

and changing gear operation and deployment requirements. Regulatory changes of this nature tend to be reactive and result when current management measures need to be modified. Generally, the public is involved at the proposed rule stage for these types of regulatory changes.

Annual specifications are another type of rulemaking action that NMFS uses to adjust the annual commercial shark quotas that are established in the FMP. The annual specifications take about 6 months to complete. Annual specifications adjust the quotas based on over- and underharvests in the previous year(s) and establish season opening dates for the Atlantic shark fishery. A recent example of an annual specification is the final rule that established quotas and season opening dates for the 2010 Atlantic shark commercial fishing season based on over- and underharvests in 2009 (75 FR 250, January 5, 2010). Depending on the outcome of this ANPR process, NMFS will consider rules or FMP amendments as appropriate.

#### IV. Summary

This ANPR explains the Atlantic shark management history while also describing ongoing issues within the shark fishery, as well as many approaches to future management that NMFS could implement in order to address these issues in the future. Some of the ideas discussed are specific changes to the current quota and permit structures, which could potentially be implemented in the short-term through a regulatory action in one to two years. The other changes discussed include implementing a catch share or sector program for the Atlantic shark fishery, which could be implemented by amending the 2006 Consolidated HMS FMP. It is NMFS's goal to move forward with proactive management for the Atlantic shark fishery and implement a viable and flexible solution that will achieve specific shark fishery goals and objectives for the future of the Atlantic shark fishery.

#### V. Submission of Public Comments

The comment period for all topics discussed in this ANPR closes on January 14, 2011. *Please see* the **ADDRESSES** section of this ANPR for additional information regarding the submission of written comments.

NMFS requests comments on the potential adjustment of regulations or an FMP amendment governing the Atlantic shark quota and permit structure as well as comments on the potential consideration of catch shares and sectors for the Atlantic shark fishery.

The preceding sections provide background information regarding these topics and ideas for potential changes. The public is encouraged to submit comments related to the specific ideas and questions asked in each of the preceding sections. NMFS is also seeking additional ideas/solutions for changes to the Atlantic shark fishery.

All written comments received by the due date will be considered in drafting proposed changes to the Atlantic shark regulations. In developing any proposed regulations, NMFS must consider and analyze ecological, social, and economic impacts. Therefore, NMFS encourages comments that would contribute to the required analyses, and respond to the questions presented in this ANPR.

#### VI. Public Meetings

NMFS will hold six public meetings to receive comments from fishery participants and other members of the public regarding this ANPR. These meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Karyl Brewster-Geisz or LeAnn Southward Hogan at 301-713-2347 (phone) or 301-713-19197 (fax), at least 7 days prior to the meeting. For individuals unable to attend a meeting, NMFS also solicits written comments on the ANPR (*see* **DATES** and **ADDRESSES**).

The meeting dates, locations, and times follow. All meetings will begin with an opportunity for individuals to view information on the issues raised in this ANPR and ask questions followed by a presentation and opportunity for public comment.

1. *September 21–23, 2010:* HMS Advisory Panel Meeting, Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

2. *October 21, 2010:* Ocean County Library, Stafford Branch, 129 North Main Street, Manahawkin, New Jersey 08050, 6–9 p.m.

3. *October 26, 2010:* Manteo Town Hall, 407 Budleigh Street, Manteo, North Carolina 27954, 6–9 p.m.

4. *November 8, 2010:* Belle Chasse Auditorium, 8398 Highway 23, Belle Chasse, Louisiana 70037, 6–9 p.m.

5. *December 15, 2010:* West St. Petersburg Community Library, 6605 5th Avenue North, St. Petersburg, FL 33710, 6–9 p.m.

6. *December 16, 2010:* Fort Pierce Library, 101 Melody Lane, Fort Pierce, FL 34950, 5–8 p.m.

#### Classification

This action is not significant pursuant to Executive Order 12866.

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

Dated: September 14, 2010.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 100622276-0307-02]

RIN 0648-AY98

#### Atlantic Highly Migratory Species; 2011 Commercial Fishing Season and Adaptive Management Measures for the Atlantic Shark Fishery

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

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

**SUMMARY:** This proposed rule would establish opening dates and adjust quotas for the 2011 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Quotas will be adjusted based on the framework established in Amendment 2 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan, which requires adjustments for any over- and/or underharvests experienced during the 2009 and 2010 Atlantic commercial shark fishing seasons. In addition to establishing opening dates and adjusting annual quotas, this proposed rule analyzes adaptive management measures, such as various opening dates for the fishing season as well as allowing adjustments through inseason actions in the allowable number of fish that can be taken via trip limits, to provide flexibility in management in furtherance of equitable fishing opportunities to the extent practicable for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the Atlantic and Gulf of Mexico.

**DATES:** Written comments will be accepted until October 20, 2010. NMFS will hold four public hearings on this proposed rule on September 22, 2010, in Silver Spring, MD; September 27, 2010,

in Tequesta, FL; October 4, 2010, in Belle Chasse, LA; and a meeting on October 6, 2010, via conference call to receive comments from fishery participants and other members of the public regarding this proposed rule.

**ADDRESSES:** The public hearings will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910; Tequesta Branch Library, 461 Old Dixie Highway North, Tequesta, FL 33469; Belle Chasse Auditorium, 8398 Highway 23, Belle Chasse, LA, 70037; and via conference call at 1-800-857-3903; passcode: 2381782.

You may submit comments, identified by 0648-AY98, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

- **Fax:** 301-713-1917, Attn: Karyl Brewster-Geisz or Guý DuBeck, or Jackie Wilson at 404-806-9188.

- **Mail:** 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on the Proposed Rule To Establish Quotas and Adaptive Management Measures for the 2011 Atlantic Shark Commercial Fishing Season."

- **Instructions:** No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and generally will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Guý DuBeck by phone: 301-713-2347 or fax: 301-713-1917, or Jackie Wilson by phone: 240-338-3936 or fax: 404-806-9188.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS FMP and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635.

On June 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658, July 15, 2008) implementing Amendment 2 to the 2006 Consolidated HMS FMP (Amendment 2). That final rule established the annual quotas for sandbar sharks, non-sandbar LCS, and pelagic sharks, and also reduced the annual base quotas for non-sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. The final rule also established a shark research fishery that allows for the commercial harvest of sandbar sharks; sandbar harvest is prohibited outside of the shark research fishery. In addition, that final rule established accounting measures for under- and overharvests and redefined the shark fishery regions.

On June 1, 2010, NMFS published a final rule (75 FR 30484) implementing Amendment 3 to the 2006 Consolidated HMS FMP. This rule established, among other things, new base quotas for blacknose shark and non-blacknose SCS fisheries.

Under Amendments 2 and 3 to the 2006 Consolidated HMS FMP, the Atlantic shark annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. NMFS has split the non-sandbar LCS quota outside the research fishery between two regions, the Atlantic and Gulf of Mexico. The boundary delineating these two regions is a line beginning on the east coast of Florida, at the mainland, at 25°20.4' N. lat. and proceeding due east. Any water and land to the south and west of that boundary, including the Caribbean, is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

As described below, in addition to establishing the adjusted annual quotas, NMFS is also proposing several changes to the regulations regarding flexibility in season opening dates and retention limits. The following summarizes the current history of the program.

In Amendment 2, NMFS decreased the number of fishing seasons from three seasons to one because of the reduced quotas that were implemented to rebuild overfished shark stocks, prevent overfishing, and meet the other objectives of Amendment 2. NMFS also reduced the commercial retention limits for non-sandbar LCS and prohibited the retention of sandbar sharks, except in a small shark research fishery.

Historically, sandbar sharks accounted for majority of the sharks caught in the

directed LCS fishery. As such, as described in Amendment 2, NMFS felt that prohibiting sandbar sharks in combination with low retention limits for non-sandbar LCS would reduce the LCS fishery to incidental levels. NMFS expected this incidental LCS fishery would last year-round and provide the mid-Atlantic fishery participants the opportunity to catch part of the non-sandbar LCS quota during the summer months when LCS migrate northward and for shark fishermen, who hold directed and incidental commercial shark permits, to be able to land LCS incidentally year-round as they targeted other species in other fisheries. However, this expectation did not happen in the 2009 or 2010 non-sandbar LCS fisheries as shark fishermen continued to direct on non-sandbar LCS, despite the low retention limits.

In 2009, all the Atlantic commercial shark fisheries opened on January 23, 2009 (73 FR 79005, December 24, 2008). On June 6, 2009, the non-sandbar LCS fishery closed in the Gulf of Mexico region (74 FR 26803, June 4, 2009). In the Gulf of Mexico region, fishery participants had limited opportunities to harvest the 2009 Gulf of Mexico non-sandbar LCS quota due to the June 6, 2009 closure of the non-sandbar LCS fishery. State fishermen in Louisiana were further limited due to a state water closure from April 1-June 30.

In 2009, the non-sandbar LCS fishery in the Atlantic region closed on July 1, 2009 (74 FR 30479, June 26, 2009). Due to this closure, and also because of the mid-Atlantic bottom longline (BLL) closure in federal waters from January 1-July 31; the state water closure in Virginia, Maryland, Delaware, and New Jersey from May 15-July 15; and the limited availability of non-sandbar LCS in northern Atlantic waters at the beginning of the year due to migratory patterns, the fishery participants from North Carolina and northward did not have a non-sandbar LCS fishing season in 2009.

In 2009, NMFS received requests to consider delaying the 2010 non-sandbar LCS fishing season until July in the Atlantic region to allow more shark fishing opportunities in the Mid-Atlantic. NMFS delayed the opening of the 2010 non-sandbar LCS in the Atlantic region until July 15, 2010, in order to allow for more equitably distributed shark fishing opportunities as intended by Amendment 2. It is too early to determine if the delay in the Atlantic region until July 15 provided more broadly distributed opportunities to all fishermen in that region.

For the Gulf of Mexico region in 2010, the season opened on February 4, 2010

(75 FR 250), and then closed six weeks later on March 17, 2010 (75 FR 12700), when the quota was taken. Because of the closure and inclement weather in the area, many fishery participants in the region did not have opportunities to participate in the 2010 Gulf of Mexico non-sandbar LCS fishery.

Based on these experiences, NMFS is considering measures in a draft environmental assessment that would provide NMFS annual flexibility to extend all of the shark fishery seasons to provide participants from all areas expanded opportunities to harvest a portion of the available non-sandbar LCS shark quota in the Atlantic and Gulf of Mexico regions. These measures would consider criteria that could be used to delay the opening of the fishing season through the annual specifications process as well as to adjust trip limits via inseason actions to provide expanded access to the resource and to address ecological concerns. This flexibility would allow NMFS to consider unanticipated events including large scale issues (e.g., BP/Deepwater Horizon oil spill) or small scale issues (e.g., inclement weather or slight shifts in migratory patterns due to colder or warmer water) in order to provide more equitable fishing opportunities across all regions to the extent practicable.

**Accounting for Under- and Overharvests**

Consistent with § 635.27(b)(1)(i)(A), if the available non-sandbar LCS quota in a particular region or in the research fishery is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the quota in that region or in the research fishery for the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the available quota for sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, and

pelagic sharks (other than porbeagle or blue sharks) is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season quota or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. 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 year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

Consistent with § 635.27(b)(1)(i)(B), if an annual quota for sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock/complex (e.g., sandbar sharks, porbeagle sharks, non-sandbar LCS, blue sharks) or specific species within a quota group (e.g., blacktip sharks within the non-sandbar LCS complex) 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 (or the adjusted base quota for sandbar sharks and non-sandbar LCS until December 31, 2012).

Currently, blacknose sharks and sandbar sharks have been determined to be overfished with overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks (other than

porbeagle or blue sharks) have an unknown stock status. Finally, blacktip sharks in the Gulf of Mexico region were determined to not be overfished with no overfishing occurring. However, blacktip sharks are included in the non-sandbar LCS complex for the Atlantic and Gulf of Mexico regions, the status of which has been determined to be unknown. As a result, no underharvests from the 2010 Atlantic commercial shark fishing season would be applied to the 2011 annual quotas or adjusted base quotas of these complexes.

Thus, the 2011 proposed quotas would be equal to the base annual quota for blacknose sharks, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) or the adjusted base annual quota for sandbar sharks and non-sandbar LCS, minus any potential overharvests that occurred in the 2009 and 2010 fishing seasons.

The non-blacknose SCS complex has been determined to not be overfished and has no overfishing occurring; therefore, any underharvest from the 2010 Atlantic commercial shark fishing season would be applied to the 2011 annual quotas or adjusted base quotas.

*2011 Proposed Quotas*

This rule proposes minor changes to the overall adjusted base and annual commercial quotas due to overharvests that occurred in 2009 and 2010. The proposed 2011 quotas by species and species group are summarized in Table 1.

Based on dealer reports received as of July 31, 2010, the non-sandbar LCS quota in the Gulf of Mexico region was exceeded during the 2010 Atlantic commercial shark fishing season. In the final rule, NMFS will adjust the quotas based on dealer reports received as of October 31, 2010. Thus, all of the 2011 proposed quotas for the respective shark complexes/species are subject to change if any overharvests occur before the final rule for this action. All dealer reports that are received by NMFS after October 31, 2010, will be used to adjust the 2012 quotas, as appropriate.

**TABLE 1—2011 PROPOSED QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES**  
[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise]

Species group	Region	2010 annual quota (A)	Preliminary 2010 landings <sup>1</sup> (B)	Overharvest (C)	2011 Base annual quota <sup>2</sup> (D)	2011 Proposed quota (D-C)	Season opening dates
Non-Sandbar Large Coastal Sharks.	Gulf of Mexico .....	390.5 (860,896 lb dw).	407.9 (899,896 lb dw).	17.4	390.5 (860,896 lb dw).	373.1 (822,536 lb dw).	On or about January 1, 2011. July 15, 2011.
	Atlantic .....	169.7 (374,121 lb dw).	22.2 (49,026 lb dw)	.....	187.8 (414,024 lb dw).	190.4 <sup>3</sup> (419,756 lb dw).	
Non-Sandbar LCS Research Quota.	No regional quotas	37.5 (82,673 lb dw)	25.2 (55,487 lb dw)	.....	37.5 (82,673 lb dw)	37.5 (82,673 lb dw).	

TABLE 1—2011 PROPOSED QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES—Continued  
 [All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise]

Species group	Region	2010 annual quota (A)	Preliminary 2010 landings <sup>1</sup> (B)	Overharvest (C)	2011 Base annual quota <sup>2</sup> (D)	2011 Proposed quota (D–C)	Season opening dates
Sandbar Research Quota.	No regional quotas	87.9 (193,784 lb dw).	42.6 (93,844 lb dw)	.....	87.9 (193,784 lb dw).	87.9 (193,784 lb dw).	On or about January 1, 2011.
Non-Blacknose Small Coastal Sharks.	No regional quotas	221.6 (488,539 lb dw).	40.0 (88,187 lb dw)	.....	221.6 (488,539 lb dw).	221.6 (488,539 lb dw).	
Blacknose Sharks	No regional quotas	19.9 (43,872 lb dw)	6.8 (15,082 lb dw)	.....	19.9 (43,872 lb dw)	19.9 (43,872 lb dw).	
Blue Sharks .....	No regional quotas	273 (601,856 lb dw).	3.4 (7,388 lb dw) ...	.....	273 (601,856 lb dw).	273 (601,856 lb dw).	
Porbeagle Sharks	No regional quotas	1.5 (3,307 lb dw) ...	1.3 (2,824 lb dw) ...	.....	1.7 (3,748 lb dw) ...	1.7 (3,748 lb dw).	
Pelagic Sharks Other Than Porbeagle or Blue.	No regional quotas	488 (1,075,856 lb dw).	92.9 (204,750 lb dw).	.....	488 (1,075,856 lb dw).	488 (1,075,856 lb dw).	

<sup>1</sup> Landings are from January 1, 2010, until July 31, 2010, and are subject to change.

<sup>2</sup> 2010 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).

<sup>3</sup> NMFS intends to adjust the 2011 quota for Atlantic non-sandbar LCS to account for the 2.6 mt dw that was over estimated in the landings report in 2010 after the final rule establishing the 2010 quota published.

#### 1. Proposed 2011 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

The 2011 proposed commercial quotas within the shark research fishery are 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks. This proposed rule would not change any of the overall adjusted base commercial quotas.

Within the shark research fishery, as of July 31, 2010, preliminary reported landings of non-sandbar LCS were at 67.1 percent (25.2 mt dw), and sandbar shark reported landings were at 48.4 percent (42.6 mt dw). Reported landings have not exceeded the 2010 quota to date. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(vii), NMFS is not proposing to reduce 2011 quotas in the shark research fishery based on any overharvests.

Under § 635.27(b)(1)(i)(A), because individual species, complexes, or species within a complex have been determined to be either overfished, have overfishing occurring, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2011 quotas. Therefore, NMFS proposes 2011 quotas for non-sandbar LCS and sandbar sharks within the shark research fishery would be 37.5 mt dw (82,673 lb dw) and 87.9 mt dw (193,784 lb dw), respectively.

#### 2. Proposed 2011 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

The 2011 proposed quota for non-sandbar LCS in the Gulf of Mexico

region is 373.1 mt dw (822,536 lb dw). As of July 31, 2010, preliminary reported landings were at 104.5 percent (407.9 mt dw) for non-sandbar LCS in the Gulf of Mexico region. These reported landings exceed the 2010 quota by 17.4 mt dw. As such, NMFS's proposal deducts the overharvest from the 2011 annual quota. Therefore, the 2011 proposed quota for non-sandbar LCS in the Gulf of Mexico region is 373.1 mt dw (822,536 lb dw) (390.5 mt dw annual base quota—17.4 mt dw of 2010 overage = 373.1 mt dw 2011 adjusted annual quota).

#### 3. Proposed 2011 Quotas for the Non-Sandbar LCS in the Atlantic Region

The 2011 proposed quota for non-sandbar LCS in the Atlantic region is 190.4 mt dw (419,756 lb dw). As of July 31, 2010, preliminary reported landings were at 13.1 percent (22.2 mt dw) for non-sandbar LCS in the Atlantic region as the commercial season opened on July 15, 2010. In the final rule establishing the 2010 quotas (75 FR 250, January 5, 2010), NMFS accounted for an overharvest of non-sandbar LCS of 18.1 mt dw (39,903 lb dw) using data that was reported as of October 31, 2009. Between that date and December 31, 2009, the reported landings dropped by 2.6 mt dw. This decline is due to normal quality control procedures that occur when updated data are supplied. As such, in accordance with § 635.27(b)(1)(i), the amount that was deducted from the 2010 annual quota, based on preliminary numbers that were later corrected, would be added to the proposed 2011 non-sandbar LCS quota in the Atlantic region. Thus, the 2011 proposed commercial non-sandbar LCS

quota would be 190.4 mt dw (419,756 lb dw) (187.8 mt dw annual base quota + 2.6 mt dw 2009 over estimated landings = 190.4 mt dw 2011 adjusted annual quota).

#### 4. Proposed 2011 Quotas for SCS and Pelagic Sharks

The 2011 proposed annual commercial quotas for non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 221.6 mt dw (488,539 lb dw), 19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

As of July 31, 2010, preliminary reported landings of non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 18 percent (40 mt dw), 34.4 percent (6.8 mt dw), 1.2 percent (3.4 mt dw), 85 percent (1.3 mt dw), and 19 percent (92.9 mt dw), respectively. These landings are within the available quotas at this time. As described above, while NMFS may adjust quotas for underharvests depending on stock status, NMFS will always adjust quotas for overharvests.

Non-blacknose SCS have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. As such, any underharvests for the non-blacknose SCS would be applied to the 2011 quotas.

All the other SCS or pelagic species are considered overfished, to have overfishing occurring, or to have an unknown status. Therefore, the 2011 proposed quotas would be the base annual quotas for non-blacknose SCS, blacknose sharks, blue sharks, porbeagle

sharks, and pelagic sharks (other than blue and porbeagle sharks) (221.6 mt dw (488,539 lb dw), 19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively).

#### *Proposed Adaptive Management Measures*

Under the current regulations, the Atlantic shark commercial fishing seasons for each species or species complex is anticipated to open on or about January 1 of each year, and continue year-round. In recent years, the quota for some of the shark species groups and regions has lasted only a short period of time instead lasting year-round as expected under Amendment 2. For example, in the Atlantic region in 2009, the non-sandbar LCS quota lasted for approximately six months, and in the Gulf of Mexico in 2010, the non-sandbar LCS quota was taken within six weeks.

One approach to the proposed adaptive management measures in the environmental assessment would be to maintain the status quo approach to establishing trip limits (33 non-sandbar LCS/trip) as well as consider alternatives to allow inseason flexibility regarding trip limits in order to extend fishing opportunities year-round. This approach would either maintain the current 33 non-sandbar LCS trip limits (sub-alternative 1A) or consider reductions in the trip limits to help ensure the fishing season extends throughout the year (sub-alternatives 1B and 1C).

A second approach would be to allow flexibility in the opening of the season for Atlantic shark fisheries through the annual specifications process and inseason actions to adjust shark trip limits in either region to provide expanded opportunities for constituents across the fishery, as is the intent of Amendment 2. In addition, having such flexibility would help NMFS respond throughout the management region to any future unanticipated large and small scale events.

This second approach was also analyzed in Amendment 2; however, as described in Amendment 2, NMFS did not select this approach at that time because NMFS felt that fishermen would fish for non-sandbar LCS in an incidental manner. As described earlier, after Amendment 2, fishermen continued to direct on non-sandbar LCS. Neither approach would alter the objectives in the 2006 Consolidated HMS FMP or its Amendments. Rather, these two approaches look at different ways of maintaining the shark fishery given rebuilding plans and other

management measures, such as time/area closures, that were designed to rebuild overfished stocks, prevent overfishing, and provide opportunities to fish for some shark species, as appropriate. Neither approach would change the overall quota, the rebuilding plan, time/area closures, or other management measures. Only the opening dates and retention limits would change under these approaches. Thus, the main differences between the approaches are how fast and at what time of year the quota will be taken. In considering these approaches, NMFS analyzed several alternatives in the environmental assessment.

Sub-alternative 1A, the no action alternative, would maintain the existing regulations for the current trip limits established in the 2006 Consolidated HMS FMP and its amendments. The Atlantic shark commercial fishing season for each species or species complex would be anticipated to open on or about January 1 of each year and continue until the fishery is closed. Additionally, over- or underharvests in a given fishing year would be accounted for in the following year depending on the status of the species.

Sub-alternative 1B would allow NMFS to modify the non-sandbar LCS trip limit through an inseason action, if needed, to extend the fishing season in the Gulf of Mexico region if the available quota is being harvested at a rate that would not ensure a reasonable season length. The trip limit could be reduced from the current trip limit established under Amendment 2 to the 2006 Consolidated HMS FMP down to zero non-sandbar LCS per trip based on the amount of remaining quota and the time left in a given fishing season. NMFS' decision to reduce the trip limit, and to what extent it would be reduced, would be based on the criteria discussed under sub-alternative 2B.

Sub-alternative 1C would modify the non-sandbar LCS trip limit through an inseason action, as needed, to extend the fishing season in the Atlantic region if the available quota is being harvested at a rate that would not allow for a reasonable season length. Similar to sub-alternative 1B, the trip limit could be reduced and decisions to reduce the trip limit would be based on the criteria discussed under sub-alternative 2B.

Alternative 2, the preferred alternative, considers multiple sub-alternatives that would revisit the current shark management structure. These proposed management measures would allow flexibility in setting the opening date of the Atlantic shark fisheries through the annual specifications process and allow for

more equitable fishing opportunities for constituents across all areas. Another proposed management measure would provide flexibility by allowing inseason actions to make adjustments to the non-sandbar LCS trip limits in either region to provide equitable opportunities for constituents across the fishery, as is the intent of Amendment 2.

Sub-alternative 2A, a preferred alternative in the environmental assessment, would establish a process and criteria for selecting the opening dates of the shark fisheries through the annual specifications process in the Atlantic and Gulf of Mexico regions. This alternative presumes that the quotas for some fisheries, such as the non-sandbar LCS fisheries, would not last the entire fishing year given that the fishing behavior has changed since the implementation of Amendment 2. This alternative would provide additional flexibility to ensure the fisheries open at times beneficial for fishermen while also considering the ecological needs of the different species. Consistent with current practice, NMFS would establish the yearly shark quotas and announce the opening of the fishing season through annual rulemaking with notice and public comment at the beginning of each fishing season. Under this alternative, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

1. The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

2. Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years;

3. Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years;

4. Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information;

5. Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas;

6. Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or

7. Effects of a delayed opening with regard to fishing opportunities in other fisheries.

Sub-alternative 2B, a preferred alternative in the environmental assessment, would provide NMFS the ability to adjust the trip limits via inseason actions based on certain criteria. This alternative presumes that the quotas for some fisheries, such as the non-sandbar LCS fisheries, would not last the entire fishing year given that the fishing behavior has changed since the implementation of Amendment 2 and builds in flexibility to try to extend the availability of the quota. The goal of the alternative is to lengthen the season to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species. The criteria NMFS would consider in making adjustments via inseason actions to trip limits in either the Atlantic or Gulf of Mexico regions would be the following:

1. The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports;
2. The catch rates of the relevant shark species/complexes, to date, based on dealer reports;
3. Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;
4. Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;
5. Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or,
6. Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

For the 2011 Atlantic commercial shark fishing season, NMFS does not propose to change the trip limit when the season opens. Currently, the trip limits are 33 non-sandbar LCS per trip for shark directed permit holders and 3 non-sandbar LCS per trip for shark incidental permit holders. Under sub-alternative 2B, NMFS could later modify the trip limits through an inseason action with five days' advance notice from filing of such a change.

#### *Proposed Fishing Season Notification for the 2011 Atlantic Commercial Shark Fishing Season*

Based on the proposed criteria and processes described above, NMFS proposes that the 2011 Atlantic

commercial shark fishing season for the shark research, non-sandbar LCS in the Gulf of Mexico region, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, would open on the effective date of the final rule for this action. NMFS proposes to open the Atlantic non-sandbar LCS fishery on July 15, 2011. The delay in the Atlantic non-sandbar LCS fishery would provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species. Without delaying the opening date, based on catch rates from 2009, the south Atlantic fishermen would likely catch the regional quota before the sharks could migrate to the north Atlantic area.

All of the shark fisheries would remain open until December 31, 2011, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) have reached, or are projected to reach, 80 percent of the available quota. At that time, consistent with § 635.28(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region 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 and, for non-sandbar LCS, region would remain closed, even across fishing years, consistent with § 635.28(b)(2).

#### *Request for Comments*

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by October 20, 2010 (see **DATES** and **ADDRESSES**). NMFS will hold four public hearings for this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guý DuBeck at (301) 713-2347 or Jackie Wilson at (240) 338-3936 at least 7 days prior to the hearing date. 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**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment for this rule that discusses the impact on the environment as a result of this rule. In this proposed action, NMFS is considering adding flexibility to shark management measures by analyzing criteria that would allow for delays to the start of the different shark species/complex fishing seasons each year as well as allow for inseason adjustments to the shark trip limits, as appropriate, to extend the fishing season, as necessary. These measures are meant to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

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 analysis follows. A copy of this analysis

is 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 Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to adjust the 2011 proposed quotas for non-sandbar LCS, sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) based on overharvests from the previous fishing year. An additional purpose is to provide flexibility in the regulations to allow for a delay in the opening of the fishing season, and allow inseason adjustments in the trip limits to slow the fishery down during the season, as necessary. This flexibility is intended to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) Adjust the annual quotas for non-sandbar LCS in the Atlantic region due to overestimations in the final rule in 2010 and non-sandbar LCS in the Gulf of Mexico region due to minor overharvests in 2010; (2) create new criteria and a process for selecting the opening dates of the shark fisheries in the Atlantic and Gulf of Mexico regions; and (3) adjust the trip limits inseason for non-sandbar LCS based on certain criteria and processes.

Section 603(b)(3) requires Federal 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 commercial shark fishery is comprised of fishermen who hold a shark directed or incidental limited access permits (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 221 directed commercial shark permit holders, 2782 incidental commercial

shark permit holders, and 105 commercial shark dealers as of November 5, 2009.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). 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 the Environmental Assessment for the proposed action. 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. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the

Magnuson-Stevens Act. As described below, NMFS analyzed two different main alternatives in this proposed rulemaking with 5 sub-alternatives and provides justification for selection of the preferred alternative to achieve the desired objective.

NMFS considered two main alternatives for the shark fishery in the short term. One approach would be to maintain the status quo approach to establishing trip limits (33 non-sandbar LCS/trip) as well as consider alternatives to allow inseason flexibility regarding trip limits in order to extend fishing opportunities year-round (alternative 1 and its sub-alternatives). The other approach would be to allow flexibility in the opening of the season for Atlantic shark fisheries through the annual specifications process and allow adjustments via inseason actions to shark trip limits in either region to provide expanded opportunities for constituents across the fishery, as is the intent of Amendment 2 (alternative 2 and its sub-alternatives).

Under alternative 1, NMFS considered three sub-alternatives. Sub-alternative 1A, the No Action alternative, would maintain the current vessel trip regulations for non-sandbar LCS. This would result in no additional impacts to small entities. Limited access directed shark permit holders would continue to be able to land up to 33 non-sandbar LCS per trip. On average, between 2008 and 2009, approximately 47 vessels with directed shark permits and 15 vessels with incidental shark permits had non-sandbar LCS landings. The estimated total trip revenue for a maximum trip of 33 sharks is estimated to be \$1,920 in the Gulf of Mexico and \$1,767 in the Atlantic. However, this trip limit as implemented has resulted in shortened fishing seasons in 2009 and 2010 due to regional non-sandbar LCS quotas being filled before the end of the fishing year. Fishermen in some areas, such as the north Atlantic, were not able to harvest a portion of the 2009 non-sandbar LCS quota as intended in Amendment 2 because the quota was harvested before sharks migrated to northern waters in the Atlantic in 2009. As such, sub-alternative 1A is not likely to meet the objective of this proposed rule to provide fishery participants an equal opportunity to the extent practicable to harvest the full shark quotas.

Sub-alternative 1B would establish a new non-sandbar LCS trip limit that would extend the fishing season in the Gulf of Mexico region based on remaining quota and time left in the fishing season. On average between 2008 and 2009, approximately 20

vessels with directed shark permits and 4 vessels with incidental shark permits had non-sandbar LCS landings in the Gulf of Mexico region. The direct economic impacts to shark fishermen in the Gulf of Mexico region would depend on the reduction in the trip limit. Approximately 81 percent of the Gulf of Mexico trips retained 29 or fewer non-sandbar LCS per trip. Therefore, for a majority of trips, NMFS anticipates that a reduction in the trip limit from 33 non-sandbar LCS to 29 non-sandbar LCS would have a neutral impact on fishermen as fishing and business practices are not anticipated to change due to such a reduction. Reducing the trip limit from 33 non-sandbar LCS to 29 non-sandbar LCS would potentially reduce the maximum revenue per trip by an average of \$233 per trip in the Gulf of Mexico. This estimate is based on the average non-sandbar shark weight and 2009 median ex-vessel prices for non-sandbar LCS and shark fin in the Gulf of Mexico region. Approximately 18 percent may lose additional gross revenues on a per trip basis as they were landing more than 33 non-sandbar LCS according to Coastal Fisheries data. In addition, on average, vessels in the Gulf of Mexico region retained 21 non-sandbar LCS per trip; however, the average trip landing numbers of non-sandbar LCS varied by month. If the trip limit were reduced to 21 non-sandbar LCS per trip, this could reduce gross revenues per trip from \$1,920 to \$1,222. While, on average, fishermen may only retain 21 non-sandbar LCS, such a reduction would preclude fishermen from being able to keep additional sharks (up to 33 non-sandbar LCS per trip). Therefore, such a reduction may change how they fish. It may also result in additional trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. All of these factors are expected to result in negative economic impacts in the short term.

Reducing the trip limit to below 21 non-sandbar LCS per trip would be expected to result in economic impacts as it would further reduce gross revenues for shark fishermen on a trip basis. The reduction in gross revenues would range from \$756 to \$1,920 for a trip limit of 20 to 0 non-sandbar LCS, respectively. The lowest average number of non-sandbar LCS retained was 11 non-sandbar LCS per trip during the month of September, which equates to \$640 in gross revenues per trip. Such reductions in the trip limits could translate into fishermen making

multiple trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. However, NMFS anticipates that at some reduced trip limit level, directed shark fishermen would stop targeting sharks because it would no longer be economically viable. At this point, NMFS expects that shark fishermen would target other species and retain sharks incidentally as anticipated under Amendment 2 and, therefore, the economic impacts in terms of changes in fishing practices and diversifying fishing effort toward other species to make up for lost shark revenues would be the same as described in Amendment 2.

Sub-alternative 1C would establish a new non-sandbar LCS trip limit that would extend the fishing season in the Atlantic region based on remaining quota and time left in the fishing season. On average between 2008 and 2009, approximately 27 vessels with directed shark permits and 11 vessels with incidental shark permits had non-sandbar LCS landings in the Atlantic region. The direct impacts to shark fishermen in the Atlantic region would depend on the reduction in the trip limit. As explained above, approximately 81 percent of the Atlantic trips retained 27 or fewer non-sandbar LCS per trip. Therefore, for a majority of the trips, NMFS anticipates that a reduction in the trip limit from the 33 non-sandbar LCS to 27 non-sandbar LCS would have minimal economic impacts on fishermen as fishing and business practices would not be anticipated to change with such a reduction. Approximately 11 percent may lose additional gross revenues on a trip basis as they were landing more than 33 non-sandbar LCS according to Coastal Fisheries data. In addition, on average, vessels in the Atlantic region retained 13 non-sandbar LCS per trip; however, the average trip landing numbers of non-sandbar LCS varied by month. If the trip limit was reduced to 13 non-sandbar LCS per trip, this could reduce potential gross revenues per trip from \$1,767 to \$696. However, on average, fishermen did not retain 33 non-sandbar LCS per trip during any month of the year. In addition, during 6 of the 12 months fishermen retained fewer than the overall monthly average retention of 13 non-sandbar LCS per trip. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct economic impacts to fishermen in the short term; long term impacts are not anticipated as these reductions would not be permanent.

Reducing the trip limit below 13 non-sandbar LCS per trip would be expected to result in moderate adverse direct economic impacts as it would most likely reduce gross revenues for shark fishermen in the short term. Fishermen would be expected to stop fishing for sharks as it would no longer be profitable. The reduction in gross revenues would range from \$1,125 to \$1,767 for 12 to 0 non-sandbar LCS per trip, respectively. The lowest average number of non-sandbar LCS retained was 8 non-sandbar LCS per trip during the month of June, which equates to \$428 in gross revenues per trip. These reductions in the trip limits could translate into fishermen making multiple trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. However, NMFS anticipates that at some reduced trip limit level, directed shark fishermen would stop targeting sharks because it would no longer be economically viable. At this point, NMFS expects that shark fishermen would target other species and retain sharks incidentally as anticipated under Amendment 2, and therefore, the socioeconomic impacts in terms of changes in fishing practices and diversifying fishing effort toward other species to make up for lost shark revenues would be the same as described in Amendment 2.

Under alternative 2, the preferred alternative, NMFS considered two sub-alternatives. Sub-alternative 2A would establish new opening dates for the shark fisheries through the annual specifications process in the Atlantic and Gulf of Mexico regions based on certain criteria and processes. Sub-alternative 2A could potentially affect the 221 directed and 282 incidental shark permit holders along with the 105 shark dealers. NMFS plans to review the criteria on an annual basis to determine when to open each fishery at equitable and beneficial times for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary based on the available annual quota, catch rates, and number of fishing participants during the year. For the 2011 fishing season, NMFS is proposing to open the shark research, non-sandbar LCS in the Gulf of Mexico region, blacknose shark, non-blacknose SCS, and pelagic shark fisheries on the effective date of the final rule for this action. The direct and indirect socioeconomic impacts would be neutral on a short and long-term basis, because NMFS is proposing not to change the opening dates of these



fisheries from the status quo. NMFS is proposing to delay the opening of the non-sandbar LCS in the Atlantic region until July 15, 2011, which would be the same opening date as 2010 fishing season. The delay in the Atlantic non-sandbar LCS fishing season would result in short- and long-term, direct, minor, adverse socioeconomic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues at the beginning of the 2011 fishing season. The short and long-term effects for delaying the season would cause indirect, minor, adverse socioeconomic impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. This would be most prevalent in areas of the southeast Atlantic where non-sandbar LCS are available early in the fishing season. The delay in the non-sandbar LCS fishing season could cause changes in ex-vessel prices. In 2009, the median ex-vessel price of LCS meat in January was approximately \$0.25 per pound dressed weight in the Gulf of Mexico and \$0.45 in the South Atlantic region, while the median ex-vessel price in July of 2008 was \$0.45 in the Gulf of Mexico and \$0.75 in the South Atlantic. The median ex-vessel price for shark fins in January was \$17.00 per pound in the Gulf of Mexico and \$16.00 in the South Atlantic. When the LCS fishery opens in July, the average price for fins would be approximately \$14.00 per pound in the Gulf of Mexico and \$12.00 per pound in the South Atlantic based on 2008 prices. Since the north Atlantic had a very limited 2009 non-sandbar LCS fishing season, the ex-vessel prices for 2008 were used for the comparison.

In the north Atlantic, the delayed opening for the non-sandbar LCS would have direct, minor, beneficial socioeconomic impacts in the short and long-term for fishermen as they would have access to the non-sandbar LCS quota in 2011. Fishermen in the North Atlantic did not have or had limited access to the non-sandbar LCS quota in 2009. There would be indirect, minor, beneficial socioeconomic impacts in the short and long-term for shark dealers and other entities that deal with shark products in this area as they would also have access to non-sandbar LCS products in 2011. Thus, delaying the non-sandbar LCS seasons under the preferred alternative would cause neutral cumulative socioeconomic impacts, since it would allow for a more equitable distribution of the quotas among constituents in this region,

which was the original intent of Amendment 2.

Sub-alternative 2B would establish new inseason trip limit adjustment criteria for the Gulf of Mexico and Atlantic regions. Sub-alternative 2B would allow NMFS to adjust the trip limit through inseason actions, but would not adjust the overall shark quotas for the GOM and Atlantic regions. This sub-alternative is anticipated to have direct and indirect, short-term, neutral socioeconomic impacts in the GOM and Atlantic regions, because changing the trip limits inseason would not limit the overall harvest of sharks, but would provide the mechanism to modify the harvest spatially and temporally to allow equitable access to the resource. Directed fishing on sharks would continue as long as the trip limit is high enough to make it economically viable. Since the implementation of Amendment 2 directed shark fishing trips land, on average, 21 non-sandbar LCS in the GOM region, and 13 non-sandbar LCS in the Atlantic region. NMFS has not been able to determine at what trip limit directed fishing for non-sandbar LCS would not be economically viable, as directed non-sandbar LCS fishing trips have continued at lower landings than the annual averages during certain months. Different trip limit levels have been further analyzed in alternatives 1B and 1C, and the socioeconomic impacts associated with the range of trip limits are described above under sub-alternatives 1B and 1C. Trip limits set at levels too low for fishermen to continue targeting non-sandbar LCS would likely lead to shifts in effort to other fisheries, similar to effort shifts experienced during closures of the non-sandbar LCS fishery in 2009 and 2010. The criteria for changing trip limits inseason takes into account opportunities for equitable access to fishermen throughout the respective regions and ecological considerations of the stocks, but would not restrict or reduce the current quota. If trip limits are set in a manner that is beneficial to the ecological needs of the different shark species their populations may increase in the long-term, which could allow for increased quota levels in the future. Therefore, minor, beneficial long-term direct, indirect, and cumulative socioeconomic impacts may occur.

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

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

Dated: September 15, 2010.

**Samuel D. Rauch III,**

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

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

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

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

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

2. In § 635.24, paragraph (a)(8) is added to read as follows:

#### **§ 635.24 Commercial retention limits for sharks and swordfish.**

\* \* \* \* \*

(a) \* \* \*  
(8) *Inseason trip limit adjustment criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports;

(ii) The catch rates of the relevant shark species/complexes, to date, based on dealer reports;

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or,

(vi) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

\* \* \* \* \*

3. In § 635.27:

A. Paragraphs (b)(1)(ii) through (b)(1)(vi) are redesignated as paragraphs (b)(1)(iii) through (b)(1)(vii), respectively.

B. Paragraph (b)(1)(ii) is added to read as follows:

#### **§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Opening fishing season criteria.* NMFS will file with the Office of the

Federal Register for publication notification of the opening dates of the shark fishery for each species/complex. Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years;

(C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years;

(D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information;

(E) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas;

(F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(G) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

\* \* \* \* \*

[FR Doc. 2010-23443 Filed 9-17-10; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100830405-0405-02]

RIN 0648-BA09

#### Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Charter/Party Fishery Control Date

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

**ACTION:** Advance notice of proposed rulemaking (ANPR).

**SUMMARY:** NMFS and the New England Fishery Management Council (Council)

announce that they are seeking public comment on the reaffirmation of the current control date of March 30, 2006, in anticipation of developing a limited access program for the NE multispecies open access charter and party boat (charter/party) fishery. This component of the fishery includes vessels with open access charter/party permits, as well as limited access NE multispecies permits, while not on a NE multispecies day-at-sea (DAS) or fishing under the sector management program. The Council has not made a determination that limiting the number of participants in this fishery is necessary, but reaffirming the current control date keeps the stakeholders informed of possible future consideration of the issue and promotes awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery, while the Council considers whether and how access to the charter/party fishery should be controlled. By this notification, NMFS reaffirms, on behalf of the Council, that March 30, 2006, may be used as a "control date" to establish eligibility criteria for determining levels of future access to the fishery.

**DATES:** Written comments must be received by 5p.m., local time October 20, 2010.

**ADDRESSES:** You may submit comments by any of the following methods:

Written comments (paper, disk, or CD ROM) should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, "Comments- Multispecies Charter/Party Control Date."

Comments also may be sent via facsimile (fax) to (978) 465 3116.

Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. *NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.*

#### FOR FURTHER INFORMATION CONTACT:

Travis Ford, Fishery Management Specialist, (978) 281-9233; fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** The charter/party industry targets the following species: Atlantic cod (*Gadus morhua*), pollock (*Pollachius virens*); haddock (*Melanogrammus aeglefinus*); and winter flounder (*Pleuronectes americanus*); and, to a lesser extent, white hake (*Urophycis tenuis*) and wolffish (*Anarhichas lupus*). In light of the restrictions imposed by Framework 42 to the FMP in 2006 and their impacts, members of the charter/party industry and the Council's Recreational Advisory Panel recommended at that time that the Council restrict new entrants to the charter/party fishery to reduce the need for further restrictions on the recreational catch of cod and other groundfish. The Council did not take action to restrict entrants but, instead, established a control date of March 30, 2006. A "control date" is a time certain that may be used to limit access to a future limited access fishery by vessel owners who enter the fishery after the control date, versus those that entered the fishery before the control date. One of the purposes of the control date is to discourage speculative entry into the fishery by vessels hoping to qualify under any new limited access program, thereby ramping up fishing effort during the period the limited access program is being developed. The control date also serves as notice to any new entrants into the fishery that their financial investment to participate in the fishery may be jeopardized if they do not qualify to fully participate in any new limited access program that is adopted.

With the implementation of Amendment 16, many participants in the recreational fishery have expressed concern that the number of party/charter operators will increase due to low allocation of some stocks to the commercial fishery. The Council has decided to reaffirm the original control date in order to discourage further speculative entry while it takes time to develop appropriate measures for the recreational fishery.

This notification reiterates that March 30, 2006, is the control date for potential use in determining historical or traditional participation in the NE multispecies charter/party fishery. Consideration of a control date does not commit the Council or NMFS to develop any particular management system or criteria for participation in this fishery. The Council may choose a different control date, or may choose a