

Community Conservancy manages the Conservancy (unit 1a) of the same name. With the exception of the Glendora Community Conservancy, these entities exceed the threshold established for small governments (service population of 50,000 or less). Therefore, the Glendora Community Conservancy is the only land manager considered in this screening analysis.

The DEA (See Section 6) estimates potential costs to public and private land management entities. Of the entities analyzed, the Glendora Community Conservancy is the only small entity. This section estimates potential impacts of *Brodiaea filifolia* conservation activities to the Conservancy.

The Conservancy's overall annual budget ranges from \$15,000 to \$30,000 and includes such elements as insurance, discounted land taxes, weed abatement, and trail maintenance. The analysis estimates that potential future costs associated with *Brodiaea filifolia* conservation activities at the Conservancy may range from \$1,600 to \$2,600 on an annualized basis (assuming a seven percent discount rate). These costs represent approximately 11 percent to 17 percent of annual expenditures assuming the low-end estimate of the annual budget (\$15,000) and 5 percent to 9 percent assuming the high-end estimate (\$30,000). Considering that the Glendora Community Conservancy is in the business of conservation, this is not an unexpected expenditure for the Conservancy. Consequently, we do not believe that the designation of critical habitat for *B. filifolia* will significantly or uniquely affect any small governmental entity addressed in the DEA. As such, a Small Government Agency Plan is not required.

#### Takings

In accordance with Executive Order 12630 ("Government Actions and

Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for *Brodiaea filifolia*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for *B. filifolia* does not pose significant takings implications.

#### Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 26, 2005.

#### Craig Manson,

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 050927248-5248-01; I.D. 090805C]

RIN 0648-AT74

#### 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 establish the 2006 first trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on over- and underharvests from the 2005 first trimester season. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. The intended effect of these proposed actions is to provide advance notice of quotas and season dates for the Atlantic commercial shark fishery.

**DATES:** Written comments will be accepted until November 7, 2005.

**ADDRESSES:** Written comments on the proposed rule may be submitted to Chris Rilling, Highly Migratory Species Management Division via:

• E-mail: [SF1.090805C@noaa.gov](mailto:SF1.090805C@noaa.gov).

• Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for 1<sup>st</sup> Trimester Season Lengths and Quotas."

• Fax: 301-713-1917.

• Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line the following identifier: I.D. 090805C.

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

#### Proposed Opening and Closing Dates and Quotas

Proposed opening and closing dates and quotas for the 2006 first trimester season by region are provided in Table 1.

TABLE 1 — PROPOSED OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closing Date	Quota
Large Coastal Sharks	Gulf of Mexico	January 1, 2006	April 15, 2006 11:30 p.m. local time	222.8 mt dw (491,185 lb dw)
	South Atlantic		March 15, 2006 11:30 p.m. local time	141.3 mt dw (311,510 lb dw)
	North Atlantic		April 30, 2006 11:30 p.m. local time	5.3 mt dw (11,684 lb dw)
Small Coastal Sharks	Gulf of Mexico	January 1, 2006	To be determined, as necessary	14.8 mt dw (32,628 lb dw)
	South Atlantic			284.6 mt dw (627,429 lb dw)

TABLE 1 — PROPOSED OPENING AND CLOSING DATES AND QUOTAS—Continued

Species Group	Region	Opening Date	Closing Date	Quota
	North Atlantic			18.7 mt dw (41,226 lb dw)
Blue sharks	No regional quotas	January 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

## Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (Amendment 1), finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 that established, among other things, an annual landings quota of 1,017 metric tons (mt) dressed weight (dw) for LCS, and an annual landings quota of 454 mt dw for SCS. 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 based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that, among other things, adjusted the 2005 regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

Consistent with 50 CFR 635.27(b)(1)(iii), as adjusted by the 2004 final rule, the annual LCS quota (1,017 mt dw) is split among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The annual SCS quota (454 mt dw) is split among the three regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic. The regional quotas for LCS

and SCS were divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings of 4, 88, and 8 percent for LCS, and 1, 9, and 90 percent for SCS in the first, second, and third trimester seasons, respectively, in the North Atlantic.

The quotas were divided in this manner because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, but primarily during the summer months in the North Atlantic region. Dividing the quotas equally between the three trimester seasons in the South Atlantic also resulted in a greater proportion of the quota being made available during August and September when the time/area closure off North Carolina is no longer in effect.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvest in a given region from the 2005 first trimester season will be carried over to the 2006 first trimester season. This action would not change the 2006 base landings quota or the 2006 regional quotas established in the November 30, 2004, final rule.

In addition, the November 30, 2004, final rule established a process for issuing proposed and final rules to notify interested parties of season lengths and quotas and to facilitate public comment.

## Annual Landings Quotas

Pursuant to Amendment 1, the 2006 annual base landings quotas are 1,017 mt dw (2,242,078 lb dw) for LCS and 454 mt dw (1,000,888.4 lb dw) for SCS. The 2006 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. This proposed rule does not propose any changes to these overall base landings quotas.

As of August 22, 2005, the overall 2005 first trimester season quotas for LCS and SCS had not been exceeded.

Reported landings of LCS for all regions combined were at 84 percent (249.6 mt dw) of the LCS first trimester season quota (295.9 mt dw), and SCS landings for all regions combined were at 30 percent (74.6 mt dw) of the overall SCS trimester quota (246.0 mt dw).

## Gulf of Mexico Regional Landings Quotas

For all regions, the proposed quotas may change depending on any updates to the reported landings from the 2005 first trimester season. In 2005, preliminary data indicate that for LCS, the Gulf of Mexico had an underharvest of 46.7 mt dw in the first trimester season. As a result, the Gulf of Mexico LCS quota for the 2006 first trimester season is proposed to be 222.8 mt dw,  $((1,017 * 0.52 * 0.333) + 46.7)$ .

In 2005, preliminary data indicate that for SCS, the Gulf of Mexico had an overharvest of 0.3 mt dw in the first trimester season. As a result, the Gulf of Mexico SCS quota for the 2006 first trimester season is proposed to be 14.8 mt dw,  $((454 * 0.10 * 0.333) - 0.3)$ .

## South Atlantic Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the South Atlantic had an underharvest of 2.4 mt dw in the first trimester season. As a result, the South Atlantic LCS quota for the 2006 first trimester season is proposed to be 141.3 mt dw,  $((1,017 * 0.41 * 0.333) + 2.4)$ .

In 2005, preliminary data indicate that for SCS, the South Atlantic had an underharvest of 153.1 mt dw in the first trimester season. As a result, the South Atlantic SCS quota for the 2006 first trimester season is proposed to be 284.6 mt dw,  $((454 * 0.87 * 0.333) + 153.1)$ .

## North Atlantic Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the North Atlantic had an underharvest of 2.5 mt dw in the first trimester season. The North Atlantic LCS quota for the 2006 first trimester

season is proposed to be 5.3 mt dw,  $((1,017 * 0.07 * 0.04) + 2.5)$ .

In 2005, preliminary data indicate that for SCS, the North Atlantic had an underharvest of 18.6 mt dw in the first trimester season. As a result, the North Atlantic SCS quota for the 2006 first trimester season is proposed to be 18.7 mt dw,  $((454 * 0.03 * 0.01) + 18.6)$ .

#### Pelagic Shark Quotas

As of August 2005, approximately 23.1 mt dw had been reported landed in the 2005 first trimester 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). The 2006 first trimester season quotas for pelagic, blue, and porbeagle sharks are proposed to be 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

#### Proposed Fishing Season Notification for the First Trimester Season

The first trimester fishing season of the 2006 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on January 1, 2006. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle sharks, the Assistant Administrator (AA) will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, consistent with 50 CFR 635.28(b)(2).

The first trimester fishing season of the 2006 fishing year for LCS is proposed to open on January 1, 2006, in the South Atlantic, North Atlantic, and Gulf of Mexico regions. To estimate the LCS fishery closing dates for the first trimester season, NMFS calculated the average catch rates from January through April during the first season in recent years (2002–2005). Because state landings during a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received during 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 provide consistency and predictability 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 the average January through April LCS catch rates in recent years in the Gulf of Mexico region, approximately 91 percent of the available first trimester LCS quota (222.8 mt dw) would likely be taken by the second week in April, and 103 percent of the available LCS quota would likely be taken by the end of April. Dealer data also indicate that, on average, approximately 5.4 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 2.4 percent of the proposed available quota. If catch rates in 2006 are similar to the average catch rates from 2002 through 2005, 93.4 percent (91 + 2.4 percent) of the first trimester quota could be caught by the second week in April. If the fishery remains open until the end of April, the quota could be exceeded ( $103 + 2.4 = 105.4$  percent). Thus, NMFS proposes to close the fishery in the Gulf of Mexico on April 15, 2006.

Based on the average January through April LCS catch rates in recent years in the South Atlantic region, and accounting for the reduction in effort due to the time/area closure off North Carolina, approximately 79 percent of the available first trimester LCS quota (141.3 mt dw) would likely be taken by the second week in March, and 88 percent of the available LCS quota would likely be taken by the end of March. Dealer data also indicate that, on average, approximately 28 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 20 percent of the proposed available quota. If catch rates in 2006 are similar to the average catch rates from 2002 through 2005, 99 percent (79 + 20 percent) of the first trimester quota could be caught by the second week in March. If the fishery remains open until the end of March, the quota could be exceeded ( $88 + 20 = 108$  percent). Thus, NMFS proposes to close the fishery in the South Atlantic on March 15, 2006.

Based on the average January through April LCS catch rates in recent years in the North Atlantic region, approximately 57 percent of the available first trimester LCS quota (5.4 mt dw) would likely be taken by the end of April. Dealer data also indicate that no LCS landings have been reported received by dealers after a Federal closure and before the start of the second trimester season on May 1, 2006. Accordingly, NMFS proposes to close the fishery in the North Atlantic on April 30, 2006.

#### Request for Comments

Comments on the proposed rule may be submitted via email, mail, or fax by November 7, 2005 (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.* Consistent with 50 CFR 635.27(b)(1)(vi), the purpose of this action is to adjust the LCS trimester quotas based on over- or underharvests from the 2005 fishing season, and to announce the 2006 first trimester season opening and closing dates. This proposed rule will not increase the overall quotas or landings for LCS or SCS, and is not expected to increase fishing effort or protected species interactions.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that, among other things, adjusted the 2005 regional quotas for LCS and SCS based on updated landings information and divided the quotas among the three trimester seasons. A final regulatory flexibility analysis (FRFA) conducted for the November 2004 rule indicated that there were approximately 253 directed commercial shark permit holders, 358 incidental commercial shark permit holders, and 267 commercial shark dealers, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). The FRFA concluded that overall economic impacts of adjusting the regional quotas on these small entities were expected to be minimal. As of April 20, 2005, there were approximately 229 directed commercial shark permit holders, 321 incidental commercial shark permit holders, and 230 commercial shark dealers.

This proposed rule would not change the overall LCS or SCS base landings quotas or the overall regional quotas established in the November 2004 rule, or implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions. This proposed rule would adjust the quotas for each of the regions based on underharvests from the 2005 first trimester season consistent with 50 CFR 635.27(b)(1)(vi).

The Gulf of Mexico was the only region with an overharvest of 0.3 mt dw of its SCS quota, and will have its SCS regional quota lowered by this corresponding amount. The 2003 average ex-vessel price for LCS flesh was \$0.78/lb dw, and the average ex-

vessel price for SCS flesh was \$0.43/lb dw. Although shark fins command a higher price (\$17.09/lb dw), they represent only a small proportion of the total landings. The Gulf of Mexico experienced a net underharvest of 46.7 mt dw (+\$80,304, excluding fins) of LCS, and a net overharvest of 0.3 mt dw (-\$284) of SCS during the 2005 first trimester season. Thus the net economic impact to the Gulf of Mexico is approximately +\$80,020. This represents approximately 20 percent of the estimated 2006 first trimester gross revenue of \$397,154, (\$383,124 for LCS, excluding fins, + \$13,875 for SCS) for the Gulf of Mexico region. Given that there are approximately 35 active shark vessels (defined as vessels with greater than 25 percent of landings derived from sharks as reported in the snapper-grouper logbook) in the Gulf of Mexico, this could result in an increase in revenue of approximately \$2,286 per vessel during the 2006 first trimester season.

For the South Atlantic and North Atlantic, which both experienced underharvests of 2.4 and 2.5 mt dw for LCS, respectively, and 153.1 and 18.6 mt dw for SCS, respectively, during the 2005 first trimester season, the net economic impact would also be positive. For the South Atlantic, if the entire quota is caught, this could result

in a net economic benefit of approximately \$149,262, (\$4,127 for LCS, excluding fins, + \$145,135 for SCS). This represents approximately 29 percent of the estimated 2006 first trimester season gross revenue of \$512,771, (\$242,977 for LCS, excluding fins, + \$269,794 for SCS) for the South Atlantic region. Given that there are approximately 28 active shark vessels in the South Atlantic, this could result in an increase in revenue of approximately \$5,330 per vessel during the 2006 first trimester season.

For the North Atlantic, if the entire quota is caught, this could result in an economic benefit of approximately \$4,299 for LCS, excluding fins, + \$17,632 for SCS. This represents approximately 16 percent of the 2006 first trimester season gross revenue of \$26,840, (\$9,113 for LCS, excluding fins, + \$17,727 for SCS) for the North Atlantic region. Given that there are fewer than 10 active shark vessels in the North Atlantic, this could result in an increase in revenue of approximately \$2,684 per vessel during the 2006 first trimester season. The increases in possible revenue as a result of transferring the underharvests are only potential amounts that may or may not be realized. If it is not realized, then there would be no economic impact because the fishermen did not receive

any benefit from the transfer. If it is realized, then it will result in a positive impact as described above. Thus, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 1, or the November 2004 final rule (69 FR 69537).

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.

Dated: October 3, 2005.

**William T. Hogarth,**

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

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