[FR Doc. 02–24564 Filed 9–26–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–200228(b); FRL–7382–3]

Approval and Promulgation; Georgia Transportation Conformity State Implementation Plan Memorandum of Agreement for the Atlanta Metropolitan Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: . EPA is promulgating one correction to its previous approval of the transportation conformity State Implementation Plan (SIP) for Atlanta, Georgia promulgated on April 7, 2000 (65 FR 18249). In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 28, 2002.

ADDRESSES: Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA 20228. The EPA Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562–9042, *Sheckler.Kelly@epa.gov.*

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, US. Environmental Protection Agency, Region 4, 61 Forsyths Street, SW, Atlanta, Georgia 30303, *Sheckler.Kelly@epa.gov,* (404) 562–9042.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: September 11, 2002.

A. Stanley Meiburg,

Regional Administrator, Region 4.

[FR Doc. 02–24491 Filed 9–26–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 091802D]

Endangered and Threatened Wildlife and Plants; 12–Month Finding for a Petition to List Barndoor Skate (Dipturus laevis) as Threatened or Endangered

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

ACTION: Notice of petition finding.

SUMMARY: NMFS announces a 12–month finding on a petition to add barndoor skate (*Dipturus laevis*) to the list of threatened and endangered wildlife and to designate critical habitat under the Endangered Species Act (ESA). NMFS has compiled and analyzed the best available data, and prepared this administrative finding for barndoor skate. NMFS has determined after review of the best available scientific and commercial information that listing the barndoor skate is not warranted at this time. NMFS will retain the species on its candidate species list.

DATES: The finding announced in this notice was made on September 20, 2002.

ADDRESSES: Comments or questions concerning this petition finding should be sent to Mary Colligan, NMFS, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS Northeast Region, 978–281–9116, or David O'Brien, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*), for any petition to revise the List of Endangered or Threatened Wildlife and Plants that presents substantial scientific and commercial information, NMFS is required to make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12–month findings are to be published promptly in the **Federal Register**.

On January 15, 1999 (64 FR 2629), NMFS requested information from the public on barndoor skate for possible inclusion on the list of candidate species. Such designation highlights species for which NMFS is concerned may warrant listing under the ESA, but it does not afford any regulatory protection for those species. In a petition dated March 4, 1999, GreenWorld requested that NMFS list barndoor skate as endangered or threatened and designate Georges Bank and other appropriate areas as critical habitat. The petitioner also requested that barndoor skate be listed immediately, as an emergency matter. Finally, the petitioner requested that other similar looking species of skate also be designated as threatened or endangered to ensure the protection of barndoor skate. On April 2, 1999, NMFS received a second petition from the Center for Marine Conservation (CMC) to list barndoor skate as an endangered species. This second petition is considered a comment on the first petition submitted by GreenWorld.

Both the petition and comment on the petition referenced a paper in the journal Science (Casey and Myers, 1998), which presents data on the decline of barndoor skate. The petitioner cites bycatch in commercial fishing gear as the major threat to the species' continued existence and also expresses concern over ''inbreeding depression due to small population size.'' Furthermore, the petitioner cites the inadequacy of existing regulatory mechanisms as a threat to the species. Comments submitted by the CMC cite

overutilization for commercial purposes as well as the inadequacy of existing regulatory mechanisms as the reasons for barndoor skate being endangered. Finally, the CMC requested that the Secretary of Commerce categorize barndoor skate as ''overfished'' under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

The information available in the petition and in NMFS' records indicated that listing barndoor skate under the ESA may be warranted. Therefore, pursuant to section 4(b)(3)(A) of the ESA, NMFS published a 90–day finding on June 21, 1999 (64 FR 33040) announcing their intent to review the status of barndoor skate and soliciting information from the public. NMFS received four comments from the public. One comment was received from the Marine Conservation Biology Institute (MCBI), containing materials in response to NMFS' request for information on barndoor skate. The information included a paper summarizing the conclusions reached at a scientific workshop convened by MCBI, which examined scientific information on the status and vulnerability of barndoor skate. A few participants at this workshop also were participants of the 30th Northeast Regional Stock Assessment Workshop (SAW).

One comment was received from the Virginia Institute of Marine Science (VIMS). The purpose of the comment was to inform NMFS of two recent studies discussed in a report entitled, ''Results of modifications to sea scallop dredge twine tops to facilitate the reduction of finfish bycatch: Georges Bank Closed Area II Experimental Fishery September-October 1998.'' The first study obtained distribution and size data on barndoor skate during a 1998 NMFS/Scallop Industry/Academic Institution cooperative survey of sea scallop resources in Georges Bank Closed Area II. According to VIMS, the results of barndoor skate density data appears to be higher than what was reported by Casey and Myers (1998). The second study was in the process of collecting more detailed data in the southern part of Georges Bank Closed Area II. The results from the first study were discussed in the Stock Assessment Review Committee (SARC) Consensus Summary of Assessments document. VIMS concluded that the decision to list barndoor skate as endangered or threatened should be delayed until other information sources are examined.

One comment was received from the following east coast commercial fishing groups: the Associated Fisheries of Maine Groundfish Group, Trawler Survival Fund, Fisheries Survival Fund, Monkfish Defense Fund, Garden State Seafood Association, and the North Carolina Fisheries Association. Included with their comments was a report entitled ''Conservation Status of the Barndoor Skate (Raja laevis)'', which was prepared by a participant of the 30th Northeast Regional SAW. Their comments requested that NMFS determine that listing barndoor skate under the ESA is not warranted based upon the best available science or information presented by the petitioners.

One comment was received from the CMC providing additional information regarding an option for reducing bycatch of large skates in New England trawl fisheries. A report entitled, ''Groundfish Forum's Experimental Fishing Permit to test the effectiveness of a halibut excluder,'' was included. The CMC stated that the report has been sent to the New England Fishery Management Council (Council), which is the appropriate forum to review the information provided. In addition, the CMC stated that it is pleased that the Council is moving forward with a management plan for skates.

To determine if the petitioned action was warranted, NMFS initiated a status review and, as part of that review, conducted a stock assessment at the 30th Northeast Regional SAW, which took place from November 29, 1999, through December 3, 1999. The SARC reviewed all four comments and information received, in addition to commercial fishery and state and Federal (both U.S. and Canadian) research survey data, for consideration and use in developing comments on the five ESA listing factors. The assessment information was compiled and presented in the 30th Northeast Regional Stock Assessment Workshop, SARC Consensus Summary of Assessments document completed in April of 2000.

The SARC Chairman was Dr. Robert Mohn, Bedford Institute of Oceanography, Department of Fisheries and Oceans, Halifax, Nova Scotia. The SARC is composed of scientists from the Northeast Fisheries Science Center (NEFSC), the Northeast Regional Office, NMFS Headquarters, the Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, the states of Rhode Island and Massachusetts, Department of Fisheries and Oceans of Canada (DFO Canada), and VIMS.

The SAW Steering Committee guides the SAW process. Working groups are created to assemble data for the assessments, decide on methodology, and prepare documents for SARC review. Terms of reference provided by the Steering Committee for this assessment included: (1) A summary of available biological studies for the skate complex; (2) an update of commercial and recreational landings and survey indices through 1998/99; (3) a summary of fishery discard rates through use of sea sampling data or other information sources to the extent possible; (4) an estimate of fishing mortality rates and trends in relative or absolute stock size; (5) and an assessment of the status of species in the complex relative to overfishing criteria, as well as an evaluation of the status of barndoor skate relative to the listing factors of the ESA.

In March of 2000, NMFS notified the Council of its responsibility for the development of a plan and management of the seven species of skate found off the northeast coast of the United States. Since identification of barndoor skate as a candidate species, NMFS has been working with the Council to develop a Skate Fishery Management Plan (Skate FMP). The purpose of the plan is to develop and implement measures to conserve the seven species of skates found in the northeast region.

The Council has set up a Skate Plan Development Team, which prepared a 2000 Stock Assessment and Fishery Evaluation (SAFE) Report for the Northeast Skate Complex on January 5, 2001. This is the first Skate SAFE Report for the northeast region complex and will serve as a source document for the Skate FMP. The Skate FMP will also consist of a Supplemental Environmental Impact Statement. Skate FMP scoping meetings were held from January 23, 2001, through February 12, 2001. A draft Skate FMP was prepared and submitted to NMFS by the Council on April 10, 2002. Since then, a revised draft Skate FMP has been submitted to NMFS by the Council on August 1, 2002. NMFS will continue to work with the Council to ensure that the Skate FMP contains all of the necessary components required to manage and rebuild skate resources.

Life History

The barndoor skate is one of seven species of skates that occur off the northeastern coast of the United States. Barndoor skates can reach sizes in excess of 1 meter in length, and may not reach maturity until age 10 or older. The historic range of the barndoor skate extended from Cape Hatteras to the Grand Banks off Newfoundland. Skates are found from near the tide line to depths exceeding 700 m. Skates are not

known to undertake large-scale migrations, but they do move seasonally in response to changes in water temperature, generally offshore in the summer and early autumn and inshore in the winter and spring. Barndoor skates have a limited reproductive capacity with an estimated average fecundity of 47 egg cases per year (NEFSC, 2000). Spawning is thought to occur over a considerable part of the year. Members of the skate family lay eggs that are encased in a hard, leathery case commonly called a mermaid's purse. The eggs are yellowish or greenish brown with a hollow tendril at each corner enabling them to fasten to seaweeds or other objects (Bigelow and Schroeder, 1953). The incubation time is from 6 to 12 months with the young having the appearance of an adult upon hatching. Skates are omnivorous, feeding on crustaceans, worms, mollusks, and fish (Bigelow and Schroeder, 1953).

Slow growth and late age at maturity may cause skates to be more susceptible to the effects of fishing (NEFSC 2000). Musick (1999), stated that large, slow growing, late maturing species with low fecundity (i.e. K-selected species), tend to produce low maximum sustainable yields and recover more slowly from overfishing. Long-lived species tend to be especially prone to excessive mortalities and rapid stock collapse, resulting in a recovery that may take decades. These long-lived species may not be able to react as strongly, or as quickly as more productive species to make up for decreases in their population densities (Sminkey and Musick 1996). According to Musick (1999), the greatest threat to these long-lived species results from mixed species fisheries where they are taken as either directed catch or bycatch.

Consideration as a ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, a population of the petitioned barndoor skate must be considered a ''species'' under the ESA. Section 3(15) of the ESA defines a ''species'' to include any ''distinct population segment of any species of vertebrate which interbreeds when mature.'' On February 7, 1996, the USFWS and NMFS adopted a joint policy to clarify their interpretation of the phrase ''distinct population segment (DPS) of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the ESA (51 FR 4722). The joint policy identifies two elements that must be considered when making DPS determinations: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management, or conservation status.

Some of the considerations that may be used when determining the significance of a population segment to the taxon to which it belongs are: (1) Persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or (4) evidence that the discrete population segment has marked genetic differences from other populations of the species.

There is insufficient information at this time to delineate DPSs of barndoor skate. In the absence of such information, NMFS will assess the status of the species rangewide for this listing analysis.

Status of Species

U.S. Research Surveys

U.S. Bureau of Fisheries research surveys and NEFSC bottom trawl surveys indicate that barndoor skates are most abundant in the Gulf of Maine, Georges Bank, and Southern New England offshore strata regions, with very few fish caught inshore (<27 meters depth) or in Mid-Atlantic regions. According to Bigelow and Schroeder (1953), historically barndoor skate have been found inshore to the tide line and in depths as great as 400 meters off Nantucket.

Indices of barndoor skate abundance and biomass from the NEFSC spring survey were highest during the 1960s, then declined in the early 1980s. Since 1990, both the spring and autumn survey indices have steadily increased, but are only about 10 percent of the peak values observed in the early 1960s (NEFSC 2000). While the status of ''overfished'' under the MSFCMA does not mean that the species is ''overutilized,'' ''threatened,'' or ''endangered'' under the ESA, current scientific information gathered for MSFCMA purposes can be useful in identifying trends in barndoor skate biomass for ESA purposes. Three-year averages of indices are used to evaluate the current status with respect to the SARC proposed MSFCMA biomass reference points. The 1996–1998 NEFSC autumn survey biomass index average was 0.08 kg/tow. According to the Skate SAFE Report, the 1997–1999 NEFSC autumn survey average is 0.17 kg/tow. The most recent 3–year average (1998–2000) increased further to 0.23 kg/tow (NEFSC, pers. comm., 2001). Preliminary 2001 data bring the 1999–2001 average up to 0.38 kg/tow, notably higher than the 1996–1998 average (NEFMC 2002a). This average is below the SARC proposed MSFCMA biomass target of 1.62 kg/tow and the threshold of 0.81 kg/tow for determining whether this species is overfished; however, an increasing trend has been seen in each of these survey years with the biomass index almost tripling in 3 years.

The median length of barndoor skate has been increasing in recent years for both the spring and autumn surveys; it is currently 70–75 cm. Since the decline in the 1980s, recent survey catches have included individuals as large as those recorded during the peak abundance in the early 1960s, but the large number of barndoor skates between 40 and 80 cm found during the 1960s is not apparent in recent surveys. However, the NEFSC winter surveys of length frequency distribution for 1998–1999 found a significant increase in the abundance of barndoor skate at lengths less than 80 cm (NEFSC 2000). These increases may have resulted from an increase in survival of young resulting from the closure of certain areas to fishing, and the elimination of foreign fishing in 1978.

Canadian Research and Commercial Data

Research surveys and commercial fishery observer sampling by the DFO Canada between the Gulf of St. Lawrence and Georges Bank show two principal concentrations of barndoor skates: Georges Bank/Fundian Channel and central Scotian Shelf. The broad ranges of sizes encountered by DFO Canada surveys on Georges Bank suggest that the current population consists of both juveniles and adults. Canadian observer sampling of commercial fisheries using both fixed and mobile gears suggests that commercial gears may catch more and larger barndoor skate than shown in research survey catches. This may be due to the different types of fishing gear

used. Otter trawls used in research surveys are not as efficient in catching larger species as they can escape easier than with long-line and fixed gear methods.

Recent information from commercial fisheries also indicates that barndoor skate are much more widely distributed to the north (roughly 16 degrees more) than what research surveys indicate (Kulka, 1999). Kulka (1999) states that there are a large number of records along the southwest slope of the Grand Bank, as well as the shelf edge as far north as 64° N. lat., which portrays a significant extension of range for this species. Further explanation by Kulka (1999) shows that the increased depth at which barndoor skate have been found is due to the distribution of the species being associated with particular bottom water temperatures, and except for a couple areas, these ideal temperatures are found at depths greater than 1000 m. Commercial fisheries information shows that some barndoor skate were caught as bycatch when there was fishing in waters greater than 800m on the slope of the Grand Bank (Kulka 1999). Kulka (1999) believes that this work considerably extends the latitudinal range of this species, in addition to suggesting a much greater depth range than what is portrayed by research survey data. Lastly, Kulka (1999) states that there appears to exist a proportion of the distribution that lies outside of the range of commercial and research fishing gears and, if this is the case, it may provide a protected area for the stock.

U.S. Commercial Fishery Data

Since the late 1800s, skates have been reported in New England fishery landings. Commercial fishery landings, primarily off Rhode Island, never exceeded several hundred metric tons until the arrival of distant water fleets during the 1960s. The commercial fishery landings are not reported specifically by species, with over 99 percent of the landings reported as ''unclassified skates.'' From 1989 to 1998, the biomass of total discards is estimated to be two (1998) to eight (1989) times the reported total landings. It is unknown what proportions of total skate landings and of total skate discards are barndoor skate. The commercial fishery discard mortality rate for skates and, therefore, the magnitude of total skate discard mortality, is unknown (NEFSC 2000).

U.S. Recreational Fishery Data

Aggregate recreational landings of all skates never exceeded 300 metric tons during the 1981–1998 time series of estimates from the Marine Recreational Fishery Statistics Survey. Skates reported as released alive average an order of magnitude greater than the reported landed number. The recreational fishery release mortality rate for skates is not known, but is likely analogous to that for flounders and other demersal species, generally ranging from 10–15 percent. Assuming this rate would suggest that the recreational fishery discard mortality is of similar magnitude to the recreational landings (NEFSC, 2000). The Skate SAFE Report states that skates in general have little to no recreational value and are not intentionally pursued in any recreational fisheries.

Conclusion

Barndoor skates were sporadically encountered throughout the 1970s, rarely encountered in the 1980s, and have shown an increase in abundance since the mid–1990s on the southwestern Scotian Shelf, on Brown's Bank and in the Gulf of Maine (Simon and Frank, 1999). The petitioners argue that current numbers of barndoor skate are so low that the species may not recover. Historical survey data suggest a substantial decline of barndoor skate in the northern part of their range had already taken place by the time that standardized NEFSC surveys began in U.S. waters in 1963. However, the species has persisted at low levels in U.S. waters over the past 30–40 years. Thus, there is no scientific evidence to suggest that barndoor skate are currently subject to unusual natural or anthropogenic factors that threaten its continued existence (NEFSC 2000).

Summary of Factors Affecting Barndoor Skate

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence. The following is a discussion of the factors used to determine whether barndoor skate should be listed as a threatened or endangered species under the ESA.

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Despite past declines, barndoor skates have persisted in their core habitat at a low abundance since the late 1960s. Currently, numbers of barndoor skate are on the rise, and barndoor skates are now occurring in some areas of the western Scotian Shelf, on Georges Bank, and in offshore waters of Southern New England. There is no evidence of a contraction of range; however, the current abundance, which is lower than the historic abundance, may reflect local reductions in area of occupancy.

Auster and Langton (1999) explain that mobile fishing gear may have a negative impact on the structural components of habitat by: direct removal or damage of epifauna, the reduction of bottom roughness, and the removal of structure forming organisms. The effects of bottom trawling on habitat depend on several factors, including the type of sediment, type of gear used, and the habits of the species living on the bottom. Our knowledge of life history characteristics of the barndoor skate is currently insufficient to analyze adequately any potential negative impacts from bottom trawling. Currently, there is no evidence that such habitat alterations as a result of trawling are having a negative impact on barndoor skates or their egg cases. Therefore, the evidence does not suggest present or threatened destruction, modification or curtailment of the habitat or range of barndoor skate to an extent that threatens its continued existence.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

There is no substantial information that indicates ongoing adverse impacts to the species due to overutilization for commercial, recreational, scientific or educational purposes. Available data suggest that overfishing (directed catch and bycatch) was the major threat to barndoor skate; however, this is now greatly reduced. The elimination of foreign fishing in 1978, as well as increasingly restrictive regulations in other fisheries in which barndoor skate are taken as bycatch, have contributed to this reduction.

NEFSC spring survey indices of barndoor skate abundance and biomass were highest during the 1960s, then declined in the early 1980s. However, since 1990, both the spring and autumn survey indices have steadily increased (NEFSC, 2000). The most recent 3–year survey average (1998–2000) is 0.23 kg/

tow (NEFSC, pers. comm.). An increasing trend has been seen in each of the survey years with the biomass index almost tripling in 3 years. According to the NEFSC, this increase in barndoor skate biomass began when fishing effort was near or at the highest level in almost all fisheries (the late 1980s); therefore, discards do not appear to have been a great factor in reducing population size.

The Skate SAFE Report outlines two types of directed fisheries for skates, the wing fishery and the bait fishery. The bait fishery is described as more of a historical and directed skate fishery (NEFMC, 2002a), involving vessels primarily from southern New England ports that target and land a combination of little skates (≤ 90 percent of landings), and a small percentage of juvenile winter skates (NEFMC, 2001). A seasonal gillnet incidental catch fishery also exists as part of the directed monkfish gillnet fishery; however, this fishery consists of mostly winter skates, which are sold both for lobster bait and as cut wings for processing (NEFMC, 2001).

The wing fishery is more of an incidental fishery. Skates are caught while targeting other species such as multispecies, monkfish and scallops, and are landed if the price is high enough. While the wing fishery considers barndoor skate to be of a sufficient size for processing, there is currently no directed fishery for barndoor skate (either for bait or for wings) and none is planned in the future (NEFSC, 2000). Since barndoor skate populations have been at low levels for many years, little of the recent wing landings would be attributable to this species. Given that wing cutting is labor intensive, many vessels have chosen to optimize their days-at-sea (DAS) by targeting more profitable multispecies rather than taking part in the skate fishery (NEFMC, 2001).

New Bedford, MA lands and processes the greatest amount of skate wings; and it is assumed that more vessels land skate wings as an incidental catch in mixed fisheries rather than a targeted species (NEFMC 2001). According to the Skate SAFE Report, fishermen and dealers claim market limitations as a reason for low participation in the wing fishery. In Rhode Island, many of the companies that experimented with the wing market quickly got out of it, due to the low profit margins, with an 80 percent drop in production since the early 1990s for some dealers (NEFMC 2001). Barndoor skate are reported as getting the lowest ex-vessel prices of the wing skates since they cannot be skinned by a machine (NEFMC 2001).

Discard rates have not been classified by skate species due to difficulty in identification. However, barndoor skate may have been correctly identified due to their large size and distinctive ventral coloration (NEFMC, 2001). The Skate SAFE Report notes that discard rates are generally low, at less than 5 percent of the landings of the targeted species, resulting in estimates of barndoor skate commercial fishery discards of a few hundred metric tons per year. The commercial fishery discard mortality rate for skates and, therefore, the magnitude of total skate discard mortality, is unknown (NEFSC 2000).

According to the SARC, although fishing mortality and natural mortality rates cannot be measured, the small but sustained increases in research survey catches indicate that annual survival rates are currently high enough to offer some recovery. Given this increase, along with the fact that there is no directed fishery and little market demand for barndoor skate, and that the best information available indicates that barndoor skates constitute a small amount of the total skate catch, there is no substantial information that indicates that barndoor skate are threatened or endangered due to overutilization for commercial, recreational, scientific or educational purposes.

C. Disease or Predation

There is no substantial evidence that indicates significant loss due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Skates can be targeted in the commercial wing and bait fisheries, or they can be caught incidentally in other fisheries.

Incidental catch

The petitioners cite bycatch from commercial fishery gear as the reason for the decline of barndoor skate abundance. The scallop, monkfish, and multispecies fisheries are most likely to encounter barndoor skate and other skate species as bycatch. However, management measures implemented to conserve scallop, monkfish, and multispecies have also provided indirect protection for skates. Management measures implemented by NMFS for other fisheries have reduced fishing mortality, in turn promoting the rebuilding of overfished skate stocks.

Measures in the scallop, monkfish, and multispecies fisheries provide protection for skates. The Scallop FMP restrictions are likely to reduce skate bycatch as the overall bycatch in the scallop fishery is reduced. The FMP outlines several management measures designed to reduce overall bycatch including: DAS reductions, minimum twine top mesh requirements increased from six to eight inches implemented through Scallop Framework 11, as well as reductions of chafing gear. These reductions may reduce total fishing effort, which in turn reduces total bycatch (NEFMC, 2001).

There is an unknown degree of overlap between the monkfish fishery and the skate fishery according to the Skate SAFE Report. The Monkfish FMP was established in November 1999 and consists of limited entry; DAS limits; trip limits; minimum mesh sizes to reduce bycatch of multispecies and other species; and limits on the number of gillnets (NEFMC, 2002a). According to the Skate SAFE Report, under the current regulations, gillnetters fishing in Southern New England are fishing with one-third fewer nets, resulting in a decrease of skate catches. The monkfish and dogfish gillnet fishery, primarily in the Mid-Atlantic region, do not catch as many skates in their gillnets since they are fishing with heavier twine (NEFMC, 2001). It is reported that the fishermen switched to the heavier twine to avoid catching skates (NEFMC 2001). In addition, the Harbor Porpoise Take Reduction Plan requires fishermen west of the 72° 30' line to use the heavier gear to avoid entanglements of harbor porpoise (NEFMC, 2001). To the extent that barndoor skate are present in the area where this heavier gear is used, less bycatch is expected. Estimates of skate bycatch on monkfish trips are currently not available. However, the overall impact of the Monkfish FMP should reduce the amount of skate bycatch (NEFMC, 2001).

The Multispecies FMP is likely to impact skates and the skate fishery more than any other existing FMP. A significant overlap lies between multispecies and skate fisheries and the vessels that participate in these fisheries. Skate bycatch has been reduced in the multispecies fishery due to several years of restrictive management measures. Since the implementation of the multispecies DAS guidelines, multispecies fishing effort has been reduced by 50 percent from baseline levels which occurred before Amendment 5 to the Multispecies FMP. The Multispecies FMP uses both seasonal and year-round closed areas to reduce fishing mortality and to protect spawning stocks of cod, haddock, and yellowtail flounder. Multispecies Framework 33, implemented on May 1, 2000, requires

a large area closure on Georges Bank during the month of May as well as additional 1–month multispecies area closures. These closures provide a degree of protection for skate species by reducing fishing effort overall. However, it is important to note that seasonal and year-round closed areas may result in an effort relocation and perhaps not a complete effort reduction.

The following multispecies gear restrictions also have an impact on skate fishing mortality. A primary restriction is a minimum mesh size requirement for all gillnet and trawl gear. According to the Skate SAFE Report, although there are no known studies on selectivity of mesh for skates, these restrictions undoubtedly have some impact on the size of fish caught. Another restriction is a limit on the number of nets fished by vessels that make day gillnet trips. Regulations implementing the Multispecies FMP also require that any vessel fishing in the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Areas in Federal waters, are required to fish under DAS restrictions unless participating in an exempted fishery or are fishing with exempted gear (gear not capable of catching multispecies). An exempted fishery under the Multispecies FMP is one that has been determined to have minimal bycatch of regulated multispecies and will not jeopardize fishing mortality objectives. It is required that the percentage of regulated multispecies bycatch be less than 5 percent by weight of the total catch. For exempted fisheries in the Southern New England Exempted Area, skate bycatch is limited to 10 percent by weight of the total species on board to prevent the bycatch of multispecies that might occur in directed skate fisheries. The multispecies DAS program directly restricts the time available for vessels to fish for skates. Since the majority of skate fishing effort is controlled by the multispecies effort reduction program, reductions in multispecies fishing effort through DAS restrictions have resulted in and will continue to result in proportional reductions in skate fishing effort (NEFMC 2002b).

Currently, as a result of a settlement agreement endorsed by a federal district court in *Conservation Law Foundation* v. *Evans*, 211 F. Supp. 2d 55 D.D.C. May 23, 2002), additional regulatory measures are being implemented to protect species managed under the Multispecies FMP from overfishing. These additional measures, effective as of August 1, 2002, will remain in effect until implementation of Amendment 13 to the Multispecies FMP. The following additional measures have been implemented pursuant to the settlement agreement: A freeze on DAS used by a vessel to the level 20 percent below the highest annual level of DAS used during the fishing years 1996–2000; a restriction on the issuance of new open access hand-gear permits, and a decreased cod, haddock, and yellowtail flounder possession limit under that category; increased gear restriction for gillnets, hook-gear, and trawl nets; restrictions on yellowtail flounder catch. In addition, to be consistent with the court order in the lawsuit, NMFS has increased observer coverage on multispecies vessels to at least 5 percent until Amendment 13 is implemented.

These measures will further aid in the protection of barndoor skate until completion of the Skate FMP. Since the majority of skate fishing occurs under multispecies DAS, any reduction in multispecies fishing effort will proportionally reduce the opportunity to fish for and catch skates. Gear restrictions in the multispecies fishery will reduce skate fishing mortality, and reduce the effort that is applied to the skate fishery. Restrictions in mesh size aid in the selection of certain fish sizes and, therefore, will also have an impact on the size of skates caught, such as juvenile barndoor skate and egg cases. Reduction in the number of gillnets that can be used in the multispecies fishery reduces the amount of gear in the water that is capable of catching skates. Lastly, an increase in observer coverage levels will provide additional information pertaining to the magnitude and species composition of the bycatch of skates in the multispecies fishery. This increased information will be valuable in improving barndoor skate populations and management.

Directed Fisheries

The Skate SAFE Report outlines two types of directed fisheries for skates, the wing fishery and the bait fishery. A limited amount of directed skate fishing is also allowed under the Multispecies FMP. Directed skate gillnet and trawl fisheries are exempt in the portion of the Southern New England Regulated Mesh Area that is south of 40° 10' N. lat. since they have been determined to meet the 5 percent multispecies bycatch criteria for exempted fisheries under the Multispecies FMP. However, this area may limit directed skate fishing to a small portion of the overall range of skate species.

According to the Skate SAFE Report, there are two existing and significant regulatory limitations on the directed skate bait fishery, which include the lobster regulations and the multispecies DAS requirements. Current restrictions outlined in the Skate SAFE Report for the lobster fishery consist of limited access permits, minimum lobster carapace size, prohibition of possession of certain lobsters, or parts, trap specifications, and landing limits for non-trap harvest.

In 1994, NMFS implemented a 5–year moratorium on new entrants into the Exclusive Economic Zone (EEZ) lobster fishery by a limited access permit system (59 FR 31938, June 21, 1994). On December 6, 1999, Federal lobster regulations extended the moratorium indefinitely (64 FR 68227). This moratorium limits the number of people that can participate in the lobster fishery, thus indirectly eliminating the possibility of any future increase in the amount of skates used as bait due to an increase in new entrants to the fishery.

Newly implemented measures are of particular relevance to the skate fishery, including the establishment of six lobster management areas and associated restrictions. The various management areas have different trap limits associated with them. Nearshore management areas have relatively low trap limits; 800 traps in Area 1 versus 1,800 traps in Area 3. Vessel owners may decide to fish in several management areas; however, they must abide by the most restrictive trap limit of the areas they designate. These regulations are designed to limit effort in the lobster fishery. Therefore, any reduction in lobster fishery effort will indirectly reduce the amount of skates needed for use as bait.

The fishery regulations already in place, which have become more restrictive over the past years, as well as various statutory requirements, are expected to continue to aid in the increase in barndoor skate abundance. There is no substantial information that indicates that barndoor skate are threatened or endangered due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

The petitioner expressed concern over inbreeding depression due to the population size of barndoor skate. The potential effects and magnitude of inbreeding depression are dependent upon the genetic composition of the species. Currently, there is no genetic information available for barndoor skate; therefore, we cannot determine at this time if inbreeding depression is a problem. However, it is unlikely that inbreeding depression is a significant issue given the wide geographic range and increasing population size of barndoor skate.

Despite the combination of continued low abundance, suspected low intrinsic rate of increase and suspected late age of maturity, barndoor skates have persisted at low levels in U.S. waters over the past 30–40 years (NEFSC, 2000). Long-lived species tend to be especially prone to excessive mortalities and rapid stock collapse, resulting in a recovery that may take decades. It is recognized that the rebuilding of barndoor skate will be a long and slow process, but the recent and continuing increases seen in abundance and size range indicate that the population is increasing. There is no evidence of any other natural or manmade factors affecting the continued existence of barndoor skate populations.

Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species.

After reviewing the best scientific and commercial information available, NMFS has determined that listing of barndoor skate as threatened or endangered under the ESA is not warranted at this time. The following factors all indicate a positive trend for barndoor skate populations: The recent increases in abundance and biomass of barndoor skate observed during surveys; the expansion of known areas where barndoor skate have been encountered; the increases in size range, and; the increase in number of small size barndoor skate collected. This trend is not consistent with a species that is in danger of extinction throughout all or a significant portion of its range or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Furthermore, the major identifiable threat to the species, overfishing, is currently being reduced by existing regulatory measures affecting several northeast fisheries. In addition to regulatory measures already in place, NMFS intends to continue to work with the Council to fully develop and implement the Skate FMP. NMFS is not relying on the draft Skate FMP as a reason not to list barndoor skate, but rather noting that it is under development and will benefit barndoor skate populations when it is implemented.

NMFS believes that remaining uncertainties regarding the status and population structure of the barndoor skate warrant leaving it on the agency's list of candidate species. If new information becomes available indicating that the species faces threats greater than are currently known, this decision will be revisited to determine whether ESA protection is appropriate.

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Authority

Authority: The authority for this action is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 20, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 091702C]

Fisheries Off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit, request for comments.

SUMMARY: NMFS announces receipt of an application for an exempted fishing permit (EFP) from the California Department of Fish and Game. This EFP application applies to vessels with valid California State delivery permits fishing for flatfish with small footrope trawl gear in Federal waters off the state of California. If awarded, the EFP would allow vessels with a Federal limited entry permit to land federally managed groundfish species in excess of cumulative trip limits and to sell flatfish catch for profit, provided that the vessels carry state-sponsored observers. Observers would collect data that are otherwise not available shoreside. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing data that can be used to enhance management of the groundfish fishery.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Copies of the EFP application are available from Becky