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**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110303179-1178-02]

RIN 0648-XA163

#### Fisheries of the Northeastern United States; Proposed 2011 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 2011 fishing year (FY) (May 1, 2011, through April 30, 2012). 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 on those specifications. The intent of this rulemaking is to specify the commercial quota and other management measures for FY 2011 only. Specifically, for FY 2011, NMFS proposes that the annual quota be set at 20 million lb (9,071.85 mt), and that the possession limit for dogfish remain 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 April 18, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 0648-XA163, 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 2011 Dogfish Specifications."

*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 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: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State St., Dover, DE 19901. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Lindsey Feldman, Fishery 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 NMFS to prepare measures to end overfishing and rebuild the spiny dogfish stock. During 1998 and 1999, the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint FMP, with the MAFMC designated as the administrative lead.

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 ensure 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 FYs. 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), which is 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 FYs. The Council's Joint Spiny Dogfish Committee (Joint Committee) considers the MC's recommendations and any public comment in making its recommendation to the two Councils. The MAFMC and the NEFMC then 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

NMFS declared the spiny dogfish stock rebuilt on June 22, 2010, based on an analysis of biological reference points presented at the Transboundary Resource Assessment Committee (TRAC) meeting in January 2010. A group of peer reviewers, using information from the TRAC analysis, accepted a newly defined spiny dogfish biomass target (159,288 mt),  $F_{\text{target}}$  (0.207), and  $F_{\text{threshold}}$  (0.325). The 2009 stochastic estimate of spawning stock biomass (SSB) (163,256 mt) was shown to exceed the newly defined biomass target, which was consistent with a rebuilt stock. Based on the recommendation of the MC and TRAC analysis showing the spiny dogfish stock was rebuilt, NMFS set the FY 2010 spiny dogfish specifications at 15 million lb (5,443.11 mt) (75 FR 36012, June 24, 2010).

In the fall of 2010, the NMFS 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), 2009 catch data, and results from the 2010 spring bottom trawl survey. The update specified that the female spawning stock biomass (SSB) for 2010 is 164,066 mt (362 million lb), about 3 percent above the maximum spawning

stock biomass,  $SSB_{max}$  (159,288 mt), the maximum sustainable yield biomass ( $B_{msy}$ ) proxy.

The NEFSC stock status update confirmed that overfishing of spiny dogfish is not occurring, the stock is not overfished, and the stock is rebuilt. The NEFSC stock status update also revised fishing mortality reference points, as the fishery is no longer held to the rebuilding  $F_{target}$  of 0.11. The updated target and threshold  $F$ s are 0.207 and 0.325, respectively.

The updated stock assessment noted that there are still a number of concerns about the condition of the stock. Although recruitment to the fishery increased in 2010, a decline in SSB is expected when small 1997–2003 year-classes recruit to the SSB (in approximately 2015), due to estimated low pup production from 1997–2003 implicated by survey catches of pups and low survey catches of the sizes categories for these year classes. In addition, rates of pup production may be lower than historic levels due to a skewed male-to-female sex ratio of approximately 3:1.

#### Technical Recommendations

The MAFMC's Scientific and Statistical Committee (SSC) met September 21–22, 2010, to develop an acceptable biological catch (ABC) recommendation for spiny dogfish for FY 2011, based on the NEFSC stock status update. The development of the proposed 2011 spiny dogfish specifications was consistent with the Mid-Atlantic Omnibus Amendment (also Amendment 2 to the FMP), which will implement annual catch limits (ACLs) and accountability measures (AMs) for the spiny dogfish fishery. Consistent with the SSC's risk policy for an 'typical' stock, in which the species' life history makes it vulnerable to overfishing, the SSC categorized the updated spiny dogfish assessment as a Level 3 assessment, due to uncertainty in calculating the overfishing limit (OFL). The designation of the spiny dogfish fishery as a Level 3 assessment dictates that the SSC recommend the OFL for spiny dogfish equal 75 percent of  $F_{target}$  (20,267 mt), and that the ABC be set as a reduction from OFL based on a probability of overfishing of 35 percent. The ABC that corresponds to a probability of overfishing of 35 percent was calculated to be 75 percent of the OFL, and is equal to 15,200 mt.

Subsequently, on September 24, 2010, the MC met to recommend the appropriate quota and possession limits for spiny dogfish in FY 2011, based on the SSC's ABC recommendation. To set the appropriate commercial quota, the

MC deducted all other sources of fishing mortality for the spiny dogfish stock (U.S. commercial dead discards, recreational landings and discards, and Canadian commercial landings). Due to a dramatic decrease in Canadian spiny dogfish landings and potential changes in trawl effort in 2009, the MC decided to reduce the ABC by actual 2009 removals. Excluding U.S. commercial landings, removals (U.S. commercial dead discards, recreational landings and discards, and Canadian commercial landings) in 2009 were approximately 6,043.66 mt (13.324 M lb). The commercial quota that is available after deducting the removals from the SSC's ABC recommendation is 20.186 million lb (15,200 mt minus 6,043.66 mt; 9,156.34 mt). The MC recommended a commercial quota of 20 million lb (9,071.85 mt), in order to build in an additional buffer for other assorted sources of uncertainty. The MC also recommended maintaining possession limits at 3,000 lb (1.36 mt), unchanged from 2010.

#### Council Recommendations

At an October 13–14, 2010 meeting, the MAFMC and the Spiny Dogfish Joint Committee approved the FY 2011 commercial quota for spiny dogfish of 20 million lb (9,071.85 mt), and the possession limit of 3,000 lb (1.36 mt), as recommended by the MC. The NEFMC met on November 18, 2010, and concurred with recommendations of the Joint Committee. While management measures may subsequently be established for up to 5 years, the Councils are currently recommending specifications and management measures for FY 2011 only, to account for new information on the stock that may become available, as well as for the implementation of ACLs and AMs that will be enacted for spiny dogfish as a part of the Mid-Atlantic Omnibus Amendment (also Amendment 2 to the FMP).

#### Proposed Measures

NMFS reviewed both Councils' recommendation and concluded that the quota recommendations would adequately allow utilization and conservation of the spiny dogfish resource. Therefore, NMFS proposes the measures recommended by both Councils for FY 2011: Setting the commercial spiny dogfish quota at 20.0 million lb (9,071.85 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 57.9 percent of the quota (11,580,000 lb (5,252.6 mt)), and quota Period 2

(November 1 through April 30) would be allocated 42.1 percent of the quota (8,420,000 lb (3,819.25 mt)).

The proposed 2011 spiny dogfish commercial quota is consistent with the commercial quota adopted by the Atlantic States Marine Fisheries Commission (Commission). On November 12, 2010, the Commission approved a FY 2011 quota for spiny dogfish of 20 million lb (9,071.85 mt), and a maximum possession limit of 3,000 lb (1.36 mt). 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 projected 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 20 million lb (9,071.85 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 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, 3,020 vessels were issued Federal spiny dogfish permits in FY 2009, while 398 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 \$4 million annually. Information from FY 2009 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 2) specifies a commercial quota for spiny dogfish of 20.0 million lb (9,071.85 mt), and maintains the current possession limit of 3,000 lb (1.36 mt) for FY 2011. The proposed commercial quota is higher than the Status Quo (Alternative 1) option, which would maintain the FY 2011 commercial quota for spiny dogfish at 15 million lb (5,443.11 mt). Alternative 3 would specify a commercial quota of 31.4 million lb (14,242.8 mt), a level set to achieve the existing  $F_{\text{target}}$  of 0.207. None of the alternatives propose to modify the current 3,000-lb (1.36-mt) possession limit.

If implemented, and assuming that the quota is fully attained, the proposed action would be expected to increase revenue levels for affected businesses, thereby having a positive economic impact on small entities. By contrast, Alternative 1 (status quo) would maintain the current revenue levels, and Alternative 3 would be expected to increase revenue from dogfish landings. Total spiny dogfish revenue from the

last complete FY (2009) was reported as \$2.360 million. Using the average FY 2009 price/lb (\$0.22), landing the full FY 2010 quota of 15 million lb (5,443.11 mt), (and also the FY 2011 quota under Alternative 1) would yield \$3.300 million in fleet revenue. Using the same approach, revenue would be expected to increase to \$4.400 million under the proposed action (Alternative 2) and \$6.898 million under Alternative 3. The quota level of the proposed action allows the highest level of harvest of spiny dogfish while taking into account scientific uncertainty about the stock's population. Additionally, although the level of increased revenue for small entities is expected to be less than under Alternative 3, the proposed action is more likely to prevent overfishing of the spiny dogfish resource and promote a more stable stream of commercial landings and revenues over the long term.

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

Dated: March 11, 2011.

**Samuel D. Rauch III,**

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

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