

Street, SW., Washington, DC 20554, or e-mail at [Guy.Benson@fcc.gov](mailto:Guy.Benson@fcc.gov).

47. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force Web site, <http://www.fcc.gov/dtf>, and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160, facsimile (202) 488-5563, or via e-mail at [http://www.fcc@bcpiweb.com](mailto:http://www.fcc@bcpiweb.com). This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov), or send an e-mail to [access@fcc.gov](mailto:access@fcc.gov).

*C. Ex Parte Rules Regarding the NRPM—Permit-But-Disclose Comment Proceeding*

48. With regard to the NRPM, this is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

### III. Ordering Clauses

49. Pursuant to the authority contained in sections 1, 4(i), 11, and 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), (y), 308, 309, and 332, this Notice of Proposed Rulemaking is hereby *adopted*.

50. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 22 as follows:

### PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.925 is revised to read as follows:

#### § 22.925 Prohibition on airborne operation of cellular telephones.

(a) Cellular devices installed in or carried aboard airplanes, balloons or any other type of aircraft must not be operated and must be turned off while such aircraft are airborne (not touching the ground) unless as specified in paragraph (b) of this section. Unless measures are implemented aboard aircraft in accordance with paragraph (b), the following notice must be posted on or near each cellular device installed in any aircraft:

“The use of cellular telephones while this aircraft is airborne is prohibited by FCC rules, and the violation of this rule could result in suspension of service and/or a fine. The use of cellular telephones on this aircraft is also subject to FAA regulations.”

(b) Devices using 800 MHz cellular frequencies may be operated on airborne aircraft only if such devices are operated in a manner that will not cause interference to terrestrial cellular systems. Airborne operation of cellular devices is permissible only if operation of these devices is under the control of onboard equipment specifically designed to mitigate such interference.

**Note to § 22.925:** The FAA independently prohibits the use of personal electronic devices, including cellular devices, unless an aircraft operator has determined that use of those devices does not cause interference to an aircraft's aviation navigation and communications systems.

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### DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

[Docket No. 050303056-5056-01; I.D. 020205F]

**RIN 0648-AT07**

### 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 second and third trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), pelagic, blue, and porbeagle sharks based on over- or underharvests from the 2004 second semi-annual season. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery.

**DATES:** Written comments will be accepted until 5 p.m. on March 25, 2005.

NMFS will hold one public hearing to receive comments from fishery participants and other members of the public regarding the proposed shark regulations. The hearing date is Monday, March 21, 2005, from 2:45–3:45 p.m.

The Atlantic commercial shark fishing season proposed opening and closure dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The hearing location is the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Written comments on the proposed rule may be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division via:

- E-mail: [SF1.020205F@noaa.gov](mailto:SF1.020205F@noaa.gov).
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Proposed Rule for 2nd and 3rd 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. 020205F.

**FOR FURTHER INFORMATION CONTACT:** Chris Rilling, Karyl Brewster-Geisz, or

Mike Clark by phone: 301-713-2347 or  
by fax: 301-713-1917.

**Proposed Opening and Closure Dates  
and Quotas**

**SUPPLEMENTARY INFORMATION:**

**TABLE 1—PROPOSED OPENING AND CLOSURE DATES AND QUOTAS**

Species Group	Region	Opening Date	Closure Date	Quota
Second Trimester Season				
Large Coastal Sharks	Gulf of Mexico	August 1, 2005	August 31, 2005 11:30 p.m. local time	148 mt dw (326,280 lb dw)
	South Atlantic	July 1, 2005		182 mt dw (401,237 lb dw)
	North Atlantic	July 15, 2005		65.2 mt dw (143,739 lb dw)
Small Coastal Sharks	Gulf of Mexico	May 1, 2005	To be determined, as necessary	30.5 mt dw (67,240 lb dw)
	South Atlantic			281.3 mt dw (620,153 lb dw)
	North Atlantic			23 mt dw (50,706 dw)
Blue sharks	No regional quotas	May 1, 2005	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)
Third Trimester Season				
Large Coastal Sharks	Gulf of Mexico	September 1, 2005	October 31, 2005 11:30 p.m. local time	167.7 mt dw (369,711 lb dw)
	South Atlantic		December 15, 2005 11:30 p.m. local time	187.5 mt dw (413,362 lb dw)
	North Atlantic		September 14, 2005 11:30 p.m. local time	4.8 mt dw (10,582 lb dw)
Small Coastal Sharks	Gulf of Mexico	September 1, 2005	To be determined, as necessary	31.7 mt dw (69,885 lb dw)
	South Atlantic			201.1 mt dw (443,345 lb dw)
	North Atlantic			15.9 mt dw (35,053 lb dw)
Blue sharks	No regional quotas	September 1, 2005	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks				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 Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999,

and Amendment 1 to the HMS FMP, 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 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 2004 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 based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that adjusted the 2005 regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, established a method of accounting for over- or underharvests in the transition from semi-annual to trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

The 2004 final rule divided the LCS quota 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 SCS quota was split among the three regions as follows: 10 percent to the Gulf of Mexico, 88 percent to the South Atlantic, and 2 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 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 quota according to historical landings in the North Atlantic provided that region with a better opportunity to harvest its regional quota.

The final rule also established a method of dividing any over- or underharvests from the 2004 first semi-annual season equally between the 2005 first and second trimester seasons, and any over- or underharvest from the 2004 second semi-annual season equally between the 2005 second and third trimester seasons. This was done, in part, to make a larger portion of the quota available to fishermen during the second and third trimester seasons when the time/area closure off North Carolina will no longer be in effect.

Consistent with the Administrative Procedure Act (APA), the final rule established a process of issuing a proposed and final rule for notification of season lengths and quotas to facilitate public comment. This proposed rule serves as notification of proposed season lengths and quotas pursuant to 50 CFR 635.27(b)(1)(iii). This action would not change the 2005 base landings quota or the 2005 regional quotas established in the November 30, 2004, final rule.

### Annual Landings Quotas

Any of the proposed quotas may change depending on any updates to the reported landings from the 2004 second semi-annual season. Per Amendment 1 to the HMS FMP, the 2005 annual base landings quotas for LCS and SCS are 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 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 propose to change any of these overall base landings quotas.

As of February 1, 2005, the overall 2004 second semi-annual season quotas for LCS and SCS had not been exceeded. Reported landings of LCS were at 89 percent (618.2 mt dw) of the LCS semi-annual quota, and SCS landings were at 30 percent (77.1 mt dw) of the overall SCS semi-annual quota. The Gulf of Mexico and North Atlantic regions experienced overharvests of 6 percent (16.9 mt dw) and 5 percent (1.85 mt dw) of their regional LCS quotas, respectively, whereas the South Atlantic region experienced an underharvest of 26 percent (97.1 mt dw) of its regional LCS quota. The Gulf of Mexico and South Atlantic experienced an underharvest of 62 percent (33.2 mt dw) and 65 percent (138.7 mt dw) of their regional SCS quotas, respectively. The North Atlantic reported no landings of SCS during the second semi-annual season. As described below, the regional quotas will be adjusted based on these over- or underharvests.

### Regional Landings Quotas Percentages for LCS and SCS

Consistent with 50 CFR 635.27(b)(1)(iii), the annual LCS quota (1,017 mt dw) is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic.

Also consistent with 50 CFR 635.27(b)(1)(vi)(3), the LCS quota for the Gulf of Mexico and the South Atlantic regions is further split equally (33.3 percent/season) between the three trimester fishing seasons, and the quota for the North Atlantic is further split according to historical landings of 4, 88, and 8 percent for the first, second, and third trimester seasons, respectively.

Consistent with 50 CFR 635.27(b)(1)(iv), the annual SCS quota (454 mt dw) 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.

Also consistent with 50 CFR 635.27(b)(1)(vi)(3), the SCS quota for the Gulf of Mexico and the South Atlantic region is further split equally (33.3 percent/season) between the three trimester fishing seasons, and the quota for the North Atlantic is further split according to historical landings of 1, 9, and 90 percent for the first, second, and third trimester seasons, respectively.

Due to the transition between semi-annual and trimester seasons, and consistent with the November 30, 2004, final rule, any over- or underharvest in a given region for the 2004 second semi-annual season will be divided equally between that region's quotas for the second and third 2005 trimester seasons. Additionally, one half of the over- or underharvest from the 2004 first semi-annual season will be carried over to the second 2005 trimester season.

### Gulf of Mexico Regional Landings Quotas

In 2004, preliminary data indicate that for LCS, the Gulf of Mexico had an overharvest of 39.7 mt dw in the first semi-annual season, and an overharvest of 16.9 mt dw in the second semi-annual season. Thus, the total amount of quota removed from the second trimester season is 28.3 mt dw ( $39.7/2 + 16.9/2$ ), and the total amount of LCS quota removed from the third trimester season is 8.45 mt dw ( $16.9/2$ ). As a result, the Gulf of Mexico LCS quota for the 2005 second trimester season is proposed to be 147.8 mt dw ( $1,017 * 0.52 * 0.333 - 28.3$ ), and the quota for the 2005 third trimester season is proposed as 167.7 mt dw ( $1,017 * 0.52 * 0.333 - 8.45$ ).

In 2004, preliminary data indicate that for SCS, the Gulf of Mexico had an overharvest of 2.4 mt dw in the first semi-annual season, and an underharvest of 33.2 mt dw in the second semi-annual season. Thus, the total amount of quota carried over into the second trimester season is 15.4 mt dw ( $33.2/2 - 2.4/2$ ), and the total amount of quota carried over into the third trimester season is 16.6 mt dw ( $33.2/2$ ). As a result, the Gulf of Mexico SCS quota for the 2005 second trimester season is proposed to be 30.5 mt dw ( $454 * 0.10 * 0.333 + 15.4$ ), and the quota for the 2005 third trimester season is proposed as 31.7 mt dw ( $454 * 0.10 * 0.333 + 16.6$ ).

### South Atlantic Regional Landings Quotas

In 2004, preliminary data indicate that for LCS, the South Atlantic had an overharvest of 11.2 mt dw in the first semi-annual season, and an underharvest of 97.1 mt dw in the

second semi-annual season. Thus, the total amount of quota carried over to the second trimester season is 43.0 mt dw (97.1/2–11.2/2), and the total amount of quota carried over into the third trimester season is 48.6 mt dw (97.1/2). As a result, the South Atlantic LCS quota for the 2005 second trimester season is proposed to be 182.0 mt dw ( $1,017 \times 0.41 \times 0.333 + 43.0$ ), and the quota for the 2005 third trimester season is proposed as 187.5 mt dw ( $1,017 \times 0.41 \times 0.333 + 48.6$ ).

In 2004, preliminary data indicate that for SCS, the South Atlantic had an underharvest of 161.0 mt dw in the first semi-annual season, and an underharvest of 138.7 mt dw in the second semi-annual season. Thus, the total amount of quota carried over into the second trimester season is 149.8 mt dw ( $161.0/2 + 138.7/2$ ), and the total amount of quota carried over into the third trimester season is 69.3 mt dw ( $138.7/2$ ). As a result, the South Atlantic SCS quota for the 2005 second trimester season is proposed to be 281.3 mt dw ( $454 \times 0.87 \times 0.333 + 149.8$ ), and the quota for the 2005 third trimester season is proposed to be 200.8 mt dw ( $454 \times 0.87 \times 0.333 + 69.3$ ).

#### North Atlantic Regional Landings Quotas

In 2004, preliminary data indicate that for LCS, the North Atlantic had an underharvest of 7.0 mt dw in the first semi-annual season, and an overharvest of 1.85 mt dw in the second semi-annual season. Thus the total amount of quota carried over into the second trimester season is 2.6 mt dw ( $7.0/2 - 1.85/2$ ), and the total amount of quota removed from the third trimester season is 0.93 mt dw ( $1.85/2$ ). As a result, the North Atlantic LCS quota for the 2005 second trimester season is proposed to be 65.2 mt dw ( $1,017 \times 0.07 \times 0.88 + 2.6$ ), and the quota for the 2005 third trimester season is proposed as 4.76 mt dw ( $1,017 \times 0.07 \times 0.08 - .93$ ).

In 2004, preliminary data indicate that for SCS, the North Atlantic had an underharvest of 36.1 mt dw in the first semi-annual season, and an underharvest of 7.4 mt dw in the second semi-annual season. Thus, the total amount of quota carried over into the second trimester season is 21.8 mt dw ( $36.1/2 + 7.4/2$ ), and the total amount of quota carried over into the third trimester season is 3.7 mt dw ( $7.4/2$ ). As a result, the North Atlantic SCS quota for the 2005 second trimester season is proposed to be 23.0 mt dw ( $454 \times 0.03 \times 0.09 + 21.8$ ), and the quota for the 2005 third trimester season is proposed as 15.9 mt dw ( $454 \times 0.03 \times 0.90 + 3.7$ ).

#### Pelagic Shark Quotas

The 2005 annual quotas for pelagic, blue, and porbeagle sharks are 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 February 2005, approximately 57.3 mt dw had been reported landed in the second 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). The 2005 second and third trimester quotas for pelagic, blue, and porbeagle sharks are proposed to be 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.

#### Proposed Fishing Season Notification for the Second Season

The second trimester fishing season of the 2005 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 May 1, 2005, at 11:30 a.m. local time. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the Assistant Administrator (AA) will file notification of closures at the Office of the Federal Register at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

The second trimester fishing season of the 2005 fishing year for LCS is proposed to open on July 1, 2005, in the South Atlantic region, on July 15, 2005, in the North Atlantic region, and on August 1, 2005, in the Gulf of Mexico region. NMFS is proposing to close the second trimester season LCS fishery in all regions on August 31, 2005, at 11:30 p.m. local time.

NMFS is proposing to delay the start of the second season for LCS to reduce the likelihood of interactions with pregnant female sharks that may be about to give birth. Delaying the start of the season will also allow the second and third trimester seasons to run consecutively. This will prevent the need for a closure of the LCS fishery between the second and third trimester seasons and should help minimize disruption to fishery participants in the transition from semi-annual to trimester seasons.

To estimate the LCS fishery opening and closing dates for the second and third trimester seasons, NMFS calculated the average catch rates from

July and August combined, as well as catch rates from August alone for each of the regions during the second semi-annual season in recent years (2000–2004), and then took the average of the two estimates to determine the appropriate season lengths. NMFS used this precautionary approach of averaging catch rates from July and August because of the potential for higher effort in August than has been observed in the past, and to reduce the likelihood of an overharvest. These average catch rates were used to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period.

Consistent with 50 CFR 635(b)(1)(vi), any over- or underharvests in one region will result in an equivalent increase or decrease in the following year's quota for that region.

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 simplify dealer reporting and aid in managing the fishery, NMFS proposes to open and close the Federal LCS fishery on either the 15th or the end of any given month.

Based on the average July and August LCS catch rates combined in recent years in the Gulf of Mexico region, approximately 54 percent of the available second trimester LCS quota (148.0 mt dw) would likely be taken in 2 weeks and 108 percent of the available LCS quota would likely be taken in 4 weeks. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 4 percent of the proposed available quota. If catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 58 percent ( $54 + 4$  percent) of the second trimester quota could be caught in 2 weeks, and 113 percent ( $109 + 4$ ) of the quota could be caught in 4 weeks.

Based on average LCS catch rates from August in recent years in the Gulf of Mexico region, approximately 37 percent of the available second trimester LCS quota would likely be taken in 2 weeks and 73 percent of the available second trimester LCS quota would

likely be taken in 4 weeks. If catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 41 percent (37 + 4) of the second trimester quota could be caught in 2 weeks and 77 percent (73 percent + 4 percent) of the quota could be caught in 4 weeks. Taking into account the average of the two catch rates for 4 weeks, approximately 95 percent (113 percent and 77 percent), of the quota would likely be caught during this period. Thus, NMFS proposes to open the fishery in the Gulf of Mexico on August 1, 2005.

Based on the average July and August LCS catch rates combined in recent years for the South Atlantic region, approximately 81 percent of the available second trimester LCS quota (182.0 mt dw) would likely be taken in 6 weeks and 100 percent of the available LCS quota would likely be taken in 8 weeks. Dealer data also indicate that, on average, approximately 17 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 9 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 90 percent (81 percent + 9 percent) of the quota could be caught in 6 weeks, and 109 percent (100 percent + 9 percent) of the quota could be caught in 8 weeks.

Based on the average LCS catch rates for August in recent years for the South Atlantic region, approximately 56 percent of the available second trimester LCS quota would likely be taken in 6 weeks and 74 percent of the available LCS quota would likely be taken in 8 weeks. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 65 percent (56 percent + 9 percent) of the quota could be caught in 6 weeks, and 83 percent (74 percent + 9 percent) of the quota could be caught in 8 weeks. Taking into account the average of the two catch rates for 8 weeks (109 percent and 83 percent), approximately 96 percent of the quota would likely be caught during this period. Thus, in order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester season, NMFS proposes to open the fishery in the South Atlantic on July 1, 2005.

Based on the average July and August LCS catch rates combined in recent years for the North Atlantic region, approximately 80.7 percent of the available second trimester LCS quota (65.2 mt dw) would likely be taken in 4 weeks and 104 percent of the available LCS quota would likely be taken in 6 weeks. Dealer data also indicate that, on average, approximately 9 mt dw of LCS

has been reported received by dealers during a Federal closure. This is approximately 14 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 94.7 percent (80.7 + 14 percent) of the quota could be caught in 4 weeks, and 118 percent (104 percent + 14 percent) in 6 weeks. Thus, allowing the fishery to stay open for 6 weeks could result in an overharvest.

Based on the average August LCS catch rates in recent years for the North Atlantic region, approximately 46 percent of the available second trimester LCS quota would likely be taken in 4 weeks and 70 percent of the available LCS quota would likely be taken in 6 weeks. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 60 percent (46 percent + 14 percent) of the quota would likely be caught by in 4 weeks, and 84 percent of the quota would likely be caught in 6 weeks (70 percent + 14 percent). Taking into account the average of the two catch rates for 6 weeks (118 percent and 74 percent), approximately 96 percent of the quota would likely be caught during this period. Thus, in order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester season, NMFS proposes to open the fishery in the North Atlantic on July 15, 2005.

#### **Proposed Fishing Season Notification for the Third Season**

The third 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 September 1, 2005. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closures at the Office of the Federal Register at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

NMFS is proposing to close the third trimester season LCS fishery in the North Atlantic on September 14, 2005, at 11:30 p.m. local time, in the Gulf of Mexico on October 31, 2005, at 11:30 p.m. local time, and in the South Atlantic on December 15, 2005, at 11:30 local time.

Since the LCS fishery has historically been closed during much of the third trimester period, NMFS used average LCS catch rates from August and September in recent years (2000–2004) to estimate the third trimester season catch rates and closure dates for each of

the regions. NMFS used this precautionary approach of averaging catch rates from August and September because of the potential for higher effort in September than has been observed in the past, and to reduce the likelihood of an overharvest. Using catch rates from August alone may not be appropriate because catch rates during that month have been higher historically than during September, and because it does not fall within the third trimester season. However, using catch rates from September alone may also not be appropriate because of the lack of data during that month. Hence, NMFS used the average of the 2-month catch rates.

In the Gulf of Mexico, approximately 79 percent of the available third trimester LCS quota (167.8 mt dw) would likely be taken by the end of October and 99 percent of the available LCS quota would likely be taken by the second week of November. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 4 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 82 percent (79 percent + 4 percent) of the quota could be caught by the end of October. If the fishery were to remain open until the second week of November, the quota would likely be exceeded (99 percent + 4 percent = 103 percent). Accordingly, NMFS is proposing to close the Gulf of Mexico LCS fishery on October 31, 2005, at 11:30 p.m. local time.

In the South Atlantic, approximately 86 percent of the available third trimester LCS quota (187.5 mt dw) would likely be taken by the second week of December and 98 percent of the available LCS quota would likely be taken by the end of December. Dealer data also indicate that, on average, approximately 18 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 10 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 96 percent (86 percent + 10 percent) of the quota could be caught by the second week of December. If the fishery were to remain open until the end of December, the quota would likely be exceeded (98 percent + 10 percent = 108 percent). Accordingly, NMFS is proposing to close the South Atlantic LCS fishery on December 15, 2005, at 11:30 p.m. local time.

In the North Atlantic, approximately 68 percent of the available third trimester LCS quota (4.8 mt dw) would likely be taken by the second week of

September and 135 percent of the available LCS quota would likely be taken by the end of September. Dealer data also indicate that, on average, approximately 7 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 151 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 219 percent (68 percent + 151 percent) of the quota could be caught by the second week of September.

Accordingly, NMFS is proposing to close the North Atlantic LCS fishery on September 15, 2005, at 11:30 p.m. local time.

#### Request for Comments

NMFS will hold one public hearing (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

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 impacts on a substantial number of small entities. This proposed rule is published under the authority of

the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.279(b)(1)(iii) and (iv), the purpose of this action is to adjust the LCS and SCS trimester quotas based on over- or underharvests from the 2004 fishing season, and to announce the 2005 second and third trimester season opening and closing dates. This proposed rule will not increase overall quotas, landings or regional percentages for LCS or SCS, implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions.

This proposed rule would result in a net positive economic impact for the South Atlantic and North Atlantic and a minimal negative economic impact for the Gulf of Mexico. The 2003 average ex-vessel price for LCS flesh was \$0.79/lb, and the average ex-vessel price for SCS flesh was \$0.53/lb dw. Although shark fins command a higher price (\$19.86/lb dw), they represent only a small proportion of the total landings. The Gulf of Mexico experienced a net overharvest of 56.6 mt dw (–\$98,576, excluding fins) of LCS during the two 2004 semi-annual seasons and a net underharvest of 30.8 mt dw (+\$35,987) of SCS during the 2004 seasons. Thus, the net economic impact to the Gulf of Mexico is approximately –\$62,589. This represents a small fraction of the overall gross revenue for the fishery (\$4.5 million in 2003) and does not represent a significant negative economic impact. For the South Atlantic and the North Atlantic, which both experienced net underharvests of 85.9 mt dw and 5.15 mt dw for LCS,

respectively, and 299.7 mt dw and 43.5 mt dw for SCS, respectively, during 2004, the net economic impact would be positive. For the South Atlantic, if the entire quota is caught, this could result in a net economic benefit of approximately \$499,786 (\$149,606 for LCS, excluding fins + \$350,180 for SCS). For the North Atlantic, if the entire quota is caught, this could result in net economic benefit of approximately \$59,115 (\$8,288 for LCS, excluding fins + \$50,827 for SCS).

This rule is expected to impact 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)).

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: March 4, 2005.

**William T. Hogarth,**

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

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