

State/location	Community No.	Effective date of eligibility	Current effective map date
<b>Region IX</b>			
Nevada:			
Douglas County, unincorporated areas .....	320008	.....do.	Do.
<b>Region X</b>			
Washington:			
Arlington, city of, Snohomish County .....	530271	.....do.	Do.
Bothell, city of, King and Snohomish Counties .....	530075	.....do.	Do.
Brier, city of, Snohomish County .....	530276	.....do.	Do.
Darrington, town of, Snohomish County .....	530233	.....do.	Do.
Edmonds, city of, Snohomish County .....	530163	.....do.	Do.
Everett, city of, Snohomish County .....	530164	.....do.	Do.
Gold Bar, town of, Snohomish County .....	530285	.....do.	Do.
Index, town of, Snohomish County .....	530166	.....do.	Do.
King County, unincorporated areas. ....	530071	.....do.	Do.
Lake Stevens, city of, Snohomish County .....	530291	.....do.	Do.
Lynwood, city of, Snohomish County .....	530167	.....do.	Do.
Marysville, city of, Snohomish County .....	530168	.....do.	Do.
Mill Creek, city of, Snohomish County .....	530330	.....do.	Do.
Monroe, city of, Snohomish County .....	530169	.....do.	Do.
Mountlake Terrace, city of, Snohomish County.	530170	.....do.	Do.
Mukilteo, city of, Snohomish County .....	530235	.....do.	Do.
Snohomish, city of, Snohomish County .....	530171	.....do.	Do.
Snohomish County, unincorporated areas. ....	535534	.....do.	Do.
Spokane County, unincorporated areas. ....	530174	.....do.	Do.
Stanwood, city of, Snohomish County .....	530172	.....do.	Do.
Sultan, city of, Snohomish County .....	530173	.....do.	Do.
<b>Region II</b>			
New Jersey: Lavallette, borough of, Ocean County.	340379	November 22, 1999, Suspension Withdrawn. ....	November 22, 1999.
New York: Oswego, city of, Oswego County .....	360656	.....do.	Do.
<b>Region VI</b>			
Louisiana:			
Ball, town of, Rapides Parish .....	220373	.....do.	Do.
Farmersville, town of, Union Parish .....	220325	.....do.	Do.
Lincoln Parish, unincorporated areas .....	220366	.....do.	Do.
Newcastle, city of, McClain County .....	400103	.....do.	Do.
<b>Region X</b>			
Oregon: Milwaukie, city of, Clackamas County .....	410019	.....do.	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: January 3, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00-595 Filed 1-10-00; 8:45 am]

BILLING CODE 6718-05-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 990713189-9335-02; I.D. 060899B]

RIN 0648-AK79

### Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to initiate management of spiny dogfish (*Squalus acanthias*) through implementation of the Spiny Dogfish Fishery Management Plan (FMP) under

the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule implements the following measures: A commercial quota; seasonal (semi-annual) allocation of the quota; a prohibition on finning; a framework adjustment process; establishment of a Spiny Dogfish Monitoring Committee; annual FMP review; permit and reporting requirements for commercial vessels, operators, and dealers; and other measures. The intent of this rule is to conserve spiny dogfish in order to achieve optimum yield from the resource.

**DATES:** Effective February 10, 2000.

**ADDRESSES:** Copies of the FMP, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) contained within the RIR, the Supplement to the FMP dated May 1999, and the Final Environmental Impact Statement (FEIS) are available

from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council (MAFMC), Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The IRFA, its summary in the proposed rule, the comments and responses on economic impacts, and the discussion in the classification section of the final rule constitute the Final Regulatory Flexibility Analysis (FRFA) for this action.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:**

Richard A. Pearson, Fishery Policy Analyst, at 978-281-9279.

**SUPPLEMENTARY INFORMATION:** The spiny dogfish (*Squalus acanthias*) is a common small shark that inhabits the temperate and sub-Arctic latitudes of the North Atlantic Ocean. In the Northwest Atlantic, spiny dogfish range from Labrador to Florida, but are most abundant from Nova Scotia to Cape Hatteras. They migrate seasonally, moving north in spring and summer, and south in fall and winter. Spiny dogfish are considered a unit stock in the Northwest Atlantic Ocean.

Spiny dogfish landings on the East Coast have increased dramatically in the last 10 years as export markets for dogfish have been developed. The fishing mortality rate (F) has correspondingly risen from below an estimated  $F=0.1$  in the 1980's to the current estimate of  $F=0.3$ . Dogfish landings have been primarily composed of females because they attain a larger size than males, and large fish are preferred by the processing sector. The 26th Northeast Regional Stock Assessment Workshop (SAW 26), in 1998, indicated that biomass estimates of mature females ( $> 80$  cm) have declined by over 50 percent since 1989. Recruitment of juvenile spiny dogfish was the lowest on record in 1997. The combination of increased fishing mortality, declining biomass of mature females, and low recruitment have contributed to the overfished condition of the stock.

NMFS notified the Mid-Atlantic and New England Fishery Management Councils (Councils) on April 3, 1998, that spiny dogfish was being 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 Act. The Magnuson-Stevens Act requires the regional fishery management councils to prepare measures within 1 year of notification to end overfishing and to rebuild the overfished stock.

The FMP was developed jointly by the Councils, with the Mid-Atlantic Council having the administrative lead.

A Notice of Availability (NOA) for the FMP was published in the **Federal Register** on June 29, 1999 (64 FR 34759), and solicited public comment through August 30, 1999. The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999 (64 FR 42071), and solicited public comments through September 17, 1999. The NOA for the FEIS was published on August 20, 1999 (64 FR 45541), and solicited comments through September 10, 1999. Comments received by August 30, 1999, in response to any of these documents, were considered when NMFS made the decision to partially approve the FMP on September 29, 1999. The only measure in the FMP that was disapproved was the specification of 180,000 mt as the spawning stock biomass (SSB) target level. The SSB target was not a regulatory measure and the disapproval has no impact on these final regulations.

**Management Measures**

This final rule implements the following measures contained in the FMP: (1) A commercial quota; (2) seasonal (semi-annual) allocation of a commercial quota; (3) a prohibition on finning; (4) a framework adjustment process; (5) the establishment of a Spiny Dogfish Monitoring Committee; (6) annual FMP review; (7) permit and reporting requirements for commercial vessels, operators, and dealers; and (8) other measures regarding sea samplers, foreign fishing, and exempted fishing activities.

*Commercial Quota*

An annual spiny dogfish commercial quota will be allocated to the fishery to control F. The quota will be set at a level to assure that the F specified for the appropriate year in the FMP and § 648.230(a) will not be exceeded. The annual commercial quota will be established by the Regional Administrator, Northeast Region, NMFS (Regional Administrator), based upon recommendations made by the Councils with the advice of the Spiny Dogfish Monitoring Committee and the Joint Spiny Dogfish Committee. The quota recommendation will be based upon

projected stock size estimates for each year, as derived from the latest stock assessment information, coupled with the target F specified for each year. The quota is specified for a fishing year that begins on May 1, and is subdivided into two semi-annual periods. The period from May 1–October 31 is allocated 57.9 percent of the annual quota and the period from November 1–April 30 is allocated 42.1 percent of the annual quota. The percent allocation of quota between the two semi-annual quota period may be revised through the framework adjustment process described herein.

All spiny dogfish landed for sale in the states from Maine through Florida will be applied against the commercial quota, regardless of where the spiny dogfish were harvested. NMFS will monitor the fishery to determine when the quota for a semi-annual quota period is reached. NMFS will publish notification in the **Federal Register** prohibiting possession, fishing for, or landing of spiny dogfish by vessels with Federal spiny dogfish permits from the date on which the quota is projected to be attained through the remainder of the quota period.

The rebuilding schedule and corresponding annual quotas, as described in the FMP, were developed assuming an implementation date of May 1, 1999. According to the rebuilding schedule adopted by the Councils for the period May 1, 1999, to April 30, 2000, F is reduced to 0.2, which results in a quota of 22,059,228 lbs (10,006 mt), for the first year. The semi-annual allocations for this period are 12,772,293 lb (5,793.5 mt) for the period May 1, 1999–October 31, 1999; and 9,286,935 lb (4,212.5 mt) for the period November 1, 1999–April 30, 2000. Due to delays in the development of the FMP, the implementation date of this FMP will be February 10, 2000. Therefore, the requirements established by this final rule concerning quotas apply for the second semi-annual period only.

For the remaining years of the rebuilding plan, the FMP specifies that F will be reduced to 0.03. This has been initially projected to result in annual quotas ranging from approximately 2,901,254 lbs (1,316 mt) to 3,198,875 lbs (1,451 mt) until rebuilding is achieved. The quotas in the FMP were developed assuming, among other things, that current levels of discard mortality will continue at recent average annual rates.

*Prohibition on Finning*

Finning, the act of removing the fins of spiny dogfish and discarding the carcass, is prohibited. Vessels that land

spiny dogfish are prohibited from landing fins in excess of 5 percent, by weight, of the weight of spiny dogfish carcasses landed. Fins may not be stored on board a vessel after the vessel lands spiny dogfish.

#### *Framework Adjustment Process*

The Councils may add or modify management measures through a framework adjustment process that establishes a streamlined public review process. The following management measures could be implemented or adjusted at any time through the framework adjustment process: (1) Minimum fish size; (2) maximum fish size; (3) gear requirements, restrictions, or prohibitions, including, but not limited to, mesh size restrictions and net limits; (4) regional gear restrictions; (5) permitting restrictions and reporting requirements; (6) recreational fishery restrictions, including possession limits, size limits, and season/area restrictions; (7) commercial season and area restrictions; (8) commercial trip or possession limits; (9) fin weight to carcass weight restrictions; (10) onboard observer requirements; (11) commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch and to conduct scientific research or for other reasons; (12) recreational harvest limit; (13) annual quota specification process; (14) FMP Monitoring Committee composition and process; (15) description and identification of essential fish habitat (EFH); (16) description and identification of habitat areas of particular concern; (17) overfishing definition and related thresholds and targets; (18) regional season restrictions (including the option to split seasons); (19) restrictions on vessel size (length and gross registered tonnage (GRT)) or shaft horsepower; (20) target quotas; (21) provisions to mitigate marine mammal entanglements and interactions; (22) regional management; (23) any management measures currently included in the FMP; and (24) provisions relating to aquaculture projects.

The framework adjustment process involves the following steps. If the Councils determine that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, they will develop and analyze appropriate management actions over the span of at least two meetings of each Council. The Councils will provide the public with advance notice of the availability of the recommended measures, justification for the measures, and all appropriate analyses, such as economic and biological analyses. The

Councils will allow the public an opportunity to comment on the proposed framework adjustment before and during the second Council meeting. After developing management actions and receiving public comments, the Councils will make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. Adjustments to the FMP using the framework adjustment process will require the approval of both Councils. The Councils' recommendation to the Regional Administrator must include supporting rationale, an analysis of impacts, and a recommendation to the Regional Administrator on whether to publish the management measures as a proposed or final rule. The Councils' recommendation is reviewed by NMFS, and NMFS will determine whether the measures should be published or not. If NMFS does not concur with the Councils' recommendation, the Councils will be notified in writing of the reason for non concurrence.

#### *Spiny Dogfish Monitoring Committee and Annual FMP Review*

A Spiny Dogfish Monitoring Committee is established made up of staff representatives of the Mid-Atlantic and New England Councils, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and state representatives. The state representatives will include any individual designated by an interested state from Maine to Florida. In addition, the Monitoring Committee will include two non-voting, ex-officio industry representatives (one each from the Mid-Atlantic and New England Council regions). The Mid-Atlantic Council Executive Director or a designee will chair the Committee.

The Spiny Dogfish Monitoring Committee will annually review the best available data, as specified in 50 CFR 648.230, and recommend to the Joint Spiny Dogfish Committee a commercial quota and, possibly, other measures to assure that the target F specified for the appropriate year in § 648.230(a) for spiny dogfish is not exceeded. These recommendations will be reviewed, and possibly modified, by the Joint Spiny Dogfish Committee, which will then forward its recommendations to the Councils. The Councils will consider the recommendations of the Joint Spiny Dogfish Committee and then jointly make their recommendations to the Regional Administrator. The Regional Administrator will review the recommendations and, if necessary, may modify the annual quota and other management measures to assure that the

target F will not be exceeded. The Regional Administrator may modify the recommendations using any of the measures that were not rejected by both Councils. NMFS will publish a proposed and final rule in the **Federal Register** specifying a coastwide commercial quota and other measures, if any, necessary to assure the appropriate F specified in § 648.230(a) will not be exceeded.

#### *Permits for Vessels, Operators, and Dealers*

Any vessel of the United States that fishes for, possesses, or lands spiny dogfish in or from the exclusive economic zone (EEZ) must have been issued and carry on board a valid commercial spiny dogfish vessel permit. Individuals with commercial vessel permits may only sell spiny dogfish, at the point of first sale, to a dealer who has a valid dealer permit issued pursuant to this FMP.

Any individual who operates a vessel that is issued a valid Federal commercial vessel permit for spiny dogfish must be issued an operator permit. Any vessel fishing commercially for spiny dogfish will be required to have at least one operator who holds an operator permit on board. The operator is accountable for violations of the fishing regulations, with penalties that may include a permit sanction. During a permit sanction period, the individual operator may not work in any capacity aboard a federally permitted fishing vessel.

Any dealer of spiny dogfish must be issued a Federal dealer permit to receive spiny dogfish for a commercial purpose other than transport from a vessel possessing a Federal commercial spiny dogfish permit.

#### *Reporting Requirements for Vessels, Dealers and Processors*

Owners or operators of vessels issued a Federal spiny dogfish permit are required to submit vessel trip reports on a monthly basis. These vessel trip reports are the same as those required under other Federal FMPs in the Northeast Region.

Dealers with permits issued pursuant to regulations implementing this FMP are required to submit weekly reports showing the quantity of all fish purchased and the name and permit number of the vessels from which the fish were purchased and to report purchases of spiny dogfish through the Interactive Voice Response (IVR) system utilized for quota-managed species in the Northeast Region. Dealers also are required to report annually to NMFS certain employment data. These

requirements are the same as those established by other Federal FMPs in the Northeast Region.

#### *Other Measures*

This rule authorizes the Regional Administrator to place sea samplers aboard spiny dogfish vessels.

The total allowable level of foreign fishing is zero; therefore, foreign fishing vessels may not fish for or retain any spiny dogfish. Foreign fishing vessels may not fish for nor retain spiny dogfish.

The Regional Administrator, in consultation with the Executive Directors of the Councils, may exempt any person or vessel from the requirements of the regulations implementing the FMP in order to conduct experimental fishing beneficial to the management of the spiny dogfish resource or fishery. The exemption must be consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law. The exemption may not have a detrimental effect on the spiny dogfish resource and/or fishery, cause any quota to be exceeded, or create significant enforcement problems.

#### **Comments and Responses**

There were 124 written comments received from the public during the comment period announced in the NOA of the FMP, which ended August 30, 1999. Many of the comments were submitted in support of the comments offered by a coalition of several conservation groups including the Center for Marine Conservation, the National Audubon Society, the Environmental Defense Fund, the Ocean Wildlife Campaign, the Natural Resources Defense Council, Fish Forever, and the American Oceans Campaign. Other comments were submitted by the Massachusetts Division of Marine Fisheries (MDMF), and law firms representing fishing industry groups and non-fishing entities. All comments received prior to August 30, 1999, were considered in making the decision September 29, 1999, to partially approve the FMP. All of these comments are addressed here. There were three comments received after the close of the comment period for the FMP but during the comment period of the proposed rule, which closed September 17, 1999. The portions of these comments that concern the implementation of the approved FMP measures in this final rule are addressed here.

*Comment 1:* There were 122 commenters who requested NMFS to reject the rebuilding target of 180,000 mt

spawning stock biomass (SSB) specified in the FMP. These commenters noted their support for a rebuilding target of 200,000 mt SSB.

*Response:* The rebuilding target of 180,000 mt SSB was disapproved by NMFS because it does not provide for rebuilding to maximum sustainable yield as required by the Magnuson-Stevens Act. The best available scientific information identified 200,000 mt SSB as the appropriate biomass rebuilding target.

*Comment 2:* There were 122 commenters who expressed support for specific measures in the FMP. The measures cited were the requirement to close the fishery upon attainment of the semi-annual quota and the prohibition on "finning."

*Response:* These measures were approved.

*Comment 3:* There were 122 commenters who indicated that the Spiny Dogfish Monitoring Committee should be composed only of technical and scientific members, without fishing industry representation because the management process provides for public input through Council, Committee, and Advisory Panel meetings.

*Response:* NMFS sees no legal basis to question the specific membership of the Monitoring Committee. In addition, NMFS notes that the two industry representatives will be non-voting, ex-officio industry representatives (one each from the Mid-Atlantic and New England Council regions). NMFS notes that the intent of the Councils in including these representatives on the committee is to provide information regarding the commercial fishery.

*Comment 4:* One commenter stated that the rebuilding target of 180,000 mt SSB is too high. The commenter contended that the rebuilding target was determined subjectively using a Ricker dome-shaped stock/recruitment (S/R) curve and that a Beverton model would be just as appropriate to determine the rebuilding target.

*Response:* NMFS disapproved the rebuilding target of 180,000 mt SSB contained in the FMP because it does not provide for rebuilding to maximum sustainable yield as required by the Magnuson-Stevens Act. An Overfishing Definition Review Panel was initially established by the Councils to develop definitions of overfishing that conform with the Magnuson-Stevens Act. The Spiny Dogfish Technical Committee, in developing the FMP, adopted the definition that was developed by the Overfishing Definition Review Panel. Both of these groups recommended a rebuilding target of 200,000 mt SSB. Later, upon request by the Councils, the

joint Scientific & Statistical Committee (SSC) reviewed and discussed the argument in favor of the Beverton model. The SSC clearly indicated that the Ricker S/R model is appropriate for spiny dogfish.

*Comment 5:* A commenter stated that the rebuilding schedule in the FMP cannot be met without an effective control on discards of spiny dogfish in fisheries targeting other species. The commenter asserts that such discards will increase as the spiny dogfish stock rebuilds.

*Response:* The rebuilding schedule in the FMP presumes that the proportion of mortality from discards will remain at current levels, relative to landings, throughout the rebuilding period. The fishery data indicate that a significant portion of dogfish discards occur in the directed dogfish fishery, which does not retain dogfish that are too small for purchase by processors. Since the FMP restricts the directed fishery, it is presumed the discards from those participants will decrease beginning in year 2 of the FMP. The Spiny Dogfish Technical Committee projected that the rebuilding schedule can be accomplished with minimal impacts on other fisheries. However, if discards do increase significantly in fisheries targeting other species, the Councils can develop measures to address discards through the framework adjustment process or through an FMP amendment.

*Comment 6:* A commenter indicates that discards in the FMP are noted as being approximately 4,445 mt, yet the rebuilding projection is predicated upon discards of 80,000 mt. The letter requests that this discrepancy be reconciled.

*Response:* The value of 4,445 mt was obtained using the average of dogfish discards from 1995 - 1997 based upon sea sampled trips. The estimate of 80,000 mt, which the commenter notes is embedded in the rebuilding projection models, is obtained by subtracting 1997 dogfish landings (approximately 20,000 mt) from the NMFS 1997 survey area-swept biomass estimate multiplied by the 1997 exploitation rate (100,000 mt). These values should not be used for comparison, primarily because of how the survey area-swept biomass estimate is used in the dogfish assessment (i.e., as an index of abundance), and because of some uncertainty regarding estimates of discard mortality using sea-sampling data.

The estimates of swept area biomass were used in a biological projection model to assess the effects of various alternative rebuilding strategies. The Technical Committee noted the strong

correlation between the magnitude of landings when the fishery was directed for dogfish and the estimates of fishing mortality, and concluded that reductions in fishing mortality (including discards) should be proportional to the reduction in reported landings when directed fishing was reduced. This conclusion implies that discards are roughly proportional to, rather than independent of, the directed fishery. The rebuilding strategies were evaluated using trajectories of fishing mortality to attain the target biomass level. If the target fishing mortality rates cannot be achieved due to ineffective controls on discards, then the rebuilding strategy would need to be re-evaluated. The selected rebuilding strategy utilizes a strong assumption regarding the effectiveness of landings reductions to rebuild the resource. Rebuilding strategies that assume no proportionality between landings and discards would require more stringent measures and, possibly, a longer rebuilding period.

SAW 26 (1998) discussed estimating dogfish discards using sea sampling data and concluded that, at the time, it was not possible to derive reliable annual estimates of dogfish discards for all major gear/area/target species cells. There are some components of the fishery in which dogfish discards occur, but are not accounted for in the sea sampling data calculations. Sea sampling estimates are provisional, and further work on discard rates and the magnitude of total discard mortality is warranted. However, it is important to note that overall dogfish discards are likely substantially lower now, than in the period prior to 1994, owing to effort control strategies in a number of fisheries that would normally encounter dogfish.

*Comment 7:* One comment was received concerning the Regulatory Impact Review (RIR) portion of the FMP. The commenter was concerned that minimal analysis was provided in the RIR to determine the economic impact of implementing a very low quota in year 2 of the rebuilding schedule. The commenter indicated that the FMP does not consider the economic impacts of these quota levels, and contends the regulations will shut down processors who depend upon large quantities of dogfish to operate. The commenter also indicated that the analysis did not fully consider the loss of markets overseas.

*Response:* The RIR indicates that in year 2 ex-vessel gross revenue declines reach a high of \$3,383,903, as landings are reduced to 2,901,780 lbs (1316 mt).

Pack-out facility gross revenue declines are also the greatest in year 2, estimated at \$902,374. The FRFA concludes that these impacts are significant. The FRFA also concludes that in year 2, with an 89 percent reduction in landings (relative to status quo), 39 percent of harvesters will realize a reduction in gross revenue greater than 5 percent.

The FMP does acknowledge some uncertainty regarding the effects of very low quotas upon markets. Since most spiny dogfish are currently processed and exported, the implications of a very low total allowable level of landings (TAL) upon both foreign and domestic markets is difficult to predict. The RIR indicates that one of two scenarios is likely to occur. The demand for spiny dogfish by foreign markets may decline as this species is replaced by more readily available alternatives, or conversely, a reduced dogfish supply in combination with a static demand may cause increased dogfish prices and allow for a limited fishery to exist at low landings levels. The FMP acknowledges that the first scenario is more likely to occur, but the long-term effect of a large decline in demand is unknown. The FMP further states that the ability of processors and harvesters to re-establish export markets, if they are lost during the rebuilding phase, is unknown.

*Comment 8:* Three commenters suggested that alternative management strategies should be considered including establishment of a fishery harvesting male dogfish only, landing limits (aside from size limits) on mature females, area or seasonal closures, and gear alternatives.

*Response:* The Spiny Dogfish Committee considered a wide range of alternatives, including those suggested by the commenters. Three of the alternatives that were suggested by the respondents were specifically included as management options by the Spiny Dogfish Committee during the FMP development process, but were rejected and not considered to be significant alternatives to the proposed rule.

On January 22, 1998, at the first meeting of the Joint Spiny Dogfish Committee, a motion was unanimously adopted that the selective harvest of males be removed as a management measure in the FMP. Specific reasons for this decision were not provided in the Councils' summary minutes, but the Committee did not consider the option to be a significant feasible alternative at the time. After the FMP was submitted, on April 21, 1999, the Committee suggested that a male-only fishery be reexamined. The analysis of this option is not yet available.

Area and seasonal closures were recommended by the Committee to be included as management measures in the Public Hearing Document on January 22, 1998. The Spiny Dogfish Technical Committee discussed these alternatives, but reached a general consensus on May 8, 1998, that the effects of area closures would vary greatly from year to year and would be difficult to quantify due to spatial distribution and environmental factors affecting spiny dogfish annual migration. Therefore, area and seasonal closures were not considered to be a significant alternative to the preferred alternative. In addition, NMFS notes that area closures alone would, most likely, need to be very large and lengthy to effectively achieve the large reduction in fishing mortality that is specified in the FMP. Because of these reasons, the Councils chose not to develop area closures for inclusion in the FMP.

The Joint Spiny Dogfish Committee and the Mid-Atlantic Council did request that NMFS implement seasonal closures as interim measures in January 1999. The New England Council did not support the request for interim seasonal closures. NMFS ultimately denied the request for interim seasonal closures, in part because existing multispecies area closures were projected to reduce dogfish landings perhaps near the level specified in the FMP.

Gear alternatives, primarily minimum mesh sizes, were considered early in the FMP development process. The Committee discussed a minimum mesh size at their first meeting on January 22, 1998. At that meeting, the Committee voted to include minimum mesh size, gear restrictions, and gear limits as management options. Later, Council staff indicated on May 13, 1998, that there was very little available scientific information on spiny dogfish gear selectivity. An industry advisor indicated on May 12, 1998, that there should not be a minimum mesh size. Use of a minimum mesh size would capture larger dogfish and allow smaller dogfish to escape, thereby contradicting the need to protect larger females to improve recruitment of the species. A minimum mesh size is, therefore, not considered to be a significant alternative to the preferred alternative. The Committee discussion on minimum mesh size evolved into discussion on minimum fish size. A minimum fish size was rejected as a preferred option by the Committee on June 8, 1998.

A limit of 80 nets for the gillnet fishery was identified as a preferred alternative in the Public Hearing Document. This measure was rejected by the Committee on December 2, 1998.

A landing limit, or quota, for mature females was not specifically considered by the Committee. However, the Committee did reject the selective harvest of males as an option, which is very similar. At the time, the Committee did not believe that the selective harvest of males could be implemented in a feasible manner.

If alternative harvest strategies prove to be feasible, the FMP provides the Councils with framework and amendment processes to implement them.

*Comment 9:* One commenter stated that the possibility of a fishery targeting male dogfish was discussed at a public hearing, but was not mentioned in the FMP as an option considered by the Councils.

*Response:* As discussed above, the Joint Spiny Dogfish Committee considered the possibility of a male-only fishery, but did not recommend that the Councils pursue it. A similar option was brought forward, which would allow only the harvest of dogfish within a particular size range of 27.5 to 32 inches (70 to 81 cm) (a so-called slot size limit). This measure was discussed because it could protect larger, mature female dogfish. However, a mechanism to implement a "slot-limit" was not identified. Unless gear could be devised to prevent the capture of dogfish larger or smaller than the slot size, such dogfish would be discarded and incur some level of mortality. The results of a projected TAL under this scenario indicated that the strategy would not shorten the rebuilding period. Thus, the potential benefits under this management strategy are less than the preferred alternative.

*Comment 10:* One commenter suggested that the management measures should focus on trip limits and area closures, rather than relying upon a quota to control the spiny dogfish harvest.

*Response:* The Joint Spiny Dogfish Committee and the Councils did consider trip limits for the spiny dogfish fishery. They decided against establishing a coastwide trip limit in conjunction with the quota system. The analysis conducted by the Councils indicated that a trip limit specified on an annual basis might be very low. The analysis indicated roughly 5000 federally permitted vessels from Maine to North Carolina. Assuming that each vessel makes 100 trips per year, and that half of those trips land dogfish, there are approximately 250,000 trips to distribute the quota between. For a quota of 1,316 mt, the associated trip limit would be calculated in this manner would be about 12 pounds (5.5 kg).

Conceivably, a trip limit could be higher if the trip limit were specified for a limited duration. At the time, the Committee indicated that a trip limit established at one level for all vessels may not ensure quota availability distributed across all areas, gear types, and seasons.

As mentioned earlier, area closures were not considered to be a significant alternative because the movement of dogfish make it difficult to quantify the effects of closures on the dogfish harvest.

In all likelihood, to achieve the specified mortality reduction that is necessary to rebuild the dogfish stock, a trip limit would have to be very low and area closures would have to be large. Nevertheless, the FMP does allow for these options (area closures and trip limits) to be implemented under a framework action if the Councils choose this management option in the future.

*Comment 11:* One commenter alleged that the Councils did not utilize the best available scientific information in developing the FMP.

*Response:* NMFS disagrees. The FMP is based upon the best scientific information available. Spiny dogfish were last assessed at SAW 26. Also, the Council's joint SSC reviewed important spiny dogfish information in 1999, including use of the Ricker stock-recruitment function, alternative biomass rebuilding targets, and consideration of ecosystem interactions in establishing the biomass rebuilding target.

*Comment 12:* One commenter stated that the absence of historical data resulted in a poor proxy value that was used to establish the biomass rebuilding target.

*Response:* NMFS disagrees. Data from 1970 through 1997 were used to determine the stock/recruitment function and the average spawning biomass at maximum sustainable yield ( $B_{msy}$ ) proxy. This represents 27 years worth of data.

*Comment 13:* One commenter noted that the FMP indicates a recent shift in dogfish landings from Federal waters to state waters. Because the states, through the Atlantic States Marine Fisheries Commission (ASMFC), do not have a management plan, the commenter expressed concern that there would be an effect on the success of the FMP.

*Response:* This was recognized as a potential problem during development of the FMP. As a result, the ASMFC has indicated its intention to develop a spiny dogfish fishery management plan. The FMP provides management for vessels that are permitted in the Federal spiny dogfish fishery. The FMP

indicates that landings of spiny dogfish shall be prohibited by vessels possessing Federal spiny dogfish permits upon attainment of the semi-annual quota. This prohibition affects catches of dogfish in state waters by federally permitted vessels because there is an underlying provision that requires Federal permit holders to comply with Federal regulations regardless of where their fishery operations occur. Agreeing to comply in this manner is a condition precedent to obtaining a Federal fisheries permit. It enhances the enforceability of the Federal regulations and plays an important role in achieving the goals of the Magnuson-Stevens Act. The FMP also contains an annual framework mechanism that will enable the Council to adjust the spiny dogfish quota to ensure that the fishing mortality rate specified in the FMP will not be exceeded. The level of landings from state waters can be considered when establishing the annual quota.

*Comment 14:* One commenter stated that the analysis of the economic impact of the status quo option (no management measures) is overstated.

*Response:* NMFS disagrees. Because recent recruitment has been very poor, stock projections indicate that if there are no management measures for the dogfish fishery, landings will continuously decline at current levels of fishing effort. Fishing at this level will lead to recruitment failure and, eventually, stock collapse. As landings decline, annual ex-vessel revenues from dogfish are projected to decline correspondingly. This was the basis for the economic analysis of the status quo option.

*Comment 15:* One commenter expressed concern regarding the inclusion of two measures on the list of measures that could be implemented by framework action: (1) The description and identification of essential fish habitat (EFH), and (2) the description and identification of habitat areas of particular concern (HAPC). The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule, without publication first as a proposed rule. The commenter states that nonfishing interests lack representation at Council meetings and, therefore, will not have the opportunity to comment upon actions regarding EFH. The commenter also asserts that the framework adjustment process for these two measures will create inconsistencies in the measures among different NMFS Regions and the Councils, thereby complicating the EFH consultation process. The commenter

requests that the inclusion of these measures be delayed until NMFS EFH interim final regulations and guidelines are revised.

*Response:* The framework adjustment process requires the Councils, when making specifically allowed adjustments to the FMP, to develop and analyze these actions over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings, the proposals, and the analysis. Publication of the meeting agenda in the **Federal Register** is required. The public is provided an opportunity to comment on the proposals prior to, and at, the second Council meeting. Upon review of the analysis and public comments, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may either publish the measures as a final rule, or as a proposed rule if NMFS or the Council determines that additional public comment is needed.

The list of frameworkable measures included in the FMP and the final rule to implement the FMP is inclusive to give the Councils maximum flexibility to respond quickly to fishery information as it becomes available and to adjust the regulations accordingly. As such, modifications to EFH and HAPC can be implemented in an expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law, and a framework adjustment requires full analysis to evaluate the impact of the measures. The degree of the required analysis will differ for each framework adjustment, depending upon the scope of the action and the degree to which the impacts have been previously analyzed.

*Comment 16:* One commenter considered the definition for spiny dogfish EFH to be too broad, vague, and unworkable. The commenter specifically cited the breadth of EFH designation, noting that EFH appeared to be designated over the range of the species, and in estuarine and coastal waters of the states.

*Response:* The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Councils used for EFH designation was primarily species distribution and relative abundance data, which would be classified as "level 2" information

under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Councils' EFH designation for spiny dogfish is consistent with these requirements.

The specific methodology used by the Councils for designating EFH was based on the highest relative density of spiny dogfish. This methodology was developed by scientists at the NMFS Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species' range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats. NMFS and the Council have developed a management regime designed to increase the population of spiny dogfish. The broad EFH designation for spiny dogfish is intended to include habitat essential for the species' long-term well-being.

*Comment 17:* One commenter objects to the provision that requires Federal spiny dogfish vessel permit holders to comply with Federal regulations when fishing in state waters.

*Response:* This longstanding provision applies to all regulated fisheries in the Northwest Atlantic Ocean. It operates as a condition precedent to getting a Federal fisheries permit. Anyone who elects to obtain a Federal fisheries permit must agree to abide by the Federal regulations regardless of where fishing operations are conducted. This condition enhances the enforceability of the Federal regulations and plays an important role in achieving the goals of the Magnuson-Stevens Act. This requirement has been in effect in other fisheries for nearly 20 years. See also the response to Comment 13.

*Comment 18:* One commenter indicated that NMFS should be more accurate regarding the assessment of impacts of the rebuilding schedule and low TALs on the dogfish industry. Specifically, the commenter objects to the statement that low TALs may cause processors to stop processing dogfish and may cause markets for the species to collapse.

*Response:* The RIR and the Regulatory Flexibility Analysis conducted for this action indicate two possible scenarios. First, markets for dogfish could be completely lost or, second, other market opportunities could develop. It is acknowledged that the first scenario is the most likely. However, the low TALs during the rebuilding period could possibly support a processing sector that is different from the current industry. For this reason, the RIR does not definitively indicate that processors will cease dogfish processing.

*Comment 19:* One respondent suggested that the definition of a sustainable fishery (in tonnage) should be provided.

*Response:* The FMP states that a rebuilt stock will allow for a sustainable fishery at yield levels of approximately 14 million pounds (6250 mt) per year.

*Comment 20:* One commenter asked for clarification of the meaning of "fishing for spiny dogfish" and asks if the FMP will allow harvesters to bring dogfish aboard a vessel.

*Response:* According to the Magnuson-Stevens Act, fishing means any activity, other than scientific research conducted aboard a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) the attempted catching, taking, or harvesting of fish; (3) any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) any operations at sea in support of, or in preparation for, any activity described in (1), (2), or (3) of this definition. These regulations will prohibit any individual from possessing or landing spiny dogfish harvested from the EEZ if their vessel is not issued a Federal spiny dogfish permit. Any vessel with a Federal spiny dogfish permit will be prohibited from fishing for or possessing spiny dogfish harvested in or from the EEZ, and prohibited from landing spiny dogfish, after the effective date of notification in the **Federal Register** stating that the semi-annual quota has been harvested and the fishery is closed. It is recognized that a vessel may inadvertently encounter dogfish and may have them on board during the process of discarding them. It is a matter for law enforcement authorities to



determine the circumstances when such fish are possessed in violation of the regulations.

**Comment 21:** Two commenters questioned whether NMFS met its obligations under National Standard 8 to, in its words, "consider the importance of fishing resources to the fishing community and select the alternative that minimizes the adverse economic impact on the community." The commenters cite the high percentage of spiny dogfish landings out of total fish landings in Plymouth, MA (96%), Wachapreague, VA (91%), and Scituate, MA (74%), as evidence of what it terms the "high dependency" of those communities on spiny dogfish harvesting. The comments also suggest that New Bedford, MA, is highly dependent on spiny dogfish processing, because it processes a high percentage of spiny dogfish landings.

**Response:** National Standard 8 states that "[c]onservation and measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." The commenter's suggestion that NMFS must choose the alternative that has the least impact on communities does not comport with National Standard 8. After extensive public input, the Council chose and recommended to NMFS, and NMFS approved and is implementing, an alternative that reduced economic impacts to the extent practicable while meeting the conservation requirements of the Magnuson-Stevens Act to stop overfishing and rebuild the overfished stock, and providing for long-term economic gains. The FMP states that the impacts associated with rebuilding the stock will be more severe if rebuilding is delayed. Nonetheless, recognizing the impacts of this FMP, the Council worked closely with both harvesters and processors to include an "exit fishery" in the FMP, as implemented by these regulations, to allow the industry time to modify its activities before the landings were reduced by the rebuilding program. At the same time, the Council decided, based on stock condition of spiny dogfish (low abundance of males and females, especially females of spawning age and those soon to reach maturity), that an exit fishery lasting longer than a year was ill-advised and that harvest of spiny dogfish needed to

be reduced drastically by year 2 to protect females nearing maturity.

NMFS recognizes that some participants in the commercial fishing industry, namely, some fishermen and some processors, will be adversely affected by the conservation measures in the FMP in the short-term. NMFS also recognizes that some smaller communities involved in the dogfish fishery might be disproportionately affected by the conservation measures. The Council has made these points very clear in the FMP. While individual processing plants and fishing vessels may process or harvest spiny dogfish exclusively, none of the communities mentioned are engaged in the spiny dogfish fishery to meet social and economic needs of the community. Two of the communities, Plymouth and Scituate, are part of the suburban areas of a large city and are dependent on and substantially engaged in the businesses of the metropolitan area, as bedroom communities and tourist areas. The other community, Wachapreague, has significant fishing activities, both commercial and recreational fishing, but also attracts retirees and tourism, and is substantially dependent on these two sectors for economic activity. New Bedford is a fishing community with about 25 vessels landing dogfish and a processing plant handling catches from these vessels and other ports. The multispecies nature of the fishing industry in New Bedford and the diversification of the other communities' economies in non-fishing activities is such that closing the directed fishery for spiny dogfish would affect these communities only to a degree.

**Comment 22:** One commenter stated that dogfish are abundant and that biomass is at or near its historic high, implying that rebuilding is not necessary.

**Response:** The total dogfish biomass is currently comparable to recent high levels of abundance. However, the current age structure has been seriously distorted by the selective removal of mature females by the fishery. Because of the lack of mature females, recruitment is low and the stock will collapse if no action is taken. The management measures in the FMP will reduce fishing mortality rates to allow the population to return to equilibrium at a lower level of abundance than is currently observed. Preliminary projections, calculated with a spawning stock biomass of 200,000 mt, indicate that the total long-term biomass of a sustainable dogfish fishery would be about 416,000 mt, which is actually

lower than the current total biomass of 515,513 mt.

**Comment 23:** One commenter expressed concern that the 5-year rebuilding plan and the 180,000 mt SSB rebuilding target in the FMP were not given adequate consideration during the public hearing process. The commenter stated that the 180,000 mt SSB rebuilding target was adopted by the Councils despite the fact that the SSC had previously stated that 200,000 mt SSB was the appropriate rebuilding target.

**Response:** NMFS has disapproved the 180,000 mt SSB rebuilding target, because it does not comply with the Magnuson-Stevens Act.

**Comment 24:** One commenter stated that the Councils failed to consider the impacts of a rebuilt dogfish stock on other managed fisheries, especially with regards to predation and other ecosystem interactions.

**Response:** NMFS disagrees. The Councils specifically requested the SSC to evaluate estimates of Bmsy for spiny dogfish within an ecological context. The SSC found no compelling reason to consider predation by spiny dogfish on other commercially valuable groundfish in determining its Bmsy. The SSC indicated that changing the SSB rebuilding target to as low as 150,000 mt would not significantly effect predation on groundfish and have a minimal effect on groundfish rebuilding. The stock of spiny dogfish is a very small part of the ecological community, and because of its opportunistic predatory habits it may have minimal direct and indirect effects on the relationships of different species. It was recognized that dogfish do have some effect on other species through predation and competition. However, the SSC stated that trying to determine pairwise relationships between one species and a series of others is currently not feasible.

**Comment 25:** Several commenters requested NMFS to keep track of landings to see if 10,000 mt is exceeded in the first year.

**Response:** NMFS will monitor the quota, as required by the FMP. However, NMFS notes that for the period May 1–February 10, 2000 monitoring may be incomplete because the mandatory reporting provision will not be in place. NMFS must also rely on state agencies for data from state water fisheries.

#### Changes From the Proposed Rule

In the definition for Spiny Dogfish Monitoring Committee, minor editorial changes have been made for clarity.

In § 648.4(a)(11) wording has been added to clarify that permits are



required for vessels fishing commercially.

In § 648.4(b) wording has been added to clarify that restrictions on landings take effect as of the effective date of the notification of a fishery closure in the **Federal Register**.

In § 648.5(a) a reference to the recently published 50 CFR part 697 has been added to indicate that operator permits issued under that part satisfy the permitting requirements of this section.

In the final rule, two sentences in § 648.6(a) have been combined for the purpose of brevity. References to regulations not yet in effect have been deleted.

In § 648.7(b), the paragraph headings for paragraph (b) and (b)(1)(i) have been revised to reflect that both owners and operators are responsible for reporting.

In § 648.11, paragraph (b) is revised to be consistent with the language in paragraph (a) that clarifies that vessels chosen to carry sea samplers/observers are required to do so, unless exempted by the Regional Administrator. The original language in paragraphs (a) and (b) used the word "request" even though each paragraph as a whole indicated that carrying sea samplers was a requirement, not an option. Additional editorial corrections have been also made.

§ 648.14(a)(119), the phrase "the owner or operator of a vessel" has been changed to "any person on board a vessel" to make it clear that it is illegal to receive spiny dogfish from anyone on board a vessel with a spiny dogfish permit unless the purchaser/receiver has a spiny dogfish dealer permit.

§ 648.14(aa)(2), the prohibition on vessels from possessing spiny dogfish harvested from the EEZ after the date by which the semi-annual quota has been harvested and on which the EEZ is closed to the harvest of spiny dogfish, as announced in a notification published in the **Federal Register** has been revised to also prohibit fishing for spiny dogfish after that date. This is to better reflect the intent of the FMP. There are additional editorial corrections made within the section.

In § 648.230, the term "the Regional Administrator" has been replaced with "NMFS" to indicate that the agency as whole is responsible for review and publication of the regulations. Other, minor editorial corrections are also made.

In § 648.230(b), the portion of a sentence that specified the semi-annual quota periods has been deleted, because that information is specified in § 648.230(d)(1).

In § 648.230(b) and (c), the paragraphs have been revised to be consistent with the final sentence in § 648.230(c), which makes it clear that the Monitoring Committee and the Joint Spiny Dogfish Committee are to recommend a quota and other measures necessary to assure that the fishing mortality rate specified in the FMP and § 648.230(a) for the upcoming fishing year will not be exceeded. The language is also revised to note that management measures listed in paragraph (b) are not restricted to those shown.

In § 648.230(c), the final regulations now specify that the Joint Spiny Dogfish Committee is a joint committee of the Councils. The portion of a sentence that specified the semi-annual quota periods has been deleted, because this information is already specified in § 648.230(d)(1). The last four sentences are revised to clarify the Councils' and NMFS responsibilities in establishing annual fishing measures.

In § 648.230(d)(2), the paragraph has been revised to remove closure procedures and effects from the paragraph because that information is specified in § 648.231.

In § 648.231, the paragraph has been revised to clarify closure procedures and to more accurately indicate the prohibited activities during a closure. Prohibited activities include fishing for or possessing spiny dogfish in the EEZ, landing spiny dogfish by vessels issued a Federal spiny dogfish permit, and purchasing spiny dogfish from vessels issued a Federal spiny dogfish permit by dealers issued a Federal dogfish dealer permit. These have been standard prohibitions for closures in Federal fishery regulations.

Other changes from the proposed rule have been made at §§ 648.1(a), 648.2, 648.4(a), 648.12, and 648.14 to reflect changes necessary because of the monkfish final rule becoming effective between the dates of publication of the proposed and final spiny dogfish rules.

Minor editorial changes have been made in §§ 648.231 and 648.237.

Throughout the regulations references to bluefish, for which the regulations are not yet effective, have been deleted.

#### *Classification*

The Administrator, Northeast Region, NMFS, determined that the FMP, except for the disapproved measure, is necessary for the conservation and management of the spiny dogfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Councils prepared a FEIS for this FMP. The EPA published a notice of availability (NOA) for the Draft EIS at 63

FR 54476, October 9, 1998, and a NOA for the FEIS at 64 FR 45541, August 20, 1999. A notice of availability for the FMP, which contains the FEIS, was published at 64 FR 34759, June 29, 1999. The management measures will have long-term positive impacts on the affected human environment.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999, (64 FR 42071). A copy of the IRFA analysis is available from the Councils (see **ADDRESSES**). The Final Regulatory Flexibility Analysis (FRFA) incorporates the IRFA and its findings, the responses to public comments that mentioned possible effects of the FMP on small entities, and the following discussion, which is based on the IRFA. No changes were made in response to comments on the economic impact of the rule.

Domestic landings of spiny dogfish increased rapidly from 1989 through 1996, but began a decline in 1997. In 1998 NMFS declared the stock to be overfished. Without any management measures (status quo), landings in 2001 would be expected to decline to 21.3 million lb (9,662 mt), which is less than half of what they were in 1997. Projections indicate that an unregulated dogfish fishery would deplete the adult spawning portion of the stock by about 85 percent in 10 years. Landings would be expected to decline continuously due to the overfished condition of the stock. Nominal spiny dogfish ex-vessel revenues are correspondingly projected to decline. Eventually, the spawning stock would decline to a level that would lead to recruitment failure and stock collapse. Due to the slow growth and low fecundity of spiny dogfish, it would then take decades to rebuild the stock. The continuation of an unregulated fishery for spiny dogfish is, therefore, contrary to the Magnuson-Stevens Act, which requires remedial action through appropriate management measures for species designated as overfished. This final rule implements measures for spiny dogfish to prevent overfishing, rebuild the stock, and comply with other provisions of the Magnuson-Stevens Act.

The categories of small entities likely to be affected by this action are commercial vessel owners harvesting spiny dogfish and dogfish processors. The IRFA estimates that this action is expected to affect 595 vessels and 3 processors that meet the criteria for small entities.

### *Impacts of Permitting and Reporting Requirements*

Under all of the alternatives, any vessel fishing commercially for spiny dogfish must have a valid open access Federal spiny dogfish vessel permit issued by NMFS. It is estimated that 87 percent of the 595 commercial vessels landing spiny dogfish in 1997 from Federal waters already possess a NMFS permit for at least one or more fisheries other than spiny dogfish. Therefore, the other 13 percent (approximately 77 vessels) will be required to apply for a Federal spiny dogfish vessel permit using the initial application form. The remainder will use the renewal form and will not likely incur an additional burden. It is estimated that the owner/operators of all 77 vessels will apply for a spiny dogfish permit. The burden costs to the public for the permit application consist only of the time required to complete an application (.5 hr), at a hourly rate of \$15/hour. The total burden cost to the public will be \$578 (\$7.50 per vessel X 77 vessels).

The expected burden cost to the public for commercial logbook submissions will be \$1,540 (\$20 per vessel per year X 77 vessels).

In addition, the operators of these 77 vessels will be required to apply for a Federal spiny dogfish operator permit using the initial application form. The remainder would use the renewal form and will not likely incur an additional burden. The burden costs to the public for the operator permit consist only of the time required to complete an application (1 hr), at a hourly rate of \$15/hour. The total burden cost to the public will be \$1,155 (\$15 per operator X 77 operators).

It is expected that there will be approximately 15 new applicants for dealer permits. The cost to the public for dealer permits will be \$18.75 (\$1.25 per applicant X 15 applicants). Thereafter, the public annual estimate of submitting weekly reports will be \$26 per dealer per year. Thus, total cost for all new dealers (who do not currently have permits) for permitting requirements in the first year is \$409 (\$1.25 + \$26 X 15 dealers).

### *Non-Preferred Alternative to Permitting and Reporting Requirements*

The alternative to the permitting and reporting requirements is the status quo, or no regulation. Without these requirements, a Federal quota system would be unmanageable, as landings information would not be complete and closures would be unenforceable. Because the status quo option would not meet the requirements of the Magnuson-

Stevens Act, this alternative was rejected.

### *Impacts of Prohibition on Finning*

This rule prohibits the practice of finning spiny dogfish (cutting off and retaining the fins and discarding the carcass). Fishing industry representatives testified that this practice occurs only under extremely limited circumstances in the fishery; therefore, the prohibition would have a negligible effect on the current fishery. The provision is designed to prevent the practice in a reduced fishery and, thereby, reduce waste of the spiny dogfish resource.

### *Non-Preferred Alternative to Prohibition on Finning*

The alternative to the prohibition of finning is the status quo, or no regulation. The practice is already banned in other shark fisheries in the management area; therefore, not having a prohibition in this fishery could complicate enforcement by allowing fishermen to claim that fins from other sharks were from dogfish. Due to the strong support for prohibiting finning from all sectors and the insignificant economic effects of the prohibition, the status quo alternative was rejected.

### *Impacts of the Preferred Spiny Dogfish Rebuilding Schedule*

The impacts of the preferred rebuilding schedule were analyzed presuming a 180,000 mt rebuilding target. While this rebuilding target has been disapproved, the management program remains intact. The analyzed impacts are still relevant in the near-term, and will be updated as necessary when the Councils submit a revised rebuilding target.

The intent of the Councils is to rebuild the spawning stock biomass of the spiny dogfish stock to levels that will support the fisheries at long-term, sustainable levels. The preferred rebuilding schedule identified in the FMP is expected to eliminate overfishing and rebuild the spiny dogfish stock in the shortest possible time, while still allowing for a 1-year "exit fishery." The 1-year "exit fishery" of 22 million lb (10,006 mt) includes 9,286,935 lb (4212.5 mt) for the semi-annual period from November 1, 1999 - April 30, 2000, and will allow participants to gradually reduce their activity in the directed spiny dogfish fishery. This approach was chosen to reduce the impacts of the rebuilding program on both the harvesting and processing sectors of the industry, during the first 6 months. Beginning May 1, 2000, landings will be reduced

to 2.9 million lb (1,316 mt) and then maintained at under 4.4 million lb (2,000 mt) until the target biomass is reached. The analysis for the preferred alternative presented here, and in the FMP, was developed with an assumption that the fishery would rebuild in 2004.

Based upon projected status quo landings in relation to proposed total allowable commercial landings or TALs, ex-vessel gross revenue declines would reach a high of \$3,383,903 in year two as landings are reduced to 2,901,780 lb (1,316 mt). Pack-out facility gross revenue declines would be the greatest (\$902,374) in year two. Gross revenue losses after year two would then decline as projected landings under the preferred alternative increase, while landings under the status quo model decrease. Nominal gross ex-vessel revenues would exceed status quo ex-vessel revenues in 2004, assuming that rebuilding is achieved. Cumulative ex-vessel revenues would exceed status quo in 2016. More appropriately, cumulative gross ex-vessel revenues in real terms at a 7 percent discount rate would only exceed status quo in 2029.

In year one of the preferred rebuilding schedule, there would be a 30-percent reduction in landings compared with the status quo levels. This reduction would cause a decrease in gross revenues of greater than 5 percent for approximately 149 vessels (using 1997 dealer and weightout data) and for 2 processors. In year two, with an 89-percent reduction in landings (relative to the status quo levels), 232 harvesters would have a gross reduction of revenues greater than 5 percent (based on 1997 landings and dealer data). The IRFA also concluded that it is possible that the action will result in at least 12 spiny dogfish harvesters ceasing operations.

Processors have indicated that their ability to process spiny dogfish in a cost-effective manner is dependent upon volume. This action, which greatly reduces landings during the rebuilding period, could, therefore, result in the elimination of dogfish processing operations for the remaining 3 dogfish processors and the potential loss of approximately 200 jobs.

An area of uncertainty is the effect of low TALs upon markets. The low TALs may cause processors to cease processing spiny dogfish and cause established U.S.-based markets for this species to collapse. Since most spiny dogfish are currently processed and exported, the implications of this action upon both foreign and domestic markets are hard to predict. The demand for spiny dogfish by foreign markets may

decline as dogfish is replaced by a more readily available alternative, or, conversely, reduction of supply in combination with static demand could cause dogfish prices to rise and allow for a limited fishery to exist with landings at low levels. Industry members indicate that demand is likely to decline. The ability of processors and harvesters to re-establish markets, if they ceased operations earlier, is unknown.

If markets for spiny dogfish cease, there would be no processors to whom harvesters could sell their catch. Conversely, if prices rise, harvesters would be able to receive higher ex-vessel prices for spiny dogfish (assuming a market exists). Even if prices increase, due to the extremely low TALs, it would probably not mitigate the economic impacts on the processors and harvesters caused by the preferred alternative. Given low TALs, the harvesting, processing, and support industries are not likely to see cumulative benefits for at least 15 years.

While the short and intermediate effects of the FMP are negative for those involved in the fishery, the long-term effects are likely to be positive. Projections indicate that an unregulated dogfish fishery would deplete the adult spawning portion of the stock by about 85 percent within 10 years. This would lead to a stock collapse. Yields would be expected to plummet, and a rebuilding program after a stock collapse is projected to take decades, due to the life history of dogfish. This action will rebuild the adult spawning stock biomass and, then, allow for a sustainable fishery in future years.

#### *Impacts of Alternatives to the Preferred Rebuilding Schedule Considered but Rejected*

Other alternatives to the preferred rebuilding schedule were considered, but either did not meet the requirements of the Magnuson-Stevens Act, or did not provide long-term economic benefits greater than those of the proposed action.

Non-Preferred Alternative Rebuilding Schedule 1 would reduce landings to a consistent level of approximately 5.5 million lb (2,500 mt) until 2003 when the stock is assumed to be rebuilt, and landings reach a level of 14 million lb (6,350 mt). Relative to status quo, gross revenue declines would reach a high of \$3,067,000 in year two (2000). Cumulative gross revenues would exceed status quo levels in 2015. Similarly, relative to status quo, gross revenue declines for pack-out facilities would reach a high of \$817,000 in year two (2000). Impacts would then decline

afterwards as projected landings increase. At approximately 5.5 million lb (2,500 mt), a directed fishery for spiny dogfish is unlikely, and as noted in discussing the preferred alternative, the effect that an incidental dogfish fishery would have on markets is difficult to predict. This option would not provide for a 1-year "exit" fishery; therefore, it would have imposed greater economic burdens on fishery participants in the short term. In addition, this alternative's long-term economic benefits would not exceed those of the preferred alternative.

Non-Preferred Alternative Rebuilding Schedule 2 would reduce landings to 22.5 million lb (10,206 mt) in year one, to 11.3 million lb (5,125 mt) in year two, and then limit landings to a level that would ensure the rebuilding of the stocks within a 10-year time-frame. Relative to status quo, gross revenue declines would reach a high of \$2,778,962 in year three (2001). Cumulative gross revenues would exceed status quo levels in 2020. Similarly (also relative to status quo), gross revenue declines for pack-out facilities would reach a high of \$741,056 in year three (2001). Impacts would then decline afterwards as projected landings increase. Unlike the preferred alternative, this alternative does not provide for a rebuilt stock until 2009. Similarly, although the second year of this option provides for a higher TAL than the preferred, the long-term economic outlook for the preferred alternative is superior. Given the higher TAL in year two of this option, there is a possibility that, in the short-term, this option could provide some cost savings by not forcing harvesters into other fisheries as quickly as the preferred alternative. However, the cost data needed to support this conclusion are currently unavailable. The analysis examined gross revenues, and the long-term benefits of the preferred alternative exceeded this alternative.

Non-Preferred Alternative Rebuilding Schedule 3 would allow for a reduction in dogfish landings to 13.2 million lb (5,988 mt) in 1999 and 8.8 million lb (3,992 mt) in 2000. Landings until 2004 would be reduced to a level which allows the stock to be rebuilt in 5 years. Year one gross ex-vessel revenue declines would be \$2,631,447 and reach a high of \$2,697,000 in year three (2001), compared to the status quo revenue levels. These impacts would decline throughout the time-span of the FMP as projected landings increase. Cumulative gross revenues would exceed status quo levels in 2015. This alternative would not provide for an economically feasible exit fishery

compared to the preferred alternative; therefore, it was not favored by members of the fishing industry. In addition, this alternative's long-term economic benefits do not exceed those of the preferred alternative.

Alternatives four, five, and six would reduce F to levels that are necessary to rebuild spiny dogfish stocks within a 15-, 20-, and 30-year time frame, respectively. These options were rejected early in the FMP development process because the analysis indicated that spiny dogfish did not meet the necessary Magnuson-Stevens Act criteria that allow rebuilding to exceed 10 years. These options would spread economic impacts over a greater time period, but would not meet the requirements of the Magnuson-Stevens Act.

Alternative seven would establish a system of uniform trip limits in conjunction with an annual quota. In the second year of the rebuilding program, the projected trip limits per vessel could potentially be as low as 12 lb (5.4 kg) per trip, assuming a TAL of 2.9 million lb (1,315 mt) and 250,000 trips. Given that the average commercial fishing trip in 1997 landed 3,116 lb (1,413 kg), this low trip limit would preclude a viable directed fishery. There could be fewer participants involved in the commercial spiny dogfish fishery, an occurrence that would allow for larger trip limits. However, a uniform trip limit system would not necessarily ensure quota availability distributed across all geographic areas, gears, and seasons. This management option was rejected because positive long-term benefits would be limited.

Alternative eight would establish a minimum size limit for spiny dogfish that corresponds to the length at which 50 percent of female spiny dogfish are sexually mature (32 in (81 cm)). Alternative nine would establish a minimum size limit for spiny dogfish that corresponds to the length at which 100 percent of female spiny dogfish are sexually mature (36 in (91 cm)). These alternatives would have little economic impact on recreational fishing because most recreationally caught spiny dogfish are released after capture. However, there would likely be negative short-term economic impacts on the commercial harvesting sector through reduced landings because very few dogfish harvested by commercial fishermen currently achieve the proposed minimum sizes. These negative economic impacts would likely extend to processors and dealers because of reduced landings of spiny dogfish.

Alternative ten would allow only the harvest of spiny dogfish between 27.5 in (70 cm) to 32 in (81 cm) in length (a "slot size" limit). The results of projected TALs under this scenario indicate that this strategy would result in lower overall yields and not in reducing the rebuilding period. Thus, the potential benefits under this scenario would be less than the preferred alternative for the same time period.

The eleventh and twelfth alternatives would distribute the annual quota on a quarterly or bi-monthly basis. The effects of these alternatives would depend largely upon the distributional system set up by the Councils. The further sub-allocation of quotas could provide long-term benefits through a rebuilt spiny dogfish fishery. As the industry is presently structured, there are insufficient fish to make processing operations (which depend on volume) economically viable. Additionally, administrative logistics associated with implementing a quarterly or bimonthly quota monitoring system are expected to be formidable. For these reasons, these alternatives were rejected.

#### *Steps Taken to Minimize the Significant Impact on Small Entities*

Several steps have been taken to minimize the economic impact on small entities. First, the primary means of initially minimizing the effect of this action on small entities was to provide the 1-year "exit fishery" to allow participants to gradually reduce their activity in the first year of the plan. Second, the semi-annual quota allocates the catch to minimize the impact on any one portion of the fishery. Third, the FMP and regulations incorporate a wide range of framework actions that will allow the Councils and NMFS to tailor the fishery to minimize impacts on small entities over the life of the FMP. Finally, the rebuilding strategy for the fishery protects a large class of juvenile female spiny dogfish to allow them to mature and contribute to the stock quickly, as opposed to a rebuilding strategy that could take decades if that large class of juvenile females was not protected.

A copy of this analysis is available from the Councils (see **ADDRESSES**).

#### **Paperwork Reduction Act (PRA)**

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a

currently valid Office of Management and Budget (OMB) control number.

This final rule contains eight new collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, and the OMB control numbers and public reporting burden are listed as follows:

Processed Products Family of Forms, OMB Control Number 0648-0018, (2 minutes/response).

Northeast Region Federal Fisheries Permit Family of Forms, OMB Control Number 0648-0202 (vessel permit - 30 minutes/response; dealer permit - 5 minutes/response; operator permit - 1 hour/response).

Northeast Region Logbook Family of Forms, OMB Control Number 0648-0212 (5 minutes/response).

Northeast Region Dealer Purchase Reports, OMB Control Number 0648-0229 (IVR - 4 minutes/response; form 88-30 - 2 minutes/response).

Northeast Region Vessel Identification, OMB Control Number 0648-0350 (45 minutes/response).

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

#### **Endangered Species Act**

A formal Section 7 consultation under the Endangered Species Act was initiated for the FMP. In a biological opinion dated August 13, 1999, the Assistant Administrator for Fisheries 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.

#### **Marine Mammal Protection Act**

Potential adverse impacts to marine mammals resulting from fishing activities conducted under this rule are discussed in the FEIS, which focuses on potential impacts to harbor porpoise, right whales, and humpback whales.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 5, 2000.

**Penelope D. Dalton,**

*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.*

#### **Subpart A—General Provisions**

2. In § 648.1, paragraph (a) is revised to read as follows:

##### **§ 648.1 Purpose and scope.**

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries (NE Multispecies FMP and (Monkfish FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); and the spiny dogfish fishery (Spiny Dogfish FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

\* \* \* \* \*

3. In § 648.2, the definitions for "Council" and "Councils" are revised and the definition for "Spiny Dogfish Monitoring Committee" is added in alphabetical order to read as follows:

##### **§ 648.2 Definitions.**

\* \* \* \* \*

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; the Atlantic bluefish fishery; and the spiny dogfish fishery.

*Councils* with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management

Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

\* \* \* \* \*

*Spiny Dogfish Monitoring Committee* means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

\* \* \* \* \*

4. In § 648.4, paragraph (a)(10) is reserved, paragraph (a)(11) is added, and the first 4 sentences of paragraph (b) are revised to read as follows:

**§ 648.4 Vessel and individual commercial permits.**

(a) \* \* \*

(10) [Reserved].

(11) *Spiny dogfish vessels.* Any vessel of the United States that commercially fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing activity occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium permit, or a spiny dogfish permit must also agree not to land summer flounder, scup, black sea bass, or spiny dogfish, respectively, in any state after the effective date of a notification published in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. \*

\* \* \* \* \*

5. In § 648.5, paragraph (a) is revised to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, bluefish, or spiny dogfish harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board a valid operator's permit. An operator's permit issued pursuant to parts 649 or 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

\* \* \* \* \*

6. In § 648.6, paragraph (a) is revised to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, and spiny dogfish dealers, and surf clam and ocean quahog processors must have been issued under this section and have in their possession a valid permit for these species.

\* \* \* \* \*

7. In § 648.7, paragraphs (a)(1)(i), (a)(3)(i), (b) heading, and (b)(1)(i) are revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) \* \* \*

(1) \* \* \*

(i) All summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, or spiny dogfish dealers must provide: Dealer's name and mailing address; dealer's permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable), price per pound by species (by market category, if applicable); or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a

report so stating on the required form must be submitted.

\* \* \* \* \*

(3) \* \* \*

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, and spiny dogfish dealers must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Administrator.

\* \* \* \* \*

(b) *Vessel owners or operators.*

(1) \* \* \*

(i) *Owners or operators of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish Atlantic mackerel, squid, butterfish, or spiny dogfish permit.* The owner or operator of any vessel issued a permit for the species listed in the preceding sentence must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other system. At least the following information, and any other information required by the Regional Administrator, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

**§ 648.11 At-sea sea sampler/observer coverage.**

(a) The Regional Administrator may require any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, scup, black sea bass, or spiny

dogfish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. If required by the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or the requirement is waived.

\* \* \* \* \*

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, or a spiny dogfish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, spiny dogfish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, spiny dogfish, or other specimens taken by vessel.

\* \* \* \* \*

9. In § 648.12, the introductory text is revised to read as follows:

#### § 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (general provisions), B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies and monkfish fisheries), G (summer flounder), H (scup), I (black sea bass), or L (spiny dogfish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, and spiny dogfish fisheries.

\* \* \* \* \*

10. In § 648.14, paragraph (z) is reserved and paragraphs (a)(119), (a)(120), and (aa) are added to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

(119) Purchase or otherwise receive, except for transport, spiny dogfish from any person on board a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(120) Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a federally permitted vessel in any state, from Maine to Florida, after

the effective date of notification published in the **Federal Register** stating that the semi-annual quota has been harvested and the EEZ is closed to the harvest of spiny dogfish.

\* \* \* \* \*

(z) [Reserved].

(aa) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid spiny dogfish permit or issued an operator's permit to do any of the following:

(1) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, spiny dogfish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(2) Fish for or possess spiny dogfish harvested in or from the EEZ after the effective date of the notification published in the **Federal Register** stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(3) Land spiny dogfish for a commercial purpose after the effective date of the notification published in the **Federal Register** stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(4) Remove the fins from spiny dogfish and discard the carcass.

(5) Land spiny dogfish fins in excess of 5 percent, by weight, of the weight of spiny dogfish carcasses.

(6) Store spiny dogfish fins on board a vessel after the vessel lands spiny dogfish.

10. Subpart K is added and reserved.

#### Subpart K—[Reserved]

11. Subpart L is added to read as follows:

#### Subpart L—Management Measures for the Spiny Dogfish Fishery

Sec.

648.230 Catch quotas and other restrictions.

648.231 Closures.

648.232 Time Restrictions. [Reserved]

648.233 Minimum Fish Sizes. [Reserved]

648.234 Gear restrictions. [Reserved]

648.235 Possession limit. [Reserved]

648.236 Special Management Zones.

[Reserved]

648.237 Framework provisions.

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

(a) *Annual review.* The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a

target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2003, and a target F of 0.08 thereafter will not be exceeded:

Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a commercial quota and any other measures including those in paragraphs (b)(1)-(b)(5) of this section that are necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded. The quota may be set within the range of zero to the maximum allowed. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits; or

(5) Other gear restrictions.

(c) *Annual fishing measures.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a commercial quota and, possibly, other measures, including those specified in paragraph (b) of this section, necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded. The commercial quota may be set within the range of zero to the maximum allowed. The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year will not be exceeded. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota

and other management measures to assure that the target F specified in paragraph (a) of this section will not be exceeded. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils. After such review, NMFS shall publish a proposed rule in the **Federal Register** specifying a coastwide commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded. After considering public comments, NMFS shall publish a final rule in the **Federal Register** to implement such a quota and other measures.

(d) *Distribution of annual quota.* (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 30 (57.9 percent) and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

#### **§ 648.231 Closures.**

The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.230(d)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing a notification in the **Federal Register**. Upon the closure date and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

#### **§ 648.232 Time Restrictions. [Reserved]**

#### **§ 648.233 Minimum Fish Sizes. [Reserved]**

#### **§ 648.234 Gear restrictions. [Reserved]**

#### **§ 648.235 Possession limit. [Reserved]**

#### **§ 648.236 Special Management Zones. [Reserved]**

#### **§ 648.237 Framework provisions.**

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management

measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to

the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 00-630 Filed 1-10-00; 8:45 am]

BILLING CODE 3510-22-F