



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: March 27, 2009
TO: Council
FROM: Paul Howard
SUBJECT: Final Amendment 3 Decision Document

The Council has four major decisions to make on skate management at this Council meeting. Three of the decisions are needed to finalize and submit the Amendment 3 document for approval. The fourth decision is whether to establish a control date for the bait fishery in preparation for consideration of a limited access program in a future action.

The Oversight Committee and Advisory Panel met jointly on February 19, 2009. The Oversight Committee did not have a quorum but a consensus was reached on the details of the final alternative. The details of the final alternative have been negotiated with NMFS, which have been incorporated into a draft final document and proposed regulations. The decision matrix below outlines the pros and cons of the Council choices and highlights any remaining uncertainties that need to be decided.

The four items that need your approval are:

1. The final alternative recommended by the Oversight Committee and Advisory Panel (see Document #2)
2. The draft regulatory text, which should be modified to agree with the final amendment approved by the Council. (See Document #3)
3. The draft final amendment document for submission to the Secretary of Commerce, subject to any changes to the final alternative made at the Council meeting. (See Document #4)
4. A control date for the skate bait fishery.

Issue	Recommendation	Considerations	Background
Approval of Final Alternative			
1. Update overfishing definition reference points (Section 5.1.1 on page 5-49)	The DPWS report and the SSC recommend updating the selected reference time series to 2007 (2008 spring survey for little skate)	The update would make minor changes to the biomass targets and thresholds. It would change the status determination for smooth and winter skate, which would not have been overfished in 2006 and 2007. Instead smooth and winter skate biomass would be slightly above the minimum biomass threshold.	The 75 th percentile of the survey time series is considered as being a suitable proxy for B_{MSY} . The existing reference time series ends with 1997 (1998 for little skate) using best available data when the FMP was developed. There is no a priori reason to exclude the latest decade of survey data.
ACL framework (Section 5.1.2 Target TAC Management on page 5.52)	The framework sets the $ACL=ABC$, the ACT is 25% below the ACL to account for uncertainty.	The SSC approved a 23,826 mt ABC for 2009-2011, based on the median exploitation ratio applied to survey mean biomass averaged over 2005-2007, and summed over species. The SSC recommends setting the ACT 25% below the ACL to account for uncertainty. This would allow for a 17,864 mt target for landings and discards.	The relationship between catch levels and changes in biomass was analyzed by the PDT using the DPWS data. The SSC approved using the median catch/biomass ratio to set ABC, because biomass tends to increase when catch is below this level, and vice versa. This choice factors in risk about uncertain population dynamics. Setting the ACT 25% below the ACL is expected to accommodate uncertainties in discard levels, catch information, and management effectiveness.
ACL framework (Section 5.1.2 Target TAC Management on page 5.52)	Oversight Committee recommendation: To allocate a TAL, after deducting the 2005-2007 discard rate and 3% for state landings, to the wing and bait fishery using a 1995-2006 base period. The wing fishery TAL would be 4,873 mt (66.5%) and the bait fishery TAL would be 2,455 mt (33.5%) for the 2009-2011 fishing years.	This allocation provides more TAL to the bait fishery, compared to Option 1 (2005-2007), reducing mortality and improving conservation for skates that are caught by the wing fishery, including winter, thorny, smooth, and barndoor skate.	Wing fishery fishermen favored Option 1, while bait fishery fishermen favored the recommended option.

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ACL framework (Section 5.1.2 Target TAC Management on page 5.52)	This issue did not arise during the Oversight Committee. Staff recommends that landings and catch in 2009 should apply retroactively to the 2009 ACL.	This recommendation will make the bait fishery quotas and the TAL triggers effective in 2009, rather than 2010.	Amendment 3 was intended for implementation on May 1, 2009, but was postponed to accommodate new DPWS information
Wing fishery TAL trigger: Accountability measures (AMs) (Section 5.1.3, page 5-53)	Oversight Committee recommendation: As an in-season AM the wing fishery possession limit would automatically be reset to the incidental skate possession limit when landings reach 80% of the wing fishery TAL	The Advisors and Oversight Committee lowered the trigger as mitigation for raising the incidental skate possession limit, since some wing landings will occur after the wing fishery possession limit is reset.	This in-season AM is needed to reduce the risk that catch will exceed the ACL. A range of 80-100% was taken to public hearings, but there was very little comment.
Bait fishery TAL trigger: Accountability measures (AMs) (Section 5.1.3, page 5-53)	Oversight Committee recommendation: As an in-season AM the bait fishery possession limit would automatically be reset to the incidental skate possession limit when landings reach 90% of the bait fishery TAL	The bait market needs large amounts of landings to supply offshore lobster trips. Bait will probably be supplied from state water landings and other product types when the bait fishery possession limit is reset to either the wing limit (if below its TAL trigger) or the incidental skate possession limit.	This in-season AM is needed to reduce the risk that catch will exceed the ACL. A range of 80-100% was taken to public hearings, but there was very little comment.
TAL overages: Accountability measures (AMs) (Section 5.1.3.2, page 5-54)	Oversight Committee recommendation: For overages of 5 percent or more, a straight one-for-one reduction in the TAL trigger will be applied to future allocations.	This measure would apply to the fishery that exceeded the TAL and reduce the risk of future overages by that fishery.	This AM accounts for observed management uncertainty. If management uncertainty is addressed in future actions, the Council may adjust the TAL trigger by framework action.
ACL overages: Accountability measures (AMs) (Section 5.1.3.3, page 5-54)	Oversight Committee recommendation: Reduce the ACT buffer on a one-for-one basis for ACL overages.	This measure would be responsive to overall overages, particularly those caused by changes in discards.	This AM also accounts for management uncertainty from various sources and reduces the risk that future overages will occur.

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Annual review (Section 5.1.4.1, page 5-56)	Oversight Committee recommendation: Replace the baseline review process with an annual review described on page 5-56, including additional measures that may be adjusted by framework action.	The PDT supports this process that could alert the Council to problems and issues that arise from recent actions or proposed actions in other fisheries which may affect skate conservation.	The baseline review process had proven to be very burdensome, time consuming, and obsolete. Many of the baseline measures had become relatively meaningless for skate conservation, due to changes in how DAS were administered.
Biennial SAFE Report and Specifications (Section 5.1.4.2, page 5-56)	Oversight Committee recommendation: Adopt a biennial SAFE Report and specification process as described on page 5-56 and 5-57. Specifications will include the ACL, ACT, TALs, and skate possession limits for not less than a two-year period).	This process is needed to respond to changes in skate biomass and to keep catch below the exploitation median.	The next SAFE Report would be completed by June 2011, allowing time to collect data and analyze the effects of Amendment 3 and Amendment 16 on the skate fishery. This report would also be used as the basis for setting specifications for 2012-2013.
Annual catch limit monitoring (Section 5.1.5, page 5-57)	Oversight Committee recommendation: To monitor landings through the existing reporting of product form and market by dealers.	This measure will minimize the reporting burden to monitor the skate fishery TALs. There may be an incentive to mis-report if a fishery is about to close. Some whole skate landings occur to supply both the bait and wing markets.	The DEIS contained two options for determining in which fishery the vessel was operating. These options would have required a trip declaration by VMS or IVR program. NMFS commented that these reporting options could not be administered and would be very costly. With the Oversight Committee recommendation, landings by vessels with Bait Letter of Authorizations will be presumed to be catching skates for the bait fishery, since these vessels cannot land whole skates.

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Bait skate possession limit (Section 5.1.6, page 5-58)	Oversight Committee recommendation: To set a bait skate fishery possession limit of 20,000 lbs. whole skate	This measure will help to avoid derby style fishery behavior as the landings approach the TAL trigger. It may, however, have a differential effect on large boats that land large volumes of skates compared to small boats.	This measure was not in the DEIS, but was recommended by Advisors because the revised TAL is substantially lower than current landings.
Wing skate possession limit (Section 5.1.6, page 5-58)	Oversight Committee recommendation: To adopt the skate wing possession limit for Alternative 3B: 1,900 lbs. of skate wings, or 4,313 lbs whole, with provisions compatible with existing regulations.	This limit was intended to achieve the TAL as specified in the DEIS. Although the new TAL is lower, skate wing possession limits less than 1,900 lbs. would not allow for a profitable skate wing fishery. Also, the effects of the new groundfish interim rule and Amendment 16 on skate catches are uncertain.	Fishermen in the skate wing fishery strongly supported Alternative 3B, since it did not include time/area closures to achieve the mortality objectives.
Wing skate possession limit (Section 5.1.6, page 5-58)	Oversight Committee recommendation: Apply the skate possession limits as they are applied in existing regulations	The final alternative was written as a 1,900 lbs. skate wing possession limit, not to exceed 1,900 lbs. per 24 hour period, similar to existing skate limits. As written, this would prevent vessels from making multiple trips in areas where sufficient skates are available close to shore.	The existing skate possession limit has a daily skate wing possession limit of 10,000 lbs. with a 20,000 lbs. maximum on trips over 24 hours in duration. Possession limits of other species caught on a DAS are either applied as a straight limit no matter trip length, applied as a maximum per DAS, or applied using a running clock.

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Skate bait fishery quota (Section 5.1.7, page 5-59)	Oversight Committee recommendation: To adopt Alternative 4 with a three-season quota system for the skate bait fishery.	Trip limits in other alternatives were too low to supply a skate bait market. The three season quota will minimize the length of possible closures. Overages and shortfalls of landings during the first two quota periods in a fishing year would be applied to the third period. The TAL trigger would apply to the third period.	Alternative 4 without time area closures was strongly supported by fishermen and processors in the skate bait fishery.
Incidental skate possession limit (Section 5.1.8, page 5-60)	Oversight Committee recommendation: To adopt an incidental skate possession limit of 1135 lbs. of whole skates (500 lbs. of skate wings).	This possession limit would apply when the wing and/or bait fishery TAL trigger is reached. If the bait fishery landings reach its trigger first, the wing fishery possession limit would apply to future landings. When the wing fishery possession limit reaches the TAL trigger, this possession limit would apply on all trips landing skates.	A 500 lbs. skate possession limit (220 lbs. of skate wings) was included and analyzed in the DEIS. The higher limit would have avoided a little more than 300,000 of skate discards with the higher incidental skate possession limit, according to analysis in the FEIS.
Vessels on a trip using Multispecies Category B DAS (Section 5.1.8, page 5-60)	Oversight Committee recommendation: Vessels on a Multispecies Category B DAS should have the same limit regardless of gear type, i.e. 500 lbs. of whole skates or 220 lbs. of skate wings.	The Category B skate possession limit can either be the same as the limit applied to vessels using trawls (500 lbs. of whole skate, or 220 lbs. of wings) or the above incidental skate possession limit. Amendment 3 cannot change the skate limit for vessels using trawls on a Category B DAS and there are reasons other than skate conservation for this limit.	Framework 42 set the skate possession limit for vessels using trawls on a Multispecies Category B DAS at 500 lbs. of whole skates (220 lbs. of wings) to discourage vessels from configuring nets to target flounders, with a non-target catch of skates and monkfish.

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Approval of draft regulatory text			
Draft regulatory text, Binder document #2.	Staff will provide some comments at the Council meeting	The draft text should be modified to be consistent with the final alternative approved by the Council	The Council must review the draft regulatory text before publication as a proposed rule.
Approval of draft final FEIS document for submission to the Secretary of Commerce			
Council must approve document for submission	Authorize staff to make final revisions to the document and correct any remaining deficiencies before submitting the document for approval.	The document and analyses must be consistent with the final alternative that the Council approves. Delaying this decision could postpone document submission until June if it must come before the Council again.	For previous actions, the Council has delegated final approval to the Committee Chair and Executive Director.
Skate bait fishery control date			
To ask NMFS to publish a control date notification that would apply to vessels participating in the skate bait fishery.	Fishermen and processors at the February 19, 2009 meeting recommended that the Council establish a control date for the bait fishery, allowing development of an action with limited access.	Since a control date adds uncertainty and business risk for fishermen that enter the fishery after the control date, it is best if limited access will be contemplated soon.	This issue has arisen before and the Council did not set a control date because there was no such action pending. A well-defined set of fishery participants is known because vessels that exceed the skate possession limit to land skates for the bait market require a Skate Bait Letter of Authorization.

