

for 2004 under the Marine Mammal Protection Act was published in the Federal Register (69 FR 19365). NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based on the level of serious injury and mortality of marine mammals that occurs incidental to the fishery. NMFS must publish in the Federal Register any necessary changes to the LOF after notice and opportunity for public comment. In the proposed LOF for 2004, NMFS proposed to elevate the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line fishery from Category III (remote likelihood of or no known incidental mortality and serious injury) to Category I (frequent incidental mortality and serious injury). In addition, NMFS provided that it would convene a workshop to address the scientific bases for this proposal, and it would consider the results of the workshop and public comments in its decision to classify this fishery in the final LOF for 2004. In order to allow sufficient time to organize and convene the workshop and allow for consideration of public comment based on the workshop as well as from other sources, NMFS is extending the public comment period on the proposed LOF for 2004 from May 13, 2004, to June 14, 2004.

Dated: May 10, 2004.

**Rebecca Lent,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 040430138-4138-01; I.D. 042204C]

RIN 0648-AS28

#### Atlantic Highly Migratory Species (HMS) Fisheries; Adjustment of the Semi-annual Quotas for Large Coastal Sharks (LCS) in the North Atlantic Region

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

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

**SUMMARY:** This proposed rule would adjust the seasonal split of the North

Atlantic LCS regional quota from an equal percentage split of the quota to a 20 to 80 percentage split of the quota between the first and second 2004 semi-annual seasons, respectively. Landings data indicate that the North Atlantic quota would be reached or exceeded in a short period of time during the second semi-annual season under the existing quota allocations. This action could affect all fishermen with commercial shark limited access permits fishing in the North Atlantic region.

**DATES:** Public comments must be received by May 28, 2004.

**ADDRESSES:** Comments on the proposed rule may be submitted by mail to the HMS Management Division, 1315 East West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule on North Atlantic LCS Quota Allocation." Comments may also be made via facsimile (fax) to 301-713-1917. Comments on this proposed rule may also be submitted by e-mail. The address for providing e-mail comments is [0648.AS28@noaa.gov](mailto:0648.AS28@noaa.gov). Include in the subject line of the e-mail comment the following document identifier (RIN 0648-AS28 and I.D. 042204C). Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** For additional information regarding the requirements specified in this document, contact Chris Rilling, Karyl Brewster-Geisz, or Heather Stirratt, phone 301-713-2347 or fax 301-713-1917.

**SUPPLEMENTARY INFORMATION:** On December 24, 2003, NMFS issued a final rule (68 FR 74746) that established the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw). The final rule also established regional LCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split between the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the

South Atlantic, and 4 percent to the North Atlantic. As was done since 1993, the quotas for each region were further split evenly between the 2004 first and second semi-annual fishing seasons. This proposed rule does not alter the annual landings quota or the overall North Atlantic regional quota, but proposes to adjust the seasonal quota split for the North Atlantic region.

Landings data from 2000-2002 indicate that the majority of LCS in the North Atlantic region are landed in the second semi-annual season. Historically, first season landings, including state landings after a Federal closure, have ranged from 6 to 38 percent, with an average of approximately 20 percent of the annual regional quota for the North Atlantic being landed during the first season. Second season landings, including state landings after a Federal closure, have ranged from 62 to 94 percent, with an average of approximately 80 percent of the annual regional quota for the North Atlantic being landed during the second season. In addition, as of April 23, 2004, there were no reported landings of LCS for the North Atlantic region during the first semi-annual season, indicating that the current 50 percent split between the two semi-annual seasons does not reflect the historic or current landings for the North Atlantic region.

As a result, NMFS proposes to adjust the seasonal quota split from an even split (50/50) to a 20/80 split resulting in 8.1 mt dw for the first semi-annual season and 32.6 mt dw for second semi-annual season, not adjusted for any over- or underharvest. This action will not affect the overall landings quota for the fishery or the region (40.7 mt dw for the North Atlantic), but will adjust the available North Atlantic LCS quota in each season to result in a longer second season that more accurately reflects historical and current landings in the region. Any over- or underharvest from both seasons will be considered before establishing the trimester season which begins in 2005.

Since neither the annual quotas, nor the overall regional quotas are proposed to be changed, NMFS does not expect this action to result in any negative economic consequences. This action will likely have a positive economic impact by allowing fishermen to harvest an amount closer to the actual historic landings for the region. Without making this adjustment, the season length would have to be shortened when the lower existing quota was reached, thus preventing fishermen from landing as many sharks as they have historically. The short season would also make effective management and reporting of

the data in a timely manner impracticable. Dealer reports of shark landings are received on a bi-weekly basis, and under the lower existing quota the season would have to be closed in a matter of days rather than weeks, thus not allowing sufficient time to review landings reports.

Regulations at 50 CFR 635.27(b) provide for adjustments of shark fishing quotas via a framework regulatory action. Adjustments to the quotas are to be filed with the Office of the **Federal Register** for publication at least 30 days prior to the start of the next fishing season.

A **Federal Register** notification announcing the opening and closing dates and quotas for all regions will be published in a separate document prior to the start of the second semi-annual commercial shark fishing season.

#### **Classification**

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

As of October 2003, there were 56 directed shark limited access permits in the North Atlantic region that would be affected by this rule, all of which are considered small entities. This proposed rule would have a positive economic impact because it would allow the fishery to stay open longer, thus providing fishermen with a better opportunity to catch the quota. The positive economic impact is not expected to be significant because the overall quota would not be changed, only the period during which the quota could be harvested. By not making this adjustment, the second semi-annual season length would be considerably shorter because the fishery would have to close when the lower existing quota was reached, the quota would not reflect historic and current landings in the fishery, and there could be a negative economic impact on fishermen due to the early closure and lower landings. Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management

and Budget has determined that this final rule is not significant.

NMFS notified all states, consistent with the Coastal Zone Management Act, of the regional quotas during the rulemaking for Amendment 1 of the HMS FMP. No states indicated that the regional quota requirement was inconsistent with their coastal zone management programs. Thus, NMFS has determined that adjusting the semi-annual regional quota for the North Atlantic region would be consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs.

The environmental impacts of the overall regional quotas were analyzed in Amendment 1 to the HMS FMP and the final rule published on December 24, 2003, (68 FR 74746). Adjusting the 2004 quota allocation for the North Atlantic region between the first and second semi-annual seasons is not expected to have impacts on endangered species or marine mammal interaction rates beyond those impacts considered in the October 29, 2003, Biological Opinion.

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

Dated: May 10, 2004.

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

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