

2010, final rule amending the HPTRP (75 FR 7383) was prepared. The EA concluded that the action to amend the HPTRP was anticipated to have no significant effect on the quality of the human environment. A supplement to the EA has been prepared for this action, describing the effects to the environment of delaying the new pinger requirements in New England. The supplement concludes that the delay does not change the determination of the EA.

Pursuant to 5 U.S.C. 553(b)(B), NMFS finds good cause to waive prior notice and opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to the time constraints in implementing this final rule prior to the original March 22, 2010 effective date. This final rule merely delays the effective date of the seasonal pinger requirements within two new HPTRP management areas in New England; all other new measures will become effective on March 22, 2010.

Delaying the effective date of the pinger requirement for these two areas is necessary in order to allow manufacturers of pingers to obtain stock levels sufficient to meet the new demand for pingers. Additionally, the delay is necessary to provide affected gillnet vessel owners and operators sufficient time to come into compliance with the HPTRP requirements by ordering and purchasing pingers, and receiving NMFS pinger authorization training prior to fishing within a HPTRP management area in which pingers are required. Without this extension, many affected gillnet owners and operators would, due to the unavailability of pingers in the large quantities being requested, be out of compliance with this rule the day after it becomes effective. Moreover, if NMFS allowed for a notice and comment period, the effective date of the original February 19, 2010 rule would come into effect, thereby defeating the purpose of this rule to delay that effective date in order to allow the affected parties to come into compliance with the rule. For these reasons, NMFS believes it is in the public interest to extend the effective date of these management areas until the first full HPTRP management season in New England following the initial February 19, 2010 publication of the final rule modifying the HPTRP. This season begins in the fall of 2010.

Additionally, pursuant to 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effective date of this final rule. This delay is necessary because, if this rule's effectiveness were delayed an additional thirty days, the

original effective date of the February 19, 2010 final rule would gain effect, affected fishermen would be out of compliance due to the lack of pingers, and the purpose of this rule would be defeated.

This final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

NMFS conducted a section 7 consultation pursuant to the Endangered Species Act (ESA) on the final rule to amend the HPTRP, which was completed on November 19, 2008. The consultation concluded that the action would not have effects on listed species that were not previously considered during the informal consultation conducted on the initial HPTRP (concluded on November 12, 1998); as such, a consultation was not reinitiated. Therefore, delaying the effective date of new pinger requirements in New England through this final rule does not change this conclusion.

This final rule does not change the determination for the February 19, 2010, final rule (75 FR 7383) that the HPTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the U.S. Atlantic coastal states.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

Dated: March 10, 2010.

**Eric C. Schwaab,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

RIN 0648-XU90

#### Atlantic Highly Migratory Species; Inseason Action to Close the Commercial Gulf of Mexico Non-Sandbar Large Coastal Shark Fishery

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

**ACTION:** Fishery closure.

**SUMMARY:** NMFS is closing the commercial fishery for non-sandbar large coastal sharks (LCS) in the Gulf of Mexico region. This action is necessary because the quota for the 2010 fishing season is projected to have reached at least 80 percent of the available quota.

**DATES:** The commercial non-sandbar LCS fishery is closed effective 11:30 p.m. local time March 17, 2010, until and if NMFS announces, via publication in the **Federal Register** that additional quota is available and the season is reopened.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Gu DuBeck, 301-713-2347; fax 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS all sharks landed every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under § 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group 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 is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On January 5, 2010 (75 FR 250), NMFS announced that the non-sandbar LCS fishery for the Gulf of Mexico region for the 2010 fishing year would open on February 4 and the available non-sandbar LCS quota would be 390.5 metric tons (mt) dressed weight (dw) (860,896 lb dw). Dealer reports through the February 28, 2010, reporting period indicate that 216 mt dw or 55 percent of the available quota for non-sandbar LCS has been taken. All dealer reports through that reporting period are not expected to be received by NMFS until March 10, 2010. Dealer reports received

to date indicate that 22 percent of the quota was taken from the opening of the fishery on February 4, 2010, through February 15, 2010, and an additional 33 percent of the quota was taken from February 15, 2010, through February 28, 2010. Based on the rate of fishing effort indicated by these preliminary dealer reports in February, NMFS expects that an additional 34 percent of the quota likely will be taken from March 1 through March 15, 2010. Based on this calculation, the fishery likely will reach 89 percent of the quota, which exceeds the 80-percent limit specified in the regulations. Accordingly, NMFS is closing the commercial non-sandbar LCS fishery in the Gulf of Mexico region as of 11:30 p.m. local time March 17, 2010. All other shark fisheries remain open.

At § 635.27(b)(1)(ii), the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region.

During the closure, retention of non-sandbar LCS sharks in the Gulf of Mexico region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel

is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and "no sale" provisions apply (50 CFR 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard. A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive non-sandbar LCS in the Gulf of Mexico region from a vessel issued an Atlantic Shark Limited Access Permit (LAP), except that a permitted shark dealer or processor may possess non-sandbar LCS that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. However, a permitted shark dealer or processor may possess non-sandbar LCS that were harvested by a vessel issued a valid shark research fishery permit per § 635.32 with a NMFS-approved observer onboard during the trip the sharks were taken on as long as the non-sandbar shark research fishery remains open. Under this closure, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a non-sandbar LCS in the Gulf of Mexico region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark

LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: March 11, 2010.

**Alan D. Risenhoover,**

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

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