

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

[Docket No. 120213130-2129-01]

RIN 0648-XA973

Fisheries of the Northeastern United States; Proposed 2012 Spiny Dogfish Fishery Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes a catch limit, commercial quota, and trip limit for the spiny dogfish fishery for the 2012 fishing year. The proposed action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. The proposed management measures are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass. The proposed action is expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on April 18, 2012.

ADDRESSES: An environmental assessment (EA) was prepared that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Dr. Christopher M. Moore, Executive Director, Mid Atlantic Fishery Management Council, Suite 201, 800 N. State St, Dover, DE 19901. The EA/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2012-0016, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter “NOAA-NMFS-2012-0016” in the keyword search. Locate the document you wish to comment on

from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Fax:** (978) 281-9135, Attn: Tobey Curtis.
- **Mail:** Daniel S. Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Spiny Dogfish Specifications.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will 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 or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:**Background**

Spiny dogfish (*Squalus acanthias*) were declared overfished by NMFS in 1998. Consequently, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required NMFS to prepare measures to end overfishing and rebuild the spiny dogfish stock. The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint fishery management plan (FMP), with the MAFMC designated as the administrative lead. The FMP was implemented in 2000, and the spiny dogfish stock was declared to be successfully rebuilt in 2010.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, trip limit, and other management measures for a period of 1–5 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 MAFMC's Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and makes recommendations on acceptable biological catch (ABC). This recommendation is then used as the basis for catch limits and other management measures developed by the MAFMC's Spiny Dogfish Monitoring Committee and Joint Spiny Dogfish Committee (which includes members of the NEFMC). The MAFMC and NEFMC then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In September 2011, the Northeast Fisheries Science Center (Center) updated spiny dogfish stock status, using the most recent catch data and biomass estimates from the 2011 spring trawl survey. Updated estimates indicate that the female spawning stock biomass (SSB) for 2011 is 169,415 mt, about 6 percent above the target maximum sustainable yield biomass proxy (SSB_{max}) of 159,288 mt. Additionally, the Center revised the fishing mortality rate (F) reference points that were approved by the SSC. The 2010 F estimate for the stock was 0.093, well below the overfishing threshold (F_{MSY}) of 0.2439. Therefore, the spiny dogfish stock is not currently overfished or experiencing overfishing. However, while recruitment has increased in recent years, poor pup production from 1997–2003 is projected to result in significant declines in SSB from 2014–2020.

The SSC subsequently recommended an ABC for spiny dogfish for the 2012 fishing year. The ABC recommendation was based on an overfishing level of median catch at the F_{MSY} proxy, and the Council's risk policy for a Level 3 assessment (probability of overfishing = 40 percent). The resulting 2012 spiny dogfish ABC is 44,868 million lb (20,352 mt), which represents a 34-percent increase from the 2011 ABC.

Council Recommendations

The Spiny Dogfish Monitoring Committee and the Atlantic States Marine Fisheries Commission's (Commission) Spiny Dogfish Technical Committee met on September 22, 2011, to determine the resulting specifications

following the Annual Catch Limit (ACL) and Accountability Measures Omnibus Amendment process (September 29, 2011; 76 FR 60606). After deducting the projected Canadian catch (131,175 lb (59 mt)), the domestic ACL for spiny dogfish would be 44.737 million lb (20,292 mt). No additional deductions were recommended to account for management uncertainty. Following additional reductions for projections of U.S. discards (8,997 million lb (4,081 mt)) and recreational landings (46,000 lb (21 mt)), the final 2012 commercial quota for spiny dogfish would be 35.694 million lb (16,191 mt) (a 78-percent increase from 2011).

The MAFMC met October 11–13, 2011, to recommend spiny dogfish management measures for the 2012

fishing year. The MAFMC voted to recommend that the commercial quota for spiny dogfish be set at 35.694 million lb (16,191 mt), with a daily commercial trip limit of 4,000 lb (1,815 kg). Both of these recommendations represent increases over the 2011 quota (20 million lb (9,072 mt)) and trip limit (3,000 lb (1,361 kg)).

However, several spiny dogfish processors expressed concerns that the dramatic increase in quota and trip limits could lead to unstable market conditions (e.g., low or fluctuating prices), and may not be in the best long-term interests of the fishery (due to the projected future decline in SSB). Additionally, the increased trip limit would likely result in mid-season closures, rather than allowing vessels to

land dogfish continuously throughout the fishing year.

In response to these concerns, at its November 7–10, 2011, meeting, the Commission voted to implement a 30-million-lb (13,608-mt) commercial quota for state waters, and maintain the current 3,000-lb (1,361-kg) trip limit for the 2012 fishing year. Additionally, when the NEFMC met on November 17, 2011, it recommended a third alternative of a 35.694-million-lb (16,191-mt) quota with a 3,000-lb (1,361-kg) trip limit (Table 1). NMFS must select its preferred alternative for the 2012 spiny dogfish specifications from among the range of alternatives not rejected by both Councils.

TABLE 1—FISHING YEAR 2012 SPINY DOGFISH COMMERCIAL QUOTA AND TRIP LIMIT RECOMMENDATIONS

| Alternative | Commercial quota | Trip limit |
|------------------|-------------------------------------|----------------------|
| MAFMC | 35.694 million lb (16,191 mt) | 4,000 lb (1,815 kg). |
| NEFMC | 35.694 million lb (16,191 mt) | 3,000 lb (1,361 kg). |
| Commission | 30.000 million lb (13,608 mt) | 3,000 lb (1,361 kg). |
| Status Quo | 20.000 million lb (9,072 mt) | 3,000 lb (1,361 kg). |

Proposed Measures

NMFS proposes that the spiny dogfish ACL be set at 44.737 million lb (20,292 mt) for the 2012 fishing year. If this ACL is exceeded, the accountability measures described at § 648.233 would be implemented. Additionally, NMFS has reviewed the recommendations of the Councils and Commission and concluded that, despite industry concerns about the higher quota recommendations, there is not a significant biological basis for a lower quota in 2012. The Councils' recommendations favor short-term yield over potential long-term stock stability, but are still not projected to result in overfishing. If spiny dogfish SSB declines in coming years, as projected, catch limits would be appropriately reduced in those years.

Therefore, NMFS proposes to impose a commercial quota of 35.694 million lb (16,191 mt) and to maintain the status quo trip limit of 3,000 lb (1,361 kg) for the 2012 fishing year (consistent with the NEFMC recommendation). Based on the percentage allocations specified in the FMP, quota Period 1 (May 1 through October 31) would be allocated 20.667 million lb (9,374 mt), and quota Period 2 (November 1 through April 30) would be allocated 15.027 million lb (6,816 mt). The significant quota increase in conjunction with the status quo trip limit should help avoid prolonged fishery closures, extend the fishing season, reduce regulatory discards, and

maximize revenues for vessels that land spiny dogfish.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The MAFMC prepared an IRFA, 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 of the preamble and in the SUMMARY of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the MAFMC (see ADDRESSES).

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than \$4 million in annual sales, while the size standard for charter/party operators (part of NAICS code 487210) is \$7 million in sales. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. Although multiple vessels

may be owned by a single owner, ownership tracking is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this rule. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed increase in the spiny dogfish commercial quota would impact vessels that hold Federal open access commercial spiny dogfish permits, and participate in the spiny dogfish fishery. According to MAFMC's analysis, 2,942 vessels were issued spiny dogfish permits in 2010. However, only 326 vessels landed any amount of spiny dogfish. While the fishery extends from Maine to North Carolina, most active vessels were from (in descending order)

Massachusetts, New Jersey, New Hampshire, Rhode Island, New York, North Carolina, and Virginia.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

The alternatives considered and analyzed by the Councils are summarized in Table 1 above. The proposed action reflects the recommendation of the NEFMC. The purpose of the proposed action is to increase spiny dogfish catch limits and landings, consistent with the best available science, thereby extending the duration of the fishing season and increasing revenue relative to the status quo. The proposed action is expected to maximize the short-term profitability for the spiny dogfish fishery during the 2012 fishing year, without jeopardizing the long-term sustainability of the stock. Therefore, the economic impacts resulting from the proposed action as compared to the other alternatives are positive.

The proposed action is almost certain to result in greater revenue from spiny dogfish landings, which would be up to 78 percent higher than the status quo quota. Based on recent landings information, the spiny dogfish fishery is able to land close to the full amount of fish allowable under the quotas. Total spiny dogfish revenue from the 2010 fishing year was approximately \$3.119 million. Assuming the 2010 average price (\$0.21 per lb), landing the proposed quota of 35.694 million lb (16,191 mt) would result in revenues of approximately \$7.655 million in 2012. The Commission's quota alternative of 30 million lb (13,608 mt) would result in revenues of approximately \$6.434 million, which is also an increase over the Status Quo/No Action alternative of approximately \$4.289 million in revenue. The expected increases in spiny dogfish revenue should benefit those ports that are more heavily dependent on spiny dogfish revenue than other communities, including Virginia Beach, Virginia; Hatteras, North

Carolina; Rye, New Hampshire; Chatham, Massachusetts; and Ocean City, Maryland.

The proposed commercial trip limit of 3,000 lb (1,361 kg) is equal to the Status Quo/No Action alternative trip limit, and should therefore have no additional economic impacts. The MAFMC's alternative with a 4,000-lb (1,815-kg) trip limit could result in greater short-term revenue per trip, but result in a shorter fishing season due to fishery closures once the quota was reached. Therefore, the proposed trip limit is expected to prolong the fishing season and the positive impacts to communities over the course of the fishing year.

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

Dated: March 13, 2012.

Alan D. Risenhoover,

Action Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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