

Dated: June 29, 2006.

James Jones,

Director Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

#### **PART 174—[AMENDED]**

■ 1. The authority citation for part 174 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.454 is added to subpart W to read as follows:

#### **§ 174.454 *Bacillus Thuringiensis* Cry2Ab2 Protein and the Genetic Material Necessary for Its Production in Corn.**

*Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in corn is exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of field corn, sweet corn and popcorn. Genetic material necessary for its production means the genetic material which comprise genetic material encoding the Cry2Ab2 protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry2Ab2 protein. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 524–EUP–97 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked June 30, 2009; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time. [FR Doc. E6–11249 Filed 7–14–06; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 060418103–6181–02; I.D. 040706F]

**RIN 0648–AT59**

#### **Fisheries of the Northeastern United States; Final 2006–2008 Specifications for the Spiny Dogfish Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces final specifications for the 2006–2008 fishing years, which is May 1, 2006, through April 30, 2009. NMFS is also establishing possession limits for dogfish at 600 lb (272 kg) for both quota periods 1 and 2 of the fishery.

**DATES:** The regulatory change at 50 CFR 648.235 that sets the dogfish possession limits at 600 lb (272 kg) is effective August 16, 2006. The specifications are effective August 16, 2006, through April 30, 2009.

**ADDRESSES:** Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee (Monitoring Committee); the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council (MAFMC), Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at <http://www.nero.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281–9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

A proposed rule for this action was published in the **Federal Register** on May 8, 2006 (71 FR 26726), with public comment accepted through May 23, 2006. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

## **2006–2008 Specifications**

The commercial spiny dogfish quota for the 2006–2008 fishing years is 4 million lb (1.81 million kg) annually, to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for quota period 1 (May 1 - Oct. 31); and 1,684,000 lb (763,849 kg) for quota period 2 (Nov. 1 – April 30). The possession limits are 600 lb (272 kg) for quota periods 1 and 2, to discourage a directed fishery.

## **Comments and Responses**

There were 1,099 comments submitted on the proposed measures, by 4 organizations and 1,095 individuals.

*Comment 1:* Three organizations and 1,081 individuals argued that NMFS should have followed the Monitoring Committee's recommendation, setting the quota at 2 million lb (907 mt) and the possession limits at 600 lb (272 kg) and 300 lb (136 kg), respectively. These commenters argued that the Monitoring Committee's recommendation represented the best available scientific information.

*Response:* The Council's analysis concluded that the U.S. commercial spiny dogfish landings are controlled more by the possession limits than the overall quota. Maintaining the limits of 600 lb (272 kg) for both quota periods does not erode the control over landings and would allow for a limited level of retention of spiny dogfish caught incidentally while fishing for other species. Standardizing the possession limits for both quota periods will address a perceived inequity that has been identified by some vessel operators, without creating an incentive for directed fishing. Discouraging directed fishing through this modest possession limit and an incidental catch quota will provide protection for mature female spiny dogfish, the portion of the stock that has traditionally been targeted by the directed fishery, and the stock component that is most in need of protection and rebuilding. These measures would also be consistent with the measures being implemented under the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan in state waters, at least for FY 2006. This would have the benefit of establishing consistent management measures in Federal and state jurisdictions, and would simplify monitoring and enforcement. As demonstrated in previous years, when measures differed in state and Federal waters, the benefits of a more restrictive quota in Federal waters would likely be slight because fishing would continue in state waters

under the less restrictive ASMFC quota. In addition, discard mortality associated with continuing incidental catches would continue to occur after a quota period was closed, further undermining the conservation benefits expected from a more restrictive quota in Federal waters. The Northeast Fisheries Science Center's (NEFSC) review of the proposed measure concluded that the higher quota would not significantly alter the rebuilding period (no more than 1 or 2 years), though continued low recruitment could change this conclusion. Although the specifications are being set for 3 years, the Council and NMFS will continue to review new information in intervening years, and if that information indicates that the specifications need to be modified to ensure continued rebuilding of the stock, the specifications-setting process would be re-initiated to take that information into account.

*Comment 2:* One organization argued that by not following the Monitoring Committee's recommendation, NMFS would be violating the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) because it would allow mortality to increase, and therefore increase the time horizon for rebuilding.

*Response:* The Dogfish Fishery Management Plan (FMP) implemented a strategy to eliminate the directed fishery for dogfish, which was the largest source of dogfish mortality prior to management. A quota was established to allow a limited amount of incidental catch to be landed. Even if the quota were reduced to 0, dogfish mortality would continue to occur since dogfish are caught incidentally in other fisheries. Thus, this action maintains the FMP strategy of eliminating mortality associated with directed fishing for dogfish and allowing limited landings of incidental catch. NMFS believes that this incidental level of harvest is a reasonable exercise of its discretion in line with the court's decision in *Natural Resources Defense Council, Inc., v. National Marine Fisheries Service* 421 F.3d 872, (9th Cir. 2005). This level will allow those fishing for other species to land a limited amount of dogfish caught incidentally. This will not allow a directed fishery for dogfish, which is the principal objective of the Dogfish FMP. NMFS believes that setting an incidental quota in line with the Monitoring Committee's recommendation would result in discard mortality of dogfish caught incidentally that would otherwise be landed under a higher incidental quota. This deprives fishermen of the limited income they

could derive from fish that they would have to discard under the lower quota without having a material benefit to the stock. While section 304(e) of the Magnuson-Stevens Act specifies that a rebuilding period should be short as possible, it invests NMFS with a certain amount of discretion to take into account other factors such as the stock status and biology and the needs of fishing communities in determining the length of any rebuilding period.

*Comment 3:* One organization also did not agree with NMFS's contention that setting the quota at 4 million lb, and possession limits at 600 lb (272 kg) for both periods would be beneficial because it would mirror the ASFMC management measures for 2006. This organization argued that such a decision, "turned the requirements of the Magnuson-Stevens Act on its head," because instead of mirroring the ASFMC, NMFS should focus on rebuilding the stock as quickly as possible. The commenter also suggested that the preemption section of the Magnuson-Stevens Act could be used to resolve conflicts with state law.

*Response:* As noted in the response to comment 2, NMFS has discretion to take into account other factors in determining how long the rebuilding period should be. There is no absolute legal requirement that a rebuilding period needs to be as short as possible. NMFS has determined that an incidental harvest of dogfish should be allowed. The views of the commenters differ from that of the agency as to what that level should be. Only one commenter suggested that the level should be set at 0. Obviously, there is a recognition that dogfish mortality would continue even were the quota 0, since it is caught incidentally in other fisheries. It would also be a questionable exercise of agency authority to close other fisheries to prevent the incidental mortality of dogfish. NMFS believes that it is a reasonable exercise of its discretion to allow for a 4-million lb (1,814-mt) incidental quota. This will prevent discards of incidentally caught dogfish that would otherwise be landed but for a lower quota, and not allow for directed fishing. The fact that the 4-million lb (1,814-mt) quota will mirror that set by the ASMFC and achieve a consistent management program is important yet ancillary to the establishment of an incidental quota that NMFS believes is reasonable and does not represent a material delay in rebuilding the dogfish fishery.

Preempting state law under the Magnuson-Stevens Act is a politically sensitive process involving strongly held states rights. It is not invoked

lightly. It has been used only once or twice during the history of the Magnuson-Stevens Act and then only with the cooperation of the affected state. The Magnuson-Stevens Act reserves the use of this provision only for rare occasions where a state has taken any action or omitted to take any action, the results of which will substantially and adversely affect the carrying out of a FMP. The implementation of a dogfish quota higher than the Federal quota by the states does not fall within those narrowly prescribed circumstances that would allow preemption under the Magnuson-Stevens Act.

*Comment 4:* Seven individuals argued that the proposed action was not supported by the science, but they did not recommend a specific alternative.

*Response:* Although these measures do not reflect the Monitoring Committee's recommendation, they are not without scientific support, as is indicated by the analysis presented in the Council's environmental assessment. Specifically, the measures will continue to preclude a directed fishery and contribute to the rebuilding of the stock. As noted in the response to comment 1, the NEFSC's review of the proposed measure concluded that the higher quota, if reached, would not significantly alter the rebuilding period (no more than 1 or 2 years); and given the restraining influence of the low possession limit, it is unlikely that the higher quota will be attained. In light of this, and comments made in other responses included in this action, these measures are a reasonable exercise of the discretion invested in NMFS by the Magnuson-Stevens Act.

*Comment 5:* One organization and five individuals claimed that there were too many dogfish in the ocean, that NMFS has mismanaged the resource and relied on faulty assessment science, and that NMFS should increase the quota and the possession limits.

*Response:* NMFS does not question that fishermen frequently encounter dogfish and in large numbers while fishing. However, the best available science indicates that spiny dogfish are overfished and, as such, the Magnuson-Stevens Act requires the development of a management program to rebuild the stock. Given the status of the stock, a directed fishery is not appropriate at this time. Increasing the quota and the possession limits would risk the re-initiation of a directed fishery.

*Comment 6:* One individual agreed that there were too many dogfish and urged NMFS to allow a male-only fishery.

*Response:* A directed fishery of any type is inappropriate in light of the overfished condition of the spiny dogfish stock. No one has identified a way to successfully direct fishing on males only. Therefore, if a directed fishery for male dogfish developed, it would likely require the discard of female dogfish, and increase the associated discard mortality. That would likely have a negative impact on the rebuilding program, as it could increase the mortality of mature females.

*Comment 7:* One individual wanted the dogfish quota set at zero.

*Response:* For the reasons cited in response 3, NMFS believes that this is not appropriate.

*Comment 8:* One organization urges NMFS to limit the specifications to 1 year until the 2006 stock assessment is completed and analyzed. After that assessment is completed, the commenter argued, multi-year specifications can be set.

*Response:* Because the recovery trajectory for spiny dogfish is expected to be rather gradual under the most conservative management regime, NMFS believes that it is appropriate to set the specifications for 3 years. As noted in the response to comment 1, the Council and NMFS will continue to review new information as it is brought forward, and if that information indicates that the specifications need to be modified to ensure continued rebuilding of the stock, the specifications-setting process would be re-initiated to take that information into account. Thus, if the 2006 stock assessment warrants a change in the specifications, in either direction, such a change will be made.

**Classification**

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see ADDRESSES).

**Final Regulatory Flexibility Analysis**

*Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed \$3.5 million annually. Information from the 2004 fishing year was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to NMFS permit file data, 2,911 vessels possessed Federal spiny dogfish permits in 2004, while 180 of these vessels contributed to overall landings.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

*Minimizing Significant Economic Impacts on Small Entities*

The FRFA evaluated three alternatives. The action described in this final rule establishes a commercial quota of 4 million lb (1,814 mt), and a possession limit of 600 lb (272 kg), in both quota periods, for a period of 3 years. Alternative 2 is the MAFMC proposal, which establishes a 2-million lb (907-mt) quota with possession limits of 600 lb (272 kg) in both quota periods, for a period of 3 years. Alternative 3 is the NEFMC proposal, which establishes a commercial quota of 4-million lb (1,814 mt), with possession limits of 600 lb (272 kg) in both quota periods, for a period of 1 year.

Based on NMFS dealer reports, spiny dogfish landings in fishing year 2004 were roughly 1.5 million lb (680 mt). These landings occurred at a time when the Federal and state management measures for spiny dogfish were identical, with a quota of 4 million lb (1,814 mt), and the possession limits for periods 1 and 2 set at 600 lb (272 kg) and 300 lb (136 kg), respectively. This shows that the U.S. commercial spiny dogfish landings are controlled more by the possession limits than the overall quota, unless the quota is set so low as to be constraining.

All three of the alternatives to the no-action alternative considered could lead to a slight increase in revenues to individual fishermen from the sale of dogfish. This is because all three of the alternatives would increase the possession limit in quota period 2 to

600 lb (272 kg). Setting the possession limit at 600 lb (272 kg) throughout the year, as opposed to 600 (272 kg) and 300 lb (136 kg) in periods 1 and 2 respectively, would allow fishermen to land higher amounts of dogfish in the second period as compared to what was landed in fishing year 2004. If the 1,124 fishing trips that landed spiny dogfish in period 2 of FY2004 had all landed 600 lb (272 kg), periodic landings would have increased from 320,000 lb (145 mt) to 560,000 lb (254 mt), for a net increase of 240,000 lb (109 mt), which, at the average price of 0.17 cents per pound of dogfish, equals roughly an addition \$41,000 in net revenue.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the spiny dogfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 11, 2006.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out above, 50 CFR part 648 is amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

*Authority:* 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.235, paragraph (b)(1) is revised as follows:

**§ 648.235 Possession and landing restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) Possess up to 600 lb (272 kg) of  
spiny dogfish per trip; and

\* \* \* \* \*

[FR Doc. E6-11134 Filed 7-14-06; 8:45 am]

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