

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

[Docket No. 990713189-9189-01; 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Spiny Dogfish Fishery Management Plan (FMP). This proposed rule would implement 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.

DATES: Comments on this proposed rule must be received on or before September 17, 1999.

ADDRESSES: Comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on proposed rule for Spiny Dogfish FMP."

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the FMP, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) contained within the RIR, the "supplement" 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.

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.

The FMP was developed jointly by the Mid-Atlantic and New England Fishery Management Councils (Councils). The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has the administrative lead on the FMP. A Notice of Availability for the FMP was published for public comment at 64 FR 34759, June 29, 1999.

Domestic landings of spiny dogfish on the East Coast have increased rapidly from 9.92 million lb (4,500 metric tons (mt)) in 1989 to 61.72 million lb (28,000 mt) in 1996, and then declined to approximately 41.89 million lb (19,000 mt) in 1997. During this period, the fishing mortality rate (F) rose from below 0.1 during the 1980s to 0.3 in 1997. In addition to the overall increase in landings, the landings have been disproportionately composed of females, because females grow to a larger size than males and are, therefore, preferred for processing. Because of the directed fishing effort on adult female spiny dogfish, the spawning stock biomass (SSB) has severely declined. The 26th Northeast Regional Stock Assessment Workshop (SAW 26), in March 1998, concluded that spiny dogfish are overexploited. SAW 26 reported that minimum biomass estimates of mature females (≥ 80 cm) have declined by over 50 percent since 1989 and that recruitment of juvenile dogfish was the lowest on record in 1997. The combination of increased F, declining biomass of mature females, and low recruitment have contributed to the overfished condition of the stock.

NMFS notified the 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 Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires remedial action for stocks that are designated overfished and requires the Regional Fishery Management Councils to prepare measures within 1 year of notification to end overfishing and to rebuild the overfished stock. The purpose of this action is to propose the implementation of the management measures contained in the FMP.

Proposed Management Measures

This proposed rule would implement 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 experimental fishing activities.

Commercial Quota

An annual spiny dogfish commercial quota would be allocated to the fishery to control F. The quota would be set at a level to assure that the F specified in the FMP would not be exceeded. The annual commercial quota would be established by the Regional Administrator, Northeast Region, NMFS (Regional Administrator) based upon the recommendations of the Spiny Dogfish Monitoring Committee and the Spiny Dogfish Committee to the Councils. The quota recommendation of the Spiny Dogfish Monitoring Committee would be based upon projected stock size estimates for that year, as derived from the latest stock assessment information, coupled with the target F specified for that year. The quota would be specified for the fishing year, which would be defined as May 1 through April 30, and would be allocated to two semi-annual periods, as described below. The commercial quota could change annually following the Spiny Dogfish Monitoring Committee process set forth below, if appropriate. However, the quota could also be specified for a period of up to 3 years.

The management unit for spiny dogfish extends throughout its range. Therefore, the commercial quota would apply throughout the management unit, in both state and Federal waters. All spiny dogfish landed for sale from Maine through Florida would be applied against the commercial quota, regardless of where the spiny dogfish were harvested. Using data collected through this FMP, NMFS would monitor the fishery to determine when the quota for a semi-annual quota period would be reached. The Regional Administrator, through notification in the **Federal Register**, would prohibit possession of spiny dogfish in the U.S. exclusive economic zone (EEZ) and landings of spiny dogfish by vessels with Federal spiny dogfish permits for the remainder of the period, when the

semi-annual quota has been determined to be reached.

The rebuilding schedule and corresponding annual quotas, as described in the FMP, were projected assuming an implementation date of May 1, 1999. A 1-year "exit" approach was chosen to minimize the impact of the rebuilding program on both the harvesting and processing sectors of the industry. According to the rebuilding schedule adopted by the Councils for the period May 1, 1999, to April 30, 2000, F would be reduced to 0.2, which would result in a quota of 22,059,228 lb (10,006 mt), for the first year. Landings would be allocated semi-annually for the periods May 1 through October 31 and November 1 through April 30. The May 1 through October 31 period would be allocated 57.9 percent of the annual quota, and the remaining 42.1 percent would be allocated to period November 1 through April 30. Due to unanticipated delays in the development of the FMP, the implementation date of this FMP, if approved, would be approximately November 1, 1999. Therefore, the quota for the second semi-annual period (November 1999 through April 2000) of Year 1 would be implemented at a level of 9,286,935 lb (4212.5 mt), which is equivalent to 42.1 percent of the first year's quota. F would then be reduced to 0.03 for the remaining 4 years of the rebuilding plan (2000 through 2003). This is expected to result in annual quotas ranging from 2,901,254 lb (1,316 mt) to 3,198,875 lb (1,451 mt) during those 4 years.

The quotas in the FMP were developed with the assumption that current levels of discard mortality would continue at the recent average annual rate of 9.8 million lb (4,445 mt) per year.

Seasonal Allocation of Annual Commercial Quota

As described above, the annual commercial quota would be distributed between two periods (May 1 through October 31 and November 1 through April 30) based on the historical percentage of commercial landings for each semi-annual period during the years 1990 through 1997. The period May 1 through October 31 would receive 57.9 percent of the annual allocation, and the period November 1 through April 30 would receive 42.1 percent of the annual allocation. The specification of the seasonal allocation may be revised through the framework adjustment process described below.

Prohibition on Finning

Finning, the act of removing the fins of spiny dogfish and discarding the carcass, would be prohibited. Vessels that land spiny dogfish must land fins in proportion to carcasses, with the weight of fins not to exceed 5 percent of the weight of carcasses. Fins may not be stored on board a vessel after a vessel lands spiny dogfish.

Framework Adjustment Process

The Councils may add or modify management measures through a framework adjustment process. This adjustment procedure allows the Councils to add or to modify management measures through 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 would involve 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 would recommend, develop,

and analyze appropriate management actions over the span of at least two Council meetings. The Councils would then provide the public with advance notice of the availability of the recommendation, justification for the measure, and economic and biological analyses. The Councils would afford 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 would 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 would 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 final rule.

If the Councils recommend that the framework adjustment management measures should be published as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered: (1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule; (2) whether regulations have to be in place for an entire harvest/fishing season; (3) whether there has been adequate notice and opportunity for participation by the public and affected industry members in the development of the Councils' recommended management measures; (4) whether there is an immediate need to protect the resource; and (5) whether there will be a continuing evaluation of management measures adopted following the Councils' promulgation as a final rule.

If, after reviewing the Councils' recommendation and supporting information, NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures may be published as a final rule, then the action will be published in the **Federal Register** as a final rule.

If NMFS concurs with the Councils' recommendation and determines that the recommended measures should be published first as a proposed rule, then the action will be published first as a proposed rule in the **Federal Register**. After providing an opportunity for additional public comment, if NMFS concurs with the Councils' recommendation, then the action will be

published as a final rule in the **Federal Register**.

If NMFS does not concur with the Councils' recommendation, they would be notified, in writing, of the reason for non-concurrence.

Spiny Dogfish Monitoring Committee and Annual FMP Review

The Spiny Dogfish Monitoring Committee would be a joint committee 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 would include any individual designated by an interested state from Maine to Florida. In addition, the Monitoring Committee would 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 would 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 in the FMP for spiny dogfish is not exceeded. This recommendation would be reviewed, and possibly modified, by the Joint Spiny Dogfish Committee, which would then recommend a quota and, possibly, other measures to the Councils to assure that the F specified in the FMP for the fishing year is not exceeded. The Councils would consider the recommendation of the Joint Spiny Dogfish Committee and then, jointly determine the quota and other measures for the following year to assure that the specified F is not exceeded. The Councils would make their recommendation to the Regional Administrator. The Regional Administrator would review the recommendation and, if necessary, modify it by using any measures that were not rejected by both Councils to assure that the target F is not exceeded. The recommended measures would be published as a proposed rule for public comment, followed by a final rule to implement the quotas and other management measures.

Permits for Commercial Vessels, Operators, and Dealers

Any owner of a vessel fishing for spiny dogfish within the EEZ for sale or transporting or delivering for sale, spiny dogfish taken within the EEZ must have

a valid open access Federal commercial vessel permit issued by NMFS for that purpose. Individuals with commercial vessel permits may only sell spiny dogfish, at the point of first sale, to a dealer who has a dealer permit issued pursuant to this FMP.

Any individual who operates a vessel for the purpose of fishing commercially for spiny dogfish (i.e., possesses a valid commercial vessel permit for spiny dogfish) would be required to obtain an operator's permit. Any vessel fishing commercially for spiny dogfish would be required to have at least one operator who holds an operator's permit on board. An operator is defined as the master or other individual on board a vessel who is in charge of that vessel. That operator would be held accountable for violations of the fishing regulations and could be subject to a permit sanction. During the permit sanction period, the individual operator could not work in any capacity aboard a federally permitted fishing vessel.

An operator's permit would be issued for a period of up to 3 years. The permit would not be transferable. Permit holders would be required to carry their operator's permit aboard the fishing vessel during fishing and off-loading operation and must have it available for inspection upon request by an authorized officer.

Any dealer of spiny dogfish would be required to have a permit. A dealer of spiny dogfish would be defined as a person or firm that receives spiny dogfish for a commercial purpose other than transport from a vessel possessing a Federal commercial spiny dogfish permit. Only persons with a Federal dealer permit may buy spiny dogfish from, or landed by, a vessel that has a commercial spiny dogfish permit issued pursuant to this FMP.

Reporting Requirements for Commercial Vessels, Dealers and Processors

To aid in the monitoring of this fishery, this rule would require owners or operators of vessels issued a Federal vessel permit to submit vessel trip reports on a monthly basis. The vessel trip reports would be the same as those required under other Federal FMPs in the Northeast Region.

This rule would require dealers with permits issued pursuant to this FMP 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. This rule would also require dealers to report purchases of spiny dogfish through the Interactive Voice Response (IVR) system utilized for quota-managed

species in the Northeast Region. Dealers would also be required to annually report to NMFS certain employment data.

Other Measures

The Regional Administrator would be authorized to place sea samplers aboard spiny dogfish vessels.

No foreign fishing vessel would be allowed to conduct a fishery for or to retain any spiny dogfish. Foreign nations catching spiny dogfish would be subject to prohibited species regulations at § 600.509.

The Regional Administrator, in consultation with the Executive Directors of the Councils, could exempt any person or vessel from the requirements of the FMP to conduct experimental fishing beneficial to the management of the spiny dogfish resource or fishery.

The Regional Administrator may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is 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.

Each vessel participating in an exempted experimental fishing activity would be subject to all provisions of the FMP, except those necessarily relating to the purpose and nature of the exemption. The Regional Administrator would specify the exemption in a letter issued to each vessel participating in the experimental activity. The vessel would be required to carry the letter on board while participating in the exempted experimental fishery. All exempted experimental activities would be required to be consistent with the harvest levels in the FMP.

Classification

At this time, NMFS has not determined that the FMP this rule would implement is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a FEIS for this FMP. A notice of availability for the FMP, containing the FEIS, was published at 64 FR 34759, June 29, 1999. The proposed management measures would have long-term positive impacts on affected human environments. A copy of the FEIS may

be obtained from the Councils (see ADDRESSES).

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

The Councils prepared an IRFA as part of the RIR, which describes the impact this proposed rule, if adopted, would have on small entities.

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), and then continuously decline due to the overfished condition of the stock. Eventually, the spawning stock would diminish, leading to recruitment failure and stock collapse. Due to the slow growth and low fecundity of spiny dogfish, it would take decades to rebuild the stock. The continuation of an unregulated fishery for spiny dogfish is contrary to the requirements of the Magnuson-Stevens Act, which requires remedial action through appropriate management measures for species designated as overfished. This FMP proposes 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 proposed action are commercial vessel owners harvesting spiny dogfish and dogfish processors. The IRFA estimates that this proposed 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 vessel spiny dogfish 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) would be required to apply for a Federal spiny dogfish vessel permit using the initial application form. The remainder would use the renewal form and would not likely incur an additional burden. It is estimated that owner/operators of all 77 vessels would 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 would be \$578 (\$7.50 per vessel X 77 vessels).

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

In addition, the operators of these 77 vessels would be required to apply for a Federal spiny dogfish operator permit using the initial application form. The remainder would use the renewal form and would 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 would 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 would 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 be poor or unavailable 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 would prohibit 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 proposed 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 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) (9,286,935 lb (4212.5 mt) for the second semi-annual period of year 1) will allow participants to reduce gradually 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 would 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.

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 would decline from this point as projected landings increase.

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 weighout 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 RIR also concluded that it is possible that the proposed 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. The proposed action,

which greatly reduces landings in years two through four, 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 proposed low TAL 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 the proposed 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 nominal 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, left unchecked, 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 (even at current high levels of F), and a rebuilding program after a stock collapse is projected to take decades, due to the life history of dogfish. The proposed action will rebuild the adult spawning stock biomass in a relatively short period of time 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 landings are assumed to reach a consistent 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 the effect that an incidental dogfish fishery would have on markets is not known. 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 the 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, this option could provide greater cost savings in the first 2 years of implementation of the management measures. However, the cost data needed to clarify this point 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 2003 would be reduced to such a level as to allow 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 Magnuson-Stevens Act specifies that rebuilding, in most cases, may not 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 an equitable distribution for 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. An equitable allocation of quotas would help to ensure the maximization of 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 is expected to be formidable. For these reasons, these alternatives were rejected.

NMFS seeks comments regarding the IRFA. 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 proposed rule contains eight new collection-of-information requirements subject to review and approval by the OMB under PRA. These collection-of-information requirements have been submitted to the OMB for approval. The public reporting burden for these collection-of-information requirements are indicated in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether the proposed collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to NMFS and OMB (see ADDRESSES).

New Collection-of-Information Requirements

1. Spiny Dogfish Vessel Permits (§ 648.4(a)(11)), (30 minutes/response);
2. Spiny Dogfish Operator Permits (§ 648.5(a)), (60 minutes/response);
3. Spiny Dogfish Dealer/Processor Permits (§ 648.6(a)), (5 minutes/response);
4. Spiny Dogfish Weekly Dealer Purchase Reports (§ 648.7(a)(1)(i)), (2 minutes/response);
5. Spiny Dogfish Weekly IVR System Reports (§ 648.7(a)(2)(i)), (4 minutes/response);
6. Annual Processed Products Report (§ 648.7(a)(3)(i)), (2 minutes/response);
7. Northeast Region Vessel Logbook (§ 648.7(b)(1)(i)), (5 minutes/response);
8. Vessel Identification (§ 648.8), (45 minutes/response).

Endangered Species Act

A formal Endangered Species Act section 7 consultation on the potential impacts of the proposed FMP was initiated May 24, 1999. The consultation will be completed prior to the publication of the final rule.

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: July 28, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

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

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

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 fishery (NE Multispecies 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 definition for "Council" is revised and the definitions for "Councils" and "Spiny Dogfish Monitoring Committee" are 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 means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) for the spiny dogfish fishery.

* * * * *

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, the states and two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

* * * * *

4. In § 648.4, paragraphs (a)(9) and (a)(10) are added and 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) * * *

(9) [Reserved].

(10) [Reserved].

(11) *Spiny dogfish vessels.* Any vessel of the United States that 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 spiny dogfish permit must also agree not to land summer flounder, scup, black sea bass or spiny dogfish, respectively, in any state after NMFS has published a notification 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 part 649 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 bluefish 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. All spiny dogfish dealers must have been issued under this section and have in their possession a valid dealer permit. As of the effective date of the final rule to implement Amendment 12 to the Northeast Multispecies and Monkfish Fishery Management Plan, persons on board vessels receiving small-mesh multispecies at sea for use as bait are not defined as dealers and are not required to possess a valid permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * * *

7. In § 648.7, paragraphs (a)(1)(i), (a)(3)(i), 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, bluefish, 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, bluefish, 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) * * *

(1) * * *

(i) *Owners of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish Atlantic mackerel, squid, butterfish, bluefish, 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, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterflyfish, or scup, or black sea bass, or bluefish, 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 unless the requirement is waived.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish 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, bluefish, 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, bluefish, 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 B (Atlantic mackerel, squid, and butterflyfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), H (scup), I (black sea bass), J (bluefish), 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 Council regarding such exemptions for

the Atlantic mackerel, squid, butterflyfish, summer flounder, scup, black sea bass, bluefish, and spiny dogfish fisheries.

* * * * *

10. In § 648.14, paragraphs (y) and (z) are added and reserved and paragraphs (a)(117), (a)(118), and (aa) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(117) Purchase or otherwise receive, except for transport, spiny dogfish from the owner or operator of a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(118) Purchase or otherwise receive for a commercial purpose spiny dogfish landed for sale 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.

* * * * *

(y) [Reserved].

(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 operators 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) 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 sale after the effective date of the notification 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 of 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.

11. Subpart K is added and reserved.

Subpart K—[Reserved]

12. 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 specifications.

§ 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 achieve a target fishing mortality rate (F) of 0.2 in 1999 through 2000, a target F of 0.03 in 2000 through 2003, and a target F of 0.08 thereafter: 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 other 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 set, from a range of zero to the maximum allowed, 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 and that the seasonal allocation of the quota will be distributed into the following two semi-annual periods: May 1 through October 30 and November 1 through April 30. In addition to the commercial quota, the Spiny Dogfish Monitoring Committee may also recommend any of the following measures:

(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 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 set,

from a range of zero to the maximum allowed, 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, and that the seasonal allocation of the quota will be distributed into the following two semi-annual periods: May 1 through October 30 and November 1 through April 30. In addition to the commercial quota, the Joint Spiny Dogfish Committee may also recommend any of the measures specified in paragraph (b) of this section. 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 specified in paragraph (b) 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 and economic impacts of the recommendations. The Regional Administrator shall review these recommendations. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to assure that the F specified in paragraph (a) of this section will not be exceeded. The Regional Administrator may modify the Councils' recommendation using any of the measures specified in paragraph (b) of this section that were not rejected by both Councils. After considering public comments, the Regional Administrator will publish a final rule in the **Federal Register** to implement a coastwide commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual quota specified 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 sale 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. The Regional Administrator will determine the date by which the semi-annual quota will be harvested and will close the EEZ to the harvest of spiny dogfish upon that date. The Regional Administrator will publish a notice in the **Federal Register** advising that, upon that date, no vessel may possess spiny dogfish in the EEZ during a closure, nor may vessels issued

a spiny dogfish permit under this part land spiny dogfish during the closure.

§ 648.231 Closures.

If the Regional Administrator determines that the specified spiny dogfish quota for a semi-annual quota period, as described in § 648.200(d)(1), will be reached, then he/she shall close the EEZ to fishing for spiny dogfish by federally permitted commercial vessels for the remainder of that semi-annual quota period, by publishing a notification in the **Federal Register**.

§ 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 specifications.

(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 and, if management measures are recommended, an analysis of impacts and 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. 99-19852 Filed 8-2-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 90720198-9198-01; I.D. 070799B]

RIN 0648-AM36

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages, Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to separate shorttraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Eastern Regulatory Area (ERA) of the Gulf of Alaska (GOA) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: Comments must be received at the following address by September 2, 1999.

ADDRESSES: Comments may be sent to Susan Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental

Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT:

Shane Capron, 907-586-7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained on board the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of non-target species by limiting the amount that can be retained on board a vessel. By not placing a species on "prohibited" status, thereby prohibiting all retention, MRBs also serve to minimize regulatory discard of non-target species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between slowing harvest rates and minimizing the potential for undesirable discard. Although directed fishing for a species or species group may be prohibited under 50 CFR 679.20(d)(1)(iii), fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

In October 1998, the Council requested NMFS to initiate an analysis for a regulatory amendment to reduce the MRB percentages for SR/RE. Reducing the MRB percentages is needed to slow the harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to "top off" retained catch with SR/RE. Based on the analysis presented to the Council at its meeting in April 1999, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group in the ERA of the GOA for the deep-water complex only. In addition, the Council recommended that the MRB percentages for SR/RE be

reduced to 7 percent relative to deep-water complex species in the ERA (primarily Pacific ocean perch (POP) and sablefish) and remain at 5 percent (in the aggregated rockfish category GOA-wide) relative to shallow-water complex species. The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further rationale for these MRB adjustments is discussed below.

Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish species category would increase the overall amount of rockfish that could be retained and increase incentives to vessel operators to "top off" their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, "other flatfish," squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by the relatively small amounts of total allowable catch (TAC), all of which are needed to support incidental catch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Incidental catch amounts of SR/RE, however, can exceed the species TAC and approach its overfishing level. In 1998, the SR/RE incidental catch in the ERA trawl and hook-and-line fisheries (181 mt and 554 mt, respectively) exceeded the acceptable biological catch (ABC) and caused overfishing concerns. This resulted in SR/RE being placed on prohibited species status on October 1, 1998. In this case, closure of any fishery, including the individual fishing quota fisheries for sablefish and halibut, that could have incidental catches of SR/RE was a possibility; SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

For these reasons, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish a SR/RE bycatch species group for the ERA of the GOA.