



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240514-0138]

RTID 0648-XD841

Fisheries of the Northeastern United States; Atlantic Spiny Dogfish Fishery; 2024

Specifications Emergency Measures

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule implements 2024 specifications for the Atlantic spiny dogfish fishery. This action is necessary to establish allowable harvest levels for the spiny dogfish fishery to prevent overfishing while minimizing adverse economic impacts on fishing communities, using the best scientific information available.

DATES: Effective May 21, 2024, through [*insert date 180 days after date of publication in the FEDERAL REGISTER*]. Comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2024-0063 by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2024-0063 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by another method, to any other address or individual, or received after the end of the comment period, may not be considered by

NMFS. All comments received are part of the public record and will generally be posted for public viewing on <https://www.regulation.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for these specifications that describes the action, other considered alternatives, and analyses of the impacts of all alternatives. Copies of the specifications document, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org/action-archive>.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281-9116, emily.keiley@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic and New England Fishery Management Councils (Councils) jointly manage the Atlantic Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council acting as the administrative lead. The Atlantic States Marine Fisheries Commission manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The implementing regulations for the Federal FMP are found at 50 CFR part 648 subpart L, and require the specification of regulatory harvest limits, including an acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings, and a coastwide commercial quota. These limits and other management measures may be set

for up to 5 fishing years at a time, with each fishing year running from May 1 through April 30.

Due to concerns related to national standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), we are issuing this temporary emergency rule to implement Atlantic spiny dogfish specifications for the 2024 fishing year.

Council Recommended Specifications

In October 2023, the Mid-Atlantic Council's Science and Statistical Committee (SSC) set spiny dogfish ABCs for 2024–2026 based on the 2023 management track assessment. The Spiny Dogfish Monitoring Committee recommended specifications in November 2023, followed by recommendations from the joint Spiny Dogfish Committee. The Mid-Atlantic Council adopted 2024–2026 specifications at its December 2023 meeting and the New England Council adopted identical 2024–2026 specifications at its January 2024 meeting.

The Mid-Atlantic Council's Risk Policy specifies an acceptable risk for overfishing. The risk policy works in conjunction with the SSC's application of the Mid-Atlantic Council's ABC control rule to account for scientific uncertainty when determining ABCs. For a stock slightly above its biomass target, such as spiny dogfish, the risk policy dictates achieving a 54-percent chance of not overfishing. Using the stock assessment and associated projection methods, the SSC applied the Council's risk policy to generate the 2024–2026 ABCs. The Spiny Dogfish Monitoring Committee recommended reductions for Canadian landings and U.S. recreational landings as well as model-based projected discard set-asides. The specifications recommended by the Monitoring Committee result in a commercial quota of 4,605 metric tons (mt; 10.1 million pounds (lb)) for 2024. The size of this quota was a significant concern for the spiny dogfish industry and, ultimately, both Councils. Representatives of the commercial

spiny dogfish industry indicated to the Councils that another reduction beyond that already taken in 2023, particularly a reduction that brings the quota substantially below 12 million lb (5,443 mt), could be devastating for what remains of the industry. Industry testimony has cited a level close to 12 million lb (5,443 mt) as a threshold for the minimum commercial quota necessary for the sole remaining commercial spiny dogfish processor to remain economically viable.

Research track (December 2022) and management track (September 2023) stock assessments were recently completed for spiny dogfish. Initial findings from the research track assessment indicated that recruitment and biomass were trending downward and that the stock may be experiencing overfishing. However, the more recent management track assessment found that, with updated data and indices, the stock is not currently overfished or experiencing overfishing and remains above its biomass target. Even so, in response to the results of these assessments and using the Mid-Atlantic Council's Risk Policy, the SSC recommended an 8-percent decrease to the 2024 ABC (resulting in a 15-percent decrease in the commercial quota), but as noted above, these decreases create a significant risk of the collapse of the fishery in light of the recent loss of the last southern processing facility.

Given concerns about the commercial quota level in 2024, the Councils considered alternative approaches to setting the specifications. Because the Councils cannot set an ABC above the SSC recommendation, they opted to use a discard estimate that was different from the Monitoring Committee's recommendation. The Councils considered several approaches and ultimately decided to use the 2022 discard estimate as a proxy for predicted discards in 2024. The 2022 estimate of discards represents the lowest level in the time series, and using 2022 discards as a proxy results in a lower value of predicted discards than the model-based estimate recommended by the Monitoring Committee. Specifically, the Monitoring Committee stated that the model-based discard

estimate is objective and more likely to reflect actual discards than a recent 3-year average or the most recent year (2022) estimate. The modeled discards integrate the historic discard information as well as the trends in biomass forecasted by the model. The Councils did not identify a compelling reason why the single-year 2022 estimate should be more predictive of 2024 discards than the model-based estimate recommended by the Monitoring Committee. While the lower discard estimate recommended by the Councils did result in a higher commercial quota, we agree with the Monitoring Committee, that it is not based on the best available science. As a result, we are unable to approve the Councils' recommended 2024 specifications with the lower discard estimate, as they violate national standard 2.

Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Act authorizes us to take "emergency" action to address situations that result from recent, unforeseen events or recently discovered circumstances. NMFS' policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, to preserve a significant economic opportunity that otherwise might be foregone, or to prevent significant community impacts.

The emergency here results from recent, unforeseen events and recently discovered circumstances of commercial dogfish quotas being too low to support the fishery in light of the recent closure of one of the last two processing facilities for the fishery. Industry and fishery stakeholders continue to express their concern with any further reduction in annual commercial quotas, indicating that the supply chain for spiny dogfish remains vulnerable to disruption. This summer, one of the last two remaining dogfish processors, and the last major southern processor, unexpectedly closed.

Testimony during the recent Council meetings suggests that overly restrictive commercial dogfish quotas will irreparably harm the fishery, and may cause the closure of the last remaining processing facility, which would likely end the commercial fishery and result in significant socioeconomic impacts to the fishing communities that rely on this resource. This testimony and industry feedback suggests that commercial quotas notably under 12 million lb (5,443 mt) will be insufficient to sustain what remains of the processing capacity in this fishery. If the sole remaining processor shuts down due to insufficient volume and inability to sustain the European market, it is unlikely that any other facilities would process high volumes of dogfish, resulting in the potential collapse of the commercial spiny dogfish fishery and significant social and economic impacts on fishing communities.

The emergency presents serious management problems for the fishery. The industry's reliance on a sole operational high-volume processing facility, and the concerns that quotas set below a reasonable threshold would lead to that processor ceasing its dogfish processing operations, lead to concerns under national standard 8 regarding the ability of the dogfish fishery, and the communities that depend upon it, to continue to participate in the fishery. Consistent with the provisions of national standard 1, that we prevent overfishing, and national standard 2, that we base management measures on the best scientific information available, we are also, consistent with

national standard 8, taking into account the importance of a viable spiny dogfish fishery in an effort to minimize adverse economic impacts on the communities that depend on this fishery.

In this context, the use of the emergency rulemaking provisions to allow for slightly higher quotas is intended to prevent the collapse of the dogfish fishery, a significant concern that outweighs the immediate benefits of advance notice and public comment under a normal rulemaking process.

2024 Spiny Dogfish Specifications

Given the significant concerns raised by the fishing industry and the risk to the associated fishing communities, we are taking emergency action to set 2024 spiny dogfish specifications at levels higher than the SSC recommendation for 2024. The Councils' approach to address national standard 8 and to achieve a higher commercial quota in 2024 by using the 2022 discard estimate as the basis for 2024 predicted discards was not based on the best available science, which as noted above, violates national standard 2. While the Councils are constrained in their capacity to address this issue given that their recommendation cannot exceed the SSC's recommended ABC, that restriction applies only to the Councils and NMFS is able to set an ABC higher than the SSC recommendation, so long as the probability of overfishing is 50 percent or less, consistent with national standard 1. Here, setting the ABC equal to the OFL of 7,818 mt (17.24 million lb) would result in no more than a 50-percent chance of overfishing. Using the Monitoring Committee's recommended model-based values for discards, and accounting for expected recreational landings, the resulting 2024 commercial quota is 5,140 mt (11.3 million lb) (table 1). The higher quota level is expected to have social and economic benefits, while still meeting our national standard 1 mandate to prevent overfishing and use the best scientific information available.

Table 1 -- Final Atlantic spiny dogfish specifications for FY2024

	2024
--	-------------

Final 2024 Atlantic Spiny Dogfish Specifications	lb	mt
OFL	17,235,719	7,818
ABC	17,235,719	7,818
Canadian Landings	79,366	36
Domestic ABC	17,156,353	7,782
ACL	17,156,353	7,782
Management Uncertainty Buffer	0	0
Amount of buffer	0	0
ACT	17,156,353	7,782
U.S. Discards	5,577,698	2,530
TAL	11,578,664	5,252
U.S. Recreational Landings	246,917	112
Commercial Quota	11,331,747	5,140

This action makes no changes to the 7,500-lb (3,402-kg) trip limit.

We will consider the Councils' recommended specifications for 2025 and 2026 in subsequent rulemakings. This emergency action is intended to provide a 1-year bridge, with a slightly higher risk of overfishing on a healthy stock above its biomass target, to mitigate the potential long-term adverse economic and social impact should the fishery lose access to its sole remaining commercial processor.

Renewal of Emergency Measures

The Magnuson-Stevens Act limits NMFS' authority to implement interim measures for an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the initial emergency management measures in this temporary rule (see **ADDRESSES**). After considering public comments on this rule, NMFS may extend the interim measures for one additional period of not more than 186 days to maintain these measures for the remainder of the 2024 fishing year.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The interim

measures in this rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds it unnecessary and contrary to the public interest to provide prior notice and an opportunity for public comment. Similarly, the need to implement these measures in a timely manner constitutes good cause to make the rule effective immediately upon filing for public inspection with the Office of the Federal Register. The need to ensure that these emergency specifications are in place as early as possible into the 2024 spiny dogfish fishing year constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this action. The 2024 fishing year began on May 1, 2024. The higher quota that carried over from 2023 until replaced by this rule carries an increased risk of overfishing, and is not consistent with the best available scientific information to prevent overfishing with at least a 50-percent probability. A delay in the date of effectiveness would be contrary to the public interest as it could create confusion in the spiny dogfish industry around current quotas, and with state agencies as they prepare their annual management measures. Furthermore, regulated parties do not require any additional time to come into compliance with this rule, and thus, a 30-day delay before the emergency rule becomes effective does not provide any benefit. Unlike actions that require an adjustment period, spiny dogfish fishing vessels will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this emergency rule simply means adhering to the new catch limits set for the 2024 fishing year. For these reasons, there is good cause not to delay this emergency rule's effectiveness, consistent with 5 U.S.C. 553(d)(3), and to implement this action immediately. This rule is being issued at the earliest possible date, as NMFS received the Councils' Environmental Assessment for this action on May 7, 2024.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from OMB review.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This emergency rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: May 15, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2024-11024 Filed: 5/21/2024 8:45 am; Publication Date: 5/22/2024]