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Dated: June 11, 2010

**Jeffrey L. Underwood,**

Acting Director, U.S. Fish and Wildlife Service.

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

[Docket No. 100201058-0260-02]

RIN 0648-AY50

**Fisheries of the Northeastern United States; 2010 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 and management measures for the spiny dogfish fishery for the 2010 fishing year (FY) (May 1, 2010, through April 30, 2011). NMFS is implementing a spiny dogfish quota of 15 million lb (6,803.89 mt) for FY 2010, and maintaining the possession limit of 3,000 lb (1.36 mt). These measures are consistent with the Spiny Dogfish Fishery Management Plan (FMP) and based on new biological reference points announced by peer reviewers of the Transboundary Resource Assessment Committee (TRAC), which indicated the stock is rebuilt.

**DATES:** Effective July 26, 2010 through April 30, 2011.

**ADDRESSES:** 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 revised EA/RIR/IRFA updated after the announcement of new biological reference points 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 the preamble 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:**

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

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

A proposed rule for this action was published in the *Federal Register* on April 2, 2010 (75 FR 16716), with public comment accepted through May 3, 2010. NMFS proposed to establish a commercial quota of 12 million lb (5,443.11 mt), the level calculated to achieve the fishing mortality rate (F) that would rebuild the stock ( $F_{rebuild}$ ) after accounting for other sources of fishing mortality. NMFS also proposed maintaining the possession limit of 3,000 lb (1.36 mt) for FY 2010. As noted in the preamble to the proposed rule, the proposed commercial quota of 12 million lb (5,443.11 mt) was consistent with the rebuilding F level ( $F_{rebuild} = 0.11$ ) in existence at that time. As also noted, the Transboundary Resource Assessment Committee (TRAC) conducted a benchmark stock assessment for spiny dogfish in February 2010, and planned to re-examine biological reference points. The proposed rule explained that the FMP provides a mechanism to allow updated stock status determination criteria to be used in setting final specifications. Details about the proposed measures were included in the preamble of the proposed rule and are not repeated here.

The TRAC met in early February 2010, and determined that additional analysis would be conducted by a group of selected peer reviewers to further define biological reference points, in particular to determine the status of the spiny dogfish stock for the purposes of U.S. management.

**Revised Stock Status Determination Criteria**

On April 6, 2010, the group of peer reviewers selected by the TRAC accepted a newly defined biomass target of 159,288 mt, based on analysis of information in the TRAC assessment. The reviewers concluded that the updated stochastic estimate of spawning stock biomass (SSB) for 2009 (163,256 mt) exceeded the newly defined biomass target, and that estimates of SSB have been above the new biomass target since 2008, consistent with a rebuilt stock. Therefore, the spiny

dogfish stock can be considered rebuilt for the purposes of U.S. management. In addition, the peer reviewers agreed on a new fishing mortality rate target ( $F_{target}$ ) of 0.207 (previously 0.28), which allows 1.5 pups per recruit, and a fishing mortality rate threshold ( $F_{threshold}$ ) of 0.325 (previously 0.39). Based on the updated stock status determination criteria, NMFS sent a letter to the Councils that the spiny dogfish stock is rebuilt.

The  $F_{target}$  of 0.207 could allow the 2010 quota to be specified as high as 21.5 million lb (9,752.24 mt). However, the Mid-Atlantic and New England Fishery Management Councils' Joint Spiny Dogfish Committee (Committee) submitted a comment on the proposed rule that supported increasing the FY 2010 commercial quota to a level that employs a constant catch management approach and avoids dramatic fluctuations in annual quota levels. In addition, there are still a number of concerns about the spiny dogfish stock condition. The 2009 updated stock assessment shows evidence of strong recruitment; however, low pup production from 1997 through 2003 has been implicated by survey catches of pups and is further supported by subsequent low survey catches of the size categories these age classes have grown into. As such, a decline in the stock is expected when these small 1997-2003 year-classes recruit into the SSB (in approximately 2015). 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. A harvest scenario of 21.6 million lb (9,797.6 mt) over the next 5 years has only a 27 percent chance of exceeding the biomass target ( $\frac{1}{2} B_{msy}$ ) when the small year classes from years of low pup production recruit into the fishery.

**2010 Specifications and Management Measures**

The commercial spiny dogfish quota for FY 2010 is 15 million lb (6,803.89 mt), the level that equates to an F of 0.167 when discard mortality and Canadian harvest estimates are accounted for. In setting the FY 2010 commercial quota at 15 million lb (6,803.89 mt), there is a 98-percent chance that the stock will not decline to the level where it would once again be deemed overfished, and a significant decrease in annual quota levels will not be necessary when the small year-classes from years of low pup production recruit into the fishery.

As specified in the FMP, quota Period 1 (May 1 through October 31) would be

allocated 57.9-percent of the 15-million-lb quota (8,685,000 lb), and quota Period 2 (November 1 through April 30) would be allocated 42.1-percent of the quota (6,315,000 lb). The possession limit of 3,000 lb (1.36 mt) is maintained for FY 2010.

### Comments and Responses

NMFS received six comments on the proposed measures from: The Maine Department of Marine Resources (ME DMR); the Mid-Atlantic and New England Fishery Management Councils' Joint Spiny Dogfish Committee (Committee); Shark Advocates International, on behalf of nine conservation organizations including itself; and three individuals.

*Comment 1:* The Committee supported an increase in the FY 2010 spiny dogfish quota from the 12-million-lb level in the proposed rule, based on analysis of the TRAC results. It specifically supported a commercial quota greater than in the proposed rule (12 million lb) but less than the maximum quota analyzed by the Councils (29.5 million lb), in order to ensure stability in future landings of spiny dogfish.

*Response:* NMFS considered the Committee recommendation along with the results from the peer reviewed analysis of the TRAC assessment in setting the FY 2010 specifications. NMFS understands the desirability of a constant catch management approach and anticipates that the 15-million-lb (6,803.89 mt) quota for FY 2010 will avoid the need for significant quota fluctuations in future years.

*Comment 2:* ME DMR suggested NMFS take the TRAC analysis results into account in preparing the final specifications for FY 2010 and increase the commercial quota and possession limit as high as possible. The three individuals, all from Maine, opposed maintaining the 3,000-lb (1.36 mt) possession limit, and suggested it be increased to 6,000 lb. One individual suggested the possession limit increase to either 6,000 lb per day, or 12,000 lb per trip.

*Response:* NMFS utilized the results from the peer-reviewed analysis of the TRAC when setting the FY 2010 specifications for the spiny dogfish fishery. Although recruitment to the fishery increased in 2009, due to estimated low pup production from 1997–2003 implicated by survey catches of pups and low survey catches of size categories for those year classes, a decline in the stock is expected when these small 1997–2003 year-classes recruit to the SSB (approximately 2015). 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. Therefore, the FY 2010 commercial quota is being increased to a level where  $F$  is equal to 0.167 after other sources of fishing mortality are accounted for.

NMFS does not agree that the possession limit should be increased for FY 2010. The FMP was developed in 1998 and implemented in 2000 in order to halt large-scale depletion of reproductively mature female spiny dogfish and to allow the stock to rebuild. Because the commercial fishery concentrated primarily on mature females, the FMP established possession limits to control the directed fishery for spiny dogfish and allow for the reproductively mature portion of the population to recover.

Neither the Councils nor the Atlantic States Marine Fisheries Commission (Commission) considered alternatives that would have increased the FY 2010 possession limits. In fact, the Commission plan specifies that spiny dogfish possession limits may be established by the states at a maximum of 3,000 lb (1.36 mt), and many states have set possession limits that are considerably lower than that for some or all of the year. It is for these reasons that the possession limit is maintained at 3,000 lb (1.36 mt) for the FY 2010.

*Comment 3:* Shark Advocacy International, on behalf of nine conservation groups, including itself, supported maintaining the commercial quota at 12-million-lb (5,443.11 mt) and the possession limit at 3,000-lb (1.36 mt) to ensure the spiny dogfish fishery is fully rebuilt. They state that a significant increase in quota would encourage fishing on already stressed populations of mature females. They also expressed concern about the Commission setting a 15-million-lb (6,803.89 mt) quota because it is inconsistent, in their view, with the best scientific information available. They encouraged NMFS to track state landings, anticipate when catch limits are met, and close Federal fisheries to avoid overages.

*Response:* NMFS's decision to specify the FY 2010 commercial quota at 15 million lb (6,803.89 mt) is based on new biological reference points established for the spiny dogfish stock, and the determination that the stock is rebuilt.

NMFS concluded that that the commercial quota could be increased to 15 million lb (6,803.89 mt) without negative effects on reproductively mature females. Analysis indicates this quota level equates to an  $F$  of 0.167, when discard mortality and Canadian

harvest estimates are incorporated into total catch. Projections also indicate that this harvest level could be held constant for 5 years, with a 98-percent probability the stock would not decline to the level where it would once again be deemed overfished.

NMFS does monitor state landings on a weekly basis and closes the fishery when it is anticipated that the commercial quota is met for that quota period; however NMFS and the Commission differ in their quota allocation schemes, which can cause confusion among different parties. NMFS manages the spiny dogfish stock by allocating the quota into two periods, where Period 1 (May 1 through October 31) is allocated 57.9-percent of the commercial quota (8,685,000 lb), and quota Period 2 (November 1 through April 30), which is allocated 42.1-percent of the quota (6,315,000 lb). The Commission allocates the commercial quota by region; the Northern region is allocated 58-percent of the quota, the Southern region is allocated 26-percent of the quota, and North Carolina is allocated 16-percent of the quota. While the Federal fishery is closed when the commercial quota is project to be harvested, it is the responsibility of the individual states to close their fishery at the recommendation of the Commission when the regional allocation is projected to be harvested. Implementing a commercial quota of 15 million lb (6,803.89 mt) ensures consistency with the Commission. However, there are still inconsistencies in the quota allocation scenario between the state and Federal FMPs, which is sometimes confusing for fishermen and creates administrative burden. The issue of quota allocation will be reconsidered by the Councils in upcoming Amendment 3 to the FMP, and is not the subject of this rulemaking.

### 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 action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

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 FY 2010 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 this final rule, and is not repeated here.

#### *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 and is not repeated here.

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

NMFS received six comments on this rule but none of them concerned the IRFA or the economic impacts of the proposed action.

#### *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 their gross receipts 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. According to unpublished NMFS permit file data, 3,142 vessels were issued Federal spiny dogfish permits in FY 2008, while 229 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 IRFA was revised from the original submitted by the Councils after the results of the TRAC review were announced. The revised IRFA considered four distinct alternatives. Alternative 1, which was the preferred alternative in the proposed rule, is equivalent to No Action, and was proposed to achieve  $F_{rebuild} = 0.11$  with a commercial quota of 12.0-million-lb (5,443.11 mt). Alternative 2 is based on an  $F_{target}$  of 0.20, with a resultant commercial quota of 21.6 million lb (9,797.60 mt). Alternative 3 is based on the target  $F$  of 0.28 with a resultant quota of 29.5-million-lb (13,380.97 mt). Alternative 4, the action being implemented, is based on an  $F$  below the revised  $F_{target}$ , and is equal to an  $F$  of 0.167 after other sources of fishing mortality are accounted for. Alternative 4 results in a commercial quota of 15.0-million-lb (6,803.89 mt). None of the alternatives proposed to modify the current 3,000-lb (1.36 mt) possession limit.

None of the alternatives under consideration are expected to result in negative economic impacts. Higher quotas (Alternatives 2, 3, and 4) are expected to increase revenue from the dogfish fishery, assuming that the quota implemented would be attained. In general, no negative economic impacts are expected because the alternatives are consistent with the goals of the FMP and are unlikely to result in significant (negative) deviation from the status quo. Total spiny dogfish revenue from the last FY for which data are complete (FY 2008) was reported as \$2.157 million. Using the average FY 2008 price/lb (\$0.24), landing the full FY 2009 quota (and therefore also the quota under Alternative 1) corresponds to \$2.880 million. Using the same approach, landing the 15-million-lb (6,803.89 mt) quota under Alternative 4 would increase revenue to \$3.600 million.

Revenue would be expected to increase to \$5.191 million under Alternative 2, and \$7.070 million under Alternative 3. The economic benefits would be greatest under Alternative 3, and to a lesser extent Alternatives 2 and 4, but fishermen would still benefit compared to the maintained revenue levels under Alternative 1. Although Alternatives 2 and 3 would provide the greatest economic benefits, the quota proposed under Alternative 4 is the action being implemented due to concerns about the stock condition and the desire to avoid dramatic fluctuations in annual quota levels, as explained earlier in this preamble. Implementing a commercial quota that employs a constant catch management strategy and that takes into account potential future declines in SSB will provide the industry with a more stable and economically beneficial fishery in the future.

#### *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/>.

Dated: June 18, 2010

**Eric C. Schwaab,**

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

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