

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 011218303-1303-01; I.D. 110501B]

RIN 0648-AP70

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

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

**ACTION:** Emergency rule; extension of expiration date; request for comments; fishing season notification.

**SUMMARY:** NMFS extends the expiration date of the emergency rule that established the commercial quotas for large and small coastal sharks at 1,285 metric tons (mt) dressed weight (dw) and 1,760 mt dw, respectively. This extension is necessary to ensure that the regulations in force are consistent with a court-approved settlement agreement and are based on the best available science. NMFS also notifies eligible participants of the opening and closing dates for the Atlantic large coastal shark (LCS), small coastal shark (SCS), pelagic shark, blue shark, and porbeagle shark fishing seasons.

**DATES:** The expiration date of the emergency rule published December 28, 2001 (66 FR 67118), is extended to December 30, 2002.

The fishery opening for LCS is effective July 1, 2002 through 11:30 p.m., local time, September 15, 2002. The LCS closure is effective from 11:30 p.m., local time, September 15, 2002, through December 31, 2002.

The fishery opening for SCS, pelagic sharks, blue sharks, and porbeagle sharks is effective July 1, 2002, through December 31, 2002, unless otherwise modified or superseded through publication of a closure notice in the **Federal Register**.

Comments on this action must be received no later than 5 p.m. on August 27, 2002.

**ADDRESSES:** Written comments on this action 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 the initial emergency rule may be obtained from Margo Schulze-Haugen or Karyl Brewster-Geisz at the same address.

**FOR FURTHER INFORMATION CONTACT:**

Margo Schulze-Haugen or 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.

On November 21, 2000, Southern Offshore Fishing Association and other commercial fishermen and dealers (plaintiffs) and NMFS reached a settlement agreement that prescribed actions to be taken by both parties in order to resolve issues raised in two lawsuits brought against NMFS by the plaintiffs. On December 7, 2000, Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida entered an order approving the settlement agreement.

The settlement agreement, inter alia, required NMFS to maintain the 1997 commercial LCS quotas and the catch accounting/monitoring procedures pending an independent review of the 1998 LCS stock assessment. In October 2001, NMFS received the complete peer reviews of the 1998 LCS stock assessment. Three of the four reviews found that the scientific conclusions and scientific management recommendations contained in the 1998 LCS stock assessment were not based on scientifically reasonable uses of the appropriate fisheries stock assessment techniques and on the best available (at the time of the 1998 LCS stock assessment) biological and fishery information relating to LCS. Because of this conclusion, NMFS regards the management recommendations of the 1996 stock assessment to be an appropriate basis for any rulemaking, pending completion of a new stock assessment. Thus, having considered the peer review's overall conclusion, the terms of the settlement agreement, and the recommendations of the 1996 stock assessment, NMFS published an emergency rule (December 28, 2001, 66 FR 67118) to maintain the 1997 commercial LCS quota level until a new LCS stock assessment that employs improved assessment techniques and addresses the recommendations and comments of the peer reviews can be

completed and independently peer reviewed.

The 2002 LCS stock evaluation workshop (SEW) will be held June 24-28, 2002, in the NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, Florida 32408. NMFS anticipates that the final LCS SEW report will be complete in August 2002.

Upon completion of the LCS stock assessment and independent review, NMFS intends to implement management measures for LCS by January 1, 2003, through notice and comment rulemaking, based on the additional information to ensure the conservation of LCS while maintaining a sustainable fishery in the long-term.

Additionally, consistent with the court-approved settlement agreement, in the initial emergency rule, NMFS maintained the SCS commercial shark quota at the 1997 level pending a new stock assessment in early 2002. The 2002 SCS stock assessment report is now available, see **ADDRESSES** or online at <http://www.nmfs.noaa.gov/sfa/hmspg.html>. NMFS intends to implement management measures for SCS based on the 2002 SCS stock assessment by January 1, 2003, through notice and comment rulemaking.

This emergency rule extension is necessary to manage and conserve LCS based on the best scientific information available, pending completion of a new LCS stock assessment. Without this emergency rule extension, the reduced LCS and SCS commercial quotas of 816 mt dw and 329 mt dw, respectively, adopted in the HMS FMP and based on the 1998 LCS stock assessment, would be in force, inconsistent with the terms of the court-approved settlement agreement.

**Annual Landings Quotas**

The 2002 annual landings quotas for LCS and SCS are established at 1,285 mt dw and 1,760 mt dw, respectively. The 2002 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw, 273 mt dw, and 92 mt dw, respectively.

Of the 735.5 mt dw established for the first 2002 semiannual LCS season (December 28, 2001, 66 FR 67118), 722.5 mt dw was taken. NMFS is adding the remaining 13 mt dw to the available quota for the second 2002 semiannual fishing season. As such, the LCS quota for the second 2002 semiannual season

is 655.5 mt dw. The SCS second semiannual quota for 2002 is established at 880 mt dw. The second 2002 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw, 136.5 mt dw, and 46 mt dw, respectively.

#### Fishing Season Notification

The second semiannual fishing season of the 2002 fishing year for the commercial fishery for LCS, SCS, and pelagic sharks in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open July 1, 2002. To estimate the closure dates of the LCS, NMFS examined the average catch rates for each species group from the first seasons from the years 1999, 2000, and 2001 while also considering the reporting dates of permitted shark dealers. Due to an apparent changes in LCS fishing patterns, NMFS determined that using the most recent year's LCS catch rates for the second semi-annual fishing season is appropriate for estimating the 2002 LCS second fishing season. Based on 2001 weekly catch rates, between 92 and 102 percent of the available quota would likely be taken between the first and second weeks of September. The second week of September 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 LCS quota for the second 2002 semiannual season will likely be attained by September 15, 2002. Thus, the LCS fishery will close September 15, 2002, 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.

#### Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The AA has determined that this action is necessary to ensure that regulations in force are consistent with the court-approved settlement agreement and with the best available science.

NMFS prepared an Environment Assessment for the initial 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 extension is of limited duration. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here. NMFS intends to conduct notice and comment rulemaking to have new management measures in place, based on the 2002 LCS and SCS stock assessments and LCS peer review, by January 1, 2003.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here.

This emergency rule extension to establish the 2002 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.

Because no general notice of proposed rulemaking is required to be published in the Federal Register for this emergency rule extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). Comment on these management measures were requested in the initial emergency rule published on December 28, 2001 (66 FR 67118); therefore, the agency has the authority to extend the emergency rule for another 180 days. Two comments were received. The first comment expressed concern that the emergency action does not allow for increases in harvest levels for the recreational shark fishery commensurate with increases for the commercial shark fishery. NMFS intends to review the recreational shark fishing measures during the notice and comment rulemaking after the 2002 LCS stock assessment and peer review. The second comment raised procedural and legal concerns regarding the adequacy and appropriateness of the independent peer reviews, initial emergency rule, and supporting environmental assessment. Some of these concerns are currently the subject of ongoing litigation and will be resolved by a court. To the extent possible, NMFS intends to address additional concerns in the 2002 LCS SEW and during the notice and comment rulemaking after the 2002 LCS stock assessment and peer review.

If these regulations are not in effect then more restrictive management measures (e.g. lower annual landings quotas and measures to count dead discards against that lower quota) that could significantly impact the fishery, and that currently lack an adequate scientific basis, would be in place. The public will have additional opportunities to comment on these or similar measures during the notice and comment rulemaking subsequent to the completion of the 2002 LCS stock assessment and peer review.

Dated: May 22, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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