

SUMMARY: NMFS published a proposed rule for developing identification and certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources (PLMRs) pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). This notice is to announce five public hearings and to discuss and collect comments on the issues described in the proposed rule.

DATES: Written comments must be received no later than 5:00 pm Eastern time on May 14, 2009. Public hearings will be held in March, April, and May of 2009. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Public hearings will be held in Boston, MA; Silver Spring, MD; La Jolla, CA; Seattle, WA; and Miami, FL. For specific locations, see

SUPPLEMENTARY INFORMATION. Written comments on this action, identified by RIN 0648-AV51, may be submitted by any of the following methods:

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

- Mail: Laura Cimo, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Laura Cimo (ph. 301-713-9090, fax 301-713-9106, e-mail Laura.Cimo@noaa.gov).

SUPPLEMENTARY INFORMATION: On January 14, 2009 (74 FR 2019), NMFS published a proposed rule for developing certification procedures to address IUU fishing activities and PLMR bycatch pursuant to the Moratorium Protection Act. The regulatory measures proposed in this rule encourage nations to cooperate with the United States towards ending IUU fishing and reducing the bycatch of PLMRs.

Under the proposed rule, NMFS is required to identify foreign nations whose fishing vessels are engaged in IUU fishing or fishing activities or practices that result in bycatch of PLMRs in a biennial report to Congress. Once a nation has been identified in the biennial report, a notification and consultation process will be initiated. Subsequent to this process, NMFS will initiate a certification process regarding identified nations that considers whether the government of an identified nation has provided evidence that sufficient corrective action has been taken with respect to the activities described in the report or whether the relevant international fishery management organization has implemented measures that are effective in ending the IUU fishing activity by vessels of that nation. Nations will either receive a positive or a negative certification.

The absence of sufficient action by an identified nation to address IUU fishing and/or PLMR bycatch may lead to the denial of port privileges for vessels of that nation, prohibitions on the importation of certain fish or fish products into the United States from that nation, or other measures.

Identified nations that are not positively certified by the Secretary of Commerce could be subject to prohibitions on the importation of certain fisheries products into the United States and other measures, including limitations on port access, under the High Seas Driftnet Fisheries Enforcement Act (Enforcement Act)(16 U.S.C. 1826a).

Request for Comments

NMFS will hold five public hearings to receive oral and written comments on these proposed actions. Comments received on the proposed rule will assist NMFS in developing a final rule.

Dates, Times, and Locations

The public hearings will be held as follows:

1. Monday, March 16, 2009, 9:00–11:00 a.m., Boston Convention & Exhibition Center, 415 Summer Street, meeting room 203, Boston, MA 02210; phone 617-954-2000.
2. Monday, April 6, 2009, 6:30–8:30 p.m., Hilton Hotel, 8727 Colesville Road, Lincoln Ballroom, Silver Spring, MD 20910; phone 301-589-5200.
3. Monday, April 13, 2009, 4:00–6:00 p.m., NMFS Southwest Fisheries Science Center, 3333 N. Torrey Pines Court, meeting room 370, La Jolla, CA 92037; phone 858-546-7000.
4. Tuesday, April 14, 2009, 4:00–6:00 p.m., NMFS Northwest Fisheries

Science Center, 2725 Montlake Boulevard East, Auditorium, Seattle, WA 98112; phone 206-860-3200. Proof of identification will be required for entry.

5. Tuesday, May 12, 2009, 6:30–8:00 p.m., Miami Airport Marriott, 1201 NW LeJeune Road, Caribbean Room, Miami, FL 33126; phone 305-649-5000.

Special Accommodations

The sessions are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laura Cimo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the session.

Dated: February 25, 2009.

Rebecca J. Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090129076-9092-01]

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement Framework Adjustment 2 (Framework 2) to the Spiny Dogfish Fishery Management Plan (FMP), developed by the Mid-Atlantic and New England Fishery Management Councils (Councils). Framework 2 would broaden 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 would also establish 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).

DATES: Written comments must be received no later than 5 p.m. local time on April 2, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648-AX56, 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: Jamie Goen

- 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 Dogfish Framework Adjustment 2."

Instructions: 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 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: Jamie Goen, Fishery Policy Analyst, (978) 281-9220.

SUPPLEMENTARY INFORMATION:

Background

The current stock status determination criteria for spiny dogfish is found in the FMP. To modify or replace these stock status determination criteria, the Council must enact a framework adjustment or an amendment to the FMP.

The regulations at § 648.230 outline the management processes for spiny dogfish (*Squalus acanthias*). Stock

assessment information is used in the management process that is used to derive annual catch limits (e.g., Total Allowable Landings (TAL)). Stock assessments for spiny dogfish undergo periodic formal scientific peer review as part of the Northeast Fisheries Science Center's (NEFSC) Stock Assessment Workshop (SAW) and Stock Assessment Review Committee (SARC) process. These and other periodic formal peer reviews may result in recommendations to revise or use different stock status determination criteria as different or new approaches are applied to previously existing data, or to new, previously unexamined data. Currently, these recommendations are incorporated into the management scheme through a framework adjustment or amendment to the FMP. Given the time necessary to develop FMP framework adjustments and amendments, it is likely that, should such new stock status determination criteria result from a formal SAW/SARC peer review, the new criteria would not be available for the Councils' use for at least 1 year.

In addition, groups such as the Councils, the Atlantic States Marine Fisheries Commission (Commission), academic institutions, and other interested parties have periodically contracted with outside parties or conducted in-house formal peer reviews of the stock status determination criteria. In such instances, it has not been clear how the results of these independently conducted peer reviews should be viewed by the Councils in regards to National Standard 2 of the Magnuson-Stevens Act, which specifies that management decisions shall be based upon the best scientific information available.

In response, the Council has developed and submitted for review by the Secretary of Commerce, Framework 2 to the Spiny Dogfish FMP. This framework, if adopted, would enact the following actions, 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. The principal actions proposed by Framework 2 are to:

1. Redefine in general terms, while maintaining objective and measurable criteria, the stock status determination criteria for spiny dogfish;
2. Define what constitutes an acceptable level of peer review; and
3. Provide 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.

These changes, proposed in Framework 2, are discussed in detail in the following sections. This action is similar to Framework Adjustment 7 to the Summer Flounder, Scup, and Black Sea Bass FMP that was implemented in 2007.

Redefined Stock Status Determination Criteria

Framework 2 would redefine the stock status determination criteria for spiny dogfish in the FMP. The maximum fishing mortality rate (F) threshold is defined as FMSY; which is the fishing mortality rate associated with the maximum sustainable yield (MSY) for spiny dogfish. The maximum fishing mortality rate threshold (F_{msy}), 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 proposed to be 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 could be 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 NEFSC SAW/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 proposes 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. These periodic reviews outside the SAW/SARC process could be conducted by any of the following, as deemed appropriate by the managing authorities:

- Transboundary Resource Assessment Committee (TRAC), composed of both U.S. and Canadian scientists
- MAFMC SSC Review
- MAFMC Externally Contracted Reviews with Independent Experts (e.g., Center for Independent Experts—CIE)
- NMFS Internally Conducted Review (e.g., Comprised of NMFS Scientific and Technical Experts from NMFS Science Centers or Regions)
- NMFS Externally Contracted Review with Independent Experts (e.g., Center for Independent Experts—CIE)

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. 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 proposes 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 proposes 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 proposes 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 SSC 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.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Regional Administrator has determined that this proposed rule is an administrative framework adjustment to the FMP and is, therefore, categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule deals only with how the best available, peer-reviewed scientific information can be more quickly and efficiently incorporated into the Councils' specification-setting process for spiny dogfish. This is achieved by broadening the descriptions of the stock status determination criteria in the FMP, so updated and peer-reviewed information can be more readily adopted for use in the management process. The proposed change is to how the stock status determination criteria are defined; there is no change to the existing determination criteria. Additionally, the Framework identifies acceptable levels of peer review that must be satisfied before new or revised information is accepted as the best available science. These are administrative changes to the FMP that serve to improve the quality of data used in management decisions, consistent with National Standards 1 and 2 of the Magnuson-Stevens Act. As such, the rule will not have significant direct or indirect economic impacts on small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: February 25, 2009.

James W. Balsiger,

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

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