

(5) *Groundfish taken with troll gear by vessels engaged in fishing for salmon north of 40° 10' N. lat.*(a) The cumulative limit for yellowtail rockfish in the open access fishery is 100 lb (45 kg) per month. If a vessel has reached its 100 lb (45 kg) yellowtail cumulative limit, up to 200 lb (91 kg) per month of additional yellowtail rockfish may be taken and retained, possessed or landed, providing the following conditions are met: in any trip in which salmon troll gear, as defined at 50 CFR 660.402, is used to take and land yellowtail rockfish and, no more than one lb (.45 kg) of yellowtail rockfish (round weight) is landed for every two lbs (.91 kg) of salmon landed (dressed weight). Dressed weight for purposes of this paragraph is the weight of salmon that is recorded on the State fish ticket and is salmon with the entrails removed, from which the head and gills may or may not have been removed.

(b) The trip limits in Table 5 apply to all other groundfish taken with troll gear by vessels fishing for salmon.

\* \* \* \* \*

#### Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures published at 66 FR 2369 (January 11, 2001) and are based on the most recent data available.

NMFS finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative limit period begins on May 1, 2001, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY. Increases to trip limits relieve burdens on the public and decreases to trip limits must be implemented in a timely manner to stretch the season as long as possible through the year. In addition, the affected public had the opportunity to comment on these actions at the April 2-6, 2001 Council meeting. This action should be implemented before the beginning of the cumulative trip limit period to avoid confusion and to provide fishers the opportunity to achieve the trip limits. For these reasons, good cause also exists to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

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

Dated: April 30, 2001.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 010319071-1103-02; I.D. 030101H]

RIN 0648-AN71

#### Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2001 Specifications

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

**ACTION:** Final rule; final specifications.

**SUMMARY:** NMFS issues final specifications for the 2001 spiny dogfish fishery (May 1, 2001, through April 30, 2002). This final rule establishes a commercial quota and possession limits for the 2001 fishing year to address overfishing of the spiny dogfish resource. In addition, the current trip limits are modified to be possession limits, specified as the maximum amount allowed to be landed within any one 24-hour period (per-calendar-day possession limit). The intent of this action is to comply with implementing regulations for the Fishery Management Plan for the Spiny Dogfish Fishery (FMP), which require NMFS to impose measures for each upcoming fishing year that will prevent overfishing of this fishery.

**DATES:** The 2001 annual commercial quota is effective from May 1, 2001, to April 30, 2002. The amendments to §§ 648.14(aa)(7), 648.230(d)(1), 648.235(a), and 648.235(b) are effective May 1, 2001.

**ADDRESSES:** Copies of supporting documents used by the Spiny Dogfish Monitoring Committee (Monitoring Committee), the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is also

accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, (978)281-9279, fax (978)281-9135, e-mail [rick.a.pearson@noaa.gov](mailto:rick.a.pearson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** A proposed rule for this action was published in the **Federal Register** on March 30, 2001, (66 FR 17391). The comment period closed on April 14, 2001.

#### Background

The FMP was developed jointly by the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) (Councils). The implementing regulations for the FMP are found at 50 CFR part 648, subpart L.

Pursuant to 50 CFR 648.230, the Administrator, Northeast Region, NMFS (Regional Administrator), imposes measures for each fishing year designed to ensure that the target fishing mortality rate (F) for the fishing year, as specified in the FMP, is not exceeded. The target F for fishing year 2001 and the management measures (i.e., semi-annual commercial quota and possession limits) for that year are summarized here. Detailed background information regarding the development of the specifications for the 2001 spiny dogfish fishing year was provided in the preamble to the proposed specifications (66 FR 17391, March 30, 2001) and is not repeated here.

#### Annual Commercial Quota

The FMP specifies a target F of 0.03 for 2001, to be attained through a commercial quota and possibly other management measures. This final rule establishes a 2001 fishing year commercial quota of 4 million lb (1.81 million kg), allocated on a semi-annual basis as follows: Quota Period 1 (May 1-October 31) is allocated 57.9 percent of the 4-million lb (1.81-million kg) quota, or 2,316,000 lb (1,050,512 kg); Quota Period 2 (November 1-April 30) is allocated 42.1 percent of the 4-million lb (1.81-million kg) quota, or 1,684,000 lb (763,849 kg). This commercial quota was recommended by the Spiny Dogfish Monitoring Committee (Monitoring Committee) to achieve the target F of 0.03, as required in the FMP for the 2001 fishing year. Although the Monitoring Committee and the Councils also recommended that an additional 500,000 lb (226,796 kg) be allocated for experimental fishing projects, the FMP and its implementing regulations do not contain a provision to allow for the allocation of such a set-aside quota for

experimental fishing projects. It was only through interim action by the Secretary of Commerce that such a provision was possible for the 2000 fishing year. Therefore, an additional quota set-aside for experimental fishing projects for 2001 is not contained in this final rule.

#### Possession Limits

The Councils differed in their possession limit recommendations. During the rebuilding period, the objective of the FMP is to rebuild the mature female component of the spiny dogfish stock to prevent possible recruitment failure. This portion of the stock, which is the primary spawning biomass of the stock, has traditionally been targeted by the directed spiny dogfish fishery and, consequently, is most in need of protection and rebuilding. In order to discourage directed fishing for spiny dogfish and to allow dogfish caught incidentally in other fisheries to be landed for the entire quota period, the MAFMC recommended per-calendar-day possession limits of 600 lb (272 kg) for Quota Period 1, and 300 lb (136 kg) for Quota Period 2. The NEFMC, however, recommended a per-calendar-day possession limit of 5,000 lb (2,268 kg) for both quota periods.

A possession limit of 5,000 lb (2,268 kg) could facilitate a directed fishery for spiny dogfish. NMFS believes that a directed fishery is not advisable because that fishery has traditionally targeted mature females, due to their larger size and higher value. The primary objective of the FMP is to rebuild the mature female component of the population. In fact, both the disapproved rebuilding target recommended by the Councils and the rebuilding target supported by the Spiny Dogfish Technical Committee are based upon attaining a specified level of abundance of adult female spiny dogfish. To establish possession limits through these specifications at levels that facilitate a directed fishery on adult female spiny dogfish would be counterproductive. Therefore, this final rule establishes per-calendar-day possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively, to allow for the retention of spiny dogfish caught incidentally in fisheries for other species throughout the entire fishing year, and to provide protection for adult female spiny dogfish.

This final rule also changes the current landing limits. The landing limits are changed to be the maximum amount of spiny dogfish that may be possessed on board and landed in any 1 calendar day. The intent of this

change is to enhance at-sea enforcement and to prohibit multiple landings of spiny dogfish in any 1 day. This change is consistent with recent changes in the landing limits for several other Mid-Atlantic fisheries (Loligo squid, scup, and black sea bass).

#### Comments and Responses

Two comment letters were submitted to NMFS during the comment period for the proposed rule. One was submitted on behalf of a commercial fishing industry association and the other on behalf of two conservation organizations. These letters addressed two main points: The level of the commercial quota, and the 500,000-lb (2,268-kg) quota set-aside for experimental fisheries.

NMFS considered all comments received during the comment period in making its decision regarding the final specifications and summarizes and responds to these comments here.

*Comment 1:* One commenter stated that the level of the proposed commercial quota was too low because it was based upon a fishing mortality rate target ( $F=0.03$ ) that is intended to achieve what the commenter believes to be an inappropriate biomass rebuilding target. The commenter stated that the current biomass rebuilding target is incorrect and that NMFS has rejected other more flexible alternatives proposed by the Councils (167,000 mt in 2000; 180,000 mt in 1999). Further, the commenter believes that achievement of the rebuilding target in the FMP will ultimately result in a record high total level of abundance of spiny dogfish.

*Response:* The quota of 4.0 million lb (1.81 million kg) will achieve  $F=0.03$  for the 2001 fishing year, as required by the FMP, and as recommended by the Monitoring Committee. A higher quota would be inconsistent with the FMP's approved rebuilding strategy and, therefore, cannot be implemented by NMFS.

Although the rebuilding strategy contained in the FMP has been approved, the FMP does not currently have an approved biomass rebuilding target. An adult female biomass rebuilding target of 200,000 mt (SSBmax) was determined by the Council's Joint Scientific and Statistical Committee on January 19, 1999, to be the most appropriate value for  $B_{msy}$  (the biomass that achieves maximum sustainable yield), based on current information. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires rebuilding of overfished stocks to a level that will achieve maximum sustainable yield, based upon the best available

information. Therefore, NMFS could not approve the adult female biomass rebuilding target of 180,000 mt that was recommended in the original submission of the FMP by the Councils. The Councils must, in the near future, develop an amendment to the FMP to establish an acceptable biomass rebuilding target for spiny dogfish. Some technical work has been done to advance the discussion of this issue. With regard to the commenter's assertion that the Agency rejected an adult female biomass rebuilding target of 167,000 mt, the Council has not submitted such a recommendation to the agency. The 167,000-mt biomass rebuilding target was considered by the Spiny Dogfish Technical Committee as an adjusted figure that could reflect a hypothesized increase in the area covered by the NEFSC survey trawl, as described at the March 6, 2000, meeting of the Spiny Dogfish Technical Committee. However, the Councils have not yet determined if or how they will utilize this information. As a result, no new additional alternatives have been recommended for further action.

NMFS noted in the final rule that implemented the FMP (65 FR 1557, January 11, 2000) that it considered fully the concern that a 200,000-mt adult female biomass rebuilding target would result in a historically high total level of abundance of spiny dogfish (see Comment 22). In summary, the current spiny dogfish age structure has been seriously distorted by the selective removal of mature females by the fishery. The management measures in the FMP, including the commercial quota, reduce fishing mortality rates to allow the total population to return to equilibrium at a lower level of abundance than that observed in 1999. The preliminary projections in the FMP indicated that the total long-term biomass of a sustainable dogfish fishery would be about 416,000 mt, which is lower than the total 1999 biomass of 515,513 mt.

*Comment 2:* One commenter supported a commercial quota of no more than 4 million lb (1.81 million kg), but asserted that a 3-million lb (1.36 million kg) quota would be more appropriate, given the scientific advice and rebuilding strategy outlined in the FMP.

*Response:* The quota of 4.0 million lb (1.81 million kg) that NMFS is establishing through these final specifications is consistent with the objective to achieve  $F=0.03$  for the 2001 fishing year, as required by the FMP, and as recommended by the Monitoring Committee. The Monitoring Committee initially calculated the yield projection

at  $F=0.03$  for 2001 to be about 3.5 million lb (1.59 million kg) using a mean estimated population size. After considering the uncertainty and variability in the population estimates for spiny dogfish that were previously described in the interim final rule (65 FR 25887, May 4, 2000), the Monitoring Committee recommended a commercial quota of 4 million lb (1.81 million kg).

*Comment 3:* One commenter urged NMFS to establish a 500,000-lb (2,268-kg) quota set-aside for experimental fishing projects. The commenter indicated that a failure to do so would delay the collection of additional management and scientific information and delay efforts by the fishing industry to devise gear and fishing modifications to harvest male spiny dogfish exclusively.

Another commenter opposed the establishment of a quota set-aside for experimental projects. The commenter mentioned that no projects were submitted during the 2000 fishing year, so justification for the additional allocation this year is lacking. The commenter wrote that any quota set-aside should be deducted from the overall 4-million lb (1.81 million kg) commercial quota.

*Response:* Although no proposals were received in 2000 when the provision was included as part of the interim rule, industry members have expressed some interest in investigating alternative fishing methods for male-only dogfish fisheries. A limited experimental fishery was conducted for this purpose in North Carolina state waters. Both Councils proposed that NMFS should allow for a set-aside quota for 2001 and they analyzed the set-aside quota in their submission. However, there is currently no provision in the FMP to allow the establishment of a set-aside quota. The set-aside quota could be implemented through an amendment to the FMP if the Councils decide to pursue this measure.

#### Changes From the Proposed Rule

The final rule contains a provision not contained in the proposed rule. The final rule revises § 648.230(d)(1) to correct a one-day error in the length of the first allocation period to extend it through October 31 rather than through October 30.

#### Classification

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

This action establishes annual quotas and related management measures for the spiny dogfish fishery, which are used to control the harvest of spiny

dogfish and to restrict landings when quotas are attained. This action must be taken immediately upon the start of the 2001 fishing year on May 1, 2001, to conserve this resource. It would be impracticable to delay implementation of the quota provisions, because doing so would prevent NMFS from carrying out its mandate to prevent overfishing of the spiny dogfish resource. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2001 spiny dogfish quotas and related management measures, including the possession limit restrictions, which are needed to enforce effectively the possession limits. With respect to the change to § 648.230(d)(1), which merely corrects a one-day error in the length of the first allocation period, a delay in effective date is unnecessary given that the one-day extension occurs six months from May 1.

NMFS and the MAFMC prepared a FRFA for this action. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed specifications included a detailed summary of the analyses contained in the IRFA, which is not repeated here. A summary of the FRFA focusing upon the impacts of the final measures follows:

A description of the reasons why this action is being taken by the agency and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. There are no compliance costs associated with this final rule.

#### Public Comments

There were no comments received in reference to the Initial Regulatory Flexibility Analysis (IRFA) description of the expected impacts of the proposed regulations on small entities.

#### Number of Small Entities

These measures potentially impact a total of 596 vessels that reported (based on vessel trip report data) spiny dogfish landings to NMFS in 1999. However, any of the 2,759 vessels that obtained Federal spiny dogfish permits could potentially be affected by the proposed measures. Data for individual vessels were not available from the 2000 fishing year at the time of analysis.

#### Minimizing Significant Economic Impact on Small Entities

In the IRFA, NMFS analyzed three alternatives. The MAFMC alternative (Alternative 1) included a commercial quota of 4 million lb (1,814 mt); possession limits of 600 lb (272 kg) during Quota Period 1 and 300 lb (136 kg) during Quota Period 2; and a 500,000-lb (2,268-kg) experimental fishery quota. The NEFMC alternative (Alternative 2) included a commercial quota of 4 million lb (1,814 mt); a possession limit of 5,000 lb (2,268 kg) for both quota periods; and a 500,000-lb (2,268-kg) experimental quota. Alternative 3 was no management action.

In this final rule, NMFS is implementing Alternative 1, without the 500,000-lb (2,268-kg) experimental quota set-aside. This final rule also modifies the trip limits to be possession limits, with the additional provision that these levels are the maximum amount that may be landed in any single calendar day. Although the spiny dogfish quota set-aside of 500,000 lb (2,268 kg) for experimental fisheries was analyzed under the three alternatives in the IRFA by the Councils, there is no authority under the FMP to make such an allocation.

The modification of the trip limits to possession limits and the requirement that these levels be set at the maximum amount that may be landed in 1 calendar day will enhance at-sea enforcement by prohibiting possession of spiny dogfish on board a vessel in excess of the specified levels, rather than simply prohibiting landings in excess of the specified levels.

Prohibiting multiple landings of spiny dogfish in 1 day will prevent vessels from landing excessive amounts when spiny dogfish are in nearshore areas. These changes are necessary to adhere to the original intent of the trip limits and to ensure that the conservation objectives of the management measures are not compromised. They are not expected to result in any significant economic impacts or differential impacts on small entities. Such measures should provide fair and equal access of vessels to the spiny dogfish quota.

The measures implemented by this final rule are intended to minimize economic impacts on small entities while achieving the conservation goals and objectives of the FMP and the Magnuson-Stevens Act. The potential change in overall revenues under the 4-million lb (1,814-mt) quota was evaluated relative to landings and revenues derived during the 2000

fishing year (6.7 million lb (3,039 mt) of landings, valued at \$1,072 million). The analysis assumed that the revenues of the 596 vessels that landed spiny dogfish in 1999 would be reduced proportionately by the measures to be implemented by this final rule for the 2001 fishing year. The reduction in overall gross revenues to vessels was estimated to be about \$432,000, or about \$725 per vessel, compared to the 2000 fishing year. Of the 596 vessels, 36 would be expected to experience a reduction in total gross revenues (all species combined) of more than 5 percent as a result of the 2.7-million lb (1,224-mt) reduction from actual 2000 fishing year landings. This represents 6 percent of the vessels that landed spiny dogfish in 1999. The remaining 560 vessels would be expected to experience a reduction in total gross revenues of less than 5 percent. Although revenues would increase in the short-term without a commercial quota (status-quo, no-action alternative) as compared to year 2000 spiny dogfish landings, long-term revenues from an unregulated fishery would continuously decline as the stock size is further reduced, due to continued overfishing.

Under the possession limits implemented through this final rule, it is projected that landings in Quota Period 1 may reach the semi-annual quota allocation (2,316,000 lb (1,050 mt)) before the close of Quota Period 1 on about July 24, 2001 (128 days into the quota period) and that landings during Quota Period 2 would not achieve the full semi-annual quota allocation (1,684,000 lb (764 mt)) by the end of Quota Period 2 on April 30, 2002. Therefore, landings for the entire 2001 fishing year are projected to reach only 2,930,663 lb (1,329 mt) of the entire 4-million lb (1,814-mt) annual quota. This translates to a reduction in spiny dogfish trips of 21 percent for Quota Period 1 and no reduction in the amount of trips for Quota Period 2. The analysis assumed that trips would be eliminated to the extent that the possession limits on spiny dogfish make those trips unprofitable. However, the analysis did not account for behavioral changes by vessel operators, which could impact the amount of landings. These changes could not be analyzed. Also, since vessels without Federal permits (i.e., state-permitted vessels) are not captured in the analysis, additional landings are likely to occur.

The possession limits implemented by this final rule were preferable to the status quo alternative (no possession limits) and the possession limit recommendation under Alternative 2 (5,000 lb (2,268 kg) for both quota

periods) because they achieve conservation benefits consistent with the objectives of the FMP and with the Magnuson-Stevens Act, and provide economic relief to small entities by allowing landings of incidentally caught spiny dogfish for the entire fishing year, thereby possibly reducing discards. The other two alternatives did not achieve the conservation objectives of the FMP and the Magnuson-Stevens Act, or, in the case of Alternative 2, would encourage a short, derby-style fishery lasting approximately 41 days per quota period, after which all landings of spiny dogfish would be prohibited.

The impact of the final specifications for the 2001 fishing year will be greatest in Massachusetts, North Carolina, Maryland, Maine, and New Jersey, which accounted cumulatively for 90 percent of spiny dogfish landings from 1988 through 1997. The communities of Wachapreague, VA, Plymouth, MA, and Scituate, MA, have benefitted from dogfish landings that made up 76 percent, 74 percent, and 21 percent, respectively, of the value of all landed fish, based on 1997 NMFS landings data. Because these communities have recently derived a relatively high percentage of their fishing income from spiny dogfish, they will be most impacted by the commercial quota and possession limits in the final specifications. These impacts were also experienced in the 2000 fishing year. Two of these communities, Plymouth and Scituate, MA, are suburban areas of a large city (Boston) and are substantially engaged in the businesses of the metropolitan area. The other community, Wachapreague, VA, has significant fishing activities, but also attracts retirees and tourism, and is substantially dependent on these two sectors for economic activity. The analysis also concludes that small vessels (25 to 49 ft (7.6 to 14.9 m)) constitute 91 percent of affected vessels (those vessels experiencing a reduction in revenues of greater than 5 percent) under a 4-million lb (1,814-mt) commercial quota. However, if no action is taken, communities benefitting from dogfish landings would experience greater lost revenues in the long term due to stock collapse as a result of allowing a directed fishery in the short term.

A formal section 7 consultation under the Endangered Species Act (ESA) was reinitiated for the FMP by NMFS on May 4, 2000, as a result of recent entanglements of endangered and threatened marine mammals and sea turtles to determine whether this fishery jeopardizes ESA-listed species. In a biological opinion dated August 13,

1999, the Assistant Administrator for Fisheries, NOAA, determined that fishing activities conducted under the FMP and its implementing regulations may adversely affect but are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of right whale critical habitat. For endangered whales, this conclusion assumed the Atlantic Large Whale Take Reduction Plan, as implemented, would be effective at reducing incidental mortality and serious injury of the whales to insignificant levels approaching zero mortality and serious injury rate.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 30, 2001.

**John Oliver,**

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (aa)(7) is added to read as follows:

##### § 648.14 Prohibitions.

\* \* \* \* \*

(aa) \* \* \*

(7) Possess more than the possessi/on limit of spiny dogfish specified under § 648.235. The possession limit is the maximum amount that may be landed in any 1 calendar day.

\* \* \* \* \*

3. In § 648.230, paragraph (d)(1) is revised to read as follows:

##### § 648.230 Catch quotas and other restrictions.

\* \* \* \* \*

(d) \* \* \*

(1) The annual quota specified according to the process outlined in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent) and November 1 through April 30 (42.1 percent).

\* \* \* \* \*

4. Section 648.235 is added to read as follows:

**§ 648.235 Possession and landing restrictions.**

(a) *Quota Period 1.* From May through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 600 lb (272 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 300 lb (136 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

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