

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

[Docket No. 030227050-3082-02; I.D. 020603D]

RIN 0648-AQ34

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2003 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 2003 spiny dogfish fishery. This final rule implements a commercial quota and possession limits for the 2003 fishing year to address overfishing of the spiny dogfish resource. The intent of this action is to comply with implementing regulations for the Fishery Management Plan (FMP), which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this resource.

DATES: The 2003 final specifications are effective from May 1, 2003, through April 30, 2004.

ADDRESSES: Copies of supporting documents used by the Spiny Dogfish 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.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281-9259, fax (978)281-9135, e-mail Eric.Dolin@Noaa.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on March 10, 2003, (68 FR 11346). The comment period closed on March 25, 2003.

Background

The spiny dogfish fishery is managed under an FMP developed jointly by the Mid-Atlantic Fishery Management Council and the New England Fishery Management Council (Councils). The implementing regulations for the

dogfish fishery are found at 50 CFR part 648, subpart L.

Pursuant to 50 CFR 648.230, the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the 2003 fishing year to assure that the target fishing mortality rate (F), as specified in the FMP, is not exceeded. The target F and management measures (i.e., semi-annual commercial quota and possession limits) are summarized below. Detailed background information regarding the development of the proposed specifications for the 2003 spiny dogfish fishery was provided in the preamble to the proposed rule (68 FR 11346, March 10, 2003) and is not repeated here.

Annual Commercial Quota and Possession Limits

The FMP specifies a target F of 0.03 for 2003 to be attained through a commercial quota, and possibly other management measures. This final rule implements a commercial quota of 4 million lb (1.81 million kg) for the 2003 fishing year that is 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 lbs (1,050,512 kg), and 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 lbs (763,849 kg).

This final rule also maintains the existing 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 while fishing for other species throughout the entire fishing year.

Comments and Responses

One set of written comments was submitted during the comment period in response to the proposed rule. The comments were prepared by a group of environmental organizations, including The Ocean Conservancy, Natural Resources Defense Council, National Audubon Society, and Environmental Defense.

NMFS considered the organizations' comments in making the decision to issue this final rule.

Comment 1: The environmental organizations supported a quota of no more than the 4-million lb (1.81-million kg) commercial quota, despite urging NMFS to consider a commercial quota lower than 4 million lb (1.81-million kg) for the upcoming fishing season. They also supported the proposed possession limits and strongly

opposed higher possession limits, which would result in a directed fishery and potentially derail rebuilding efforts.

Response: NMFS is implementing the 4-million lb (1.81-million kg) commercial quota and 600-lb (272-kg)/300-lb (136-kg) possession limits for Quota Period 1 and 2, respectively, consistent with the Monitoring Committee recommendation to maintain fishing mortality targets and rebuilding objectives of the FMP. The Monitoring Committee did not comment on a lower quota because the 4-million lb (1.81-million kg) commercial quota is consistent with the FMP's fishing mortality target. Any further reduction in landings would have to be considered in light of potential increased spiny dogfish discards.

Changes From the Proposed Rule

The preamble of the proposed rule referenced trip limits, when, in fact, this final rule implements possession limits—defined as the maximum amount that can be landed in any one 24-hr period (calendar day). In contrast, a trip limit is not tied to a specific time interval. Thus, having a trip limit as opposed to a possession limit could encourage a directed fishery consisting of multiple trips per day.

Classification

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

This action establishes annual quotas and maintains the current possession limits 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 at the start of the 2003 fishing year on May 1, 2003, to conserve this resource. It would be inconsistent with the conservation goals of the FMP to delay implementation of the quota provisions because a hiatus in harvest restrictions represented by the quota would allow for an unrestricted harvest and, if spiny dogfish are congregated in areas where other species are being targeted, or targeted by some vessels, the Period 1 quota will quickly be attained. In the absence of a commercial quota, there would be no ability to close the fishery to prevent further increases in fishing mortality and potential deleterious effects to rebuilding efforts. In addition, because this final rule maintains measures implemented in the 2002 specifications, there is no requirement for participants to come into compliance with any new gear requirements. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to partially waive the 30-day

delayed effectiveness period for the implementation of the 2003 Federal spiny dogfish quota.

NMFS and the Mid-Atlantic Council prepared a FRFA for this action. The FRFA includes comments on the Initial Regulatory Flexibility Analysis (IRFA), the discussion and the responses contained in the preamble to this final rule, and a summary of the analyses prepared in support of this action. Copies of the analysis are available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that entire discussion is not repeated here. A summary of the FRFA follows:

The reason that 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 and are not repeated here. 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.

Public Comments

The single set of comments received on the measures contained in the proposed rule did not specifically reference the IRFA analyses of the expected impacts of the proposed possession limit levels on small entities.

Number of Small Entities

The small entities considered in the analysis include 280 vessels that have reported spiny dogfish landings to NMFS in 2001 (the most recent year for which there are vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters.

Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish in recent years

(a total of 2,825 vessels were issued the permit in 2001). Because these vessels have obtained spiny dogfish permits, it is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive possession limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish, but those increases cannot be estimated because it is impossible to determine both the number of vessels that would participate and their fishing behavior (e.g., level of effort).

Minimizing Significant Economic Impact on Small Entities

This FRFA summary includes a discussion of minimizing significant economic impacts on small entities. The IRFA analyzed three alternatives: Alternative 1 is implemented by this action (commercial quota of 4 million lb (1.81 million kg) and possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively); both Alternative 2 (commercial quota of 8.8 million lb (4 million kg) and possession limits of 7,000 lb (3,175 kg) and 5,000 lb (2,273 kg) for quota periods 1 and 2, respectively) and Alternative 3 (no quota or possession limits) would have a lower economic impact on small entities, but neither meets the conservation objectives of the FMP. Alternatives 2 and 3 could not be implemented without amending the FMP to modify the F target specified in the rebuilding program.

The FMP determined that the spiny dogfish stock could not support a directed fishery as would be the case under Alternatives 2 and 3. In the absence of a directed fishery, long-term profitability and solvency issues cannot be computed with a great degree of confidence. The information necessary to perform a profitability assessment is not available. Therefore, we have used

changes in gross revenues in lieu of profitability. The potential changes in 2003 revenues under the 4-million lb (1.81-million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.94 million lb (2.25 million kg) of landings, valued at \$1,126,000. The analysis is based on the last full fishing year of landings data for 280 vessels. The reduction in gross revenues to the fishery as a whole for 2003 was estimated to be about \$214,259, or about \$765 per vessel, compared to fishing year 2001. It is only due to the landings for 2001 being in excess of the quota that this quota specification for spiny dogfish is expected to result in a reduction in revenues.

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 the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the spiny dogfish fishery. The guide and this final rule will be available upon request (see **ADDRESSES**).

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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