

■ 20. On page 48848, in the first column, the sixth line of § 27.14(m)(4) is corrected to read “expiration of the applicable benchmark, in”.

■ 21. On page 48848, in the first column, the tenth line of § 27.14(m)(4) is corrected to read “the applicable performance requirement”.

**§ 27.15 [Corrected]**

■ 22. On page 48848, in the second column, the eighth line of § 27.15(d) is corrected to read “MHz band, Blocks C, C1, or C2 in the”.

■ 23. On page 48848, in the second column, the tenth line of § 27.15(d) is corrected to read “or Block D in the 758–763 MHz and”.

\* \* \* \* \*

■ 24. On page 48848, in the second column, the sixth line of § 27.15(d)(1)(ii) is corrected to read “MHz band, or Blocks C, C1, or C2 in”.

■ 25. On page 48848, in the third column, the first sentence of § 27.15(d)(2)(i) is corrected to read as follows:

**§ 27.15 Geographic partitioning and spectrum disaggregation.**

\* \* \* \* \*

(d) \* \* \*

(2) *Disaggregation.* (i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. \* \* \*

\* \* \* \* \*

■ 26. On page 48848, in the third column, the sixth line of § 27.15(d)(2)(ii) is corrected to read “MHz band, or Blocks C, C1, or C2 in”.

**§ 27.50 [Corrected]**

■ 27. On page 48849, in the second column, § 27.50(b) introductory text is corrected to read as follows:

**§ 27.50 Power and antenna height limits.**

\* \* \* \* \*

(b) The following power and antenna height limits apply to transmitters operating in the 746–763 MHz, 775–793 MHz and 805–806 MHz bands: \* \* \*

\* \* \* \* \*

**§ 90.531 [Corrected]**

■ 28. On page 48860, third column, line 63, the amendatory language of § 90.531

is corrected by removing amendatory instruction (d).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 070803437–7666–02]

**RIN 0648–AV93**

**Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the 2008 first trimester season commercial quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on over- or underharvests from the 2007 first trimester season. This action provides advance notice of quotas and season dates for the Atlantic commercial shark fishery. It also ensures the measures in this action are in place until they are replaced by those implemented under Amendment 2 to the Highly Migratory Species (HMS) Consolidated Fishery Management Plan (FMP) even if Amendment 2 is finalized after the start of the second trimester season (May 1, 2008). As such, this action constitutes the regulatory action to determine quotas and season lengths for LCS, SCS and pelagic sharks for the 2008 second trimester season. However, if Amendment 2 to the HMS FMP is unexpectedly delayed beyond the end of the 2008 second trimester season, NMFS may consider a rulemaking for the 2008 third trimester seasons. NMFS would announce any additional action for the second and third seasons in a future **Federal Register** notice.

**DATES:** This rule is effective January 1, 2008. The Atlantic commercial shark fishing season opening and closing dates and quotas for the 2008 first and second trimester seasons are provided in Tables 1 and 2, respectively, under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** For copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory

Flexibility Analysis (EA/RIR/FRFA), please write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or at (301) 713–1917 (fax). Copies are also available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or from [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** LeAnn Southward Hogan or Michael Clark by phone: 301–713–2347 or by fax: 301–713–1917.

**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 Consolidated HMS FMP for Atlantic Sharks, Tunas, Swordfish and Billfish is implemented by regulations at 50 CFR part 635.

Currently, the Atlantic shark annual commercial quotas, with the exception of pelagic sharks, are split among three regions based on historic landings (1999–2003). Consistent with 50 CFR 635.27(b)(1)(iii) and (iv), the annual LCS baseline quota (1,017 mt dw) is split among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The annual SCS baseline quota (454 mt dw) is split among the three regions as follows: 48 percent to the Gulf of Mexico, 49 percent to the South Atlantic, and 3 percent to the North Atlantic. The regional quotas for LCS and SCS are divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings in the North Atlantic.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvest in a given region from the 2007 first trimester season will be carried over to the 2008 first trimester season in that region.

As stated in the proposed rule, existing regulations do not allow underharvests of pelagic sharks to be carried forward to the next fishing management period. Therefore, the 2008 first trimester pelagic shark quotas do not need to be reduced consistent with the current regulations at 50 CFR 635.27(b)(1)(vi)(B). The 2008 first trimester season quotas for pelagic, blue, and porbeagle sharks are proposed to be 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively. The pelagic shark season would open on January 1, 2008 and would close when quotas are projected to be reached with a

notification filed at the Office of the Federal Register by the AA, consistent with 50 CFR 635.28(b)(2). If Amendment 2 to the Consolidated HMS FMP is not final and effective by the start of the 2008 second trimester, the pelagic shark fishery would open on May 1, 2008, with the baseline quotas.

On October 1, 2007 (72 FR 55729), NMFS published a proposed rule that examined the regional adjusted quotas and proposed season lengths for the 2008 first trimester season for LCS, SCS and pelagic sharks managed under the Consolidated HMS FMP. NMFS analyzed three alternatives for adjusting regional trimester quotas and other management measures based on the over- and underharvests that occurred in the LCS and SCS fisheries in the South Atlantic and Gulf of Mexico regions during the 2007 first trimester season. Information regarding these alternatives was provided in the preamble of the proposed rule and is not repeated here.

#### Response to Comments

Comments on the proposed rule are summarized below, together with NMFS' responses.

*Comment 1:* NMFS received several comments in support of alternative 2, which would combine the LCS regions and quotas and open the LCS season on January 1 through January 6.

*Response:* NMFS does not prefer alternative 2 because of the negative consequences of establishing a single combined region with a substantially shortened season. These consequences include derby-style fishing and safety at sea concerns for all regions if fishermen have only six days to fish starting January 1, when weather conditions are potentially poor. Additionally, establishing a substantially shortened season (six days) and opening the waters in all regions could lead to decreased fishing efficiency and resultant decreased survival rates for bycatch. Also, the LCS overharvest that has occurred in recent years could continue if alternative 2 is implemented, causing negative ecological impacts through potential overharvests of overfished species in multiple regions.

Furthermore, the six day season in alternative 2 may cause a temporary glut of shark products in the market. This glut would likely reduce the ex-vessel price of shark products. Additionally, as fishermen would likely try to land as much shark as possible in as short a time as possible, fishing operations would likely be inefficient, thus reducing the quality of the shark products landed. Overall, market gluts

and reduced shark product quality would likely minimize any economic benefits fishermen would gain if the season were open for six days.

Combining the regions would likely have negative economic impacts on regions that do not have sharks present year round. The North Atlantic region may be disadvantaged as a result of combining the three regions into one region because sharks are only present in this region certain times of the year. Dealers in all regions, but particularly in the North Atlantic regions, would also be affected, possibly even more so than vessels, as the likelihood of having quality, fresh shark products would be decreased.

*Comment 2:* NMFS received a comment stating that NMFS has violated National Standards 1 and 2 of the Magnuson-Stevens Act.

*Response:* National Standard 1 requires NMFS to establish conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. Because of the overfished nature of certain shark species and the recent overharvests experienced in this fishery, NMFS believes that optimum yield requires a closure as the available quota would result in derby fishing that may compromise safety and efficiency while potentially resulting in excessive fishing mortality. NMFS must close the LCS fishery in all regions during the 2008 first trimester. The closure would also provide the most ecological benefits and help rebuild overfished sandbar and dusky shark populations, and reduce fishing pressure on other LCS species. Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks established a rebuilding plan for LCS that incorporated the results of the 2002 LCS stock assessment and established optimum yield for the LCS fishery by setting baseline LCS quotas. The LCS closure may help offset the amount of overharvests that need to be accounted for in Amendment 2 to the Consolidated HMS FMP to achieve optimum yield per the results of the 2006 LCS stock assessments.

National Standard 2 requires that conservation and management measures be based upon the best scientific information available. The baseline LCS quotas and quota adjustments that NMFS proposed in this rulemaking were established in Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Sharks and are based on the 2002 LCS stock assessment. Due to recent LCS overharvests during the first trimester season, the adjusted LCS quotas for the

2008 first trimester season are significantly reduced. The small amount of available LCS quota would lead to substantially shortened seasons or closures during the 2008 first trimester season. Although the 2002 LCS stock assessment was the best available science when the current LCS baseline quotas were established, NMFS also considered the results of the 2006 LCS stock assessment when determining the most appropriate course of action for the LCS fishery in this rulemaking. This rulemaking does not propose changes to the LCS baseline quotas. Overall, the 2008 first trimester baseline quotas are based on the best available science when those quotas were established, which is the 2002 LCS stock assessment and the adjustments are based on the best available landings data in recent years. Changes to the LCS baseline quotas, as proposed in Amendment 2 to the Consolidated HMS FMP, are based on the 2006 LCS stock assessment. The results from the 2006 LCS stock assessment were also considered as part of this rulemaking.

*Comment 3:* NMFS received a comment stating that NMFS violated National Standard 4 of the Magnuson-Stevens Act by deducting state landings from federal quotas.

*Response:* National Standard 4 requires that conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote cooperation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. This action does not discriminate between residents of different States because the LCS closure will apply to all regions and the SCS and pelagic shark fisheries will open in all regions on January 1, 2008. In addition, consistent with the regulations at 50 CFR 635.27(b)(1)(vi)(C), sharks taken and landed from state waters are counted against the fishery quota for the applicable region and time period. National Standard 3 states that fish stocks shall be managed as a unit throughout its range. Therefore, deducting state landings from federal quotas is necessary to manage stocks throughout the range and does not discriminate between residents of different states. Some residents may be impacted differently but this measure is needed to prevent overfishing. These landings are also included when

assessing the stock. The shark fishery is not the only fishery where NMFS deducts state landings from Federal quotas. Other fisheries in the southeast region such as snapper/grouper and reef fish fisheries also deduct state landings from federal quotas, consistent with 50 CFR 622.42. However, to improve consistency between state and federal regulations, NMFS is actively working with the Atlantic States Marine Fishery Commission and, as part of Amendment 2 to the Consolidated HMS FMP, wrote letters to all states comparing their regulations with Federal regulations.

*Comment 4:* NMFS received a comment stating that the Agency failed to monitor the quota and the 2008 LCS quota should default to the 2003 emergency rule LCS quota of 1,714 mt dw.

*Response:* The draft Amendment 2 to the Consolidated HMS FMP includes measures to improve reporting and quota monitoring. Such measures are not addressed in this rulemaking which only establishes quotas and season lengths based on adjustments to baseline quotas. NMFS used the best information available when it became available to establish the quotas and season lengths in this rulemaking. The 2003 emergency rule LCS quota was put into place temporarily while Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Sharks was being finalized. The LCS baseline quotas that were finalized in Amendment 1 to the FMP for Atlantic Tunas, Swordfish and

Sharks were based on the best available science at the time, which was the 2002 LCS stock assessment. Therefore, NMFS would not default to the 2003 emergency rule LCS quota because that quota was temporary and did not include the full range of analyses and public comment that was included in Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Sharks. NMFS accounts for over- and underharvests when adjusting the trimester season quotas and has for a number of years, and this rule does not propose a change to this management measure.

*Comment 5:* NMFS received a comment stating that the overall quota for all shark species should be zero.

*Response:* The purpose of this rulemaking is to adjust trimester quotas based on over- and underharvests from the previous year, not to reanalyze the overall shark quotas and management measures, which is being done in Amendment 2 to the Consolidated HMS FMP. NMFS is reexamining quotas and other management measures in Amendment 2 to the Consolidated HMS FMP.

*Comment 6:* NMFS received a comment stating that NMFS has created an economic disaster from failure to manage the fishery and that the Secretary of Commerce should provide economic relief to the small businesses affected by shark quota reductions.

*Response:* Under the Magnuson-Stevens Act at Sec. 312 (16 U.S.C. 1861a), at the request of a Governor, the

Secretary of Commerce can determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of (A) natural causes; (B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of a judicial action) imposed to protect human health or the marine environment; or (C) undetermined causes. Due to the language contained in the Magnuson-Stevens Act, NMFS is currently reviewing these criteria and anticipates doing a rulemaking on them in the near future. At this time, because NMFS has not received a request from a Governor, NMFS is not considering a disaster determination for the Atlantic shark fishery.

**Changes to the Proposed Rule**

NMFS is not changing the proposed rule published on October 1, 2007 (72 FR 55729) based upon public comments NMFS received for the aforementioned reasons. As a result, the provisions published in the proposed rule are adopted as final.

**Final Fishing Season Notification and Quotas for the 2008 First Trimester Season**

The final opening and closing dates and quotas for the 2008 first and second trimester season for LCS, SCS, and pelagic sharks are provided in Table 1 and Table 2, respectively.

TABLE 1. FINAL SEASONS AND QUOTAS FOR LCS, SCS AND PELAGIC SHARKS FOR THE FIRST TRIMESTER OF 2008.

All quotas are in metric tons, dressed weight.

Species Group (Annual Quota)	Region (Allocation)	2008 1st Tri. opening date	2008 1st Tri. closing date	2008 1st Tri. Adjusted Quota
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	Closed		N/A
	South Atlantic (41 %)			
	North Atlantic (7 %)			
Small Coastal Sharks (454)	Gulf of Mexico (48 %)	January 1, 2008	To be determined as necessary	73.2 (161,377 lb dw)
	South Atlantic (49 %)			354.9 (782,413 lb dw)
	North Atlantic (3 %)			19.3 (42,549 lb dw)
Blue Sharks (273)	No regional quotas	January 1, 2008	To be determined as necessary	91.0 (200,618 lb dw)
Porbeagle sharks (92)				30.7 (67,681 lb dw)

TABLE 1. FINAL SEASONS AND QUOTAS FOR LCS, SCS AND PELAGIC SHARKS FOR THE FIRST TRIMESTER OF 2008.—  
Continued

All quotas are in metric tons, dressed weight.

Species Group (Annual Quota)	Region (Allocation)	2008 1st Tri. opening date	2008 1st Tri. closing date	2008 1st Tri. Adjusted Quota
Pelagic Sharks other than Porbeagle or blue (488)				162.7 (358,688 lb dw)

TABLE 2. FINAL SEASONS AND QUOTAS FOR LCS, SCS AND PELAGIC SHARKS FOR THE SECOND TRIMESTER OF 2008.

All quotas are in metric tons, dressed weight.

Species Group (Annual Quota)	Region (Allocation)	2008 2nd Tri. opening date	2008 2nd Tri. closing date	2008 2nd Tri. Adjusted Quota
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	CLOSED		N/A
	South Atlantic (41 %)			
	North Atlantic (7 %)			
Small Coastal Sharks (454)	Gulf of Mexico (48 %)	May 1, 2008	To be determined as necessary	72.6 (160,054 lb dw)
	South Atlantic (49 %)			74.1 (163,361 lb dw)
	North Atlantic (3 %)			12.0 (26,455 lb dw)
Blue Sharks (273)	No regional quotas	May 1, 2008	To be determined as necessary	91.0 (200,618 lb dw)
Porbeagle sharks (92)				30.7 (67,681 lb dw)
Pelagic Sharks other than Porbeagle or blue (488)				162.7 (358,688 lb dw)

**Classification**

NMFS has determined that this action is consistent with section 304(b)(1) of the Magnuson-Stevens Act, including the National Standards, and other applicable law.

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, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule that could minimize economic impacts on small entities. A summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see ADDRESSES).

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule.

The objective of the rulemaking is to ensure that the season lengths and quotas for the first and second trimester seasons of 2008 for LCS, SCS, and pelagic sharks are in place by January 1, 2008, until they are replaced by those implemented under draft Amendment 2 of the Consolidated HMS FMP. There will be no regulatory action to determine quotas and season lengths for LCS, SCS, and pelagic sharks for the 2008 second trimester season even if Amendment 2 to the Consolidated HMS FMP is finalized after May 1, 2008, the start of the second trimester season. This rule does not change the overall annual base quotas.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the Agency's 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 2008 first trimester season Atlantic commercial shark management measures. 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's responses to them are mentioned above in the preamble for this rule.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. This rule could directly affect commercial shark fishermen on the Atlantic Ocean in the United States. 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's size standards for defining a small versus large business entity in this industry. There are approximately 529 (231 directed and 298 incidental) shark permit holders. Additionally, approximately 269 commercial shark dealers could be indirectly affected by this proposed rule. Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might also be indirectly affected by the final regulations. More information regarding the number of small entities involved in the fishery and their locations can be found in Chapters 3 and 6 of Amendment 2 to the Consolidated HMS FMP.

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency 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, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency 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:

- Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- Use of performance rather than design standards; and
- Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders in this fishery to be small entities. In order to meet the objectives of this final rule, consistent with Magnuson-Stevens Act, 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 below, NMFS analyzed three different alternatives in this final rulemaking and provides justification for selection of the preferred alternatives to achieve the desired objective.

The alternatives included: maintain existing procedures for LCS and SCS quota management (alternative 1, No Action), combine the LCS regions and quotas and maintain status quo for SCS (alternative 2), and close all regions to LCS fishing during the 2008 first trimester season until Amendment 2 to the Consolidated HMS FMP effective and maintain modified status quo for SCS (alternative 3, preferred). NMFS preferred alternative 3 because it would provide the most ecological benefits to overfished sandbar and dusky shark populations and reduce fishing pressure on other LCS species. In addition, the ecological benefits of keeping the LCS fishery closed in all regions outweighs the potential economic impacts associated with the closure.

Alternative 1 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over- and underharvests of LCS and SCS when establishing the regional quotas and seasons for the first trimester season of 2008. This alternative is not preferred in part because it could result in negative ecological impacts for LCS species compared to the preferred alternative because it would allow the LCS season to open in the Gulf of Mexico and North Atlantic regions for a short time period. As described below, this alternative would also result in derby fishing and market gluts. It is also important to note that the unexpected magnitude of the 2006 first trimester overharvest would result in no commercial fishing for LCS in the South Atlantic region during the first trimester of 2008 for the second consecutive year since the available adjusted quota of 16.3 mt dw would be taken in approximately one day.

If not for the overharvests in 2006 and 2007, the LCS 2008 first trimester base quota allocation would have been 138.9 mt dw in the South Atlantic region. Instead, the adjusted quota under the no action alternative, would be 16.3 mt dw, which is 122.6 mt dw less than it would have been under the base quota allocation. Because of this small 2008 adjusted quota, no fishing season is preferred due to safety at sea concerns, potential derby fishing conditions and further overharvests of overfished shark

species. Therefore, under this alternative, the South Atlantic region would be closed during the 2008 first trimester season. Based on the ex-vessel prices per pound dw by region in 2006 of \$0.46 per pound dw of LCS flesh and \$16.20 per pound for shark fins in the South Atlantic region, the closure would lead to a loss in revenue of approximately \$7,121 for LCS flesh (95 percent of the 16.3 mt dw) and \$13,122 for shark fins (based on the 5 percent shark fin to carcass ratio). While these revenue reductions alone may not appear to be significant, it should be noted that the 2007 first trimester season in the South Atlantic region was also closed. Therefore, the 2008 first trimester closure would be the second consecutive year this region was closed, possibly leading to continued disrupted revenue flows and negative economic impacts.

If not for the 125.1 mt dw overharvest in the first trimester of 2007 in the Gulf of Mexico region, the 2008 first trimester available quota would have been 176.1 mt of LCS in the Gulf of Mexico region. Due to this overharvest, the adjusted LCS quota is 51 mt dw in the Gulf of Mexico region. To estimate the value of changes in revenues from the 2008 available quota, the 2006 ex-vessel prices were used to calculate the "extra" revenues generated from the overharvest in the first trimester of 2007. Based on the ex-vessel prices per pound dw by region in 2006 of \$0.47 per pound dressed weight of LCS flesh and \$20.65 per pound for shark fins in the Gulf of Mexico region, the value of the 125.1 mt dw reduction from the baseline quota allocation is approximately \$55,855 for LCS flesh (95 percent of the quota weight) and \$129,166 for shark fins (based on the 5 percent shark fin to carcass ratio).

With a 2008 adjusted quota of 51 mt dw, the Gulf of Mexico region would have a short season that would last for five days. Using the ex-vessel prices as above for the Gulf of Mexico region, the value of this 51 mt dw adjusted quota for the first trimester of 2008 is approximately \$22,772 for LCS flesh (95 percent of the quota weight) and \$52,658 for shark fins (based on the 5 percent shark fin to carcass ratio). Therefore the estimated revenue for the 2008 first trimester season would be approximately \$75,430. While there may be slight positive economic impacts as a result of a limited LCS season in the Gulf of Mexico coupled with a South Atlantic LCS closure causing prices to increase, the intense fishing period may also cause a temporary glut in the market, and therefore, a reduction in the ex-vessel price of shark products or less

efficient fishing operations thus reducing the quality of the shark products landed. Overall, NMFS expects that the small amount of LCS quota available and short season would likely result in negative economic impacts in the Gulf of Mexico region.

The LCS quota in the North Atlantic region for the first trimester season of 2008 would be 10.7 mt dw. The ex-vessel prices only provide the value of LCS flesh in the North Atlantic region and not for shark fins; therefore an average of \$18.43 was taken of the ex-vessel price for shark fins in the South Atlantic and Gulf of Mexico regions to calculate approximate revenue from the available quota. The approximate value of the 10.7 mt dw adjusted quota for the 2008 first trimester season in the North Atlantic region would be \$13,415.

Under alternative 1, the estimated total value of the adjusted 2008 first trimester LCS quota is \$75,430 for the Gulf of Mexico region and \$13,415 for the North Atlantic region. Due to the LCS closure in the South Atlantic region, under alternative 1, a negative economic impact totaling \$20,243 in lost revenues would occur. The estimated total overall revenue under alternative 1 for all regions would be \$68,602. Some of the impacts from these reduced revenues might be mitigated somewhat for vessels that can fish for SCS and pelagic sharks or in other HMS and non-HMS fisheries. However, these opportunities would likely be limited and result in additional costs associated with adjusting current fishing practices.

With regards to SCS, alternative 1 would maintain existing procedures for addressing regional trimester over- and underharvests for SCS when establishing the regional quotas and seasons for the first trimesters of 2008. There were no overharvests of SCS in any region during the 2007 first trimester season. No change in economic impacts would be realized in the North Atlantic, South Atlantic, and Gulf of Mexico regions since these regions would be open, with ample quota, during the first trimester of 2008 under the no action alternative. Based on the ex-vessel price per pound of SCS in the North Atlantic, South Atlantic, and Gulf of Mexico regions potential revenue for flesh would be \$0.43, \$0.55, and \$0.53, respectively. Potential revenue from SCS may help offset lost revenue in the LCS fishery due to short seasons and a closure.

Alternative 2 would combine the North Atlantic, South Atlantic and Gulf of Mexico regions for the LCS fishery into one region. Combining the 2008 first trimester baseline quota for all three regions would result in a baseline

quota of 317.8 mt dw. Accounting for the 2007 first trimester overharvests in all three regions of 239.8 mt dw, would result in an adjusted quota of 78 mt dw. NMFS used the 2005 total ex-vessel annual revenue data for these calculations because region specific data was not available for all regions in 2006. Based on total ex-vessel annual revenues in all regions combined in 2005 of \$0.48 per pound dress weight of flesh and \$17.94 per pound of shark fins, the value of the 239.8 mt dw reduction from the baseline quota allocation in all the regions is approximately \$109,349 for LCS flesh (95 percent of the quota weight) and \$215,101 for shark fins (based on the 5 percent shark fin to carcass ratio). Therefore, the 2007 first trimester overharvest in the South Atlantic and Gulf of Mexico regions is estimated to have a direct revenue impact on the LCS commercial fishery, when combining the regions, of approximately \$324,450. The value of the 78 mt dw combined quota that would allow the season to be open for six days is approximately \$35,568 for LCS flesh (95 percent of the quota weight) and \$69,966 for shark fins (based on the 5 percent shark fin to carcass ratio). Therefore, the estimated revenue for the LCS 2008 first trimester season under alternative 2, with all regions combined would be approximately \$105,534. Derby style fishing conditions and safety at sea concerns may occur as a result of the shortened season causing negative social impacts. The six day season may cause a temporary glut of shark products in the market and therefore a reduction in the ex-vessel price of shark products or less efficient fishing operations thus reducing the quality of the shark products landed. Under these conditions, it is likely the estimated revenue for all regions would be less than \$105,534. Combining the regions would likely have negative economic impacts on regions that do not have sharks present year round. The North Atlantic region may be disadvantaged as a result of combining the three regions into one region. Dealers in all regions, but particularly in the North Atlantic region, would also be affected, possibly even more so than vessels, as the likelihood of having shark products consistently would be decreased. Overall, negative economic impacts would result from the small amount of LCS quota available and short season in all regions. NMFS did not prefer this alternative because negative consequences of establishing a single region combined with a substantially shortened season might include derby-

style fishing and safety at sea concerns, as well as decreased fishing efficiency with resulting decreased survival rates for bycatch. Additionally, negative ecological impacts to overfished shark species could occur if all regions were combined and opened for a short time period. Under alternative 2, the SCS fishery would remain the same as in the no action alternative and no adverse economic impacts are expected since these regions would be open, with ample quota, throughout the entire first trimester of 2008.

Alternative 3, the preferred alternative would close the LCS fishery in the North Atlantic, South Atlantic and Gulf of Mexico regions for the entire 2008 first and second trimester seasons. The SCS and pelagic shark fisheries would be open in all three regions on January 1, 2008, and no adverse economic impacts are expected since these regions would be open, with ample quota, throughout the first trimester of 2008. If Amendment 2 to the Consolidated HMS FMP is not finalized and effective before the start of the 2008 second trimester season the SCS and pelagic shark fisheries will open in all regions on May 1, 2008 with the baseline quotas.

Closing the LCS fishery in all three regions would have slightly more negative economic impacts than the no action alternative but this was chosen due to the result in positive ecological impacts for overfished sandbar and dusky sharks, protected species and other LCS species compared to the no action alternative. Under this alternative, the South Atlantic region would be closed during the 2008 first trimester season similar to alternative 1. However, unlike alternative 1, the Gulf of Mexico region would be closed. The estimated lost revenue as a result of this closure would be approximately \$75,430, which would be the approximate revenue lost due to all regions being closed to LCS fishing during the 2008 first trimester season. The North Atlantic region would also be closed under this alternative but this closure is not expected to have a significant economic impact because LCS are not typically in the North Atlantic region during the first trimester. Due to the small landings in this region during the first trimester, it is not expected that the North Atlantic would benefit economically from the 10.7 mt dw of quota available for the 2008 first trimester. From 2004–2007 only an average of 0.4 mt dw of LCS was landed in this region during the entire first trimester season. Therefore, closing all three regions to LCS fishing as in the final rule would have only a slightly different economic impact than the no

action alternative. Atlantic shark fishermen may pursue other options as a result of closing the LCS fishery for the 2008 first and second trimesters including transferring fishing effort to other fisheries for which they are permitted, acquiring new permits to participate in other fisheries or relinquishing their permits and leaving the fishing industry.

**List of Subjects in 50 CFR Part 635**

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

Dated: November 26, 2007.

**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 § 635.27, paragraphs (b)(1)(i) and (b)(1)(vi)(A) introductory text are revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31. NMFS may consider merging or closing any of the

fishing seasons pursuant to paragraph (b)(1)(vi) of this section.

\* \* \* \* \*

(vi) \* \* \*

(A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1. NMFS may consider merging or closing any of the fishing seasons and relevant quotas in any region when there is limited available quota in one or more seasons.

\* \* \* \* \*

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