed publication, on the website for the Greater Atlantic Regional Fisheries Office (www.greateratlantic.fisheries.noaa.gov), and through the Regulations.gov website. The *Federal Register* documents will provide metric conversions for all measurements.

Integrity of Information Product

Integrity refers to security – the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. All electronic information disseminated by NMFS adheres to the standards set out in Appendix III, “Security of Automated Information Resources,” of OMB Circular A-130; the Computer Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13, 15, and 22 of the U.S. Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the Magnuson-Stevens Act; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

Objectivity of Information Product

Objective information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial, or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods. “Accurate” means that information is within an acceptable degree of imprecision or error appropriate to the *kind* of information at issue and otherwise meets commonly accepted scientific, financial, and statistical standards.

For purposes of the Pre-Dissemination Review, this document is a “Natural Resource Plan.” Accordingly, the document adheres to the published standards of the MSA; the Operational Guidelines, Fishery Management Plan Process; the Essential Fish Habitat Guidelines; the National Standard Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing NEPA. This information product uses information of known quality from sources acceptable to the relevant scientific and technical communities. Several data sources were used in the

development of this action, including, but not limited to, historical and current landings data from the Commercial Dealer database, vessel trip report (VTR) data, and fisheries independent data collected through the NMFS bottom trawl surveys. The analyses herein were prepared using data from accepted sources and have been reviewed by members of the Skate Plan Development Team and by the SSC where appropriate.

Despite current data limitations, the conservation and management measures considered for this action were selected based upon the best scientific information available. The analyses important to this decision used information from the most recent complete fishing years, generally through 2020. The data used in the analyses provide the best available information on the number of permits, both active and inactive, in the fishery, the catch (including landings and discards) by those vessels, the landings per unit of effort (LPUE), and the revenue produced by the sale of those landings to dealers, as well as data about catch, bycatch, gear, and fishing effort from a subset of trips sampled at sea by government observers.

Specialists (including professional members of PDTs, technical teams, committees, and Council staff) who worked with these data are familiar with the most current analytical techniques and with the available data and information relevant to the small-mesh multispecies fishery. The proposed action is supported by the best available scientific information. The policy choice is clearly articulated in Section 3.0, the management alternatives considered in this action.

The supporting science and analyses, upon which the policy choice was based, are summarized and described in the 2020 Annual Monitoring Report (NEFMC 2020a), Section 5.0 of this document, and Framework 8 (NEFMC 2020b). All supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced according to commonly accepted standards for scientific literature to ensure transparency. The review process used in preparation of this document involves the responsible Council, the NEFSC, GARFO, and NOAA Fisheries Service Headquarters. The NEFSC's technical review is conducted by senior-level scientists specializing in population dynamics, stock assessment, population biology, and social science.

The Council review process involves public meetings at which affected stakeholders have opportunity to comment on the document. Review by staff at GARFO is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. The Council also uses its SSC to review the background science and assessment to approve the Acceptable Biological Catch (ABCs), including the effects those limits would have on other specifications in this document. The SSC is the primary scientific and technical advisory body to the Council and is made up of scientists that are independent of the Council. A list of current committee members can be found at <https://www.nefmc.org/committees/scientific-and-statistical-committee>.

Final approval of the action proposed in this document and clearance of any rules prepared to implement resulting regulations is conducted by staff at NOAA Fisheries Service Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget. In preparing this action for the Northeast Skate Complex FMP, NMFS, the Administrative Procedure Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Information Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), and 13158 (Marine Protected Areas). The Council has determined that the proposed action is consistent with the National Standards of the MSA and all other applicable laws.

8.9 EXECUTIVE ORDER 13158 (MARINE PROTECTED AREAS)

Executive Order (EO) 13158 on Marine Protected Areas (MPAs) requires each federal agency whose actions affect the natural or cultural resources that are protected by an MPA to identify such actions, and, to the extent permitted by law and to the maximum extent practicable, in taking such actions, avoid harm to the natural and cultural resources that are protected by an MPA. The EO directs federal agencies to refer to the MPAs identified in a list of MPAs that meet the definition of MPA for the purposes of the EO. The EO requires that the Departments of Commerce and the Interior jointly publish and maintain such a list of MPAs. A list of MPA sites has been developed and is available at the [Marine Protected Areas website](#). No further guidance related to this EO is available at this time.

In the Northeast U.S., the only MPAs are the Stellwagen Bank National Marine Sanctuary (SBNMS), the Tilefish Gear Restricted Areas in the canyons of Georges Bank, and the National Estuarine Research Reserves and other coastal sites. The only MPA that overlaps the Northeast Skate Complex fishery footprint is the SBNMS.

This action is not expected to more than minimally affect the biological/habitat resources of the SBNMS MPA, which was comprehensively analyzed in the Omnibus Habitat Amendment 2 (NEFMC 2016). Fishing gears regulated by the Northeast Skate Complex FMP are unlikely to damage shipwrecks and other cultural artifacts because fishing vessel operators avoid contact with cultural resources on the seafloor to minimize costly gear losses and interruptions to fishing.

8.10 EXECUTIVE ORDER 13132 (FEDERALISM)

Executive Order 131321 on federalism established nine fundamental federalism principles for Federal agencies to follow when developing and implementing actions with federalism implications. However, no federalism issues or implications have been identified relative to the measures proposed in this action, thus preparation of an assessment under EO 13132 is unwarranted. The affected states have been closely involved in the development of the proposed action through their representation on the Council (all affected states are represented as voting members of at least one Regional Fishery Management Council). No comments were received from any state officials relative to any federalism implications that may be associated with this action.

8.11 EXECUTIVE ORDER 12898 (ENVIRONMENTAL JUSTICE)

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations provides guidelines to ensure that potential impacts on these populations are identified and mitigated, and that these populations can participate effectively in the NEPA process (EO 12898 1994). The NOAA NAO 216-6A, Companion Manual, Section 10(A) requires the consideration of E.O. 12898 in the NEPA documents. Agencies should also encourage public participation, especially by affected communities, during scoping, as part of a broader strategy to address environmental justice issues. Minority and low-income individuals or populations must not be excluded from participation in, denied the benefits of, or subjected to discrimination because of their race, color, or national origin.

Although the impacts of this action may affect communities with environmental justice concerns, the proposed actions should not have disproportionately high effects on low income or minority populations. The proposed actions would apply to all participants in the affected area, regardless of minority status or income level. There is insufficient demographic data on participants in the skate fishery (i.e., vessel owners, crew, dealers, processors, employees of supporting industries) to quantify the income and minority status of potentially affected fishery participants. However, it is qualitatively known that people of racial or ethnic minorities constitute a substantial portion of the employees in the seafood processing sector, particularly in communities such as New Bedford. Without more data, it is difficult to fully

determine how this action may impact various population segments. The public comment process is an opportunity to identify issues that may be related to environmental justice, but none have been raised relative to this action. The public has never requested translations of documents pertinent to this fishery.

8.12 REGULATORY FLEXIBILITY ACT (RFA)

[to be completed after September Council meeting]

8.13 EXECUTIVE ORDER 12866 (REGULATORY PLANNING AND REVIEW)

[to be completed after September Council meeting]

9.0 REFERENCES

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