

(Pub. L. 102-440, 16 U.S.C. 4901-4916.).

Dated: May 12, 2005.

**Paul Hoffman,**

*Acting Assistant Secretary—Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 050504121-5121-01; I.D. 050205B]

RIN 0648-AT40

#### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Spiny Dogfish Management Program and Trawl Individual Quota Program and Establishment of a Control Date

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

**ACTION:** Advance notice of proposed rulemaking; notice of control date for the Pacific Coast groundfish fishery; request for comments.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) is considering implementing management measures for the spiny dogfish (*Squalus acanthias*) fishery off Washington, Oregon and California. This document announces a control date of April 8, 2005, for the spiny dogfish fishery. The control date for the spiny dogfish fishery is intended to discourage increased fishing effort in the limited entry and open access groundfish fisheries targeting spiny dogfish based on economic speculation while the Pacific Council develops and considers management measures for the spiny dogfish fishery. In addition, this document provides supplemental information on a control date for a limited entry groundfish trawl individual quota (IQ) program announced in the **Federal Register** on January 9, 2004, by clarifying that the control date does not preclude processors from being eligible to own quota as part of the trawl IQ program.

**DATES:** Comments may be submitted in writing by June 23, 2005.

**ADDRESSES:** You may submit comments, identified by I.D. 050205B by any of the following methods:

- E-mail: [dogfish.nwr@noaa.gov](mailto:dogfish.nwr@noaa.gov). Include 050205B in the subject line of the message.

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

- Fax: 206-526-6736, Attn: Jamie Goen

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Jamie Goen

**FOR FURTHER INFORMATION CONTACT:** The Pacific Fishery Management Council at 866-806-7204; or Steve Freese at 206-526-6140.

**SUPPLEMENTARY INFORMATION:** The Pacific Council established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) (Magnuson-Stevens Act) is considering management measures for the spiny dogfish (*Squalus acanthias*) fishery off Washington, Oregon and California. In addition, NMFS previously announced a control date for a limited entry groundfish trawl IQ program off Washington, Oregon and California that is clarified later in this notice. The Pacific Coast groundfish fishery is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP) approved on January 4, 1982 (47 FR 43964, October 5, 1982), as amended 18 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660, subpart G.

#### Control Date for the Spiny Dogfish Fishery

Recent interest in the spiny dogfish fishery and concern over the status of the stock has led the Pacific Council to consider management measures for the spiny dogfish fishery off Washington, Oregon and California. On May 5, 2005 (70 FR 23804), NMFS published a temporary emergency rule to set bycatch limits in the directed open access fishery for canary and yelloweye rockfish in order to protect those species from impacts from new vessels interested in participating in the open access fishery for dogfish (Historically, a limited number of vessels have targeted dogfish off the West Coast even though harvest of the species is currently not limited. [Note: Spiny dogfish are included in the "Other Fish" category in Pacific Coast groundfish management. Thus, the harvest of spiny dogfish is included in the optimum yield (OY) for "Other Fish," which is not limited.]

In the past few years, large areas along the coast have been closed to the non-trawl groundfish fishery to protect overfished rockfish species. Some vessels explored accessing these closed areas through an experimental fishing permit (EFP) sponsored by the Washington Department of Fish and Wildlife in an effort to test whether vessels can target spiny dogfish in the closed area while keeping catch of overfished rockfish species limited. EFP results proved promising in terms of participating vessels maintaining low bycatch rates while targeting dogfish. However, before the Pacific Council and NMFS might consider moving forward with management measures to create a targeted spiny dogfish fishery additional information is necessary, including an assessment of the status of the stock.

A formal stock assessment has not been conducted on the West Coast stock of spiny dogfish. A formal stock assessment is planned for the 2007 stock assessment cycle. In the meantime, little is known about the status of spiny dogfish on the West Coast, except that like other shark species, they are slow growing, late to mature, and have a low fecundity, making them susceptible to becoming overfished.

Thus, in an effort to discourage increased fishing effort on spiny dogfish in the limited entry and open access groundfish fisheries based on speculative new entrants while the Pacific Council considers management measures, the Pacific Council recommended and NMFS is announcing a control date of April 8, 2005, in advance of a rulemaking. Management measures may include setting an acceptable biological catch (ABC) and OY specific to spiny dogfish. While a control date is not necessary for setting an ABC/OY, it may be used if management measures include limiting future participation in the spiny dogfish fishery. If the Pacific Council recommends and NMFS adopts management measures for the spiny dogfish fishery, the measures would be implemented through a proposed and final rulemaking, and possibly an FMP amendment.

The control date announces to the public that the Pacific Council may decide not to count activities occurring after the control date toward determining a person's qualification for participation in the spiny dogfish fishery. Spiny dogfish landed after April 8, 2005, potentially may not be included in the catch history used to qualify for participation in the spiny dogfish fishery.

Implementation of any management measures for the fishery will require

amendment of the regulations implementing the FMP and may also require amendment of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and appropriate rulemaking procedures. Interested parties are urged to contact the Pacific Council office to stay informed of the development of any planned regulations. Fishers are not guaranteed future participation in the spiny dogfish fishery, regardless of their date of entry or level of participation in the fishery.

This notification hereby establishes April 8, 2005, for potential use in determining historical or traditional participation in the spiny dogfish fishery. This action does not commit the Pacific Council to developing any particular management regime or to use any specific criteria for determining entry to the fishery. The Pacific Council may choose a different control date or a management program that does not make use of such a date. The Pacific Council may also choose to take no further action to control entry or access to the fishery. Any action by the Pacific Council will be taken pursuant to the

requirement for FMP development established under the Magnuson-Stevens Act.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

#### **Trawl IQ Program Control Date Clarification**

As announced in the **Federal Register** on January 9, 2004 in an advanced notice of proposed rulemaking (69 FR 1563), the Pacific Council is considering implementing an IQ program for the Pacific Coast groundfish limited entry trawl fishery off Washington, Oregon and California. In advance of a rulemaking on the trawl IQ program, that notice announced a control date of November 6, 2003, for the trawl IQ program as follows: "the control date for the trawl IQ program is intended to discourage increased fishing effort in the limited entry trawl fishery based on economic speculation while the Pacific Council develops and considers a trawl IQ program. This control date will apply to any person potentially eligible for IQ shares. Persons potentially eligible for IQ shares may include vessel owners, permit owners, vessel operators, and crew." To clarify, the control date for

the trawl IQ program does not preclude processors from being eligible to own quota in the trawl IQ program should the Pacific Council approve and NMFS implement a trawl IQ program.

In addition, as mentioned above under the control date for spiny dogfish, the control date previously announced for the trawl IQ program does not commit the Pacific Council to developing any particular management regime or to use any specific criteria for determining entry into the trawl IQ program. The Pacific Council may choose a different control date or a management program that does not make use of such a date. The Pacific Council may also choose to take no further action. Any action by the Pacific Council will be taken pursuant to the requirement for FMP development established under the Magnuson-Stevens Act.

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

Dated: May 18, 2005.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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