

Point	North lat.	West long.
C	29°00'	87°30'.
D	29°00'	88°30'.
E	28°30'	88°30'.
F	28°30'	89°00'.
G	LA State/EEZ boundary	89°00'.
From point G follow the state/EEZ boundary back to point A.		
A	29°30'	LA State/EEZ boundary.

This rule will remain in effect for 60 days.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c).

This rulemaking is a “significant regulatory action” under section 3(f) of Executive Order 12866. The Department of Commerce has notified the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6(a)(3)(D) of the Executive Order, and OMB/OIRA agrees, that NOAA is promulgating this action in an emergency situation and that normal Executive Order review is not practicable at this time. For this reason, OMB/OIRA has not reviewed this notice under EO 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and the opportunity for public comment would be impracticable and contrary to the public interest, as delaying this action is a seafood safety concern and could result in compromised seafood products reaching the public. This temporary emergency rule prohibits royal red shrimp fishing in the area of the Gulf EEZ identified in a temporary emergency rule published December 1, 2010 (75 FR 74648) and supersedes that temporary emergency rule. NMFS will continue to investigate the deepwater area where the majority of the royal red shrimp fishing effort occurs by sampling the area for tar balls, to determine tar ball distribution across the area and to determine if the tar balls originated from the Deepwater Horizon MC252 incident. NMFS is concerned that seafood may have interacted with the tar balls. The FDA considers such seafood to be adulterated. This temporary emergency rule is necessary to prevent the harvest of adulterated seafood products.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subject in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 2, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective December 3, 2010, all fishing is prohibited in the portion of the Gulf EEZ identified in the map shown on the NMFS Web site: http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.

[FR Doc. 2010–30870 Filed 12–3–10; 4:15 pm]

BILLING CODE 3510–22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100622276–0569–02]

RIN 0648–AY98

Atlantic Highly Migratory Species; 2011 Commercial Fishing Season and Adaptive Management Measures for the Atlantic Shark Fishery

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes opening dates and adjusts quotas for the 2011 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), blacknose shark, non-blacknose small coastal shark (SCS), blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on any over- and/or underharvests experienced during the 2009 and 2010 Atlantic commercial shark fishing seasons. NMFS is taking this action to establish the 2011 adjusted fishing quotas and to open the commercial fishing seasons for the Atlantic sandbar shark, non-sandbar LCS, blacknose shark, non-blacknose SCS, and pelagic shark fisheries based on over- and underharvests from the 2009 and 2010 fishing season. This action is expected to affect commercial shark fishermen in the Atlantic and Gulf of Mexico regions. In addition to establishing opening dates and adjusting annual quotas, this final rule implements adaptive management measures, including flexible opening dates for the fishing season, as well as inseason adjustments to shark trip limits, to provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. These actions are expected to affect

commercial shark fishermen in the Atlantic and Gulf of Mexico regions.

DATES: This final rule is effective January 7, 2011. The 2011 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2011. The non-sandbar LCS in the Gulf of Mexico region will open on March 1, 2011. The non-sandbar LCS fishery in the Atlantic region will open on July 15, 2011. Each shark species/complex closes on December 31, 2011, or when landings reach, or are projected to reach, 80 percent of the respective quota, whichever occurs first. The one exception is blacknose sharks and non-blacknose SCS fisheries, where both fisheries close when landings of either fishery reach 80 percent of the quota. The 2011 Atlantic commercial shark fishing season and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Guy DuBeck at 301-713-2347 or (fax) 301-713-1917, or Jackie Wilson at 240-338-3936 or (fax) 404-806-9188.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635.

On September 20, 2010, NMFS published a rule (75 FR 57240) that proposed the 2011 opening dates of the Atlantic commercial shark fisheries and quotas based on shark landings information as of July 31, 2010. The proposed rule also considered two main alternatives regarding management of the shark fishery. One approach would maintain the status quo approach to establishing trip limits (33 non-sandbar LCS/trip), as well as consider alternatives to allow changes in shark trip limits in order to extend fishing opportunities year-round (alternative 1 and its sub-alternatives). The other approach (alternative 2 and its sub-alternatives) would allow flexibility in

the opening of the season for Atlantic shark fisheries through the annual specifications process and allow inseason actions to adjust shark trip limits in either region to provide expanded fishing opportunities for constituents across the fishery, as is the intent of Amendment 2 to the 2006 Consolidated HMS FMP (Amendment 2) (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008). The proposed rule contained details regarding the alternatives considered and a brief summary of the recent management history. Those details are not repeated here. Several comments from the public were received on the proposed rule. Those comments, along with the Agency's responses, are provided below. As detailed more fully in the Response to Comments section, NMFS will open the non-sandbar LCS fishery in the Gulf of Mexico region on March 1, 2011. The other shark species/complexes will open as proposed in the September 20, 2010, rule with non-sandbar LCS in the Atlantic region opening on July 15, 2011, and all other shark species/complexes opening on January 1, 2011. This final rule serves as notification of the 2011 opening dates of the Atlantic commercial shark fisheries and 2011 quotas, based on shark landings updates as of October 31, 2010, pursuant to 50 CFR 635.27(b)(1)(vii). This action does not change the annual base and adjusted annual base commercial quotas for sandbar sharks, non-sandbar LCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) as established under Amendment 2 or the commercial quotas established for non-blacknose SCS and blacknose sharks under Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) (75 FR 30484, June 1, 2010). Any such changes would be performed through a separate action. Rather, this action adjusts the commercial quotas based on over- and/or underharvests in 2009 and 2010.

Response to Comments

During the proposed rule stage, NMFS received more than a dozen written comments from fishermen, dealers, and other interested parties. NMFS also heard numerous comments from the fishermen and dealers who attended the four public hearings. A summary of the comments received during the public comment period for the September 20, 2010, proposed rule (75 FR 57240) is shown below with NMFS' responses. All written comments can be found at <http://www.regulations.gov/> and by searching for RIN 0648-AY98.

A. Season Opening Dates

1. Non-Sandbar LCS Comments

Comment 1: The flexibility measures under sub-alternatives 2A and 2B, which allow flexibility in the opening of the season for Atlantic shark fisheries and adjusting of shark trip limits, look good in theory, but the fishery needs certainties to make good business and personal decisions.

Response: Under the preferred sub-alternatives 2A and 2B, NMFS would still conduct annual proposed and final rulemaking to establish the quotas and season opening dates. As part of this rulemaking, interested parties could provide comments and have notice of the season opening dates, as is currently the process. In addition, NMFS would provide five days' notice of changes in shark trip limits, as is currently done with the closing of a particular shark fishery when 80 percent of a given quota is harvested. Such a process would provide the same amount of notice to fishermen and associated shark industries of changes in the fishery as is currently provided. NMFS believes that five days' notice of changes provides enough time for business decisions while also providing NMFS with the ability and flexibility to manage the fishery, as appropriate.

Comment 2: NMFS does not need to extend the shark fishing season year-round since fishermen can catch other fish species the rest of the year. The economics should be considered in this rule since it is more economically beneficial to have a short season.

Response: NMFS acknowledges that shorter seasons may result in some reduced trip-related expenses. A shorter season may result in less fuel expenditures for travel, lower costs associated with changing over gear types, and reduced crew turnover. A shorter season may reduce the at-sea time associated with harvesting the shark quota, and, therefore, provide fishermen with more time to pursue other fisheries. However, there are both social and private costs potentially associated with shorter seasons. Shorter fishing seasons often result in derby-style fishing conditions, which can result in fishing under unsafe conditions, such as poor weather and long hours. Derby fishing can also result in a market glut of fish during the early part of a fishing season when there is heavy fishing if there is insufficient demand for the product during that short period. Furthermore, when fishing in other fisheries, such as snapper/grouper or mackerel fisheries, fishermen are likely to encounter sharks. If the season for sharks is closed, those sharks

caught as bycatch need to be discarded, resulting in fishing inefficiencies and increased mortality of sharks. Therefore, NMFS prefers sub-alternatives 2A and 2B, which will provide the Agency with the necessary flexibility to extend the fishing season either by delaying the opening of a shark fishery and/or adjusting shark trip limits through inseason actions to help reduce bycatch and mortality of sharks.

In addition, NMFS could not identify patterns in ex-vessel shark prices based on season length, but rather, found slightly higher prices for 2010 overall compared to 2008 and 2009. NMFS compared ex-vessel prices for non-sandbar LCS for 2008 when the fishing season was opened for almost six months compared to 2009 and 2010 where the non-sandbar LCS fishery was opened between 6 weeks to 22 weeks. Ex-vessel prices for non-sandbar LCS in 2008 and 2009 were \$0.45 per pound each year. However, these prices were slightly higher for 2010 at \$0.60 per pound. In addition, the sandbar shark research fishery, which has been opened for longer periods of time in 2008–2010, had similar prices in 2008 and 2009 (\$0.35 and \$0.40 per pound, respectively) but had higher prices in 2010 at \$0.70 per pound.

Atlantic Region

Comment 3: NMFS should open the non-sandbar LCS fishery in the Atlantic region in January with a trip limit of 33 sharks/trip, lower the trip limit to 0 sharks/trip when 40 percent of the quota is achieved, and then raise the trip limit back to 33 sharks/trip in July. This approach would ensure available quota for fishermen along the Atlantic coast. However, if NMFS re-creates a bi-annual season by lowering and raising the trip limit, NMFS needs to ensure accurate and timely reporting by dealers in order to ensure that all fishermen along the coast have equal opportunities to fish the quota. Electronic reporting needs to be implemented to stop delayed dealer reporting of shark landings.

Response: NMFS considered such a scenario of creating a bi-annual fishing season for non-sandbar LCS by lowering and raising non-sandbar LCS trip limits to allow for a fishery at the beginning of the year yet reserving quota for a fishery later in the year when sharks migrate to more northern Atlantic waters. However, because of delays in dealer reporting due to the current biweekly reporting regime for shark dealers, and due to delays in the receipt of State landings data, NMFS is concerned that sufficient amounts of the quota may not be available for a fishery later in the season under the scenario described in

Comment 3. Currently, dealers are required to have landings reports from the first through the 15th of each month received by NMFS no later than the 25th of the month. Landings reports from the 16th through the end of the month must be received by NMFS no later than the 10th of the following month. Therefore, dealer reports are delayed by two weeks, making landings data at least 10 days old by the time the Agency receives HMS dealer reports. If the quota is being harvested at a fast rate, then the Agency may not be able to reduce trip limits fast enough to ensure an adequate fishery later in the season. NMFS is currently working on an electronic dealer reporting rulemaking, which will require more timely dealer reporting and support real-time quota monitoring. Once this system is in place, NMFS could consider managing the shark season as described under Comment 3.

Comment 4: Some fishermen for the Florida area and related industries do not support the proposed July 15 opening for the non-sandbar LCS fishery in the Atlantic region. The delay in 2010 did not provide an equal opportunity for Florida fishermen to harvest the quota because sharks are not available in Florida waters in July and prices for sharks are higher in the winter than the summer. Because there are more shark fishermen in Florida than in other regions, NMFS should not give preference to fishermen who fish further north. However, other fishermen from North Carolina and north support the proposed July 15 opening because it offers mid- and north Atlantic fishermen an opportunity to harvest the quota.

Response: In 2008, 257,286 pounds (lb) dressed weight (dw) of non-sandbar sharks were reported from July through December on HMS dealer reports by Federally permitted dealers from the east coast of Florida. During the same time period, 10,390 lb dw of non-sandbar LCS were reported by dealers from North Carolina. In 2009, when the fishery was opened during January through July, 317,050 lb dw of non-sandbar LCS were reported by Federal dealers from the east coast of Florida whereas 4,534 lb dw of non-sandbar LCS were reported from dealers from North Carolina. Thus, 2008 dealer reports indicate that non-sandbar LCS are present in waters off the east coast of Florida during the July to December timeframe. In addition, fishermen from North Carolina landed less than half the amount of non-sandbar LCS from January through July in 2009 compared to 2008 when the fishery was open later in the year, and sharks migrated to more northern Atlantic waters. Preliminary data for 2010 from July through

September indicate a similar pattern to that in 2008. Consistent with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen. Opening the non-sandbar LCS fishery later in the year (*i.e.*, July 15) would allow the furtherance of equitable fishing opportunities to all fishermen in the Atlantic region; fishermen in the south Atlantic and north Atlantic would all have the ability to harvest a portion of the non-sandbar LCS quota in the Atlantic region with such an opening date.

Finally, NMFS compared monthly ex-vessel prices based on data provided on HMS dealer reports for non-sandbar LCS from 2008 through 2010 for dealers reporting from the east coast of Florida. Median ex-vessel prices per pound ranged from \$0.45–\$0.75 in July through September in 2008 and 2010 (the non-sandbar LCS fishery was not open during this time period in 2009). From January through March, median ex-vessel prices per pound ranged from \$0.45 to \$0.50 and were similar, if not slightly lower, than summer ex-vessel prices for non-sandbar LCS. Thus, NMFS did not find higher ex-vessel prices for non-sandbar LCS during the winter months, suggesting that a summer/fall fishery for non-sandbar LCS off the east coast of Florida could generate as much revenue as a winter/spring fishery.

Comment 5: North Carolina and Florida traditional shark fisheries are composed of different species. North Carolina was mainly a sandbar shark fishery while Florida was mainly a blacktip shark fishery. NMFS should manage the fishery based on the traditional fisheries and not take away the winter non-sandbar LCS fishery from Florida fishermen.

Response: While average landing reports from 2003 to 2007 indicate that more blacktip sharks were reported, on average, from the east coast of Florida compared to North Carolina (263,405 lb dw versus 14,878 lb dw of blacktip sharks), dealers from the east coast of Florida reported higher average landings of sandbar sharks compared to dealers in North Carolina (309,640 lb dw versus 232,132 lb dw of sandbar sharks). Thus, the east coast of Florida had a substantial traditional sandbar shark fishery before the implementation of Amendment 2 to the Consolidated HMS FMP. In addition, blacktip sharks, which are currently allowed to be retained in the commercial fishery, unlike sandbar sharks, are not as prevalent in the beginning of the year

off North Carolina based on HMS dealer reports (142 lb dw of blacktip sharks from January through March). This information indicates a fishery for this species later in the year is appropriate to allow for a more equitable opportunity for all fishermen in the Atlantic region to harvest a portion of the non-sandbar LCS quota, consistent with National Standard 4.

Comment 6: Making Florida fishermen fish for sharks in the summer presents a safety-at-sea issue as it is dangerous in the Florida summer heat to have to process the sharks twice by removing fins once the sharks are offloaded and having to lift heavy sharks that cannot be cut in half.

Response: NMFS disagrees that opening the non-sandbar LCS fishery in July in the Atlantic region presents a safety-at-sea issue; NMFS has considered National Standard 10, regarding promoting the safety of human life at sea, to the extent practicable, when considering the opening dates of the shark fishing seasons. Regulations prohibiting shark fishermen from being able to cut, quarter, or fillet sharks while at sea have been in effect since 1997. In addition, landings information from HMS Dealer Form reports indicate shark fishermen have historically landed sharks in Florida during July through September, and the offloading of sharks with their fins naturally attached has been in place since the 2008 Amendment 2. Therefore, having a summer non-sandbar LCS fishery should not be a change in current fishing practices or present any new safety-at-sea concerns. Additionally, in both 2008 and 2010, the non-sandbar LCS summer fishery has continued substantially into the fall (until December 31 in 2008 and to date in 2010). As such, opening the fishery on July 15 provides shark fishermen who do not want to fish in the heat of the summer, or who fish for other species in the summer, an opportunity to fish during the cooler months.

Gulf of Mexico Region

Comment 7: Shark meat is easier to sell in the Gulf of Mexico around the religious holiday of Lent. Shark dealers and fishermen in the Gulf of Mexico supported sub-alternative 2A to allow for flexibility in the opening of the commercial fishing season so that the opening dates could be around Lent each year.

Response: Consistent with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen. Therefore,

NMFS considered a season opening date that would allow the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all parts of the Gulf of Mexico region. As such, based on comments received from fishermen and dealers in different areas of the Gulf of Mexico requesting NMFS to open the season at the beginning of the year, to open the season around Lent, or to open the season around the middle of March, NMFS is opening the non-sandbar LCS on March 1, 2011. This opening should also allow for shark product to be available during Lent in 2011 as Lent begins on March 9, 2011. This is a change from the opening date in the proposed rule for this action; however, as explained in the responses to Comment 8 below, NMFS believes such an opening date would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011.

Comment 8: Louisiana shark fishermen and dealers are in favor of opening the non-sandbar LCS fishery in the Gulf of Mexico in January or February of 2011. This would allow a winter fishery when few other fisheries are open at that time. Opening the season during the cooler months would be beneficial since ice is not used on vessels in that area. NMFS should also be consistent with Louisiana State regulations and should not open the season during the pupping season (April through June of each year). Louisiana State shark fishermen supported opening the non-sandbar LCS fishery the same time as it was opened in 2010 (*i.e.*, early February) so that catch and catch rates before and after the oil spill can be compared to determine the impact on the oil spill on shark populations. There was also some support from Louisiana State fishermen to open the non-sandbar LCS fishery in the Gulf of Mexico later in the year (*i.e.*, July) when the flow of the Mississippi river is lower and sharks are easier to catch.

Response: Consistent with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen. NMFS is balancing comments received from all fishermen and dealers in the Gulf of Mexico region with regard to the opening of the non-sandbar LCS fishery in that region. Based on comments received from fishermen and dealers throughout the Gulf of Mexico, NMFS is opening the non-sandbar LCS on March 1, 2011. This is a change from the

opening date in the proposed rule for this action; however, NMFS believes such an opening date would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011. This would open the fishery at the beginning of the year when it is cooler (*i.e.*, before the summer months) and when other fisheries may be closed. In addition, based on how quickly the quota was harvested in 2010 in the Gulf of Mexico region, NMFS does not anticipate the non-sandbar LCS quota lasting until the end of the year, so an overlap with the shark pupping season from April-June during 2011 should not be substantial. If any overlap does occur, since Louisiana State waters are closed from April to June of each year to protect shark pupping, overall shark fishing effort would be reduced. Additionally, the Federal shark permit holders that would be active during this time period would be fishing in offshore waters and not pupping areas. Thus, NMFS does not anticipate any significant impacts to shark populations due to fishing by Federal shark fishermen during this time. However, an opening date of March 1, 2011, would most likely not allow for a non-sandbar LCS fishery later in the season in the Gulf of Mexico region. NMFS could slow the fishery down by reducing the trip limit; however, while this action implements the criteria and authority for NMFS to make inseason changes to shark trip limits, no changes to the actual trip limits are being made at this time. Additionally, until NMFS has real-time reporting from shark dealers, NMFS is concerned that due to the delay in dealer reports, sufficient amounts of the quota may not be available for a fishery later in the season as explained in the response to Comment 3 above.

Comment 9: Louisiana fishermen questioned the need for equitable opportunities to catch the quota.

Response: As explained above, in accordance with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen.

Comment 10: Louisiana Department of Wildlife and Fisheries indicated that there were currently 600 State water shark permits with approximately half of those permits actively participating in the shark fishery. These fishermen derive a substantial amount of income from shark fishing; however, the State agency claimed that the proposed rule did not consider the impacts to Louisiana State fishermen, and stated that NMFS should consider the impacts

to Louisiana State fishermen when establishing shark fishing regulations.

Response: NMFS disagrees that the proposed rule did not consider impacts to Louisiana State fishermen. In both the proposed rule and this final rule, NMFS analyzed alternatives to provide equitable fishing opportunities to the extent practicable for commercial shark fishermen in all regions and areas. NMFS has not been able to quantify potential impacts to State fishermen with regard to impacts of changing trip limits as it has for Federal shark fishermen due to the lack of Federal logbooks from State fishermen and the lack of a requirement for dealers to have a Federal dealer permit and report landings of State fishermen to NMFS. However, NMFS held a public hearing in Louisiana and has taken comments from Louisiana shark fishermen into consideration on the proposed rule and draft Environmental Assessment (EA) on the opening of the commercial shark fishing seasons. In this rule, NMFS balanced comments received from all participants in the Gulf of Mexico region with regard to the opening of the non-sandbar LCS fishery in that region. As explained in responses to Comments 7 and 8, NMFS believes an opening date of March 1, 2011, would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011. This change also takes into consideration comments from some Louisiana fishermen who suggested the fishery open near the religious holiday of Lent.

Comment 11: The quota would last longer if NMFS opens the non-sandbar LCS season in the Gulf of Mexico region later in the year (such as March 1 or March 15) because, if the season opens in January, Louisiana vessels would primarily target sharks because there are no other open fisheries at that time. However, NMFS should not open the season too late in the year in the Gulf of Mexico region as there are no sharks in the Florida Keys in July, which is part of the Gulf of Mexico region.

Response: NMFS is balancing comments received from all fishermen and dealers in the Gulf of Mexico region with regard to the opening of the non-sandbar LCS fishery in that region. In Comment 8, constituents requested that the non-sandbar LCS fishery open around Lent (*i.e.*, beginning March 9, 2011) when shark product was more easily sold. Florida-based fishermen wanted the non-sandbar LCS fishery to open at the beginning to the middle of March in the Gulf of Mexico region, whereas Louisiana-based fishermen wanted the non-sandbar LCS fishery to

open around January to February of 2011. Based on public comment, NMFS is opening the non-sandbar LCS fishery on March 1, 2011. This is a change from the opening date in the proposed rule for this action; however, NMFS believes such an opening date would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011. In addition, NMFS has implemented criteria and flexibility in opening the commercial shark fisheries in the future (*see* response to Comment 7 above).

Comment 12: Louisiana State fishermen are illegally fishing for sharks in Federal waters without a Federal shark permit. Once this issue is addressed, NMFS could extend the season and allow for more of the Federal quota to be caught by Federally-permitted fishermen.

Response: Due to comments such as these during the fishing season, NMFS Office of Law Enforcement (OLE) investigated the allegations and intercepted one fisherman fishing without a Federal shark permit fishing in Federal waters in 2010. If suspected illegal activities are observed in any fishery and/or region, specific information regarding such incidents can be reported to NMFS OLE. Anyone can report suspected illegal activities to NMFS OLE by calling 1-800-853-1964 or by contacting a local OLE Division Office. The location of NMFS OLE Division Offices can be found at <http://www.nmfs.noaa.gov/ole/contacts.html>.

2. SCS Comments

Comment 13: NMFS should not close the SCS fishery when 80 percent of the blacknose quota is caught. Blacknose sharks are not caught in the north Atlantic, and closing the entire SCS fishery when the blacknose shark quota reaches 80 percent could close down a healthy Atlantic sharpnose shark fishery that occurs year round in North Carolina.

Response: In the final rule of Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484, June 1, 2010), NMFS established new blacknose shark and non-blacknose SCS quotas and established that both fisheries would close when either quota reached, or was projected to reach, 80 percent. This link between quotas was implemented because the status of the blacknose shark stock is overfished with overfishing occurring. Thus, given the small blacknose quota, it is most likely that the blacknose fishery would close before the non-blacknose fishery. However, blacknose sharks could suffer

additional mortality in non-blacknose SCS fisheries as bycatch. Closing both fisheries when either quota reached 80 percent helps ensure rebuilding of blacknose sharks. In addition, this offers an incentive to avoid blacknose sharks and target non-blacknose SCS so that the non-blacknose SCS fishery does not close with quota still available. During the proposed rule for Amendment 3, fishermen noted that they could target and avoid certain species of small coastal sharks. In addition, unlike blacknose sharks, any underharvest of the non-blacknose SCS quota could be added to the following year's fishing quota, since the stock status of finetooth, Atlantic sharpnose, and bonnethead sharks have all been determined to be healthy. These measures maximize the opportunity to harvest the healthy non-blacknose SCS while rebuilding and preventing overfishing on the blacknose shark stock.

B. Trip Limit Comments

Comment 14: NMFS should not lower the trip limit to extend the season. Anything less than 33 non-sandbar LCS per trip would shut the fishery down since it would not be profitable for Federal fishermen.

Response: With the implementation of Amendment 2, NMFS anticipated that setting the trip limit at 33 non-sandbar LCS would lead to non-sandbar LCS being caught in an incidental manner in other fisheries, as the reduced trip limit would no longer provide an economically viable targeted fishery for non-sandbar LCS. However, an analysis of logbook data indicates that the non-sandbar LCS fishery has harvested, on average, less than the 33 non-sandbar LCS per trip limit. Specifically, the Coastal Fisheries Logbook data indicate that since the implementation of Amendment 2, the overall average number of non-sandbar LCS landed per trip in the Gulf of Mexico and Atlantic regions was 21 and 13, for 2008 and 2009, respectively. Additionally, NMFS is aware that many shark fishermen continue to fish directly for large coastal sharks, particularly during times when other fisheries are closed. Therefore, it seems that targeted non-sandbar LCS trips have been conducted at lower harvest levels than the current trip limit. In this final rule, NMFS is not changing the trip limits. However, NMFS is implementing criteria for trip limit adjustments through inseason actions to provide fishermen more equitable access to the relevant shark resource throughout their appropriate region.

Comment 15: Federal fishermen are concerned that the trip limit reduction

would not stop the Louisiana State fishermen from continuing to harvest a large proportion of the Gulf of Mexico quota.

Response: On March 17, 2010 (75 FR 12700), after 42 days of fishing, NMFS closed the commercial non-sandbar LCS fishery in the Gulf of Mexico region. Inclement weather during this time period limited access to non-sandbar LCS by vessels fishing out of some areas of Florida, and allowed vessels from Louisiana, which were not as restrained by weather conditions, to continue to catch a majority of the non-sandbar LCS quota. In this final rule, NMFS implements regulations and criteria to lower and raise shark trip limits and allow fishermen more equitable access to the relevant shark resource throughout their appropriate region. Such flexibility should provide NMFS the opportunity to allow fishermen more equitable access to the relevant shark resource throughout their appropriate region by slowing a fishery down, as needed, if the quota is being harvested too quickly. However, NMFS is not implementing any changes in the shark trip limits at this time based on public comment. NMFS is also implementing regulations and criteria to allow flexibility in the opening dates of the commercial Atlantic shark fishing seasons in the future. Currently, NMFS will open the 2011 Gulf of Mexico non-sandbar LCS fishery on March 1, 2011. NMFS anticipates that delaying the 2011 season opening until March 1, 2011, balances comments NMFS heard from constituents throughout the Gulf of Mexico region and would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011.

Comment 16: Extending the quota year-round would require NMFS to reduce the number of participants in the Atlantic shark fisheries. Changing the trip limits or opening dates would not change this.

Response: As described above in response to Comment 15, at this time, the data do not provide enough information for NMFS to determine what trip limit would allow for a year-round fishery. However, in this rule, NMFS is implementing regulations and criteria to provide the flexibility to change to the opening date of the shark fisheries, as well as lower and raise shark trip limits, as necessary. Although no changes to shark trip limits are being implemented at this time, NMFS believes that the combination of these two regulations should provide fishermen with more equitable access to the relevant shark resource throughout

their appropriate region, even if they do not result in a year-round fishery. NMFS is also requesting comments on an advance notice of proposed rulemaking (ANPR) that looks at different visions for the future of the shark fishery and potential short- and long-term changes to the regulations (September 20, 2010, 75 FR 57235). This ANPR could result in a rulemaking that considers, among other things, the number of participants in the fishery, appropriate trip limits, and the length of the fishing seasons.

C. General Comments

Comment 17: NMFS should implement certain fishing days for sharks—such as Mondays, Wednesdays, and Fridays—in order to lengthen the fishing season, similar to what was done in the Atlantic bluefin tuna fishery.

Response: NMFS is aware of the problems being faced by the non-sandbar LCS fishery, which include short fishing seasons. To address some of these problems, on September 20, 2010, NMFS published an ANPR (75 FR 57235) to initiate broad public participation in considering potential short- and long-term changes to the regulations governing the U.S. Atlantic shark fishery. This ANPR requests comments and potential solutions regarding ongoing issues currently affecting management of the shark fishery, including commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, “derby” fishing conditions due to small quotas, and short seasons. Implementing certain fishing days to lengthen the shark fishing season could be one of the mechanisms considered in any rulemaking resulting from this ANPR. Comments on the ANPR will be accepted through January 14, 2010.

Comment 18: In 2009, the non-sandbar LCS fishery in the Gulf of Mexico was closed before the quota was reached without applying any underharvest, but NMFS is planning to take away overharvest in 2010. All of the quota underharvest and overharvest should be equally applied.

Response: The stock status for the non-sandbar LCS fishery is currently unknown. Under the regulations implemented in Amendment 2, NMFS does not transfer underharvest to the next fishing year for species whose stock status is unknown, overfished, or if overfishing is occurring. Not applying underharvest increases the likelihood that these stocks rebuild in a timely manner. However, NMFS transfers underharvest up to 50 percent of the base quota to the next fishing year for species whose stock status is not

unknown, not overfished, or overfishing is not occurring. In addition, NMFS subtracts overharvests from the next fishing year for all species/complexes in order to ensure rebuilding plans are being met and fisheries remain sustainable.

Comment 19: NMFS should stop all shark fishing.

Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year and opening dates for the 2011 shark season. These quotas were established to rebuild overfished stocks, prevent overfishing, and obtain optimum yield and were based on the best available science, per the requirements of the Magnuson-Stevens Act. The final rule and accompanying documents do not reanalyze the overall management measures for sharks, which was done in Amendment 2 and Amendment 3, and is being reviewed again through the ANPR process described above.

Comment 20: NMFS needs to consider a balance between the interests of Florida and North Carolina along with the rest of the Atlantic States. NMFS should consider a north and south Atlantic region and/or bi-annual seasons.

Response: NMFS implemented one fishing season and separate regions for the non-sandbar LCS fishery in the Gulf of Mexico and Atlantic in Amendment 2. The Agency preferred measures consistent with the 2006 LCS stock assessment by maintaining two regions: A Gulf of Mexico and Atlantic region. Maintaining two regions has several advantages, including: It adheres to the stock assessment for blacktip sharks, which assessed this species separately in the Gulf of Mexico and Atlantic; it accounts for overharvests that occur in the Gulf of Mexico and Atlantic more equitably; it allows for unique quotas to be implemented in each region that account for different species composition in each region; and, maintains the flexibility to implement unique regulations in the Gulf of Mexico and Atlantic Ocean.

The shark fishery has traditionally been managed on a calendar year, and NMFS prefers to maintain this practice. As implemented in Amendment 2, NMFS has one shark fishing season, starting January 1 of each year. Opening on this date is more likely to overlap with open seasons for other BLL and gillnet fisheries and provide for fishermen a full calendar year to harvest available quota. Nonetheless, NMFS is reviewing different visions for the future of the shark fishery through an ANPR

process (see the response to comment 18). Changing regional boundaries could be one of the mechanisms considered in any rulemaking resulting from this ANPR.

Comment 21: Non-sandbar LCS quota from the shark research fishery should be given to the Gulf of Mexico region.

Response: Consistent with Amendment 2, underharvest of the shark research non-sandbar LCS fishery quota is not transferable to the Gulf of Mexico region. NMFS established a separate non-sandbar LCS and sandbar shark quota in the sandbar shark research fishery under Amendment 2. The sandbar shark research fishery allows for the collection of fishery-dependent data for future stock assessments while also allowing NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives for the Agency. The shark research fishery maintains time series data for stock assessments. The separate quotas allow each fishery to continue even if the non-sandbar LCS quota outside the research fishery is fulfilled. The research fishery itself continues until both the sandbar and non-sandbar LCS landings reach 80 percent of the quotas established for the research fishery (*i.e.*, if the non-sandbar LCS landings within the research fishery reached 80 percent of the quota, non-sandbar LCS retention in the research fishery ends, but sandbar sharks continue to be retained until that sandbar shark landings reached 80 percent of the sandbar quota). Transferring quota from the research fishery to the non-research shark fisheries could undermine the research objectives and the reason for the research fishery.

Comment 22: NMFS needs to increase both the quota and trip limit.

Response: NMFS implemented the current quotas and trip limits based on the latest NMFS-conducted stock assessments for blacknose, blacktip, dusky, and sandbar sharks, and the LCS complex, which represent the best available science by independent peer reviewers. The current quota and trip limits are consistent with rebuilding targets established in the latest shark stock assessments. Any changes in quotas would be based on new, future stock assessments. Implementing sub-alternative 2B would allow NMFS to adjust the trip limits (0–33 sharks per trip) via inseason actions based on certain criteria and process. This alternative anticipates that the quotas for some fisheries, such as the non-sandbar LCS fisheries, would not last the entire fishing year and builds in flexibility to try to extend the

availability of the quota. The goal of the alternative is to lengthen the season to provide, to the extent practicable, furtherance of equitable fishing opportunities for commercial shark fishermen in all regions and areas while also considering the ecological needs of the different species. Recently, NMFS announced an ANPR (75 FR 57235, September 20, 2010) to gather public participation in considering potential short- and long-term changes to the regulations governing the U.S. Atlantic shark fishery. One such change could be to increasing the trip limits.

Comment 23: Fishermen fishing in the mid-Atlantic closed area cannot keep spinner or silky sharks caught on pelagic longline (PLL) gear due to the indicator species list in the regulations. The indicator species list needs to be re-visited.

Response: The purpose of this rulemaking is to adjust quotas and opening dates for the 2011 shark season. The final rule is not reanalyzing the overall management measures in the 2006 Consolidated HMS FMP. In the 2006 Consolidated HMS FMP, NMFS establish a 5 percent limit (by weight) on the allowable amount of pelagic “indicator” species that bottom longline vessels may possess or land from PLL closed areas, and establish a 5 percent limit (by weight) on the allowable amount of “indicator” demersal species that PLL vessels may possess or land from BLL closed areas (as measured relative to the total weight of all “indicator” species). The establishment of quantifiable species-based criteria to differentiate between PLL and BLL fishing gear in closed areas should help to eliminate ambiguities, because PLL gear would logically be expected to capture pelagic species and vice-versa. The indicator species list improves the monitoring and effectiveness of, and compliance with, HMS closed areas. Recently, NMFS initiated an ANPR (75 FR 57235, September 20, 2010), to gather public participation in considering potential short- and long-term changes to the regulations governing the U.S. Atlantic shark fishery. This comment can be addressed during the ANPR.

Changes From the Proposed Rule

NMFS made several changes to the proposed rule as described below.

1. NMFS changed the opening date of the non-sandbar LCS fishery in the Gulf of Mexico in the final rule from on or about January 1 to March 1, 2010. This change is being made to address public comment and in accordance with the criteria and process being finalized in this rule under sub-alternative 2A.

Specifically, in the proposed rule, NMFS proposed to open the non-sandbar LCS in the Gulf of Mexico region on the effective date of the final rule. As described in the response to comments above, NMFS received many public comments from fishermen and dealers regarding a change in the opening date for the Gulf of Mexico non-sandbar LCS fishery. These comments suggested changing the opening date to around the religious holiday of Lent (*i.e.*, beginning March 9, 2011) when shark products are said to be more marketable, in the beginning to the middle of March of 2011 to have a more equitable opportunity to harvest the non-sandbar LCS quota, and around the same time as it did in 2010 (*i.e.*, February). After reviewing these comments and the criteria being finalized in this rule under sub-alternative 2A, NMFS decided to delay the opening of the non-sandbar LCS fishery in the Gulf of Mexico region until March 1, 2011. Delaying the opening of the non-sandbar LCS fishery in the Gulf of Mexico region balances the comments received from all constituents in the Gulf of Mexico region and should provide further equitable shark fishing opportunities to all participants in the Gulf of Mexico region, consistent with National Standard 4.

2. NMFS made changes in the final quotas of the Gulf of Mexico non-sandbar LCS, non-blacknose SCS, and porbeagle shark fisheries based on landings updates through October 31, 2010. At the time the proposed rule published, shark landings updates (through July 31, 2010) indicated that the commercial Gulf of Mexico non-sandbar LCS quota had been exceeded by 17.4 metric tons (mt) dw during the 2010 commercial shark fishing season. Since then, additional landings have been reported, which have the effect of reducing the final quota by a total of 38.6 mt dw. Also, landing reports indicated that, in 2010, the non-blacknose SCS fishery was underharvested by 92.9 mt dw and the porbeagle shark fishery was overharvested by 0.1 mt dw.

3. NMFS changed the names of the sub-alternative 1B (establish a new non-sandbar LCS trip limit that would extend the fishing season in the Gulf of Mexico region) and sub-alternative 1C (establish a new non-sandbar LCS trip limit that would extend the fishing season in the Atlantic region) to better describe the original intent of the alternative. Also, NMFS clarified that the changes to the trip limit would occur at the beginning of the fishing season, and would remain static for the

remainder of that season, to help ensure quotas last the whole year.

2011 Annual Quotas

This final rule adjusts the commercial quotas due to over- and/or underharvests in 2009 and 2010. The 2011 annual quotas by species and

species group are summarized in Table 1. All dealer reports that are received by NMFS after October 31, 2010, will be used to adjust the 2012 quotas, as appropriate.

TABLE 1—2011 ANNUAL QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise]

Species group	Region	2010 Annual quota	Preliminary 2010 landings ¹	Overharvest/underharvest	2011 Base annual quota ²	2011 Quota	Season opening dates
		(A)	(B)	(C)	(D)	(D+C)	
Non-Sandbar Large Coastal Sharks.	Gulf of Mexico.	390.5 (860,896 lb dw).	429.1 (946,052 lb dw).	-38.6 (-85,156 lb dw).	390.5 (860,896 lb dw).	351.9 (775,740 lb dw).	March 1, 2011.
	Atlantic	169.7 (374,121 lb dw).	142 (312,952 lb dw).	.....	187.8 (414,024 lb dw).	190.4 ³ (419,756 lb dw).	July 15, 2011.
Non-Sandbar LCS Research Quota.	No Regional Quotas.	37.5 (82,673 lb dw).	33.3 (73,471 lb dw).	.....	37.5 (82,673 lb dw).	37.5 (82,673 lb dw).	January 1, 2011.
Sandbar Research Quota ..	.....	87.9 (193,784 lb dw).	53.8 (118,599 lb dw).	.....	87.9 (193,784 lb dw).	87.9 (193,784 lb dw).	
Non-Blacknose Small Coastal Sharks.	.....	221.6 (488,539 lb dw).	128.7 (283,821 lb dw).	92.9 (204,718 lb dw).	221.6 (488,539 lb dw).	314.4 (693,257 lb dw).	
Blacknose Sharks .....	.....	19.9 (43,872 lb dw).	14.5 (31,981 lb dw).	.....	19.9 (43,872 lb dw).	19.9 (43,872 lb dw).	
Blue Sharks .....	.....	273 (601,856 lb dw).	3.5 (7,700 lb dw).	.....	273 (601,856 lb dw).	273 (601,856 lb dw).	
Porbeagle Sharks .....	.....	1.5 (3,307 lb dw).	1.6 (3,576 lb dw).	-0.1 (-269 lb dw).	1.7 (3,748 lb dw).	1.6 (3,479 lb dw).	
Pelagic Sharks Other Than Porbeagle or Blue.	No Regional Quotas.	488 (1,075,856 lb dw).	116.5 (256,800 lb dw).	.....	488 (1,075,856 lb dw).	488 (1,075,856 lb dw).	January 1, 2011.

¹ Landings are from January 1, 2010, until October 31, 2010, and are subject to change.

² 2010 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).

³ NMFS intends to adjust the 2011 quota for Atlantic non-sandbar LCS to account for the 2.6 mt dw that was over estimated in the landings report in 2010 after the final rule establishing the 2010 quota published.

1. 2011 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

Since no overharvests of the non-sandbar LCS and sandbar shark quotas within the shark research fishery occurred during the 2010 fishing year, pursuant to § 635.27(b)(1)(iii), the 2011 adjusted base annual quotas within the shark research fishery will be 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

2. 2011 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

Since an overharvest of 38.6 mt dw for the non-sandbar LCS quota for the Gulf of Mexico region occurred during the 2010 fishing year, pursuant to § 635.27(b)(1)(i)(A), the 2011 adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region will be 351.9 mt dw (775,740 lb dw).

3. 2011 Quotas for the Non-Sandbar LCS in the Atlantic Region

The 2011 annual quota for non-sandbar LCS in the Atlantic region is 190.4 mt dw (419,756 lb dw). In the final rule establishing the 2010 quotas (75 FR 250, January 5, 2010), NMFS accounted for an overharvest of non-sandbar LCS of 18.1 mt dw (39,903 lb dw) using data that were reported as of October 31, 2009. Between that date and December 31, 2009, the reported landings dropped by 2.6 mt dw. This decline is due to normal quality control procedures that occur when updated data are supplied. As such, in accordance with § 635.27(b)(1)(i), the amount that was deducted from the 2010 annual quota, based on preliminary numbers that were later corrected, will be added to the 2011 non-sandbar LCS quota in the Atlantic region. Thus, the 2011 annual commercial non-sandbar LCS quota will be 190.4 mt dw (419,756 lb dw) (187.8 mt dw annual base quota + 2.6 mt dw

2009 overestimated landings = 190.4 mt dw 2011 adjusted annual quota).

4. 2011 Quotas for SCS and Pelagic Sharks

Since no overharvests of blue sharks and pelagic sharks other than porbeagle or blue sharks occurred during the 2010 fishing year, pursuant to § 635.27(b)(1)(v), the 2010 annual base quotas for blue sharks and pelagic sharks other than porbeagle or blue sharks will be 273 mt dw (601,856 lb dw) and 488 mt dw (1,075,856 lb dw), respectively. NMFS does not apply underharvest to any of the pelagic sharks.

Since the 2010 underharvest of the non-blacknose SCS complex was 92.9 mt dw, pursuant to § 635.27(b)(1)(i)(B), that amount will be applied to the 2011 quota. The 2011 adjusted base annual quota for non-blacknose SCS will be 314.4 mt dw (693,257 lb dw).

Since an overharvest of 0.1 mt dw for the porbeagle shark quota occurred during the 2010 fishing year, pursuant

to § 635.27(b)(1)(i)(A), the 2011 adjusted base annual quota for porbeagle sharks will be 1.6 mt dw (3,479 lb dw).

Fishing Season Notification for the 2010 Atlantic Commercial Shark Fishing Season

Based on the criteria and processes described in sub-alternative 2A in the final EA and public comment, the 2011 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2011. The non-sandbar LCS in the Gulf of Mexico region will open on March 1, 2010. The non-sandbar LCS fishery in the Atlantic region will open on July 15, 2010.

All of the shark fisheries will remain open until December 31, 2011, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) has reached, or is projected to reach, 80 percent of the available quota. At that time, consistent with 50 CFR 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota, if any, is available, the fishery for the shark species group and, for non-sandbar LCS, region will remain closed, even across fishing years, consistent with 50 CFR 635.28(b)(2). As a reminder, the blacknose and non-blacknose SCS fisheries will close together when landings reach 80 percent of either quota.

Classification

NMFS has determined that this action is consistent with the Magnuson-Stevens Act, including the national standards, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator (AA) for Fisheries has determined that there is good cause to waive the 30-day delay in effective date for the pelagic shark, shark research, blacknose shark, and non-blacknose small coastal shark fisheries as such a delay would be contrary to the public interest. Providing a 30-day delay in effectiveness for the opening of the pelagic shark, shark research, blacknose

shark, and non-blacknose small coastal shark fisheries would be contrary to the public interest due to the negative economic impact on fisherman and on the fishery resource, and the diminished opportunity for collection of scientific data needed to manage the fisheries.

Allowing for a delay in the effectiveness of this rule, which would result in the closure of the pelagic shark fishery from January 1, 2011, until the effective date of this rule, could be detrimental to the management of these species because it may lead to the discard of any sharks caught by this fishery. In addition, discarding sharks could result in lost ex-vessel revenue for fishermen. In the case of the pelagic shark fishery (which includes blue, shortfin mako, porbeagle, common thresher, and oceanic whitetip sharks), this fishery is conducted as a bycatch fishery by those fishermen targeting other species such as swordfish, yellowfin tuna, and bigeye tuna. This incidental fishery continues throughout the year with no closure date anticipated in the FMP. If the provisions in this rule are not made effective on January 1, 2011, there would be a break in the continuity of this fishery, which would force the fishermen to discard, dead or alive, any pelagic sharks that are caught. Such discards would not be counted against the commercial quota, which could negatively affect certain species such as porbeagle sharks, which has a limited quota and is closely monitored to ensure it is not exceeded. Under the rebuilding plan for porbeagle sharks, NMFS established a total allowable catch (TAC) of 11.3 mt dw based on current commercial landings of 1.7 mt dw, current commercial discards of 9.5 mt dw, and current recreational landings of 0.1 mt dw. As described in previous documents, estimating dead discards accurately is more difficult than accounting for landings. Landing fish, rather than discarding them dead, helps NMFS monitor the TAC properly in order to rebuild the porbeagle shark. Opening the fishery would ensure that any mortality associated with landings would be counted against the quota.

Regarding the shark research fishery, NMFS selects a small number of fishermen to participate in the shark research fishery each year for the purpose of providing NMFS biological and catch data to better manage the Atlantic shark fisheries. All the trips and catches in this fishery are monitored with 100 percent observer coverage. Specifically, the shark research fishery allows for the collection of fishery-dependent data for future stock assessments, including specific

biological and other data that are priorities for improving future stock assessments, and allows NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives for NMFS. Some of the shark research objectives include collecting reproductive and age data, monitoring size distribution, and tagging studies. The information collected in early January could be used for future stock assessments. Delaying the opening of the shark research fishery would not allow NMFS the ability to maintain the time-series of abundance for shark species or collect vital biological and regional data. Preventing NMFS from conducting the necessary research trips could hinder the collection of scientific data and limit the ability of NMFS to manage the shark fisheries, which would be contrary to the public good.

Regarding the blacknose shark and non-blacknose SCS fisheries, these fisheries have both a directed component, where fishermen target SCS, and an incidental component, where the fish are caught and—when the fishery is open—landed by fishermen targeting other species such as Spanish mackerel and bluefish. The incidental fishery catches SCS throughout the year. Delaying this action to allow for a 30-day delay in effectiveness would force all fishermen to discard, dead or alive, any SCS that are caught before this rule becomes effective. Such discards would not be counted against the commercial quota. Opening the fishery on January 1, 2011, would ensure that any mortality associated with landings would be counted against the quota. If these SCS fisheries did not open until the effective date of this rule, which is expected to be after January 1, 2011, the closure of the blacknose shark and non-blacknose SCS fisheries would occur during the time period when SCS fishermen typically fish for SCS species, and therefore, fishermen would experience negative economic impacts that would continue until the fisheries are opened. Additionally, fishermen who catch SCS incidental to their target catch would also experience negative economic impacts. For these reasons, the AA finds good cause to waive the 30-day delay in effectiveness.

NMFS prepared a final EA for this rule that discusses the impact on the human environment as a result of this rule. In this final action, NMFS is adding flexibility to shark management measures by establishing criteria that would allow for delays to the opening date of the different shark species/complex fisheries each year as well as

allow for inseason adjustments to the shark trip limits, as appropriate, to extend the fishing season, as necessary. These measures are consistent with National Standard 4, which NMFS must not discriminate between residents of different States. Also, NMFS must consider fishing opportunities that are fair and equitable to all fishermen. A copy of the EA is available from NMFS (*see ADDRESSES*).

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the impacts of adding flexibility to shark management measures and adjustments to the non-sandbar LCS, non-blacknose SCS, and porbeagle quotas based on over- and/or underharvests from the previous fishing season. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. A summary of the FRFA is below. The full FRFA and analysis of social and economic impacts are available from NMFS (*see ADDRESSES*).

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2011 proposed quotas for non-sandbar LCS, sandbar sharks, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on over- and/or underharvests from the previous fishing year. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP and its Amendments. Thus, NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. An additional purpose is to provide flexibility in the regulations to allow for a delay in the opening of the fishing season, and allow inseason adjustments in the trip limits to slow the fishery down during the season, as necessary. This flexibility is intended to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species. While there are some direct negative economic impacts associated with the measures, NMFS is delaying the 2011 non-sandbar LCS shark fishery season in the Gulf of Mexico and Atlantic regions to allow for a more equitable distribution of the

available quotas among constituents. A delay in the opening of the season in the Gulf of Mexico region until March 1, 2011, could potentially result in minor economic impacts to fishermen who would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February, while shark dealers and other entities that deal with shark products would experience minor economic impacts as they may have to diversify during the beginning of the season. A delay in the opening of the season in the Atlantic region until July 15, 2011, would potentially result in minor economic impacts to shark fishermen who would have fished earlier in the season, such as in the southeast Atlantic where sharks are available early in the fishing season. These shark fishermen would be able to fish for sharks later in the season when the sharks migrate south for the winter.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the draft EA for the 2011 Atlantic Commercial Shark Season Specifications and was summarized in the proposed rule. NMFS did not receive any comments specific to the IRFA. However, NMFS did receive comments related to the overall economic impacts of the proposed rule. Those comments and NMFS' responses to them are mentioned above in the preamble for this rule. Almost all of the comments and responses relate to the comments in 1, 2, 4, 7, 8, 10, and 14.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had gross receipts less than \$3.5 million for fish-harvesting, gross receipts less than \$6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The commercial shark fishery is comprised of fishermen who hold a shark directed or incidental limited access permit (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. As of November 2009,

there were a total of 503 commercial permit holders in the Atlantic shark fishery (221 directed and 282 incidental permits). On average, between 2008 and 2009, approximately 47 vessels with directed shark permits and 15 vessels with incidental shark permits had non-sandbar LCS landings. There were also a total of 105 Atlantic shark dealer permit holders as of November 2009. These active fishing vessels, in addition to State-owned fishing vessels, and shark dealers would be the small entities to which the final rule would apply. A more detailed description of the fisheries affected the categories and number of permit holders can be found in Chapter 6 and Chapter 3 in the FEIS for Amendment 3.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, or compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires NMFS to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives 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.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act and the ESA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this

rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described in the proposed rule (75 FR 57240, September 20, 2010), NMFS analyzed two different main alternatives in this rulemaking with five sub-alternatives and provides justification for selection of the preferred alternative to achieve the desired objective.

NMFS considered two main alternatives for the shark fishery in the short-term. One approach would be to maintain the status quo approach to trip limits (33 non-sandbar LCS/trip), as well as consider alternatives to allow flexibility regarding trip limits in order to extend fishing opportunities year-round. This approach would either maintain the current 33 non-sandbar LCS trip limits (sub-alternative 1A) or consider reductions in the trip limits to ensure the fishing season extends throughout the year (sub-alternatives 1B and 1C). A second approach would be to allow flexibility in the opening of the season for Atlantic shark fisheries through the annual specifications process (sub-alternative 2A) and adjustments via inseason actions to shark trip limits in either region (sub-alternative 2B) to provide expanded opportunities for constituents across the fishery. In addition, having such flexibility would help NMFS respond throughout the management region to any future unanticipated large and small scale events.

Under alternative 1, NMFS considered three sub-alternatives. Sub-alternative 1A, the No Action alternative, would maintain the current vessel trip regulations for non-sandbar LCS. This would result in no additional impacts to small entities. Limited access directed shark permit holders would continue to be able to land up to 33 non-sandbar LCS per trip. On average, between 2008 and 2009, approximately 47 vessels with directed shark permits and 15 vessels with incidental shark permits had non-sandbar LCS landings. The estimated total trip revenue for a maximum trip of 33 sharks is estimated to be \$1,920 in the Gulf of Mexico and \$1,767 in the Atlantic. However, this trip limit has resulted in shortened fishing seasons in 2009 and 2010 due to regional non-sandbar LCS quotas being filled before the end of the fishing year. Fishermen in some areas, such as the North Atlantic, were not able to harvest a portion of the 2009 non-sandbar LCS quota as the quota was harvested before shark migrated to northern waters in the Atlantic in 2009. As such, sub-alternative 1A is not likely to meet the objective of this rule to provide fishery participants an equal opportunity, to the

extent practicable, to harvest the shark quotas.

Sub-alternative 1B would establish a new non-sandbar LCS trip limit at the beginning of the shark fishing season, which would remain static for the remainder of the fishing season, and would extend the fishing season in the Gulf of Mexico region. On average between 2008 and 2009, approximately 20 vessels with directed shark permits and 4 vessels with incidental shark permits had non-sandbar LCS landings in the Gulf of Mexico region. The direct economic impacts to shark fishermen in the Gulf of Mexico region would depend on the reduction in the trip limit. Approximately 81 percent of the Gulf of Mexico trips retained 29 or fewer non-sandbar LCS per trip. Therefore, for a majority of trips, NMFS anticipates that a reduction in the trip limit from 33 non-sandbar LCS to 29 non-sandbar LCS would have a neutral impact on fishermen as fishing and business practices are not anticipated to change due to such a reduction. Reducing the trip limit from 33 non-sandbar LCS to 29 non-sandbar LCS would potentially reduce the maximum revenue per trip from non-sandbar LCS by on average \$233 per trip in the Gulf of Mexico. This estimate is based on the average non-sandbar shark weight and 2009 median ex-vessel prices for non-sandbar LCS and shark fins in the Gulf of Mexico region. Approximately 18 percent may lose additional gross revenues on a trip basis as they were landing more than 33 non-sandbar LCS according to Coastal Fisheries data. In addition, on average, vessels in the Gulf of Mexico region retained 21 non-sandbar LCS per trip; however, the average trip landing numbers of non-sandbar LCS varied by month. If the trip limit were reduced to 21 non-sandbar LCS per trip, this could reduce gross revenues per trip from \$1,920 to \$1,222. While, on average, fishermen may only retain 21 non-sandbar LCS, such a reduction would preclude fishermen from being able to keep additional sharks (up to 33 non-sandbar LCS per trip). Therefore, such a reduction may change how they fish. It may also result in additional trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. All of these factors are expected to result in negative economic impacts in the short-term.

Reducing the trip limit below 21 non-sandbar LCS per trip would be expected to result in economic impacts as it would further reduce gross revenues for shark fishermen on a trip basis. The reduction in gross revenues would range

from \$756 to \$1,920 for a trip limit of 20 to 0 non-sandbar LCS. The lowest average number of non-sandbar LCS retained was 11 non-sandbar LCS per trip during the month of September, which equates to \$640 in gross revenues per trip. Such reductions in the trip limits could translate into fishermen making multiple trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. However, NMFS anticipates that at some reduced trip limit, directed shark fishermen would stop targeting sharks because it would no longer be economically viable. At this point, NMFS expects that shark fishermen would target other species and retain sharks incidentally as anticipated under Amendment 2, and, therefore, the economic impacts in terms of changes in fishing practices and diversifying fishing opportunities on other species to make up for lost shark revenues would be the same as described in Amendment 2.

Sub-alternative 1C would establish a new non-sandbar LCS trip limit at the beginning of the shark fishing season, which would remain static for the remainder of the fishing season, and would extend the fishing season in the Atlantic region. On average between 2008 and 2009, approximately 27 vessels with directed shark permits and 11 vessels with incidental shark permits had non-sandbar LCS landings in the Atlantic region. The direct impacts to shark fishermen in the Atlantic region would depend on the reduction in the trip limit. As explained above, approximately 81 percent of the Atlantic trips retained 27 or fewer non-sandbar LCS per trip. Therefore, for a majority of the trips, NMFS anticipates that a reduction in the trip limit would have minimal economic impacts on fishermen if the trip limit were reduced from the 33 non-sandbar LCS to 27 non-sandbar LCS as fishing and business practices would not be anticipated to change with such a reduction. Approximately 11 percent may lose additional gross revenues on a trip basis as they were landing more than 33 non-sandbar LCS according to Coastal Fisheries data. In addition, on average, vessels in the Atlantic region retained 13 non-sandbar LCS per trip; however, the average trip landing numbers of non-sandbar LCS varied by month. If the trip limit was reduced to 13 non-sandbar LCS per trip, this could reduce potential gross revenues per trip from \$1,767 to \$696. However, on average, fishermen did not retain 33 non-sandbar

LCS per trip during any month of the year. In addition, during 6 of the 12 months fishermen retained fewer than the overall monthly average retention of 13 non-sandbar LCS per trip. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

Reducing the trip limit below 13 non-sandbar LCS per trip would be expected to result in moderate adverse direct economic impacts as it would most likely reduce gross revenues for shark fishermen in the short-term. It is expected that fishermen would stop fishing for sharks as it would no longer be profitable. The reduction in gross revenues would range from \$1,125 to \$1,767 for 12 to 0 non-sandbar LCS per trip. The lowest average number of non-sandbar LCS retained was 8 non-sandbar LCS per trip during the month of June, which equates to \$428 in gross revenues per trip. These reductions in the trip limits could translate into fishermen making multiple trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. However, NMFS anticipates that at some reduced trip limit level, directed shark fishermen would stop targeting sharks because it would no longer be economically viable. At this point, NMFS expects that shark fishermen would target other species and retain sharks incidentally as anticipated under Amendment 2, and therefore, the socioeconomic impacts in terms of changes in fishing practices and diversifying fishing on other species to make up for lost shark revenues would be the same as described in Amendment 2.

Under alternative 2, NMFS preferred two sub-alternatives. Sub-alternative 2A would establish new opening dates for the shark fisheries through the annual specifications process in the Atlantic and Gulf of Mexico regions based on certain criteria and process. Sub-alternative 2A could potentially affect the 221 directed and 282 incidental shark permit holders along with the 105 shark dealers. NMFS plans to review the criteria, described in Chapter 2 of the final EA, on an annual basis to determine when to open each fishery at equitable and beneficial times for fishermen while also considering the ecological needs of the different species. The opening of the fishing season through the annual specifications process could vary based on the available annual quota, catch rates, and

number of fishing participants during the year. For the 2011 fishing season, NMFS would open the shark research, blacknose shark, non-blacknose SCS, and pelagic shark fisheries upon the effective date of the final rule for this action. The direct and indirect socioeconomic impacts would be neutral on a short- and long-term basis because NMFS would not change the opening dates of these fisheries from the status quo alternative. NMFS would also delay the opening of the non-sandbar LCS in the Atlantic region until July 15, 2011, which would be the same opening date as the 2010 fishing season. The delay in the Atlantic non-sandbar LCS fishing season would result in short- and long-term, direct, minor, adverse socioeconomic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues at the beginning of the 2011 fishing season. The short- and long-term effects for delaying the season would cause indirect, minor, adverse socioeconomic impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. This would be most prevalent in areas of the southeast Atlantic where non-sandbar LCS are available early in the fishing season. The delay in the non-sandbar LCS fishing season could cause changes in ex-vessel prices. In 2009, the median ex-vessel price of LCS meat in January was approximately \$0.25 per pound dress weight in the Gulf of Mexico and \$0.45 in the South Atlantic region, while the median ex-vessel price in July of 2008 was \$0.45 in the Gulf of Mexico and \$0.75 in the South Atlantic. The median ex-vessel price for shark fins in January was \$17.00 per pound in the Gulf of Mexico and \$16.00 in the South Atlantic. When the LCS fishery opened in July, the average price for fins was approximately \$14.00 per pound in the Gulf of Mexico and \$12.00 per pound in the South Atlantic passed on 2008 prices. Since the North Atlantic had a very limited 2009 non-sandbar LCS fishing season, the ex-vessel prices for 2008 were used for the comparison.

In the North Atlantic, the delayed opening for the non-sandbar LCS would have direct, minor, beneficial socioeconomic impacts in the short- and long-term for fishermen as they would have access to the non-sandbar LCS quota in 2011. Fishermen in the North Atlantic did not have or had a limited access to the non-sandbar LCS quota in 2009. There would be indirect, minor, beneficial socioeconomic impacts in the

short- and long-term for shark dealers and other entities that deal with shark products in this area as they would also have access to non-sandbar LCS products in 2011. Thus, delaying the non-sandbar LCS seasons under the preferred alternative would cause neutral cumulative socioeconomic impacts, since it would allow the furtherance of equitable fishing opportunities to the extent practicable for commercial shark fishermen in all regions and areas, which was the original intent of Amendment 2.

Based on public comment, NMFS is changing the opening date of the non-sandbar LCS fishery in the Gulf of Mexico region in this final rule according to the criteria and process described in sub-alternative 2A. In the proposed rule, NMFS proposed to open the non-sandbar LCS in the Gulf of Mexico region upon the effective date of the final rule for this action. NMFS received public comments from fishermen and dealers to change the opening date for the Gulf of Mexico non-sandbar LCS fishery. The comments received supported the non-sandbar LCS fishery opening around the religious holiday of Lent (*i.e.*, beginning March 9, 2011) when shark products are more marketable. Florida-based fishermen wanted the non-sandbar LCS fishery in the Gulf of Mexico region to open in the beginning to middle of March in 2011 to have a more equitable opportunity to harvest the non-sandbar LCS quota. However, Louisiana-based fishermen requested that the non-sandbar LCS fishery open around the same time as it did in 2010 (*i.e.*, February) as many other fisheries are closed during this time period. Based on these public comments and a review of the criteria in sub-alternative 2A, NMFS is delaying the opening of the non-sandbar LCS fishery in the Gulf of Mexico region until March 1, 2011. NMFS believes delaying the opening of the non-sandbar LCS fishery balances comments received from all fishermen and dealers throughout that region with regard to the opening of the non-sandbar LCS fishery and provides further equitable shark fishing opportunities to all participants in the Gulf of Mexico region. The delay in the Gulf of Mexico non-sandbar LCS fishing season could result in short-term direct, minor, adverse socioeconomic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February of the 2011 fishing season. The short-term effects for delaying the season could cause indirect, minor, adverse socioeconomic impacts on

shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. However, long-term direct and indirect impacts are not anticipated as the delay would only be two months for the 2011 fishing season. In addition, NMFS does not anticipate that the delay would result in changes in ex-vessel prices as 2009 median ex-vessel prices for non-sandbar LCS meat and fins in the Gulf of Mexico region ranged from \$0.25–\$0.35/lb dw and \$17.00 to \$15.00/lb dw, respectively, from January through March.

Sub-alternative 2B would establish new inseason trip limit adjustment criteria for the Gulf of Mexico and Atlantic regions. Sub-alternative 2B would allow NMFS to adjust the shark trip limit through inseason actions, but would not adjust the overall shark quotas for the Gulf of Mexico and Atlantic regions. According to Amendment 2, this sub-alternative is anticipated to have direct and indirect, short-term, neutral socioeconomic impact in the Gulf of Mexico and Atlantic regions, because changing the non-sandbar LCS trip limits inseason would not limit the overall harvest of non-sandbar LCS, but would provide the mechanism to modify the harvest spatially and temporally to allow furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. Directed fishing on non-sandbar LCS or any shark species would continue as long as the trip limit is high enough to make it economically viable. Data described in Chapter 4 of the final EA shows that since the implementation of Amendment 2, directed shark fishing trips land, on average, 21 non-sandbar LCS in the Gulf of Mexico region, and 13 non-sandbar LCS in the Atlantic region. NMFS has not been able to determine at what trip limit fishermen stop targeting non-sandbar LCS. A range of trip limits have been further analyzed in alternatives 1B and 1C, and the socioeconomic impacts associated with the range of trip limits are described above under sub-alternatives 1B and 1C. Trip limits set at levels too low for fishermen to continue targeting sharks would likely lead to shifts in effort to other fisheries, similar to effort shifts experienced during closures of the non-sandbar LCS fishery in 2009 and 2010. The criteria for changing the trip limits during the season, as outlined in Chapter 2 in the final EA, takes into account opportunities for the furtherance of

equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas and ecological considerations of the relevant shark stock, but would not restrict or reduce the current quota. If trip limits are set in a manner that is beneficial to the ecological needs of the relevant shark species, their populations may increase in the long-term, which could allow for increased quota levels in the future. Therefore, minor, beneficial long-term direct, indirect, and cumulative socioeconomic impacts may occur based on sub-alternative 2B in the long-term.

List of Subjects in 50 CFR Part 635

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

Dated: December 1, 2010.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For 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 part 635 continues to read as follows:

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

■ 2. In § 635.24, paragraph (a)(8) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

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(a) * * *

(8) *Inseason trip limit adjustment criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

- (i) The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports;
- (ii) The catch rates of the relevant shark species/complexes, to date, based on dealer reports;
- (iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;
- (iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;
- (v) Variations in seasonal distribution, abundance, or migratory patterns of the

relevant shark species based on scientific and fishery-based knowledge; and/or

(vi) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

* * * * *

■ 3. In § 635.27:

■ A. Paragraphs (b)(1)(ii) through (b)(1)(vi) are redesignated as paragraphs (b)(1)(iii) through (b)(1)(vii), respectively.

■ B. Paragraph (b)(1)(ii) is added to read as follows:

§ 635.27 Quotas.

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(b) * * *

(1) * * *

(ii) *Opening fishing season criteria.* NMFS will file with the Office of the Federal Register for publication notification of the opening dates of the shark fishery for each species/complex. Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years;

(C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years;

(D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information;

(E) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas;

(F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(G) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

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