

parties with an additional opportunity to submit information and materials on the status of the northern leopard frog. Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered in the 12-month finding.

DATES: We are reopening the public information solicitation period. To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before November 27, 2009.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2009-0030; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the "Information Solicited" section below and in our original notice (74 FR 31389) for more details).

FOR FURTHER INFORMATION CONTACT:

Steven L. Spangle, Field Supervisor, by U.S. mail at Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; telephone 602-242-0210; facsimile 602-242-2513. Information submitted after November 27, 2009 should be submitted to this address. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

We, the U.S. Fish and Wildlife Service, published a 90-day finding on a petition to list the northern leopard frog as threatened in the **Federal Register** on July 1, 2009 (74 FR 31389). We are continuing to solicit information during this reopened information solicitation period on the status of the northern leopard frog. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the northern leopard frog. We are seeking information regarding:

(1) the historical and current status and distribution of the northern leopard

frog, its biology and ecology, and ongoing conservation measures for the species and its habitat, and threats to the species and its habitat;

(2) information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) the present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(3) its taxonomy (particularly genetics of the western U.S. population and of the convergence zone of the eastern and western haplotypes in Wisconsin and Ontario, Canada).

If you submitted information previously on the status of this species please do not resubmit it. This information has been incorporated into the public record and will be fully considered in the preparation of the 12-month finding. We will consider information received from all interested parties.

You may submit your information and materials concerning the 90-day finding by any of the methods listed in the

ADDRESSES section. Be aware that if you submit information via <http://www.regulations.gov> your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will also post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing the 90-day finding for the northern leopard frog, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On July 1, 2009, we published a 90-day finding on a petition to list the western U.S. population of the northern leopard frog as threatened (74 FR 31389). In that 90-day finding, we found that the petition presented substantial scientific or commercial information indicating that listing the western U.S. population of the northern leopard frog may be warranted. We also initiated a status review to determine if listing the species is warranted, and announced a 60-day public information solicitation period on the petition finding and status review, which ended on August 31, 2009.

We received multiple requests for an extension of the information solicitation period in order to allow agencies, tribes, and other interested persons the opportunity to provide additional information for our consideration during this status review. The broad geographical distribution of the western U.S. population of the northern leopard frog complicated the timely notification of interested parties. Collection of information from across the full range of the petitioned northern leopard frog population will be important for the status review and 12-month finding on the northern leopard frog.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 20, 2009

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9-25883 Filed 10-27-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 0906221072-91133-01]

RIN 0648-AX95

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and opening dates for the 2010 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on any over- and/or underharvests experienced during the 2008 and 2009 Atlantic commercial shark fishing seasons. The purpose of this proposed action is to provide advance notice of quotas and opening dates for the Atlantic commercial shark fishery and address any over- and/or underharvests that may have occurred in the Atlantic shark fishery during the 2008 and 2009 fishing seasons.

DATES: Written comments will be accepted until November 27, 2009. NMFS will hold three public hearings on this proposed rule on November 16 in Manteo, NC, November 18 in Belle Chasse, LA, and November 23 in Jupiter, FL to receive comments from fishery participants and other members of the public regarding this proposed rule.

ADDRESSES: The public hearings will be held at 407 Budleigh Street, Manteo, NC; 8398 Highway 23, Belle Chasse, LA; and 705 Military Trail, Jupiter, FL. You may submit comments, identified by 0648-AX95, by any one of the following methods:

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

- Fax: 301-713-1917, Attn: Karyl Brewster-Geisz or Guy DuBeck

- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for 2010 Atlantic Commercial Shark 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 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: Karyl Brewster-Geisz or Guy DuBeck by phone: 301-713-2347, or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS FMP and its amendments under the Magnuson-Stevens Act are implemented via 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. That final rule established the annual quotas for all Atlantic shark fisheries and also established adjusted base annual quotas for non-sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. That final rule also established accounting measures for under- and overharvests and redefined the regions in the shark fishery.

As a result of that final rule, the Atlantic shark annual quotas and adjusted base annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with the exception of non-sandbar LCS quota outside of the shark research fishery. The non-sandbar LCS quota outside the research fishery is split 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 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 quotas, NMFS is also proposing several changes to the start of the 2010 shark fishing season. In Amendment 2 to the 2006 Consolidated HMS FMP, NMFS changed the fishing seasons in part to rebuild overfished shark stocks and prevent overfishing. NMFS originally determined that the reduced retention limits for non-sandbar LCS in Amendment 2 would result in a year-round fishery. A year-round commercial fishery was expected to give the North Atlantic fishery participants opportunity to catch the quota during the summer months when the sharks migrate northward and for all participants to be able to land sharks incidentally year-round as they target species in other fisheries.

In 2009, the commercial shark fishing season opened on January 23, 2009 (73 FR 79005, December 24, 2008), in the Gulf of Mexico (GOM) and the Atlantic regions for SCS, non-sandbar LCS and pelagic sharks. On June 6, 2009, the non-sandbar LCS fishing season closed in the GOM region (74 FR 26803, June 4, 2009) and on July 1, 2009 (74 FR 30479, June 26, 2009), the non-sandbar LCS fishing season closed in the Atlantic region. In the Atlantic region, due to the July 1, 2009, closing of the non-sandbar LCS fishery, the mid-Atlantic shark 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, the fishery participants from North Carolina north did not have a non-sandbar LCS fishing season in 2009. In the GOM region, due to the June 6, 2009, closure of the non-sandbar LCS fishery and the Louisiana state water closure from April 1 - June 30, many fishery participants in the GOM did not have the opportunity to participate in the 2009 GOM non-sandbar LCS fishery. As such, NMFS has received requests from constituents that NMFS should consider the delay of the 2010 non-sandbar LCS fishing season until July to allow for more equitable shark fishing opportunities in 2010. Because the intent of Amendment 2 was to have the non-sandbar LCS quota available throughout the entire year, and given that this did not happen in 2009, NMFS proposes delaying the start of the 2010 shark fishery, as explained below. In addition to this rulemaking, NMFS is also considering future rulemaking to adjust the retention limits on a fishery-wide basis in order to meet the original intent of Amendment 2 of having the non-sandbar LCS quota last the entire year.

The other proposed change to the 2010 shark fishing season results from the implementation of draft Amendment 3 to the 2006 Consolidated HMS FMP (73 FR 36392, July 24, 2009). In Amendment 3, NMFS proposes measures to establish new non-blacknose SCS and blacknose shark quotas in order to rebuild blacknose sharks and end overfishing of this species and to establish a mechanism for implementing annual catch limits (ACLs) and accountability measures (AMs). In this current action, NMFS also proposes delaying the opening of the 2010 SCS fishing season to allow for the implementation of Amendment 3. A delay would ensure the SCS fishery

opens under the measures that may be established in Amendment 3, which would help in the rebuilding of blacknose sharks that are currently overfished and experiencing overfishing. In addition, for stocks that were determined to be overfished before July 12, 2009, ACLs must be established before the 2010 fishing year. As such, a delay would allow time for the establishment of ACLs before the start of the 2010 fishing season, which is consistent with the Magnuson-Stevens Act.

Accounting for Under- and Overharvests

Consistent with 50 CFR 635.27(b)(1)(vii)(A), if the available quota in a particular region or in the research fishery for non-sandbar LCS 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, SCS, 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 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 (other than porbeagle or blue sharks) by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), NMFS will deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

If an annual quota for sandbar sharks, 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, or blue sharks) or specific species within a quota group (e.g., blacknose sharks within the SCS 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 within the SCS complex 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. Therefore, since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2009 Atlantic commercial shark fishing season will be applied to the 2010 annual quotas or adjusted base quotas. Thus, the 2010 proposed quotas would be equal to the base annual quota for 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 2008 and 2009 fishing seasons. The 2010 proposed SCS quota and possibly the SCS complex quota, could change depending on the measures established in the final rule for implementing Amendment 3 to the Consolidated HMS FMP.

2010 Proposed Quotas

This rule proposes minor changes to the overall adjusted base and annual commercial quotas due to overharvests in 2008 and 2009. The proposed 2010 quotas by species and species group are summarized in Table 1.

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Table 1. 2010 proposed quotas and opening dates for non-sandbar LCS and sandbar sharks. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

Species Group	Region	2009 Annual Quota (A)	Preliminary 2009 Landings ¹ (B)	Overharvest (C)	2010 Base Annual Quota ² (D)	2010 Proposed Quota (D-C)	Season Opening Dates ³
Non-Sandbar Large Coastal Sharks	Gulf of Mexico	390.5 (860,896 lb dw)	317.2 (699,366 lb dw)	-	390.5 (860,896 lb dw)	390.5 (860,896 lb dw)	July 15, 2010
	Atlantic	187.8 (414,024 lb dw)	200.8 (442,790 lb dw)	13	187.8 (414,024 lb dw)	174.8 (385,364 lb dw)	July 15, 2010
Non-Sandbar LCS Research Quota	No regional quotas	37.5 (82,673 lb dw)	37 (81,572 lb dw)	-	37.5 (82,673 lb dw)	37.5 (82,673 lb dw)	On or about January 1, 2010
Sandbar Research Quota		87.9 (193,784 lb dw)	79.7 (175,627 lb dw)	-	87.9 (193,784 lb dw)	87.9 (193,784 lb dw)	On or about January 1, 2010
Small Coastal Sharks ⁴		454 (1,000,888 lb dw)	180.1 (397,190 lb dw)	-	454 (1,000,888 lb dw)	454 (1,000,888 lb dw)	On or about April 30, 2010
Blue Sharks		273 (601,856 lb dw)	1.4 (3,122 lb dw)	-	273 (601,856 lb dw)	273 (601,856 lb dw)	On or about January 1, 2010

Porbeagle Sharks	1.4 (3,086 lb dw)	0.2 (383 lb dw)	0.2 ⁵	1.7 (3,748 lb dw)	1.5 (3,307 lb dw)	On or about January 1, 2010
Pelagic Sharks Other Than Porbeagle or Blue	488 (1,075,856 lb dw)	69.7 (153,723 lb dw)	-	488 (1,075,856 lb dw)	488 (1,075,856 lb dw)	On or about January 1, 2010

¹ Landings are from January 23, 2009, through September 15, 2009, and are subject to change.

² 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)).

³ The January 1, 2010 proposed opening dates are dependant on the effective date of the final rule. The on or about April 30 proposed opening date is dependant on the effective date for the final rule implementing Amendment 3.

⁴ The quota in the table is based on current SCS quota regulations. NMFS published a proposed rule and draft Amendment 3 to the Consolidated HMS FMP (73 FR 36392, July 24, 2009) that would establish new non-blacknose SCS and blacknose shark quotas starting in the 2010 SCS fishing season.

⁵ NMFS intends to adjust the 2010 quota for porbeagle sharks to account for the 0.2 mt dw overharvest that occurred in 2008 after the 0.3 mt dw overharvest was accounted for in the final rule establishing the 2009 quota.

Based on dealer reports received as of September 15, 2009, only the non-sandbar LCS quota in the Atlantic region was exceeded during the 2009 Atlantic commercial shark fishing season. The 2010 proposed quotas for the respective shark complexes/species are subject to change in the final rule for this action, based on the final Amendment 3 to the Consolidated HMS FMP and any overharvests in the 2009 season revealed once all of the 2009 landings data has been received and analyzed. In the final rule, NMFS will adjust the quotas based on dealer reports received as of October 30, 2009. All dealer reports that are received by NMFS after that date will be used to adjust the 2011 quotas, as appropriate.

1. Proposed 2010 Quotas for Non-sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

The 2010 adjusted base annual 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 September 15, 2009, preliminary reported landings of non-sandbar LCS were at 98.7 percent (37 mt dw), and sandbar shark reported landings were at 90.6 percent (79.7 mt dw). These reported landings do not exceed the 2009 quota. Therefore, based on preliminary estimates and consistent with the current regulations at 50 CFR 635.27(b)(1)(vii), the 2010 proposed quotas do not need to be reduced based on any overharvests.

Under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2010 quotas. Therefore, the 2010 proposed quotas would be the adjusted base annual quotas for non-sandbar LCS and sandbar sharks within the shark research fishery (37.5 mt dw (82,673 lb dw) and 87.9 mt dw (193,784 lb dw), respectively).

2. Proposed 2010 Quotas for the Non-sandbar LCS in the Gulf of Mexico Region

The 2010 adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region is 390.5 mt dw (860,896 lb dw). As of September 15, 2009, preliminary reported landings were at 81.2 percent (317.2 mt dw) for non-

sandbar LCS in the Gulf of Mexico region. These reported landings do not exceed the 2009 quota. However, since the status of this complex is unknown, any underharvest would not be applied to the 2010 adjusted base annual quota. Therefore, the 2010 proposed quota would be the adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region or 390.5 mt dw (860,896 lb dw).

3. Proposed 2010 Quotas for the Non-sandbar LCS in the Atlantic Region

The 2010 adjusted base annual quota for non-sandbar LCS in the Atlantic region would be 174.8 (385,364 lb dw). As of September 15, 2009, preliminary reported landings were at 106.9 percent (200.8 mt dw) for non-sandbar LCS in the Atlantic region. These landings exceed the 2009 quota by 13 mt dw (28,660 lb dw). As such, the overharvest would be applied to the 2010 adjusted base annual quota. Therefore, the 2010 proposed quota would be the adjusted base annual quota for non-sandbar LCS in the Atlantic region or 174.8 (385,364 lb dw) (187.8 mt dw annual base quota - 13 mt dw of 2009 overage = 174.8 mt dw 2010 adjusted annual quota).

4. Proposed 2010 Quotas for SCS and Pelagic Sharks

The 2010 annual commercial quotas for small coastal sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) are 454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively. This proposed rule would not change the overall annual commercial quotas for porbeagle sharks and SCS. However, NMFS has proposed changes to the SCS quota in Amendment 3 (73 FR 36392, July 24, 2009). The quotas established in Amendment 3 would supersede the quotas established in this rule. The change for the 2010 porbeagle shark quota, which accounts for the additional overharvest experienced during the 2008 fishing season, would be 1.5 mt dw (3,307 lb dw).

As of December 31, 2008, the final reported landings of porbeagle sharks were 2.2 mt dw (4,471 lb dw) (127 percent of the 2008 1.7 mt dw (3,748 lb dw) annual base quota). In the final rule establishing the 2009 quotas (73 FR 79005, December 29, 2008), NMFS accounted for an overharvest of porbeagle sharks of 0.3 mt dw (601 lb dw). That final rule used data that was reported as of November 15, 2008. Between that date and December 31, 2008, an additional 0.2 mt dw was reported landed. As such, this additional overharvest of 0.2 mt dw (441

lb dw) is proposed to be deducted from the 2010 porbeagle shark quota. Per 50 CFR 635.27(b)(1)(vii)(A), if the available quota is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from 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. Given that the additional small overharvest of 0.2 mt dw (441 lb dw) was not accounted for in the 2009 quota (12 percent of the annual base porbeagle quota), NMFS is proposing to deduct the additional 2008 overharvest from the 2010 annual base commercial porbeagle quota. The 2010 adjusted annual commercial porbeagle quota would be 1.5 mt dw (3,307 lb dw) (1.7 mt dw annual base quota - 0.2 mt dw 2008 overage = 1.5 mt dw 2010 adjusted annual quota).

As of September 15, 2009, preliminary reported landings of SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 39.7 percent (180.1 mt dw), 0.5 percent (1.4 mt dw), 12.2 percent (0.2 mt dw), and 14.3 percent (69.7 mt dw), respectively. These landings do not exceed the available quotas. However, under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2009 quotas. Therefore, the 2010 proposed quotas would be the annual quotas for SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than blue and porbeagle sharks) (454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), 1.5 mt dw (3,307 lb dw), and 488 mt dw (1,075,856 lb dw), respectively).

Proposed Fishing Season Notification for the 2010 Atlantic Commercial Shark Fishing Season

The 2010 Atlantic commercial shark fishing season for the shark research, 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, is proposed to open on the effective date of the final rule for this action. NMFS is proposing different opening dates for the SCS and the Gulf of Mexico and Atlantic non-sandbar LCS seasons. NMFS considered two alternatives for opening the SCS fishing season: alternative A1, open the 2010 SCS

sharks fishing season on or about January 1, 2010 (No Action alternative) and alternative A2, open the 2010 SCS fishing season on the effective date of the final rule for Amendment 3 (Preferred alternative).

Alternative A1, the no action alternative, would open the 2010 SCS fishery on the effective date of the final rule for this current action, which is anticipated to be on or about January 1, 2010. Alternative A1 would not allow time for Amendment 3 to be implemented, which would cause blacknose sharks to continue to be overfished.

Alternative A2, the preferred alternative, would keep the SCS fishery closed until the effective date of the final rule for Amendment 3. This delayed opening would allow the SCS fishery to open under the quotas that would be finalized in Amendment 3, which would help rebuild blacknose sharks sooner than under the No Action Alternative. Alternative A2 would also allow the mechanism for establishing ACLs and AMs to be finalized before opening the SCS fishery consistent with the Magnuson-Stevens Act. Specifically, for stocks that were determined to be overfished before July 12, 2009, ACLs must be established before the 2010 fishing year. A delay in the 2010 SCS fishing season would allow ACLs to be established under Amendment 3 to be implemented before the start of the fishing season.

In 2009, the non-sandbar LCS fishing season did not remain open year-round as expected. Because of this, many fishermen in both the Gulf of Mexico and Atlantic did not have an opportunity to participate in the non-sandbar LCS fishery. NMFS considered three alternatives to address this situation while NMFS assesses the necessity of keeping the shark season open year-round, which was the intent of Amendment 2. These alternatives are: alternative B1, open the 2010 LCS on or about January 1, 2010 (No Action alternative); alternative B2, open the 2010 non-sandbar LCS fishery in the Atlantic region on July 15, 2010, and open the 2010 non-sandbar LCS fishery in the Gulf of Mexico region on January 1, 2010; and alternative B3, open the 2010 non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions on July 15, 2010 (Preferred Alternative).

Alternative B1, the no action alternative, would open the 2010 non-sandbar LCS fishery on the effective date of the final rule for this current action. Alternative B1 may not allow for the equitable distribution of the non-sandbar LCS quotas among fishery participants in all states of the Atlantic

and Gulf of Mexico regions if catch patterns similar to 2009 are seen in 2010.

Alternative B2 would open the 2010 non-sandbar LCS fishery in the Atlantic region on July 15, 2009, and open the 2010 non-sandbar LCS fishery in the Gulf of Mexico region on the effective date of the final rule for this current action. This alternative would allow fishermen in the Gulf of Mexico region to have access to the non-sandbar LCS quotas at the beginning of 2010 when non-sandbar LCS are present in waters off the Gulf of Mexico. Gillnet fishermen in the Gulf of Mexico region would be able to harvest non-sandbar LCS with gillnets prior to the implementation of Amendment 3, which proposes to prohibit landing sharks with gillnet gear. In addition, alternative B2 would allow fishermen in the North Atlantic to have a fishing opportunity for non-sandbar LCS in 2010 with the delayed opening in the Atlantic region. Alternative B2 may not allow for the equitable distribution of the non-sandbar LCS quota in the Gulf of Mexico region due to state water closures off the coast of Louisiana from April 1 through June 30.

Alternative B3, the preferred alternative, would open the non-sandbar LCS fishery in the Gulf of Mexico and the Atlantic regions on July 15, 2010. In 2009, the non-sandbar LCS fishery in the Atlantic region was only open approximately five and a half months, which did not allow fishery participants in the North Atlantic to have a fishing season as the quota was taken before these sharks moved northward into their waters. In addition, fishermen in the North Atlantic were also limited in their fishing opportunities due to state and Federal water closures. In the Gulf of Mexico, in 2009, the non-sandbar fishery was open for approximately four months, and many fishermen experienced state water closures during this time frame and were limited in their ability to participate in the GOM non-sandbar LCS fishery. Thus, delaying the start of the 2010 non-sandbar LCS fishery in both the Atlantic and Gulf of Mexico regions would provide equitable fishing opportunities among shark fishery participants in all states to catch the non-sandbar LCS quota.

The preferred alternatives, A2 and B3, which would delay the SCS and non-sandbar LCS fishing seasons, could result in direct negative economic impacts on shark fishermen who would not be able to fish for SCS until Amendment 3 is implemented or for non-sandbar LCS until July 15, 2010. In addition, shark dealers and other

entities that deal with shark products could experience negative economic impacts as SCS and non-sandbar LCS products would not be available at the beginning of the season. Gillnet fishermen could also experience negative economic impacts as they would not be able to fish for sharks prior to the implementation of Amendment 3 in 2010, and may not be able to fish for shark with gillnets after the implementation of Amendment 3 in 2010, depending on the final management measures implemented under Amendment 3. The preferred alternatives could result in direct negative social impacts as fishermen would have to fish in other fisheries where they hold permits, to make up for lost SCS and non-sandbar LCS revenues during the beginning of the 2010 fishing season and indirect negative social 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 SCS and non-sandbar LCS shark products would not be available. However, NMFS currently prefers alternatives A2 and B3 because fishermen in the North Atlantic and portions of the Gulf of Mexico, who had very limited access to the 2009 SCS and non-sandbar LCS quotas, could experience direct positive economic impacts as they would have access to the SCS and non-sandbar LCS quotas in 2010. Delaying the 2010 SCS fishing season under preferred alternative A2 could also allow for the rebuilding of blacknose sharks to begin sooner than under the no action alternative. Thus, delaying the SCS and non-sandbar LCS seasons under the preferred alternatives would allow for a more equitable distribution of the quotas among constituents in all regions, which was the original intent of Amendment 2, and would allow for the fastest rebuilding of blacknose sharks of all the alternatives considered in this rulemaking.

All of the shark fisheries would remain open until December 31, 2010, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) has reached, or is projected to reach, 80 percent of the available quota. At that time, consistent with 50 CFR 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 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 50 CFR § 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 November 27, 2009 (see **DATES** and **ADDRESSES**). NMFS will hold three 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 Gu DuBeck at (301) 713-2347 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

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

In compliance with Section 603 of the Regulatory Flexibility Act (RFA), NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule to analyze the impacts of delaying the 2010 SCS and non-sandbar LCS fishing seasons as adjustments to the non-sandbar LCS and porbeagle quotas based on overharvests from the previous fishing season have already been analyzed in Amendment 2 to the 2006 Consolidated HMS FMP. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of

the IRFA is below. The full IRFA and analysis of social and economic impacts 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 Magnuson-Stevens Act, to adjust the 2010 proposed quotas for non-sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) based on overharvests from the previous fishing year. These adjustments are being implemented according to the regulations implemented in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP. Thus, NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in Amendment 2 to the 2006 Consolidated HMS FMP based on the quota adjustments. In addition, NMFS is considering delaying the 2010 non-sandbar LCS shark fishery season in the Gulf of Mexico and Atlantic regions to allow for a more equitable distribution of the available quotas among constituents as well as delay the opening of the 2010 SCS fishing season to allow for the implementation of Amendment 3, which would implement new blacknose and non-blacknose SCS quotas to rebuild the blacknose shark stock and end overfishing of this species. While there are direct negative economic impacts associated with the proposed measures, delaying the opening of the 2010 SCS, and non-sandbar LCS fishing seasons could ensure that North Atlantic fishermen have access to the 2010 quotas and will allow for more equitable access to the quotas by all fishery participants.

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 and porbeagle sharks due to minor overharvests in 2008 and 2009; (2) delay of the 2010 non-sandbar LCS fishing season to allow for more equitable shark fishing opportunities in 2010; and, (3) delay the opening of the 2010 SCS fishing season to allow for the implementation of Amendment 3, which would implement new blacknose and non-blacknose SCS quotas to rebuild the blacknose shark stock and end overfishing of this species. A delay would also allow time for the establishment of ACLs before the start of the 2010 fishing season.

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 223 directed commercial shark permit holders, 279 incidental commercial shark permit holders, and 100 commercial shark dealers as of March 18, 2009. Based on the 2008 ex-vessel price, the 2010 Atlantic shark commercial baseline quota could result in revenues of \$11,987,348. The adjustment due to the overharvests would result in \$555 loss in revenues in porbeagle fishery and \$3,306 loss in revenue in the non-sandbar LCS fishery. These revenues are similar to the gross revenues analyzed in Amendment 2 to the 2006 Consolidated HMS FMP.

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 Supplemental 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 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 several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed have been grouped into two major categories. These categories include SCS and non-sandbar LCS. Under the SCS category, the alternatives include: (A1) allow the 2010 SCS fishing season to open upon the effective date of the final rule for the 2010 Atlantic shark specifications; and, (A2) open the 2010 SCS fishing season on the effective date of the final rule for Amendment 3 to the Consolidated HMS FMP. Under the non-sandbar LCS category, the alternatives include: (B1) allow the 2010 non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions to open upon the effective date of the final rule for the 2010 Atlantic shark specifications; (B2) open the 2010 non-sandbar LCS fishery in the Atlantic region on July 15, 2009 and open the 2010 non-sandbar LCS fishery in the Gulf of Mexico region upon the effective date of the final rule for the 2010 Atlantic shark specifications; and, (B3) Open the 2010 non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions on July 15, 2009.

The potential impacts these alternatives may have on small entities have been analyzed and are discussed below. The preferred alternatives include A2 and B3. A summary of the analyses follows. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

The proposed changes to the opening dates for the SCS and non-sandbar LCS were analyzed for each proposed alternative. Under alternative A1, the No Action alternative, NMFS would not delay the opening of the 2010 SCS fishing season and there would be no additional economic impacts to directed and incidental shark permit holders that were not analyzed in Amendment 2. In addition, under the No Action alternative, gillnet fishermen would be able to harvest SCS with gillnets until the implementation of Amendment 3, depending on what management measures are finalized in Amendment 3. The annual quota for SCS of 454 mt dw (1,000,888 lb dw) would be available upon the effective date of the final rule for the 2010 Atlantic shark specifications to fishermen in all regions of the Atlantic, Gulf of Mexico, and Caribbean Sea. Based on the analysis in the Draft Environmental Impact Statement (DEIS) for draft Amendment 3, the average annual gross revenues from 2004 through 2007 from all SCS meat and fins was \$833,634. However, fishermen would most likely not harvest the entire current SCS quota of 454 mt dw and realize these gross revenues by the time the final rule for Amendment 3 is implemented in 2010.

Depending on the level of SCS harvest prior to the implementation of Amendment 3, once Amendment 3 is implemented, there may be no non-blacknose SCS and blacknose shark quota available for the rest of 2010 due to the reduced quotas proposed in draft Amendment 3. Any SCS overharvests that occur prior to Amendment 3 implementation would lower the quotas for the 2011 fishing season and create more severe economic losses in 2011. Finally, due to the availability of SCS later in the year in the waters off the North Atlantic, fishermen in the North Atlantic would likely not have a SCS fishing season in 2010. Given this, NMFS does not prefer alternative A1 at this time.

Under alternative A2, NMFS would delay the start of the 2010 SCS fishing season until implementation of the final rule for Amendment 3. There may be

economic losses associated with the delay in the season, especially for fishermen in the southeast Atlantic and Gulf of Mexico that would have access to SCS at the beginning of 2010 and rely on SCS gross revenues at the beginning of the season. Depending on the quotas implemented under Amendment 3 for blacknose shark and non-blacknose SCS, economic losses could range from \$126,174 to \$172,197 for blacknose sharks and \$502,145 to \$661,513 for non-blacknose SCS. Depending on the final measures implemented under Amendment 3, gillnet fishermen could lose gross revenues from lost SCS fishing opportunities in 2010. Estimated losses for shark gillnet fishermen could be between \$90,059 to \$90,501 for blacknose sharks and \$275,008 to \$287,427 for non-blacknose SCS. However, these losses are independent of this proposed action and were fully analyzed in the DEIS for draft Amendment 3. In addition, shark dealers and other entities that deal with shark products could experience negative economic impacts as SCS products would not be available at the beginning of the season. This would be most prevalent in areas of the southeast Atlantic and Gulf of Mexico where SCS are available early in the fishing season. The delay in the SCS fishing seasons could cause changes in ex-vessel prices. From 2004 through 2008, the average ex-vessel price of SCS meat in January is approximately \$0.58, whereas the average ex-vessel price in mid- to late-Spring is \$0.69. Fin prices are not reported by species. As such, the ex-vessel price data for shark fins is the same for SCS and LCS. The average price for fins in January is \$16.36. When the SCS fishery opens in mid- to late-Spring, the average price for fins would be \$7.35.

Delaying the 2010 SCS fishing season until the implementation of Amendment 3 would allow the blacknose shark stock to rebuild as quickly as possible, and would translate into higher SCS quotas with higher associated gross revenues in the shortest time period possible. In addition, since both blacknose sharks and non-blacknose SCS are present in waters off the North Atlantic later in the year, delaying the opening of the 2010 SCS fishing season could help ensure that North Atlantic fishermen have access to the non-blacknose SCS and blacknose shark quotas implemented under Amendment 3, allowing for more equitable access to the quotas by all constituents. Thus, while there are direct negative economic impacts

associated with alternative A2, NMFS prefers this alternative at this time.

Under alternative B1, the No Action alternative, NMFS would not delay the opening of the 2010 non-sandbar LCS fishing seasons and there would be no additional economic impacts to directed and incidental shark permit holders that were not previously analyzed under Amendment 2. However, one of the main objectives of Amendment 2 was to allow for a year-round shark fishery in the Atlantic and Gulf of Mexico regions to help reduce discards of sharks and allow an opportunity to fishermen in all regions to be able to harvest the available quota. Alternative B1 would likely not meet this objective if the 2010 catches and catch rates are similar to 2009. Therefore, NMFS does not prefer this alternative at this time.

Under alternative B2, NMFS would delay the opening of the non-sandbar LCS fishery in the Atlantic region until July 15, 2009, but would open the non-sandbar LCS fishery in the Gulf of Mexico region upon the effective date of the final rule for the 2010 Atlantic shark specifications. Alternative B2 could result in negative economic impacts to fishermen in the southeast Atlantic if those fishermen depend on shark revenues early in the shark fishing season as they would not be able to land non-sandbar LCS when non-sandbar LCS would be present in waters off the southeast Atlantic. In addition, alternative B2 could result in negative economic impacts to gillnet fishermen in the Atlantic region who would potentially not be able to harvest non-sandbar LCS with gillnets in 2010, depending on final management measures implemented under Amendment 3. However, under alternative B2, fishermen in the North Atlantic would have fishing opportunities for non-sandbar LCS in 2010 as was the intent of Amendment 2. The non-sandbar LCS quota in the Atlantic region and its associated gross revenues of an estimated \$381,525 based on 2008 ex-vessel prices would be

more equitably distributed among Atlantic states by delaying the opening of the non-sandbar LCS fishery until July 15, 2009, under alternative B2.

The economic impacts of alternative B2 in the Gulf of Mexico region would be the same as analyzed under Amendment 2. In addition, gillnet fishermen in the Gulf of Mexico region could harvest non-sandbar LCS with gillnets prior to the implementation of Amendment 3, which may prohibit the landing of sharks with gillnet gear. However, state waters off Louisiana are closed to large coastal shark fishing from April 1 through June 30 of each year. During 2009, the non-sandbar LCS fishery closed on June 6, 2009. Thus, allowing the Federal non-sandbar LCS fishery in the Gulf of Mexico to be open at the beginning of the year in 2010 may result in negative economic impacts for Louisiana State fishermen if the non-sandbar LCS quota is harvested before the re-opening of Louisiana state waters in 2010. Therefore, NMFS does not prefer alternative B2 at this time.

Under alternative B3, NMFS would delay the opening of the non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions until July 15, 2009. Alternative B3 could result in negative economic impacts to fishermen in the southeast Atlantic and Gulf of Mexico if those fishermen depend on shark revenues early in the shark fishing season as they would not be able to land non-sandbar LCS when non-sandbar LCS would be present in waters off these regions. In addition, alternative B3 could result in negative economic impacts to gillnet fishermen in the Atlantic region who may not be able to harvest non-sandbar LCS with gillnets during 2010, depending on final management measures implemented under Amendment 3. Based on the analysis in the DEIS for draft Amendment 3, this could result in lost non-sandbar LCS revenues of \$106,479 to \$109,479 for gillnet fishermen. Also, shark dealers and other entities that deal with shark products could experience

negative economic impacts as non-sandbar LCS products would not be available at the beginning of the season. This would be most prevalent in areas of the southeast Atlantic and Gulf of Mexico where non-sandbar LCS are available early in the fishing season. The delay in the non-sandbar LCS fishing seasons could cause changes in ex-vessel prices. From 2004 through 2008, the average ex-vessel price of LCS meat in January is approximately \$0.57, while the average ex-vessel price in July is \$0.48. The average price for fins in January is \$16.36. When the LCS fishery opens in July, the average price for fins would be \$19.06.

However, under alternative B3, fishermen in the North Atlantic would have fishing opportunities for non-sandbar LCS in 2010 as was the intent of Amendment 2. The non-sandbar LCS quota in the Atlantic region and its associated gross revenues of an estimated \$381,525, based on 2008 ex-vessel prices, would be more equitably distributed among Atlantic states by delaying the opening of the non-sandbar LCS fishery until July 15, 2009, under alternative B3. In addition, state waters off Louisiana are closed to LCS fishing from April 1 through June 30 of each year. Therefore, opening the Federal non-sandbar LCS fishery in the Gulf of Mexico on July 15, 2010, may allow for a more equitable distribution of the non-sandbar LCS quota in the Gulf of Mexico region, estimated to be worth \$839,376 based on 2008 ex-vessel prices. Given alternative B3 helps to meet the original intent of Amendment 2 and would allow fishermen in all regions to have more reasonable access to the available non-sandbar LCS quotas, NMFS prefers alternative B3 at this time.

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