



## New England Fishery Management Council

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## DRAFT MEETING SUMMARY

### Skate Committee

Hilton Garden Inn, Boston, MA

March 28, 2018

The Skate Committee met on March 28, 2018 in Boston, MA to: discuss the alternatives considered in Framework 6, which would prolong the skate wing fishery, and make recommendations for preferred alternatives to the Council.

**MEETING ATTENDANCE:** Dr. Matt McKenzie (Chair), Ms. Libby Etrie, Mr. Peter Kendall, Mr. Scott Olszewski, Mr. John Pappalardo, and Mr. Michael Ruccio; Mr. David Wallace (AP Chair); Mr. Lou Goodreau (NEFMC staff) and Dr. Fiona Hogan; Mr. Mitch MacDonald (NOAA General Counsel). In addition, approximately 10 members of the public attended.

#### **KEY OUTCOMES:**

- The Committee recommended, as preferred for Framework 6, the option to reduce the uncertainty buffer to 10%.
- The Committee recommended moving the skate wing possession limit alternatives to considered but rejected.

#### **PRESENTATION: SKATE FRAMEWORK 6**

Staff provided the Advisory Panel with a summary of the options analyzed by the PDT that would reduce the uncertainty buffer and modify the skate wing possession limit. The PDT concluded that the buffer included both management and scientific uncertainty. The PDT constructed a table of all sources of uncertainty, any improvements that have been made, and what effect that had on uncertainty. The PDT analyzed reducing the management uncertainty buffer by 5%, 10%, and 15%. Reducing the buffer could increase fishing effort, as the TAL would increase, which could have negative impacts on protected resources and essential fish habitat because of the potential for increased interactions with both. Allowing additional landings could have some positive economic impacts but increased mortality on skate may have some low negative impacts on the stock. The Committee tasked the PDT to analyze an intermediate skate wing possession limit as part of Framework 6. The PDT analysis used FY2015 data because it was the last full year of “natural” fishing behavior; the incidental possession limit was implemented in both FYs 2016 and 2017. It is not possible to know what trips restricted to 500 lb would have actually landed if there was no restriction. The analysis did not result in the TAL being achieved for any of the options to reduce the uncertainty buffer. The intermediate skate wing possession limit would be expected to be implemented in both seasons under FY2015 effort patterns as the FY2018 TAL as set in Framework 5. This could result in a maximum of 6 possession limits in place within a single fishing year, which enforcement identified as a concern.

## **AGENDA ITEM #1: SKATE FRAMEWORK 6**

A Committee member noted that the economic losses from not achieving the TAL were based on FY2015 conditions but increased effort in FYs 2016 and 2017 could continue, which might result in a different result. The Committee member questioned how the PDT modeled the mortality impacts of the 500 lb incidental possession limit. Staff explained that we don't have a predictive model where total landings can be estimated. Instead, we have to use a year of full fishing data because there is no way to know what trips would have caught if the 500 lb possession limit wasn't in place. A Committee member noted that FY2017 data weren't available yet. A major challenge to the analysis would be the incidental nature of the skate fishery, there is no declaration for the skate fishery and it is therefore difficult to identify on a trip by trip basis what the behavior would be. Some Committee members commended the PDT on identifying the different sources of uncertainty contributing to the buffer and any improvements made. NOAA General Counsel questioned whether there was a quantification of the improvements in uncertainty that would help distinguish between the different options. Staff explained that the PDT did not quantify the amount each source of uncertainty contributed to the overall buffer. A Committee member didn't think other FMPs had a quantified analysis of buffers. The Scallop FMP had some quantification of buffers but it was not exhaustive.

### **1. MOTION: Kendall/Ruccio**

Recommend the Council select as preferred alternative Option 4 (Section 4.1.4) Reduction in the Uncertainty Buffer to 10%.

A Committee member considered the general thinking on ACLs has progressed since their adoption. There is language in the NS1 guideline that states if you have frequent overage of an ACLs then it should be revised but the ACL has not been exceeded in the skate fishery.

Public comment:

- Sonja Fordham – I want to reiterate my unconvincing argument that this is a data poor complex made up of slow growing species one of which is severely depleted. Improvements to data but uncertainty to deal with. Argue for precautionary approach. Going from 25% buffer to 10% approach is a big jump. Not warranted here. Smaller cautious approach is better
- Dave – The AP wanted to avoid the incidental possession limit. That is a de facto closure and all sorts of downsides that members of the audience can speak to better. AP meeting was useful. My reasons for supporting the motion was there have been dramatic improvements that have been made. NOAA has made dramatic improvements in terms of observers know what's being handled and discarded. NOAA instituted keys to identify the species and particularly problematic are juveniles of the different species are similar. As a result of that people do a better job, observers and NOAA do a better job at identifying the species. Might be significant changes in terms of the actual management controls the only 2 negatives are related to open permits and the council advancing the discussion on that and the fact that the survey has not been reliable. If you don't do it at the same time it tends to skew the results.
- John Whiteside – I made the motion for the 10% and urge Committee to pass the motion on the board.

**MOTION #1 CARRIED 5-0-0.**

## **2. MOTION: Pappalardo/Kendall**

The Committee recommends moving the wing possession limit section to considered but rejected.

### **Public comment:**

- David Wallace – The AP took this very seriously. I think everyone would love to change it until they were faced with the notion that if you change a word of it then you have to come back to the Committee to be readdressed so you would miss the April deadline and no one wants to hold this up so we had a unanimous vote to support status quo
- John Whiteside – If there is a way, and I'm not sure procedurally what that is, to make that part of the presentation to the Council that this was very strong at the AP and for the Committee members who were not there. That was something that went round and round. I think all of us would like that presented as well.

A Committee member considered it a difficult situation if lower possession limits could prolong the fishing year but given the AP discussion, was not opposed to the motion.

### **MOTION #2 CARRIED 5-0-0.**

### **Public Comment**

- David Borden – Since the Committee basically adopted that, I just want go back to one of the points that had been repeatedly made. Industry want to avoid a situation where we get to the point where the 500 lb limit is implemented because of the consequences of it for everyone but there is no discretionary authority for the Regional Administrator (RA) to take action just to slow the fishery down except for the 500 lb limit. It exists it just doesn't apply to anything but the 500 lb limit. My suggestion would be to avoid the incidental limit because of so many negatives, council staff should work with the GARFO and see if they could come up with regulatory language to allow the RA some discretion, within some bounds, to change the trips limits in order to avoid that type of situation. There are other plans that have been adopted by other councils that could be looked at and NOAA general counsel could look at that.

A Committee member informed the Committee that a mechanism, i.e. framework action, would be necessary to put this idea into the regulations. Additionally, if the quota decreased further then giving the discretion to the RA might not mitigate that. The Agency would need some guidance on how the Council wanted the possession limit system to work, even if discretion was given to the RA. Staff explained that adding this to Framework 6 would delay final action because this would create a new set of alternatives that would have to be analyzed. The Council only has one skate framework on its list of 2018 priorities, therefore Framework 6 would be the only possible action include this in, unless the Council decided to change its priorities.

### **Public comment:**

- David Borden – I'm not talking about a framework. My understanding is that it doesn't require a framework. If you look in the old regulations under the in-season adjustment of skate possession limits. The RA has the authority through a notice in the FR consistent with the APA to reduce the skate wing possession limit to 500 lb that's what I'm suggesting. I think Mr. Ruccio is 100% correct that there has to be conditions placed on when the RA exercises that authority but that is what I'm suggesting. I agree with all of Mr. Ruccio's points that the RA would consider X,Y, Z

in the following provisions and then has the authority to change the trip limit between X amount and Y amount.

- Wallace – A similar situation arose in the surf clam fishery. We asked the council to initiate an action for surf clams that because of climate change and catch them so fast we'd have to grade them at 10 clams per second. Impossible with current technology. Low and behold the NMFS said the MAFMC if you request us to work on doing this administratively we will start on that and since there is good cause to do this we think we can do it administratively. Currently working on doing that and this is exactly the same request as far as the procedures that are involved.

A Committee member informed the group that incorporating giving the authority to the RA to modify the skate wing possession limits as needed should come from the Council. Analysis would be needed in order to discuss the implications of such a strategy. It is not possible to do this in an administrative action, i.e. a framework action would be necessary. NOAA General Counsel recommended this be done via a framework action especially because if it wasn't it could be unbounded. The Committee Chair noted that this would further delay the limited access timeline. A Committee member

#### ***AGENDA ITEM #2: OTHER BUSINESS***

A Committee member informed the Committee that while reviewing Framework 5 it became apparent that there was no specific discussion on how much barndoor skate could be landed on a B DAS or trips participating in exemption areas. GARFO is likely to propose not allowing barndoor skate possession when on a B DAS and recommend that be considered in a future action. Staff clarified that vessels on a DAS but participating in an exemption program would have access to barndoor skate and the full skate wing possession limit. Enforcement also recommended separating barndoor and winter skate wings in the hold. There was no objection to this suggestion being incorporated into the proposed rule by Committee members or the public.