

warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined--1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined -8.80 million lb (3.99 million kg), gutted weight, that is, eviscerated but otherwise whole. Within the shallow-water grouper quota there is a separate quota for red grouper--5.31 million lb (2.41 million kg), gutted weight. When either the shallow-water grouper quota or the red grouper quota is reached, the entire shallow-water grouper fishery will be closed and the closure provisions of § 622.43(a) introductory text and § 622.43(a)(1)(i) apply to the entire shallow-water grouper fishery.

(iv) Tilefishes (i.e., tilefish and goldface, blackline, anchor, and blueline tilefish) combined--0.44 million lb (0.20 million kg), gutted weight, that is, eviscerated but otherwise whole.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 040430138-4173-02; I.D. 042204C]

RIN 0648-AS28

#### Atlantic Highly Migratory Species (HMS) Fisheries; Adjustment of the Semiannual Quotas for Large Coastal Sharks (LCS) in the North Atlantic Region; Shark Fishing Season

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the North Atlantic region seasonal quota split from an equal percentage to a 20- to 80- percentage split between the first and second 2004 semiannual seasons, respectively. This action also notifies eligible participants of the opening and closing dates for the commercial Atlantic LCS fishery for the 2004 second semiannual fishing season in the North Atlantic region.

**DATES:** This rule is effective on July 9, 2004. The fishery opening for LCS in the North Atlantic region is effective 12:01 a.m., local time, July 1, 2004, through 11:30 p.m., local time, July 15, 2004, and the closure is effective 11:30 p.m., local time, July 15, 2004, through 11:59 p.m., local time December 31, 2004.

**ADDRESSES:** For copies of Amendment 1 to the Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations, please write to Highly Migratory Species (HMS) Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or visit the webpage <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Chris Rilling, Karyl Brewster-Geisz, or Heather Stirratt, phone 301-713-2347 or fax 301-713-1917.

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

On December 24, 2003, NMFS issued a final rule (68 FR 74746) that established the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw). The final rule also established regional LCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split between the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. As was done since 1993, the quotas for each region were further split evenly between the 2004 first and second semiannual fishing seasons.

On May 13, 2004, NMFS published a proposed rule to adjust the seasonal quota split for the North Atlantic region (69 FR 26540). The comment period on that proposed rule closed on May 28, 2004. As described in the proposed rule, landings data from 2000-2002 indicated that the majority of LCS in the North Atlantic region were landed in the second semiannual season. Historically, first season landings, including state landings after a Federal closure, have ranged from 6 to 38 percent, with an average of approximately 20 percent of

the annual regional quota for the North Atlantic being landed during the first season. Second season landings, including state landings after a Federal closure, have ranged from 62 to 94 percent, with an average of approximately 80 percent of the annual regional quota for the North Atlantic being landed during the second season. In addition, as of April 23, 2004, there were no reported landings of LCS for the North Atlantic region during the first semiannual season, indicating that the current 50-percent split between the two semiannual seasons does not reflect the historic or current landings for the North Atlantic region.

Thus, this final rule adjusts the seasonal quota split from an even split (50/50) to a 20/80 split resulting in 8.1 mt dw (17,857.3 lb dw) for the first semiannual season and 32.6 mt dw (71,870.0 lb dw) for the second semiannual season, not adjusted for any over- or underharvest. This action will not affect the overall LCS landings quota for the fishery or the region (40.7 mt dw or 89,727.2 lb dw for the North Atlantic), but will adjust the North Atlantic 2004 semiannual season quotas to result in a longer second season that more accurately reflects historical and current landings in the region. Available information regarding any over- or underharvest from both seasons will be considered before establishing the trimester season that begins in 2005.

There have been no changes from the proposed to the final rule.

Since neither the annual quotas, nor the overall regional quotas will be changed, NMFS does not expect this action to result in any negative economic consequences. This action will likely have a positive economic impact by allowing fishermen to harvest an amount closer to the actual historic landings for the region. Without making this adjustment, the length of the second semiannual season would have to be shortened when the lower existing quota was reached, thus preventing fishermen from landing as many sharks as they have historically. The shortened season would also make effective management and reporting of the data in a timely manner impracticable. Dealer reports of shark landings are received on a bi-weekly basis, and under the lower existing quota the season would have to be closed in a matter of days rather than weeks, thus not allowing sufficient time to review landings reports.

On June 1, 2004, NMFS published a notice in the **Federal Register** (68 FR 30837) announcing the opening and closing dates for the commercial Atlantic large coastal, small coastal, and pelagic shark fisheries for the 2004

second semiannual fishing season and the quotas for the Gulf of Mexico and the South Atlantic regions. This information is not repeated here.

### Response to Comments

Comments on the proposed rule received during the public comment period are summarized here together with NMFS' responses.

*Comment 1:* The quotas have resulted in too short of a fishing season in the South Atlantic. If the quota split for the North Atlantic region is going to result in a longer second semiannual fishing season for the North Atlantic, then the South Atlantic region should have been allowed to have a longer first semiannual fishing season.

*Response:* The lower overall LCS quota implemented in Amendment 1 to the HMS FMP, combined with splitting the quota among three regions, has resulted in a shorter fishing season for each of the regions. Adjusting the North Atlantic regional quota split between the first and second semiannual seasons is necessary because, as of April 23, 2004, there had been no reported landings of LCS for the first semiannual season in the North Atlantic region. By contrast, as of April 23, 2004, 87 percent of the South Atlantic regional quota for the first season had been reported landed. The closure of the fishery in the South Atlantic region was thus timed appropriately to avoid an overharvest of LCS. If there had been a similar significant underharvest of LCS in other regions, along with historical data indicating a majority of landings in the second season, NMFS would have considered taking similar action to allow additional harvest during the second semiannual season, as appropriate, given the overall quota. For any quota not fully taken in any region, the underharvest will be added to the quota in the 2005 fishing year, consistent with § 635.27(b)(1)(vi).

*Comment 2:* NMFS should not allow any harvest of sharks.

*Response:* The Atlantic commercial shark fishery is being managed to allow for LCS to rebuild, consistent with the Magnuson-Stevens Act. In Amendment 1 to the HMS FMP, NMFS established the overall annual quota for LCS at 1,017 mt dw based on the latest stock assessments, and established a revised rebuilding plan for LCS. The environmental impacts of the overall regional quotas were analyzed in Amendment 1 to the HMS FMP and the final rule published on December 24, 2003, (68 FR 74746). This action does not change the 40.7-mt dw quota allocated for the North Atlantic region as part of the rebuilding plan. Adjusting

the 2004 quota allocation for the North Atlantic region between the first and second semiannual seasons is not expected to have a negative impact on shark populations.

*Comment 3:* The 15-day comment period was too short to allow true public comment.

*Response:* The 15-day comment period was necessary in order to ensure sufficient notice of the closing date for the North Atlantic region's second semiannual fishing season prior to the start of that season on July 1, 2004.

*Comment 4:* Adjusting the semiannual quota split from a 50/50 split to a 80/20 split is appropriate given that no LCS were reported landed in the North Atlantic region during the first semiannual fishing season.

*Response:* The 80/20 split in this action ensures that the quota represents the true historical landings for the second semiannual season in the North Atlantic, without exceeding the overall quota for the region or the fishery as a whole.

Regulations at 50 CFR 635.27(b) provide for adjustments of shark fishing quotas via a framework regulatory action.

### Available Quota

On December 24, 2003 (68 FR 74746), NMFS announced that the 2004 annual landings quotas for LCS was established at 1,017 metric tons (mt) dressed weight (dw) (2,242,078.2 lb dw). The LCS quotas was also further split, consistent with § 635.27(b)(1)(iii), between three fishing regions. The North Atlantic fishing region received four percent of the quota or 40.7 mt dw (89,727.2 lb dw).

This final rule allocates 20 percent of the North Atlantic regional quota to the first 2004 semiannual fishing season and 80 percent to the second 2004 semiannual fishing season. Without accounting for any under- or overharvests, the 2004 North Atlantic regional semiannual LCS quota levels are 8.1 mt dw (17,857.3 lb dw) and 32.6 mt dw (71,870 lb dw) for the first and second semiannual seasons, respectively.

In the December 2003 final rule, NMFS announced that due to an overharvest of the quota in the first 2003 semiannual season, the 2004 first semiannual quota for all regions needed to be reduced by 55.4 mt dw (122,134.8 lb dw). Thus, accounting for four percent of the overharvest (2.2 mt dw or 4,850 lb dw), the North Atlantic regional LCS quota for the first 2004 semiannual season is now 5.9 mt dw (13,007 lb dw).

In the fishing season **Federal Register** notice for the second 2004 semiannual

fishing season (69 FR 30837, June 1, 2004), NMFS announced that due to an underharvest in the 2003 second semiannual fishing season, the North Atlantic fishing region would have 7 mt dw (15,432.2 lb dw) added to its available quota. Thus, the 2004 second semiannual fishing season LCS quotas for the North Atlantic region is 39.6 mt dw (87,302.2 lb dw).

NMFS will take appropriate action before January 1, 2005, in order to determine and announce the 2005 first trimester quotas for the Atlantic shark fisheries, consistent with § 635.27(b)(1)(iii).

### Fishing Season Notification

As announced in a separate **Federal Register** notice (69 FR 30837, June 1, 2004), the 2004 second semiannual commercial fishing season for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open July 1, 2004. To estimate the LCS fishery closure dates, NMFS calculated the average reported catch rates for each region from the second seasons from recent years (2000, 2001, 2002, and 2003) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates of the years used to estimate catch rates. Additionally, pursuant to § 635.5 (b)(1), shark dealers must report any sharks received twice a month: those sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS will close the Federal LCS fishery on either the 15th or the end of any given month.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 76 percent of the available LCS quota would likely be taken by the second week of July and 152 percent of the available LCS quota would likely be taken by the end of July. Dealer data also indicate that, on average, approximately 9 mt dw (19,841 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 24 percent of the available quota. Thus, if catch rates in 2004 are similar to the

average catch rates from 2000 to 2003, 100 percent (76 + 24 percent) of the quota could be caught over the entire semiannual season if Federal waters are closed during the second week of July. If the fishery remains open until the end of July, the quota would likely be exceeded (152 + 24 percent = 176 percent). Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the North Atlantic LCS quota for the second 2004 semiannual season will likely be attained by July 15, 2004. Thus, the North Atlantic LCS fishery will close on July 15, 2004, at 11:30 p.m. local time.

#### Classification

This final rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The AA previously determined in Amendment 1 to the HMS FMP that the implementation of regional quotas was necessary to ensure effective implementation of the commercial shark fishery. The AA has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small

entities. No comments were received concerning the economic impact of the rule. As a result, a regulatory flexibility analysis was not prepared.

As of October 2003, there were 56 directed shark limited access permits in the North Atlantic region that would be affected by this rule, all of which are considered small entities. This final rule will have a positive economic impact because it would allow the fishery to stay open longer, thus providing fishermen with a better opportunity to catch the quota. The positive economic impact is not expected to be significant because the overall quota would not be changed, only the period during which the quota may be harvested. By not making this adjustment, the second semiannual season length would be considerably shorter because the fishery would have to close when the lower existing quota was reached, the quota would not reflect historic and current landings in the fishery, and there could be a negative economic impact on fishermen due to the early closure and lower landings.

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

NMFS notified all states, consistent with the Coastal Zone Management Act, of the regional quotas during the rulemaking for Amendment 1 of the

HMS FMP. No states indicated that the regional quota requirement was inconsistent with their coastal zone management programs. Thus, NMFS has determined that adjusting the semiannual regional quota for the North Atlantic region would be consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs.

The environmental impacts of the overall regional quotas were analyzed in Amendment 1 to the HMS FMP and the final rule published on December 24, 2003, (68 FR 74746). Adjusting the 2004 quota allocation for the North Atlantic region between the first and second semiannual seasons is not expected to have impacts on endangered species or marine mammal interaction rates beyond those impacts considered in the October 29, 2003, Biological Opinion. NOAA Fisheries intends to act expeditiously to inform the interested public about this final action using direct email notification, a fax notice, and the internet.

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

Dated: June 9, 2004.

**William T. Hogarth,**

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

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