

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 635**

[Docket No. 0612242866–7310–01]

RIN 0648–AU89

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Proposed rule; availability of the Fishery Management Plan (FMP); request for comments; public hearings.

SUMMARY: NMFS announces the availability of the draft Amendment 2 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its accompanying proposed rule. Amendment 2 examines different management alternatives available to rebuild sandbar, dusky, and porbeagle sharks, consistent with the 2006 shark stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law. The proposed rule to implement Amendment 2 would, among other things, allow for a limited shark research fishery for sandbar sharks, establish a trip limit for commercial harvest of non-sandbar large coastal sharks (LCS), prohibit the landing and possession of porbeagle sharks, require all sharks landed to have fins attached through landing, eliminate the regions and trimester seasons, and modify the species that can be landed by recreational fishermen. These changes could affect all fishermen who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Comments on this proposed rule and draft Amendment 2 must be received no later than 5 p.m. on October 10, 2007.

Ten public hearings on this proposed rule and draft Amendment 2 will be held in August and September 2007. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public hearings will be held in Florida, Louisiana, Maryland, New Hampshire, New Jersey, North Carolina, and Texas. For specific locations see the **SUPPLEMENTARY INFORMATION** of this document.

Written comments on the proposed rule and draft Amendment 2 may be submitted to Michael Clark, Highly

Migratory Species Management Division:

- Email: ShkA2@noaa.gov. Include in the subject line the following identifier: Shark amendment 2 comments.

- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Shark amendment 2 comments.”

- Fax: 301–713–1917.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael Clark, Highly Migratory Species Management Division and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395–7285.

Copies of the draft Amendment 2 to the Consolidated HMS FMP, the latest shark stock assessments, and other documents relevant to this rule are available from the Highly Migratory Species Management Division website at www.nmfs.noaa.gov/sfa/hms or by contacting Heather Halter at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Michael Clark, Karyl Brewster-Geisz, or LeAnn Southward Hogan at 301–713–2347 or fax 301–713–1917 or Jackie Wilson at 404–806–7622 or fax 404–806–9188.

SUPPLEMENTARY INFORMATION:**Background**

The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

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 fisheries are overfished and an amendment to the current Consolidated HMS FMP is needed to develop management measures to rebuild overfished shark stocks and to prevent overfishing.

Unlike past assessments, the recently completed 2005/2006 LCS stock assessment determined that it is inappropriate to assess the LCS complex as a whole due to the variation in life history parameters, different intrinsic rates of increase, and different catch and abundance data for all species included in the LCS complex. Based on these results, NMFS changed the status of the LCS complex from overfished to unknown (71 FR 65086, November 7, 2006).

According to this stock assessment, sandbar sharks are overfished ($SSF_{2004}/SSF_{MSY} = 0.72$; SSF is spawning stock fecundity and was used a proxy for biomass), and overfishing is occurring ($F_{2004}/F_{MSY} = 3.72$). As described in the 2005/2006 stock assessment, spawning stock fecundity, which is the sum of the number of mature females at age times their pup-production, is used instead of biomass because biomass does not influence pup production in sharks. The assessment recommends that rebuilding could be achieved with 70 percent probability by 2070 with a total allowable catch (TAC) across all fisheries that catch sharks of 220 metric tons (mt) whole weight (ww) each year (158 mt dressed weight (dw)) and fishing pressure (F) between 0.0009 and 0.011. The proposed rebuilding plan mirrors the rebuilding plan recommended by the stock assessment.

Based on tagging studies that suggested that the blacktip shark stocks are geographically distinct and isolated, the 2005/2006 stock assessment assessed blacktip sharks for the first time as two separate populations: Gulf of Mexico and Atlantic. NMFS has declared that the Gulf of Mexico blacktip shark population is not overfished with no overfishing occurring (71 FR 65086, November 7, 2006). The 2005/2006 stock assessment indicated that the Gulf of Mexico population is healthy and that current catches should not increase in order to keep this population at a sustainable level. For the blacktip shark population in the South Atlantic region, the 2005/2006 assessment was unable to provide estimates of stock status or reliable population projections, but indicated that current catch levels should not change. NMFS has declared that the South Atlantic blacktip shark population is unknown (71 FR 65086, November 7, 2006).

In 1999, dusky sharks, which were in the LCS complex, were placed on the prohibited species list due to their low population growth rate and low reproductive potential. In 2003, in Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (68 FR 74746, December 24, 2003), NMFS established a mid-Atlantic shark time/area closure to protect dusky sharks and juvenile sandbar sharks. Due to high catch rates of dusky sharks in the shark bottom longline fishery in the mid-Atlantic closed area and the high mortality of dusky sharks on bottom longline gear, NMFS closed this area to bottom longline fishing from January 1 through July 31 of every year, starting in January 2005. NMFS released the first dusky-specific shark assessment in May

2006 (71 FR 30123, May 25, 2006). The 2006 dusky shark stock assessment used data through 2003 and indicates that dusky sharks are overfished ($B_{2003}/B_{MSY} = 0.15$ 0.47) with overfishing occurring ($F_{2004}/F_{MSY} = 1.68$ 1,810). The assessment indicates that rebuilding for dusky sharks could require 100 to 400 years. Based on these results, NMFS declared the status of dusky sharks as overfished with overfishing occurring (71 FR 65086, November 7, 2006). The proposed rule would establish a rebuilding plan to rebuild dusky sharks in 100 to 400 years consistent with the stock assessment. This rebuilding plan includes keeping dusky sharks on the prohibited species list and actions to reduce dusky shark mortality and bycatch, to the extent practicable.

Canada has conducted stock assessments on porbeagle sharks in 1999, 2001, 2003, and 2005. Reduced Canadian porbeagle quotas in 2002 brought the 2004 exploitation rate to a sustainable level. According to the 2005 recovery assessment report conducted by Canada, the North Atlantic porbeagle stock has a 70 percent probability of recovery in approximately 100 years if F is less than or equal to 0.04. To date, the United States has not conducted a stock assessment on porbeagle sharks. NMFS has reviewed the Canadian stock assessment and deems it to be the best available science and appropriate to use for U.S. domestic management purposes because porbeagle sharks are a unit stock that extends into U.S. waters. The Canadian assessment indicates that porbeagle sharks are overfished ($SSN_{2004}/B_{SSNMSY} = 0.15$ 0.32; SSN is spawning stock number and used as a proxy for biomass). However, the Canadian assessment indicates that overfishing is not occurring ($F_{2004}/F_{MSY} = 0.83$). Based on these results, NMFS declared porbeagle sharks as overfished, but not experiencing overfishing (71 FR 65086, November 7, 2006). While United States vessels take only a small proportion of the porbeagle sharks harvested in the Northwest Atlantic, NMFS proposes measures to increase the likelihood that fishing mortality remains below 0.04 and rebuilding occurs in 100 years. Because Canada has the largest harvest of porbeagle sharks, the proposed rule would establish a rebuilding plan for porbeagle sharks that is consistent with the Canadian assessment. This rebuilding plan includes placing porbeagle sharks on the prohibited species list to prevent fishing effort from increasing in the future and minimizing porbeagle shark mortality and bycatch, to the extent practicable.

NMFS announced its intent to conduct an environmental impact statement (EIS) on November 7, 2006 (71 FR 65086) and held seven scoping meetings in January 2007 (72 FR 123, January 3, 2007). In March 2006, NMFS presented a predraft of the Amendment 2 to the HMS Advisory Panel (72 FR 7860, February 21, 2007). Based in part on the comments received during scoping and from the HMS Advisory Panel, NMFS proposes a number of management measures that would implement Amendment 2. Consistent with the Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, the objectives for this proposed rule are to: (1) implement rebuilding plans for sandbar, dusky, and porbeagle sharks; (2) provide an opportunity for the sustainable harvest of blacktip and other sharks, as appropriate; (3) prevent overfishing of Atlantic sharks; (4) analyze bottom longline time/area closures and take necessary action to maintain or modify the closures, as appropriate; and (5) improve, to the extent practicable, data collections or data collection programs.

In addition to the proposed management alternative described below, NMFS proposes to take additional administrative actions. These include: (1) allowing fishermen to remove hooks from smalltooth sawfish (§ 635.21 (d)(3)) based on a March 23, 2007, memorandum from the Office of Protected Resources changing this requirement in the 2003 Biological Opinion for Atlantic sharks; (2) requiring stock assessments at least once every 5 years; (3) allowing for the release of the annual Stock Assessment and Fishery Evaluation report by fall of each year; and (4) clarifying various existing regulations, for example stating that only the first receiver needs a shark dealer permit and that shark dealer reports must be species-specific.

NMFS prepared a Draft EIS (DEIS) for the draft Amendment 2 that discusses the impact on the environment as a result of this rule. A copy of the DEIS/draft Amendment 2 is available from NMFS (see ADDRESSES). The Environmental Protection Agency is expected to publish the notice of availability for this DEIS on or about the same date that this proposed rule publishes.

The following is a summary of the alternatives analyzed in the DEIS for Amendment 2. Additional analyses and descriptions are provided in the DEIS. NMFS fully considered five different alternative suites based on the above-described objectives and best available scientific information. Based on the recommendations of the latest stock

assessments, significant reductions in quotas are needed to prevent overfishing and rebuild overfished stocks. The necessary reductions effectively preclude operation of the shark fishery as it has been prosecuted in past years. As reflected below, NMFS has developed alternative suites that would provide for some fishing of sharks consistent with the stock assessments and that would allow for continued collection of data needed for stock assessments and evaluation of conservation and management measures. Each alternative suite analyzed certain management actions under seven different topics including quotas/species complexes, retention limits, time/area closures, reporting, seasons, regions, and recreational measures. The proposed alternative discussed below is the preferred alternative in the DEIS.

Analyses of the Proposed Alternative Suite

Under the proposed alternative (alternative 4), NMFS would, among other things, remove sandbar sharks from the LCS complex; establish a commercial sandbar shark quota of 116.6 mt dw; establish a commercial non-sandbar LCS quota of 541.2 mt dw; add porbeagle sharks to the prohibited species list; establish a shark research fishery that would allow a limited number of commercial vessels to fish a limited number of trips for all LCS, including sandbar sharks; reduce the retention limit for all other commercial vessels to 22 non-sandbar LCS and 0 sandbar sharks; require fins, including the tail, to be landed attached to all sharks; maintain the mid-Atlantic shark closed area and implement several other closed areas from Florida through North Carolina, per the recommendation of the South Atlantic Fishery Management Council (SAFMC); require dealer reports be received (rather than postmarked) by a certain date; eliminate the trimesters and regions and replace them with one fishing season starting January 1 and one region including the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea; and limit recreational anglers to possessing only those shark species that are easily identified, including bonnethead, nurse, tiger, great hammerhead, smooth hammerhead, scalloped hammerhead, lemon, sharpnose, shortfin mako, common thresher, oceanic whitetip, and blue sharks.

A. Quotas, Species Complexes, and Retention Limits

Under the proposed alternative, the current LCS complex would be split

into two groups: sandbar sharks and non-sandbar LCS. The sandbar shark quota would be 116.6 mt dw (257,056 lb dw) and the commercial non-sandbar LCS quota would be 541.2 mt dw (1,196,129.5 lb dw). The 116.6 mt dw quota for sandbar sharks would be allocated to the vessels operating in the research fishery. In addition, based on catch composition in the bottom longline observer program, NMFS anticipates that 50 mt dw (110,230 lb dw) of the non-sandbar LCS quota would be caught in the research fishery. The rest of the non-sandbar LCS quota could be taken by vessels operating outside of the research fishery. These quotas are based on recommendations from the most recent LCS stock assessment. Therefore, this level of fishing effort would stop overfishing of sandbar sharks and allow sandbar sharks to rebuild as well as keep other LCS, such as the blacktip shark, from being overfished and from experiencing overfishing.

Establishing a separate category for sandbar sharks from the LCS complex is mainly administrative in nature and should only affect how NMFS monitors the sandbar shark quota. The establishment of a separate sandbar shark category by itself will not impact fishermen, as they currently record shark interactions on a species basis in the logbooks. Similarly, establishing the other LCS into a non-sandbar LCS category is similar to how the LCS fishery has been managed in the past and should have few economic or social impacts. However, as described below, the quota reductions and retention limits could have negative economic and social impacts.

Under the proposed alternative, vessels with either a directed or incidental shark limited access permit (LAP) could apply to participate in the shark research fishery. Each year NMFS would publish shark research objectives for the year and request proposals that meet these objectives. Shark fishermen who were interested in participating would apply for a permit to fish in the shark research fishery. Based on the research objectives for a given year, NMFS scientists and managers would select a few vessels (i.e., 5–10 vessels) each year to conduct the prescribed research. Selected vessels would work with NMFS to conduct shark research. Vessels selected for the research fishery would be subject to 100 percent observer coverage; however, fishermen in the shark research fishery would be afforded higher trip limits and could sell their catch, including sandbar sharks, compared to vessels outside the research fishery. This research fishery

would allow the collection of fishery-dependent data for future stock assessments as well as allow NMFS and fishermen to conduct cooperative research to meet the shark research objectives for NMFS.

Only vessels operating within the research fishery would be allowed to harvest the sandbar shark quota until 80 percent of the sandbar shark or non-sandbar LCS quota was met. At that time, the shark fishery would shut down to account for state landings and ensure the 116.6 mt dw commercial sandbar quota was not overharvested.

Retention limits of sandbar sharks and non-sandbar LCS for vessels operating in the shark research fishery would depend on the research objectives of a given year. For example, assuming a catch composition of 70 percent sandbar sharks (and hence, 30 percent non-sandbar LCS) the 116.6 mt dw sandbar quota could be fulfilled in 92 trips with a 4,000 lb dw sandbar and non-sandbar LCS trip limit (70 percent \times 4,000 lb dw trip limit = 2,800 lb dw sandbar sharks per trip; 92 trips \times 2,800 lb dw of sandbar sharks = 257,600 lb dw or 116.6 mt dw). On average, under the current regulations, 872 directed permit holder trips were made under the 4,000 lb dw LCS trip limit from 2003 to 2005. NMFS expects the number of trips under the research shark permit to be lower than the current average number of trips per year, and therefore, anticipates that the proposed alternative would have positive ecological impacts for sandbar sharks. Each shark research permit would specify the amount of sandbar and non-sandbar LCS allowed per trip.

To participate in the research fishery, vessel owners holding a directed or incidental shark LAP would need to submit an application annually to NMFS for a shark research permit. The shark research permit would be considered a specifically authorized activity, and fishermen would apply in a manner similar to how they apply for an exempted fishing permit (EFP). NMFS would review all applications and would issue permits to those vessel owners that meet certain criteria as specified in the regulations and also meet the published shark research objectives for that year. Specifically, NMFS would need to ensure that eligible vessels are spread throughout the range of the shark fishery and that vessels could fish for sharks throughout the year. The number of vessels issued a shark research permit each year may vary depending on available quota and the amount expected to be collected by each individual vessel. Depending on the data needed from the fishery that year for stock assessment and other

scientific purposes (e.g., comparison of catch rates between circle and J hooks), NMFS may include other criteria, as needed, including the need to attend specific training sessions such as the shark identification workshops that are currently required for shark dealers. Vessel owners issued a shark research permit would not need to submit the interim or annual reports required with other specifically authorized activities. Rather, vessel owners would need to continue submitting logbook reports as required when fishing under the shark LAP. Once issued, the shark research permit would be valid only when a NMFS-approved observer is on board and all other terms and conditions of the permit are being followed.

Vessels in the shark research fishery would be required to sell sharks, including sandbar sharks, to only permitted dealers, as is currently required. NMFS is considering requiring dealers to obtain specific information from each vessel owner or operator for each sandbar shark landed. This information may be required to accompany each sandbar shark to final disposition. NMFS is also considering other methods of ensuring that sandbar sharks are landed only by vessels issued a shark research permit with an observer on board but is not proposing a specific method at this time.

Vessels that do not have a shark research permit, or vessels that have been issued a shark research permit but do not have a NMFS-approved observer on board, could still land 22 non-sandbar LCS per trip and SCS and pelagic sharks subject to the current retention limits determined by their permit type. On average, directed permit holders landed 40 non-sandbar LCS per trip as reported in the Coastal Fisheries and HMS Logbooks from 2003 to 2005. Therefore, this would be a 48 percent reduction in non-sandbar LCS per trip for directed permit holders. Incidental permit holders landed 3.7 non-sandbar LCS per trip on average as reported in the Coastal Fisheries and HMS Logbooks from 2003 to 2005. Therefore, NMFS does not anticipate any adverse effects on incidental permit holders. Total landings of non-sandbar LCS by boats outside the research fishery would be limited to approximately 491 mt dw (assuming, as discussed previously, that 50 mt dw of the non-sandbar LCS quota would be caught while fishermen filled the 116.6 mt dw of sandbar shark quota in the research fishery), in order to ensure that the total 541.2 mt dw of the LCS quota would not be exceeded.

It is anticipated that sandbar shark discards will occur on gear such as pelagic longline (PLL) gear, which could

interact with sandbar sharks from vessels operating outside the research fishery (approximately 4.3 mt dw). Shark discards in the research fishery are anticipated to occur as they have during directed shark trips in the past. Outside of the research fishery, vessels would not be able to land sandbar sharks and would have to discard them. Because of these discards in and out of the research fishery, it is anticipated that discards of sandbar sharks may increase by 36 percent compared to current discards. However, commercial landings and discards would still be reduced by 82 percent compared to alternative 1 (no action: 728 mt dw in landings + 9.6 mt dw in discards = 737.6 mt dw total; alternative 4: 116.6 mt dw in landings + 13.1 mt dw in discards = 129.7 mt dw). The total commercial landings and discards plus an estimated 27 mt dw of recreational landings (156.7 mt dw total) is still below the 158.3 mt dw sandbar shark TAC recommended in the 2005/2006 LCS stock assessment. Therefore, quotas and retention limits under the proposed alternative would meet the rebuilding plan for sandbar sharks and would have positive ecological impacts on this stock.

Additionally, since the boats in the research fishery would be directing on sharks, it is assumed that dusky shark discards would occur during those research trips as they have in the past when there were directed BLL trips. However, since the overall number of boats operating in the research fishery would be limited, it is anticipated that dusky shark discards could decrease by 72 percent under the proposed alternative, resulting in positive ecological impacts for this stock.

Based on the small number of boats that could fish for sandbar sharks in the research fishery, most current directed and incidental permit holders would not be allowed to land sandbar sharks, resulting in negative socio-economic impacts for these permit holders. In addition, since directed permit holders presumably make a greater percentage of their gross revenues from sandbar shark landings, directed permit holders outside the research fishery would be expected to have larger negative socioeconomic impacts compared to incidental permit holders outside of the research fishery. However, to mitigate some of these impacts, directed and incidental permit holders outside of the research fishery would still be allowed to land non-sandbar LCS, SCS, and pelagic sharks.

In 2006 ex-vessel prices, it is estimated that vessels operating in the research fishery could make \$490,411 in gross revenues of sandbar shark and

non-sandbar LCS landings. Vessels operating outside of the research fishery could make approximately \$1,502,994 in gross revenues. In total, vessels operating in and outside of the research fishery are expected to have gross revenues of \$1,993,435 in sandbar shark and non-sandbar LCS landings. This is a 48 percent reduction in gross revenues from sandbar sharks and non-sandbar LCS under the no action alternative (gross revenues based on current directed and incidental permit holders' landings were \$3,824,589).

Also under the proposed alternative, porbeagle sharks would be prohibited in the commercial and recreational sectors. This is expected to have neutral ecological impacts for this stock since the United States has had minimal landings of this species. In addition, since most porbeagle sharks are caught on pelagic longline gear, reductions in fishing effort associated with BLL gear from reductions in the sandbar shark quota are not anticipated to have much of an ecological benefit for this species. Prohibiting the retention of porbeagle sharks is anticipated to increase dead discards by 0.4 porbeagle sharks per year. Based on the average porbeagle shark landings from 2002 to 2004 (1.5 mt dw or 3,402 lb dw) and 2006 ex-vessel prices, placing porbeagle sharks on the prohibited species list is equivalent to a \$6,081 gross revenues loss in porbeagle shark landings.

This alternative would also change how NMFS adjusts quotas. Under the current regulations, NMFS adjusts the shark quota based on under- and overharvests from the previous year. Under this alternative, adjustments would be based, in part, on the status of the stock. If the status of the stock is considered to be unknown or overfished and/or if overfishing is occurring, NMFS would not adjust for underharvests. NMFS would continue to adjust for overharvests. These measures should ensure that overfished species continue to rebuild under the rebuilding plan and species that are unknown or that have overfishing occurring do not become overfished. However, if the status of the stock is known or not overfished and if overfishing is not occurring, then NMFS would adjust for underharvests until the quota is 50 percent above the base quota (e.g., if the base quota is 100 mt, NMFS would adjust it to a maximum of 150 mt). As with the no action alternative, NMFS would continue to adjust for overharvests. These measures should ensure that species that are not overfished do not become overfished.

This alternative would also require all shark fins, including the tail, to be landed attached to the shark carcass.

Fishermen could cut the fin partially off the carcass as long as skin remains attaching the fin to the carcass. This type of cut should allow the fins to be folded against the carcass for storage purposes and should ensure that the quality of the meat does not degrade. Requiring the fins to remain on the carcass is a change from the current fishery, which allows fishermen to cut the fins off the carcass prior to landing as long as both the fins and carcass are landed together. Keeping the fins attached to the carcass should have some positive ecological impacts in that species identification should be improved for reporting and enforcement purposes, and enforcement of the ban on shark finning would be facilitated. The overall economic impacts should also be minor as fishermen should be able to receive the same ex-vessel price for the meat and fins but, in the short term, the market would likely undergo some changes as fishermen and dealers work out who would be responsible for cutting the fins off the shark once the shark is offloaded.

This alternative would also modify the current quota available for EFPs and display permits. This alternative would not limit the sharks available under scientific research permits or letters of acknowledgment. The current shark quota for EFPs and display permits is 60 mt ww. This alternative would not allow for dusky sharks to be taken under EFPs or display permits. This alternative would also split sandbar sharks out of the 60 mt ww quota and provide for quotas of 1.4 mt ww (1 mt dw) for sandbar shark EFPs, 1.4 mt ww for sandbar shark display permits, and 57.2 mt ww (41.2 mt dw) for all other shark species, other than dusky sharks. Except for dusky sharks, these quota changes are mainly administrative in nature because the quota has not been taken in the past. However, all of these changes should help NMFS provide more control over shark species that are on long-term rebuilding plans.

B. Time/Area Closures

Also, under the proposed alternative, NMFS would maintain the mid-Atlantic shark closed area to BLL gear and the current BLL closures in the Caribbean that were implemented in March 2007 (72 FR 5633, February 7, 2007). Therefore, the ecological impacts associated with these closures would be the same as described under the no action alternative.

In addition, NMFS would implement the marine protected areas (MPAs) recommended by the SAFMC that range from North Carolina to the Florida Keys. These MPAs were proposed in

Amendment 14 to the Snapper Grouper FMP. A total of 19 MPAs were initially considered in Amendment 14, and 8 of the MPAs were preferred in the SAFMC's final recommendations in June 2007. The eight MPAs include one off southern North Carolina, three off South Carolina, one off Georgia, and three off Florida.

The primary purpose of Amendment 14 is to protect the population and habitat of slow growing, long-lived deepwater snapper grouper species (speckled hind, snowy grouper, Warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, and blueline tilefish) from directed fishing pressure. The only HMS authorized gear that has the potential to interact with these species is bottom longline gear. HMS permitted vessels that fish with bottom longline gear normally target large coastal sharks, but small coastal, pelagic and dogfish species are also caught. Bycatch may include groupers, tilefishes, wahoo, skates, rays, and other species.

NMFS agreed to analyze the ecological and socio-economic impacts of the MPAs on HMS fisheries and to consider rulemaking to prohibit shark bottom longline gear in the preferred MPAs.

NMFS used shark bottom longline observer program data from 1994–2006 to evaluate the impact of the shark bottom longline fishery on the snapper-grouper complex within the all of the MPAs initially considered by the SAFMC. Using a Geographic Information System (GIS), NMFS plotted the locations of all observed sets on the MPAs in the South Atlantic region to provide an overview of the number and locations of sets that intersected the MPAs. Since most of the MPAs are relatively small (<10 nautical miles in diameter), the sets tend to either start or end outside of the MPAs. In most cases, only a portion of the set intersected with an MPA and few if any sets were entirely within the MPAs. However, if a set intersected any portion of an MPA, then all bycatch reported on that set was counted as occurring in the MPA regardless of where on the set it occurred. NMFS used this approach because it is not possible to determine where on a set the bycatch actually occurred. Of the sets that intersected the MPAs, a large portion of each set actually occurred primarily outside the MPAs. As a result, the number of bycatch species reported as occurring in the MPAs is most likely an overestimate.

Of the 1,563 observed sets over the approximately twelve-year period, a total of 34 sets (2 percent) intersected all

of the MPAs initially considered by the SAFMC. Of those, only two sets occurred entirely within the boundary of the proposed MPAs (one in Snowy Grouper Wreck and one in North Florida MPA). A concentration of observed sets is apparent in the areas north of Cape Canaveral. The remaining sets tend to be more widely spaced and although observer coverage is not necessarily uniform, the level of observer coverage was based on the level of fishing effort in the different areas. Few sets occurred in the MPAs because they are located on the edge of the shelf in deeper water where currents are strong and gear may be lost. Most bottom longline sets occur shoreward of the 200 m depth contour with the exception of the Snowy Grouper Wreck MPA. The few sets that did occur in the MPAs should not be considered representative of overall shark fishing effort, and may in fact be considered anomalous based on the low number of observed sets that occurred in these areas. As very few sets occurred in the MPAs, very little shark fishing effort and associated bycatch occurred in the MPAs, resulting in minimal ecological impacts.

Using the observer data and fishing effort reported in the Coastal Fisheries Logbook, NMFS estimated the total bycatch and expanded coastal shark catches within all of the MPAs initially considered by the SAFMC to obtain overall estimates of catch within the proposed MPAs. Only one of the original MPAs, Snowy Wreck, had sufficient data to produce statistically robust expanded bycatch estimates. Based on the low estimate of total expanded bycatch, it is likely the shark bottom longline fishery has minimal impact on the MPAs. If additional data becomes available, expanded take estimates could be calculated for those MPAs for which NMFS was unable to provide estimates in the current analysis.

Given that only 34 out of 1,563 observed trips (2 percent) intersected all of the MPAs initially considered by the SAFMC, the impact of shark longline vessels on the snapper grouper complex in the MPAs is expected to be minimal. Taking all 34 sets that occurred in all the MPAs into account, only 28 grouper were observed caught over a 12 year period. Of these, only one species that was observed caught (snowy grouper) is from a stock that is considered overfished with overfishing occurring. Two individuals of this species were caught.

A total of 1,816 sharks, or 2.6 percent of the total number of sharks observed, were observed caught on sets that

intersected all of the MPAs initially considered by the SAFMC. Based on expanded catch estimates, a total of 25,395 sharks were estimated to be caught in the MPAs each year. If all the MPAs were closed to bottom longline gear, this could have a positive impact on shark populations by reducing overall mortality and landings of sharks in the South Atlantic. The total number of sharks caught annually in the MPAs is likely an overestimate because most of the catch recorded on the sets did not occur entirely within the MPA as described above. Thus the actual number of sharks caught in the MPAs may be lower.

For the eight proposed MPAs (which were approved by the SAFMC in June 2007), only 21 fish (4.8 percent of total) were reported as bycatch, and of those, only 13 individuals were comprised of grouper species. No snowy grouper were observed caught in the proposed MPAs. For sharks, 818 sharks were observed caught in the proposed MPAs (1.6 percent of total) with the majority of the catch comprised of sandbar shark.

The SAFMC has expressed concern about habitat impacts of shark bottom longline gear in the MPAs. In the Consolidated HMS FMP, NMFS completed a review of all HMS (and other state and Federally managed gears) that may have an impact on HMS essential fish habitat (EFH). In addition, NMFS considered the impact of HMS gears on EFH for other Federally managed species. NMFS concluded that bottom longline gear was the only gear that has the potential to impact EFH, specifically benthic habitat types. However, the degree to which the gear will impact EFH also depends on the substrate that makes up the EFH. Certain substrates, such as complex coral reef habitat, will be more susceptible to damage than will mud and sand substrates because of the extended time for habitat recovery. The impact of shark bottom longline gear on benthic habitat has not been rigorously studied and conclusions are mixed. For example, the 1999 NMFS EFH Workshop categorized the impact of bottom longline gear on mud, sand, and hard-bottom as low. Bottom longline may have some negative impact if gear is set in more complex habitats, such as sponges or coral reefs, however only small portions of some of the MPAs are characterized as being comprised of hardbottom, and none of the areas are considered to have sponge or coral habitat. Bottom longline gear in the shark fishery is primarily used in sandy and/or mud habitats where it is expected to have minimal impacts.

On November 7, 2006, NMFS published a Notice of Intent (71 FR 65088) to prepare an Environmental Impact Statement to examine management alternatives for revising existing HMS EFH, consider additional Habitat Areas of Particular Concern (HAPCs), and to identify ways to avoid or minimize, to the extent practicable, adverse fishing impacts on EFH consistent with the Magnuson-Stevens Act and other relevant Federal laws. In Amendment 1 to the Consolidated HMS FMP, NMFS will consider the impact of bottom longline gear on EFH. Depending on the outcome of the analysis, NMFS may consider alternatives to prohibit bottom longline gear if it is found to have more than a minimal and not temporary impact. Factors that NMFS will consider include the overlap of bottom longline gear with EFH, the duration and extent of the impact, and the susceptibility of the habitat to damage from bottom longline gear consistent with previous guidance issued by NMFS. The SAFMC has also expressed concerns about the enforceability of prohibiting only snapper grouper bottom longline gear and not shark bottom longline gear in the MPAs. Because the gears are virtually indistinguishable, and many fishermen hold both types of permits, prohibiting only one type of gear could create an enforcement loophole. As a result, NMFS proposes to close the MPAs to shark bottom longline gear based on enforceability concerns raised by the SAFMC.

The proposed MPAs are generally small (<10 miles wide) and vessels should be able to make minor adjustments to fishing locations to avoid the MPAs. Most of the observed shark bottom longline sets occurred shoreward of the MPAs. Assuming bycatch rates are higher in the MPAs than outside the MPAs, affected vessels may forego some loss of revenue from the reduced bycatch of grouper and other species caught on shark BLL sets in the proposed MPAs, however, these losses are expected to be minimal. Based on the expanded catch estimates, the total shark catches for the proposed MPAs were 25,395 and this equates to approximately \$1,060,083 based on 2006 ex-vessel prices for shark (assuming 5 percent of the landing weight was fins and 95 percent of the landings was carcasses). Since there are approximately 285 shark LAPs in Florida, this would amount to a loss of revenue of approximately \$3,722 per vessel per year in Florida if vessels are unable to catch as many sharks outside the MPAs. Given the small size of the

MPAs, it is unlikely that vessels would be unable to catch as many sharks outside the MPAs.

C. Reporting

Under the proposed alternative, NMFS would also modify the reporting frequency for dealers. The requirement for dealer reports to be postmarked within 10 days after each reporting period (1st through 15th and 16th through last day of month), would be modified to state that dealer reports must be received by NMFS not later than 10 days after each reporting period (i.e., 25th and 10th of each month). Shark dealers would have to submit these reports in advance of the 10th and 25th of each month to ensure adequate time for delivery, depending on the means employed for report submission. Requiring that all dealer reports are actually received by NMFS in a more timely fashion would provide more frequent reports of shark landings in order to better assess quantities of sharks landed and whether or not a closure or other management measure is warranted to prevent overfishing. This could decrease the likelihood that extensive overharvests of sharks would occur. Dealers would still be required to submit reports indicating that no sharks were purchased during inactive periods. NMFS does not expect any economic impacts as a result of this management measure.

Participants selected to participate in the shark research program would be subject to 100 percent observer coverage as a requirement for eligibility to participate in the program. Increasing observer coverage for vessels participating in this program would result in positive ecological impacts because observer reports could be used to monitor landings, bycatch, and interactions with protected resources in near "real-time." Vessels outside the shark research program would still be required to carry a NMFS-approved observer if selected and all vessels would still be required to complete logbooks within 48 hours of fishing activity and then submit the logbooks to NMFS within seven days.

D. Seasons

The proposed alternative would open all shark fisheries on January 1 of each year dependant upon available quota. There would only be one season per year. Upon achieving 80 percent of landings, fishermen would be given at least 5 days notice from the date of filing with the Office of the **Federal Register** prior to the closure. Official notice would be made via the **Federal Register**, however, the public would

also be informed simultaneously via the HMS website and email notice listserve. The fishery for non-sandbar LCS and sandbar sharks would both close when either quota reaches 80 percent of their respective quota because of concerns regarding sandbar shark bycatch that might occur if the non-sandbar LCS fishery were kept open after the sandbar shark quota had been filled. Closing both fisheries should also prevent individuals from mis-identifying sandbar sharks as non-sandbar LCS. Additionally, any dealer reports that note "shark" landings or unidentified shark landings would be counted against the sandbar shark quota.

The fishery for SCS and pelagic sharks would be closed individually upon achieving 80 percent of their respective quotas. Upon achieving 80 percent of landings, fishermen would be given at least 5 days notice from the date of filing with the Office of the **Federal Register** prior to the closure. Official notice would be made via the **Federal Register**, however, the public would also be informed simultaneously via the HMS website and email notice listserve. Fishing effort might increase as a result of providing this 5-day advance notice as fishermen and dealers would know that the season is about to end, however, they would still be bound by the retention limits for individual trips.

Commercial shark fisheries have been managed on a trimester basis since 2003 to provide a higher degree of resolution on which to manage seasonal fisheries, reduce fishing mortality during peak pupping seasons, and address other bycatch concerns. As described above, the proposed alternative would implement significantly reduced quotas and retention limits for sandbar shark, which is the most valuable shark in commercial fisheries because of its fin value. It is estimated that the reductions in fishing effort as a result of these reduced retention limits and quotas could provide ecological benefits to all shark species. The ecological benefits of minimizing fishing mortality during peak pupping seasons or having a higher degree of resolution on which to manage fisheries seasonally could be replaced by the fact that this alternative would implement a significant reduction in the quota for sandbar sharks and reduced retention limits for both sandbar sharks and non-sandbar LCS.

Additionally, since all sandbar sharks and some of the non-sandbar LCS would be landed by a limited number of vessels participating in a shark research program, NMFS would have more information concerning when the

sandbar shark and non-sandbar LCS quotas would likely be reached. This may result in positive ecological impacts because it should reduce overharvests. To ensure collection of information that is needed for stock assessments, NMFS would need to ensure data collection throughout different areas (e.g., throughout the sharks' range) and also throughout the year. However, fishing effort and landings (e.g., landings by state fishermen in state waters) that would occur outside the shark research program are difficult to predict and negative ecological impacts may occur as a result of the sandbar shark or non-sandbar LCS quota being filled by vessels outside of the shark research program as this would mean that fishing under the shark research program and collection of biological samples would also cease.

NMFS is seeking public input specifically in response to two questions regarding the potential ecological impacts of two variables that could affect season length. First, is the selection of 80 percent of any given species/species complex an appropriate threshold for taking action to close the fishery? Eighty percent was chosen because it is close enough to 100 percent to allow for a limited number of trips to be completed after NMFS receives landings reports from dealers and takes action to close the fishery without resulting in overharvests. Second, is providing five days notice to fishermen before the season closes for any species/species complex adequate notice for fishermen? Or, conversely, is five days notice too long and should NMFS follow the same timeline for sharks as it does for inseason actions for bluefin tuna, which is three days from date of filing?

E. Regions

Under the proposed alternative, NMFS would eliminate the three regions and manage all shark fisheries throughout the Atlantic Ocean, the Gulf of Mexico, and Caribbean Sea as one region. The ecological impacts of this change are expected to be neutral. The regions were implemented in 2004 to address regional differences in fisheries and to provide fishing opportunities for regions that do not have sharks present throughout the year. As stated above, in terms of the reduction in fishing effort that would result under the quotas and retention limits proposed in this alternative are likely to achieve, NMFS does not expect that maintaining a regional management scheme would provide any additional ecological benefits for Atlantic sharks, protected

resources, or other bycatch. However, to ensure that NMFS has a variety of biological samples from different regions, NMFS would maintain adequate regional coverage when selecting vessels for the shark research program.

Eliminating a regional management scheme would likely have negative economic impacts on regions that do not have sharks present year round. The North Atlantic region could be disadvantaged as a result of eliminating a regional management scheme because the quota would likely be harvested in southern regions before sharks are present in the North Atlantic. Vessels could either move to southern areas to participate in the shark fishery in areas where sharks are present year-round or redistribute fishing effort to other fisheries. Dealers in the North Atlantic region could also be affected, possibly even more so than vessels, as the likelihood of having shark products consistently available would decrease. However, given that the North Atlantic region mostly handles pelagic sharks and few LCS or SCS, any economic impacts of removing the regions for LCS and SCS are likely to be slight.

F. Recreational Management Measures

Finally, under the proposed alternative, recreational anglers (HMS Angling, Charter Headboat, and General Category permit holders participating in a registered HMS tournament) would only be able to possess species of shark that are easy to identify including: bonnethead, nurse, tiger, great hammerhead, smooth hammerhead, scalloped hammerhead, lemon, sharpnose, shortfin mako, common thresher, oceanic whitetip, and blue sharks. These sharks are easier to identify than other shark species and are less likely to be confused with dusky or sandbar sharks. Species that were previously authorized, but would no longer be allowed to be possessed in recreational fisheries, include: sandbar, bull, blacktip, spinner, porbeagle, blacknose, and finetooth sharks.

Ecological benefits of not allowing these species to be landed are variable depending upon the species. NMFS is most concerned about recreational anglers landing sandbar and dusky sharks and, therefore, wants to reduce the potential that one of these sharks could be mistakenly identified and then landed. Between 2002 and 2004, there were 5,784 sandbar sharks landed in recreational fisheries per year. Considering the stock status of sandbar sharks, the ecological impacts of further limiting the species that may be possessed in the recreational fishery

would likely be positive as it would reduce the number of sandbar sharks intentionally landed and/or landed due to confusion with species that look similar. The ecological impacts of prohibiting sandbar sharks would likely be positive for dusky sharks as well as it would reduce the number of dusky sharks that are landed because they can be mistaken for sandbar sharks. Silky sharks are easily confused with dusky sharks, therefore, prohibiting the retention of silky sharks could result in fewer dusky sharks being landed. Despite the fact that this alternative could result in positive ecological impacts, it is not expected to eliminate sandbar mortality in the recreational fisheries as there would likely continue to be some illegal landings of sandbar sharks and/or some level of post-release mortality for fish that are caught and released. NMFS will engage in outreach efforts to provide recreational anglers with updated regulations and tips for proper identification of shark species that are authorized to be possessed in order to improve compliance with these measures.

Participants in recreational shark fisheries could experience negative economic impacts as a result of reducing the number of sharks that can be legally landed. Charter/headboat (CHB) operators would be most affected as a result of these measures as they may see a reduction in the number of charters that customers are willing to hire. These impacts may be most pronounced in areas where blacktip sharks are frequently encountered, including the South Atlantic and Gulf of Mexico regions. Recreational landings data indicates that there are more landings of blacktip sharks than of any other species that could no longer be possessed as a result of this alternative. It is presumed that blacktip sharks are retained more than any other LCS because of the higher quality of their flesh and the fact that they are more abundant than other LCS in coastal waters. CHB operators specializing in sharks may see the number of charters decline because some fishermen insist on keeping blacktip or sandbar sharks. Prohibiting the other species (finetooth, silky, bull, blacknose, and porbeagle) is not expected to have adverse impacts as these species are not as frequently encountered in recreational shark fisheries.

Tournaments offering prize categories for sharks may also experience negative economic impacts as a result of prohibiting six additional species of sharks for retention in recreational fisheries. The majority of tournaments specializing in sharks are in the North

Atlantic region, specifically Rhode Island, New York, and Massachusetts. In 2005 and 2006, there were 60 tournaments per year with prize categories for pelagic sharks. Species most commonly targeted in these tournaments including common thresher, oceanic whitetip, blue, shortfin mako, and porbeagle. Of these, only porbeagle would be prohibited from retention as stocks are overfished. Tournaments are generally won by shortfin mako or common thresher, therefore, significant economic impacts as a result of prohibiting porbeagle retention in shark fishing tournaments are not anticipated.

NMFS is requesting public comment specifically on the list of species that can be easily identified. Specifically, do commenters agree that the species proposed are easy to identify? Are there other species that should be added to the list? Are there some species that should be removed from the list?

G. Impacts on Protected Resources and EFH

The proposed alternative could have positive impacts on protected resources, including sea turtles, marine mammals, and smalltooth sawfish as it is expected to reduce overall fishing effort targeting shark with gillnet and bottom longline gear while increasing the level of observer coverage on a limited number of vessels participating in a shark research program. The shark research program proposed in this alternative may also provide additional documentation of interactions with protected resources via observer reports and possibly the opportunity to collect samples from protected resources. Shark fishermen outside of the shark research program would likely reduce the number, duration, and frequency of trips targeting sharks with bottom longline and/or gillnet gear. Furthermore, soak time might also be reduced because fishermen would know that they would only be allowed to possess 22 non-sandbar LCS per vessel per trip. Fishing effort will decrease the most in the bottom longline fishery as this gear is most effective for targeting sandbar shark and most LCS species. Fishing effort in the gillnet fishery would likely decrease less than fishing effort in the BLL fishery as this fishery mainly targets small coastal sharks and non-sandbar LCS, specifically blacktip sharks. There is the possibility that some of the current fishing effort in the BLL fishery would transfer to the gillnet fishery to target species that have larger retention limits (i.e., SCS and blacktip sharks) or to other BLL fisheries. It is difficult to predict how fishing effort in

longline and gillnet fisheries would change as a result of this alternative.

Ecological impacts to EFH would likely be positive as a result of alternative 4. BLL gear is generally regarded as the HMS gear type most likely to potentially impact EFH of HMS and/or non-HMS. BLL gear may have some negative impact if gear is set in more complex habitats, such as hardbottom or coral reefs in the Caribbean or areas with gorgonians, or soft corals and sponges in the Gulf of Mexico. BLL gear set with cable groundline or heavy monofilament with weights can damage hard or soft corals and potentially become entangled in coral reefs upon retrieval, resulting in coral breakage due to line entanglement. However, the extent to which bottom longline gear is fished in areas with coral reef habitat targeting sharks has not been determined.

H. Conclusion

Overall, alternative 4 is preferred and therefor proposed because it implements quotas and retention limits necessary to allow rebuilding and prevent overfishing of shark species and maximizes scientific data acquisition by continuing a limited research fishery for sandbar shark with 100 percent observer coverage. Furthermore, by allowing some vessels to participate in the shark research fishery annually, this alternative mitigates some of the significant economic impacts (e.g., reduced retention limits) that are included in this alternative and alternatives 2, 3, and 5 and that are necessary to reduce fishing mortality and effort and rebuild overfished shark stocks. This alternative ensures that data for stock assessments and life history samples continue to be collected while allowing a small pool of individuals to continue to collect revenues from sharks. Individuals not selected to participate in the shark research program could still land 22 non-sandbar LCS per vessel per trip, which would limit the number of trips targeting non-sandbar LCS sharks, while allowing them to keep some sharks that would otherwise be discarded.

Analyses of the Other Alternatives Considered

Under the no action alternative (alternative 1), NMFS would maintain the current regulations including, but not limited to, a commercial quota of 1,017 mt dw for the LCS complex; 19 prohibited species; the mid-Atlantic shark closed area; a 4,000 lb retention limit per trip for all LCS; trimester seasons; three regions; and a recreational retention limit that allows

recreational anglers to possess the same species as commercial fishermen.

Overall, given the latest stock assessments that recommend large reductions in fishing mortality, the no action alternative would have negative ecological impacts on sandbar, dusky, and porbeagle sharks. In the short-term, the social and economic impacts would likely be neutral or slightly positive because current fishing effort would remain the same. In the long-term, if these species do not rebuild, social and economic impacts would likely be negative as the shark species, particularly the sandbar shark which is the major species for the fishery, become less abundant. Under the Magnuson-Stevens Act, management measures are needed to rebuild overfished stocks and prevent overfishing. Therefore, maintaining the LCS quota of 1,017 mt dw, would be inconsistent with the Magnuson-Stevens Act and the recent LCS stock assessment that recommended a TAC of 158 mt dw for sandbar sharks in order for this species to rebuild by 2070. Because the current fishing effort under this alternative could lead to continued overfishing of sandbar, porbeagle, and dusky sharks, at a level that could potentially prevent these species from rebuilding in the recommended timeframe, NMFS does not propose this alternative.

In addition to the no action alternative (alternative 1) and the proposed alternative (alternative 4), NMFS also considered alternatives 2 and 3, which would establish the same quotas, time/area closures, seasons, regions, and recreational retention limits as the proposed alternative while changing the commercial retention limits based on the permit holders allowed under each alternative. Alternative 2 would allow only those fishermen who hold a directed shark LAP to possess sharks. Those fishermen could possess 8 sandbar sharks and 21 non-sandbar LCS per trip. Additionally, under alternative 2, dealers would be required to report sharks received within 24 hours of the sale. Under alternative 3, fishermen who hold either a directed or incidental shark LAP could possess 4 sandbar sharks and 10 non-sandbar LCS per trip.

Both alternatives 2 and 3 could have positive ecological impacts for most species of sharks, bycatch, and protected resources as a result of significantly reduced retention limits and quotas for sandbar sharks and reduced retention limits for non-sandbar LCS. These positive ecological impacts would likely be more pronounced in

alternative 3 than alternative 2 because retention limits are reduced.

Both alternatives would reduce directed fishing effort for sharks significantly, as the limited retention limits for sandbar shark or non-sandbar LCS would not correspond to revenues that would equal a fishermen's costs for a trip targeting sharks. Sandbar sharks are the most lucrative species of LCS and currently they comprise 70 percent of landings in the bottom longline fishery. Under alternative 2, because the shark fishery for incidental permit holders would be closed, sharks caught in pursuit of other species with bottom longline gear or gillnet would be discarded, possibly dead. Compared to alternative 2, alternative 3 would expand the universe of commercial shark permit holders that could possess a limited number of sharks and non-sandbar LCS to include incidental permit holders. However, reduced retention limits would more closely resemble a shark fishery that is exclusively incidental in nature, as the retention limits described in this alternative would not correspond to revenues that would equal a fishermen's costs for a trip. It is still anticipated that sharks caught in excess of the retention limit while in pursuit of other species with bottom longline gear or gillnet would be discarded, possibly dead. Furthermore, alternative 3 would set a retention limit for sandbar sharks and non-sandbar LCS that is the same for both directed and incidental permit holders, which would reduce the value of a directed shark permit.

As in the proposed alternative, eliminating regions and seasons in these alternatives represents an economic disadvantage to the North Atlantic region as sharks are not present in these waters year-round, meaning the quota may be filled in some years before sharks are present in these areas. However, as fishermen in the North Atlantic region land more pelagic sharks than LCS or SCS, NMFS does not expect eliminating regions and seasons to have a significant economic impact on the North Atlantic region. Interactions with protected resources may decrease under both alternatives as a result of less bottom longline and gillnet fishing effort targeting sharks; however, it is assumed that some of this fishing effort would be displaced to other gillnet and bottom longline fisheries in which participants are permitted.

Alternative 2 is not proposed because landings of all sharks by incidental permit holders would have to be discarded and because it would place significant reporting burden on shark dealers. Additionally, alternative 2 does

not provide as much assurance that overfishing of sandbar and dusky sharks would not continue compared to other alternatives because of increased retention limits for non-sandbar LCS and the increased likelihood that sandbars and dusky sharks would be caught incidentally and discarded dead. Thus, this alternative would not achieve National Standard 1 to rebuild overfished species or prevent overfishing (e.g., sandbar and dusky sharks) nor would this alternative achieve National Standard 9, to minimize bycatch to the extent practicable.

Alternative 3 is not proposed because it diminishes the economic and historical significance of the directed fishery and essentially makes the directed shark LAP equal in value to the incidental shark fishing permit. Furthermore, given the reduced retention limits in this alternative, the directed shark fishery would essentially be eliminated, resulting in significant economic impacts. As with alternative 2, this alternative would not achieve National Standard 1 to rebuild overfished species or prevent overfishing (e.g., sandbar and dusky sharks) nor would this alternative achieve National Standard 9, to minimize bycatch to the extent practicable. Additionally, the limited data attained on shark interactions from both alternatives 2 and 3 would compromise the ability to maintain fishery dependent data series for conducting stock assessments, which are necessary in order to have the best scientific data (National Standard 2). Preferred alternative 4, the proposed alternative, would likely accomplish the necessary reductions in quota, retention limits, and fishing effort to prevent overfishing and allow stocks to rebuild while allowing for the collection of valuable scientific data, allowing the continuation of a very limited but directed shark fishery, allowing some landings of non-sandbar LCS, and minimizing bycatch to the extent practicable.

The last alternative considered (alternative 5) would close all Atlantic shark fisheries. Under this alternative, NMFS would preclude commercial and recreational fishermen from possessing or landing any shark species. This alternative would have the most significant positive ecological impacts for sharks, protected resources, and EFH of the alternatives considered in this rulemaking. However, closing the Atlantic shark fishery would also incur the most significant economic impacts on U.S. shark fishermen, shark dealers, shark tournament operators, and others

involved in supporting industries. This alternative is not proposed at this time because it would cause severe economic and social impacts to fishing communities along the east coast and Gulf of Mexico compared to the other alternatives considered, contrary to National Standard 8 (which requires consideration of economic and social data to minimize adverse economic impacts on communities, to the extent practicable). Furthermore, by closing the shark fishery, NMFS would lose a valuable source of fishery dependent data that would influence the ability to conduct future shark stock assessments. Recent stock assessments for sandbar, dusky, and porbeagle sharks indicate that these species are overfished. The primary objective of this amendment is to reduce fishing mortality for these species and allow them the opportunity to rebuild. There are numerous species of shark that are not overfished or experiencing overfishing, and therefore, do not warrant a full closure of the Atlantic shark fishery at this time. Preferred alternative 4, the proposed alternative, would strike a balance between preventing overfishing and allowing stocks to rebuild, while considering the economic needs of the shark fishing community and the data needs of future stock assessments by allowing some retention of sharks.

Request for Comments

NMFS is requesting comments on any of the alternatives or analyses described in this proposed rule and in the draft Amendment 2. NMFS is also requesting comments on specific items related to those alternatives to clarify certain sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, NMFS requests comments on:

(1) The proposed list of species that may be taken by recreational anglers. NMFS is proposing that only species that are easy to identify be allowed to be landed by recreational anglers. Do commenters agree that the species proposed are easy to identify? Are there other species that are easily identified that should be added? Are there some species that should be removed?;

(2) The amount of time proposed to provide notice of fishing closures. NMFS is proposing to close the shark fisheries with at least five days notice from date of filing with the Office of the **Federal Register**. Is that an adequate amount of time for fishermen to receive notice? Would a shorter timeframe (e.g., three days from date of filing, similar to the notice given for inseason actions with the bluefin tuna General Category) be more appropriate?; and,

(3) The 80 percent trigger for closing commercial shark fisheries. NMFS is proposing to close shark fisheries when dealer reports indicate that landings are at 80 percent of the available quota. NMFS is proposing this buffer given the timeframe for dealer reporting (twice a month), the time needed to announce the closure, and the need to close the fishery before the quota is reached. Eighty percent was chosen because it is close to 100 percent to allow for a limited number of trips to be completed after NMFS receives landings reports from dealers and to take action to close the fishery without resulting in overharvests. Is this buffer sufficient? Should it be larger or smaller?

Comments may be submitted via writing, email, fax, or phone (see **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). All comments must be submitted no later than 5 p.m. on October 10, 2007.

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold 10 public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule and the draft HMS FMP. These hearings will be physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to Heather Halter at (301) 713-2347 at least 7 days prior to the hearing date. NMFS has requested time to present this proposed rule and the draft Amendment 2 to the five Atlantic Regional Fishery Management Councils and the Atlantic States Marine Fisheries Commission at their meetings during the public comment period. Please see their meeting notices for times and locations. NMFS also tentatively anticipates holding a meeting of the HMS Advisory Panel on October 2 - 4, 2007, in Silver Spring, Maryland. The actual dates and location will be announced in a future **Federal Register** notice.

Date	Time	Hearing Location	Hearing Address
8/8/07	6 - 8:50 p.m.	Manahawkin Public Library	129 North Main St., Manahawkin, NJ 08050
8/8/07	6 - 9 p.m.	SEFSC, Panama City Laboratory	3500 Delwood Beach Dr., Panama City, FL 32408
8/14/07	6 - 9 p.m.	Bayou Black Recreational Center	3688 Southdown Mandalay Rd., Houma, LA 70360
8/22/07	6:30 - 9:30 p.m.	City of Madeira Beach	300 Municipal Dr., Madeira Beach, FL 33708
8/23/07	5:30 - 8:30 p.m.	Fort Pierce Library	101 Melody Lane, Fort Pierce, FL 34950
8/29/07	6 - 9 p.m.	Ocean Pines Public Library	11107 Cathell Rd., Berlin, MD 21811
9/5/07	6 - 9 p.m.	University of Texas, Marine Science Institute	Visitor's Center, 750 Channel View Dr., Port Aransas, TX 78373
9/6/07	5 - 8 p.m.	Islamorada Public Library	81500 Overseas Highway, Islamorada, FL 33036
9/10/07	6 - 9 p.m.	Manteo Town Hall	407 Budleigh St., Manteo, NC 27954
9/17/07	5:30 - 8:30 p.m.	Portsmouth Public Library	175 Parrott Ave., Portsmouth, NH 03801

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the

subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* At this time, NMFS has preliminarily determined that the proposed rule and related draft Amendment 2 to the Consolidated HMS FMP are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable law.

This proposed rule contains a collection-of-information requirement

subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the HMS exempted fishing permit, scientific research permit, display permit, shark research permit, and letter of authorization information collection is estimated to average 2 hours per scientific research plan; 40 minutes per application, including the shark research permit application; 15 minutes per request for amendment to the exempted fishing permit; 1 hour per interim report; 2 minutes per "no catch" report; 40 minutes per annual report; 5 minutes per departure notification regarding

collection of display animals; 10 minutes per notification call for observer coverage for the shark research fishery; and 2 minutes per tag application. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael Clark, the Highly Migratory Species Management Division, at the **ADDRESSES** above, and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the IRFA follows. The full IRFA is contained in Amendment 2. Copies of Amendment 2 are available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to implement management measures for the Atlantic shark fishery that address the results of the 2005/2006 large coastal shark stock assessment, the 2006 dusky shark stock assessment, and the

Canadian porbeagle shark stock assessment.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) implement rebuilding plans for sandbar, dusky, and porbeagle sharks; (2) provide an opportunity for the sustainable harvest of blacktip and other sharks, as appropriate; (3) prevent overfishing of Atlantic sharks; (4) analyze bottom longline time/area closures and take necessary action to maintain or modify the closures, as appropriate; and (5) improve, to the extent practicable, data collections or data collection programs.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The proposed rule would apply to the 529 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders on May 11, 2007. Of these permit holders, 231 have directed shark permits and 298 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. NMFS estimates that there are 143 vessels with directed shark permits and 155 vessels with shark incidental permits that could be considered actively engaged in fishing, since they reported landing at least one shark in the Coastal Fisheries Logbook from 2003 to 2005.

In addition, the reporting requirements in the proposed alternatives would also apply to Federal shark dealers. As of May 22, 2007, there were a total of 269 Atlantic shark dealer permit holders. Based on NMFS understanding of HMS dealers, NMFS assumes that each of these dealers would be considered a small business with 100 or fewer employees.

The proposed measures being considered may also impact the types of services HMS CHB permit holders may provide. HMS CHB permit holders are businesses directly affected by this rule because limitations on the species that may be taken could affect the number of customers and the amount they can ask passengers to pay for a certain trip. As of April 25, 2007, there were 4,245 HMS CHB permit holders. It is unknown what

portion of these permit holders actively participate in shark fishing or market shark fishing services for recreational anglers. NMFS considers all of these permit holders to be small entities.

In addition, some businesses that hold tournaments, such as marinas or specialized tournament organizers, are also considered small entities. HMS tournaments are required to register with NMFS. As such, NMFS has estimates on the number of HMS tournaments. However, NMFS may not necessarily know the number of businesses behind the tournament name and contact. Tournaments offering prize categories for sharks may also experience negative economic impacts as a result of prohibiting six additional species of sharks for retention in recreational fisheries in alternatives suites 2 through 4, as well as alternative 5 which would allow no possession of any sharks and only allow for catch and release fishing. The majority of tournaments specializing in sharks are in the North Atlantic region, specifically Rhode Island, New York, and Massachusetts. In 2005 and 2006, there were 60 tournaments per year with prize categories for pelagic sharks. Alternative 5 would apply to all tournaments that had a prize category for sharks. There have been 79 tournaments per year that had a prize category for sharks from 2005-2006. The majority of these tournaments target pelagic sharks and are held in the North Atlantic and Gulf of Mexico regions.

Under section 603(b)(4), Agencies are required to describe any new reporting, record-keeping and other compliance requirements. The proposed alternative would require modifying existing reporting and record-keeping requirements. The research program component in this proposed rule would require modifications to the existing Exempted Fishing Permit (EFP) program and dealer reporting requirements. Other compliance requirements are described in the discussion of alternatives set forth below.

The proposed rule would modify the reporting frequency for dealers. The current requirement for dealer reports to be post-marked within 10 days after each reporting period (1st through 15th and 16th through last day of month), would be modified to state that dealer reports must be received by NMFS not later than 10 days after each reporting period (i.e., 25th and 10th of each month). Shark, swordfish, and tuna dealers would have to submit these reports in advance of the 10th and 25th of each month to ensure adequate time for delivery, depending on the means employed for report submission.

Requiring that all dealer reports are actually received by NMFS in a more timely fashion would provide more frequent reports of shark landings in order to better assess quantities of sharks landed and whether or not a closure or other management measures are warranted to prevent overfishing. Dealers would still be required to submit reports indicating that no sharks were purchased during inactive periods. Requirements for vessel logbooks and observer coverage would remain unchanged. Additional burden is not expected as a result of modifying the regulations to ensure that dealer reports are actually received within 10 days.

The proposed rule would also create a limited shark research program that would result in changes to existing reporting requirements. Entry into the proposed shark research program would require vessels to submit an application, which would add to the reporting burden for those vessels wishing to apply. Applicants selected to participate in the shark research program under this alternative would also be subject to 100 percent observer coverage as a requirement for eligibility to participate in the program. In addition, selected vessels would continue to report in their normal logbook in addition to the observer program. Vessels in the shark research program, however, would not need to report in a similar way as the other holders of EFPs even though they are being issued permits under the EFP program. For example, vessels in the research fishery would not be required to submit interim or annual reports describing their fishing activities. Rather, they would only be required to submit logbook per current regulations. Vessels outside the shark research program would still be required to carry an observer if selected and all vessels would still be required to complete logbooks within 48 hours of fishing activity and then submit the logbooks to NMFS within seven days.

Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS

does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Amendment 2. 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: (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 of the rule 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 because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described 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. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed five different alternatives suites in this proposed rulemaking. The discussion below provides justification for selection of the proposed alternative to achieve the desired objective.

As described in the earlier in the preamble, the alternatives considered and analyzed have been grouped into five alternative suites. Alternative 1 would maintain the current Atlantic shark fishery (no action). Alternative 2 would allow only directed shark permit holders to land sharks whereas Alternative 3 would allow directed and incidental shark permit holders to land sandbar and non sandbar LCS as well as SCS and pelagic sharks. Alternative 4 would establish a program where vessels with directed or incidental shark permits could participate in a research fishery for sandbar sharks. Only vessels

participating in this program could land sandbar sharks. Vessels not participating in the research program could land non-sandbar LCS, SCS, and pelagic sharks. Finally, alternative 5 would shut down the commercial Atlantic shark fishery and only allow a catch and release recreational shark fishery. The proposed alternative is suite 4.

A. Alternative Suite 1

Alternative 1, the no action alternative, would not likely result in any significant new economic impacts to small businesses in the HMS Atlantic shark fishery if the current LCS quota of 1,017 mt dw, in conjunction with the 4,000 lb LCS directed shark permit trip limit, is maintained. Under this alternative, the current fishing effort would not likely change, which could lead to economic benefits from reduced market uncertainty for fishermen and related businesses in the short term. If gross revenues for directed and incidental permit holders is averaged across the approximately 298 active directed and incidental shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$14,000. However, long term, negative economic impacts could occur if current fishing mortality of sandbar sharks, an economically important species, is not decreased as recommended by the LCS stock assessment, and this species continues to be overfished.

The no action alternative would maintain the existing closures and would not add any new closures. The three management regions would also remain unchanged. There would also be no additional reporting requirements. Alternative 1 would also maintain the trimester seasons, which provides fishermen and dealers with more open seasons. With an annual LCS quota of 1,017 mt dw, spreading the seasons out over the calendar year could potentially result in greater economic stability for fishermen and associated communities. However, if quotas are reduced to comply with the recommendations from the LCS stock assessment, trimester seasons could become less economically stable for fishermen and dealers because of the reduced amount of quota and fishing effort during the calendar year. Maintaining existing closures, reporting requirements, and management regions would likely have little to no economic impacts on effected small businesses.

Alternative 1 would also maintain the current bag limit for HMS Angling permit holders at one shark greater than 54 inches per vessel per trip as well as one sharpnose and one bonnethead

shark (both of which are in the SCS complex) per person per trip. This would likely result in no new economic impacts for businesses operating recreational fishing charter trips targeting sharks and shark fishing tournaments in the short term.

Overall, alternative 1 would likely have the lowest economic impact on small businesses. However, this alternative would likely not meet the objectives of this action. Maintaining the LCS quota of 1,017 mt dw, would be inconsistent with the Magnuson-Stevens Act and the recent LCS stock assessment that recommended a TAC of 158.3 mt dw for sandbar sharks for this species to rebuild by 2070. Current fishing effort, under the no action alternative, could lead to continued overfishing of sandbar, porbeagle and dusky sharks, which could potentially prevent these species from rebuilding in the recommended timeframe. As a result, this alternative was not selected.

B. Alternative Suite 2

Alternative 2 would allow only directed shark permit holders to land sharks. In addition, this alternative would remove sandbar sharks from the LCS complex and establish a separate category for sandbar sharks from the LCS complex. Incidental shark permit holders would be affected by alternative 2. As of 2007, there were 220 shark directed, 285 shark incidental, and 336 shark dealers permit holders. NMFS considers the 143 vessels with directed shark permits and 155 vessels with shark incidental permits that reported landing at least one shark in the Coastal Fisheries Logbook from 2003 to 2005 as active.

On average, directed permit holders landed 1,571,851 lb dw of sandbar sharks and 1,210,643 of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$3,744,032 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). If gross revenues for directed permit holders are averaged across the approximately 143 active directed shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$26,000 from shark revenues. Under alternative 2, gross revenues for directed permit holders would be estimated to be \$1,026,032 from shark fishing. This is a 73 percent overall reduction in gross revenues compared to 2003 to 2005. These reduced gross revenues averaged across the 143 active directed permit holders are just over \$7,000 per directed shark fishing vessel. This estimated reduction

in revenue from shark landings could affect the profitability and even viability of some marginal operations. Operations that have permits in other fisheries and can easily diversify are less likely to be as affected as those marginal operations. Nevertheless, the profitability of all directed shark fishing vessels would likely be reduced. Because the states of Florida, New Jersey, and North Carolina have the most directed shark permits, these states would be most negatively impacted by alternative 2.

In addition, retention of sandbar sharks on pelagic longline (PLL) gear would be prohibited under alternative 2. On average, 80,825 lb dw of sandbar sharks were reported landed on PLL gear by directed shark permit holders from 2003 to 2005 (HMS Logbook). In 2006 ex-vessel prices, this is equivalent to \$106,802 in gross revenues. Given an average of 16.7 vessels landed sandbar sharks with PLL gear from 2003 to 2005, prohibition of sandbar sharks on PLL gear could result in a loss of gross revenues of \$6,395 per vessel.

Gross revenues under the no action revenue were based on a 4,000 lb dw LCS trip limit for directed shark permit holders. The average number of sandbars and non-sandbar LCS landed per trip was 35 sandbars and 32 non-sandbar LCS for all gear types reported in the Coastal Fisheries and HMS Logbooks. Based on 2006 ex-vessel prices, this is equivalent to \$3,358 per trip. Revenue estimates on a regional trip basis were also based on species composition data attained from the BLL observer program data. Observer data indicate that between 2005 and 2006, 69 sandbar sharks and 35 non-sandbar LCS were caught per trip in the South Atlantic region, and 30 sandbar sharks and 83 non-sandbar LCS were caught per trip in the Gulf of Mexico region. Based on these numbers and 2006 ex-vessel prices, South Atlantic trips averaged \$4,743 per trip and Gulf of Mexico trips averaged \$5,853 per trip.

Under alternative 2, the retention limits would be 8 sandbar sharks per trip and 21 non-sandbar LCS per trip. Non-sandbar LCS retention limits are based on the average ratio of sandbars to non-sandbar LCS caught in the South Atlantic and Gulf of Mexico regions to limit sandbar shark discards by fishermen deploying non-selective gear. In the Gulf of Mexico, the ratio of sandbars to other LCS caught is 1:4, which based on an 8 sandbar sharks per trip retention limit, would equal 32 non-sandbar LCS per trip. However, such a high non-sandbar LCS retention limit would result in a sandbar discards in the South Atlantic (65.3 mt dw). Therefore, a 21 non-sandbar LCS per

trip retention limit was set to balance discards versus catch in the two regions. This results in approximately five sandbar sharks being caught in the Gulf of Mexico region when the non-sandbar LCS retention limit per trip is filled (and therefore, only 86.1 mt dw of the sandbar quota would be filled). Therefore, gross revenues on a trip basis are estimated to be \$1,262 of gross revenue per trip in the South Atlantic and \$1,333 of gross revenue per trip in the Gulf of Mexico. From 2003 to 2005, there were 124 vessels that averaged more than 324 lb dw (or eight sandbar sharks) of sandbar shark per trip. Therefore, these vessels would be most negatively affected by retention limits under alternative 2.

On average, 66 incidental permit holders landed 19,066 lb dw per year of sandbar sharks and 39,995 lb dw per year of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. Using 2006 ex-vessel prices, this is equivalent to gross revenues of \$80,558 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). Gross revenues averaged across the 66 vessels with incidental permits landing sharks were just over \$1,221 per vessel. Since incidental permit holders would not be able to land any sharks under alternative 2, the 66 active vessels would be most negatively affected by this alternative. The states of Florida, Louisiana, New Jersey, and North Carolina had the most incidental shark permit holders as of 2007 (144, 37, 20, and 16, respectively); therefore, these states would be most negatively impacted by alternative 2.

Alternative 2 also includes increasing dealer reporting to 24 hours of when shark products were purchased. There could be economic impacts to dealers as a result of the increased reporting requirement associated with this alternative. Reporting burden would be increased significantly for Atlantic shark dealers as a result of this alternative resulting in negative economic impacts. Currently, shark dealer reports must be submitted bimonthly, regardless of whether or not the dealer actually purchased any shark products. Reporting frequency would be increased to 24 hours of when shark products were purchased. While the increased reporting burden would not impact shark dealer expenditures per se, it would result in more time spent submitting dealer reports, which represents an opportunity cost for dealers because that would be time they could not spend conducting other activities related to their business. Furthermore, in order to comply with

the requirement that dealer reports must be received by NMFS within 24 hours, it is assumed that dealers would have to submit dealer reports electronically or via fax. Dealers that do not currently possess a computer or fax machine would have to purchase one of these items. The increased reporting burden implemented in this alternative would be subject to approval under the Paperwork Reduction Act. Reporting requirements for shark vessel permit holders, including the need to take an observer if selected and the need to submit vessel logbooks within seven days of completing a fishing trip would not be modified, resulting in neutral economic impacts.

The impacts of other provisions of alternative 2 are the same as in alternative 4, discussed below, which is the proposed alternative for this proposed rule. These provisions include: maintaining the 60 mt shark display and research quota; placement of porbeagle sharks on the prohibited list; quota carryover limited to 50 percent of base quota for species not overfished; no carryover for overfished, overfishing or unknown species; sharks fins must remain on the shark; removal of regions and seasons; and limiting the shark species that can be landed recreationally.

This alternative was not selected for two primary reasons. First, this alternative does not address the impacts from continued incidentally caught sandbar sharks by vessels targeting other species. These vessels will likely continue to incidentally catch sandbar sharks, but then under this alternative those sharks would be required to be discarded. These discards would reduce potential revenues and possibly operating efficiency of vessels possessing incidental shark permits. Regulatory discards would likely lead to increases in mortality and slow efforts to end overfishing. Second, the 24 hour dealer reporting that would be required to effectively manage quotas would result in a significant increase in reporting burden for dealers. This alternative would therefore not minimize the economic cost to dealers in comparison to the proposed alternative.

C. Alternative Suite 3

Alternative 3 would allow directed and incidental shark permit holders to land sandbar shark and non sandbar LCS as well as SCS and pelagic sharks. Therefore, the available sandbar and non-sandbar LCS quota would be spread over a larger universe of commercial permit holders. However, unlike the no action or alternative 2, the retention

limits for sandbar sharks and non-sandbar LCS would be the same for both directed and incidental permit holders. Since directed permit holders presumably make a greater percentage of their gross revenues from shark landings, they are expected to have larger negative socioeconomic impacts compared to incidental permit holders. Since the states of Florida, New Jersey, and North Carolina have the most directed permit holders, NMFS anticipates that these states would have the largest negative socioeconomic impacts under alternative 3. As with alternative 2, shark dealers could also experience negative impacts due to the reduction in the sandbar shark and other LCS quotas and retention limits, which would reduce the overall amount of sharks being landed.

As stated under alternative 2, on average, directed permit holders landed 1,571,851 lb dw of sandbar sharks and 1,210,643 of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$3,744,032 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). However, under alternative 3, the available sandbar shark and non-sandbar LCS quota would be spread over directed and incidental permit holders. Based on past effort, it was assumed 1,108 trips could be made by directed permit holders. This is 78 percent of the total expected fishing effort. Therefore, given 105.9 mt dw (233,467 lb dw) of the sandbar shark quota and 229.2 mt dw (505,294 lb dw) of the non-sandbar LCS quota that could be landed under alternative 3, approximately 83 mt dw (183,073 lb dw) of sandbar shark quota and 180 mt dw (396,225 lb dw) of the non-sandbar LCS quota are anticipated to be landed by directed permit holders. Based on 2006 ex-vessel prices, this is equivalent to \$793,338 gross revenues for directed permit holders. This is a 79 percent overall reduction in gross revenues compared to 2003 to 2005 (gross revenues based on current directed permit holders' landings were \$3,744,032). Again, since the states of Florida, New Jersey, and North Carolina have the most directed permit holders, NMFS anticipates that these states would experience the largest negative socioeconomic impacts under alternative 3.

As stated in alternative 2, the no action revenue was based on a 4,000 lb dw LCS trip limit for directed shark permit holders with average South Atlantic trips at \$4,743 per trip and average Gulf of Mexico trips at \$5,853

per trip. Under alternative 3, the retention limits would be 4 sandbar sharks per trip and 10 non-sandbar LCS per trip. However, since the ratio of sandbar sharks to non-sandbar LCS caught in the Gulf of Mexico is 1:4, NMFS estimates that approximately 3 sandbar sharks would be caught in the Gulf of Mexico region when the 10 non-sandbar LCS retention limit per trip is filled (10 non-sandbar LCS / 4 = 2.5 sandbar sharks). Therefore, gross revenues on a trip basis are estimated to be \$610 per trip in the South Atlantic and \$670 per trip in the Gulf of Mexico. From 2003 to 2005, there were 128 vessels that averaged more than 163 lb dw (or 4 sandbar sharks) of sandbar per trip. Therefore, these vessels would be most negatively affected by retention limits under alternative 3.

On average, incidental permit holders landed 19,066 lb dw of sandbar sharks and 39,995 lb dw of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$80,558 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). The available sandbar shark and non-sandbar LCS quotas would be averaged over directed and incidental permit holders under alternative 3. Based on past effort, it was assumed 305 trips could be made by incidental permit holders. This is 22 percent of the expected fishing effort. Therefore, given the 105.9 mt dw (233,467 lb dw) of the sandbar shark quota and 229.2 mt dw (505,294 lb dw) of the non-sandbar LCS quota that could be landed under alternative 3, approximately 23 mt dw (50,395 lb dw) of the sandbar shark quota and 50 mt dw (109,069 lb dw) of the non-sandbar LCS quota are anticipated to be landed by incidental permit holders. Based on 2006 ex-vessel prices, this is equivalent to \$218,383 gross revenues for incidental permit holders. This would result in gross revenues that are 2.7 times higher compared to 2003 to 2005 (gross revenues based on current incidental permit holders' landings were \$80,558).

This increase in gross revenues is due to the increase in retention limits for incidental permit holders. Under the no action alternative, incidental permit holders can retain 5 sharks from the LCS complex. However, under alternative 3, incidental permit holders would be able to retain 4 sandbar sharks and 10 non-sandbar LCS or 14 LCS total. This retention limit is almost 3 times higher than what is currently allowed under the no action. On average, incidental permit holders have been landing 2 sandbar sharks and 3 non-sandbar LCS

per trip. Based on 2006 ex-vessel prices, this is equivalent to \$248 per trip. However, under alternative 3, incidental permit holders would make equivalent gross revenues per trip as directed permit holders: \$610 per trip in the South Atlantic and \$670 per trip in the Gulf of Mexico. This would result in gross revenues for incidental permit holders that are 2 to 3 times higher than gross revenues in 2003 to 2005 depending on future fishing effort and catch composition. Therefore, there would be positive economic impacts for incidental permit holders under alternative 3. Since approximately 66 vessels with incidental permit holders landed sandbar sharks or non-sandbar LCS in 2003 to 2005 in the Coastal Fisheries and HMS Logbooks, these 66 vessels would have the largest economic benefits under alternative 3. However, if sharks become profitable for incidental permit holders under alternative 3, then more vessels with incidental permits may actively land sandbar sharks and non-sandbar LCS in the future. Finally, the states of Florida, Louisiana, New Jersey, and North Carolina had the most incidental shark permit holders in 2007. Therefore, these states would see the largest socioeconomic benefits for incidental permit holders under alternative 3.

The other provisions of alternative 3 are the same as in alternative 4, which is the proposed alternative for this proposed rule. These provisions include maintaining the 60 mt shark display and research quote; placement of porbeagle sharks on the prohibited list; quota carryover limited to 50 percent of base quota for species not overfished; no carryover for overfished, overfishing or unknown species; sharks fins must remain on the shark; dealer reports received within 10 of purchase; removal of regions and seasons; and limiting the shark species that can be landed recreationally.

This alternative was not selected as the proposed alternative primarily based on the economic impacts it would potentially result in and since it does not meet some of the ecological objectives of this rule. Despite the time per area closures, alternative 3 would have a smaller reduction in dead discards of dusky sharks compared to alternative 2 since sandbar sharks would be allowed to be retained on PLL gear under alternative 3.

Negative economic impacts under alternative 3 are expected for directed permit holders (79-percent reduction in gross revenues compared to the no action) as a result of the four sandbar per vessel per trip retention limits. Given the retention limits for sandbar

shark and non-sandbar LCS are significantly lower than the limit under the no action (91 and 69-percent reduction in sandbar and non-sandbar LCS retention limits, respectively for directed permit holders), it is anticipated that there would be no directed shark fishery as a result of alternative 3. While an observer program would still operate under alternative 3, without a directed shark fishery, it is anticipated that the fishery dependent data collection would be limited, which could compromise data collection for future stock assessments. Alternative 4 would likely accomplish the necessary reductions in quota, retention limits, and fishing effort to prevent overfishing and allow stocks to rebuild while collecting valuable scientific data for NMFS. Therefore, due to concerns over dusky discards, quota monitoring, and data collection, NMFS is not preferring alternative 3 at this time.

D. Alternative Suite 4

Alternative 4, the proposed alternative, would establish a program where a limited number of vessels with directed or incidental shark permits could participate in a small research fishery for sandbar sharks that would harvest the entire 116.6 mt dw sandbar quota. There would be 100 percent observer coverage on research vessel. Only vessels participating in this program could land sandbar sharks. Vessels not participating in the research program could land non-sandbar LCS, SCS, and pelagic sharks.

Alternative 4 was selected as the proposed alternative because it meets the objectives of this proposed rule while minimizing some of the economic impacts. As detailed in the economic analysis in Amendment 2, it is estimated that vessels in the shark research fishery could make \$490,411 in gross revenues of sandbar and non-sandbar LCS landings. Depending on the number of vessels selected for the shark research fishery, NMFS estimates that these vessels will generate higher revenues from sharks than the average vessel under the other alternatives suites. If less than 18 vessels are selected for the shark research fishery, then average gross shark revenues per vessel per year could potentially be higher under the proposed than under the other alternatives. However, the vessels operating outside of the research fishery would have an estimated 491 mt dw (1,082,459 lb dw) of non-sandbar LCS quota available to them depending on non-sandbar LCS landings in the shark research fishery. In 2006 ex-vessel prices, this is equivalent to \$1,502,994

in gross revenues. Divided by the remaining vessels (298 active directed and incidental shark permit holders - 18 = 280) it is estimated that the average gross revenues from shark per vessel would be just over \$5,000.

Under the no action alternative, NMFS estimated that if gross revenues for directed and incidental permit holders is averaged across the approximately 298 active directed and incidental shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$14,000. Using the average landing for directed permit holder from 2003 to 2005, it is estimated that the 143 active directed permit holders generated average annual gross shark revenues of just over \$26,000 from sharks. Under alternative 2, the reduced gross revenues averaged across the 143 active directed permit holders are estimated to be just over \$7,000 per directed shark fishing vessel and just \$1,221 per vessel per year for incidental permit holders that land sharks. Under alternative 3 this is reduced further to approximately \$5,500 (\$793,338 gross revenues per 143 vessel) per directed shark fishing vessel per year.

Comparing these revenues to those in alternative 4 indicates that the proposed alternative maintains the annual gross revenues per vessel for the vessel operating in the small research fishery, while allowing other vessels outside of the research fishery to generate revenues at reduced levels. Alternative 4 has less economic impacts to shark fishermen than alternatives 5, but has greater impacts in the short-run than the no action alternative. By allowing a limited number of historical participants to continue to harvest sharks under the research fishery, NMFS ensures that data for stock assessments and life history samples would continue to be collected. Alternative 4 also involves less reporting burden for dealers than would be required under alternative 2. Alternative 4 is the alternative that best meets the objectives of this rule while minimizing the economic impacts to shark permit holders.

E. Alternative Suite 5

Alternative 5 would have significant economic and social impacts on a variety of small entities, including: commercial shark permit holders, shark dealers, gear manufacturers, bait and ice suppliers, and other secondary industries dependent on the shark fishery. The level of economic impact would be directly proportional to the amount of revenues that each entity has realized from past participation in the shark fishery. Permit holders would be

impacted differently depending on the quantity of sharks landed in the past. Vessels targeting sharks (directed permit holders) landed an annual average of 1,262 mt dw of LCS, 184.5 mt dw SCS, and 29.84 mt dw pelagic sharks per year between 2003–2005. The gross revenues based on 2006 ex-vessel prices of these landings is estimated at \$3,877,003, \$593,853, and \$117,920 for LCS, SCS, and pelagic sharks, respectively. While it is assumed that few directed shark permit holders subsist entirely on revenues attained from the shark fishery, impacts would still be severe for those participants that depend on any income from participating in the directed shark fishery at certain times of the year. Because of the extensive economic impacts to shark directed permit holders as a result of this alternative, it is assumed that directed permit holders would likely pursue one of the following options as a result of closing the Atlantic shark fishery: (1) transfer fishing effort to other fisheries for which they are already permitted (snapper grouper, king and Spanish mackerel, tilefish, lobster, dolphin/wahoo, etc), (2) acquire the necessary permits to participate in other fisheries (both open access and/or limited access fisheries), or (3) relinquish all permits and leave the fishing industry.

Incidental permit holders would face negative economic and social impacts as a result of closing the Atlantic shark fishery; however, these impacts would not be as severe as those experienced by directed permit holders. It is assumed that incidental permit holders receive the majority of their fishing income from participating in other fisheries depending on the region and the type of gear predominantly fished (i.e., swordfish, tunas, snapper grouper, tilefish, dolphin/wahoo, lobster, etc.). NMFS estimates that, on average, between 2003–2005 incidental permit holders landed 26.8 mt dw LCS, 15.3 mt dw SCS, and 8.11 mt dw pelagic sharks per year. This equates in gross revenues based on 2006 ex-vessel prices for these landings of \$82,333, \$49,246, and \$32,049 for the respective species complexes. Incidental permit holders would likely have to increase effort in these other fisheries to replace lost revenues from landing sharks. Furthermore, these vessels may seek other permits (open access or limited access transferred from another vessel) or leave the fishing industry entirely.

Alternative 5 could also have negative economic and social impacts for shark dealers as they would no longer be authorized to purchase shark products from Federally permitted shark fishermen. Shark dealers also maintain

permits to purchase other regionally caught fish products. Due to the brevity of the LCS shark fishing season, which is the shark fishery that accounts for the majority of the shark product revenue due to the fin value, many dealers also get revenue from purchasing fish products other than sharks. The majority of shark dealer permit holders hold permits to purchase other fish products, including swordfish, tunas, snapper grouper, tilefish, mackerel, lobster, and dolphin/wahoo among others. It is difficult to assume, on an individual dealer basis, the quantity of revenues received exclusively from shark products.

Shark fin dealers, specializing in the purchase of shark fins from Federal and state permitted dealers, would also experience negative social and economic impacts as a result of closing the shark fishery. These dealers receive virtually all of their income from purchasing shark fins and shipping them to exporters. Exporters then transport the fins to global and domestic markets. This alternative would likely force shark fin dealers to leave the industry or focus on purchasing other fishery products, resulting in significant economic impacts to the individuals involved in this trade.

It is difficult to estimate the economic and social impacts that would be experienced by various small entities that support the shark fishery, e.g., purveyors of bait, ice, fishing gear, and fishing gear manufactures. However, these impacts would likely be negative. It is difficult to estimate these impacts as it is uncertain to what extent vessels that were fishing for sharks would redistribute their fishing effort to other fisheries, or simply cease fishing operations. If the majority of vessels affected by a shark fishery closure simply displace effort to other fisheries it is assumed that they would still be dependant on small entities for their bait, ice, and gear as these are products essential for fishing excursions targeting any species. Redistributing effort to other fisheries would mitigate negative economic impacts. However, if a significant number of vessels simply cease fishing operations or scale back considerably, then severe economic consequences would be imparted on these support industries as a result.

This alternative would increase the proportion of fishermen completing the Coastal Fisheries Logbook and then selected to report information on fish that are discarded. Currently, 20 percent of the fishermen completing this logbook are selected. This percentage would be increased to facilitate improved data available for shark

interactions with longline and gillnet gear. This information would be especially useful because sharks could no longer be landed and the existing logbook only requires fishermen to provide data on landed fish. Increasing the number of fishermen who are selected to provide this data would result in negative economic and social impacts because it would require additional paperwork to be filled out. Increased reporting burden would be subject to approval under the Paperwork Reduction Act. Vessels would no longer be required to take an observer. Shark dealers would no longer be required to submit dealer reports regarding sharks purchased.

Seasons and regions for the commercial Atlantic shark fishery would no longer apply as this alternative would close the fishery.

Closing the Atlantic recreational shark fishery would have negative economic and social impacts. These impacts would be most pronounced for CHB operators who specialize in landing sharks and operators of shark tournaments that have prize categories for landing sharks. It is difficult to estimate the number of CHB operators that specialize in shark charters as the permit covers any participant targeting swordfish, sharks, tunas, and billfish. Many CHB operators target a variety of species depending on client interests, weather, time of year, and oceanographic conditions. CHB operators specializing in shark fishing charters would have to target other HMS or non HMS species to replace revenues lost as a result of customers not being able to land sharks. However, not all customers necessarily want to land sharks. CHB operators would still be able to catch sharks, however, all sharks regardless of species would need to be released in a manner that maximizes their chances of survival. Catering business operations to clientele interested in catch and release fishing for sharks might mitigate some of the negative economic impacts. Shark tournaments that reward prizes for landing sharks would be negatively impacted as a result of this alternative. There have been 79 tournaments per year that had a prize category for sharks from 2005–2006. The majority of these tournaments target pelagic sharks and are held in the North Atlantic and Gulf of Mexico regions. These tournaments would either modify their rules to only allow points/prizes for released sharks or these tournaments would cease to exist. Economic impacts on small entities such as restaurants, hotels, gear manufacturers, retail stores selling fishing supplies, and marinas in the

vicinity of where these tournaments are held would also experience negative economic impacts.

HMS Angling permit holders would also experience negative impacts, despite the fact that they would still be able to catch and release sharks. Many anglers find pleasure in being able to land a legal limit of sharks to eat themselves or give away to friends. Landings would not be permitted by any recreational anglers as a result of this alternative.

Closing the Atlantic shark fishery would have negative economic impacts on global shark fin markets. As a result of this alternative, U.S. flagged vessels would no longer be able to contribute to the global demand for shark fins. This would disadvantage U.S. shark fishermen as global markets would likely need to purchase their shark fins from other markets. However, the United States is not a significant producer of shark products globally. Based on data from the United Nations Food and Agriculture Organization (FAO), less than one percent of global shark landings occur in the U.S. Atlantic.

While alternative 5 would meet the objectives of this rule, it would have the highest negative economic impacts of the alternatives considered. There would be significant reductions in revenues for shark dealers and fishing vessels involved with the shark fishery. Some small businesses dependent on commercial shark fishing may cease operating as a result of prohibiting the commercial harvest of shark species. Therefore, this alternative was not selected.

List of Subjects

50 CFR Part 600

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

50 CFR Part 635

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

Dated: July 18, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

2. In § 600.1203, paragraph (a)(9) is revised to read as follows:

§ 600.1203 Prohibitions.

(a) * * * (9) Fail to maintain a shark in the form specified in §§ 600.1204(h) and 635.30(c) of this chapter.

3. In § 600.1204, paragraphs (h) and (j) are revised to read as follows:

§ 600.1204 Shark finning; possession at sea and landing of shark fins.

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the fins being attached to the corresponding carcass(es), except that sharks may be eviscerated and the head removed from the carcass at sea.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

4. The authority citation for 50 CFR part 635 continues to read as follows:

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

5. In § 635.2, the definitions of "First receiver," "Non-sandbar LCS," and "Shark research permit" are added in alphabetical order to read as follows:

§ 635.2 Definitions.

First receiver means the entity, person, or company that takes, for commercial purposes, immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter.

Non-sandbar LCS means one of the species, or part thereof, listed in paragraph (A) of table 1 in appendix A to this part other than the sandbar shark (Carcharhinus plumbeus).

Shark research permit means a permit issued to a commercial shark vessel in order to catch and land a limited number of sharks to maintain time series for stock assessments and other scientific research purposes. These

permits may be issued only to persons who own a vessel that has been issued either a directed or incidental shark LAP. The permit is specific to that vessel.

6. In § 635.4, paragraphs (a)(5) and (g)(2) are revised to read as follows:

§ 635.4 Permits and fees.

(5) Display upon offloading. Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit, Atlantic tunas, shark, or swordfish permit, and/or the shark research permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

(2) Shark. A first receiver, as defined in 635.2, of Atlantic sharks must possess a valid dealer permit.

7. In § 635.5, paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

(i) Dealers that have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section. All reports must be species-specific and must include all HMS landed, regardless of where harvested or whether the vessel is Federally permitted under § 635.4. As stated in § 635.4 (a)(6), failure to comply with these recordkeeping and reporting requirements could result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any future applications.

(ii) Reports of Atlantic tunas, swordfish, and/or sharks received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, on the first through the 15th of each month, must be received by NMFS not later than the 25th of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish, or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as

specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be received by NMFS for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

* * * * *

(iv) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, the dealer must deliver such report for Atlantic tunas, swordfish, or sharks no later than the prescribed received date for the reporting period prescribed in paragraphs (b)(1)(i) and (ii) of this section.

* * * * *

8. In § 635.21, paragraphs (d)(1)(i), (d)(1)(ii), (d)(3)(ii) are revised and paragraph (d)(1)(iii) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(1) * * *

(i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;

(ii) The areas designated at § 622.33(a)(1) through (3) of this title, year-round; and

(iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) Snowy Grouper Wreck off North Carolina in the area that is bound by the following coordinates: The northwest corner at 33° 25'N. lat., 77° 4.75'W. long.; northeast corner at 33° 34.75'N. lat., 76°51.3'W. long.; southwest corner at 33° 15.75'N. lat., 77° W. long.; and the southeast corner at 33°25.5'N. lat., 76°46.5'W. long..

(B) Northern South Carolina Marine Protected Area (MPA) in the area bounded by the following coordinates: The northwest corner at 32° 53.5'N. lat., 78° 16.75'W. long.; the northeast corner at 32° 53.5'N. lat., 78° 4.75'W. long.; the southwest corner at 32°48.5'N. lat., 78°16.75'W. long.; and the southeast corner at 32°48.5'N. lat., 78°4.75'W. long..

(C) Edisto MPA in the area bounded by the following coordinates: The northwest corner at 32°24'N. lat., 79°6'W. long.; the northeast corner at 32°24'N. lat., 78°54'W. long.; the southwest corner at 32°18.5'N. lat., 79°6'W. long.; and the southeast corner at 32°18.5'N. lat., 78°54'W. long..

(D) Georgia MPA (Tilefish MPA) in the area bounded by the following coordinates: The northwest corner at 31°43'N. lat., 79°31'W. long.; the northeast corner at 31° 43'N. lat., 79°21'W. long.; the southwest corner at 31°34'N. lat., 79°39'W. long.; and the southeast corner at 31°34'N. lat., 79°29'W. long..

(E) North Florida MPA in the area bounded by the following coordinates: The northwest corner at 30°29'N. lat., 80°14'W. long.; the northeast corner at 30°29'N. lat., 80°2'W. long.; the southwest corner at 30°19'N. lat., 80°14'W. long.; and the southeast corner at 30°19'N. lat., 80°2'W. long.

(F) St. Lucie Hump MPA in the area bounded by the following coordinates: The northwest corner at 27°8'N. lat., 80° W. long.; the northeast corner at 27°8'N. lat., 79°58'W. long.; the southwest corner at 27°4'N. lat., 80° W. long.; and the southeast corner at 27° 4'N. lat., 79°58'W. long.

(G) East Hump/Un-named Hump MPA in the area bounded by the following coordinates: The northwest corner at 24°36.5'N. lat., 80°45.5'W. long.; the northeast corner at 24°32'N. lat., 80°36'W. long.; the southwest corner at 24°32.5'N. lat., 80°48'W. long.; and the southeast corner at 24°27.5'N. lat., 80° 38.5'W. long.

(H) Charleston Deep Artificial Reef MPA off the Coast of South Carolina in the area identified by the following boundaries: The northwest corner at 32°08.58'N. lat., 79°07.82'W. long.; the northeast corner at 32° 06.06'N. lat., 79°04.99'W. long.; the southwest corner at 32°04.07'N. lat., 79°12.11'W. long.; and the southeast corner at 32°01.47'N. lat., 79 °09.28'W. long.

* * * * *

(3) * * *

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in Category (D) of Table 1 of Appendix A of this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags. All smalltooth sawfish must be released in a manner that will ensure

maximum probability of survival, but without removing the fish from the water.

* * * * *

9. In § 635.22, paragraph (c) is revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) *Sharks.* One of the following sharks may be retained per vessel per trip, subject to the size limits described in § 635.20(e): lemon (*Negaprion brevirostris*), nurse (*Ginglymostoma cirratum*), scalloped hammerhead (*Sphyrna lewini*), smooth hammerhead (*S. zygena*), great hammerhead (*S. mokarran*), tiger (*Galeocerdo cuvieri*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*C. longimanus*), and shortfin mako (*Isurus oxyrinchus*). In addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained regardless of where harvested. The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued an Atlantic incidental or directed shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) may be applied to persons aboard a vessel issued an Atlantic incidental or directed shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

10. In § 635.24, introductory paragraph is removed and paragraph (a) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

(a) *Sharks.* (1) A person who owns or operates a vessel issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (4) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a

valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) A person who owns or operates a vessel that has been issued a directed or incidental LAP for sharks, or that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 22 non-sandbar LCS per vessel per trip. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks may retain, possess, or land no more than 16 SCS and pelagic sharks, combined per trip. A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land SCS and pelagic sharks if the fishery is open per § 635.27 and § 635.28.

(4) A person who owns or operates a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

* * * * *

11. In § 635.27, paragraph (b) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks taken and landed from state waters, even by fishermen without Federal shark permits, are counted against the fishery quota. Commercial quotas are specified for each of the management groups of sandbar sharks, non-sandbar LCS, SCS, pelagic sharks, and blue sharks. Any sharks landed as unclassified will be considered a sandbar shark, for the purposes of quota monitoring, and will be counted against that quota. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* The fishing season for sandbar sharks, non-sandbar LCS, small coastal sharks, and pelagic sharks will begin on January 1 and end on December 31.

(ii) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(iii) *Non-sandbar LCS.* The base annual commercial quota for non-sandbar LCS is 541.2 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(iv) *Small coastal sharks.* The base annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(v) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks and 488 mt dw for pelagic sharks other than blue sharks, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(vi) *Annual adjustments.* NMFS will publish in the **Federal Register** any annual adjustments to the base annual commercial quotas. The base annual quota will not be available and the fishery will not open until such adjustments are published in the **Federal Register**.

(A) *Overharvests.* If an annual quota for sandbar sharks, non-sandbar LCS, small coastal, and pelagic sharks is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest from the following fishing season. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season.

(B) *Underharvests.* If an annual quota for sandbar sharks, non-sandbar LCS, SCS, pelagic sharks, or blue sharks is not exceeded, NMFS will adjust the annual quota depending on the status of the stock. If the stock (e.g., sandbar shark, non-sandbar LCS, SCS, pelagic shark, or blue shark) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest and the following fishing year's quota will be equal to the base annual quota. If the stock is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will increase the following year's base annual quota by an equivalent amount of the underharvest up to 50 percent above the base annual quota.

(2) *Public display and research quota.* The base annual quota for persons who collect sharks from the non-sandbar LCS, SCS, pelagic shark, blue shark, or prohibited species under a display permit or EFP is 57.2 mt whole weight (41.2 mt dw). The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt whole weight (1 mt dw) and under an EFP is 1.4 mt whole weight (1 mt dw). No

persons may collect dusky sharks under a display permit or EFP. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against these quotas.

* * * * *

12. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks*—(1) If quota is available, the commercial fisheries for sandbar shark, non-sandbar LCS, SCS, pelagic sharks, and blue sharks will remain open as specified at § 635.27(b)(1).

(2) When NMFS calculates that the fishing season landings for SCS, pelagic sharks, or blue sharks has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group that will be effective no fewer than 5 days from date of filing. When NMFS calculates that the fishing season landings for either non-sandbar LCS or sandbar sharks has been reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for both the non-sandbar LCS and sandbar shark species groups that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces via a notice in the **Federal Register** that additional quota is available, the fishery for the shark species group is closed, even across fishing years.

(3) When the fishery for a shark species group is closed, a fishing vessel, issued an Atlantic Shark LAP pursuant to § 635.4, may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been

issued a Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

* * * * *

13. In § 635.30, paragraph (c) is revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) *Shark*—(1) Notwithstanding the regulations issued at part 600, subpart N of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark LAP must maintain the shark fins and tail on the shark carcass until the shark has been offloaded from the vessel. While sharks are on board and when being offloaded, persons issued a Federal Atlantic commercial shark LAP are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark LAP must maintain the shark intact through offloading except that the shark may be eviscerated and the head may be removed from the carcass. All fins, including the tail, must remain on the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains attached to the carcass via a small amount of uncut skin. The fins and tails may be completely removed from the carcass once the shark has been removed from the vessel.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark LAP and who lands shark in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart N, of this chapter. Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins attached. The shark may be bled.

* * * * *

14. In § 635.31, paragraph (c)(4) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a

vessel who has a valid commercial permit for shark issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group has not been closed, as specified in § 635.28(b).

* * * * *

15. In § 635.32, paragraphs (a)(2), (f), and (g) are revised and paragraph (h) is added to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(a) * * *

(2) Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

* * * * *

(f) *Shark research permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24 (a)(2) through (4). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel, owner, and operator(s) specified and cannot be transferred to

another vessel, owner, or operator(s). A shark research permit is only valid for the retention limits, time, area, and gear specified on the permit and only when a NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessment and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) Persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend additional workshops (e.g., shark identification workshops, captain's workshops, etc.) as deemed necessary by NMFS to ensure the quality of the data collected.

(5) Issuance of a shark research permit does not guarantee that the holder will be issued a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip and may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24 (a)(2) through (4).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those permitted by the permit, and does not confer any right of compensation to the holder.

(g) *Applications and renewals.* (1) Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register**, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, SRP, LOA, public display, chartering, or shark research permit activities. Applications for EFPs, SRPs, public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent

reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually in the Federal Register a notice describing, for the following fishing year, the expected research objectives, number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the Federal Register notice and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, the number of expected trips to collect sharks, when and where the trips are expected to occur, vessel(s) and gear to be used. NMFS will review all complete applications and rank vessels according to the ability of the vessel to: meet the research objectives; fish in the regions and seasons required; carry a NMFS-approved observer; and meet other criteria as published in the annual notice. Vessels that do not have recent and/or an excessive number of fishery regulation violations, as determined by the Office of Law Enforcement, will be ranked higher than vessels that do have recent and/or excessive number of fishery regulation violations. Until the number of vessels required for the research are filled, vessels that rank highest in meeting the specific criteria will be issued shark research permits. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, the next highest ranked vessel will be issued a shark research permit.

(h) Terms and conditions. (1) For EFPs, SRPs, and public display permits: Written reports on fishing activities and disposition released under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be

submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, SRPs, Display, and Chartering Permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4 (a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, SRP, display permit, chartering permit, or shark research permit being revoked, suspended, or modified, and in the denial of any future applications.

16. In § 635.69, the introductory language to paragraph (a) is revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) Applicability. To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit under the following circumstances:

* * * * *

17. In § 635.71, paragraphs (a)(2), (a)(4), (a)(6), (d)(3), (d)(4), (d)(6) through (8), and (d)(10) are revised and paragraphs (d)(15) and (d)(16) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, SRP, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

* * * * *

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes

exclusively within the waters under the jurisdiction of any state.

* * * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit, scientific research permit, display permit, chartering permit, or shark research permit issued under § 635.32.

* * * * *

(d) * * *

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b).

* * * * *

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c) and § 600.1204(e) and (l) of this chapter.

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c).

* * * * *

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a), and 635.27(b), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d).

* * * * *

(15) Sell or transfer or attempt to sell or transfer a sandbar shark or sharks or part of a sandbar shark or sharks in excess of the retention limits specified in § 635.24(a).

(16) Purchase, receive, or transfer or attempt to purchase, receive, or transfer a sandbar shark or sharks or part of a sandbar shark or sharks landed in excess of the retention limits specified in § 635.24(a).

* * * * *

18. In Table 1 of Appendix A to part 635, remove entry for "Porbeagle, Lamna nasus" under heading C and add the entry "Porbeagle, Lamna nasus" under heading D in alphabetical order.

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