

between 26°19.8' N. lat. and 25°48' N. lat. (a line directly west from the Monroe/Collier County, FL, boundary), i.e., the area off Collier County.

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on August 26, 2000 (65 FR 52350, August 29, 2000). Subsequently, NMFS determined that the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone was reached and closed that segment of the fishery on November 19, 2000 (65 FR 70317, November 22, 2000). Next, NMFS determined that the commercial quota for Gulf group king mackerel for vessels fishing with run-around gillnets in the southern Florida west coast subzone was reached and closed that segment of the fishery on January 19, 2001 (66 FR 7591, January 24, 2001). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the southern Florida west coast subzone through June 30, 2001.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. Note, however, that the bag limit for an operator or crew member of a charter vessel or headboat is zero. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained

from the fishery. The closure must be implemented immediately to prevent an overrun of the commercial quota (50 CFR 622.42(c)(1)) of Gulf group king mackerel, given the capacity of the fishing fleet to quickly harvest the quota. Overruns could potentially lead to further overfishing and unnecessary delays in rebuilding this overfished resource. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds, for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 28, 2001.

Bruce C. Moorehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010112015-1015-01; I.D. 120500A]

RIN 0648-AO85

Atlantic Highly Migratory Species; Commercial Shark Management Measures

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues emergency regulations to re-establish the commercial quotas for large and small coastal sharks and catch accounting/monitoring procedures at 1997 levels. These regulations are necessary to ensure that the regulations in force are consistent with the court-approved settlement agreement.

DATES: This emergency rule is effective March 6, 2001 through September 4, 2001. Comments must be received no later than 5 p.m. on June 4, 2001.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly

Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Margo Schulze-Haugen at the same address.

FOR FURTHER INFORMATION CONTACT:

Margo Schulze-Haugen or Karyl Brewster-Geisz at 301-713-2347.

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

On May 2, 1997, NMFS was sued by the Southern Offshore Fishing Association (SOFA) and other commercial fishermen and dealers on a regulation that reduced the large coastal shark (LCS) commercial quota by 50 percent to 1,285 metric tons (mt) dressed weight (dw) and established a small coastal shark (SCS) commercial quota of 1,760 mt dw.

In April 1999, in response to new requirements of the Magnuson-Stevens Act, NMFS published the final HMS FMP. The HMS FMP included numerous measures to rebuild or prevent overfishing of Atlantic sharks in commercial and recreational fisheries, including a rebuilding plan for LCS that further reduced commercial quotas and measures to prevent overfishing of SCS. On June 25, 1999, SOFA and commercial fishermen and dealers sued NMFS on the commercial shark measures in the HMS FMP and its implementing regulations.

On June 30, 1999, Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida enjoined the Atlantic shark commercial quotas and fish-counting methods (including the counting of dead discards and state commercial landings after Federal closures) adopted in the HMS FMP. The injunction ordered that NMFS maintain the commercial shark quotas and fish-counting methods at 1997 levels.

On June 12, 2000, in response to a joint motion, Judge Merryday ordered that NMFS may proceed with implementation and enforcement of the prohibited species provisions adopted in the HMS FMP.

Settlement Agreement

On November 21, 2000, plaintiffs and NMFS reached a settlement agreement

that would dismiss both lawsuits and prescribed actions to be taken by both parties. On December 7, 2000, Judge Merryday entered an order approving the settlement agreement. The settlement agreement requires NMFS to re-establish the 1997 commercial LCS quota and catch accounting/monitoring procedures (dead discards and state landings after Federal closure not counted against Federal quotas; no splitting of the LCS commercial quota into ridgeback and non-ridgeback subgroups; no minimum size for ridgeback LCS) pending an independent review of the 1998 LCS stock assessment. The settlement agreement also requires NMFS to re-establish the 1997 SCS commercial quota pending a new SCS stock assessment. Both the independent review of the 1998 LCS stock assessment and a new SCS stock assessment are anticipated to be completed in 2001. NMFS also anticipates conducting a new LCS stock assessment in 2001, which will also be independently reviewed.

NMFS determined that the settlement agreement was appropriate because it will conserve Atlantic sharks while maintaining a sustainable fishery in the long-term; move the management process for Atlantic sharks forward through quality-controlled scientific assessment and appropriate rulemaking; and promote confidence in the management process and its underlying science.

This emergency rule is necessary because, since the court injunction was dissolved per the settlement agreement, the HMS FMP and its implementing regulations are in force. Specifically, without this emergency rule, the reduced LCS and SCS commercial quotas of 816 mt dw and 329 mt dw, respectively, and the catch accounting/monitoring procedures adopted in the HMS FMP would remain in force, inconsistent with the court-approved settlement agreement. This emergency rule will ensure that the regulations in force are consistent with the court-approved settlement agreement.

Commercial Quotas and Catch Accounting/Monitoring Procedures

Pending completion of the independent review of the 1998 LCS stock assessment, this emergency rule establishes the LCS commercial quota at 1,285 mt dw; suspends the regulation on the ridgeback LCS minimum size; suspends the regulation on season-specific quota adjustments for LCS and SCS; and suspends the regulation on counting dead discards and state landings after Federal closures against Federal quotas. Pending completion of a

new SCS stock assessment, this emergency rule establishes the SCS commercial quota at 1,760 mt dw. NMFS will ensure that the independent review of the 1998 LCS stock assessment and new stock assessments for LCS and SCS are completed as soon as possible. NMFS will take appropriate action at the earliest practicable date upon completion of these assessments and reviews to ensure the conservation of Atlantic sharks while maintaining a sustainable fishery in the long-term.

Classification

These emergency regulations are published under the authority of the Magnuson-Stevens Act. The Assistant Administrator for Fisheries (AA) has determined that these regulations are necessary to ensure that regulations in force are consistent with the court-approved settlement agreement.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact on the human environment would result. This emergency rule is of limited duration and is the surest and quickest way to conserve Atlantic sharks and ensure the long-term sustainability of shark fisheries. While this action could result in further LCS stock declines in the short-term, NMFS believes that the risks of protracted litigation (potentially several years) and uncertain outcome outweigh these short-term negative ecological impacts.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. Because the fishing quotas and catch accounting/monitoring procedures for the LCS or SCS fisheries, as adopted in the HMS FMP and its implementing regulations, have been thus far enjoined by court order, re-establishing the 1997 management measures for the duration of this emergency rule will not change the short-term economic benefits or costs associated with the fisheries.

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

NMFS issues this emergency rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This emergency rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the emergency rule and, at the time of extension, the agency is actively pursuing a plan amendment or proposed regulations to conserve Atlantic sharks on a permanent basis.

NMFS will consider public comments on this emergency rule in determining whether to maintain or extend this emergency rule. Responses to comments will be provided if the emergency rule is revoked, modified, or extended. Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such provisions would be contrary to public interest. This emergency rule is necessary to meet the requirements of a court-approved settlement agreement. Further litigation that could further delay implementation of appropriate quotas is contrary to the public interest, because of the concern that LCS stocks would experience further decline during any protracted litigation.

The AA, under 5 U.S.C. 553(d)(3), also finds that there is good cause to waive the 30-day delay in the effective date of this emergency rule, as is normally required, because such delay would be contrary to the public good. The AA finds that this measure is necessary to meet the timely requirements of the court order and to achieve the agency's goals, as described here. Given NMFS's ability to communicate rapidly these regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, and the HMS Infoline, the AA believes that affected fishermen and other interested persons will have sufficient and timely notice of this action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: February 28, 2001.

William T. Hogarth,

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

For the reasons set out in the preamble, 50 CFR part 635 is 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.*

§ 635.20 [Amended]

2. In § 635.20, paragraph (e)(1) is suspended effective from March 6, 2001 through September 4, 2001.

3. In § 635.27, paragraphs (b)(1)(i), (ii), and (iv)(A) and (C) are suspended and paragraphs (b)(1)(v) and (vi) are added, effective from March 6, 2001 through September 4, 2001, to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(v) *Large coastal and small coastal sharks.* The annual commercial quota for large coastal sharks is 1,285 mt dw, divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual large coastal shark season is 642.5 mt dw. The length of each large coastal shark season will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file with the Office of the Federal Register for publication in the **Federal Register** notification of the length of each season for large coastal sharks at least 30 days prior to the beginning of the season. The annual commercial quota for small coastal sharks is 1,760 mt dw, divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual small coastal shark season is 880 mt dw.

(vi) NMFS will adjust the next year's semiannual quota for pelagic sharks to reflect actual landings during any semiannual period. For example, a commercial quota underharvest or overharvest in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for the season that begins January 1, provided that the annual quota is not exceeded. NMFS will file with the Office of the Federal Register for publication in the **Federal Register** notification of any adjustment at least 30 days prior to the start of the next fishing season.

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4. In § 635.28, paragraph (b)(1) is suspended and paragraph (b)(4) is added, effective from March 6, 2001 through September 4, 2001, to read as follows:

§ 635.28 Closures.

(b) * * *

(4) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as

specified at § 635.27(b)(1)(v). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 010165024-1024-10; I.D. 121500D]

RIN 0648-AO88

American Lobster; Interstate Fishery Management Plans

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

ACTION: Notice of determination of noncompliance; declaration of a moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), NMFS, upon a delegation of authority from the Secretary of Commerce (Secretary), has determined that the State of Rhode Island is not in compliance with Amendment 3 to the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for American Lobster, because the state has failed to implement and enforce a measure that is necessary for the conservation of American lobster. Pursuant to the Act, a Federal moratorium on fishing for American lobster within Rhode Island state waters is hereby declared and will be effective on May 1, 2001. If Rhode Island is found to be in compliance with the ISFMP for American lobster before that date, the moratorium will be withdrawn. The purpose of this action is to support and encourage implementation and enforcement of the Commission's American Lobster ISFMP.

DATES: Effective May 1, 2001.

ADDRESSES: Copies of an Environmental Assessment and Regulatory Impact Review (EA/RIR) are available from the Director, State, Federal and Constituent Programs Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Harry Mears, NMFS, Northeast Region, 978-281-9144.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the Act is to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and manage Atlantic coastal fishery resources. Section 806 of the Act specifies that, after notification by the Commission that an Atlantic coastal state is not in compliance with an ISFMP of the Commission, the Secretary must make a finding, no later than 30 days after receipt of the Commission's notification, on: (1) whether the state has failed to carry out its responsibilities to implement and enforce the Commission's ISFMP; and (2) whether the measures that the state has failed to implement and enforce are necessary for the conservation of the fishery in question. In making such a finding, the Act requires the Secretary to give careful consideration to the comments of the Commission, the Atlantic coastal state found out of compliance by the Commission, and the appropriate Regional Fishery Management Councils. If the Secretary finds that the state is not in compliance with the Commission's ISFMP and that the measures the state has failed to implement and enforce are necessary for the conservation of the fishery, the Secretary must declare a moratorium on fishing in that fishery within the waters of the noncomplying state. The Secretary must specify the moratorium's effective date, which may be any date within 6 months after the declaration of the moratorium. NMFS has been delegated this decision-making authority.

On November 6, 2000, the Secretary received a letter from the Commission prepared pursuant to section 806(b) of the Act. The Commission's letter stated that the State of Rhode Island's American lobster regulations did not meet the provisions of Amendment 3 to the Commission's ISFMP for American lobster and, therefore, the Commission found the State of Rhode Island out of compliance with the ISFMP.

Commission Findings of Non-compliance

The Commission adopted Amendment 3 to the ISFMP for American Lobster in December 1997. Under Amendment 3, states are required to implement and enforce the nontrap gear limit of no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip,