

This emergency rule may be extended for up to an additional 186 days, provided that the public has had an opportunity to comment on the rule and provided that the Council is actively preparing a plan amendment or proposed regulations to address this emergency on a permanent basis. Public comments on this emergency rule are invited and will be considered in determining whether to maintain or extend this rule to address the incidental take and mortality of sea turtles in the Gulf of Mexico. The Council is preparing an FMP amendment to address this issue on a permanent basis which, if approved, would be implemented through notice and comment rulemaking.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery in the Gulf of Mexico EEZ and is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for public comment. Prior notice and opportunity for public comment would be contrary to the public interest, as delaying action to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery would increase the likelihood of additional sea turtle mortality in excess of that allowed under the incidental take statement established under the ESA.

For the same reasons, the AA finds good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3). However, the effective date of this rule will be delayed until 15 days after the date of publication in the **Federal Register**. A typical bottom longline fishing trip lasts approximately 2 weeks. Advance preparation for such a trip often takes a couple of days for purchasing and loading necessary provisions and involves substantial expenditures. Immediate, or nearly immediate, implementation of this rule would be very disruptive of trips for which advance preparations and expenses had already occurred or for trips that had already been initiated and provisioned based on the expectation of a full 2-week trip. A 15-day delay will provide adequate time to inform the bottom longline component of the Gulf

of Mexico reef fish fishery of the impending restrictions and allow them to plan and adjust their fishing activities accordingly.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 28, 2009.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (q) is added to read as follows:

#### § 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(q) *Prohibitions applicable to bottom longline fishing for Gulf reef fish.* (1) Bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30' W. long. that is shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°58.5'	85°30.0'
B	28°42.5'	85°05.0'
C	28°12.5'	84°50.0'
D	27°52.0'	84°30.0'
E	27°28.0'	84°19.0'
F	26°28.5'	83°50.0'
G	25°30.0'	83°44.5'
H	25°04.0'	83°44.5'
I	24°48.0'	83°54.4'
J	24°39.5'	83°41.0'
K	24°28.5'	83°14.5'
L	24°25.0'	83°00.0'

(2) If both the commercial deep-water grouper and tilefish components of the Gulf reef fish fishery are closed, bottom longlining for Gulf reef fish is prohibited in all waters of the Gulf EEZ east of 85°30' W. long.

(3) A vessel with bottom longline gear on board or that is using bottom longline gear to fish for species other

than Gulf reef fish may not possess Gulf reef fish within the prohibited areas specified in paragraphs (q)(1) of this section or within the prohibited area specified in paragraph (q)(2) of this section when that prohibition is applicable, unless the bottom longline gear is appropriately stowed. For the purposes of paragraph (q) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

\* \* \* \* \*

[FR Doc. E9–10042 Filed 4–28–09; 4:15 pm]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090206149–9658–02]

RIN 0648–AX57

#### Fisheries of the Northeastern United States; 2009 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 specifications for the spiny dogfish fishery for the 2009 fishing year (FY) (May 1, 2009, through April 30, 2010), and modifies existing management measures. NMFS is implementing a spiny dogfish quota of 12 million lb (5,443.11 mt) for FY 2009, and a possession limit of 3,000 lb (1.36 mt). **DATES:** The rule is effective May 1, 2009. The specifications are effective May 1, 2009 through April 30, 2010.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is

contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930 2276, and are also available via the internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen, Fishery Policy Analyst, phone: 978-281-9220, fax: 978-281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

A proposed rule for this action was published in the **Federal Register** on March 19, 2009 (74 FR 11706), with public comment accepted through April 3, 2009. The final specifications and management measures are unchanged from those that were proposed. A complete discussion of the development of the specifications and management measures appears in the preamble to the proposed rule and is not repeated here.

##### **2009 Specifications and Management Measures**

The commercial spiny dogfish quota for the 2009 fishing year is 12 million lb (5,443.11 mt). As specified in the FMP, quota Period 1 (May 1 through October 31) is allocated 57.9 percent of the quota, 6,948,000 lb (3,151.56 mt), and quota Period 2 (November 1 through April 30) is allocated 42.1 percent of the quota, 5,052,000 lb (2,291.55 mt). The possession limits, specified in regulations at 50 CFR 648.235, are revised from 600 lb (272 kg) to 3,000 lb (1.36 mt) for both quota periods.

##### **Comments and Responses**

NMFS received 23 comments on the proposed measures from 9 organizations and 14 individuals.

*Comment 1:* Two organizations (including processors) and three individuals, all from either New York, New Jersey, or Massachusetts, support the increased quota and possession limits for spiny dogfish for FY 2009 as described in the proposed rule.

*Response:* NMFS agrees with these comments for the reasons described in the preamble to the proposed rule for this action.

*Comment 2:* Five organizations (including processors) and nine individuals, all from Massachusetts, support the increased quota but oppose the increased possession limits for the spiny dogfish fishery in Federal waters as proposed. Six commenters recommended keeping the possession

limit somewhere between 600 lb (272 kg) and approximately 2,000 lb (907 kg) for the entire fishing year. Eight commenters recommended starting the fishing year with the status quo possession limit, 600 lb (272 kg), and increasing the quota to between 1,500 lb (680 kg) and 3,000 lb (1.36 mt) starting September 1, 2009, to better match the existing markets for the fishery and to mirror Massachusetts Division of Marine Fisheries (MA DMF) proposed action. Many of these commenters expressed concern that higher possession limits will flood the market. They claim that there are not enough processors willing to buy dogfish, and also claim that the large supply of dogfish will drive down the price. Some commenters also stated concern that a 3,000 lb (1.36 mt) possession limit at the start of the fishery may cause the fishery to close early and preclude a state fishery in the fall.

*Response:* For the first time in years, the Atlantic States Marine Fisheries Commission (Commission), the group that develops fishery management for state waters from 0 to 3 nm, and the parties involved in management of the Federal spiny dogfish fishery from 3 to 200 nm (the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council and NMFS) have agreed on the quota and possession limits for spiny dogfish. Management of the spiny dogfish resource in both Federal and state waters is intended to be collaborative and covers the entire spiny dogfish population along the Atlantic coast of the U.S. (i.e., in both state and Federal waters from 0 to 200 nm). Agreement on the quota and possession limits between the Commission, Councils, and NMFS is a step in the right direction for management of the dogfish fishery.

Both the Commission and the Council process for the FY 2009 spiny dogfish specifications started in the fall of 2008 and both processes relied on the best available science first presented at the Commission's Spiny Dogfish Technical Committee meeting on October 16, 2008. The best available science was an update of the spiny dogfish stock status from the Northeast Fisheries Science Center (NEFSC) using the model from the 43rd Northeast Regional Stock Assessment Workshop (SAW)/Stock Assessment Review Committee (SARC), 2007 catch data, and results from the 2008 trawl survey. Even though both the Commission and Council processes rely on the same scientific advice, they do not always agree on what quota and possession limits should result from that advice. However, for 2009, they have agreed on a 12-million-lb

(5,443.11-mt) quota and 3,000-lb (1.36-mt) possession limit for both Federal and state waters. While the Commission has adopted a 3,000-lb (1.36-mt) possession limit for state waters along the east coast, the individual states may have more restrictive measures.

The measures recently proposed by the MA DMF under the Commission plan would establish more restrictive possession limits than this action. The MA DMF has proposed a 600-lb (272-kg) possession limit for May through August, and a 1,500 (680-kg) to 2,000-lb (907-kg) possession limit beginning September 1, 2009, depending on the level of landings at that time. Once the Commission's 58 percent regional allocation (described in more detail below) of the 12-million-lb (5,443.11-mt) quota is reached, the state fisheries (Maine through Connecticut) will close. Federal spiny dogfish permit holders who possess or land dogfish in Massachusetts would be subject to these more restrictive measures. MA DMF is proposing these possession limits in response to feedback from members of the fishing industry who are concerned with flooding the market with dogfish too early in the season and driving down the price paid for dogfish.

As previously stated, individual states may have more restrictive quotas and possession limits than those adopted by the Commission and Council. In addition, fishermen may choose to land less than the possession limit if they conclude that it is in their best interest to do so. The possession limit established by this rule provides gives fishermen the flexibility to land any amount up to 3,000 lb (1.36 mt).

The concern over the dogfish fishery closing before the fall when dogfish prices are better is moderated by the fact that the Federal spiny dogfish commercial quota is distributed between two periods (Period 1 is May 1 through October 31 and Period 2 is November 1 through April 30) based on the historical percentage of commercial landings for each semi-annual period during the years 1990 through 1997. Period 1 is allocated 57.9 percent of the quota (6,948,000 lb (3,151.56 mt)) and Period 2 is allocated 42.1 percent (5,052,000 lb (2,291.55 mt)). This was intended to preserve the traditional distribution of landings, both geographically and seasonally. If the Period 1 fishery closes early due to quota attainment, the Period 2 fishery would open in the fall starting November 1, 2009. However, for state waters, the Commission has removed this seasonal quota beginning in 2009. Instead, the Commission has adopted an annual regional quota for state waters

with 58 percent of the quota going to Maine through Connecticut, 26 percent of the quota going to New York through Virginia, and 16 percent of the quota going to North Carolina. This means that while the Federal seasonal allocation of the quota (Period 1 and Period 2) would preserve a fall fishery, it could be possible that fishing by non-federally permitted vessels in state waters would result in early attainment of the 12-million-lb (5,443.11-mt) quota. This is the only inconsistency between the state and Federal programs, and could cause the Federal Period 2 fishery not to open or to open with less than the full amount allocated to Period 2 remaining for harvest. There is no current provision in the Federal FMP that would enable NMFS to address this inconsistency.

*Comment 3:* One organization and two individuals commented on the status of the spiny dogfish resource and the resulting quota. One commenter requested that NMFS report on the population trends of the species, and asked why the specifications are set consistent with a fishing mortality rate of 0.11 ( $F_{\text{rebuild}}$ ) versus the target fishing mortality rate for a rebuilt stock ( $F=0.28$ ). The commenter asked about the uncertainty associated with these estimates of  $F$ . One commenter stated that NMFS should manage the fishery for the longer term recovery of the stock and with an ecosystem perspective.

One commenter noted that the proposed rule does not follow the recommendations of the 2007 report of the ASMFC Spiny Dogfish Technical Committee. The commenter questioned how a species can be considered “not overfished” given the skewed sex ratio, declining size of females, and reduction in the number of pups. The commenter recommended allowing the stock more time to recover before increasing the quota or possession limits.

One commenter recommended that the quota be reduced by a certain percentage each year. The commenter also stated that environmentalists should have a seat on the Council’s Committees.

*Response:* Trends in the status of the spiny dogfish resource are reported through the stock assessment and, between stock assessments, through stock status updates. Stock assessments include biomass estimates going back to the 1960s and projections on future trends. The most recent stock assessment for the spiny dogfish resource occurred at the NEFSC’s 43rd SAW/SARC (<http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0625/>). The most recent stock status update was provided at the

Commission’s Spiny Dogfish Technical Committee and the Council’s Spiny Dogfish Monitoring Committee and the Joint Committee meetings in the fall of 2008. As explained in the proposed rule, the stock status update used the model from the 43rd SAW/SARC, the 2007 catch data, and results from the 2008 trawl survey to provide the information that was used to develop these specifications.

The FMP for spiny dogfish specifies that the biomass threshold below which spiny dogfish would be considered overfished is the value equal to half the maximum female spawning stock biomass ( $\frac{1}{2} \text{SSB}_{\text{max}}$ ) (or 100,000 mt). The proposed rule for Framework Adjustment 2 to the Spiny Dogfish FMP (74 FR 9208, March 3, 2009) proposes a process to change the stock status determination criteria and provides options for other biological parameters to define dogfish as overfished. Specifically, the rule proposes to define dogfish as overfished if the minimum stock size threshold (MSST) reaches half the biomass necessary to support the maximum sustainable yield ( $\frac{1}{2} B_{\text{MSY}}$  or a reasonable proxy thereof). The MSST may be defined as a function of (but not limited to): total stock biomass, spawning stock biomass, total pup production, and may include males, females, both, or combinations and ratios thereof which provide the best measure of productive capacity for spiny dogfish. While spiny dogfish is currently considered “not overfished,” as one commenter suggests, if Framework 2 is approved, the determination of whether spiny dogfish is considered overfished may change in the future if different biological parameters are used to determine the stock’s overfished status.

The stock update that provides the basis for these specifications evaluated the uncertainty associated with the most recent estimate of fishing mortality for the stock, and concluded that the probability that  $F$  in 2006 was lower than the  $F$  threshold is near 100 percent. The analysis concluded that 75 percent of the computed values for SSB exceeded the target biomass value.

In light of the likelihood that the stock could be considered rebuilt, the advisory bodies to the Commission and Councils could have recommended increasing the fishing mortality above  $F=0.11$  and up to the fishing mortality associated with a rebuilt stock ( $F_{\text{target}}=0.28$ ). However, the advisory bodies took a more risk averse approach given concern over the biology of the stock (concentrated size frequency of the female population, low pup production, skewed sex ratio); and

concern that projections of future biomass include assumptions about pup survivorship and selectivity of gear that may be optimistic. Because of these concerns and uncertainty, the advisory bodies recommended keeping the fishing mortality at the level associated with rebuilding the dogfish stock ( $F=0.11$ ) to ensure the long-term recovery of the stock. The resulting 12-million-lb (5,443.11-mt) quota is much higher than previous years because the stock biomass has been increasing.

One commenter noted that the proposed rule does not follow the recommendations of the Spiny Dogfish Technical Committee report (2007) by the ASMFC. As mentioned in the response to Comment 2 above, both the Commission and the Council process for the FY 2009 spiny dogfish specifications started in the fall of 2008 and both processes relied on the best available science first presented at the Commission’s Spiny Dogfish Technical Committee meeting on October 16, 2008. The best available science was an update on the spiny dogfish stock status from the NEFSC using the model from the 43rd SAW/SARC, 2007 catch data, and results from the 2008 trawl survey. The Commission action to establish a 12-million-lb (5,443.11-mt) quota and 3,000-lb (1.36-mt) maximum possession limit was consistent with the recommendations of the Spiny Dogfish Technical Committee’s 2008 recommendation, not the recommendation from 2007.

NMFS does not agree with the comment that the quota should be reduced by an arbitrary percentage each year. The FMP specifies the process for establishing the spiny dogfish management measures and that methodology resulted in a risk averse quota for FY 2009, as discussed above.

NMFS agrees with the comment that environmentalists should provide input to the Councils’ process. While there is not a voting seat reserved on the Council’s Committees specifically for an environmentalist, such constituents are included on the Advisory Panel to the Council and are actively involved in public meetings.

*Comment 4:* One organization opposed the 15-day public comment period on the proposed rule for this action, claiming that it did not provide reasonable notice and opportunity to comment. The commenter also suggested NMFS provide more widely publicized notice to the public.

*Response:* The Administrative Procedures Act (APA) (5 U.S.C. Subchapter II) outlines the rulemaking process for Federal agencies, including “notice and comment” rulemaking.

While NMFS may allow more than 15 days for public comment, a 15-day comment period is consistent with the APA. In this instance, because the spiny dogfish specifications for FY 2009 relieve a restriction for the fishing community, NMFS determined that a shortened public comment period was reasonable and appropriate in order to have the final rule effective at the start of the fishery, May 1, 2009. In addition, the public had several opportunities to comment on the development of the spiny dogfish specifications and management measures in writing or verbally through the Council process, including the Council meetings and meetings of its advisory bodies that were held starting in the fall of 2008. Notification of these meetings and opportunities were publicized widely by the Councils on their websites and in mailings to interested members of the public.

### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because this rule relieves a restriction by increasing the spiny dogfish quota and possession limits, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). The Spiny Dogfish FMP was first implemented in 2000 in response to the classification of the stock as overfished in 1998. Since the FMP was implemented, the commercial quota has been set at 4 million lb (1,814.37 mt) and the possession limits have been no higher than 600 lb (272 kg). These restrictions on the harvest of spiny dogfish were necessary to rebuild the stock. As explained in the preamble to the proposed rule (74 FR 11706, March 19, 2009), the latest Northeast Fisheries Science Center stock status update from the fall of 2008 estimated that the spiny dogfish female spawning stock biomass is likely to be above the most recently calculated maximum sustainable yield biomass (B<sub>msy</sub>), which would indicate the stock is not overfished and could be considered rebuilt. This action maintains a conservative rebuilding fishing mortality value (F value) of 0.11 as the target in FY 2009, as opposed to the F = 0.28 target that is associated with a rebuilt stock, and still results in a 12-million-lb (5,443.11 mt) quota for FY

2009. This quota represents a 200 percent increase from the 4-million-lb (1,814.37-mt) quota from prior years. Because the best available science shows that the stock biomass is at a level that could support a higher quota and possession limit, the fishing community should be allowed to harvest that available spiny dogfish biomass. This rule relieves a restriction by increasing the commercial quota from 4 million lb (1,814.37 mt) to 12 million lb (5,443.11 mt) and increasing the possession limits from 600 lb (272 kg) to 3,000 lb (1.36 mt).

Waiving the 30-day delayed effectiveness provision avoids unnecessary economic harm to the fishing industry that would result from confining them to the lower 600-lb possession limit. Confining fishermen to the lower possession limits would reduce their potential economic benefits on the trip level of being able to land a larger amount of dogfish. In addition, processors may have already made business plans (e.g., additional personnel to process, trucking services) in anticipation of the increased Federal possession limits.

Waiving the 30-day delayed effectiveness provision also reduces confusion by making the Federal regulations and those adopted by the Commission for state waters consistent at the start of the fishery, May 1, 2009. Otherwise, the Federal fishery will start with the lower 600-lb possession limit, while the possession limits in state waters may be up to 3,000 lb. This will cause confusion because of the different Federal and state limits and will likely push effort in to state waters. Federal spiny dogfish permit holders may relinquish their Federal permit, an open access permit, to fish in state waters until the Federal quota and possession limit is effective.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a final regulatory flexibility analysis (FRFA), included in this final rule, in support of the 2009 spiny dogfish specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES). A complete 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 the proposed rule and is not repeated here.

### 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 the proposed rule (74 FR 11706, March 19, 2009) and is not repeated here.

#### *Summary of Public Comment on IRFA and Agency Response*

No comments were received about the IRFA. However, eight comments received during the public comment period mentioned the general economic effects of the proposed rule. One comment supported the economic benefit of the higher quota and possession limits. Seven comments, all from Massachusetts, recommended a lower possession limit from May through August to preserve the economic markets that are stronger in the fall. NMFS response to these comments are included in the response to Comment 2 in the preamble of this rule.

#### *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. Therefore, there are no disproportionate economic impacts on small entities. Information from FY 2007 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, 3,142 vessels were issued Federal spiny dogfish permits in FY 2007, while 257 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 Council's analysis, the EA/RIR/IRFA, considered three alternatives. The action recommended in this rule,

Alternative 1, includes a commercial quota of 12 million lb (5,443.11 mt), and the possession limit at 3,000 lb (1.36 mt), for both quota periods during FY 2009. Alternative 2 is the same as Alternative 1, but with a more liberal quota of 36.5 million lb (16,556.14 mt). Alternative 3, the status quo/no action alternative, would result in commercial quota of 4 million lb (1,814.37 mt) and a possession limit of 600 lb (272 kg) for both quota periods.

Alternatives 1 and 2 have higher quotas than prior years. Assuming that the quota implemented would be attained, Alternatives 1 and 2 would be expected to increase overall revenue from dogfish landings, a beneficial economic impact on small entities. FY 2008 revenue is estimated using the average FY 2007 price/lb (\$0.20) and the FY 2008 state quota of 8 million lb (3,628.74 mt) to equal \$1.6 million. The increase in revenue in FY 2009 compared to FY 2008 could amount to \$800,000 under Alternative 1 (preferred) and Alternative 3, and \$5.7 million under Alternative 2. Alternative 3 is expected to result in a revenue increase because landings for spiny dogfish would presumably continue in state waters even after Federal waters closed until the 12-million-lb (5,443.11-mt) state quota implemented by the ASMFC for FY 2009 was reached. The net economic benefits by alternative would be greatest under Alternative 2, then Alternative 1 (preferred), and lastly by Alternative 3. As noted in the preamble, however, Alternative 2 was not recommended by the Councils or NMFS because, while stock biomass has

increased, there are several other biological indicators that continue to raise concern about the condition of the stock. Although total dogfish revenues may be the same under Alternative 1 and 3, the lower trip limit under Alternative 3 would distribute revenues at a lower rate over a longer period. Alternatives 1 and 2 would have a beneficial economic impact on small entities, including fishermen, processors, and the businesses that support them.

#### *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 letter to permit holders that also serves as small entity compliance guide (guide) was prepared and 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 Northeast Regional Administrator (see **ADDRESSES**) and may be found at the following web site: <http://www.nero.noaa.gov/nero/>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 27, 2009

**John Oliver,**

*Deputy Assistant Administrator For Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 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, paragraphs (a) and (b) are revised to read as follows:

#### **§ 648.235 Possession and landing restrictions.**

(a) *Quota Period 1.* From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

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