

withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write the proposed rule, will be available for public inspection, by appointment, during normal business hours at the Colorado Field Office (see **ADDRESSES** section). In making a final decision on the proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from the proposal.

#### Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) was listed as a threatened species on May 13, 1998 (63 FR 26517). At that time, *Z. h. preblei* was classified as a subspecies of the meadow jumping mouse based on a study by Krutzsch (1954). On February 2, 2005, the Service proposed to delist or remove *Z. h. preblei* from the List of Endangered and Threatened Animals (70 FR 5404). This proposal was based on an unpublished report (Ramey *et al.* 2004a) that suggested *Z. h. preblei* should be considered the same subspecies as the Bear Lodge meadow jumping mouse (*Z. h. campestris*). In the spring of 2005, we sought and received three expert peer reviews of this proposal in accordance with our 1994 Interagency Policy for Peer Review in Endangered Species Act Activities (59 FR 34270, July 1, 1994). As noted in our February 2, 2005, **Federal Register** notice proposing delisting of the Preble's meadow jumping mouse (70 FR 5404), we were expecting additional genetics information (including nuclear DNA results) within the next year that would provide additional information on meadow jumping mouse taxonomy.

In December 2004, Ramey *et al.* (2004b) released a revised version of their report that suggested further synonymization. Specifically, the authors suggested synonymizing *Z. h. preblei*, *Z. h. campestris*, and *Z. h.*

*intermedius*. This unpublished report was not considered in the February 2, 2005, proposal to delist *Z. h. preblei* from the List of Endangered and Threatened Animals because it had not been peer-reviewed at that time. In the spring of 2005, the Service sought and obtained peer review of this report.

In August 2005, a manuscript, authored by Rob Roy Ramey II, Hsiu-Ping Liu, Clinton W. Epps, Lance M. Carpenter, and John D. Wehausen, titled "Genetic relatedness of the Preble's meadow jumping mouse (*Z. h. preblei*) to nearby subspecies of *Z. hudsonius* as inferred from variation in cranial morphology, mitochondrial DNA, and microsatellite DNA: implications for taxonomy and conservation" was published in the journal *Animal Conservation* (Ramey *et al.* 2005). As indicated in the title, this version of Ramey *et al.* included microsatellite information.

In January 2006, we received a final report analyzing the mitochondrial DNA and microsatellite DNA of five *Z. hudsonius* subspecies including—*Z. h. preblei*, *Z. h. campestris*, *Z. h. intermedius*, *Z. h. pallidus*, and *Z. h. luteus* (King *et al.* 2006). The King *et al.* (2006) report, which constitutes further testing of the conclusions of Ramey *et al.* (2003, 2004a, 2004b, 2005), has been peer-reviewed in accordance with U.S. Geological Survey methods as described in the Leetown Science Center Research Documentation Manual (U.S. Geological Survey 2003) but is unpublished.

All of the documents described above are available on-line at <http://mountain-prairie.fws.gov/preble/>. We are reopening the public comment period on the delisting proposal to allow the public to consider and comment on the above documents.

The two studies differ in sampling regime, sources of tissues chosen for analysis, number of molecular characters sequenced and microsatellite fragments surveyed, statistical tests applied, method used to portray genealogical relationships, and the criteria used to determine uniqueness. The different conclusions in the two studies suggest there is scientific disagreement regarding the application of the available data relevant to the proposed action (70 FR 5404, February 2, 2005) and, thus, we extend for not more than six months this rulemaking process as allowed by Section 4(b)(6)(B)(i) of the ESA. We will use the 6-month extension to assemble a panel of experts to carefully review and assess the two studies which represent the best available information on the genetics, morphology, and ecology of the species. The Service will make a final decision

based on the best scientific and commercial information available, including but not limited to the expert panelists' judgments.

#### Author

The primary authors of this notice are the Colorado Field Office staff (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 5, 2006.

#### H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E6-2286 Filed 2-16-06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 060131019-6019-01; I.D. 012006B]

RIN 0648-AU17

#### 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 2006 second and third trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on over- or underharvests from the 2005 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 must be received by March 6, 2006.

**ADDRESSES:** Written comments on the proposed rule may be submitted to Chris Rilling, Highly Migratory Species Management Division via:

- E-mail: [012006B@noaa.gov](mailto:012006B@noaa.gov).
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for 2nd and 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. 012006B.

**FOR FURTHER INFORMATION CONTACT:**  
Chris Rilling or Karyl Brewster-Geisz by

phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:**

**Proposed Opening and Closing Dates and Quotas**

Proposed opening and closing dates and quotas for the 2006 second and third trimester seasons by region are provided in Table 1.

TABLE 1—PROPOSED OPENING AND CLOSING DATES AND QUOTAS

Second Trimester Season				
Species Group	Region	Opening Date	Closure Date	Quota
Large Coastal Sharks	Gulf of Mexico	July 6, 2006	July 31, 2006 11:30 p.m. local time	201.1 mt dw (443,345 lb dw)
	South Atlantic		August 16, 2006 11:30 p.m. local time	151.7 mt dw (334,438 lb dw)
	North Atlantic		August 6, 2006 11:30 p.m. local time	66.3 mt dw (146,165 lb dw)
Small Coastal Sharks	Gulf of Mexico	May 1, 2006	To be determined, as necessary	38.9 mt dw (85,759 lb dw)
	South Atlantic			333.5 mt dw (735,234 lb dw)
	North Atlantic			24.2 mt dw (53,351 lb dw)
Blue sharks	No regional quotas	May 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

Third Trimester Season				
Species Group	Region	Opening Date	Closure Date	Quota
Large Coastal Sharks	Gulf of Mexico	September 1, 2006	November 15, 2006 11:30 p.m. local time	226.6 mt dw (499,562 lb dw)
	South Atlantic		October 3, 2006 11:30 p.m. local time	56.2 mt dw (123,899 lb dw)
		North Atlantic	CLOSED <sup>1</sup>	
Small Coastal Sharks	Gulf of Mexico	September 1, 2006	To be determined, as necessary	30.8 mt dw (67,902 lb dw)
	South Atlantic			263.7 mt dw (581,353 lb dw)
	North Atlantic			28.2 mt dw (62,170 lb dw)
Blue sharks	No regional quotas	September 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

<sup>1</sup>Since opening the LCS fishery in the North Atlantic for even one week could result in an overharvest, NMFS proposes to keep the North Atlantic LCS fishery closed during the third trimester season.

## Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (Amendment 1), finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 that established, among other things, an annual landings quota of 1,017 metric tons (mt) dressed weight (dw) for LCS, and an annual landings quota of 454 mt dw for SCS. The final rule also established regional LCS and SCS 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 among the three regions based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that, among other things, adjusted the regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

Consistent with 50 CFR 635.27(b)(1)(iii), as adjusted by the 2004 final rule, 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 were divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings of 4, 88, and 8 percent for LCS, and 1, 9, and 90 percent for SCS in the first, second, and third trimester seasons, respectively, in the North Atlantic.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvest in a given region from the 2005 second and third trimester seasons will be carried over to the 2006 second and third trimester seasons. This action would not change the 2006 base landings quota or the 2006 regional

quotas established in the November 30, 2004, final rule.

In addition, the November 30, 2004, final rule established a process for issuing proposed and final rules to notify interested parties of season lengths and quotas and to facilitate public comment.

## Annual Landings Quotas

Any of the proposed quotas may change depending on any updates to the reported landings from the 2005 second and third trimester seasons. Per Amendment 1 to the HMS FMP, the 2005 annual base landings quotas for LCS and SCS 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 2005 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 rule does not propose to change any of these overall base landings quotas.

As of January 13, 2006, the overall 2005 second trimester season quotas for LCS and SCS had not been exceeded. Reported landings of LCS were at 89 percent of the LCS quota (353.5 mt dw out of a 395.2 mt dw quota), and SCS landings were at 26 percent (86.1 mt dw out of a 334.8 mt dw quota) of the overall SCS quota. The Gulf of Mexico, South Atlantic, and North Atlantic regions experienced underharvests of 17 percent (24.6 mt dw), 7 percent (12.8 mt dw), and 6 percent (3.9 mt dw) of their regional LCS quotas, respectively. The Gulf of Mexico, South Atlantic, and North Atlantic experienced underharvests of 78 percent (23.8 mt dw), 72 percent (199.7 mt dw), and 100 percent (23 mt dw) of their regional SCS quotas, respectively.

As of January 13, 2006, the overall 2005 third trimester season quota for LCS, but not SCS, had been exceeded. Reported landings of LCS were at 110 percent of the LCS quota (396.0 mt dw out of a 361.0 mt dw quota), and SCS landings were at 34 percent (85.1 mt dw out of a 249.0 mt dw quota) of the overall SCS quota. The South Atlantic and North Atlantic regions experienced overharvests of 44 percent (82.7 mt dw) and 48 percent (2.4 mt dw) of their regional LCS quotas, respectively, and the Gulf of Mexico experienced an underharvest of 30 percent (50.5 mt dw). The Gulf of Mexico, South Atlantic, and North Atlantic experienced underharvests of 49 percent (15.7 mt dw), 66 percent (132.2 mt dw), and 100 percent (16 mt dw) of their regional SCS quotas, respectively. As described below, the regional quotas

will be adjusted based on these over- or underharvests.

## Regional Landings Quotas Percentages for LCS and SCS

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.

Also consistent with 50 CFR 635.27(b)(1)(vi)(A)(3), the LCS quota for the Gulf of Mexico and the 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.

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, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

Also consistent with 50 CFR 635.27(b)(1)(vi)(A)(3), the SCS quota for the Gulf of Mexico and the 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 according to historical landings of 1, 9, and 90 percent for the first, second, and third trimester seasons, respectively.

## Gulf of Mexico Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the Gulf of Mexico had an underharvest of 25 mt dw in the second trimester season, and an underharvest of 50.5 mt dw in the third trimester season. As a result, the Gulf of Mexico LCS quota for the 2006 second trimester season is proposed to be 201.1 mt dw ( $1,017 \times 0.52 \times 0.333 + 25$ ), and the quota for the 2006 third trimester season is proposed as 226.6 mt dw ( $1,017 \times 0.52 \times 0.333 + 50.5$ ).

In 2005, preliminary data indicate that for SCS, the Gulf of Mexico had an underharvest of 23.8 mt dw in the second trimester season, and an underharvest of 15.7 mt dw in the third trimester season. As a result, the Gulf of Mexico SCS quota for the 2006 second trimester season is proposed to be 38.9 mt dw ( $454 \times 0.10 \times 0.333 + 23.8$ ), and the quota for the 2006 third trimester season is proposed as 30.8 mt dw ( $454 \times 0.10 \times 0.333 + 15.7$ ).

### South Atlantic Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the South Atlantic had an underharvest of 12.8 mt dw in the second trimester season, and an overharvest of 82.7 mt dw in the third trimester season. As a result, the South Atlantic LCS quota for the 2006 second trimester season is proposed to be 151.7 mt dw ( $1,017 \times 0.41 \times 0.333 + 12.8$ ), and the quota for the 2006 third trimester season is proposed as 56.2 mt dw ( $1,017 \times 0.41 \times 0.333 - 82.7$ ).

In 2005, preliminary data indicate that for SCS, the South Atlantic had an underharvest of 202 mt dw in the second trimester season, and an underharvest of 132.2 mt dw in the third trimester season. As a result, the South Atlantic SCS quota for the 2006 second trimester season is proposed to be 333.5 mt dw ( $454 \times 0.87 \times 0.333 + 202$ ), and the quota for the 2006 third trimester season is proposed to be 263.7 mt dw ( $454 \times 0.87 \times 0.333 + 132.2$ ).

### North Atlantic Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the North Atlantic had an underharvest of 3.7 mt dw in the second trimester season, and an overharvest of 2.4 mt dw in the third trimester season. As a result, the North Atlantic LCS quota for the 2006 second trimester season is proposed to be 66.3 mt dw ( $1,017 \times 0.07 \times 0.88 + 3.7$ ), and the quota for the 2006 third trimester season is proposed as 3.3 mt dw ( $1,017 \times 0.07 \times 0.08 - 2.4$ ).

In 2005, preliminary data indicate that for SCS, the North Atlantic had an underharvest of 23 mt dw in the second trimester season, and an underharvest of 16 mt dw in the third trimester season. As a result, the North Atlantic SCS quota for the 2006 second trimester season is proposed to be 24.2 mt dw ( $454 \times 0.03 \times 0.09 + 23$ ), and the quota for the 2006 third trimester season is proposed as 28.2 mt dw ( $454 \times 0.03 \times 0.90 + 16$ ).

### Pelagic Shark Quotas

The 2005 annual quotas for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,845 lb dw), 273 mt dw (601,856 lb dw), and 92 mt dw (202,823 lb dw), respectively. These are the same quotas that were established in the HMS FMP. As of January 13, 2006, approximately 84.8 mt dw had been reported landed in the second 2005 second trimester season, and 22.6 mt dw in the third trimester season 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). The 2006 second and third trimester season quotas for pelagic, blue, and porbeagle sharks are proposed for each season 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 Fishing Season Notification for the Second Season

The second trimester fishing season of the 2006 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on May 1, 2006. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the Assistant Administrator (AA) will file notification of closures at the Office of Federal Register at least 14 days before the effective date, consistent with 50 CFR 635.28(b)(2).

The second trimester fishing season of the 2006 fishing year for LCS is proposed to open on July 6, 2006, in the Gulf of Mexico, South Atlantic, and North Atlantic regions. NMFS is proposing to close the second trimester season LCS fishery in the Gulf of Mexico on July 31, 2006, at 11:30 p.m. local time, in the South Atlantic on August 16, 2006, at 11:30 p.m. local time, and in the North Atlantic on August 6, 2006, at 11:30 p.m. local time.

NMFS is proposing to delay the start of the second season for LCS in the Gulf of Mexico, South Atlantic, and North Atlantic regions until July 6, 2006, in order to reduce the likelihood of interactions with pregnant female sharks that may be about to give birth, and in response to public comments received during 2005 requesting to delay the start of the second trimester season until after the Fourth of July weekend to improve marketing opportunities for shark product.

To estimate the LCS fishery opening and closing dates for the second and third trimester seasons, NMFS calculated the average catch rates from July through November for each of the regions during the second semi-annual and second and third trimester seasons in recent years (2002–2005), and applied the average monthly catch rate to the available quota for each of the regions.

Consistent with 50 CFR 635(b)(1)(vi), any over- or underharvests in one region will result in an equivalent increase or decrease in the following year's quota for that region. Because state landings during a Federal closure are counted against the quota, NMFS also calculated

the average amount of quota reported received during the Federal closure dates of the years used to estimate catch rates.

Based on the average July LCS catch rates in recent years in the Gulf of Mexico region, approximately 81 percent of the available second trimester LCS quota (201.1 mt dw) would likely be taken in three weeks and 108 percent of the available LCS quota would likely be taken in four weeks. Dealer data also indicate that, on average, approximately 2.9 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 1 percent of the proposed available quota. If catch rates in 2006 are similar to the average catch rates from 2002 to 2005, 82 percent ( $81 + 1$  percent) of the second trimester quota could be caught in three weeks, and 109 percent ( $108 + 1$ ) of the quota could be caught in four weeks. Thus, NMFS proposes to open the fishery in the Gulf of Mexico on July 6, 2006, and close the fishery on July 31, 2006 (=25 days or ~ 3 1/2 weeks).

Based on the average July and August LCS catch rates in recent years for the South Atlantic region, approximately 85 percent of the available second trimester LCS quota (151.7 mt dw) would likely be taken in six weeks and 94 percent of the available LCS quota would likely be taken in seven weeks. Dealer data also indicate that, on average, approximately 21 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 14 percent of the available quota. Thus, if catch rates in 2006 are similar to the average catch rates from 2002 to 2005, 99 percent ( $85 \text{ percent} + 14 \text{ percent}$ ) of the quota could be caught in six weeks, and 108 percent ( $94 \text{ percent} + 14 \text{ percent}$ ) of the quota could be caught in seven weeks. Thus, NMFS proposes to open the fishery in the South Atlantic on July 6, 2006, and close the fishery on August 16, 2006 (six weeks).

Based on average catch rates in recent years for the North Atlantic region, approximately 69 percent of the quota would likely be taken in four weeks, and 86 percent of the quota in five weeks. Dealer data indicate that, on average, approximately 19 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 28 percent of the available quota. Thus, if catch rates in 2006 are similar to the average catch rates from 2002 to 2005, 97 percent ( $69 \text{ percent} + 28 \text{ percent}$ ) of the quota could be caught in four weeks, and 114 percent ( $86 \text{ percent} + 28 \text{ percent}$ ) of the quota could be caught in five weeks. Thus, NMFS proposes to open the fishery in the North Atlantic on July 6,

2006, and close the fishery on August 6, 2006 (~4 1/2 weeks).

### Proposed Fishing Season Notification for the Third Season

The third trimester fishing season of the 2006 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on September 1, 2006. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2). The third trimester fishing season of the 2006 fishing year for LCS is proposed to open on September 1, 2006, in the Gulf of Mexico and South Atlantic, but NMFS proposes to keep the North Atlantic region closed during the 2006 third trimester season due to overharvests during the 2005 third trimester season.

NMFS used LCS catch rates from September in recent years (2002–2005) to estimate the 2006 third trimester season catch rates for September. For the months of October through November, NMFS used 2005 catch rates only because, prior to 2005 the fishery was closed during that period. The 2005 data are thus the most representative data available for estimating 2006 catch rates.

Based on average catch rates in recent years in the Gulf of Mexico, approximately 97 percent of the available third trimester LCS quota (226.6 mt dw) would likely be taken in 13 weeks and 105 percent of the available LCS quota would likely be taken in 14 weeks. Dealer data also indicate that approximately 1.1 mt dw of LCS were reported received by dealers after the October 31, 2005, Federal closure. This is approximately 0.5 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2002 to 2005, 97 percent of the quota could be caught by the first week of December, and 105 percent of the quota could be caught by the end of December. However, as a precautionary measure to avoid an overharvest, and due to lack of information about landings in November and December, NMFS proposes to close the Gulf of Mexico LCS fishery on November 15, 2006, at 11:30 p.m. local time (10 weeks).

In the South Atlantic, approximately 92 percent of the available third trimester LCS quota (56.2 mt dw) would likely be taken in four weeks and four days, and 112 percent of the available

LCS quota would likely be taken in five weeks. Dealer data indicate that, in 2005, no LCS were reported received by dealers after the November 15, 2005, Federal closure. Thus, if catch rates in 2006 are similar to the average catch rates from 2002 to 2005, if the fishery were to remain open until the first week of October, the quota would likely be exceeded. Accordingly, NMFS proposes to close the South Atlantic LCS fishery on October 3, 2006, at 11:30 p.m. local time.

In the North Atlantic, approximately 41 percent of the available third trimester LCS quota (3.3 mt dw) would likely be taken in one week, and 82 percent would likely be taken in two weeks. Dealer data also indicate that approximately 3.1 mt dw of LCS were reported received by dealers after the September 15, 2005, Federal closure. This is approximately 95 percent of the available quota. Thus, if catch rates in 2006 are similar to the average catch rates from 2002 to 2005, 136 percent (41 percent + 95 percent) of the quota could be caught by the first week of September, and 177 percent of the quota could be caught by the end of the second week of September. Since opening the LCS fishery in the North Atlantic for even one week could result in an overharvest, NMFS proposes to keep the North Atlantic LCS fishery closed during the third trimester season.

### Request for Comments

Comments on the proposed rule may be submitted via email, mail, or fax by March 6, 2006, (see **DATES** and **ADDRESSES**).

### Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.27(b)(1)(vi), the purpose of this action is to adjust the LCS trimester quotas based on over- or underharvests from the 2005 fishing season, and to announce the 2006 second and third trimester season opening and closing dates. This proposed rule will not increase the overall quotas or landings for LCS or SCS, and is not expected to increase fishing effort or protected species interactions.

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy that this proposed rule would not have a significant economic impact on a substantial number of small entities. On November 30, 2004, NMFS published a final rule (69 FR 69537) that, among other things, adjusted the 2005 regional quotas for LCS and SCS based on

updated landings information and divided the quotas among the three trimester seasons. A final regulatory flexibility analysis (FRFA) conducted for the November 2004 rule indicated that there were approximately 253 directed commercial shark permit holders, 358 incidental commercial shark permit holders, and 267 commercial shark dealers, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). The FRFA concluded that overall economic impacts of adjusting the regional quotas on these small entities were expected to be minimal. As of October 17, 2005, there were approximately 235 directed commercial shark permit holders, 320 incidental commercial shark permit holders, and 230 commercial shark dealers.

This proposed rule would not change the overall LCS or SCS base landings quotas or the overall regional quotas established in the November 2004 rule, or implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions. This proposed rule would adjust the quotas for each of the regions based on underharvests from the 2005 second and third trimester seasons consistent with 50 CFR 635.27(b)(1)(vi).

During the 2005 second and third trimester seasons, the Gulf of Mexico experienced underharvests of 25 and 50.5 mt dw for LCS, respectively (for a net underharvest of 75.5 mt dw) and underharvests of 23.8 and 15.7 mt dw for SCS, respectively (for a net underharvest of 39.5 mt dw). The 2003 average ex-vessel price for LCS flesh was \$0.78/lb dw, and the average ex-vessel price for SCS flesh was \$0.43/lb dw. Shark fins typically account for approximately 5 percent of dressed weight of LCS and command a higher price (\$17.09/lb, 2003 average). If the entire 2006 second and third trimester season quota in the Gulf of Mexico is caught, this could result in a gross economic benefit of \$309,503 (\$129,829 for LCS flesh, \$142,229 for LCS fins, and \$37,445 for SCS). This represents approximately 34 percent of the estimated 2005 second and third trimester gross revenue of \$888,520 (\$413,561 for LCS flesh, \$453,061 for LCS fins, and \$21,898 for SCS) for the Gulf of Mexico region. Given that there are approximately 35 active shark vessels (defined as vessels with greater than 25 percent of landings derived from sharks as reported in the snapper-grouper logbook) in the Gulf of Mexico, this could result in an increase in

revenue of approximately \$8,842 per vessel during the 2006 second and third trimester seasons.

During the 2005 second and third trimester seasons, the South Atlantic experienced an underharvest of 12.8 mt dw and an overharvest of 82.7 mt dw for LCS, respectively, for a net overharvest of 69.9 mt dw, and underharvests of 202.0 and 132.2 mt dw for SCS, respectively, for a net underharvest of 334.2 mt dw. If the entire 2006 second and third trimester season quota is caught in the South Atlantic, this could result in a net economic benefit of approximately \$64,935 (-\$120,199 for LCS flesh, and -\$131,680 for LCS fins due to the overharvest, +\$316,814 for SCS). This represents approximately 3.8 percent of the estimated 2005 second and third trimester season gross revenue of \$1,725,539, (\$756,447 for LCS, \$828,697 for LCS fins, and \$140,386 for SCS) for the South Atlantic region. Given that there are approximately 28 active shark vessels in the South Atlantic, this could result in an increase in revenue of approximately \$2,319 per vessel during the 2006 second and third trimester seasons.

During the 2005 second and third trimester seasons, the North Atlantic experienced an underharvest of 3.7 mt dw and an overharvest of 2.4 mt dw for LCS, respectively, and underharvests of 23 and 16 mt dw for SCS, respectively. If the entire 2006 second trimester season quota is caught in the North Atlantic, this could result in a gross economic benefit of approximately \$35,135 (\$6,362 for LCS flesh, \$6,970 for

LCS fins, and \$21,803 for SCS). This represents approximately 16 percent of the estimated 2005 second season gross revenue of \$220,890, (\$105,411 for LCS, \$115,479 for LCS fins, and \$0 for SCS) for the North Atlantic region. Given that there are fewer than 10 active shark vessels in the North Atlantic, this could result in an increase in revenue of approximately \$3,513 per vessel during the 2006 second trimester season.

NMFS proposes to keep the North Atlantic LCS fishery closed during the third trimester season due to an overharvest of LCS during the 2005 third trimester season. Accounting for the LCS overharvest of 2.4 mt dw during the 2005 third trimester season, the proposed 2006 third trimester LCS adjusted quota for the North Atlantic is 3.3 mt dw. Not allowing the LCS fishery to open could result in a loss of revenue of approximately \$11,877 (\$5,668 for LCS flesh, and \$6,209 for LCS fins), or \$1,187 per vessel during the 2006 third trimester season.

The increases in possible revenue as a result of transferring the underharvests are only potential amounts that may or may not be realized. For example, the increased supply of sharks could decrease prices. If it is not realized, then there would be no economic impact because the fishermen did not receive any benefit from the transfer. If it is realized, then it will result in a positive impact as described above. The decreases in revenue for some of the regions are a result of overharvests during the 2005 seasons, which, consistent with 50 CFR 635.27(b)(1)(vi),

must be accounted for with an equivalent decrease during the 2006 season. Only one region, the North Atlantic region, may experience a loss in revenue if the LCS fishery is closed during the third trimester season due to overharvests during the 2005 third trimester season. Thus, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 1, or the November 2004 final rule (69 FR 69537).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

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

Dated: February 14, 2006.

**John Oliver,**

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

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