

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 090129076–9926–02]

RIN 0648–AX56

**Fisheries of the Northeastern United States; Spiny Dogfish; Framework Adjustment 2**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces approval of Framework Adjustment 2 (Framework 2) to the Spiny Dogfish Fishery Management Plan (FMP), which was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils). Framework 2 broadens the FMP stock status determination criteria for spiny dogfish, while maintaining objective and measurable criteria to identify when the stock is overfished or approaching an overfished condition. The framework action also establishes acceptable categories of peer review of new or revised stock status determination criteria for the Council to use in its specification-setting process for spiny dogfish. This action is necessary to ensure that changes or modification to the stock status determination criteria, constituting the best available, peer-reviewed scientific information, are accessible to the management process in a timely and efficient manner, consistent with National Standards 1 and 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action modifies the process for defining and peer-reviewing the stock status determination criteria, as defined in the FMP and does not implement or change any regulations.

**DATES:** Effective July 24, 2009.

**ADDRESSES:** Copies of Framework Adjustment 2 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 framework document is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Policy Analyst, phone: 978–281–9244, fax: 978–281–9135.

**SUPPLEMENTARY INFORMATION:****Background**

A proposed rule for this action was published in the **Federal Register** on March 3, 2009 (74 FR 9208), with public comment accepted through April 2, 2009. This final rule is unchanged from the proposed rule. A complete discussion of the development of Framework 2 appears in the preamble to the proposed rule and is not repeated here.

Framework 2 is designed to improve the time frame in which peer reviewed information can be utilized in the management process, as well as providing guidance on peer review standards and how to move forward in the management process when peer review results are not clear. Framework 2:

1. Redefines, in general terms, the stock status determination criteria for spiny dogfish;
2. Defines what constitutes an acceptable level of peer review; and
3. Provides guidance on how the Council may engage its Scientific and Statistical Committee (SSC), including cases when approved peer review processes fail to provide a consensus recommendation or clear guidance for management decisions.

**Redefined Stock Status Determination Criteria**

Framework 2 redefines the stock status determination criteria for spiny dogfish in the FMP. The maximum fishing mortality rate (F) threshold is defined as  $F_{msy}$ ; which is the fishing mortality rate associated with the maximum sustainable yield (MSY) for spiny dogfish. The maximum fishing mortality rate threshold, or a reasonable proxy thereof, may be defined as a function of (but not limited to): Total stock biomass, spawning stock biomass, or total pup production; and may include males and/or females, or combinations and ratios thereof, that provide the best measure of productive capacity for spiny dogfish. Exceeding the established fishing mortality rate threshold constitutes overfishing.

The minimum stock size threshold is defined as 1/2 of the biomass at MSY ( $B_{msy}$ ) (or a reasonable proxy thereof) as a function of productive capacity. The minimum stock size threshold may be defined as (but not limited to): Total stock biomass, spawning stock biomass, or total pup production; and may include males and/or females, or combinations and ratios thereof, that provide the best measure of productive capacity for spiny dogfish. The minimum stock size threshold is the

level of productive capacity associated with the relevant 1/2  $B_{msy}$  level. Should the measure of productive capacity for the stock or stock complex fall below this minimum threshold, the stock or stock complex is considered overfished. The target for rebuilding is specified as  $B_{msy}$ , under the same definition of productive capacity as specified for the minimum stock size threshold.

Under Framework 2, the stock status determination criteria are made more general by removing specific references to how maximum fishing mortality threshold, minimum stock size threshold, and biomass are calculated. By making the stock status determination criteria more general, the results of peer reviewed best available science are more readily adopted through the specification-setting process. The Councils would still provide specific definitions for the stock status determination criteria in the specifications and management measures, future framework adjustments, and amendments, including, where necessary, information on changes to the definitions.

**Peer Review Standards**

While the Northeast Fisheries Science Center's (NEFSC) Stock Assessment Workshop (SAW) and Stock Assessment Review Committee (SARC) process remains the primary process utilized in the Northeast Region to develop scientific stock assessment advice, including stock status determination criteria for federally managed species, Framework 2 includes several additional scientific review bodies and processes that would constitute an acceptable peer review to develop scientific stock assessment advice for spiny dogfish stock status determination criteria.

**Guidance on Unclear Scientific Advice Resulting from Peer Review**

In many formal peer reviews, the terms of reference provided in advance of the review instruct the reviewers to formulate specific responses on the adequacy of information and to provide detailed advice on how that information may be used for fishery management purposes. As such, most stock assessment peer reviews result in clear recommendations on stock status determination criteria for use in the management of fish stocks. However, there are occasional peer review results where panelists disagree and no consensus recommendation is made regarding the information. Or, the terms of reference may not be followed and no recommendations for the suitability of

the information for management purposes may be made. In such instances, it is unclear what then constitutes the best available information for management use.

Framework 2 states that, when clear consensus recommendations are made by any of the acceptable peer review groups, the information is considered the best available and may be utilized by the Council in the management process for spiny dogfish. Similarly, when the consensus results of a peer review are to reject proposed changes to the stock assessment methods or the stock status determination criteria, Framework 2 states that the previous information on record would still continue to constitute the best available information and should be used in the management process.

When peer review recommendations do not result in consensus, are unclear, or do not make recommendations on how the information is to be used in the management process, Framework 2 states that the Councils engage their SSCs or a subset of their SSCs with appropriate stock assessment expertise, to review the information provided by the peer review group. The SSCs would then seek to clarify the information and provide advice to the Councils to either modify, change, or retain the existing stock status determination definitions as the best available information for use in the development of specifications and management measures.

#### Comments and Responses

No comments specific to Framework 2 were received during the public comment period. NMFS received three comments under the Framework 2 proposed rule, but all were actually regarding the spiny dogfish 2009 specifications and management measures proposed rule (74 FR 11706, March 19, 2009), which was open for public comment at the same time. NMFS responded to those comments in the final rule for the spiny dogfish 2009 specifications and management measures (74 FR 20230, May 1, 2009).

#### 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: June 18, 2009.

**Samuel D. Rauch III**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351-9087-02]

RIN 0648-XP97

#### Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot, Arrowtooth Flounder, and Sablefish by Vessels Participating in the Amendment 80 Limited Access Fishery in Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for Greenland turbot, arrowtooth flounder, and sablefish by vessels participating in the Amendment 80 limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 halibut bycatch allowance specified for the trawl Greenland turbot, arrowtooth flounder, and sablefish fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 19, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the

Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 halibut bycatch allowance specified for the trawl Greenland turbot, arrowtooth flounder, and sablefish fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI is 5 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.21(e)(3)(vi)(B) and § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2009 halibut bycatch allowance specified for the trawl Greenland turbot, arrowtooth flounder, and sablefish fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI has been caught. Consequently, NMFS is closing directed fishing for Greenland turbot, arrowtooth flounder, and sablefish by vessels participating in the Amendment 80 limited access fishery in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Greenland turbot, arrowtooth flounder, and sablefish by vessels participating in the Amendment 80 limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 18, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon