

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

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

RIN 0648-AQ34

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2003 Specifications

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

ACTION: Final rule; final specifications.

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

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

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

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

Background

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

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

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

Annual Commercial Quota and Possession Limits

The FMP specifies a target F of 0.03 for 2003 to be attained through a commercial quota, and possibly other management measures. This final rule implements a commercial quota of 4 million lb (1.81 million kg) for the 2003 fishing year that is allocated on a semi-annual basis as follows: Quota Period 1 (May 1–October 31) is allocated 57.9 percent of the 4-million lb (1.81-million kg) quota, or 2,316,000 lbs (1,050,512 kg), and Quota Period 2 (November 1–April 30) is allocated 42.1 percent of the 4-million lb (1.81-million kg) quota, or 1,684,000 lbs (763,849 kg).

This final rule also maintains the existing possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively, to allow for the retention of spiny dogfish caught incidentally while fishing for other species throughout the entire fishing year.

Comments and Responses

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

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

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

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

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

Changes From the Proposed Rule

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

Classification

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

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