

Response 4

The proposed finding of attainment for 1-hour ozone and CO relied upon monitoring data through year 2003. In response to this comment, we have reviewed the latest available data (*i.e.*, the data for year 2004) collected at the Washoe County monitors and input to AQS and have found no exceedances of either the 1-hour ozone or CO NAAQS. The highest 1-hour ozone concentration measured in 2004 in Washoe County was 0.09 ppm (recorded at both the Reno State Street and Sparks Fourth Street stations) and the highest CO concentrations were 5.9 ppm, one-hour average, and 4.0 ppm, eight-hour average, as recorded at the Sparks Fourth Street station and Reno Galletti station, respectively. In contrast, the 1-hour ozone NAAQS is 0.12 ppm and the CO NAAQS are 35 ppm, one-hour average, and 9 ppm, eight-hour average. Thus, the 2004 data add further support to our finding of attainment for Washoe County (with respect to the 1-hour ozone NAAQS) and Truckee Meadows (with respect to the CO NAAQS).

III. Final Action

No comments were submitted that change our assessment that the 1-hour ozone NAAQS has been attained in Washoe County and that the CO NAAQS has been attained in the Truckee Meadows portion of Washoe County. Therefore, we are taking final action, pursuant to sections 179(c), 181(b)(2) and 186(b)(2) of the Act, to determine that the Washoe County “marginal” nonattainment area has attained the NAAQS for 1-hour ozone by the applicable attainment date and has continued to attain the 1-hour ozone NAAQS since that time and, further, that the Truckee Meadows “moderate” nonattainment area has attained the NAAQS for CO by the applicable attainment date and has continued to attain the CO NAAQS since that time. These findings relieve the State of Nevada from the additional requirements under the Clean Air Act for the next higher nonattainment classifications for the 1-hour ozone and CO standards.

It should be noted that this action does not redesignate these areas from “nonattainment” to “attainment”. Under section 107(d)(3)(E), the Clean Air Act requires that, for an area to be redesignated from nonattainment to attainment, five criteria must be satisfied including the submittal by the State (and approval by EPA) of a maintenance plan as a SIP revision. Therefore, the designations for Washoe County (for 1-hour ozone) and Truckee

Meadows (for CO) in 40 CFR part 81 are unaffected by this action, and Washoe County will remain a “marginal” nonattainment area for 1-hour ozone and “moderate” for CO until such time as EPA finds that the State of Nevada has met the Clean Air Act requirements for redesignation to attainment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely finds that an area has attained a national ambient air quality standard based on an objective review of measured air quality data. This action will not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental, or private entity. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely finds that an area has attained a national ambient air quality standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885,

April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 20, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

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

[Docket No. 050302053-5112-02; I.D. 022805C]

RIN 0648-AS24

Fisheries of the Northeastern United States; Spiny Dogfish Fishery

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

ACTION: Final rule, 2005 specifications.

SUMMARY: NMFS announces final specifications for the 2005 fishing year, which is May 1, 2005, through April 30, 2006.

DATES: Effective June 2, 2005, through April 30, 2006.

ADDRESSES: Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee (Monitoring Committee); the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council (MAFMC), Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at <http://www.nero.gov>.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281-9259, fax (978)281-9135.

SUPPLEMENTARY INFORMATION:**Background**

A proposed rule for this action was published in the **Federal Register** on March 11, 2005 (70 FR 12168), with public comment accepted through March 28, 2005. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2005 Specifications

The commercial spiny dogfish quota for the 2005 fishing year is 4 million lb (1.81 million kg), to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for quota period 1 (May 1, 2005 – Oct. 31, 2005); and 1,684,000 lb (763,849 kg) for quota period 2 (Nov. 1, 2005 – April 30, 2006).

The possession limits are 600 lb (272 kg) for quota period 1, and 300 lb (136 kg) for quota period 2, to discourage a directed fishery.

Comments and Responses

There were 73 comments submitted on the proposed measures, by 71 individuals, a fishing company, and a non-governmental organization.

Comment 1: Two commenters supported the proposed rule and encouraged NMFS to continue rebuilding the spiny dogfish stock.

Response: NMFS is implementing measures that will continue the rebuilding of the spiny dogfish stock.

Comment 2: Two commenters wanted NMFS to implement a male-only and subadult female fishery for dogfish, contending that optimum yield can be achieved and bycatch reduced by such measures. The commenters claimed that, with a 1,500-lb (680-kg) possession limit, such a fishery would not compromise the rebuilding of the stock.

Response: The MAFMC recommended that a 1,500-lb (680-kg) male-only possession limit should be established to allow for a limited directed fishery. NMFS determined that a directed fishery is inappropriate in light of the overfished condition of the spiny dogfish stock, even with a prohibition on possession of female dogfish. The MAFMC's staff analysis of the MAFMC recommendation noted that, if a directed fishery for male dogfish developed, it could require the discard of female dogfish, and may increase the associated discard mortality of these animals. The MAFMC staff analysis expressed concern that this may have a negative impact on the rebuilding program as it could increase the mortality of mature females. The measure recommended by the commenters would allow the possession of up to 1,500 lb (680 kg) of males or subadult females. NMFS notes that a directed fishery for subadult females would be inconsistent with the rebuilding program, as it is necessary to allow those animals to reach maturity so that they can spawn and contribute to stock rebuilding.

NMFS also notes that the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan requires the states to establish possession limits of 600 lb (272 kg) in quota period 1, and 300 lb (136 kg) in quota period 2. As a result, it would not be possible for a vessel operator to land 1,500 lb (680 kg) of dogfish in any state.

Comment 3: One commenter suggested that all quotas should be cut by 50 percent this year and by 10 percent each succeeding year, but

provided no basis for these recommendations.

Response: The commercial quota established by this action is based on extensive analyses conducted by the MAFMC and reviewed by NMFS, and is based on the best available scientific information. There is no information to support the reductions suggested by the commenter.

Comment 4: Sixty-five commenters stated that there were too many dogfish in the ocean. Most of them requested that NMFS implement no management measures and, therefore, allow an unlimited directed fishery. Most of the commenters felt that NMFS should not be worrying about dogfish because they prey on other more valuable commercial fish species and, by virtue of their great numbers, make it difficult for commercial and recreational fishermen to catch the fish they are targeting. Some commenters stated that the science on dogfish is faulty and that dogfish are not overfished.

Response: Dogfish are overfished and, as such, the Magnuson-Stevens Fishery Conservation Management Act (MSFCMA) requires the development of a management program to rebuild the stock. The ≥overfished≥ determination for dogfish is restricted to adult females. Reproduction of dogfish, and ultimately the future fishery, is closely tied to the abundance of reproductive females. In the 1990's, the spiny dogfish population biomass was at a historic high. The rapid expansion of commercial harvest, however, quickly depleted the number of mature females in the stock. The Spiny Dogfish Fishery Management Plan (FMP) was implemented in 2000, and established a rebuilding program intended to protect mature female spiny dogfish so that stock rebuilding could be achieved as quickly as practicable. However, complementary measures were not implemented in state waters until May 2004, and this, as well as delays in the implementation of the FMP, has delayed stock rebuilding. Recent population projections by the NMFS Northeast Fisheries Science Center (NEFSC), which factor in U.S. commercial harvest and stock removals from all other sources (U.S. commercial discards, Canadian commercial fishery landings, U.S. recreational discards and landings) suggest a time span of 15 to 20 years before the stock will have fully recovered.

The most recent peer-reviewed evaluation of the status of the Northwest Atlantic spiny dogfish stock was conducted at the 37th Northeast Regional Stock Assessment Workshop (SAW) in 2003. The mature female component of the stock (spawning stock

biomass (SSB)) had declined from the historic high in 1990 of roughly 500 million lb (226,796 mt) to about 115 million lb (52,163 mt) in 2003 (29 percent of the recommended biomass target of 400 million lb (181,437 mt). The low level of SSB was expected to result in low recruitment for the next several years, and recruitment estimates from 1997 to 2003 were observed to represent the seven lowest values in the entire time series. The fishing mortality rate (F) in 2002 was estimated to be about 0.09. The 37th SAW recommended that total removals (landings, discards, Canadian catch) be constrained below levels consistent with $F=0.03$ ($F_{rebuild}$).

The commenters noted that they encounter dogfish in large numbers, and stated that the overall population remains relatively high. However, recent data support the trends found by the 37th SAW. Due to high inter-year variability in the NEFSC spring survey's catches of spiny dogfish, current assessment methods use smoothed estimates of biomass to characterize population trends. According to the latest (2004) spring survey values, the 3-year moving average of total stock biomass decreased from 916 million lb (415,533 mt) in 2001-2003, to 857 million lb (388,767 mt) in 2002-2004. Mature female biomass decreased from 144 million lb (65,466 mt) in 2001-2003, to 132 million lb (60,033 mt) in 2002-2004. Pup abundance, however, increased from 338 thousand lb (153 mt) in 2001-2003 to 1.440 million lb (653 mt) in 2002-2004. While this increase in pup abundance is encouraging, there is still a long way to go before the stock is rebuilt.

As for the concern about dogfish preying on commercially important species, NMFS notes that dogfish prey on a wide range of species, not just those that are commercially fished. Analyses of over 40,000 stomach samples over several decades reveals high percentages of forage species, especially herring and mackerel, and a variety of invertebrates. Commercially important species such as gadoids (cod, haddock, pollock) and flatfish do not exceed 10 percent of the total diet. Invertebrates, notably comb jellies and squid, make up about 50 percent of the diet of spiny dogfish in NMFS autumn samples. Several recent scientific papers have documented the low occurrence of commercially important finfish in dogfish diets.

Classification

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion

that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

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

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

All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed \$3.5 million annually. Information from the 2003 fishing year was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to unpublished NMFS permit file data, 3,025 vessels possessed Federal spiny dogfish permits in 2003, while 94 of these vessels contributed to overall landings.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

Minimizing Significant Economic Impacts on Small Entities

Impacts were assessed by the MAFMC, the New England Fisheries Management Council (NEFMC), and NMFS for two sets of measures that were evaluated as alternatives to the measures enacted by this rule. The first alternative would have set the commercial quota at the same level as this rule, but would have established different possession limits for vessels landing dogfish. It would not increase the overall landings of spiny dogfish and, therefore, would not minimize economic impacts on the small entities participating in the fishery.

The second alternative would have eliminated the commercial quota and possession limits, and was projected to result in landings of about 25 million lb (11.3 million kg), the level observed in the unregulated period of the fishery. This would constitute a 525-percent

increase in landings compared to the status quo quota of 4.0 million lb (1.81 million kg), and a 696-percent increase in landings compared to actual 2003 landings of 3.14 million lb (1.42 million kg). Although the short-term social and economic benefits of an unregulated fishery would be positive because of the revenue generated for the fishery participants, this unregulated harvest would be inconsistent with the requirements of the FMP and the MSFCMA, and would lead to depletion of the spiny dogfish population. Therefore, this alternative was rejected by the MAFMC, the NEFMC, and NMFS.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as $\geq$ small entity compliance guides. $\geq$ The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the spiny dogfish. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

Dated: April 28, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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