

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 040910261-4261-01; I.D. 072704A]

RIN 0648-ASO8

**Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would adjust the regional and trimester quotas for Large Coastal Sharks (LCS) and Small Coastal Sharks (SCS) based on updated landings information. This proposed rule includes a framework mechanism for the annual adjustment of quotas to account for future overharvests and season closures, for transferring under- and overharvests during the transition from semi-annual to trimester seasons, and for notifying participants of season openings and closures. In addition, this rule proposes the opening and closing dates for the LCS fishery based on the proposed changes to the regional and trimester quotas. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data, and accurately reflect historic and current fishing effort.

**DATES:** Written comments will be accepted until 5 p.m. on October 18, 2004.

NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding the proposed shark regulations. The hearing dates are:

1. Tuesday, September 28, 2004, 7-9 p.m., Manteo, NC.
2. Wednesday, September 29, 2004, 4-6 p.m., Cocoa Beach, FL.
3. Thursday, September 30, 2004, 7-9 p.m., Madeira Beach, FL.

**ADDRESSES:** The hearing locations are:

1. Manteo - North Carolina Aquarium, Roanoke Island, Airport Road, Manteo, NC 27954.
2. Cocoa Beach - Cocoa Beach Public Library, 550 North Brevard Avenue, Cocoa Beach, FL 32931.
3. Madeira Beach - City of Madeira Beach, 300 Municipal Dr., Madeira Beach, FL 33708.

Written comments on the proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) may be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division:

- E-mail: 072704A@noaa.gov.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for LCS and SCS Quota Adjustments."
- Fax: 301-713-1917.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line the following identifier: I.D. 072704A.

Copies of the Draft EA/RIR/IRFA or Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations, may be obtained by using the above mailing address, and are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:**

Karyl Brewster-Geisz, Chris Rilling, or Mike Clark by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the HMS FMP are implemented by regulations at 50 CFR part 635.

**Background**

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw), and the annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split among the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The quota for SCS was split among the three regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

Recent updates to the regional landings data and new data collected

since the December 2003 (68 FR 74746) final rule indicate that the regional quotas need to be adjusted. This action considers alternatives for adjusting the regional quotas.

In addition, beginning in January 2005, each regional quota will be divided among three trimester seasons rather than two semi-annual seasons. The first trimester season will operate between January 1 and April 30, the second trimester season will operate between May 1 and August 31, and the third trimester season will operate between September 1 and December 31. This action and the associated EA consider alternatives for dividing each region's quota among the three seasons, as well as accounting for over- or underharvests in the transition from semi-annual to trimester seasons.

**Regional Quota Distribution**

The regional quotas, along with trimester seasons, were implemented in Amendment 1 to the HMS FMP to ensure that historical catches were maintained, account for regional differences in fishing effort, and provide fishery managers with the flexibility to reduce mortality of juvenile and reproductive female sharks. For example, the quotas for the second trimester could be reduced and the fishing season shortened to minimize impacts during part of the primary shark pupping season.

The current regional quotas were based upon average historical landings (1999-2001) from the General Canvass and Quota Monitoring System (QMS) databases. Average landings were calculated in order to minimize the uncertainty associated with inter-annual fluctuations in regional landings as well as differences in reported landings between the two databases.

As of July 30, 2004, the overall semi-annual quota for LCS, but not SCS, was exceeded. Reported landings of LCS were at 107 percent of the LCS semi-annual quota, and SCS landings were at 31 percent of the SCS semi-annual quota for the three regions combined. The Gulf of Mexico experienced an overharvest of 21 and 22 percent of its LCS and SCS regional quotas, respectively, during the first semi-annual season of 2004, and the South Atlantic experienced an overharvest of 5 percent of its LCS quota.

For this proposed rule, NMFS examined commercial LCS and SCS landings data from 2002-2004 to determine the cause and nature of the increased harvests in the Gulf of Mexico. Preliminary information indicates that there was an increase in fishing effort in the Gulf of Mexico in

2002 and 2003 coupled with a reduction in effort in the North Atlantic region. Based on updated landings data, NMFS considered alternatives that would adjust the percentages of the overall LCS and SCS quotas among the regions to more accurately reflect current fishing effort.

The preferred alternative, A3, would establish new regional quotas based on updated landings information and include a framework for annual adjustment of regional quotas, as necessary. NMFS proposes to adjust the regional quota split for LCS in the Gulf of Mexico, South Atlantic, and North Atlantic to 49, 38, and 13 percent of the overall LCS landings quota for each of the regions, respectively. Comparing these revised quotas to those published in Amendment 1, this represents an increase in the regional LCS quota for the Gulf of Mexico (+7 percent) and North Atlantic (+9 percent), and a decrease in the regional LCS quota for the South Atlantic (-16 percent).

The regional SCS quotas for the Gulf of Mexico, South Atlantic, and North Atlantic would be adjusted to 10, 87, and 3 percent of the overall SCS landings quota for each of the three regions, respectively. These quotas represent an increase in the regional quota for the Gulf of Mexico (+6 percent) and South Atlantic (+4 percent), and a decrease in the SCS quota for the North Atlantic (-10 percent).

In proposing new regional quotas, NMFS examined updated landings from the General Canvass, QMS, Northeast Commercial Fisheries Database System (CFDBS), and the Coastal Fisheries Logbook databases. The updated landings include two additional years of data (2002 and 2003) that were not available during preparation of Amendment 1 to the HMS FMP. The four databases were used to collect all relevant data regarding shark landings. The General Canvass data are collected directly from all seafood dealers in the Southeast and Gulf of Mexico, the QMS data are collected from Federally-permitted shark dealers in the Southeast and Gulf of Mexico, the CFDBS data are collected from seafood dealers in the Northeast, and the Coastal Fisheries logbook data are submitted by commercial fishermen with any of the following permits: Gulf of Mexico Reef Fish, South Atlantic Snapper-Grouper, King and Spanish Mackerel, or Shark. In addition, NMFS re-reviewed data from 1999-2001 and made some corrections in how the data were compiled.

Overall economic impacts of adjusting the regional quotas are expected to be minimal. Economic data from LCS

revenues generated in 2003 indicate that the proposed adjustments to the regional quotas would result in an increase in gross revenues to the Gulf of Mexico (+1 percent; \$18,036) and North Atlantic (+6 percent; \$19,612) regions, and a decrease in gross revenues to the South Atlantic (-6 percent; \$130,169) region. Economic data for the SCS fishery indicate that gross revenues for the Gulf of Mexico would decrease (-57 percent; \$14,885) while the gross revenues would increase for the South Atlantic (+54 percent \$27,443) and the North Atlantic (+3 percent; revenues unknown because of lack of landings in 2003). The percentage change in gross revenues for SCS is larger than for LCS in some of the regions, however, the total dollar value for the SCS fishery is minimal compared to the total gross revenues generated by the LCS fishery (approximately \$93,734 for SCS vs. approximately \$4,402,136 in 2002 for LCS).

No ecological impacts are expected as a result of adjusting the regional quotas because the overall LCS and SCS quotas are not being changed, only the proportion of the quota being assigned to particular regions. For example, even though the quota for LCS in the Gulf of Mexico is being increased by approximately 7 percent, the LCS quota for the South Atlantic is proposed to be decreased by 16 percent, based upon updated landings data. As a result, there may be increased effort in the Gulf of Mexico, but a corresponding decline in effort in the South Atlantic.

The overall quota for LCS was reduced in Amendment 1 by approximately 35 percent from the 2003 quota of 1,714 mt dw, and 14 percent from 1997-2002 quotas of 1,285 mt dw. Since the overall quota will remain the same in this action as the one established in Amendment 1 (1,017 mt dw), the regional quotas are still well below the historic average for any of the regions. The reduction in overall quotas, as well as regional quotas, resulted in a decline in overall and regional fishing effort for the shark bottom longline fishery beginning in 2004, and will likely continue in 2005. Thus, even though NMFS proposes to increase the regional quota for the Gulf of Mexico and North Atlantic when compared to Amendment 1, these quotas are still much lower than in years 1997-2003. Furthermore, these quotas are based upon effort from previous years 1999-2003, and are believed to be a more accurate reflection of current and historic fishing effort in all regions. NMFS does not anticipate that changes to regional quotas will result in activation of latent fishing effort,

because even though the percentage given to a particular region may increase, the overall LCS and SCS quotas are not being changed.

In addition to revising the regional quotas, NMFS is also proposing a framework mechanism for the annual adjustment of quotas among regions to minimize unharvested quotas using the following guidelines: if a region has an overharvest of 10 percent or greater of its regional quota, and another region or regions has an underharvest of more than 10 percent of their respective quotas, then NMFS may transfer up to 10 percent of the quota from the region or regions with the underharvest(s) to the region with the overharvest. Any overharvest above that 10 percent would be counted against that region's quota for the following year. For example, if a region had an overharvest of 15 percent, 10 percent may be transferred from another region or regions, provided they had an underharvest greater than 10 percent each, and 5 percent would be counted against the overharvesting region's quota for the following year. If the underharvest is less than 10 percent of the quota for any other region or regions, NMFS would not transfer any quota, even if another region or regions had an overharvest in excess of 10 percent. NMFS would transfer no more than 10 percent of a region's quota in any given year. If the overharvest is less than 10 percent, NMFS would not transfer any quota, but rather, would subtract any overharvest from that region's quota for the same season of the following year. Other factors NMFS would consider before making a transfer include the likelihood of protected species interactions and bycatch rates within a region, historic landings for the region, total landings reported for all regions at the end of their respective seasons, the number of storms during the open season, the size of a region's quotas, the amount of available quota remaining, the projected ability of the vessels fishing in the region from which the quota is proposed to be removed to harvest the remaining quota, and the projected ability of vessels fishing in the region receiving the quota to harvest the additional quota. NMFS would file with the Office of the **Federal Register** for publication, consistent with the Administrative Procedure Act, any annual quota adjustments. These quota adjustments would not take place until the first trimester season of 2006. Any quota transferred to a region would be divided among the three trimester seasons based upon historical landings for each season, as described below under trimester quota alternatives.

NMFS considered several other alternatives for regional quota distribution and adjustment, including: (A1) maintaining the current regional quota distribution (status quo); (A2) establishing new quotas based on updated landings information without an annual framework adjustment mechanism; (A4) establishing a single quota for LCS and SCS; (A5) maintaining regional quotas for LCS but a single quota for SCS; and (A6) combining the quotas for the Gulf of Mexico and South Atlantic regions. NMFS selected alternative A3 as its preferred alternative because it would revise quotas using updated landings information and provide managers with the ability to adjust future quotas based on a number of factors, including, but not limited to: the current fishing year's landings, the amount of available quota remaining, the size of a region's quota, and the ability of vessels in all regions to harvest their remaining quota. Alternative A3 would also provide NMFS with the ability to update regional quotas to reflect changes in fishing effort and landings on an annual basis.

The other options considered may have negative economic impacts on participants if there is not flexibility to address over- or underharvests, if any, of regional quotas. One of the alternatives would establish a single quota for LCS and SCS and eliminate the existing regional quotas. While a single quota system would simplify management and monitoring of the fishery, regional quotas provide a better means of ensuring that historical catches are maintained, accounting for regional differences in fishing effort, and providing flexibility to reduce mortality on juveniles and reproductive female sharks.

### Trimester Quota Alternatives

NMFS also considered alternatives for dividing regional quotas among the trimester seasons, which are scheduled to take effect in January 2005. Amendment 1 to the HMS FMP implemented trimester seasons to provide flexibility to adjust the shark seasons to account for differences in the timing of shark pupping among regions, and to improve the market by allowing for the fishing seasons to be spread throughout the year. In the December 2003 final rule (69 FR 74746), implementing Amendment 1 to the HMS FMP, NMFS anticipated splitting the quotas equally among trimester seasons. After further analysis, NMFS had determined that this could lead to unharvested quotas (e.g., LCS quota for the first 2004 semi-annual season in the

North Atlantic) and corresponding overharvested quotas in other seasons. Thus, NMFS considered three alternatives for dividing trimester season quotas, including: (B1) equal quotas for each trimester season regardless of historical landings (i.e., 33 percent of quota/trimester season); (B2) dividing quotas in proportion to the historical landings during each trimester season; and (B3) dividing quotas in proportion to the historical landings for each trimester season and reviewing landings annually to make adjustments as necessary.

In order to adapt to the change from semi-annual to trimester seasons beginning in 2005, NMFS is proposing that quotas be divided among the three seasons based on updated historical landings (1999–2003) within each region, and that trimester season quotas be reviewed and updated as necessary (alternative B3). NMFS would make adjustments to trimester season quotas based on a number of factors including, but not limited to: the historic landings for each trimester season in a particular region, total landings reported for all seasons at the end of their respective seasons, the number of storms during each open season, the size of each seasonal quota, the amount of available quota remaining, and the projected ability of vessels fishing in the season receiving additional quota to harvest the additional quota.

Landings data across all regions indicate that there are temporal variations in catches with highest catches currently occurring in January and July. Fewer sharks have been caught during the third trimester season because the fishery has historically been closed during that period. NMFS anticipates that the change from semi-annual to trimester seasons in 2005 will result in additional landings during the third trimester over time and that it may take time for effort and landings to stabilize. Maintaining an even distribution of quotas across trimester seasons (alternative B1) could result in consistent over- and underharvests as fishing effort has not historically been evenly distributed throughout the year due to shark migration patterns and geographic location of fishermen. Alternative B2 would divide quotas in proportion to historic landings during each trimester season, but would not provide a mechanism for making necessary adjustments as would preferred alternative B3.

### Transition from Semi-Annual to Trimester Seasons

NMFS also considered alternatives to account for any over- or underharvests

during the transition from two semi-annual seasons in 2004 to three trimester seasons in 2005. The first semi-annual season (January-June) partially overlaps with the first two trimesters (January-April and May-August) and the second semi-annual season (July-December) partially overlaps with the second and third trimester seasons (May-August and September-December), respectively. The alternatives considered would only apply to the transition year: 2005. Any over- or underharvest in subsequent years would be applied to the same trimester season of the following year, in the region in which it occurred, per the current regulations at 50 CFR 635.27(b)(1)(vi).

Alternatives considered for the transition include: (C1) dividing any over- or underharvests from the 2004 semi-annual seasons equally among the 2005 trimester seasons; (C2) carrying over any over- or underharvest from the first semi-annual season to the first trimester season, and any over- or underharvest from the second semi-annual season to the second trimester season; (C3) transferring over- or underharvests from the first semi-annual season to the first trimester season and dividing any over- or underharvest from the second semi-annual season equally between the second and third trimester seasons; and (C4) dividing over- or underharvests from the first semi-annual season equally between the first and second trimester season and dividing any over- or underharvest from the second semi-annual season equally between the second and third trimester seasons.

NMFS prefers alternative C3 because it would account for over- and underharvests in a manner that is most consistent with the historical landings in semi-annual seasons. For example, the opening of the first semi-annual season corresponds to the first trimester season, thus, this alternative would keep accounting of over- and underharvests consistent between the two years' seasons. This alternative also accounts for the overlap between the second semi-annual season and the second and third trimester seasons.

NMFS believes the preferred alternative would have no adverse impact on targeted species and minimal ecological impact on protected species because the number of interactions during the third trimester season has historically been low. Economically, it would provide the greatest benefit to those fishermen who will not have an opportunity to fish for sharks during the mid-Atlantic closure from January 1 through July 31, 2005. Any under- or

overharvests from the 2004 second semi-annual would be divided equally between the second and third trimester seasons, and fishermen in the South Atlantic region would thus have an opportunity to harvest a potentially larger quota during the third trimester season compared to the other alternatives.

Alternative C1 is not preferred because it does not account for the overlap between seasons, and does not account for differences in effort and landings among the three seasons. Alternative C2 does not account for the third trimester season, and would keep quotas for the third trimester season low, resulting in reduced revenues and temporal shortages of shark products, particularly for fishermen in the South Atlantic region who are already impacted by the mid-Atlantic closure area. Alternative C4 may reduce the quota for the second trimester season unnecessarily because overharvests from the first and second semi-annual seasons would both be subtracted from the second trimester season. This could result in additional negative economic impacts on the South Atlantic region which is already impacted by the mid-Atlantic closure.

#### **Notification of the Length of Fishing Seasons and Annual Adjustments**

Currently, pursuant to 50 CFR 635.27(b)(1)(iii) and (vi), NMFS files a notification of a shark fishing season's length and annual adjustments at least 30 days prior to the start of the season. This requirement was originally intended to address the need to provide shark fishermen with ample advance notice to prepare for the upcoming season. Given Amendment 1 to the HMS FMP and recent and proposed changes to shark management, NMFS proposes to remove the 30-day notification provisions and, as necessary and appropriate, issue proposed and final rules for season lengths and quotas to facilitate more opportunity for public comment. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication the length of each season and any annual adjustments.

#### **Proposed Available Quotas**

Per Amendment 1 to the HMS FMP, the 2005 annual landings quotas for LCS and SCS are established at 1,017 mt dw (2,242,078 lbs dw) for LCS and 454 mt dw (1,000,888.4 lbs dw) for SCS. The 2005 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. This

rule does not change any of these quotas.

An emergency rule that published on December 27, 2002 (67 FR 78990; extended May 29, 2003, 68 FR 31983), implemented a new management measure from the 1999 HMS FMP that required dead discards from 2003 be subtracted from the commercial shark quotas in 2005. This emergency rule expired on December 27, 2003. In November 2003, NMFS released Amendment 1 to the HMS FMP; the final rule implementing this Amendment was published on December 24, 2003 (68 FR 74746). Amendment 1 to the HMS FMP also dealt with the issue of dead discards and devised a process for subtracting them when calculating maximum sustainable yield (MSY), in conjunction with establishing a timeframe for rebuilding stocks of LCS by 2030, while still allowing fishing by enacting other conservation measures including reducing quotas, time/area closures, and gear restrictions. Dead discards are already accounted for under the new process for determining MSY, thus if NMFS were to count the 2003 dead discards against the 2005 quota as stated in the December 27, 2002 rule (69 FR 78990), NMFS would be improperly recording dead discards against the quota twice, once prior to formulating this year's quota, and once after the quota had been formulated. Quotas were already reduced under Amendment 1 and further reductions could cause negative economic impacts with negligible effects on the rebuilding plan. Therefore, NMFS does not believe it is appropriate to count the 2003 dead discards against the 2005 commercial fishing quotas as stated in the 2002 emergency rule.

The first 2004 semiannual fishing season quota for LCS was set at 443.1 mt dw (December 24, 2003, 68 FR 74746 and June 9, 2004, 69 FR 33321). This equated to 244.7, 190.3, and 18.12 mt dw for the South Atlantic, Gulf of Mexico, and North Atlantic regions, respectively. As of July 2004, approximately 486.9 mt dw LCS had been reported landed from all regions.

Consistent with this proposed rule, the annual LCS quota (1,017 mt dw) would be split among the regions as follows: 49 percent to the Gulf of Mexico, 38 percent to the South Atlantic, and 13 percent to the North Atlantic. Any over- or underharvest in a given region for the first 2004 season would result in an equivalent increase or decrease in that region's quotas for the first 2005 trimester season.

Also consistent with this proposed rule, the quota for each region would be

further split among the three fishing seasons according to historical catches during that season, and adjusted for over- or underharvests from the 2004 first season. The percentages for the first, second, and third trimester seasons for each region would be as follows: 47, 44, and 9 percent to the Gulf of Mexico, respectively; 63, 28, and 9 percent to the South Atlantic, respectively; and 34, 58, and 8 percent to the North Atlantic, respectively. In 2004, preliminary data indicate that the Gulf of Mexico had an overharvest of 39.7 mt dw, the South Atlantic had an overharvest of 11.1 mt dw, and the North Atlantic had an underharvest of 7.0 mt dw. Thus, the LCS quotas for the 2005 first trimester season would be as follows: the Gulf of Mexico - 194.5 mt dw (428,795 lbs dw); South Atlantic - 232.4 mt dw (512,349 lbs dw); and North Atlantic - 52.0 mt dw (114,639 lbs dw).

In the 2004 first semiannual fishing season for SCS, the quota was established at 280.9 mt dw (December 24, 2003, 68 FR 74746). This equated to 233.15, 36.5, and 11.23 mt dw for the South Atlantic, North Atlantic, and the Gulf of Mexico regions, respectively. As of July 2004, approximately 86.3 mt dw had been reported landed from all regions. This constitutes an underharvest for the first 2004 semiannual fishing season of 194.6 mt dw from all regions.

Consistent with this proposed rule, the annual SCS quota (454 mt dw) would be split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic. Any over- or underharvest in a given region for the first 2004 season would result in an equivalent increase or decrease in that region's quotas for the first 2005 trimester season.

Also consistent with this proposed rule, the quota for each region would be further split among the three fishing seasons according to historical catches during that season in each of the regions. The percentages for the first, second, and third trimester seasons for each region would be as follows: 59, 29, and 12 percent to the Gulf of Mexico, respectively; 20, 53, and 27 percent to the South Atlantic, respectively; and 6, 17, and 77 percent to the North Atlantic, respectively. In 2004, preliminary data indicate that the Gulf of Mexico had an overharvest of 2.4 mt dw, the South Atlantic had an underharvest of 161.0 mt dw, and the North Atlantic had an underharvest of 36.1 mt dw. Thus, the SCS quotas for the 2005 first trimester season are proposed as follows: the Gulf of Mexico - 24.4 mt dw (53,351 lbs dw); South Atlantic - 240.0 mt dw (529,104

lbs dw); and North Atlantic - 37.0 mt dw (81,570 lbs dw).

The 2005 annual quotas for pelagic, blue, and porbeagle sharks would be established at 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. These are the same quotas that were established in the HMS FMP. As of July 2004, approximately 44 mt dw had been reported landed in the first 2004 semiannual fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(iv). Thus, the 2005 first trimester quotas for pelagic, blue, and porbeagle sharks would be established at 162.6 mt dw (358,688.4 lbs dw), 91 mt dw (200,618.6 lbs dw), and 30.7 mt dw (67,681.2 lbs dw), respectively.

These proposed quotas may change depending on the final decision regarding the regional quotas split, the trimester transition, and any updates to the reported landings in first 2004 semi-annual season.

#### Proposed Fishing Season Notification

The first trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on January 1, 2005. To estimate the LCS fishery closure dates, NMFS calculated the average reported catch rates for each region from the second seasons from recent years (2001–2004) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS proposes to close the Federal LCS fishery on either the 15th or the end of any given month.

Based on average LCS catch rates in recent years in the Gulf of Mexico region, approximately 84 percent of the proposed available LCS quota would

likely be taken by the second week of March and 98 percent of the available LCS quota would likely be taken by the end of March. Dealer data also indicate that, on average, approximately 27 mt dw (59,524 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 14 percent of the proposed available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 99 percent (85 + 14 percent) of the proposed quota could be caught by the second week of March. If the fishery remains open until the end of March, the proposed quota would likely be exceeded (98 + 14 percent = 112 percent). Accordingly, NMFS is proposing to close the Gulf of Mexico LCS fishery on March 15, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the South Atlantic region, approximately 97 percent of the proposed available LCS quota would likely be taken by the second week of February and 114 percent of the proposed available LCS quota would likely be taken by the end of February. Dealer data also indicate that, on average, approximately 55 mt dw (121,253 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 24 percent of the proposed available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 121 percent (97 + 24 percent) of the quota could be caught by the second week of February. If the fishery remains open until the end of February, the quota would likely be exceeded by 138 percent (114 + 24 percent). Since the Mid-Atlantic closed area will be in effect from January 1 through July 31, 2005, landings will likely not be accumulating at the same rate as they have in the past. For example, during the first 2004 shark fishing season, North Carolina accounted for 29 percent (68 mt dw) of landings in the South Atlantic region. Taking into account that a large portion of North Carolina will be closed during the first trimester season of 2005, NMFS does not believe that the quota will be exceeded by the February 15 closure date. Thus, NMFS is proposing to close the South Atlantic LCS fishery on February 15, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 7 percent of the available proposed LCS quota would likely be taken by the end of April. Dealer data also indicate that, on average, approximately 10 mt dw (22,046 lb dw) of LCS have been

reported received by dealers after a Federal closure. This is approximately 20 percent of the proposed available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 27 percent (7 + 20 percent) of the proposed quota could be caught by the end of April. Accordingly, NMFS is proposing to close the North Atlantic LCS fishery on April 30, 2005, at 11:30 p.m. local time.

#### Request for Comments

NMFS will hold three public hearings (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding these proposed alternatives. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Rilling at (301) 713-2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

#### Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

As required under the Regulatory Flexibility Act, NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this rule. The IRFA analyzes the anticipated economic impacts of these preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**). NMFS does not believe that the proposed regulations would conflict with current relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

This proposed rulemaking is being initiated to update the LCS and SCS regional and trimester quotas based on updated landings information and implement a framework for annual adjustment of quotas based on over- or underharvests, to address the transfer of over- and underharvests between semi-annual (2004) and trimester (2005) seasons, and to modify the fishing season notification requirement. This rule could directly impact commercial shark fishermen and dealers on the Atlantic Ocean in the United States. NMFS estimates that as of April 2004, there were approximately 253 directed and 358 incidental permit holders, of which 199 (32 percent) reported landings in 2003. As of September 2003,

there were 267 commercial shark dealers. All permit holders are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might be indirectly affected by the proposed regulations.

Average annual gross revenues from sharks for commercial shark fishermen in 2003 was \$31,085.60 and \$1,946.18 for directed and incidental permit holders, respectively. Average ex-vessel prices were \$0.79 and \$0.53/lb dw for LCS and SCS flesh, respectively and shark fins averaged \$19.86/lb dw. Preliminary cost-earning data obtained in 2003 indicated that fishermen, on average, spend approximately \$1,765.49, \$570.97, and \$398.65 for fuel, bait, and ice, respectively, per trip.

An analysis of the economic impacts of the proposed rulemaking on active incidental and directed shark permit holders was conducted as part of the IRFA. The preferred alternative to modify the regional quotas based on updated landings information would increase the existing regional quotas, and therefore potential landings, by 6 percent for the Gulf of Mexico and 4 percent for South Atlantic for SCS, respectively and would decrease the SCS regional quota by 10 percent for the North Atlantic. Based on landings and revenue information obtained from the appropriate 2003 logbooks, these potential increases in landings may result in a similar increases to gross revenue, however, NMFS is unable to predict future ex-vessel prices for shark products. For LCS, regional quotas and potential landings would be increased by 7 percent for the North Atlantic and 9 percent for the Gulf of Mexico, respectively while reducing the South Atlantic quota by 16 percent.

The preferred measures outlined in this proposed rule were selected for the commercial Atlantic LCS and SCS fisheries because they minimize economic, ecological, and social impacts incurred on fishermen while, consistent with the Magnuson-Stevens Act and other domestic laws, enhancing equity among user groups, and allowing stocks to be managed at sustainable levels. Other alternatives analyzed herein for regional and trimester quota distribution were not preferred because they fail to base quotas on updated landings information or fail to provide a means of annually revising quotas to adjust for over- or underharvests, if any, to minimize economic hardships that may result due to fishery closures or an inability to harvest the full quota for

LCS and SCS. Other alternatives for the transfer of over- and underharvests between semi-annual (2004) and trimester (2005) seasons were not selected because they would reduce quotas for the third trimester season resulting in reduced revenues and temporal shortages of shark products, particularly for fishermen in the South Atlantic region who are already impacted by the Mid-Atlantic closure area. The alternative to remove the 30-day requirement to publish a fishing season's length or quotas/annual adjustments is not expected to result in negative economic impacts, as it provides for more public input.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 603(c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities and in order to meet the objectives of this proposed rule and the Magnuson-Stevens Act, NMFS cannot change the requirements only for small entities. Additionally, all of the proposed measures in this rule would not be effective with exemptions for small entities. Thus, there are no alternatives available to satisfy the stipulations of the first and fourth categories listed above. NMFS is proposing these measures to modify regional and trimester quotas based on updated landings information and as such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this proposed rule are not practicable. Alternatives relevant to the second category are identified in the preamble and further discussed below.

The preferred measures for updating regional and trimester quotas were selected because the other proposed alternatives do not allow NMFS to update the quotas based on the most up-to-date landings data available while installing a provision for the annual adjustment of these quotas to better adapt to future changes in regional

fishing effort. Furthermore, although they may consolidate, clarify, and/or simplify compliance, other alternatives considered that do not maintain regional and trimester quotas could result in regional inequality as fishermen in the North Atlantic would be at a disadvantage due to their geographic location and these alternatives may also have negative impacts on shark pupping, both of which would conflict with National Standards (NSs) of the Magnuson-Stevens Act by inhibiting or discriminating against fishermen in a given state or region and delaying the rebuilding plan for LCS (NS 4 and NS 1). Maintaining the regional and trimester quotas also promote market stability by ensuring the availability of shark products year round and in all locales.

There was little difference in economic impact between the different alternatives considered. Other proposed alternatives for the transition between semi-annual and trimester season are not expected to have adverse economic or ecological impacts, however, the preferred alternative was selected because it provides equitable distribution of quotas based on historic fishing practices. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, upholding the Magnuson-Stevens Act. This proposed rule does not contain any new reporting or recordkeeping requirements. This proposed rule would not increase the administrative burden or professional skills required of permit holders to maintain compliance with commercial shark regulations.

The biological opinion prepared in October 2003, entitled "Biological Opinion on the continued operation of Atlantic shark fisheries under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP)", in response to the proposed measures in Amendment 1 to the HMS FMP, found that the continued existence of commercial shark fishery would not jeopardize marine mammals, sea turtles, or smalltooth sawfish. Regional quota administration and trimester seasons were actions finalized in Amendment 1 to the HMS FMP and therefore, were included in the aforementioned BiOp. This proposed rule will not increase overall quotas or landings for LCS or SCS, therefore interactions with, or incidental takes of, protected species should not increase. The preferred alternatives simply redistribute quotas based on updated landings information, distribute them

across trimester seasons based on historical landings, and transfer over- or under harvests from semi-annual to trimester seasons.

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

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 13, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for 50 CFR part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (b)(1)(i), (b)(1)(iii), (b)(1)(iv), and (b)(1)(vi)(A) and (B) are revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(ii) \* \* \*

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,017 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 49 percent to the Gulf of Mexico, 38 percent to the South Atlantic, and 13 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication, consistent with the Administrative Procedure Act, the length of each season.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

(v) \* \* \*

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1.

(1) NMFS will adjust a region's quota based on the following criteria: if a region has an overharvest of 10 percent or greater of its regional quota, and any other region or regions has an underharvest of more than 10 percent of their respective quotas, then NMFS may transfer up to 10 percent of the quota from the region or regions with the underharvest to the region with the overharvest. Any overharvest above that 10 percent would be counted against that region's quota for the same season of the following year. If the underharvest is less than 10 percent of

the quota for any other region or regions, NMFS would not transfer any quota, even if another region or regions had an overharvest in excess of 10 percent.

(2) Other factors NMFS would consider before making a transfer include, but are not limited to, the likelihood of protected species interactions and bycatch rates within a region, historic landings for the region, total landings reported for all regions at the end of their respective seasons, the number of storms during the open season, the size of a region's quotas, the amount of available quota remaining, the projected ability of the vessels fishing in the region from which the quota is proposed to be removed to harvest the remaining quota, and the projected ability of vessels fishing in the region receiving the quota to harvest the additional quota.

(3) Quotas for each region would be further divided among the trimester seasons based upon historic landings in each of the seasons. NMFS would make adjustments to trimester season quotas based on a number of factors including, but not limited to: the historic landings for each trimester season in a particular region, total landings reported for all seasons at the end of their respective seasons, the number of storms during each open season, the size of each seasonal quota, the amount of available quota remaining, and the projected ability of vessels fishing in the season receiving additional quota to harvest the additional quota. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication, consistent with the Administrative Procedure Act, any annual adjustment.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season.

(C) \* \* \*

\* \* \* \* \*

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