

(50 CFR 424.12(b)) state that the agency “shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.” Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. *Id.*

Section 4(b)(2) of the ESA requires the Secretary to consider the “economic impact, impact on national security, and any other relevant impact,” of designating a particular area as critical habitat (16 U.S.C. 1533(b)(2)). Section 4(b)(2) further authorizes the Secretary to exclude any area from a critical habitat designation if the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. *Id.* We seek information regarding the benefits of designating specific areas geographically throughout the range of the bumphead parrotfish as critical habitat. We also seek information on the economic impact of designating particular areas as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

In accordance with our regulations (50 CFR 424.13) we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties.

#### Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all “influential scientific information” and “highly influential scientific information” disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered “influential scientific information,” we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2010.

#### Eric C. Schwaab,

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100201058-0158-01]

RIN 0648-AY50

#### Fisheries of the Northeastern United States; Proposed 2010 Specifications for the Spiny Dogfish Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the spiny dogfish fishery for the 2010 fishing year (FY) (May 1, 2010,

through April 30, 2011). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. This specification setting will apply to FY 2010 only. The intent of this rulemaking is to specify the commercial quota and other management measures, and to rebuild the spiny dogfish resource. NMFS proposes that the annual quota be set at 12 million lb (5,443.11 mt), and that the possession limit for dogfish remain set at 3,000 lb (1.36 mt). These proposed specifications and management measures are consistent with the FMP and promote the utilization and conservation of the spiny dogfish resource.

**DATES:** Public comments must be received no later than 5 p.m. eastern standard time on May 3, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AY50, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- **Fax:** 978-281-9135, Attn: Lindsey Feldman.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on 2010 Dogfish Spex.”

**Instructions:** No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (MAFMC), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Richard Seagraves, Acting Deputy 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>.

**FOR FURTHER INFORMATION CONTACT:**

Lindsey Feldman, Fisheries Management Specialist, phone: 978–675–2179, fax: 978–281–9135.

**SUPPLEMENTARY INFORMATION:** Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to the list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the MAFMC and NEFMC during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) necessary to assure that the target fishing mortality rate (target F) specified in the FMP will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The annual quota is allocated to two semi-annual quota periods as follows: Period 1, May 1 through October 31 (57.9 percent); and Period 2, November 1 through April 30 (42.1 percent).

The Spiny Dogfish Monitoring Committee (MC), comprised of representatives from states; MAFMC staff; NEFMC staff; NMFS staff; academia; and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for 1–5 fishing years, with the fishing year being from May 1 through April 30. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the MC's recommendations and any public comment in making its recommendation to the two Councils. The MAFMC and the NEFMC review the recommendations of the MC and Joint Committee and make their recommendations to NMFS. NMFS

reviews those recommendations, and may modify them if necessary to assure that the target F will not be exceeded. NMFS then publishes proposed measures for public comment.

**Spiny Dogfish Stock Status Update**

In the fall of 2009, the Northeast Fisheries Science Center (NEFSC) updated the spiny dogfish stock status using the population modeling approach from the 43rd Stock Assessment Workshop (43rd SAW, 2006), 2008 catch data, and results from the 2009 trawl survey. The update indicates that the female spawning stock biomass (SSB) for 2009 is 163,256 mt (360 M lb), about 2.7% below the maximum spawning stock biomass,  $SSB_{max}$  (167,800mt), the current maximum sustainable yield biomass ( $B_{msy}$ ) proxy. However, no biomass target currently exists in the Federal FMP because the Councils' recommended target (90%  $SSB_{max}$ ) was disapproved during the review of the FMP in 2000.

The NEFSC stock status update estimated that overfishing is not occurring. Total removals (U.S. commercial dead discards, recreational landings and discards, and Canadian commercial landings) in 2008 were approximately 10,828 mt (23.871 M lb), corresponding to a fishing mortality (F) estimate of 0.11, well below the overfishing threshold of  $F = 0.39$  and equivalent to the F level necessary to rebuild the stock ( $F_{rebuild}$ ).

While the stock status update shows that the stock is close to the biomass target proxy, the 2009 stock assessment could not conclude that the stock is rebuilt. In addition, there are still a number of concerns about the stock condition. Although recruitment to the fishery increased in 2009, a decline in SSB is expected when these small 1997–2003 year-classes recruit to the SSB (approximately 2015) due to estimated low pup production from 1997–2003 and low survey catches of the size categories for these year classes. In addition, the current survival rate of pups may be lower than historic levels due to reduced maternal size and a skewed male-to-female sex ratio in the population.

**Technical Recommendations**

The MAFMC's Scientific and Statistical Committee (SSC) met on October 27, 2009, to develop an acceptable biological catch (ABC) recommendation for spiny dogfish for FY 2010 based on the NEFSC stock status update. The SSC discussed the fact that the stock had not been declared rebuilt, and that the appropriate target

fishing mortality for spiny dogfish should be one consistent with continuing to achieve  $F_{rebuild}$  (0.11). According to model projections, the ABC associated with  $F_{rebuild}$  for spiny dogfish would be 10,064 mt (22.188 million lb).

The MC met on October 29, 2009, and November 13, 2009, to recommend the appropriate quota and possession limits for FY 2010 based on the SSC's ABC recommendation. To set the appropriate commercial quota, the MC took into account all other sources of fishing mortality for the spiny dogfish stock (U.S. commercial dead discards, recreational landings and discards, and Canadian commercial landings). The commercial quota that is available after deducting the estimated values for these other factors is 12.251 million lb (5,556.96 mt). The MC chose to recommend a commercial quota of 12.0 million lb (5,443.11 mt) in order to maintain the same quota in FY 2010 as in FY 2009. The MC felt that maintaining the slightly lower (status quo) commercial quota accommodated some management uncertainty for FY 2010. The MC also recommended maintaining possession limits at 3,000 lb (1.36 mt), unchanged from 2009.

**Joint Committee Recommendations**

The Joint Committee did not meet to review the Monitoring Committee's recommendations due to time limitations associated with the specification process. The Joint Committee review was encompassed in the meetings of both of the full Councils.

**Council Recommendations**

The MAFMC and NEFMC met in December and November 2009, respectively, to review the technical recommendations. While management measures may be established in the specification setting process for up to five years, the Councils are both recommending that the specifications and management measures be set for FY 2010 only. This is primarily because the Transboundary Resource Assessment Committee (TRAC) conducted a benchmark stock assessment for spiny dogfish in early February 2010, the results of which are expected in late March 2010. The Councils intend to utilize these results in developing specifications for FY 2011 and beyond.

The MAFMC adopted the MC's recommendation for 12.0 million lb (5,443.11 mt). The NEFMC did not adopt the MC recommendation and instead derived their recommendation from an ABC based on  $F = 0.20$ . The commercial quota that results after

deductions of U.S. commercial dead discards, recreational landings, and Canadian commercial landings is 21.6 million lb (9,797.60 mt). Both Councils recommended maintaining the possession limits of 3,000 lb (1.36 mt).

### Proposed Measures

The FMP provides for disagreement between the Councils on management measures for the upcoming fishing year by specifying that NMFS may propose measures that were not rejected by both Councils assuring that the target  $F$  (in this case  $F_{\text{rebuild}}$  until the fishery is declared rebuilt) will not be exceeded in any fishing year.

NMFS reviewed both Councils' recommendations and concluded that the MC's recommendation would assure that the  $F_{\text{rebuild}}$  (0.11) is not exceeded, as required by the FMP until the stock is determined to be rebuilt. Therefore, NMFS proposes the measures recommended by the MAFMC: a commercial spiny dogfish quota of 12.0 million lb (5,443.11 mt) and maintaining the current possession limit of 3,000 lb (1.36 mt). As specified in the FMP, quota Period 1 (May 1 through October 31) would be allocated 6,948,000 lb (3,151.56 mt), and quota Period 2 (November 1 through April 30) would be allocated 5,052,000 lb (2,291.55 mt).

The FMP authorizes NMFS to update biological reference points through the specification process based on the results of a peer-reviewed resource assessment such as the TRAC. Therefore, this rule also proposes that; if the results of the TRAC assessment, including any additional analysis, provide a biomass target that indicates the stock is rebuilt, NMFS may consider setting a higher quota for FY 2010 in the final rule consistent with an appropriate  $F$  value. The Councils have analyzed the impacts of a quota of 29.5 million lb (13,380.97 mt), consistent with a target  $F$  (0.28) which is the current  $F$  target for a rebuilt stock.

### Measures Adopted by the Atlantic States Marine Fisheries Commission (ASMFC)

NMFS notes that the proposed 2010 spiny dogfish commercial quota is inconsistent with the commercial quota adopted by the ASMFC. On February 5, 2010, the ASMFC approved a 15 million lb (6,803.89 mt) quota with a maximum possession limit of 3,000 lb (1.36 mt) for FY 2010. As the quota implemented under the ASMFC is higher, the proposed Federal quota is likely to be exceeded by landings by vessels

authorized to fish only in state waters. As in previous years, when the federal spiny dogfish fishery is closed but state fisheries remain open, fishing vessels issued federal permits may not fish for, possess, or land spiny dogfish from state or federal waters. In addition, Addendum II to the ASMFC's Interstate FMP for Spiny Dogfish allocated the ASMFC quota with 58 percent to states from Maine through Connecticut, 26 percent to New York through Virginia, and 16 percent to North Carolina. Due to this difference in allocation, state and Federal waters may close at different times, depending on regional and seasonal quota attainment.

### Classification

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

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows:

### 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

According to NMFS permit file data, 3,019 vessels were issued Federal spiny dogfish permits in FY 2008, while 229 of these vessels contributed to overall landings. 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 FY 2008 was used to evaluate impacts of this action, as that is the most recent year for which data are complete.

### 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 IRFA considered three distinct alternatives. The proposed action (Alternative 1, Status quo and equivalent to No Action) is expected to achieve  $F_{\text{rebuild}} = 0.11$  and recommends a commercial quota of 12.0 million lb (5,443.11 mt) and a possession limit of 3,000 lb (1.36 mt), for FY 2010. The proposed commercial quota is lower than those that result from the higher  $F$  targets associated with Alternative 2 ( $F = 0.20$ ) and Alternative 3 ( $F = 0.28$ ). Alternative 2 proposes a 21.6 million lb (9,797.60 mt) quota and Alternative 3 proposes a 29.5 million lb (13,380.97 mt) quota. None of the alternatives propose to modify the current 3,000 lb possession limit.

Assuming that the quota implemented would be attained, the proposed action would be expected to maintain current revenue levels. Alternatives 2 and 3 would be expected to increase revenue from dogfish landings, which would have positive or null economic impact on small entities. Total spiny dogfish revenue from the last complete fishing year (FY 2008) was reported as \$2.157 million. Using the average FY 2008 price/lb (\$0.24), landing the 12 million lb (5,443.11 mt) quota would yield \$2.880 million in fleet revenue. Using the same approach, revenue would be expected to increase to \$5.191 million under Alternative 2 and \$7.070 million under Alternative 3. However, under Alternative 1, the proposed quota assures that  $F_{\text{rebuild}}$  (0.11) is not exceeded until the stock is determined to be rebuilt, as required by the FMP.

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

Dated: March 29, 2010.

**Eric C. Schwaab,**

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

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