

based on a combination of (1) certifications that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) a negative declaration demonstrating that no facilities exist in the four county, five city area for the applicable CTG categories; and (3) a new RACT determination for a single source. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the Virginia RACT under the 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 5, 2009.

William T. Wisniewski,

Acting Regional Administrator, Region III.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206149-9302-01]

RIN 0648-AX57

Fisheries of the Northeastern United States; Proposed 2009 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2009 fishing year (FY) (May 1, 2009, through April 30, 2010). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial

quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource. NMFS proposes that the annual quota be set at 12 million lb (5,443.11 mt), and that the possession limits for dogfish be set at 3,000 lb (1.36 mt).

DATES: Public comments must be received no later than 5 p.m. eastern standard time on April 3, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648-AX57, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- **Fax:** 978-281-9135, Attn: Jamie Goen

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2009 Dogfish Spex."

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, Fishery Policy Analyst, phone: 978-281-9220, fax: 978-281-9135.

SUPPLEMENTARY INFORMATION: Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) necessary to assure that the target fishing mortality rate (target F) specified in the FMP will not be exceeded in any fishing year (May 1 April 30), for a period of 15 fishing years. The annual quota is allocated between two semi-annual quota periods as follows: Period 1, May 1 through October 31 (57.9 percent); and Period 2, November 1 through April 30 (42.1 percent).

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states; MAFMC staff; New England Fishery Management Council (NEFMC) staff; NMFS staff; academia; and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the 1–5 fishing years. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the FMP, and may modify them if necessary. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In the fall of 2008, the NMFS Northeast Fisheries Science Center (NEFSC) updated the spiny dogfish stock status using the model from the 43rd Stock Assessment Review Committee (SARC), 2007 catch data, and results from the 2008 trawl survey. The stock status update estimated that the spiny dogfish female spawning stock

biomass (SSB) is likely to be above the most recently calculated maximum sustainable yield biomass (Bmsy), which would indicate the stock is not overfished and could be considered rebuilt. However, there is no Bmsy target in the FMP because NMFS disapproved the Councils' recommended biomass target (90% SSBmax) during the review of the FMP. Framework Adjustment 2 to the FMP has been submitted for review and, if approved, would incorporate updated biological reference points after the next benchmark stock assessment results from the Transboundary Resource Assessment Committee (TRAC) are available in late 2009.

The NEFSC stock status update also estimated that overfishing is not occurring. Total removals in 2007 were approximately 12,136 mt (26.755 M lb), corresponding to an F estimate of 0.1104, well below the overfishing threshold of $F = 0.39$ and essentially equivalent to $F_{rebuild} = 0.11$.

While the stock status update estimates that the stock could be considered rebuilt and that overfishing is not occurring, there are a number of concerns with the stock. These include: size frequency of the female population that is concentrated between 75 and 95 cm (29.3 and 37.1 inches), with very few fish above 100 cm (39.1 inches) or below 70 cm (27.3 inches); several years of low pup production, implying that the population will oscillate over time decreasing to a low around 2017; a skewed sex ratio of males to females (4:1, rather than the expected 2:1); and concern that projections of future biomass include assumptions about pup survivorship and selectivity of gear that may be optimistic.

Monitoring Committee Recommendations

The Monitoring Committee and a representative of the MAFMC's Scientific and Statistical Committee (SSC) met on October 31, 2008, to develop recommendations based on stock conditions estimated from the NEFSC stock status update. Based on the information from the stock status update, including the concerns over the status of the stock, the Monitoring Committee recommended a precautionary management response. The Monitoring Committee recommended maintaining the rebuilding F value of 0.11 as the target in FY 2009, as opposed to the $F = 0.28$ target that is associated with a rebuilt stock. The fishing mortality associated with $F_{rebuild}$ results in a quota recommendation of 12 million lb (5,443.11 mt) for FY 2009, a 200 percent

increase from the 4-million-lb (1,814.37-mt) quota in FY 2008. The Monitoring Committee also agreed that the commercial quota should be set for 1 fishing year pending the TRAC stock assessment in 2009. The Monitoring Committee recommended that the possession limit be set at 3,000 lb (1.36 mt), up from 600 lb (272 kg) in 2008. A 3,000-lb (1.36-mt) possession limit would allow for increased retention of dogfish incidentally captured in Federal waters.

Joint Committee Recommendations

The Joint Committee met on November 17, 2008, to review the Monitoring Committee's recommendations and make its recommendation to the Councils. Council staff noted the SSC had been polled and generally supported the recommendation. The Joint Committee agreed with the Monitoring Committee's recommendation; to establish a 12-million-lb (5,443.11-mt) quota with a possession limit of 3,000 lb (1.36 mt).

Council Recommendations

The MAFMC and NEFMC met in December and November 2008, respectively, to review the Joint Committee's recommendation. The Councils agreed with the recommendation, a commercial quota of 12 million lb (5,443.11 mt) and a possession limit of 3,000 lb (1.36 mt), and recommended that NMFS implement these recommendations for FY 2009.

Alternatives Adopted by the Atlantic States Marine Fisheries Commission (ASMFC)

The Councils' quota and possession limit recommendations are consistent with those adopted for state waters in FY 2009 by the ASMFC at its October 2008 meeting. However, the newly approved Addendum II to the ASMFC's Interstate FMP for Spiny Dogfish removes the seasonal quota split (Period 1 and Period 2) for state fisheries and re-allocates the ASMFC quota with 58 percent to states from Maine through Connecticut, 26 percent to New York through Virginia, and 16 percent to North Carolina. Thus, while the overall 12-million-lb (5,443.11-mt) quota is the same for both state and Federal waters, the way that quota is allocated differs by region and season. One of the implications of this difference is that state and Federal waters may close at different times, depending on regional and seasonal quota attainment.

Proposed Measures

NMFS reviewed the Councils' recommendations and proposes to implement their recommendations of a commercial spiny dogfish quota of 12 million lb (5,443.11 mt) and a possession limit of 3,000 lb (1.36 mt) for FY 2009. As specified in the FMP, quota Period 1 (May 1 through October 31) would be allocated 57.9 percent of the quota, 6,948,000 lb (3,151.56 mt), and quota Period 2 (November 1 through April 30) would be allocated 42.1 percent of the quota, 5,052,000 lb (2,291.55 mt).

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

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

All of the potentially affected businesses are considered small entities under the standards described in NMFS

guidelines because they have gross receipts that do not exceed \$3.5 million annually. Information from FY 2007 was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to NMFS permit file data, 3,142 vessels were issued Federal spiny dogfish permits in FY 2007, while 257 of these vessels contributed to overall landings.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IRFA considered three alternatives. The action recommended in this proposed rule, Alternative 1, includes a commercial quota of 12 million lb (5,443.11 mt), and the possession limit at 3,000 lb (1.36 mt), for both quota periods during FY 2009. Alternative 2 is the same as Alternative 1, but with a more liberal quota of 36.5 million lb (16,556.14 mt). Alternative 3, the status quo/no action alternative, would result in commercial quota of 4 million lb (1,814.37 mt) and a possession limit of 600 lb (272 kg) for both quota periods.

Alternatives 1 and 2 have higher quotas than prior years. Assuming that the quota implemented would be attained, Alternatives 1 and 2 would be expected to increase overall revenue from dogfish landings, a beneficial economic impact on small entities. FY 2008 revenue is estimated using the average FY 2007 price/lb (\$0.20) and the FY 2008 state quota of 8 million lb (3,628.74 mt) to equal \$1.6 million. The increase in revenue in FY 2009 compared to FY 2008 could amount to \$800,000 under Alternative 1 (preferred) and Alternative 3, and \$5.7 million under Alternative 2. Alternative 3 is expected to result in a revenue increase because landings for spiny dogfish would presumably continue in state waters even after Federal waters closed until the 12-million-lb (5,443.11-mt)

state quota implemented by the ASMFC for FY 2009 was reached. The net economic benefits by alternative would be greatest under Alternative 2, then Alternative 1 (preferred), and lastly by Alternative 3. Although total dogfish revenues may be the same under Alternative 1 and 3, the lower trip limit under Alternative 3 would distribute revenues at a lower rate over a longer period. Alternatives 1 and 2 would have a beneficial economic impact on small entities, including fishermen, processors, and the businesses that support them.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 16, 2009.

Samuel D. Rauch III,

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

For the reasons set out above, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.235, paragraphs (a) and (b) are revised to read as follows:

§ 648.235 Possession and landing restrictions.

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

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and
(2) Land only one trip of spiny dogfish per calendar day.

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

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and
(2) Land only one trip of spiny dogfish per calendar day.

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