

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

## List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.239 to read as follows:

### § 117.239 Lewes and Rehoboth Canal.

(a) The draw of the Savannah Road/SR 18 Bridge, at mile 1.7, in Lewes shall open on signal if at least 24 hours notice is given.

(b) The draw of the SR 14A Bridge, at mile 6.7, in Rehoboth shall open on signal if at least 24 hours notice is given.

3. Revise § 117.241 to read as follows:

### § 117.241 Mispillion River.

The draw of the S14 Bridge, at mile 11.0, at Milford shall open on signal if at least 24 hours notice is given.

Dated: September 18, 2006.

**L.L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E6–16427 Filed 10–4–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 060925247–6247–01; I.D. 091106B]

**RIN 0648–AU84**

### 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 first trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. The proposed rule also would modify the existing mid-Atlantic shark closed area in 2007. 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 and address over- and underharvests that occurred in the Atlantic shark fishery in the first trimester of 2006.

**DATES:** Written comments will be accepted until November 1, 2006.

Public hearings will be held from 6–8 p.m. on each of the following dates: October 19, 23, and 25.

**ADDRESSES:** Written comments on the proposed rule may be submitted to

Michael Clark, Highly Migratory Species Management Division via:

- E-mail: [SF1.091106B@noaa.gov](mailto:SF1.091106B@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 1st 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. 091106B.

The hearing locations are:

1. October 19, 2006 from 6–8 p.m. City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708.
2. October 23, 2006 from 6–8 p.m. Town Hall, 407 Budleigh Street, Manteo, NC 27954.

3. October 25, 2006 from 6–8 p.m. Comfort Inn and Suites Port Canaveral Area, 3901 N. Atlantic Avenue, Cocoa Beach, FL 32931.

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 Michael Clark (see **FOR FURTHER INFORMATION CONTACT**).

#### FOR FURTHER INFORMATION CONTACT:

Michael Clark 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 Fishery Management Plan (HMS 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 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. The quotas were divided in this manner because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, but primarily during the summer months in the North Atlantic region. Dividing the quotas equally among the three trimester seasons in the South Atlantic also result in a greater proportion of the quota being made available during August and September when the mid-Atlantic shark closure is no longer in effect.

Consistent with 50 CFR 635.27(b)(1)(iii) and (vi), any over- or underharvest in a given region from the 2006 first trimester season will be carried over to the 2007 first trimester season in that region.

#### First Trimester 2006 Landings

Shark landings data for the first trimester of 2006 are provided in Table 1. As a result of the over- and underharvests that occurred in the first trimester season of 2006, NMFS analyzed alternatives to adjust the 2007 first trimester seasons and quotas for the LCS fishery.

#### Quota Adjustments in the LCS Fishery

The Agency conducted an Environmental Assessment (EA) to analyze five alternatives for adjusting regional trimester LCS quotas and other management measures based on the over- and underharvests that occurred in the LCS fisheries in the South Atlantic and Gulf of Mexico regions, respectively, during the 2006 first trimester season.

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 FMP. These measures are necessary to ensure that over- and underharvests from 2006 are accounted for and any impacts are analyzed. The Agency is preparing, in a separate action, an amendment to the 2006 Consolidated HMS FMP to implement management measures 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 quotas beyond the first trimester of 2007, at this time.

The current regulations (status quo, alternative 1) 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 excessive landings (230 percent of quota) of LCS reported in the South Atlantic region during the first trimester of 2006, the status quo alternative would not allow for any available quota in that region for LCS in the first trimester of 2007. This alternative would not modify the regional quotas or the mid-Atlantic shark closed area. Quotas and season lengths are provided in Table 1.

The current regulations at 50 CFR 635.27(b)(1)(vi)(A) and (b)(2) allow for the transfer of up to 10 percent of a region's annual quota between two regions that have a corresponding under- and overharvest. Thus, NMFS also considered alternative 2, which would transfer up to 10 percent of the Gulf of Mexico region's annual quota to the South Atlantic region. This amount of quota would not be sufficient to account for the overharvest experienced by the South Atlantic region during the first trimester of 2006.

The preferred alternative (alternative 3) would close the South Atlantic region to LCS fishing during the first trimester of 2007 and open the mid-Atlantic shark closed area in July 2007, subject to availability of quota for the second trimester of 2007. This alternative would result in a closure of the South Atlantic region for approximately six months (January-June 2007). Negative ecological impacts of re-opening the closed area are not expected to be significant because the re-opening would be allowed for only one month during one year. Unless action were taken to open the closure in the upcoming amendment to the HMS FMP, the area would be closed from January 1 to July 31, in 2008 and subsequent years. Economic and social impacts of re-opening the mid-Atlantic shark closed area would likely be positive relative to the status quo as fishermen in this area would have additional fishing opportunities during the month of July.

Alternative 4 would open the mid-Atlantic shark closed area from January 1, 2007, through July 31, 2007. The opportunity to land LCS in this area during this time period would be contingent on the availability of quota for the first and second trimesters of 2007. This alternative was not selected

because LCS quota would not likely be available for the first trimester of 2007, therefore, the closed area would not be opened until the second trimester (July 2007), similar to the preferred alternative. Furthermore, if quota were made available by combining this alternative with alternative 5, negative ecological impacts may be more extensive because the overharvest that occurred in 2006 would not be addressed. A permanent removal of the closure was not analyzed because such an action would require an FMP amendment to ensure consistency with the current rebuilding plan for sandbar sharks. An upcoming FMP amendment will implement measures to address the 2006 stock assessments for the LCS complex and dusky, sandbar, and blacktip sharks and will also review the mid-Atlantic shark closed area, among other measures, in light of more recent information.

Lastly, alternative 5 would transfer the entire underharvest from the Gulf of Mexico region (119.7 mt dw) to the South Atlantic region. Once overharvests from 2006 are addressed, this alternative would provide a quota of 74.3 mt dw, resulting in a three-week fishing season for the South Atlantic region during the first trimester of 2007. A season of three weeks would be estimated to harvest 85 percent of the quota, including 33 percent that is harvested after the seasonal closure. Keeping the season open for four weeks would result in a 2 percent overharvest during the first trimester. Transferring this quota to the South Atlantic region results in 176.1 mt dw of LCS quota and a proposed seasonal closure of April 15, 2007, for the Gulf of Mexico region. Keeping the season open until April 30, 2007, would result in a 9 percent overharvest, including 0.85 percent being harvested after the seasonal closure. The North Atlantic region would have the same fishing seasons and quotas as the preferred alternative.

Combining alternative 5, which would transfer the Gulf of Mexico region's underharvest to the South Atlantic region with alternative 4, which would open the mid-Atlantic shark fishery closure in January 2007, would result in negative ecological impacts and positive social and economic benefits.

The preferred alternative (alternative 3) was selected to account for the overharvest experienced by the South Atlantic region during the first trimester of 2006, while providing participants in this region with a one-time additional fishing opportunity in the month of July 2007. The ability to fish during the month of July 2007, depending on

available quota, should not result in significant negative ecological impacts due to the limited nature of the opening (one month in one year). In addition, this alternative may offset some of the negative economic impacts of not being able to target LCS for the first six months of 2007 as a result of the first trimester closure. Furthermore, this opening may address perceived inequity between fishery participants in the vicinity of the mid-Atlantic shark closed area with those in other portions of the South Atlantic region.

#### Proposed Quotas for First Trimester 2007

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 1 describes the proposed quotas for LCS, SCS, and pelagic sharks for the various regions (if applicable) for the first trimester of 2007 adjusted for over- and underharvests that occurred during the first trimester of 2006.

Existing regulations do not allow underharvests of pelagic sharks to be carried forward to the next fishing management period. As of August 2006, approximately 20.3 mt dw had been reported landed in the 2006 first trimester fishing 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)(iv). The 2007 first trimester season 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 Fishing Season Notification and Quotas for the First Trimester Season 2007

The first trimester fishing season of the 2007 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 January 1, 2007 (Table 1). 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).

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to provide consistency and predictability in managing the fishery, NMFS proposes to close the Federal LCS fishery on either the 15th or the end of any given month.

#### Proposed Opening and Closing Dates and Quotas

Proposed opening and closing dates for the 2007 first trimester season, by region and species group, are provided in Table 1.

TABLE 1. PROPOSED SEASONS AND QUOTAS FOR LCS, SCS, AND PELAGIC SHARKS FOR THE FIRST TRIMESTER OF 2007.

All quotas and landings are dressed weight, in metric tons, unless specified otherwise.

Species Group (Annual Quota)	Region (Allocation)	2006 1 <sup>st</sup> Tri. Quota	2006 1 <sup>st</sup> Tri. Landings	2007 1 <sup>st</sup> Tri. Quota	+/- Under/Over Harvest	2007 Proposed Quota	Proposed Season
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	176.1	103.1	176.1	+119.7	295.8 (692,157 lb dw)	Jan. 1 - April 30, 2007
	South Atlantic (41 %)	141.3	326.1	137.6	-184.3	-46.7 (-102,955 lb dw)	Closed
	North Atlantic (7 %)	5.3	0.3	2.8	+5.0	7.8 (17,196 lb dw)	Jan. 1 - April 30, 2007
Small Coastal Sharks (454)	Gulf of Mexico (10 %)	14.8	5.0	15.1	+9.8	24.9 (54,894 lb dw)	Jan. 1, 2007 - To be determined
	South Atlantic (87 %)	284.6	42.1	131.5	+242.5	374.0 (824,520 lb dw)	
	North Atlantic (3 %)	18.7	0.1	0.1	+18.6	18.7 (41,226 lb dw)	
Blue Sharks (273)	No regional quotas	91.0	20.3	91.0	Not applicable	91.0 (200,618 lb dw)	Jan. 1, 2007 - To be determined
Porbeagle sharks (92)		30.7		30.7		30.7 (67,681 lb dw)	
Pelagic Sharks other than Porbeagle or blue (488)		162.7		162.7		162.7 (358,688 lb dw)	

#### Request for Comments

Comments on this proposed rule may be submitted at public hearings, via email, mail, or fax. NMFS will hold

three public hearings to receive comments from fishery participants and other members of the public regarding these proposed alternatives. These

hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Michael Clark at (301) 713–2347 at least 5 days prior to the hearing date. 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.

An EA has been prepared that describes the impact on the human environment that would result from implementation of alternative management measures that may adjust LCS quotas in the first trimester of 2007 based on over- and underharvests in the South Atlantic and Gulf of Mexico regions, respectively. Based on the EA, Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act, and review of the National Environmental Policy Act (NEPA) criteria for significant effects (40 CFR Part 1508.27) and NMFS criteria for significance evaluated above (NAO 216–6 Section 6.02), no significant effect on the quality of the human environment is anticipated from this action.

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) and (2) 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 first trimester of 2007 based on under- and overharvests that occurred during the first trimester of 2006. This rule does not change the overall base quotas.

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 and dealers on the Atlantic Ocean in the United

States. There are approximately 552 (240 directed and 312 incidental) shark permit holders and 336 commercial shark dealers that would be 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 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 and the Endangered Species Act (ESA), 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 five different alternatives in this proposed rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives included: status quo (alternative 1), transferring 10 percent of the Gulf of Mexico region annual quota to the South Atlantic (alternative 2),

closing the South Atlantic region during the first trimester of 2007 and opening the mid Atlantic shark closed area in July 2007 (alternative 3), removing the mid-Atlantic shark closed area (alternative 4), and transferring the entire Gulf of Mexico region underharvest to the South Atlantic region (alternative 5). Closing the South Atlantic region during the first trimester and opening the mid Atlantic shark closed area in July is the preferred alternative (alternative 3).

Alternative 1 is considered the status quo alternative since it would maintain existing procedures for addressing regional trimester over- and underharvests when establishing the regional quotas and seasons for the first trimester of 2007 and it would also maintain the existing mid-Atlantic shark closure. The Gulf of Mexico and North Atlantic regions would maintain similar economic levels as previous years because those regions are proposed to be open, with ample quota, throughout the entire first trimester 2007. This alternative is not preferred, as it would result in negative economic impacts for the South Atlantic region, compared to the preferred alternative.

By itself, the status quo alternative does not create any new economic burdens on the shark commercial industry. Regardless, the unexpected magnitude of the 2006 first trimester overharvest would result in no commercial fishing for LCS in the entire South Atlantic region from January 1 to July 31, 2007, and there would be no fishing with bottom longline (BLL) gear permitted in the Mid-Atlantic shark closure until August 1, 2007.

If not for the overharvest in 2006, the first trimester quota available would have been 137.6 mt of LCS. Using a median ex-vessel price of \$0.51 for LCS and \$12.61 for shark fin reported HMS Dealer reports from 2002 to 2005 for the South Atlantic and adjusted for inflation, the value of this harvest would have been approximately \$146,976 for LCS fresh (95 percent of the quota weight) and \$191,266 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have an estimated direct revenue impact on South Atlantic commercial shark fishing activity of approximately \$338,242. There will also be continued economic hardship compared to the preferred alternative for fishing operations using BLL gear that are dependant on LCS in the vicinity of the Mid-Atlantic shark closure since they would not be permitted to fish until August 1, 2007. However, it should be noted that fishermen received revenue sooner

under the 2006 first trimester overharvest than they normally would have received. However, a closure during the first trimester of 2007 would result in disrupted revenue flows and negative economic impacts. Using the median ex-vessel prices for the first trimester of 2006 of \$0.45 and \$14.00 for LCS flesh and shark fins, respectively, the estimated revenue for the first trimester in 2006 from the 184.3 mt in overharvest was \$458,116.

Maintaining the Mid-Atlantic shark closed area would result in no fishing with BLL gear permitted in the mid-Atlantic shark closure until August 1, 2007. This could impact some of the vessels dependent on fishing with BLL gear in this region.

Alternative 2 would adjust the South Atlantic regional LCS quota for the first trimester by transferring up to 10 percent of the 2006 first trimester quota from the Gulf of Mexico. This would likely result in the same economic effects as the status quo alternative, since the transferred amount is not likely to be sufficient to allow for an LCS season in the first trimester in the South Atlantic region while still allowing for a full season in the Gulf of Mexico region. Before implementing this alternative, it would be necessary to review the annual regional landings for 2006 for both regions before determining whether the South Atlantic and Gulf of Mexico regions have corresponding annual over- and underharvests, respectively. This alternative is not preferred, as it would result in negative economic impacts for the South Atlantic region, similar to alternative 1 (status quo), compared to the preferred alternative.

Alternative 3, the preferred alternative, would close the entire South Atlantic region for LCS during the first trimester of 2007 and open the entire area including the mid-Atlantic shark closed area region in July 2007, pending availability of quota. This alternative could minimize the economic costs associated with the South Atlantic overharvest. As described above for Alternative 1, the 2006 overharvest is estimated to have an estimated direct revenue impact on South Atlantic commercial shark fishing activity of approximately \$338,242. In 2005, 46 vessels reported landings in the South Atlantic region, indicating that the LCS closure could result in a loss of revenue of approximately \$7,353/vessel. However, this alternative might provide an additional month of fishing opportunities for vessels that may not be able to participate in the South Atlantic fishery during the first six months of 2007. Compared to pre-closure landings

(2002–2004), landings in 2005 of LCS decreased by 13.9 mt dw which may have been a result of the closed area. This additional month of access to the mid-Atlantic shark closed area region during the month of July is estimated to potentially result in an additional \$34,188 in gross shark revenues based on the difference in landings that may occur as a result of reopening the mid-Atlantic shark closed area.

Alternative 4 would open the mid-Atlantic shark closed area on January 1, 2007, through July 31, 2007, dependant on available quota for LCS during the first and second trimester seasons of 2007. Given the preliminary landings data as of August 24, 2006, it is likely quota will not be available. Therefore, it is likely that this alternative would result in economic impacts identical to Alternative 3. The impacts of this alternative would be similar to the preferred alternative or the status quo alternative as lack of available quota would prevent fishing in the South Atlantic region during the first trimester. This alternative is not preferred because the preferred alternative achieves similar objectives, yet ensures that the ecological benefits of maintaining the mid-Atlantic shark closed area are maintained through June of 2007. Furthermore, if fishing were allowed in the first trimester of 2007 by transferring quota from the Gulf of Mexico region (alternative 5) this alternative would result in negative ecological impacts because it does not account for the overharvest that occurred in 2006.

Alternative 5 would distribute a portion of the LCS underharvest from the Gulf of Mexico's landings from the first trimester of 2006 to the South Atlantic first trimester of 2007 thus providing a first trimester season for 2007 in the South Atlantic. Transferring all of the Gulf of Mexico region's under harvest to the South Atlantic could provide for 74.3 mt dw of quota that would provide for an approximately 3-week long season. This 3-week season would generate approximately \$182,641 (95 percent at \$0.51/lb dw LCS and 5 percent at \$12.61/lb dw shark fins) in revenue in the South Atlantic region. However, the estimated revenue generated during the 3-week season would still be about \$155,601 less than the potential revenue associated with the annual quota allocation. This alternative was not selected as it would not account for the overharvest experienced in the South Atlantic region during the first trimester of 2006, resulting in additional fishing mortality in 2007 and negative ecological impacts as a consequence. Furthermore, the

potential exists for the South Atlantic region to exceed its 2007 first trimester quota, exacerbating future potential economic and ecological impacts as a result.

Overall, underharvests from 2006 that would be transferred to the first trimester season quota for 2007 under this alternative may result in economic benefits for the Gulf of Mexico that may potentially offset some of the negative economic impacts to the South Atlantic region. Increases in possible revenue as a result of transferring the underharvests are only potential amounts that may or may not be realized. If revenues are not realized then there would be no economic impact because the fishermen did not receive any benefit from the transfer of underharvests. If revenues are realized, it may result in a positive economic impacts.

These proposed regulations are not expected to increase endangered species or marine mammal interaction rates. A Biological Opinion (BiOp) issued October 29, 2003, concluded that the continued operation of the Atlantic shark fisheries was not likely to jeopardize the continued existence of any listed species under NMFS purview. An analysis of the anticipated incidental takes of sea turtles (primarily loggerhead and leatherback sea turtles) and smalltooth sawfish resulted in a "non-jeopardy" determination in the BiOp. This proposed rule would adjust LCS quotas for the first trimester of 2007 based on over- and underharvests that occurred in the first trimester of 2006. Furthermore, this proposed rule would not alter fishing practices or fishing effort significantly and therefore should not have any further impacts on endangered species or marine mammals beyond those considered in the October 29, 2003, BiOp for Atlantic shark fisheries. Between 1994–2004, there have been 5 loggerhead sea turtles observed caught on BLL gear in the mid-Atlantic shark closed area, two of which were released alive. Only one of these interactions occurred during the month of July (1998). Re-opening the mid-Atlantic shark closure in July would likely have slightly negative ecological impacts because the likelihood of 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. The modification to the mid-Atlantic shark closure area is not expected to significantly impact interactions with protected resources, because the South Atlantic region would be closed to targeted LCS fishing from January through June of 2007.

The preferred alternative of opening the mid-Atlantic shark closed area in July 2007, dependent upon available quota, would likely increase fishing mortality of juvenile sandbar sharks. This area is considered an Habitat Area of Particular Concern (HAPC) for sandbar sharks. However, the impacts on Essential Fish Habitat (EFH), and specifically, the HAPC are considered to be negligible because of the short duration of the opening. A status quo alternative was considered that would have reduced ecological impacts on the HAPC and EFH in general, however, that alternative would result in more extensive negative social and economic impacts because the South Atlantic region will be closed for the first seven months of 2007, rather than six months as preferred.

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

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

Dated: September 28, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
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. *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.21, paragraph (d)(1) is revised to read as follows:

##### **§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(d) \* \* \*

(1) If bottom longline gear is on board a vessel issued a permit under this part, persons on board that vessel may not fish or deploy any type of fishing gear in the mid-Atlantic shark closed area from January 1 through July 31 each calendar year, except that in 2007 the mid-Atlantic shark closed area will be closed from January 1 through June 30 and may open in July, contingent upon available quota.

\* \* \* \* \*

[FR Doc. E6-16408 Filed 10-4-06; 8:45 am]

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