

fails to meet one of the first two criteria for a distinct vertebrate population segment per our policy (i.e., the significance criterion), we have determined that it is not a listable entity under the Act. We note that the petition also fails to present substantial information that the range of the longnose sucker within the Monongahela River Basin may be a significant portion of the range of the species. Therefore, we are not proceeding with an evaluation of its conservation status relative to the Act's standards for listing as endangered or threatened.

The petition presented information for the five listing factors in section 4 of the Act in an effort to identify threats that may be leading to the decline of the Monongahela River population of the longnose sucker. These factors are pertinent only in cases where the organism being proposed for listing is a listable entity as defined by section 3(15) of the Act. Because the Monongahela River basin population does not meet the significance criterion for a DPS, and therefore not a listable entity, the five threat factors are not analyzed for that population here.

#### *Finding*

We have reviewed the information presented in the petition, and evaluated that information in relation to information readily available in our files. Based on this review, we find the petition does not present substantial information indicating that listing the Monongahela River population of *C. catostomus* may be warranted. This finding is based on the lack of evidence to indicate that the Monongahela River population of *C. catostomus* meets the criteria for being classified as a DPS. Although it is geographically and reproductively isolated, scientific evidence was not provided to document this population's biological or ecological significance under the Service's DPS policy. Therefore, we have concluded that the Monongahela River population of the longnose sucker is not a listable entity under section 3(15) of the Act. We will not commence a status review in response to this petition. We encourage interested parties to monitor the Monongahela River population's status and trends, and potential threats, and to implement actions that will contribute to this species' conservation. We also encourage interested parties to continue to gather data that will assist with these conservation efforts. New information regarding this population's potential consideration as a DPS should be submitted to the Field Supervisor,

Pennsylvania Field Office (see **ADDRESSES**).

#### References Cited

A complete list of all references cited herein is available, upon request, from the Pennsylvania Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

#### Author

The primary author of this notice is Robert M. Anderson, Pennsylvania Field Office (see **ADDRESSES**).

#### Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 23, 2007.

#### Kenneth Stansell,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. E7-4081 Filed 3-7-07; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 070302052-7052-01; I.D. 021307B]

RIN 0648-AV09

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish the 2007 second and third trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on over- or underharvests from the 2006 second and third trimester seasons. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. The intended effect of these proposed actions is to provide advance notice of quotas and season dates for the Atlantic commercial shark fishery.

**DATES:** Written comments will be accepted until March 28, 2007.

Public hearings will be held from 6-8 p.m. on March 22 and March 28, 2007.

**ADDRESSES:** Written comments on the proposed rule may be submitted to LeAnn Southward Hogan, Highly

Migratory Species Management Division via:

- E-mail: SF1.021307B@noaa.gov.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope "Comments on Proposed Rule for 2007 2nd & 3rd Trimester Season Lengths and Quotas."

- Fax: 301-713-1917.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line the following identifier: I.D. 021307B.

The hearing locations are:

1. March 22, 2007 from 6-8 p.m. Orlando Public Library, 101 E. Central Blvd., Orlando, FL 32801.

2. March 28, 2007 from 6-8 p.m. Town Hall, 407 Budleigh Street, Manteo, NC 27954.

Copies of the draft Environmental Assessment (EA) and other relevant document are available from the HMS website (<http://www.nmfs.noaa.gov/sfa/hms/>), or by contacting LeAnn Southward Hogan (see **FOR FURTHER INFORMATION CONTACT**).

#### FOR FURTHER INFORMATION CONTACT:

LeAnn Southward Hogan or Karyl Brewster-Geisz 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). NMFS recently finalized a Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks. The HMS FMP is implemented by regulations at 50 CFR part 635.

Currently, the Atlantic shark annual 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 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 quota (454 mt dw) is split among the three regions as follows: 10 percent to the Gulf of Mexico, 87 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 2006 second and third trimester seasons will be carried over to the 2007 second and third trimester seasons in that region.

### Second and Third Trimester 2006 Landings

Shark landings data for the second and third trimesters of 2006 are provided in Table 1. As a result of the over- and underharvests that occurred

in the second and third trimester seasons of 2006, NMFS analyzed alternatives to adjust the 2007 second and third trimester seasons and quotas for the LCS and SCS fishery.

TABLE 1- LANDINGS IN METRIC TONS DRESSED WEIGHT (MT DW) FOR THE 2ND AND 3RD TRIMESTER SEASONS OF 2006.

Landings estimates are based on dealer reports received as of January 16, 2007.

Second Trimester Season 2006				
Species Group (Annual Quota)	Region (Allocation)	Quota (mt dw)	Estimated Landings	Percent Quota Taken
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	201.1	343.9	171%
	South Atlantic (41 %)	151.7	207.4	136.7%
	North Atlantic (7 %)	66.3	59.9	90.3%
Small Coastal Sharks (454)	Gulf of Mexico (10 %)	38.9	80.1	205.9%
	South Atlantic (87 %)	333.5	74.8	22.4%
	North Atlantic (3 %)	35.9	0	0
Blue Sharks (273)	No regional quotas	91	0.2	0.2%
Porbeagle sharks (92)		30.7	0.3	1.0%
Pelagic Sharks other than those above(488)		162.7	24.5	15.1%

Third Trimester Season 2006				
Species Group (Annual Quota)	Region (Allocation)	Quota (mt dw)	Estimated Landings	Percent Quota Taken
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	225.6	351.8	155.9%
	South Atlantic (41 %)	50.3	108.7	216.1%
	North Atlantic (7 %)	3.3	5.8	175.8%
Small Coastal Sharks (454)	Gulf of Mexico (10 %)	30.8	23	74.7%
	South Atlantic (87 %)	263.7	40.3	15.3%
	North Atlantic (3 %)	28.2	0	0%
Blue Sharks (273)	No regional quotas	91	0	0.0%
Porbeagle sharks(92)		30.7	0.8	2.6%
Pelagic Sharks other than those above(488)		162.7	21.4	13.2%

### Quota Adjustments in the LCS and SCS Fishery

The Agency conducted an Environmental Assessment (EA) to analyze three LCS and four SCS 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 2006 second and third trimester seasons.

These measures are necessary to ensure that over- and underharvests from 2006 are accounted for and any impacts are analyzed. The base quotas established in Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks and maintained in the Consolidated HMS FMP would not be affected by this rulemaking. Rather, the base quotas would be changed via an amendment to the Consolidated HMS FMP. The Agency is preparing, in a separate action, an amendment to the

2006 Consolidated HMS FMP to implement management measures particularly for sandbar, dusky, and porbeagle sharks that address the results of recent stock assessments, including the need for rebuilding plans and other modifications to the management program. Therefore, the Agency is not proposing any modifications to fishing seasons or LCS quotas beyond the second and third trimesters of 2007, at this time.

### LCS Quota Adjustments

The current regulations state that NMFS will adjust the next year's fishing season (2007) and quotas for LCS to reflect actual landings during the previous fishing season (2006) in any particular region. Due to the extensive overharvest of LCS in the 2006 second and third trimester seasons in the South Atlantic and Gulf of Mexico regions, limited quota would be available resulting in a short season in the South Atlantic region and no season in the Gulf of Mexico region for the 2007 second trimester. If NMFS were to not change the current regulations, then in the 2007 third trimester, both regions would experience short seasons. Moreover, under the current regulatory scheme, NMFS would open the mid-Atlantic shark closed area from July 6 - 20, 2007. As described in the rulemaking for the 2007 first trimester (71 FR 75122; December 14, 2006), re-opening the mid-Atlantic shark closed area in the month of July would likely have slightly negative ecological impacts because potential interactions with protected resources and other bycatch would be increased due to the displacement of fishing effort to an area that had been previously closed. Also, under the current regulatory scheme, NMFS would open the North Atlantic region for the month of July in the 2007 second trimester and close this region during the 2007 third trimester season due to overharvest during the 2006 third trimester season.

Under this proposed rule, NMFS would combine the second trimester season quota with the third trimester season quota in the South Atlantic and Gulf of Mexico regions. NMFS would open the South Atlantic region for six weeks beginning August 1, 2007. This would close the entire South Atlantic region for the month of July and maintain any ecological benefits of the mid-Atlantic shark closure. NMFS is proposing to delay the start of the merged seasons until August 1, 2007, to allow for a longer season than was previously allowed, based on slower catch rates in August versus July. NMFS believes that an August start date would still provide opportunities for all fishermen in the South Atlantic to fish for LCS. Under this proposed rule, NMFS would open the Gulf of Mexico region for three weeks beginning September 1, 2007. This accommodates comments received by NMFS stating the desire for the Gulf of Mexico region to be open at a different time than the South Atlantic region. The proposed rule would provide for longer seasons than the current regulations thereby increasing fishing opportunities

consistent with available quota. Under this proposed rule, NMFS would keep in place the North Atlantic regional quotas and opening dates. Under alternatives 2 and 3, the LCS season would be open at different times in different regions, which would prevent market gluts.

### SCS Quota Adjustments

Under current regulations, NMFS would subtract the overharvest accrued (41.2 mt dw) in the Gulf of Mexico region during the 2006 second trimester season from the baseline quota (15.1 mt dw) for this region during the 2007 second trimester. Because the overharvest was greater than the baseline quota, NMFS would close the SCS fishery in the Gulf of Mexico during the 2007 second trimester. Under this proposed rule, NMFS would open the North Atlantic and South Atlantic regions on May 1, 2007, and would keep these regions open as long as quota was available in each region. Under existing regulations, NMFS would close the LCS and SCS commercial fishery in the Gulf of Mexico for the entire second trimester of 2007.

Under 635.27(b)(1)(vi)(A)(1), NMFS may transfer up to 10 percent of the underharvested quota from the South Atlantic region to the Gulf of Mexico region. However, this would result in a Gulf of Mexico quota of -0.23 mt dw and was not further analyzed because it does not address the entire overharvest that occurred in the Gulf of Mexico region and would result in the same impacts as the existing regulations.

Under this proposed rule, NMFS would change the SCS regional quota percentages in the South Atlantic and Gulf of Mexico regions due to recent overharvests in the Gulf of Mexico region and continued underharvest of the available quota in the South Atlantic region. Currently, the regional quota percentages are 87 percent in the South Atlantic region and 10 percent in the Gulf of Mexico region, which gives each of the regions 395 mt dw, and 45.4 mt dw, of the base quota, respectively. The change in regional quota percentages would allocate the SCS base quota of 454 mt dw based on recent landings in both the South Atlantic and Gulf of Mexico regions and split the available quota between the two regions. Therefore, under this proposed rule, the 2007 regional SCS quotas would be 3 percent in the North Atlantic (13.6 mt dw, 29,983 lb dw), 49 percent (222.5 mt dw, 490,524 lb dw) in the South Atlantic, and 48 percent (217.9 mt dw, 480,382 lb dw) in the Gulf of Mexico. The rule also includes a quota transfer, which would cover the 41.2 mt dw overharvest of SCS that occurred in the

Gulf of Mexico region during 2006. Redistributing the quota among regions would more equally allocate the total SCS quota, and is expected to have little impact on SCS mortality in each respective region or status of SCS stocks in general. As the total SCS quota has to date never been fully harvested, the impacts of a slight increase in fishing effort would not significantly affect these stocks, and should prevent future overharvest in the Gulf of Mexico region while not leading to an overharvest in the South Atlantic region.

### Annual Landings Quotas

Pursuant to Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, and the Final Consolidated HMS FMP, the 2007 annual base landings quotas are 1,017 mt dw (2,242,078 lb dw) for LCS and 454 mt dw (1,000,888.4 lb dw) for SCS. The 2007 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. This proposed rule does not propose any changes to these overall base landings quotas. Table 2 describes the proposed adjusted quotas for LCS, and Table 3 describes the proposed adjusted quotas for SCS and pelagic sharks for the various regions (if applicable) for the second and third trimester seasons of 2007 adjusted for over- and underharvests that occurred during the second and third trimester seasons of 2006 (Table 1).

Existing regulations do not allow underharvests of pelagic sharks to be carried forward to the next fishing management period. As of January 16, 2007, approximately 47.2 mt dw had been reported landed in the 2006 second and third trimester fishing seasons in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(vi)(B). The 2007 second and third trimester seasons 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.

### Proposed Regional Quotas for LCS

Consistent with 50 CFR 635.27(b)(1)(iii), the annual LCS quota (1,017 mt dw) is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic.

Consistent with 50 CFR 635.27(b)(1)(vi)(A)(3), the LCS quota for the Gulf of Mexico and South Atlantic regions is further split equally (33.3 percent/season) between the three trimester fishing seasons, and the quota for the North Atlantic is further split according to historical landings of 4, 88, and 8 percent for the first, second, and third trimester seasons, respectively.

Under the proposed rule, the South Atlantic LCS regional quota for the 2007 second trimester (83.2 mt dw) would be combined with the 2007 third trimester quota (80.5 mt dw) for a total quota of 163.7 mt dw (360,893 lb dw). Under this rule, the Gulf of Mexico regional LCS quota for the 2007 second trimester (33.2 mt dw) would be merged with the 2007 third trimester quota (49.9 mt dw) for a total of 83.1 mt dw (183,202 lb dw). The North Atlantic LCS quota for the 2007 second trimester would be 69.0 mt dw (152,117 lb dw) and there would be a closure in the North Atlantic region during the 2007 third season (Table 2).

#### Proposed Regional Quotas for SCS

Consistent with 50 CFR 635.27(b)(1)(iv), the annual SCS quota (454 mt dw) is split among the regions as follows: 10 percent to the Gulf of Mexico region, 87 percent to the South Atlantic region and 3 percent to the North Atlantic region.

Also consistent with 50 CFR 635.27(b)(1)(vi)(A)(3), the SCS quota for the Gulf of Mexico and South Atlantic regions is further split equally (33.3

percent/season) between the three trimester fishing seasons in each of the regions, and the quota for the North Atlantic is further split of 4, 88 and 8 percent for the first, second, and third trimester seasons, respectively.

This rule proposes a change to the SCS regional quota percentages in the South Atlantic and Gulf of Mexico regions for 2007 and in the future. The new SCS quota percentage allocations would be 49 percent in the South Atlantic and 48 percent in the Gulf of Mexico. This change would give the South Atlantic an 2007 annual base quota of 222.5 mt dw (490,524 lb dw) (454 mt dw x .49%) and a trimester quota of 74.1 mt dw (163,361 lb dw) (222.5 mt dw x .333). The Gulf of Mexico would have an annual base quota of 217.9 mt dw (480,382 lb dw) (454 mt dw x .48%) and a trimester quota of 72.6 mt dw (160,054 lb dw) (217.9 mt dw x .333).

#### Proposed Fishing Season Notification for the Second and Third Trimester Seasons 2007

The 2007 LCS second trimester season in the North Atlantic region is proposed to open on July 6, 2007, and would close on July 31, 2007, at 11:30 pm local time. The 2007 third trimester in the North Atlantic region would be closed (Table 2).

The 2007 LCS fishery in the South Atlantic would have a merged second and third trimester season that is proposed to open on August 1, 2007,

and would close September 15, 2007, at 11:30 pm local time (Table 2). NMFS is proposing to delay the start of the merged season until August 1, 2007, to allow for a longer season based on slower catch rates in August versus July.

The 2007 LCS fishery in the Gulf of Mexico would also have a merged second and third trimester season that is proposed to open on September 1, 2007, and would close on September 22, 2007, at 11:30 p.m. local time (Table 2). NMFS is proposing to delay the start of the merged season until September 1, 2007, to accommodate comments received by NMFS stating the desire for the South Atlantic region to be open at a different time than the Gulf of Mexico region. The September 1, 2007, open date would also allow for a longer season based on slower catch rates in September versus July.

The second and third trimester fishing seasons of 2007 for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, are proposed to open on May 1, 2007, and September 1, 2007, respectively (Table 3). When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle sharks, the Assistant Administrator (AA) will file notification of closures at the Office of the **Federal Register** at least 14 days before the effective date, consistent with 50 CFR 635.28(b)(2).

TABLE 2. LCS PROPOSED SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007

LCS	Proposed merged 2 <sup>nd</sup> and 3 <sup>rd</sup> trimester opening dates	Proposed merged 2 <sup>nd</sup> & 3 <sup>rd</sup> trimester Closing Dates	Proposed merged 2 <sup>nd</sup> & 3 <sup>rd</sup> trimester Quotas
South Atlantic	August 1, 2007	September 15, 2007	163.70 mt dw 360,893 lb dw
Gulf of Mexico	September 1, 2007	September 22, 2007	83.1 mt dw 183,202 lb dw
North Atlantic	July 6, 2007	July 31, 2007	69.0 mt dw 152,117 lb d
	Closed 3 <sup>rd</sup> Season	Closed 3 <sup>rd</sup> Season	CLOSED

TABLE 3. SCS AND PELAGIC SHARKS PROPOSED SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007

2007 2 <sup>nd</sup> Trimester	Opening Dates	Closing Dates	2007 2 <sup>nd</sup> Tri. Adjusted Quota
SCS South Atlantic (49%)	May 1, 2007	To be determined as necessary	291.6 mt dw 642,861 lb dw
SCS Gulf of Mexico (48%)	May 1, 2007	To be determined as necessary	72.6 mt dw 160,054 lb dw
SCS North Atlantic (3%)	May 1, 2007	To be determined as necessary	36.2 mt dw 79,807 lb dw

TABLE 3. SCS AND PELAGIC SHARKS PROPOSED SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007—Continued

2007 2 <sup>nd</sup> Trimester	Opening Dates	Closing Dates	2007 2 <sup>nd</sup> Tri. Adjusted Quota
Blue Sharks	May 1, 2007	To be determined as necessary	91.0 mt dw 200,619 lb dw
Porbeagle	May 1, 2007	To be determined as necessary	30.7 mt dw 67, 681 lb dw
Pelagic Sharks	May 1, 2007	To be determined as necessary	162.7 mt dw 358,688 lb dw
2007 3 <sup>rd</sup> Trimester	Opening Dates	Closing Dates	2007 3 <sup>rd</sup> Tri. Adjusted Quota
SCS South Atlantic (49%)	September 1, 2007	To be determined as necessary	297.5 mt dw 655,869 lb dw
SCS Gulf of Mexico (48%)	September 1, 2007	To be determined as necessary	80.4 mt dw 177,250 lb dw
SCS North Atlantic (3%)	September 1, 2007	To be determined as necessary	29.4 mt dw 64,815 lb dw
Blue Sharks	September 1, 2007	To be determined as necessary	91.0 mt dw 200,619 lb dw
Porbeagle	September 1, 2007	To be determined as necessary	30.7 mt dw 67, 681 lb dw
Pelagic Sharks	September 1, 2007	To be determined as necessary	162.7 mt dw 358,688 lb dw

### Request for Comments

Comments on this proposed rule may be submitted at public hearings, via email, mail, or fax by March 28, 2007. NMFS will hold two public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to LeAnn Southward Hogan at (301) 713-2347 at least 5 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending member of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do no, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits

written comments on this proposed rule (see **DATES** and **ADDRESSES**).

### Classification

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

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

In compliance with Section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis was prepared for this rule. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**).

In compliance with section 603 (b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the LCS and SCS regional and trimester quotas and propose season lengths for LCS, SCS, and pelagic sharks for the second and third trimesters of 2007 based on under- and overharvests

that occurred during the second and third trimesters of 2006. This rule does not change the overall annual base quotas.

In compliance with section 603 (b)(2) of the Regulatory Flexibility Act, the objective of the proposed rulemaking is, to ensure that the season lengths and quotas for the second and third trimester of 2007 for LCS, SCS, and pelagic sharks are in place by the end of the first trimester of 2007 consistent with the regulations established in the 2003 Amendment to the 1999 FMP for Atlantic Tunas, Swordfish and Sharks.

Section 603 (b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. This rule could directly affect commercial shark fishermen on the Atlantic Ocean in the United States. There are approximately 549 (235 directed and 314 incidental) shark permit holders. Additionally, approximately 253 commercial shark dealers could be indirectly affected by this proposed rule. All of these permit holders and dealers are considered small entities according to the Small Business Administration's standard for defining a small entity. Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might also be indirectly affected by the proposed regulations.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)).

One of the requirements of an IRFA, under Section 603 of the Regulatory Flexibility Act, is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four categories for alternatives that must be considered. These categories 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 for small entities.

In order to meet the objectives of this proposed 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 seven different alternatives in this proposed rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives include: maintain existing procedures for LCS quota management (alternative 1, No Action), merge the second trimester season quota with the third trimester season quota in the South Atlantic and open the combined season August 1, 2007 (alternative 2), merge the second trimester season quota with the third trimester season quota in the Gulf of Mexico region and open the combined season September 1, 2007 (alternative 3), maintain existing procedures for SCS quota management (alternative 4, No Action), transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest to the Gulf of Mexico region (alternative 5), transfer

a portion of the South Atlantic's regional 2007 second trimester SCS underharvest to the Gulf of Mexico region as well as give the Gulf of Mexico region additional SCS quota for the 2007 second trimester season (alternative 6), and reallocate the SCS regional quota percentages in the South Atlantic region from 87 percent to 49 percent and in the Gulf of Mexico region from 10 percent to 48 percent and transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest to the Gulf of Mexico region (alternative 7). Merging the second and third trimester seasons for LCS for both the South Atlantic (alternative 2) and the Gulf of Mexico (alternative 3) regions and also reallocating the SCS regional quota percentages between the South Atlantic and Gulf of Mexico regions for the second and third trimesters while also transferring a portion of the South Atlantic's regional second trimester underharvest to the Gulf of Mexico (alternative 7) are the preferred alternatives.

#### Alternatives Considered for LCS

Alternative 1 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over and underharvests of LCS when establishing the regional quotas and seasons for the second and third trimesters of 2007 and it would also open the mid Atlantic shark closed area in July, subject to available quota for the second trimester in 2007. This alternative is not preferred in part because it would result in negative economic impacts for the South Atlantic region and Gulf of Mexico region, compared to the preferred alternative.

The no action alternative does not create any new economic burdens on the shark commercial industry that was not included in previous rulemaking. Regardless, the unexpected magnitude of the 2006 second trimester overharvest would result in no commercial fishing for LCS in the entire Gulf of Mexico region during the second trimester of 2007 since the available adjusted quota would be taken in approximately two days. Furthermore, overharvest during the second trimester in 2006 in the South Atlantic region would result in a reduced second trimester quota of 83.2 mt dw and therefore the fishing season would be adjusted and shortened to last only from July 6 to July 20, 2007.

If not for the overharvest in 2006, the second trimester quota allocation would have been 138.9 mt of LCS in the South Atlantic region. Instead, the adjusted quota under this alternative would be 83.2 mt dw, which is 55.7 mt dw less

than it would have been under the base quota allocation. To estimate the value of changes in revenues from the 2007 available quota, the median ex vessel prices from 2003 to 2006 for each region reported in Table 6.6 of the draft EA were used to forecast 2007 shark prices since this multi year average smoothes out temporary market volatility. Using a median ex vessel price of \$0.48 per pound dressed weight of LCS and \$12.28 per pound for shark fin reported via HMS dealer reports from 2003 to 2006 for the South Atlantic region and adjusted for inflation, the value of the 55.7 mt dw reduction from the baseline quote allocation would have been approximately \$55,996 for LCS flesh (95 percent of the quota weight) and \$75,398 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on South Atlantic regional commercial shark fishing activity of approximately \$131,393. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 second trimester than previously expected. Since the actual prices received for the 2006 second trimester are available, those prices were used to calculate the "extra" revenues generated from the overharvest in the second trimester of 2006. Using the median ex vessel prices for the second trimester of 2006 of \$0.40 and \$10.00 for LCS flesh and shark fins, respectively, for the South Atlantic region the estimated revenue for the second trimester in 2006 from the 55.7 mt dw in overharvest was \$108,162. Due to this extra revenue in 2006, a shortened second trimester for 2007 would result in disrupted revenue flows and result in negative economic impacts.

If not for the overharvest in the second trimester of 2006 in the Gulf of Mexico region, the second trimester quota available would have been 176.1 mt of LCS in the Gulf of Mexico region. However, due to the overharvest, the adjusted quota is 33.2 mt for LCS. Because of the small size of this quota, no fishing season is feasible due to safety at sea concerns and potential derby fishing conditions. Using a median ex vessel price of \$0.44 for LCS and \$17.05 for shark fin reported HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of the 176.1 mt dw baseline quota for the second trimester of 2007 is approximately \$162,282 for LCS flesh (95 percent of the quota weight) and \$330,969 for shark fins (based on the 5 percent shark fin to

carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately \$493,251. Using the median ex vessel prices for the second trimester of 2006 of \$0.40 and \$13.00 for LCS flesh and shark fins, respectively, for the Gulf of Mexico region, the estimated revenue for the second trimester in 2006 from the 142.9 mt dw (176.1 33.2 mt dw) in overharvest was \$324,491. However, a closure during the second trimester of 2007 would result in disrupted revenue flows and result in negative economic impacts.

The quota for the second trimester of 2007 is not impacted by overharvests in the North Atlantic region. However, in the 2007 third trimester, the North Atlantic region would be closed to fishing because of overharvest in the third trimester of 2006. The base quota allocation for the third trimester would have been 5.7 mt dw if not for the overharvest. Using an average between the median ex vessel price in the South Atlantic and the Gulf of Mexico regions from 2003 to 2006 adjusted for inflation, the approximate value of this quota allocation would have been \$14,709. This minor economic impact is offset by the extra revenue received in 2006 as a result of the 2.5 mt dw overharvest in the third trimester worth \$6,451. However, it should also be noted that the third season was closed in 2006.

During the third trimester of 2006, there was also an overharvest in the South Atlantic region. This resulted in the base quota allocation being reduced from 138.9 mt dw to an adjusted quota of 80.5 mt dw for the third trimester. Using a similar calculation as above, the economic impact of the overharvest would be a reduced third quarter value of revenues of approximately \$137,762. However, it should be noted that fishermen received revenue sooner under the 2006 third trimester overharvest than they normally would have received. Using the median ex vessel prices for the third trimester of 2006 of \$0.45 and \$8.00 for LCS flesh and shark fins, respectively for the South Atlantic region, the estimated revenue for the third trimester in 2006 from the 58.4 mt in overharvest was \$100,425.

During the third trimester of 2006, there was also an overharvest in the Gulf of Mexico region. This resulted in the base quota allocation being reduced from 176.1 mt dw to an adjusted quota of 49.9 mt dw for the third trimester. Using a similar calculation as above, the economic impact of the overharvest would be a reduced third quarter value

of revenues of approximately \$353,482. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 third trimester than previously expected. Using the median ex vessel prices for the third trimester of 2006 of \$0.40 and \$17.00 for LCS flesh and shark fins, respectively for the Gulf of Mexico region, the estimated revenue for the third trimester in 2006 from the 126.2 mt in overharvest was \$342,214. Despite this extra revenue in 2006, a shortened third trimester for 2007 would result in disrupted revenue flows and result in negative economic impacts.

Overall, the economic impact of reduced 2007 LCS quota for the South Atlantic, Gulf of Mexico, and North Atlantic regions for the second and third trimesters of 2007 would result in a total economic impact of \$1,130,597 in reduced revenues. However, this is partially offset by the extra revenues generated in the second and third trimesters of 2006 estimated to be worth \$881,644. Some of the impacts from these reduced revenues might be mitigated somewhat for vessels that can fish in other regions or fisheries. However, these opportunities will likely be limited and result in additional costs associated with adjusting current fishing practices.

Alternative 2, the preferred alternative, which would merge the second trimester season in the South Atlantic region with the third trimester season quota in the South Atlantic region, could minimize the economic costs associated with the South Atlantic regional overharvest. The 83.2 mt dw adjusted quota for the second trimester would be combined with the 80.5 mt dw adjusted quota for the third trimester in the South Atlantic to provide a combined 163.7 mt dw season starting on August 1, 2007, that is proposed to last until September 15, 2007.

There does not appear to be any significant seasonality to LCS and shark fin ex vessel prices. Therefore, revenues under this alternative would likely be at least the same as having two separate seasons. The combined seasons would provide for a total of six weeks to fish the LCS quota in the South Atlantic region versus only five weeks (split into two seasons) under the no action alternative. This would afford more flexibility in addressing market conditions for LCS, and thus potentially allow for greater profits. However, there could be negative impacts on business planning as a result of the season starting in August versus the expected July start date. Fishing operations may face cash flow problems covering their fixed costs as they wait for the later

starting combined season, unless they are able to generate cash flows in other fisheries in the interim. Starting the season in August essentially extends the Mid Atlantic closure to the whole region from July to August. This could have negative economic impacts, especially since catch rates have been historically higher in July than in August. The positive aspects of merging the two seasons include reduced operating costs since fishermen would only need to prepare the vessel once instead of twice and they are more likely to have a viable market for LCS given the season would be longer.

Alternative 3 is similar to Alternative 2 in that it would merge the second trimester season with the third trimester season quota, but is instead for the Gulf of Mexico region. The merged season would combine the second trimester season quota of 33.2 mt dw with the third trimester season quota of 49.9 mt dw to create a three week long season starting September 1, 2007, that would have 83.1 mt dw of quota. This preferred alternative would have the benefit of extending the third season by one week versus under Alternative 1. Since Alternative 3 has the same start date as Alternative 1, there would not be any impact on that portion of the Gulf of Mexico region. Alternative 3 also allows the 33.2 mt dw quota of the second season to be fished. Under Alternative 1, the season for that 33.2 mt dw of quota would have been closed. Using a median ex vessel price of \$0.44 for LCS and \$17.05 for shark fin reported HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of harvesting this 33.2 mt dw of quota would be approximately \$92,992 in revenue. In addition, by providing for a three week combined fishing season, this alternative would afford more flexibility in addressing market conditions for LCS.

#### Alternatives Considered for SCS

Alternative 4 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over and underharvests for SCS when establishing the regional quotas and seasons for the second and third trimesters of 2007. No change in economic impacts would be realized in the North Atlantic and South Atlantic regions since those regions would be open, with ample quota, throughout the entire second and third trimesters of 2007 under the status quo. This alternative is not preferred, as it would result in greater negative economic

impacts for the Gulf of Mexico region, compared to the preferred alternative.

The no action alternative would not create any new economic burdens on the SCS commercial industry that were not included in previous rulemaking. Regardless, the size of the 2006 second trimester overharvest in the Gulf of Mexico region would result in no commercial fishing for SCS in the entire Gulf of Mexico region during the second trimester of 2007. Even after a ten percent quota transfer from the South Atlantic second season underharvest, the 25.87 mt dw of transferred quota is not sufficient to address the 41.2 mt dw of overharvest in the Gulf of Mexico region during the second trimester season of 2006.

If not for the overharvest in 2006, the 2007 second trimester quota allocation would have been 15.1 mt dw of SCS in the Gulf of Mexico region. Instead, the adjusted quota under Alternative 4 would be negative 26.1 mt dw resulting in a closed fishing season. Using a median ex vessel price of \$0.44 per pound dress weight for SCS and \$17.05 per pound for shark fin reported in HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of this harvest (15.1 mt dw) would have been approximately \$13,915 for SCS flesh (95 percent of the quota weight) and \$28,380 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately \$42,295. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 second trimester than previously expected.

Alternative 5 would transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest (41.2 mt dw) to the Gulf of Mexico region to cover the Gulf of Mexico's regional 2006 second trimester overharvest. The Gulf of Mexico would then have the equivalent of their base quota of 15.1 mt dw for the 2007 second trimester. This would eliminate the economic impact of a closure in the Gulf of Mexico region in 2007 unlike under the no action alternative. The South Atlantic region would still have an adjusted third trimester quota of 349 mt dw, which is much greater than the amount that region actually harvested in the second season of 2006. The only economic impacts would come from potential future impacts to the South Atlantic region as a result of the 41.2 mt dw transfer of their underharvest to the Gulf of Mexico region if in the future the South Atlantic harvests more SCS than

is accommodated by their lowered final adjusted quota.

Alternative 6 would transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest (41.2 mt dw) to the Gulf of Mexico region to cover the Gulf of Mexico's regional 2006 second trimester SCS overharvest as well as give the Gulf of Mexico region additional SCS quota of 15.1 mt dw from the South Atlantic region for a total of 30.2 mt dw for the 2007 second trimester. This additional quota transfer would likely not provide enough quota to prevent an overharvest during the 2007 second trimester. However, this additional quota (15.1 mt dw) would provide the Gulf of Mexico region with an additional \$42,294 in potential revenue from SCS. It would also further reduce the underharvest carry forward of SCS in the South Atlantic as a result of the larger transfer. There could be future economic impacts in the South Atlantic region if one day they need that quota.

Alternative 7 would take a different approach. Under Alternative 7, NMFS would reallocate the SCS regional quota percentages in the South Atlantic region from 87 percent to 49 percent and in the Gulf of Mexico region from 10 percent to 48 percent for both the 2007 second and third trimester seasons and in the future. In addition, there would also be transfer of underharvest in the South Atlantic regional 2007 second trimester quota to cover the Gulf of Mexico's regional second trimester overharvest. This alternative is the preferred alternative.

There would be no change in the total base quota available for all regions in the second and third trimester season under this alternative versus alternative 4 (No Action). In addition, the adjusted 2007 second and third trimester regional quota would stay the same for the North Atlantic region. The key change would involve the quota amounts for South Atlantic and Gulf of Mexico regions. The 2007 second trimester quota in the South Atlantic region would decrease from 390.2 mt dw (Alternative 4) to 291.6 mt dw of SCS and the 2007 third trimester quota would decrease from 354.9 mt dw (Alternative 4) to 297.5 mt dw. Using the 2003 to 2006 median ex vessel prices of \$0.67 lbs dw for flesh and the 2003 to 2006 median ex vessel prices for shark fin of \$12.28 for SCS in the South Atlantic region, there would be a decrease of \$200,425 in potential revenues for the second trimester season and \$158,245 decrease in potential revenues in the third trimester season. However, it should be noted that the South Atlantic region has not harvested SCS in amounts approaching even these

lowered trimester quota levels in the past few years.

The 2007 second trimester quota in the Gulf of Mexico region would go from -26.1 mt dw (which would close this region) under the alternative 4 (No Action) scenario in the second trimester season to 72.6 mt dw of SCS under this alternative. In addition, the 2007 third trimester quota would increase from 22.9 mt dw to 80.4 mt dw. Using the 2003 to 2006 median ex vessel prices of \$0.44 lbs dw for flesh and the 2003 to 2006 median ex vessel prices for shark fins of \$17.05 for SCS in the Gulf of Mexico region, there would be an increase of \$203,350 in potential revenues for the second trimester season and \$161,506 increase in potential revenues in the third trimester season. This reallocation of quota would allow the SCS fishery to remain open in the Gulf of Mexico region and would prevent future overharvest of quota in that region while not leading to an overharvest in the South Atlantic region.

Overall, Alternative 7 would increase revenues for SCS by transferring quota from a region of underharvest to a region that is currently overharvesting their SCS quota. The reallocation of regional quota percentages would provide greater regional equity in future base quota allocations. This would help mitigate overharvesting of the quota in the Gulf of Mexico region. However, there could be future impacts to the South Atlantic region as a result of the reallocation of the SCS regional quota percentage to the Gulf of Mexico region if in the future the South Atlantic harvests more than this proposed lower regional quota allocation percentage.

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

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

Dated: March 5, 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 proposed to be 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), (b)(1)(iv), (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 any of the fishing seasons pursuant to paragraph (b)(1)(vi) of this section.

\* \* \* \* \*

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 48 percent to the Gulf of Mexico, 49 percent to the South Atlantic, and 3 percent to the North Atlantic.

\* \* \* \* \*

(vi) *Annual adjustments.* (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 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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