

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 225, 232, and 252****Defense Federal Acquisition Regulation Supplement; Technical Amendments**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to reinstate text that was inadvertently omitted from a previous amendment and to update references within the DFARS text.

**EFFECTIVE DATE:** April 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

**SUPPLEMENTARY INFORMATION:** This final rule amends DFARS text as follows:

○ *Section 225.7002-2.* Reinstates paragraphs (b)(1) through (5), which were inadvertently omitted from the interim rule published at 71 FR 58536 on October 4, 2006. These paragraphs appeared in section 225.7002-2 prior to the October 4, 2006, publication. Paragraph (b)(5) contains an update to a reference to corresponding text in the DFARS companion resource, Procedures, Guidance, and Information (PGI).

○ *Section 232.070.* Corrects a typographical error in a cross-reference.

○ *Section 252.212-7001.* Updates a reference to a contract clause to reflect the current clause date.

**List of Subjects in 48 CFR Parts 225, 232, and 252**

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 225, 232, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225, 232, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 225—FOREIGN ACQUISITION**

■ 2. Section 225.7002-2 is amended by adding paragraphs (b)(1) through (5) to read as follows:

**225.7002-2 Exceptions.**

\* \* \* \* \*

(b) \* \* \*

(1) The following officials are authorized, without power of redelegation, to make such a domestic nonavailability determination:

(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(2) The supporting documentation for the determination shall include—

(i) An analysis of alternatives that would not require a domestic nonavailability determination; and

(ii) A written certification by the requiring activity, with specificity, why such alternatives are unacceptable.

(3) Defense agencies shall follow the procedures at PGI 225.7002-2(b)(3) when submitting a request for a domestic nonavailability determination.

(4) If an official listed in paragraph (b)(1)(ii) through (iv) of this subsection makes a domestic nonavailability determination for the acquisition of titanium or a product containing titanium, that official shall—

(i) Notify the congressional defense committees at least 10 days before the award of a contract that relies on such a determination; and

(ii) Provide a copy of the notification and the determination to the Director, Defense Procurement and Acquisition Policy, as specified in PGI 225.7002-2(b)(4).

(5) Follow the procedures at PGI 225.7002-2(b)(5) for reciprocal use of domestic nonavailability determinations.

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**PART 232—CONTRACT FINANCING****232.070 [Amended]**

■ 3. Section 232.070 is amended in paragraph (b), in the second sentence, by removing “Subpart 204.1” and adding in its place “Subpart 201.4”.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.212-7001 [Amended]**

■ 4. Section 252.212-7001 is amended in paragraph (b)(17) by removing

“(MAY 2006)” and adding in its place “(MAR 2007)”.

[FR Doc. E7-7914 Filed 4-25-07; 8:45 am]

BILLING CODE 5001-08-P

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

[Docket No. 070302052-7088-02; I.D. 021307B]

RIN 0648-AV09

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the 2007 second and third trimester seasons commercial quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on over- or underharvests from the 2006 second and third trimester seasons. In addition, this rule finalizes the opening and closing dates for the LCS commercial fishery based on adjustments to the trimester quotas. The final rule also opens the existing mid-Atlantic shark closed area for two weeks at the end of July.

**DATES:** This rule is effective May 1, 2007. The Atlantic commercial shark fishing season opening and closing dates and quotas for the 2007 second and third trimester seasons are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** For copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA), please write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or at (301) 713-1917 (fax). Copies are also available from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>.

**FOR FURTHER INFORMATION CONTACT:** LeAnn Southward Hogan 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 Reauthorization Act

(Magnuson-Stevens Reauthorization Act). NMFS recently finalized a Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), (October 2, 2006; 71 FR 58058), that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks. The Consolidated 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. 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 are divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings in the North Atlantic.

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

On March 8, 2007 (72 FR 10480), NMFS published a proposed rule that examined the regional quotas and proposed season lengths for the 2007 second and third trimester seasons for LCS, SCS, and pelagic sharks managed under the Consolidated HMS FMP. NMFS analyzed three LCS and four SCS alternatives for adjusting regional trimester quotas and other management measures based on the over- and underharvests that occurred in the LCS and SCS fisheries in the South Atlantic and Gulf of Mexico regions during the 2006 second and third trimester seasons. Information regarding these alternatives was provided in the preamble of the proposed rule and is not repeated here.

#### Response to Comments

Comments on the proposed rule are summarized below, together with NMFS' responses.

*Comment 1:* NMFS received several comments in support of the LCS no action alternative, alternative 1, to open the LCS season on July 6. Commenters preferred a July 6 opening in the South Atlantic region because an August 1 opening would conflict with the spiny

lobster fishery opening. Specifically these commenters felt that a July opening would avoid gear conflicts with spiny lobster traps and would allow spiny lobster fishermen to fish for sharks even if it was a two-week season. NMFS also received several comments in support of merging the 2007 second and third trimesters in the South Atlantic and Gulf of Mexico region. Finally, NMFS received a comment stating that the LCS 2007 second and third trimesters should remain closed and that the available quota be carried forward to the 2008 first trimester.

*Response:* Based on comments received, NMFS will implement the preferred alternatives for LCS in the South Atlantic and the Gulf of Mexico regions, alternatives 2 and 3, which would merge the 2007 second and third trimester seasons. However, due to comments received regarding concerns over the August 1st opening date in the South Atlantic region, NMFS has recalculated the opening and closing dates and will modify the opening date of the LCS merged trimester in the South Atlantic region to July 15, 2007. Based on average catch rates in July, the available quota for the merged season will likely be taken in just over four weeks; therefore the merged season in the South Atlantic region will close on August 15, 2007. Because of historically high catch rates in July if the merged season was to open on July 6, as in the past, the 163.7 mt dw of available quota would likely be taken in 3 weeks. Therefore, in order to allow for a longer merged season, NMFS modified the opening from August 1 to July 15. The commenters who suggested keeping the 2007 second and third seasons closed were concerned that the first season in 2008 will be closed due to the large overharvest in the first season of 2006. While the combined quota from the 2007 merged second and third seasons would eliminate the overharvest from the first season in 2006, keeping this combined season closed would have negative socioeconomic impacts to fishermen who fish during this time period. The trimester seasons were implemented in Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish and Sharks to assist with managing seasonal fisheries, pupping seasons, and bycatch concerns. The trimester seasons also provide more open seasons spread across the calendar year.

*Comment 2:* NMFS received comments in opposition to the SCS preferred alternative, alternative 7, to reallocate the base quota percentages in the South Atlantic and Gulf of Mexico regions and to transfer a portion of the South Atlantic region's underharvest to

cover the Gulf of Mexico region's overharvest. Opposition stemmed in part from fears that the South Atlantic region's quota would be permanently transferred to the Gulf of Mexico region. The commenters were also concerned about the possible misidentification of SCS being caught in the Gulf of Mexico region. NMFS also received a comment in support of the reallocation of the SCS base quota percentages since the Gulf of Mexico region's allocation of quota has been insufficient in the past.

*Response:* The current regional percent allocations of SCS were established in 2003 under Amendment 1 to the Atlantic Tunas, Swordfish, and Sharks FMP, and were amended in 2004 based on additional landings data from 2002 and 2003. Alternative 7 would modify the percent allocations to more evenly distribute the SCS quota among the Gulf of Mexico and South Atlantic regions, as recent landings in the Gulf of Mexico region indicate a change in the fishery and an increase in landings in this region. Landings information received from dealer reports during the 2006 second and third seasons indicate that the SCS species caught in the Gulf of Mexico region are about fifty percent blacknose and twenty-five percent finetooth sharks. In the South Atlantic region, dealer reports indicated that the SCS species caught are over seventy percent sharpnose sharks. Over the last three years, 33 percent of all SCS landed have been landed in the Gulf of Mexico. The South Atlantic region has not fully utilized its SCS quota and has accumulated large underharvests that are greater in total than the entire annual quota for all the regions. The new baseline quota allocations are similar to the landings in both regions reported during 2006. Redistributing the SCS more equally should help prevent future quota overharvests and fishery closures in the Gulf of Mexico region, which in turn should reduce potential future economic and social costs associated with unexpected closures. The commercial shark fishing industry in the South Atlantic region may perceive the reallocation of quota percentages as both a social and economic burden. However, alternative 7 would not require a reduction in fishing effort or landings of SCS in the South Atlantic region relative to current fishing levels. Additionally, sufficient quota would still be available to the South Atlantic region to provide for future limited fishery expansion. The adjusted South Atlantic regional quota for the second and third seasons are 291.6 mt dw and 297.5 mt dw, which is 64.2 percent and 65.5 percent of the

total annual quota for SCS, respectively. NMFS is currently undertaking a SCS stock assessment that is scheduled to be completed in the fall of 2007. Future SCS management decisions will be based, in large part, on the results of this stock assessment.

*Comment 3:* NMFS received a comment stating that sharks are overfished and quotas should be cut fifty percent this year and ten percent each year thereafter. NMFS also received a comment in support of managing porbeagle sharks under the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).

*Response:* The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year, not to reanalyze the overall management measures for sharks, which is being done in amendment 2 to the Consolidated HMS FMP. Based on the results of the 2005 Canadian porbeagle shark stock assessment, the 2006 dusky shark stock assessment, and the 2005/2006 LCS stock assessment, NMFS has determined that a number of shark stocks and/or species are overfished and an amendment to the Consolidated HMS FMP is needed to implement management measures to rebuild overfished stocks and prevent overfishing consistent with the mandates of the Magnuson-Stevens Act. On November 7, 2006, NMFS published a Notice of Intent, (71 FR 65086), to amend the Consolidated HMS FMP and recently presented a pre-draft to the Advisory Panel for comments. The purpose of the amendment is to enact management measures that will rebuild sandbar, dusky, and porbeagle shark populations; provide an opportunity for the sustainable harvest of blacktip sharks, particularly in the Gulf of Mexico where the stock has been declared rebuilt; and to end and/or prevent overfishing of Atlantic sharks. NMFS will be reexamining quotas and other management measures in that amendment. With regard to CITES, Germany, on behalf of the European Union has proposed listing the porbeagle shark under Appendix II of CITES. The United States is considering this and other CITES proposals. These proposals will be addressed at the CITES fourteenth meeting of the Conference of Parties held in The Hague, June 13–15, 2007.

*Comment 4:* NMFS received several comments concerning the accuracy of regional landings and reporting information and concern regarding the misidentification of species.

*Response:* The current dealer reporting regulations at 50 CFR 635.5(b)(1)(ii) state that reports of Atlantic sharks received by dealers from U.S. vessels on the first through the 15th of each month must be postmarked no later than the 25th of that month. Reports of sharks received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. NMFS has forwarded information about potential violations to NOAA Fisheries Office of Law Enforcement, and is reviewing internal processes to improve compliance with reporting requirements. Additionally, the upcoming shark amendment also includes measures to improve reporting. In order to minimize shark identification problems in the regions, in the Consolidated HMS FMP, NMFS implemented mandatory Atlantic shark identification workshops required for all federally permitted Atlantic shark dealers. These workshops are currently being held monthly throughout the South Atlantic and Gulf of Mexico regions and should help shark misidentification problems and lead to more accurate regional species reporting. NMFS relies on fishermen and dealers for accurate and timely reporting, and incomplete or non-submitted data make it difficult for the Agency to effectively monitor quotas and establish future seasons based on these landings.

*Comment 5:* NMFS received several comments stating that managing sharks in three different regions is not working, and that management of sharks in one region would be more effective. Conversely, NMFS received a comment stating that North Carolina should be removed from the South Atlantic region and that there should be a Mid-Atlantic quota, and that NMFS should get more regionally specific about what is being caught where and when.

*Response:* This rule does not address the trimester seasons or shark fishing regions that were established in Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish and Sharks and the subsequent rulemaking (November 30, 2004, 69 FR 69537). The trimester seasons were implemented to provide fishermen with more fishing opportunities later in the year (September through December) when they were traditionally not allowed to fish under the semi-annual seasons, and to protect large pregnant female sharks and their pups from excessive fishing pressure. The regional quota allocations were designed to provide each region its own quota based on historical landings, providing the ability to manage

commercial shark fishing with greater resolution. Under the current regime, regions that did not experience an overharvest are not penalized by quota reductions for overharvests that may occur in another region. In the amendment to the Consolidated HMS FMP that is currently underway, NMFS may consider changes to existing regional definitions and quota allocations for the regions. NMFS will consider this and other comments received during scoping at that time.

*Comment 6:* NMFS received a comment stating that blacktip sharks should be removed from the LCS complex and managed separately. NMFS also received a comment supporting an endorsement for the gillnet fishery.

*Response:* As described above, the purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year, not to reanalyze the overall management measures for sharks. The purpose of the shark amendment to the Consolidated HMS FMP is to enact management measures that will rebuild sandbar, dusky, and porbeagle shark populations; provide an opportunity for the sustainable harvest of blacktip sharks, particularly in the Gulf of Mexico region where the stock is rebuilt; and to end and/or prevent overfishing of Atlantic sharks. The removal of blacktip sharks from the LCS complex and an endorsement for the gillnet fishery are both alternatives that may be considered in the amendment to the Consolidated HMS FMP.

*Comment 7:* NMFS received a comment stating that the Agency should fully analyze the cumulative socio-economic impacts to fishermen.

*Response:* NMFS realizes that most participants in HMS fisheries also depend on non-HMS species fisheries. For example, bottom longline participants also target reeffish, snapper/grouper, and golden tilefish either on the same trip or at different times of the year. NMFS analyzed the ecological and socio-economic impacts of each alternative considered in the Final EA for this rulemaking only and determined that the preferred management measures would not have significant ecological or socio-economic impacts. In addition, as a result of comments received regarding the spiny lobster fishery, NMFS changed the final action. Additionally, in the upcoming amendment to the Consolidated HMS FMP, NMFS will include a full analysis of socio-economic impacts of the management measures in the Atlantic shark fishery as well as the reeffish,

snapper/grouper, tilefish, and other fisheries, as appropriate.

*Comment 8:* NMFS received a comment stating that the Agency should declare the shark fishery an economic disaster.

*Response:* Under the Magnuson-Stevens Act at Sec.312 (16 U.S.C. 1861a), the Secretary of Commerce can determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of (A) natural causes; (B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or (C) undetermined causes. NMFS is currently reviewing these criteria during implementation of the Magnuson-Stevens Reauthorization Act and has not made any determination at this time with regard to the Atlantic shark fishery.

**Changes to the Proposed Rule**

NMFS has made a change from the March 8, 2007, proposed rule regarding the opening and closing dates for the 2007 second and third merged season in the South Atlantic region. In the proposed rule, NMFS proposed to open the merged 2007 second and third season on August 1, 2007, and to close it on September 15, 2007. This was

based on available quotas, historic catch rates, and dealer data on the amount of quota taken during a closure. The August 1 start date was proposed because of lower catch rates in August versus July, therefore allowing for a longer 6 week continuous season. However, due to concerns regarding an August 1 opening date in the South Atlantic region and the overlap with the August 1 opening date of the spiny lobster fishery in the South Atlantic region, the LCS preferred alternative, alternative 2, has been modified. Based on the average July and August LCS catch rates in the South Atlantic region, NMFS calculates that approximately 69.6 percent of the merged second and third season quota (163.7 mt dw) would likely be taken by the second week of August. Historic dealer data also indicate that, on average, approximately 2.3 percent of available quota is taken during a closure from May through August. If the catch rates in 2007 are similar to average catch rates in the second and third season from 2003–2006 and landings after a closure remain consistent, 71.9 percent (69.6 percent + 2.3 percent) of the merged second and third trimester quota would be caught by the second week of August, and 105.6 percent (103.3 percent + 2.3 percent) would be taken by the third week of August. Because of historically high catch rates in July if the merged

season was to open on July 6, as in the past, the 163.7 mt dw of available quota would likely be taken in 3 weeks. Therefore, in order to allow for a longer merged season, NMFS modified the opening from August 1 to July 15. The combined second and third trimester season in the South Atlantic region would be open for just over four weeks (Table 1). This continuous season would afford more flexibility in addressing market conditions for LCS, and thus potentially allow for greater profits. The positive aspects of merging the two seasons include reduced operating costs since fishermen will only need to prepare the vessel once instead of twice and they are more likely to have a viable market for LCS given that the season is longer. NMFS is closing the season on August 15 (Table 1), when only 71.9 percent of the available quota will likely be taken to avoid overharvest that may occur due to potential increased effort in the South Atlantic region because this region is currently closed to LCS fishing.

**Final Fishing Season Notification and Quotas for the 2007 Second and Third Trimester Seasons**

The final opening and closing dates and quotas for the 2007 LCS and SCS second and third trimester seasons are provided in Tables 1 and 2, respectively.

TABLE 1.—FINAL LCS SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007

Region	Final merged 2nd and 3rd trimester opening dates	Final merged 2nd & 3rd trimester closing dates	Final merged 2nd & 3rd trimester quotas
South Atlantic .....	July 15, 2007 .....	August 15, 2007 .....	163.70mt dw; 360,893 lb dw.
Gulf of Mexico .....	September 1, 2007 .....	September 22, 2007 .....	83.1 mt dw; 183,202 lb dw.
North Atlantic .....	July 6, 2007—2nd trimester .....	July 31, 2007—2nd trimester .....	69.0 mt dw; 152,117 lb dw.
	Closed 3rd trimester .....	Closed 3rd trimester .....	CLOSED.

TABLE 2.—FINAL SCS AND PELAGIC SHARK SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASON OF 2007

2007 2nd trimester	Opening dates	Closing dates	2007 2nd tri. adjusted quota
SCS South Atlantic (49%) .....	May 1, 2007 .....	To be determined as necessary ...	291.6 mt dw; 642,861 lb dw.
SCS Gulf of Mexico (48%) .....	May 1, 2007 .....	To be determined as necessary ...	72.6 mt dw; 160,054 lb dw.
SCS North Atlantic (3%) .....	May 1, 2007 .....	To be determined as necessary ...	36.2 mt dw; 79,807 lb dw.
Blue Sharks .....	May 1, 2007 .....	To be determined as necessary ...	91.0 mt dw; 200,619 lb dw.
Porbeagle .....	May 1, 2007 .....	To be determined as necessary ...	30.7 mt dw; 67,681 lb dw.
Pelagic Sharks .....	May 1, 2007 .....	To be determined as necessary ...	162.7 mt dw; 358,688 lb dw.
2007 3rd trimester	Opening dates	Closing dates	2007 3rd tri. adjusted quota
SCS South Atlantic (49%) .....	September 1, 2007 .....	To be determined as necessary ...	297.5 mt dw; 655,869 lb dw.
SCS Gulf of Mexico (48%) .....	September 1, 2007 .....	To be determined as necessary ...	80.4 mt dw; 177,250 lb dw.
SCS North Atlantic (3%) .....	September 1, 2007 .....	To be determined as necessary ...	29.4 mt dw; 64,815 lb dw.
Blue Sharks .....	September 1, 2007 .....	To be determined as necessary ...	91.0 mt dw; 200,619 lb dw.
Porbeagle .....	September 1, 2007 .....	To be determined as necessary ...	30.7 mt dw; 67,681 lb dw.
Pelagic Sharks .....	September 1, 2007 .....	To be determined as necessary ...	162.7 mt dw; 358,688 lb dw.

## Classification

NMFS has determined that this action is consistent with the Magnuson-Stevens Act, including the national standards, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the May 1, 2007, start of the 2007 second trimester season for LCS, SCS, pelagic, blue, and porbeagle sharks (50 CFR 635.27(b)(1)(i)).

Updated landings reports for LCS, SCS, pelagic, blue, and porbeagle sharks for the 2006 second and third trimester seasons just became available in mid January 2007. Due to the discovery of under and late dealer reporting in November 2006, NMFS had to expend considerable effort in December and January to obtain, verify and document accurate landings data for the production of the landings reports that could be used to make over- and underharvest adjustments to the quotas consistent with 50 CFR 635.27(b)(1)(vi).

Based on that data, NMFS determined it needed to implement these measures in a timely manner to address the overharvest that occurred in 2006 and to prevent serious damage to the fishery resource by having regulations in place by the start of the second trimester fishing season, May 1, 2007. If this final rule is not in place by May 1, 2007, the baseline quotas for these species, which are higher than the 2007 adjusted quotas, would come into place as a default. The LCS default baseline quotas would be 138.9 mt dw for the South Atlantic region and 176.1 mt dw for the Gulf of Mexico region, compared to the lower LCS adjusted quotas of 83.2 mt dw for the South Atlantic region and 33.2 mt dw for the Gulf of Mexico region. If the higher default baseline quotas are in place on May 1, it is likely that the fishermen will harvest the entire available quota for the second season, leading to an unnecessary overharvest of Atlantic Sharks. These overharvests would result in damage to the fishery resource and future reductions in available quotas and fishing opportunities.

In addition, historically, the LCS second semi-annual or trimester season has opened in July instead of May 1. The time period between April and July is the time during which pregnant female sandbar sharks and other LCS species begin to pup and prohibited dusky sharks start to pup mainly between South Carolina and North Carolina. If this final action is not in place by May 1, the higher default baseline quotas will come into place and fishermen will begin to fish during

months that are typically closed to LCS shark fishing due to the pupping season. By having the final action in place by May 1, the LCS fishing season will not open until July, which allows these critical pupping months to remain closed to shark fishing giving overfished sharks a greater opportunity to rebuild.

This final rule been determined to be not significant for purposes of Executive Order 12866.

In compliance with Section 604 of the Regulatory Flexibility Act, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule portion of this action that could minimize economic impacts on small entities. Each of the statutory requirements of Section 604 of the Regulatory Flexibility Act has been addressed, and a summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule. As stated earlier, the objective of this rule is to establish the quotas and season length for the 2007 second and third seasons of the Atlantic shark fishery consistent with the Consolidated HMS FMP and the rebuilding plan established in the 2003 Amendment 1 to the Atlantic Tunas, Swordfish, and Sharks FMP. NMFS needs to implement this action in order to maintain fishing mortality at the levels designated in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks to prevent overfishing of the fishery resource.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public comment in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the Agency's assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the draft EA for the 2007 second and third season Atlantic commercial shark management measures. NMFS did not receive any comments specific to the IRFA. NMFS received an economic comment regarding the overlap of the shark fishery with the lobster fishery in the South Atlantic region that stated that the July 6 opening in the South Atlantic region would be better than the proposed August 1st opening because the spiny lobster fishery opens August 1st. Specifically, the commenters felt that a July opening would avoid gear

conflicts with spiny lobster traps and would allow spiny lobster fishermen to fish for sharks even if it was a two week season.

As a result of comments received regarding concerns over the August 1 opening date in the South Atlantic region as proposed, NMFS will modify the opening date for the preferred LCS alternative in the South Atlantic region in the final rule. Based on the average July and August LCS catch rates and dealer data in the South Atlantic region, NMFS calculates, based on a July 15 start date, that approximately 71.9 percent of the merged second and third trimester quota would be caught by the second week of August, and 105.6 percent would be taken by the third week of August. Therefore, the combined second and third trimester season in the South Atlantic region would be open for just over four weeks. NMFS is closing the merged season on August 15 (Table 1), when only 71.9 percent of the available quota will likely be taken to avoid overharvest that may occur due to potential increase in effort in the South Atlantic region because this region is currently closed.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. NMFS considers all HMS permit holders to be small entities because they either had gross receipts less than \$3.5 million for fish-harvesting, gross receipts less than \$6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. These are the Small Business Association size standards for defining a small versus large business entity in this industry. As of January 2007, there were a total of 552 commercial permit holders in the Atlantic shark fishery (235 directed and 314 incidental permits). Comparing 2005 logbook data with permit holders indicates that there were 86 active vessels in the Gulf of Mexico region, 46 active vessels in the South Atlantic region, and 6 active vessels in the North Atlantic region. More information regarding the numbers of small entities involved in the fishery and their locations can be found in Chapter 6 of the EA (see **ADDRESSES**).

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional

reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

- Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- Use of performance rather than design standards; and
- Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders in this fishery to be small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, 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 seven different alternatives in this final rulemaking and provides justification for selection of the preferred alternatives to achieve the desired objective.

The alternatives included: Maintain existing procedures for LCS quota management (alternative 1, No Action), merge the second trimester season quota with the third trimester season quota in the South Atlantic and open the combined season July 15, 2007 (modified alternative 2), merge the second trimester season quota with the third trimester season quota in the Gulf of Mexico region and open the combined season September 1, 2007 (alternative 3), maintain the existing procedures for SCS quota management (alternative 4, No Action), transfer a portion of the South Atlantic region’s 2007 second trimester SCS underharvest

to the Gulf of Mexico region (alternative 5), transfer a portion of the South Atlantic region’s 2007 second trimester SCS underharvest to the Gulf of Mexico region as well as give the Gulf of Mexico region additional SCS quota for the 2007 second trimester season (alternative 6), and reallocate the SCS regional quota percentages in the South Atlantic region from 87 percent to 49 percent and in the Gulf of Mexico region from 10 percent to 48 percent and transfer a portion of the South Atlantic region’s 2007 second trimester SCS underharvest to the Gulf of Mexico region (alternative 7). Merging the second and third trimester seasons for LCS for both the South Atlantic (alternative 2) and the Gulf of Mexico (alternative 3) regions and also reallocating the SCS regional quota percentages between the South Atlantic and Gulf of Mexico regions for the second and third trimesters while also transferring a portion of the South Atlantic’s regional second trimester underharvest to the Gulf of Mexico (alternative 7) are the preferred alternatives.

#### *Alternatives Considered for LCS*

Alternative 1 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over- and underharvests of LCS when establishing the regional quotas and seasons for the second and third trimesters of 2007 and it would also open the mid-Atlantic shark closed area in July, subject to available quota for the second trimester in 2007. This alternative is not preferred in part because it would result in negative economic impacts for the South Atlantic region and Gulf of Mexico region, compared to the preferred alternative.

The no action alternative does not create any new economic burdens on the shark commercial industry that were not included in previous rulemaking. Regardless, the unexpected magnitude of the 2006 second trimester overharvest would result in no commercial fishing for LCS in the entire Gulf of Mexico region during the second trimester of 2007 since the available adjusted quota would be taken in approximately two days. Furthermore, overharvest during the second trimester in 2006 in the South Atlantic region would result in a reduced second trimester quota of 83.2 mt dw and therefore the fishing season would be adjusted and shortened to last only from July 6 to July 20, 2007.

If not for the overharvest in 2006, the second trimester quota allocation would have been 138.9 mt of LCS in the South Atlantic region. Instead, the adjusted quota under this alternative would be

83.2 mt dw, which is 55.7 mt dw less than it would have been under the base quota allocation. To estimate the value of changes in revenues from the 2007 available quota, the median ex-vessel prices from 2003 to 2006 for each region were used to forecast 2007 shark prices since this multi-year average smoothes out temporary market fluctuations. Using a median ex-vessel price of \$0.48 per pound dressed weight of LCS and \$12.28 per pound for shark fin as reported on HMS dealer reports from 2003 to 2006 for the South Atlantic region and adjusted for inflation, the value of the 55.7 mt dw reduction from the baseline quote allocation would have been approximately \$55,996 for LCS flesh (95 percent of the quota weight) and \$75,398 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on South Atlantic regional commercial shark fishing activity of approximately \$131,393. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 second trimester than previously expected. Since the actual prices received for the 2006 second trimester are available, those prices were used to calculate the “extra” revenues generated from the overharvest in the second trimester of 2006. Using the median ex-vessel prices for the second trimester of 2006 of \$0.40 and \$10.00 for LCS flesh and shark fins, respectively, for the South Atlantic region, the estimated revenue for the second trimester in 2006 from the 55.7 mt dw in overharvest was \$108,162. Due to the extra landings in 2006, a shortened second trimester for 2007 would result in disrupted revenue flows and result in negative economic impacts.

If not for the overharvest in the second trimester of 2006 in the Gulf of Mexico region, the second trimester quota available would have been 176.1 mt of LCS in the Gulf of Mexico region. However, due to the overharvest, the adjusted quota is 33.2 mt for LCS. Because of the small size of this quota, no fishing season is feasible due to safety at sea concerns and potential derby fishing conditions. Using a median ex-vessel price of \$0.44 for LCS and \$17.05 for shark fin as reported on HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of the 176.1 mt dw baseline quota for the second trimester of 2007 is approximately \$162,282 for LCS fresh (95 percent of the quota weight) and \$330,969 for shark fins (based on the 5

percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately \$493,251. Using the median ex-vessel prices for the second trimester of 2006 of \$0.40 and \$13.00 for LCS flesh and shark fins, respectively, for the Gulf of Mexico region, the estimated revenue for the second trimester in 2006 from the 142.9 mt dw (176.1—33.2 mt dw) in overharvest was \$324,491. However, a closure during the second trimester of 2007 would result in disrupted revenue flows and result in negative economic impacts.

The quota for the second trimester of 2007 is not impacted by overharvests in the North Atlantic region. However, in the 2007 third trimester, the North Atlantic region would be closed to fishing because of overharvest in the third trimester of 2006. The base quota allocation for the third trimester would have been 5.7 mt dw if not for the overharvest. Using an average between the median ex-vessel price in the South Atlantic and the Gulf of Mexico regions from 2003 to 2006 adjusted for inflation, the approximate value of this quota allocation would have been \$14,709. This minor economic impact is offset by the extra revenue received sooner as a result of the 2.5 mt dw overharvest in the third trimester worth \$6,451. However, it should also be noted that the third season was closed in 2006.

During the third trimester of 2006, there was also an overharvest in the South Atlantic region. This resulted in the base quota allocation being reduced from 138.9 mt dw to an adjusted quota of 80.5 mt dw for the third trimester. Using a similar calculation as before, the economic impact of the overharvest would be a reduced third quarter value of revenues of approximately \$137,762. However, it should be noted that fishermen received revenue sooner under the 2006 third trimester overharvest than they normally would have received. Using the median ex-vessel prices for the third trimester of 2006 of \$0.45 and \$8.00 for LCS flesh and shark fins, respectively, for the South Atlantic region, the estimated revenue for the third trimester in 2006 from the 58.4 mt dw in overharvest was \$100,425.

During the third trimester of 2006, there was also an overharvest in the Gulf of Mexico region. This resulted in the base quota allocation being reduced from 176.1 mt dw to an adjusted quota of 49.9 mt dw for the third trimester. Using a similar calculation as above, the economic impact of the overharvest would be a reduced third quarter value

of revenues of approximately \$353,482. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 third trimester than previously expected. Using the median ex-vessel prices for the third trimester of 2006 of \$0.40 and \$17.00 for LCS flesh and shark fins, respectively for the Gulf of Mexico region, the estimated revenue for the third trimester in 2006 from the 126.2 mt dw in overharvest was \$342,214. Despite this extra revenue in 2006, a shortened third trimester for 2007 would result in disrupted revenue flows and result in negative economic impacts.

Overall, the economic impact of reduced 2007 LCS quota for the South Atlantic, Gulf of Mexico, and North Atlantic regions for the second and third trimesters of 2007 would result in a total economic impact of \$1,130,597 in reduced revenues. However, this is partially offset by the extra revenues generated in the second and third trimesters of 2006 estimated to be worth \$881,644. Some of the impacts from these reduced revenues might be mitigated somewhat for vessels that can fish in other regions or fisheries. However, these opportunities will likely be limited and result in additional costs associated with adjusting current fishing practices.

Alternative 2, the modified preferred alternative, which would merge the second trimester season in the South Atlantic region with the third trimester season quota in the South Atlantic region, could minimize the economic costs associated with the South Atlantic regional overharvest. The 83.2 mt dw adjusted quota for the second trimester would be combined with the 80.5 mt dw adjusted quota for the third trimester in the South Atlantic to provide a combined 163.7 mt dw season starting on July 15, 2007, that would remain open until August 15, 2007.

There does not appear to be any significant seasonality to LCS and shark fin ex-vessel prices. Therefore, revenues under this alternative would likely be at least the same as having two separate seasons. The combined seasons under the modified Alternative 2 would provide for a total of just over four weeks to fish the LCS quota in the South Atlantic region versus five weeks (split into two seasons) under the no action alternative. This continuous season would afford more flexibility in addressing market conditions for LCS, and thus potentially allow for greater profits. Starting the season in July opens the mid-Atlantic shark closure to the South Atlantic region. This could have positive economic benefits, especially since catch rates have been historically

higher in July than in August. The positive aspects of merging the two seasons include reduced operating costs since fishermen will only need to prepare the vessel once instead of twice and they are more likely to have a viable market for LCS given the longer season.

Alternative 3 is similar to Alternative 2 in that it merges the second trimester season with the third trimester season quota, but is instead for the Gulf of Mexico region. The merged season would combine the second trimester season quota of 33.2 mt dw with the third trimester season quota of 49.9 mt dw to create a three week long season starting September 1, 2007, that would have 83.1 mt dw of quota. This preferred alternative would have the benefit of extending the third season by one week versus under Alternative 1. Since Alternative 3 has the same start date as Alternative 1, there would not be any impact on that portion of the Gulf of Mexico region. Alternative 3 also allows the 33.2 mt dw quota of the second season to be fished. Under Alternative 1, the season for that 33.2 mt dw of quota would have been closed. Using a median ex-vessel price of \$0.44 for LCS and \$17.05 for shark fin reported HMS Dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of harvesting this 33.2 mt dw of quota would be approximately \$92,992 in revenue. In addition, by providing for a three week combined fishing season, this alternative would afford more flexibility in addressing market conditions for LCS.

#### *Alternatives Considered for SCS*

Alternative 4 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over- and underharvests for SCS when establishing the regional quotas and seasons for the second and third trimesters of 2007. No change in economic impacts would be realized in the North Atlantic and South Atlantic regions since that region would be open, with ample quota, throughout the entire second and third trimesters of 2007 under the status quo. This alternative is not preferred, as it would result in greater negative economic impacts for the Gulf of Mexico region, compared to the preferred alternative.

The no action alternative would not create any new economic burdens on the SCS commercial industry that were not included in previous rulemaking. Regardless, the size of the 2006 second trimester overharvest in the Gulf of Mexico region would result in no commercial fishing for SCS in the entire

Gulf of Mexico region during the second trimester of 2007. Even after a ten percent quota transfer from the South Atlantic second season underharvest, the 25.87 mt dw of transferred quota is not sufficient to address the 41.2 mt dw of overharvest in the Gulf of Mexico region during the second trimester season of 2006.

If not for the overharvest in 2006, the 2007 second trimester quota allocation would have been 15.1 mt dw of SCS in the Gulf of Mexico region. Instead, the adjusted quota under Alternative 4 would be negative 26.1 mt dw resulting in a closed fishing season. Using a median ex-vessel price of \$0.44 per pound dw for SCS and \$17.05 per pound for shark fin reported HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of this harvest (15.1 mt dw) would have been approximately \$13,915 for SCS flesh (95 percent of the quota weight) and \$28,380 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately \$42,295. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 second trimester than previously expected.

Alternative 5 would transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest (41.2 mt dw) to the Gulf of Mexico region to cover the Gulf of Mexico's regional 2006 second trimester overharvest. The Gulf of Mexico would then have the equivalent of their base quota of 15.1 mt dw for the 2007 second trimester. This would eliminate the economic impact of a closure in the Gulf of Mexico region in 2007 unlike under the no action alternative. This additional quota transfer would likely not provide enough quota to prevent an overharvest during the 2007 second trimester. The South Atlantic region would still have an adjusted third trimester quota of 349 mt dw, which is much greater than the amount that region actually harvested in the second season of 2006. The only economic impacts would come from potential future impacts to the South Atlantic region as a result of the 41.2 mt dw transfer of their underharvest to the Gulf of Mexico region if, in the future, the South Atlantic harvests more SCS than is accommodated by their lowered adjusted quota.

Alternative 6 would transfer a portion of the South Atlantic region's 2007 second trimester SCS underharvest (41.2 mt dw) to the Gulf of Mexico region to cover the Gulf of Mexico region's 2006

second trimester SCS overharvest as well as give the Gulf of Mexico region additional SCS quota of 15.1 mt dw from the South Atlantic region for a total of 30.2 mt dw for the 2007 second trimester. This additional quota transfer would likely not provide enough quota to prevent an overharvest during the 2007 second trimester. However, this additional quota (15.1 mt dw) would provide the Gulf of Mexico region with an additional \$42,294 in potential revenue from SCS. It would also further reduce the underharvest carry forward of SCS in the South Atlantic as a result of the larger transfer. There could be future economic impacts in the South Atlantic region if SCS catches increase in that region in the future.

Alternative 7 would take a different approach. Under Alternative 7, NMFS would reallocate the SCS regional quota percentages in the South Atlantic region from 87 percent to 49 percent and in the Gulf of Mexico region from 10 percent to 48 percent for both the 2007 second and third trimester seasons and in the future. In addition, there would also be transfer of underharvest in the South Atlantic region's 2007 second trimester quota to cover the Gulf of Mexico region's second trimester overharvest. This alternative is the preferred alternative.

There would be no change in the total base quota available for all regions in the second and third trimester season under this alternative. The adjusted 2007 second and third trimester regional quota would stay the same for the North Atlantic region. The key change would involve the quota amounts for South Atlantic and Gulf of Mexico regions. The 2007 second trimester quota in the South Atlantic region would decrease from 390.2 mt dw (Alternative 4) to 291.6 mt dw of SCS and the 2007 third trimester quota would decrease from 354.9 mt dw (Alternative 4) to 297.5 mt dw. Using the 2003 to 2006 median ex-vessel prices of \$0.67 lbs dw for flesh and the 2003 to 2006 median ex-vessel prices for shark fin of \$12.28 for SCS in the South Atlantic region, there would be a decrease of \$200,425 in potential revenues for the 2007 second trimester season and a \$158,245 decrease in potential revenues in the 2007 third trimester season. However, it should be noted that the South Atlantic region has not harvested SCS in amounts approaching even these lowered trimester quota levels in the past few years. Under this alternative, the regional quotas for the South Atlantic region for the 2007 second and third seasons are 291.6 mt dw, and 297.5 mt dw which is 64.2 percent and 65.5

percent of the total annual quota for SCS, respectively.

The 2007 second trimester quota in the Gulf of Mexico region would go from closed under the Alternative 4 (No Action) scenario in the second trimester season to 72.6 mt dw of SCS under this alternative. In addition, the 2007 third trimester quota would increase from 22.9 mt dw to 80.4 mt dw. Using the 2003 to 2006 median ex-vessel prices of \$0.44 lbs dw and the 2003 to 2006 median ex-vessel prices for shark fin of \$17.05 for SCS in the Gulf of Mexico region, there would be an increase of \$203,350 in potential revenues for the second trimester season and \$161,506 increase in potential revenues in the third trimester season for the Gulf of Mexico region. This reallocation of quota would allow the SCS fishery to remain open in the Gulf of Mexico region and would prevent future overharvest of quota in that region while not leading to an overharvest in the South Atlantic region.

Overall, Alternative 7 would increase revenues for SCS by transferring quota from a region of underharvest to a region that is currently overharvesting their SCS quota. The reallocation of regional quota percentages would provide greater regional equity in future base quota allocations. This would help mitigate overharvesting of the quota in the Gulf of Mexico region. However, there could be future impacts to the South Atlantic region as a result of the reallocation of the SCS regional quota percentage to the Gulf of Mexico region if in the future the South Atlantic harvests more than this lower regional quota allocation percentage.

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

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

Dated: April 23, 2007.

**Samuel D. Rauch III,**

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

■ For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.27, paragraphs (b)(1)(i), (b)(1)(iv), (b)(1)(vi)(A) introductory text, are revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31. NMFS may consider merging any of the fishing seasons pursuant to paragraph (b)(1)(vi) of this section.

\* \* \* \* \*

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 48 percent to the Gulf of Mexico, 49 percent to the South Atlantic, and 3 percent to the North Atlantic.

\* \* \* \* \*

(vi) \* \* \*

(A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1. NMFS may consider merging any of the fishing seasons and relevant quotas in any region when there is limited available quota in one or more seasons.

\* \* \* \* \*

[FR Doc. E7-8029 Filed 4-25-07; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 070213032-7032-01; I.D. 042007A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish and Pelagic Shelf Rockfish for Trawl Catcher Vessels Participating in the Rockfish Entry Level Fishery in the Central Regulatory Area of the Gulf of Alaska**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for northern rockfish and pelagic shelf rockfish for trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of northern rockfish and pelagic shelf rockfish allocated to trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 24, 2007, through 2400 hrs, A.l.t., September 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.83(a)(1)(i), allocations of entry level rockfish to trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area are first made from the Pacific ocean perch TAC. Trawl catcher vessels participating in the rockfish entry level program are allocated northern rockfish and pelagic shelf rockfish only if the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for the trawl catcher vessels. NMFS has determined that the 2007 TAC of Pacific ocean perch meets or exceeds the total allocation of rockfish allowable for the trawl catcher vessels. Therefore, the 2007 TACs of northern rockfish and pelagic shelf rockfish allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area are 0 mt.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TACs of northern rockfish and pelagic shelf rockfish allocated to trawl catcher vessels participating in the entry level

rockfish fishery in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish and pelagic shelf rockfish for trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish and pelagic shelf rockfish for trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 20, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.83 and is exempt from review under Executive Order 12866.

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

Dated: April 23, 2007.

**James P. Burgess**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 07-2063 Filed 4-23-07; 2:10 pm]

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