

technical amendment, related solely to internal Departmental management, the Secretary has determined, under 5 U.S.C. 553 and departmental policy, that it is unnecessary to follow proposed rulemaking procedures.

#### Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA), if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Therefore, in accordance with the RFA of 1980, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. The Secretary has also determined that this final rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures.

The Secretary has further determined that the rule is not a "major rule" within the meaning of the statute providing for Congressional review of agency rulemaking, 5 U.S.C. 801. Major rules are those that impose a cost on the economy of \$100 million or more a year or have certain other economic impacts. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

#### Paperwork Reduction Act of 1995

This regulation is not subject to the Paperwork Reduction Act because it

deals solely with internal management of the Department of Health and Human Services.

#### List of Subjects in 45 CFR Part 4

Courts, vaccine injury petitions.

Dated: November 29, 2002.

**Elizabeth M. Duke,**

*Administrator, Health Resources and Services Administration.*

Approved: December 16, 2002.

**Tommy G. Thompson,**

*Secretary.*

Accordingly, 45 CFR part 4 is amended as set forth below:

#### PART 4—SERVICE OF PROCESS

1. The authority citation for 45 CFR part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301, 42 U.S.C. 300aa-11.

2. Section 4.6 is revised to read as follows:

##### **§ 4.6 Materials related to petitions under the National Vaccine Injury Compensation Program.**

Notwithstanding the provisions of §§ 4.1, 4.2, and 4.3, service of the Secretary's copies of petitions for compensation under the VICP and of related filings, by mail, shall be served upon the Director, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration 5600 Fishers Lane, Parklawn Building, Room 16C-17, Rockville, Maryland 20857, or in person, shall be served upon the Director, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, 4350 East West Highway, 10th Floor, Bethesda, Maryland 20814.

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#### DEPARTMENT OF COMMERCE

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 635**

[Docket No. 021219321-2321-01; I.D. 120902A]

**RIN 0648-AQ39**

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

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

**ACTION:** Emergency rule; request for comments; fishing season notification.

**SUMMARY:** NMFS issues an emergency rule to: establish the commercial annual quotas for ridgeback and non-ridgeback large coastal sharks (LCS) at 783 metric tons (mt) dressed weight (dw) and 931 mt dw, respectively; establish the commercial annual quota for small coastal sharks (SCS) at 326 mt dw; and suspend the regulation regarding the commercial ridgeback LCS minimum size. These regulations are necessary to ensure that the regulations in force are based on the best available science. In addition, as of January 1, 2003, regulations on season-specific quota adjustments and counting dead discards and state landings after a Federal closure against the commercial quotas will go into effect. At least one public hearing on this emergency rule will be held during the public comment period and will be announced in a separate **Federal Register** document. NMFS also notifies eligible participants of the opening and closing dates for the Atlantic LCS, SCS, pelagic shark, blue shark, and porbeagle shark fishing seasons.

**DATES:** This emergency rule is effective as of 12:01 a.m., local time, on December 31, 2002, through June 30, 2003.

The fishery opening for ridgeback LCS is effective January 1, 2003, through 11:30 p.m., local time, April 15, 2003. The ridgeback LCS closure is effective from 11:30 p.m., local time, April 15, 2003, through June 30, 2003.

The fishery opening for non-ridgeback LCS is effective January 1, 2003, through 11:30 p.m., local time, May 15, 2003. The non-ridgeback LCS closure is effective from 11:30 p.m., local time, May 15, 2003, through June 30, 2003.

The fishery opening for SCS, pelagic sharks, blue sharks, and porbeagle sharks is effective January 1, 2003, through June 30, 2003, unless otherwise modified or superseded through publication of a closure notice in the **Federal Register**.

Comments on the emergency rule must be received no later than 5 p.m. on February 14, 2003.

**ADDRESSES:** Written comments on this emergency rule must be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the Environmental Assessment and Regulatory Impact Review prepared for this emergency rule

may be obtained from Karyl Brewster-Geisz at the same address or may be obtained on the web at <http://www.nmfs.noaa.gov/sfa/hmspg.html>.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz at 301-713-2347.

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

Since 1997, NMFS has been sued numerous times regarding shark management measures. These lawsuits have come from a variety of user groups including commercial fishermen, recreational fishermen, and environmentalists. In December 2000, NMFS settled two lawsuits with commercial fishermen. The court-approved settlement agreement included, among other things, independent peer-reviews of the 1998 and the new 2002 LCS stock assessments and a commitment to maintain the LCS and SCS quotas at 1997 levels pending the new 2002 assessments. The settlement agreement did not address any regulations affecting the pelagic shark, prohibited species, or recreational shark fisheries.

NMFS received the results of the complete peer reviews of the 1998 LCS stock assessment in October 2001. After reviewing all peer reviews of the 1998 LCS stock assessment, NMFS determined that the projections of the models used in the 1998 LCS stock assessment no longer constituted the best available science. Thus, a number of management measures in the 1999 HMS FMP were no longer appropriate. As a result, NMFS published an emergency rule on December 28, 2001 (66 FR 67118; extended 67 FR 37354, May 29, 2002), that implemented management measures based on the best available science at that time: a combination of landings, discards, and biological data; catch rates; the 1996 LCS stock assessment; and the peer reviews. The December 2001 emergency rule was designed to maintain the status of LCS and SCS pending new stock assessments. In the December 2001 emergency rule, NMFS made a commitment to re-evaluate the management measures promulgated in that emergency rule based on the new stock assessments before any of these measures would be re-implemented. The December 2001 emergency rule expires on December 30, 2002.

Since publication of the December 2001 emergency rule, NMFS has received several new stock assessments. On May 8, 2002, NMFS announced the availability of the first SCS stock assessment since 1992 (67 FR 30879). The Mote Marine Laboratory and the University of Florida provided NMFS with another SCS stock assessment in August 2002. Both these stock assessments indicate that overfishing is occurring on finetooth sharks. The three other species in the SCS complex (Atlantic sharpnose, bonnethead, and blacknose) are not overfished and overfishing is not occurring. Because many management measures for sharks are interrelated, NMFS commenced SCS rulemaking once the LCS assessment was complete.

On October 17, 2002, NMFS announced the availability of the LCS stock assessment (67 FR 64098), which currently constitutes the best available science for LCS. The results of this stock assessment indicate that the LCS complex is still overfished and overfishing is occurring; that sandbar sharks are no longer overfished and that overfishing is still occurring; and that blacktip sharks are rebuilt and overfishing is not occurring. The peer review process for the 2002 LCS stock assessment, required under the above-referenced settlement agreement, is expected to be complete in mid-December. At the time of drafting this emergency rule, the results of the peer reviews were not available to all NMFS staff or the public, and therefore, were not considered.

This action is necessary because, once the December 2001 emergency rule expires, certain measures from the 1999 HMS FMP, which were based on the projections from the 1998 LCS stock assessment, will enter into force unless regulations are promulgated to replace them. As noted above, NMFS determined that portions of the 1998 LCS stock assessment no longer constitute the best available science. Furthermore, NMFS now has updated stock assessments for both LCS and SCS, which constitute the best available science for these complexes. The results of these stock assessments indicate that the status of both LCS and SCS have changed since previous stock assessments. New regulations are needed to reflect this change in status.

NMFS has one objective for this rulemaking: to amend management measures that are no longer based on the best available science and/or that were implemented in the HMS FMP and later suspended or revised in the December 2001 shark emergency rule. The management measures promulgated

in the current rulemaking, along with many other shark management measures implemented in the HMS FMP, will be re-evaluated in an amendment to the HMS FMP, which NMFS announced it would initiate through a Notice of Intent issued on November 15, 2002 (67 FR 69180). Shark management measures that are not addressed in this rulemaking will be evaluated in the amendment to the HMS FMP. Those management measures include, but are not limited to, the recreational retention limits and size limit, the prohibited species, the public display quota, and the commercial trip limits.

At the end of the public comment period for this emergency rule, NMFS will consider all public comments and the peer reviews of the 2002 LCS stock assessment and will amend the measures under the emergency regulations, as appropriate.

#### **Commercial Management Measures**

This emergency rule (1) establishes the commercial annual quotas for ridgeback and non-ridgeback large coastal sharks (LCS) at 783 metric tons (mt) dressed weight (dw) and 931 mt dw, respectively; (2) establishes the commercial annual quota for small coastal sharks (SCS) at 326 mt dw; and (3) suspends the regulation regarding the commercial ridgeback LCS minimum size. In addition, as of January 1, 2003, the regulations on season-specific quota adjustments and counting dead discards and state landings after a Federal closure against the commercial quotas will go into effect. This emergency rule does not affect commercial management measures for pelagic sharks, except for counting dead discards or state landings against the quota and seasonal quota adjustments, and does not affect the management measures for prohibited species or recreational fisheries.

NMFS considered other alternatives including implementing the HMS FMP quotas based on the 1998 stock assessment, implementing higher or lower annual LCS quota levels, implementing higher or lower annual SCS quota levels, implementing the ridgeback LCS minimum size, not counting state landings after a Federal closure and dead discards against Federal quotas, and adjusting the semiannual quotas on the subsequent semiannual season rather than the same semiannual season the following year. Based on the results of the 2002 stock assessments and consideration of social and economic impacts on fishermen, NMFS concluded that pending an FMP amendment (expected in 2004), the management measures implemented in

this rule would conserve and maintain the shark stocks while having few adverse impacts on the fishery or the human environment.

Upon completion of the independent peer review process for the 2002 LCS stock assessment and the consideration of comments received during the public comment period for this emergency rule, NMFS will take the appropriate actions to amend these regulations, if necessary, pending an FMP amendment, to ensure the conservation of Atlantic sharks while rebuilding shark stocks and maintaining sustainable fisheries in the long-term.

#### Annual Landings Quotas

The 2003 annual landings quotas for LCS and SCS are established at 783 mt dw for ridgeback LCS, 931 mt dw for non-ridgeback LCS, and 326 mt dw for SCS. The 2003 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw, 273 mt dw, and 92 mt dw, respectively.

Because the under-harvest of LCS from the first semiannual season of 2002 was already taken into consideration when setting the second semiannual season of 2002 (66 FR 67118, December 28, 2001), that under-harvest will not be carried over for the first semiannual season of 2003. The LCS under-harvest of the second 2002 semiannual season will be considered when setting the LCS quota levels for the second semiannual season of 2003. As such, the LCS quota for the first 2003 semiannual season is 391.5 mt dw for ridgeback LCS and 465.5 mt dw for non-ridgeback LCS. The SCS first semiannual quota for 2003 is established at 163 mt dw. The first 2003 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw, 136.5 mt dw, and 46 mt dw, respectively.

NMFS will take appropriate action before July 1, 2003, in order to determine and announce the second 2003 semiannual quotas for Atlantic sharks.

#### Fishing Season Notification

The first semiannual fishing season of the 2003 fishing year for the commercial fishery for ridgeback and non-ridgeback LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open January 1, 2003. To estimate the closure dates of the LCS, NMFS used the average catch rates for each species group from the first seasons from recent years (2000, 2001, and 2002) while also considering the reporting dates of permitted shark dealers.

Based on average ridgeback LCS catch rates in recent years, approximately 93 percent of the available ridgeback LCS quota would likely be taken by the second week of April. The end of the second week of any month corresponds with the end of the first of two monthly reporting periods for permitted shark dealers. Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the ridgeback LCS quota for the first 2003 semiannual season will likely be attained by April 15, 2003. Thus, the ridgeback LCS fishery will close April 15, 2003, at 11:30 p.m. local time.

Based on average non-ridgeback catch rates in recent years, approximately 90 percent of the non-ridgeback LCS quota would likely be taken by the second week of May and 98 percent by the last week of May. Because the LCS shark season has not been open in May since 1996, NMFS has difficulty accurately estimating catch rates in May. Because of this, in addition to the high probability that the quota could be taken in the last week of May and because ridgeback LCS would be discarded dead after April 15, NMFS does not believe it is prudent to leave the non-ridgeback LCS fishery open until the end of May. Additionally, NMFS prefers to have shark closure dates correspond with one of the two monthly reporting periods for permitted shark dealers. Accordingly, the AA has determined that the non-ridgeback LCS quota should be closed by May 15, 2003. Thus, the non-ridgeback LCS fishery will close on May 15, 2003, at 11:30 p.m. local time.

When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closure at the Office of the **Federal Register** at least 14 days before the effective date.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

#### Comment Period

NMFS is accepting comments regarding this emergency rule through 5 p.m. on February 14, 2003. At least one public hearing on this emergency rule will be held during the public comment period and will be announced in a separate **Federal Register** document.

Based on the comments received on this rule and on the results of the peer review of the 2002 LCS stock assessment, NMFS will modify these regulations, as appropriate.

#### Classification

These emergency regulations are published under the authority of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The AA has determined that these emergency regulations are necessary to ensure that regulations in force are based on the best available science.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact on the human environment would result. This emergency rule is of limited duration and, depending on the results of the peer review of the 2002 LCS stock assessment, may be modified to ensure the regulations are based on the best available science. The quota levels established in this rule are based on the best available science at this time - results of the 2002 LCS and SCS stock assessments - and should maintain the status of the stock pending an FMP amendment and, if needed, implementation of a rebuilding plan.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. The requirements of this emergency rule establish the annual LCS quota at recent landings levels, including landings by fishermen in state waters. Thus, the annual LCS quota should not have adverse economic impacts on fishermen and may have some economic benefits if the season is lengthened slightly compared to the past few years. Similarly, the requirements of this emergency rule establish an annual SCS quota at the highest SCS landings level and thus, should not have any adverse economic impacts on fishermen. The minimum size requirement on ridgeback LCS has never gone into place and thus, the suspension of the minimum size requirement would not have any economic impacts on fishermen. Counting dead discards and state landings after a Federal closure could have minor adverse economic impacts if fishermen discard a number of sharks or if fishermen fishing in state waters after a Federal closure land a large number of sharks. However, NMFS expects this requirement to have only minor economic impacts, if any, because the suspension of the minimum size requirement minimizes discards until after the fishery closed and because a

number of states now close state waters to shark fishing with Federal waters. The season-specific quota adjustment would not have any economic impact on the fishery as a whole but could have slight economic benefits for fishermen who fish in only one season. The other alternatives considered could have greater economic impacts in part or in combination with other alternatives.

This emergency rule to establish the 2003 landings quotas and other shark management actions has been determined to be not significant for the purposes of Executive Order 12866.

Additionally, the ancillary action announcing the fishing season is taken under 50 CFR 635.27(b) and is exempt from review under Executive Order 12866.

The AA finds that it would be impracticable and contrary to the public interest to provide prior notice of and an opportunity for public comment on this action. The measures in this rule must be in place by January 1, 2003, the opening date for the Atlantic shark fisheries. Otherwise, certain measures that were based on the 1998 LCS stock assessment will go into effect. After reviewing the independent peer reviews of the 1998 LCS assessment, NMFS determined that portions of the 1998 LCS stock assessment did not constitute the best available science. Also, allowing regulations based on the 1998 LCS stock assessment to go into effect would be inconsistent with the terms of a court-approved settlement agreement, which requires NMFS to maintain 1997 LCS quota levels pending completion of a new rulemaking based on the new LCS stock assessment.

NMFS now has updated 2002 stock assessments for both LCS and SCS that constitute the best available science for these species and indicate that the status of both LCS and SCS have changed since the previous stock assessments. However, the 2002 LCS stock assessment did not become available in time to allow for prior notice and an opportunity for public comment on these interrelated LCS and SCS measures. Therefore, because any further delay in implementing new measures, based on the 2002 LCS and SCS stock assessments, will result in regulations based on outdated science going in effect, and a violation of the settlement agreement, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

For the above reasons and because this action relieves restrictions (i.e., increases LCS quotas and suspends a minimum size requirement), the AA also finds good cause under 5 U.S.C.

553(d)(3) not to delay for 30 days the effectiveness of this emergency rule. Additionally, NMFS can rapidly communicate these regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, and the HMS infoline.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply; thus, no Regulatory Flexibility Analysis was prepared. Nevertheless, as described above, NMFS prepared an economic analysis as part of the regulatory impact review for this emergency rule. Based on this economic analysis, NMFS does not believe that the requirements of this rule would have any adverse economic impacts on fishermen or small entities.

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

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 20, 2002.

**William T. Hogarth,**

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

For the 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 50 CFR part 635 continues to read as follows:

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

##### **§ 635.20 [Amended]**

2. In § 635.20, paragraph (e)(1) is suspended.

3. In § 635.27, paragraphs (b)(1)(i) and (b)(1)(ii) are suspended, and paragraphs (b)(1)(v) and (b)(1)(vi) are added to read as follows:

##### **§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,714 mt dw, apportioned between ridgeback and non-ridgeback sharks and divided between two equal semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season

will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file with the Office of the **Federal Register** for publication notification of each season's length at least 30 days prior to the beginning of the season. The quotas for each semiannual fishing season (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section) are as follows:

(A) Ridgeback shark 391.5 mt dw.

(B) Non-ridgeback shark 465.5 mt dw.

(vi) *Small coastal sharks.* The annual commercial quota for small coastal shark is 326 mt dw, (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section) divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual season is 163 mt dw.

\* \* \* \* \*

4. In § 635.28, paragraphs (b)(1) and (b)(2) are suspended, and paragraphs (b)(4) and (b)(5) are added to read as follows:

##### **§ 635.28 Closures.**

\* \* \* \* \*

(b) \* \* \*

(4) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as specified at § 635.27(b)(1)(v). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(5) When a semiannual quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1)(vi) and (b)(1)(iii) is reached, or is projected to be reached, NMFS will file with the Office of the **Federal Register** for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

\* \* \* \* \*

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