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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140331031-4031-01]

RIN 0648-BC77

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Amendment 3

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes regulations to implement measures in Amendment 3 to the Spiny Dogfish Fishery Management Plan, which was developed by the Mid-Atlantic and New England Fishery Management Councils. The proposed management measures include implementing a research set-aside program, updating essential fish habitat definitions, allowing rollover of specifications, and eliminating the seasonal allocation of the commercial quota. These administrative measures are intended to improve the implementation of the Spiny Dogfish Fishery Management Plan and provide benefits to the spiny dogfish fishery.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Copies of the amendment, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also

accessible via the Internet at: <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2014-0036, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0036](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0036), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Spiny Dogfish Amendment 3.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

## Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils). The Atlantic States Marine Fisheries Commission (Commission) also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan (FMP). The Federal Spiny Dogfish FMP was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass. Currently, the stock is not overfished or experiencing overfishing.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the management procedures and measures for the spiny dogfish fishery. The Councils have developed and submitted Amendment 3, which is intended to update the FMP and improve management of the spiny dogfish fishery. Specifically, the Councils have recommended: 1) Adding an option for allocation of a small percentage (up to 3 percent) of the commercial quota for use in the Research Set-Aside (RSA) Program; 2) updating the definitions of essential fish habitat (EFH) for all life stages of spiny dogfish; 3) maintaining existing annual management measures until replaced via rulemaking (i.e., specifications rollover); and 4) eliminating the seasonal allocation of the commercial quota in order to minimize conflicts with spiny dogfish fishing operations that occur in both state and Federal waters. These proposed management measures are described in more detail below.

### Research Set-Aside (RSA)

A number of FMPs include an RSA program, in which a percentage of the quota is set aside to fund research. In Amendment 3, the Councils are proposing to allow up to 3 percent of

the spiny dogfish commercial quota to be set aside as RSA quota. The revenues generated by those landings would be used for scientific research aimed at improving our understanding of the spiny dogfish stock and its related fisheries, consistent with the Councils' research priorities. For example, the spiny dogfish commercial quota for fishing year 2014 is currently specified at 41.784 million lb (18,953 mt). Based upon the funds requested through the RSA Federal Funding Opportunity announcement (refer to:

<http://www.nero.noaa.gov/mediacenter/2013/03/ma13rsaawards.html>), up to 1.254 million lb (569 mt) of spiny dogfish could be used for RSA (i.e., 3 percent of the 2014 commercial quota).

#### Essential Fish Habitat (EFH)

The Magnuson-Stevens Act requires that EFH be defined for all managed stocks, and that it should be periodically reviewed and updated. EFH designations are used by NMFS when consulting with other agencies on Federal activities, and up-to-date designations lead to more effective consultation and protection of EFH. Spiny dogfish EFH was most recently updated in 2007 (<http://www.nefsc.noaa.gov/nefsc/publications/tm/tm150/>). Amendment 3 includes updated text and maps, using the most recent fishery-independent data, to describe EFH for the following spiny dogfish size and sex categories: Recruits (juvenile males and females < 36 cm); sub-adult females (36-79 cm); sub-adult males (36-59 cm); adult females (>79 cm); and adult males (>59 cm). Detailed EFH maps and text descriptions are provided in the supporting documents (see ADDRESSES).

#### Rollover of Specifications

This measure would allow the specifications (annual catch limit, commercial quota, etc.) of the current fishing year to carry forward to the subsequent fishing year, in the event that rulemaking and implementation of revised specifications are delayed. If the implementation of

new final specifications is delayed beyond the start of the new fishing year (May 1), the previous year's specifications would apply to the new fishing year until replaced by the final rule. The Councils are recommending this measure to maintain consistency across FMPs.

#### Commercial Quota Allocation

The current regulations implementing the Spiny Dogfish FMP (§ 648.232) require that the commercial quota be allocated between two seasons: Season 1 (May through October) receives 57.9 percent of the quota; and Season 2 (November through April) receives 42.1 percent of the quota. These seasons were designed to match the regional distribution of the spiny dogfish population as it migrates up and down the Atlantic coast, and to ensure that each state's fisheries would be able to land spiny dogfish during the year.

In contrast to the Federal regulations, the Commission allocates the commercial quota to individual states/regions, rather than by season. These different management approaches have occasionally resulted in misaligned in-season fishery closures between Federal and state waters, and confusion within the industry regarding where they can fish. This rule proposes to remove the Federal FMP's seasonal quota allocation, and replace it with a single, annual coastwide commercial quota. The Federal spiny dogfish fishery would only be closed when 100 percent of the coastwide commercial quota is projected to be landed. The states, through the Commission's FMP, would be responsible for controlling their spiny dogfish allocations to ensure the participation of all states. This measure is expected to help alleviate potential misalignment issues with the Commission, while still constraining total spiny dogfish catch to the specified Federal limits.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

The Councils prepared an IRFA, 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 of the preamble and in the SUMMARY of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Councils (see ADDRESSES).

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

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

This rule will impact fishing vessels, including commercial fishing entities. In 2012, 2,666 vessels held spiny dogfish permits. However, not all of those vessels are active participants in the fishery; only 489 vessels landed spiny dogfish in 2012. If two or more vessels have identical owners, these vessels should be considered to be part of the same firm, because they may have the same owners. When permit ownership data is considered, in 2012, 1,976 fishing firms held at least one spiny dogfish permit. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity which they derive the most revenue. Using the \$5M cutoff for shellfish firms (NAICS 114112)

and the \$19M cutoff for finfish firms (NAICS 114111), there are 1,953 directly regulated small entities and 23 directly regulated large entities. There are 488 active fishing firms, of which 482 are small entities and 6 are large entities. On average, for small entities, spiny dogfish is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. While all 1,953 directly regulated small entities will be affected by the Amendment 3, many of these small entities do not currently participate in this fishery and would be likely to experience only negligible economic impacts, if any.

#### Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

According to the Council's analysis in the EA (see ADDRESSES), Amendment 3 is not expected to result in any direct negative or positive economic impacts. The management measures and alternatives included in this action are administrative in nature, and have no inherent direct economic costs or benefits. Possible indirect, minor positive economic impacts are anticipated from the RSA and EFH alternatives. Under the RSA alternatives, the preferred alternative (Alternative 1b) of allowing an RSA quota of up to 3 percent of the commercial quota, and Alternative 1c, which would allow up to 5 percent of the commercial quota for RSA, are expected to result in minor positive economic impacts relative to no action (i.e., no RSA; Alternative 1a). This conclusion was based on cases where research funded by RSA would result in improved management of the spiny dogfish fishery. Both the no action (i.e., no update to EFH; Alternative 2a) and preferred (i.e., updated EFH; Alternative 2b) EFH alternatives may result in indirect, minor positive economic impacts, as the designation of EFH can inform Federal activities and help minimize potentially negative habitat impacts. Under the commercial quota allocation alternatives, the no action alternative (i.e., maintain current seasonal allocation of the quota; Alternative 4a) was expected to result in minor, indirect negative economic impacts

in situations where misalignment in Federal (Council) vs. state (Commission) fishery closures could result in lost revenues. The preferred alternative (i.e., remove allocation of the quota; Alternative 4b) is anticipated to alleviate the potential negative economic impacts associated with the current management misalignment. Both the no action alternative (i.e., no rollover of specifications; Alternative 3a) and the preferred alternative (i.e., allow rollover of specifications; Alternative 3b) associated with the rollover of specifications from one year to the next in the event of delayed implementation of specifications are expected to have no economic impact (positive or negative).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 4, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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 § 648.232, revise paragraphs (a), (b), and (e); and add paragraphs (c)(3) and (f) to read as follows:

**§ 648.232 Spiny dogfish specifications.**

(a) Commercial quota and other specification measures. The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (i.e., annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (8) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1-April 30), for a period of 1-5 fishing years. If research quota is specified as described in paragraph (f) of this section, the effective commercial quota will be those commercial landings available after the deduction for the research quota. The measures that may be recommended include, but are not limited to:

- (1) Minimum or maximum fish sizes;
- (2) Seasons;
- (3) Mesh size restrictions;
- (4) Trip limits;
- (5) Research quota set from a range of 0 to 3 percent of the commercial quota;
- (6) [Reserved]
- (7) Other gear restrictions; and
- (8) Changes to AMs and ACT control rules.

(b) Joint Spiny Dogfish Committee recommendation. The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations, requests for research quota, and any public comments, the

Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (8) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1-April 30), for a period of 1-5 fishing years.

(c) \* \* \*

\* \* \* \* \*

(3) If the annual specifications are not published in the Federal Register prior to the start of the fishing year, the previous year's annual specifications will remain in effect. The previous year's specifications will be replaced by the current year's specifications as of the effective date of the final rule implementing the current year's specifications.

\* \* \* \* \*

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

(f) Research quota. See § 648.22(g).

3. In § 648.233, revise paragraph (a) to read as follows:

**§ 648.233 Spiny dogfish accountability measures (AMs).**

(a) Commercial EEZ closure. The Regional Administrator shall determine the date by which the annual coastwide quota described in § 648.232 will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of the fishing year by publishing notification in the Federal Register. Upon the closure date, and for the remainder of the fishing year, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny

dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

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4. In § 648.235, revise paragraph (a) introductory text and paragraph (b), and remove paragraph (c).

The revisions read as follows:

**§ 648.235 Spiny dogfish possession and landing restrictions.**

(a) Possession limit. Vessels issued a valid Federal spiny dogfish permit under § 648.4(a)(11) may:

\* \* \* \* \*

(b) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

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