



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 GREATER ATLANTIC REGIONAL FISHERIES OFFICE
 55 Great Republic Drive
 Gloucester, MA 01930

DATE: June 27, 2024

MEMORANDUM FOR: Michael Pentony
Regional Administrator

FROM: Ashleigh McCord
NEPA Policy Analyst

THROUGH: Timothy Cardiasmenos
NEPA Coordinator

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SUBJECT: Final Clearance of the Environmental Assessment and Finding of No Significant Impact for Framework Adjustment 12 to the Northeast Skate Complex Fishery Management Plan

Thank you for the opportunity to review the subject documents. All comments provided on the subject Environmental Assessment (EA) have been adequately addressed. National Environmental Policy Act (NEPA) staff reviewed the Finding of No Significant Impact (FONSI) for the subject EA. We have determined that it complies with the requirements of NEPA and recommend you concur by signing below. We have no further comment on the EA or FONSI statement.

cc: Laura Deighan, SFD
Jay Hermsen, SFD
Mitch MacDonald, GCNE

1. I concur. Michael Pentony July 2, 2024
Date

2. I do not concur. _____
Date

Attachments



**FINDING OF NO SIGNIFICANT IMPACT
Under the National Environmental Policy Act**

Final Rule to Implement Framework Adjustment 12 to the Northeast Skate Complex Fishery
Management Plan

July 2, 2024

I. Purpose of Finding of No Significant Impact (FONSI): The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major Federal action significantly affecting the quality of the human environment (42 U.S.C. § 4332(C)). The Council on Environmental Quality (CEQ) regulations direct agencies to prepare a Finding of No Significant Impact (FONSI) when an action not otherwise excluded will not have a significant impact on the human environment (40 CFR §§ 1500.4(b), 1500.5(b), & 1501.6). To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action (40 CFR § 1501.3(b)). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR § 1501.3(b)(1)), and whether the project is considered minor or small-scale (NAO 216-6A CM, Appendix A-2). In considering the degree of effect on these resources, agencies should examine, as appropriate, short- and long-term effects, beneficial and adverse effects, and effects on public health and safety, as well as effects that would violate laws for the protection of the environment (40 CFR § 1501.3(b)(2)(i)-(iv); NAO 216-6A CM Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration (40 CFR § 1501.3(b)(2)(i)-(iv)). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing this FONSI, we reviewed the Northeast Skate Complex Fishery Management Plan Framework Adjustment 12 Environmental Assessment (EA), which evaluates the affected area, the scale and geographic extent of the action, and the degree of effects on those resources (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude). The EA is hereby incorporated by reference (40 CFR § 1501.6(b)).

II. Approach to Analysis: The EA includes recommended measures for the Northeast skate fishery to: (1) Set 2024 and projected 2025 specifications; (2) increase the wing possession limits for trips fishing on a day-at-sea (DAS); (3) increase the wing possession limits for trips fishing on a Northeast multispecies B-DAS or not on a DAS; (4) remove the barndoor skate possession restriction for both the bait and wing fisheries; and (5) remove the smooth skate possession restriction for both the bait and wing fisheries.

On June 25, 2024, we received a clarification regarding the amount of barndoor skate discarded in the skate bait fishery for the period analyzed in the EA. The updated data indicated that the amount of barndoor skate, and particularly barndoor skate under the bait fishery's 23-inch maximum size, discarded on trips under a Skate Bait Letter of Authorization was higher than the amount described in the EA and considered by the New England Fishery Management Council when recommending the removal of the barndoor skate possession limit for both the bait and wing fisheries. Given the potential increase in juvenile barndoor skate mortality, additional analysis is required before determining whether removal of the barndoor skate possession restriction is supported for the bait fishery. Based on this, we are disapproving the removal of the barndoor skate possession restriction

for the bait fishery. The data and analysis supporting the removal of the barndoor skate possession restriction for the wing fishery remain unchanged from what the Council considered when recommending removal of the barndoor skate possession restriction and what is described in the Environmental Assessment.

We intend to approve all other measures in Framework Adjustment 12, including the removal of the barndoor skate possession restriction for the wing fishery. This FONSI only makes a finding related to NMFS' approved measures, and references to "the action" in this document refer exclusively to those measures.

The EA includes analysis of the proposed action for its impacts on five valued ecosystem components (VEC), individually and collectively. The five components are: Target species; non-target species; protected resources; physical environment; and human communities. These effects were also analyzed in the context of past and potential future actions as part of a consideration of cumulative effects. The impacts of the action on the VECs and associated analyses are described throughout the EA and specifically in section 6.

The proposed action is not considered to contribute to a meaningfully significant impact based on scale of impact. The catch specifications are of limited duration (*i.e.*, will be in place for up to two years, with specifications reviewed by the Council annually). Changes to the possession limits and removal of the barndoor skate possession restriction for the wing fishery and smooth skate possession restrictions for both the bait and wing fisheries do not have a set duration.

The New England Fishery Management Council manages the Northeast skate complex fishery. Federal measures are designed annually to meet established management goals and objectives. The expected impacts of the action on the VECs and associated analyses are described in section 6 of the EA. The action is expected to have: (1) Slight positive effects on the Northeast skate complex stocks; (2) slight negative to slight positive impacts on non-target species; (3) slight negative to moderate positive impacts on protected species (with negligible to slight negative impacts on Endangered Species Act (ESA)-listed species and Marine Mammal Protection Act (MMPA)-protected species with PBR levels exceeded, and negligible to moderate positive impacts on MMPA-protected species in good condition); (4) slight negative impacts on habitat; and (5) slight negative to slight positive impacts on human communities. None of these conclusions, when considered together, is expected to result in any overall significant impact.

The action is not connected to other actions that have caused or may cause effects to the resources in the affected area. There is then no potential for the effects of the action to add to the effects of other projects, such that the effects taken together could be significant, as described in the Cumulative Effects Analysis (section 6.7 of the EA).

III. Geographic Extent and Scale of the Proposed Action: The action establishes Federal management measures for the Northeast skate complex fishery that includes seven species of skate (barndoor, clearnose, little, rosette, smooth, thorny, and winter skates) off the New England and Mid-Atlantic coasts, and is therefore regional in its geographic extent. The resources present throughout this region that may be impacted by the skate fishery are described in section 5 of the EA. The EA also describes and considers the typical distribution of effort throughout the skate fishery to varying extents throughout the year and managed region. The fishery and its impacts are spread across a broad region throughout the year. In part due to the wide geographic range of

fishing activity, in the context of the species and other VECs concerned in the action, the environmental effects analyzed in the EA would be dispersed throughout the region and not expected to result in substantial¹ changes to any VECs or specific geographic areas.

IV. Degree of Effect:

A. The potential for the proposed action to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection.

The action is not expected to alter fishing methods or activities such that they violate any Federal, state, or local law, or other requirements imposed for environmental protection. The preferred specifications and possession restrictions were developed to be consistent with the Magnuson-Stevens Act (MSA). Section 7.0 of the EA describes consistency with other applicable laws, either for the Council's recommended alternatives, for the range of alternatives, or for the Northeast Skate Complex FMP. The information provided in the EA is applicable to NMFS' approved measures, except in Section 7.1.1, where the updated data on barndoor skate discards in the bait fishery supersedes the data in the EA as the best scientific information available. The proposed action is consistent with MSA National Standard 2 requirements because our decision to disapprove the removal of the barndoor skate possession restriction for the bait fishery (and to approve all other recommended measures) is based on the best scientific information available.

B. The degree to which the proposed action is expected to affect public health or safety.

As described in the EA, the action is not expected to change the manner in which participants conduct fishery activities or substantially affect fishing communities. Therefore, no changes in fishing behavior that would affect safety are anticipated. The action is consistent with previously analyzed measures used since the FMP was adopted, and is not expected to adversely affect public health or safety.

C. The degree to which the proposed actions is expected to affect a sensitive biological resource, including:

a. Federal threatened or endangered species and critical habitat;

Impacts to ESA-listed species and critical habitat are discussed in section 6.4 of the EA.

On May 27, 2021, the National Marine Fisheries Service (NMFS) completed formal consultation pursuant to section 7 of the ESA of 1973, as amended, and issued a Biological Opinion on the authorization of eight Federal FMPs, two interstate fishery management plans (ISFMP), and the implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat (EFH) Amendment 2.² The 2021 Opinion considered the effects of the authorization of these FMPs, ISFMPs, and the implementation of the Omnibus EFH Amendment on ESA-listed species and designated critical habitat, and determined that those actions were not likely to

¹A high impact or considerable change from a baseline condition or to an important environmental or socio-economic aspect of an action indicating the potential for a significant impact under NEPA.

²The eight Federal FMPs considered in the May 27, 2021, Biological Opinion include: (1) Atlantic Bluefish; (2) Atlantic Deep-Sea Red Crab; (3) Mackerel, Squid, and Butterfish; (4) Monkfish; (5) Northeast Multispecies; (6) Northeast Skate Complex; (7) Spiny Dogfish; and (8) Summer Flounder, Scup, and Black Sea Bass. The two ISFMPs are American Lobster and Jonah Crab.

jeopardize the continued existence of any ESA-listed species or destroy or adversely modify designated critical habitats of such species under our jurisdiction. An Incidental Take Statement (ITS) was issued in the 2021 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 the 2021 Opinion.

On January 10, 2024, NMFS issued a 7(a)(2)/7(d) memorandum that reinitiated consultation on the 2021 Opinion. The Federal actions to be addressed in the reinitiation of consultation include the authorization of the Federal fisheries conducted under the aforementioned eight Federal FMPs (see footnote 2). The reinitiated consultation will not include the American lobster and Jonah crab fisheries, which are authorized under ISFMPs.³

Given the information provided above, it has been determined that the proposed action does not entail making any changes to the skate fishery during the reinitiation period that would cause an increase in interactions with or effects to ESA-listed species or their critical habitat beyond those considered in NMFS' January 10, 2024, 7(a)(2)/7(d) reinitiation memorandum. Therefore, the proposed action is consistent with NMFS' January 10, 2024, 7(a)(2) determination.

b. Stocks of marine mammals as defined in the Marine Mammal Protection Act;

As described in section 6 of the EA, the action is not expected to: (1) Alter overall fishing operations; (2) increase fishing effort; or, (3) alter the spatial and/or temporal distribution of current fishing effort. Considering this, and the information provided in section 6.4 of the EA, the action is not expected to introduce new or elevated interaction risks to MMPA-protected species, and it has been determined that the action is not expected to adversely affect stocks of marine mammals as defined in the MMPA.

c. Essential fish habitat identified under the Magnuson–Stevens Fishery Conservation and Management Act;

The action is not expected to cause substantial damage to EFH as defined under the MSA and identified in the FMP. The commercial fishery primarily uses gillnet and bottom trawl gear (section 6 of the EA). These gear types, particularly bottom otter trawls, can adversely impact EFH. However, as described in section 6.5, the areas fished for skates have been fished for many years and are unlikely to be degraded further as the result of the levels of fishing effort that are expected under the action, which are not expected to be substantially different from past levels of effort. The action is expected to result in slight negative impacts to habitat as the result of continued fishing.

³ On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023, which included the following provision specific to NMFS' regulation of the American lobster and Jonah crab fisheries to protect North Atlantic right whales, "Notwithstanding any other provision of law ... for the period beginning on the date of enactment of this Act and ending on December 31, 2028, the Final Rule ... shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance with the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)." Given this, the American lobster and Jonah crab fisheries remain in compliance with the ESA through December 31, 2028; this determination was documented in a memorandum issued by the Greater Atlantic Regional Fisheries Office's Sustainable Fisheries Division on June 15, 2023.

d. Bird species protected under the Migratory Bird Treaty Act;

Information about seabird interactions with this fishery is limited. However, there is no known evidence of substantial impacts to bird species, including those protected under the Migratory Bird Treaty Act, from the skate fishery in the past. The approved measures are not expected to result in substantial changes to the spatial and/or temporal distribution of current fishing effort, or substantially alter fishing methods. As a result, it is not expected that the action would have any new effect on these species.

e. National marine sanctuaries or monuments;

There are national marine sanctuaries and marine national monuments established in the broader region covered by the skate fishery and considered in the EA. However, as described in section 6.5, the areas fished for skates have been fished for many years and are unlikely to be degraded further as the result of the levels of fishing effort that are expected under the action, which are not expected to be substantially different from past levels of effort. The action is generally not expected to change the typical manner in which fishing is conducted. No significant impacts to other VECs that may be found within these monuments or sanctuaries are expected. Fishery participants would also be required to continue to comply with any rules or regulations concerning fishing activity within these areas. As a result, the specifications are not expected to have any substantial effects on national marine sanctuaries or monuments.

f. Vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems;

The action is not expected to have significant impacts on the natural or physical environment, including vulnerable marine or coastal ecosystems. Current skate fishery operations do not adversely affect these areas, and the preferred specifications and possession restrictions are not expected to alter fishing methods or activities or to increase fishing effort or the spatial and/or temporal distribution of current fishing effort substantially. The areas fished for skate have been fished for many years (for a variety of species), and the action is not expected to change the locations or nature of any fishing activity. Much of the area in the mid-Atlantic near the continental slope/shelf break where deep sea corals can be found in and around the submarine canyons is now protected by a prohibition on bottom-tending gear in the Frank R. Lautenberg Deep Sea Coral Protection Area (81 FR 90246; December 14, 2016). On the outer continental shelf in New England waters, the Georges Bank Deep Sea Coral Protection Area (86 FR 33553; June 25, 2021) designated coral protection areas on Georges Bank and in the Gulf of Maine and prohibited the use of certain bottom-tending gears in those areas. The approved measures are not expected to alter skate fishing patterns relative to this protected area or in any other manner that would lead to adverse impacts on deep sea coral or other vulnerable marine or coastal ecosystems.

g. Biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)

The impacts of the skate fishery on biodiversity and ecosystem functioning have not been assessed; however, the impacts to components of the ecosystem (*i.e.*, non-target species, habitat, and protected species) have been considered. As described in section 6 of the EA, the action is not expected to result in substantial changes in fishing methods, activities, or the spatial and/or temporal

distribution of current fishing effort. As described in the EA, expected levels of effort are not likely to negatively impact the stock status of non-target species, they are not likely to cause additional habitat damage beyond that previously caused by a variety of fisheries, and they are not expected to substantially increase interaction risk with any protected species. However, they are also not expected to contribute to the recovery of any damaged habitats or endangered or threatened species. For these reasons, the action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area.

D. The degree to which the proposed action is reasonably expected to affect a cultural resource: Properties listed or eligible for listing on the National Register of Historic Places; archeological resources (including underwater resources); and resources important to traditional cultural and religious tribal practice.

The impacts of the action on the human environment are described in section 6.6 of the EA. No significant impacts are expected to occur in any of the cultural resource areas listed in the above question. The action would not affect historic properties and archeological resources. The gear types used in the skate fishery (primarily gillnet and bottom trawl gear) can negatively impact physical habitat. However, the approved measures are not expected to result in substantial changes to the spatial and/or temporal distribution of current fishing effort, or substantially alter fishing methods. Therefore, minimal disturbing impacts are expected to result from the action. Although historical or cultural resources, such as shipwrecks, may be present in the area where skate fishing occurs, including some registered on the National Register of Historic Places, vessels typically avoid fishing too close to wrecks due to the possible loss or entanglement of gear. Therefore, it is unlikely that the action would result in substantial impacts to unique areas.

E. The degree to which the proposed action has the potential to have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898).

The skate fishery is not expected to affect minority and low-income communities disproportionately. As described in section 6 of the EA, the action is not expected to change the operation of, or participation in, the fishery substantially; and would apply to all participants in the affected area, regardless of minority status or income level. See further discussion in section 7 of the EA (Other Applicable Laws).

F. The degree to which the proposed action is likely to result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.

There is no evidence or indication that the skate fishery has ever resulted in the introduction or spread of noxious weeds or nonnative invasive species. As described in section 6 of the EA, the action is not expected to change fishing effort substantially or alter the manner in which the fishery operates; nor will it change the spatial and/or temporal distribution of current fishing effort. Therefore, it is highly unlikely that the action would result in any effects that promote the introduction, growth, or expansion of these species.

G. The potential for the proposed action to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resource such as marshland or seagrass) or over which there is substantial uncertainty or scientific disagreement.

The action is not expected to cause a substantial effect to any other physical or biological resource, nor is there substantial uncertainty or scientific disagreement on the impacts of the action. The approved measures are not expected to alter fishing methods or activities substantially or increase fishing effort or the spatial and/or temporal distribution of current fishing effort substantially. The measures contained in the action are not expected to have highly uncertain, unique, or unknown risks on the human environment. The approved measures are comparable to previous measures developed under the Northeast Skate Complex FMP, which has been in place for many years. Fishing conducted under the FMP has been monitored and analyzed in the Council process for many years and, thus, risks from the fishery are relatively well known. There is some uncertainty involved in projecting stock abundance. However, uncertainty around skate stock status is partly addressed in the SSC's development of recommendations and in the specifications-setting process. The annual catch target is set at 90 percent of the annual catch limit to account for scientific and management uncertainty, as described in Sections 3 and 5.1.4 of the EA. In addition, the Council reviews specifications annually, and can adjust measures as necessary based on any new information received in the preceding year.

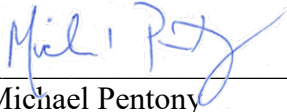
V. Other Actions Including Connected Actions: There are no other connected actions where the combined effects may be significant (40 CFR § 1501.9(e)(1)). Any other future actions within the skate fishery would be developed, analyzed, and implemented independently of this action. The Cumulative Effects Analysis in section 6.7 of the EA discusses other beneficial and adverse actions that are occurring or are reasonably certain to occur, and that affect the same resources as the action. Section 6.7 focuses on cumulative effects of the Council's preferred alternatives. However, Sections 6.2-6.6 of the EA demonstrate that the direct and indirect impacts of the removal of the barndoor skate possession restriction and retention of the barndoor skate possession restriction are generally expected to be similar. The impact on human communities differs slightly, with a slight positive impact resulting from the removal of the barndoor skate possession restriction and a slight negative impact resulting from retention of the restriction. The resulting impact from the partial removal of the barndoor skate possession restriction is slight negative to slight positive, which falls within the range of impacts for other measures approved through this action. Therefore, all conclusions reached regarding cumulative impacts to resources are expected to be similar when accounting for the disapproval of the removal of the barndoor skate possession restriction for the bait fishery. Section 6.7 of the EA demonstrates that the effects of these collective actions, for each resource analyzed, do not result in synergistically significant impacts, either positive or negative.

VI. Mitigation and Monitoring: NMFS does not anticipate any high or significant impact from the action. Therefore, NMFS is not proposing or adopting any mitigation measures or monitoring plans.

DETERMINATION

The CEQ NEPA regulations, 40 CFR § 1501.6, direct an agency to prepare a FONSI when the agency, based on the EA for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and

the analysis contained in the supporting EA prepared for Framework Adjustment 12 to the Northeast Skate Complex FMP, it is hereby determined that the proposed action will not significantly impact the quality of the human environment. The EA for Framework Adjustment 12 is hereby incorporated by reference. In addition, all beneficial and adverse impacts of the proposed action as well as mitigation measures have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service

July 2, 2024

Date