

325(b)(3)(C) of the Communications Act 47 U.S.C. 325; provided, however, that it shall not be a failure to negotiate in good faith if the television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station negotiates with multichannel video programming distributors in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation.*—(1) *Standards.* The following actions or practices violate a broadcast television station's duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a television broadcast station to negotiate retransmission consent with any multichannel video programming distributor;

(ii) Refusal by a television broadcast station to designate a representative with authority make binding representations on retransmission consent;

(iii) Refusal by a television broadcast station to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a television broadcast station to put forth more than a single, unilateral proposal.

(v) Failure of a television broadcast station to respond to a retransmission consent proposal of a multichannel video programming distributor, including the reasons for the rejection of any such proposal;

(vi) Execution by a television broadcast station of an agreement with any party, a term or condition of which, requires that such television broadcast station not enter into a retransmission consent agreement with any multichannel video programming distributor; and

(vii) Refusal by a television broadcast station to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.

(2) *Totality of the circumstances.* In addition to the standards set forth in section 76.65(b)(1), a multichannel video programming distributor may

demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station breached its duty to negotiate in good faith as set forth in section 76.65(a).

(c) *Good faith negotiation and exclusivity complaints.* Any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this § 76.64(m) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) A complainant multichannel video programming provider enters into a retransmission consent agreement with a television broadcast station that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station; or

(3) The complainant has notified the television broadcast station that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2005.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 022800D]

#### Fisheries of the Northeastern United States; Magnuson-Stevens Act Provisions; Northeast Skates; Overfished Fisheries

**ACTION:** Designation of Council responsibilities for the Northeast skate fisheries; determination of overfished fisheries.

**SUMMARY:** NMFS announces that the Assistant Administrator for Fisheries, on behalf of the Secretary of Commerce (Secretary), has designated the New England Fishery Management Council (NEFMC) as the Regional Fishery Management Council (Council) responsible for developing a fishery management plan (FMP) for seven species of skate (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) found in Federal waters off the coast of the New England and Mid-Atlantic states. NMFS also informs the public of its determination that four of the species comprising the Northeast skate fisheries (barndoor, smooth, thorny, and winter skate) are overfished.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 508-281-9104.

#### SUPPLEMENTARY INFORMATION:

##### Background

Soon after the passage of the Fishery Conservation and Management Act in 1976, the Secretary designated species-specific management responsibilities to the Councils. The skate species were not among those designated for management. In April 1999, the NEFMC requested the Secretary to grant the NEFMC sole authority to manage seven species of skate found in the Northeast—namely the barndoor, clearnose, little, rosette, smooth, thorny, and winter skate. In August 1999, the Mid-Atlantic Fishery Management Council agreed that it would be appropriate for the NEFMC to manage the Northeast skate fisheries. On March 14, 2000, NMFS informed the NEFMC that the Assistant Administrator for Fisheries, NMFS, on behalf of the Secretary, designated the NEFMC as the Council responsible for developing an FMP for seven species of skate found in Federal waters off the coast of the New England and Mid-Atlantic states.

### Determination of Overfished Fisheries

The determination of the status of a stock relative to overfishing and overfished condition is based on both the rate of removal of fish from the population through fishing (the exploitation rate) and the current stock size. When the exploitation rate jeopardizes the capacity of a stock to produce its maximum sustainable yield (MSY) on a continuing basis, overfishing is occurring. Exploitation rates are usually expressed in terms of an instantaneous fishing mortality rate (F).

Another important factor for classifying the status of a resource is the current stock level. If a stock's biomass falls below its minimum biomass threshold, the capacity of the stock to produce MSY on a continuing basis is jeopardized and the stock is said to be in an overfished condition.

NMFS' Northeast Fisheries Science Center assessed the Northeast skate stocks at the 30th Northeast Regional Stock Assessment Workshop (SAW 30), in January 2000. Results of SAW 30 indicate that barndoor, smooth, thorny, and winter skate are overfished as discussed below.

#### *Barndoor skate (Raja laevis)*

The abundance of barndoor skate declined continuously through the 1960s to historic lows during the early 1980s. Since 1990, the abundance of barndoor skate has increased slightly on Georges Bank, the western Scotian Shelf, and in southern New England. However, the 1999 NEFMC autumn survey biomass index was less than 5 percent of the peak observed in 1963. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–98 NEFMC autumn survey biomass index of 0.08 kg/tow was below the proposed biomass threshold of 0.81 kg/tow. Therefore, barndoor skate is overfished.

#### *Smooth skate (Raja senta)*

The abundance of smooth skate was highest during the early 1960s and late 1970s. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–1998 NEFMC autumn survey biomass index of 0.15 kg/tow was below the proposed biomass threshold of 0.16 kg/tow. Therefore, smooth skate is overfished.

#### *Thorny skate (Raja radiata)*

The abundance of thorny skate has declined to historic lows. Current abundance is about 10–15 percent of the peak observed in the late 1960s and early 1970s. F could not be estimated for the stock, nor could an F reference point

be determined. However, the 1996–1998 NEFSC autumn surgery biomass index of 0.77 kg/tow was below the proposed biomass threshold of 2.20 kg/tow. Therefore, thorny skate is overfished.

#### *Winter skate (Raja ocellata)*

Winter skate abundance is currently about the same as in the early 1970s, at about 25 percent of the peak observed during the mid-1980s. Comparison of the current F(0.39), based on the NEFSC spring survey, to the proposed threshold F(0.1) indicates that overfishing is occurring. The 1996–1998 NEFSC autumn survey biomass index average of 2.83 kg/tow was below the proposed biomass threshold of 3.23 kg/tow. Therefore, winter skate is also overfished.

Section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act requires that within 1 year of being notified of the identification of a stock as being overfished, the affected Council must develop measures to end overfishing and rebuild the stock. On March 14, 2000, the NEFMC was informed that it had been designated as the Council having responsibility for the management of the Northeast skate fisheries and was notified of the overfished status of the barndoor, winter, thorny, and smooth skate stocks. The letter to the NEFMC reads as follows:

March 14, 2000  
Mr. Thomas Hill  
Chairman  
New England Fishery Management Council  
50 Water Street - Mill 2  
Newburyport, Massachusetts 01950-2866  
Dear Chairman Hill:

I am pleased to inform you that, on behalf of Secretary Daley, I have approved your request to designate the New England Fishery Management Council (NEFMC) as the responsible body for the development and management of the Northeast skate fisheries. Your responsibilities will include the management of seven species of skate found in the Northeast—barndoor, clearnose, little, rosette, smooth, thorny, and winter skate.

The Mid-Atlantic Fishery Management Council (MAFMC), at its August 1999 meeting, passed a motion to support the NEFMC's request to initiate skate management. The MAFMC made clear its desire to be an active participant with the NEFMC in the development of a fishery management plan for Northeast skates. The MAFMC also expressed the desire to place at least three voting members on the NEFMC's skate committee and to appoint at least three industry advisors to the NEFMC's skate advisory panel or its equivalent.

The National Marine Fisheries Service Northeast Fisheries Science Center undertook an assessment of the Northeast skate fisheries at the 30th Northeast Regional Stock Assessment Workshop (SAW 30), which was

completed in January 2000. Results of SAW 30 indicate that barndoor, smooth, thorny, and winter skate are overfished. The date of this letter will begin the 1-year period specified in the Magnuson-Stevens Fishery Conservation and Management Act for development of measures to address overfishing. A notice announcing the addition of these species to the list of overfished stocks will be published in the **Federal Register**.

I am pleased that you will begin work on management measures for these fisheries. If you have any questions, please do not hesitate to contact me.

Sincerely,  
Andrew A. Rosenberg  
Acting Assistant Administrator  
for Fisheries

Dated: March 15, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 991228352-0012-02; I.D. 011100D]

**RIN 0648-AM83**

### Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule To Implement Major Provisions of the American Fisheries Act; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency interim rule; revisions to 2000 harvest specifications; sideboard directed fishing closures; correction.

**SUMMARY:** This document corrects the emergency interim rule, which implements major provisions of the American Fisheries Act (AFA) and revises interim 2000 harvest specifications and sideboard directed fishing closures. This correction is being made to clarify that AFA crab processing sideboard limits do not apply to the processing of Community Development Quota (CDQ) crab.

**DATES:** Effective January 21, 2000 through July 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**