

(n) Transmitters designed to operate in the voice mode on channels designated in § 90.531(b)(5) or 90.531(b)(6) that do not provide at least one voice path per 6.25 kHz of spectrum bandwidth shall not be manufactured in, or imported into the United States after December 31, 2014. Marketing of these transmitters shall not be permitted after December 31, 2014.

■ 3. Section 90.535 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

**§ 90.535 Modulation and spectrum usage efficiency requirements.**

\* \* \* \* \*

(d) \* \* \*

(1) With the exception of licensees designated in paragraph (d)(2) of this section, after December 31, 2014, licensees may only operate in voice mode in these channels at a voice efficiency of at least one voice path per 6.25 kHz of spectrum bandwidth.

(2) Licensees authorized to operate systems in the voice mode on these channels from applications filed on or before December 31, 2014, may continue operating in voice mode on these channels (including modification applications of such licenses granted after December 31, 2014, for expansion

or maintenance of such systems) at a voice efficiency of at least one voice path per 12.5 kHz of spectrum bandwidth until December 31, 2016.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 050303056-5108-02; I.D. 020205F]

RIN 0648-AT07

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

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

**ACTION:** Temporary rule; fishing season notification.

**SUMMARY:** This rule establishes the second and third trimester season quotas for large coastal sharks (LCS);

small coastal sharks (SCS); and pelagic, blue, and porbeagle sharks based on over- or underharvests from the 2004 second semi-annual season. In addition, this rule establishes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data.

**DATES:** This rule is effective May 1, 2005 through December 31, 2005. The Atlantic commercial shark fishing season opening and closing dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** For copies of this rule, write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Chris Rilling, Karyl Brewster-Geisz, or Mike Clark by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:**  
**Opening and Closing Dates and Quotas**

TABLE 1—OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closing Date	Quota
<b>Second Trimester Season</b>				
Large Coastal Sharks	Gulf of Mexico	July 6, 2005	July 23, 2005 11:30 p.m. local time	147.8 mt dw (325,839 lb dw)
	South Atlantic		August 31, 2005 11:30 p.m. local time	182.0 mt dw (401,237 lb dw)
	North Atlantic	July 21, 2005		65.2 mt dw (143,739 lb dw)
Small Coastal Sharks	Gulf of Mexico	May 1, 2005	To be determined, as necessary <sup>1</sup>	30.5 mt dw (67,240 lb dw)
	South Atlantic			281.3 mt dw (620,153 lb dw)
	North Atlantic			23.0 mt dw (50,706 lb dw)
Blue sharks	No regional quotas	May 1, 2005	To be determined, as necessary <sup>1</sup>	91.0 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)
<b>Third Trimester Season</b>				
Large Coastal Sharks	Gulf of Mexico	September 1, 2005	October 31, 2005 11:30 p.m. local time	167.7 mt dw (369,711 lb dw)

TABLE 1—OPENING AND CLOSING DATES AND QUOTAS—Continued

Species Group	Region	Opening Date	Closing Date	Quota
	South Atlantic		November 15, 2005 11:30 p.m. local time	187.5 mt dw (413,362 lb dw)
	North Atlantic		September 15, 2005 11:30 p.m. local time	4.8 mt dw (10,582 lb dw)
Small Coastal Sharks	Gulf of Mexico	September 1, 2005	To be determined, as necessary <sup>1</sup>	31.7 mt dw (69,885 lb dw)
	South Atlantic			201.0 mt dw (443,345 lb dw)
	North Atlantic			15.9 mt dw (35,053 lb dw)
Blue sharks	No regional quotas	September 1, 2005	To be determined, as necessary <sup>1</sup>	91.0 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

<sup>1</sup>When necessary, the closing date will be established and a notification will be published in the *Federal Register*.

## Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, and Amendment 1 to the HMS FMP, finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw) and the 2004 annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the west coast of Florida), South Atlantic (east coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The LCS and SCS quotas were split among the three regions based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that adjusted the 2005 regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, established a method of accounting for over- or underharvests in the transition from semi-annual to trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

The 2004 final rule divided the LCS quota among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The SCS quota was split among the three regions as follows: 10 percent to the Gulf of Mexico, 88 percent to the South Atlantic, and 2 percent to the North Atlantic. The regional quotas for LCS and SCS were divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings in the North Atlantic. The quotas were divided in this manner because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, but primarily during the summer months in the North Atlantic region. Dividing the quota according to historical landings in the North Atlantic provided that region with a better opportunity to harvest its regional quota.

The final rule also established a method of dividing any over- or underharvests from the 2004 first semi-annual season equally between the 2005 first and second trimester seasons, and any over- or underharvest from the 2004 second semi-annual season equally between the 2005 second and third trimester seasons. This was done, in part, to make a larger portion of the quota available to fishermen during the second and third trimester seasons when the time/area closure off North Carolina will no longer be in effect.

The 2004 final rule established a process of issuing proposed and final rules for notification of season lengths and quotas to facilitate public comment. This final rule serves as notification of season lengths and quotas pursuant to 50 CFR 635.27(b)(1)(iii). This action does not change the 2005 base landings quota or the 2005 regional quotas established in the November 30, 2004, final rule (69 FR 69537).

NMFS issued a proposed rule on March 10, 2005 (70 FR 11922), to adjust regional quotas based on over- or underharvests from the 2004 season and to establish the second and third trimester season opening and closing dates.

## Response to Comments

Comments on the March 2005 proposed rule received during the public comment period are summarized below, together with NMFS' responses.

*Comment 1:* NMFS received several comments regarding the proposed second trimester season opening dates. Commenters indicated a preference for a number of different opening dates including May 1, July 1, and July 6. All of the commenters expressed a preference for a particular date due to a combination of potential shark availability, marketing concerns, other fishery openings and closings such as lobster and grouper, and other economic considerations.

*Response:* NMFS has selected July 6 as the opening date for the second trimester LCS season in the Gulf of Mexico and South Atlantic regions, and

July 21 as the opening date for the North Atlantic region. The LCS season was postponed from the May 1 start date in order to protect sharks during the pupping season and to ensure availability of quota for North Carolina fishermen after the reopening of the time/area closure on August 1, 2005. The shark pupping season occurs from March through September in the Atlantic Ocean and the Gulf of Mexico with a peak from May through June. The LCS fishery has usually been closed for at least some of the time during these peak pupping months to reduce the likelihood of interactions with juvenile and reproductive female sharks. Additionally, if NMFS were to open the season on May 1, it is likely that the South Atlantic regional quota would have been harvested prior to the reopening of the time/area closure off North Carolina. Although July 1 has historically been the start of the second semi-annual season, NMFS received several comments that a season opening date of July 6 would improve marketing opportunities because it does not conflict with the Fourth of July holiday. Commenters pointed out that a July 6 season start date would prevent a glut of shark product on the market prior to the Fourth of July holiday when the market for sharks has historically been low. Thus, NMFS believes that the July 6 start date for the second trimester LCS season in the South Atlantic and Gulf of Mexico regions strikes a balance between the various competing interests based on shark availability, pupping concerns, and equitable distribution of the quota. The start date of July 21 for the North Atlantic region will allow that region's second and third trimester seasons to run consecutively.

*Comment 2:* The proposed opening date of September 1 for the third trimester season in the Gulf of Mexico will allow fishing when there are virtually no sharks to catch, with the exception of migrating dusky sharks. This is a prohibited species that will no doubt be caught and discarded if there is any fishing effort in the Gulf of Mexico during this time.

*Response:* NMFS does not anticipate that there will be excessive catch and discard of prohibited shark species. However the likelihood of catching prohibited species always exists, and NMFS will monitor landings and discards closely in order to determine whether the discard of prohibited shark species is excessive. Vessels will be selected for observer coverage, and through the observers, NMFS will be able to determine during the season if the third trimester season is resulting in excessive prohibited species

interactions. Before the 2006 third season, NMFS will also use logbook reports to further verify whether or not opening at that time caused excessive prohibited species interactions.

*Comment 3:* Catching sharks should be totally banned. If not totally banned, then shark quotas should be cut by 50 percent this year, and by 10 percent every year after that.

*Response:* NMFS does not believe that banning all shark fishing is warranted for the following reasons: a number of businesses, including fishermen, processors, suppliers, and dealers could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. In addition, the current rebuilding plan implemented in 2003 reduced the LCS quotas by 41 percent from 1,714 to 1,017 mt dw, to ensure a sustainable fishery and viable Atlantic shark populations in compliance with the requirements of the Magnuson-Stevens Act and other domestic laws.

*Comment 4:* NMFS should implement a more frequent reporting system for Atlantic shark landings. Reporting every week, as opposed to the current two-week reporting period, would help improve monitoring catch rates during the season.

*Response:* NMFS may consider shortening the reporting period in the future. However, prior to taking such an action, NMFS would need to conduct additional analyses, including an opportunity for public notice and comment as required by the Paperwork Reduction Act (PRA). Since shortening the reporting period would increase the reporting burden on seafood dealers, NMFS would need to amend the current regulations as well as the information collection approved by the Office of Management and Budget pursuant to the PRA. Even if the reporting period were shortened, NMFS would likely continue to establish the commercial shark fishing seasons in advance of the season to avoid overharvests.

*Comment 5:* NMFS should shorten the third trimester season in the South Atlantic by approximately one month to avoid an overharvest.

*Response:* NMFS agrees that there is the possibility that catch rates in late October or early November could increase, potentially resulting in an overharvest. As a result, NMFS will take the precautionary step of closing the third trimester season in the South Atlantic on November 15. Any over- or underharvest will be counted against or added to the South Atlantic quota during the third season of 2006.

*Comment 6:* NMFS should consider opening the first trimester season in February rather than January, because sharks are typically not available until that time.

*Response:* NMFS will consider postponing the opening date in all regions for the 2006 first trimester season in a proposed rule to be published later this year in the **Federal Register**.

*Comment 7:* There are enormous numbers of spiny dogfish and something must be done to manage them.

*Response:* Spiny dogfish are currently managed jointly by the Mid-Atlantic and New England Fishery Management Councils. Any comments on that FMP should be submitted to those Councils.

#### **Changes From the Proposed Rule (March 10, 2005, 70 FR 11922)**

In the proposed rule, NMFS considered opening the LCS second trimester season in the Gulf of Mexico on August 1, in the South Atlantic on July 1, and in the North Atlantic on July 15. NMFS considered delaying the start of the second season from May 1 in order to reduce the likelihood of interactions during shark pupping periods, and to allow the available quota to be harvested by the beginning of the third trimester season. Delaying the start of the second trimester season would have allowed the second and third trimester seasons to run consecutively. This would have prevented the need for a closure of the LCS fishery between the second and third trimester seasons and could have helped minimize disruption to fishery participants in the transition from semi-annual to trimester seasons. After considering public comments, NMFS has decided to change the season opening date for the Gulf of Mexico from August 1 to July 6, and the South Atlantic season opening date from July 1 to July 6. NMFS received several comments that a July 6 opening date in both regions would improve marketing opportunities because it does not conflict with the Fourth of July holiday. Many fishermen indicated that sharks are available in July, but not in August, and that an opening date of August 1 would have had negative economic impacts on fishermen in the Gulf of Mexico as a result. Fishermen also noted that the lobster fishery opens on August 1, and that opening the shark season on the same date would have prevented them from participating in either the shark or the lobster fishery, thus creating further economic hardship on fishermen who rely on revenues from both fisheries. Since the fishery has historically opened on July 1, NMFS

does not believe there will be any negative ecological or economic impacts as a result of this change. Since the season will now begin on July 6, and catch rates have historically been higher in July than August however, the season in the Gulf of Mexico will need to be shortened. Consequently, the second and third trimester seasons in the Gulf of Mexico will not run consecutively.

For the North Atlantic region, recent updates to landings information indicated higher landings that required delaying the start of the second trimester season one week from July 15 to July 21. This will allow the second and third trimester seasons to run consecutively from July 21 to August 31, 2005, and from September 1 to September 15, 2005, respectively, without overharvesting the quota.

In the proposed rule, NMFS considered a closing date of December 15 for the South Atlantic region. After considering public comments, NMFS has decided to establish a closing date of November 15. There has historically been no commercial shark fishery in October or November, and NMFS thus estimated the closing date in the proposed rule based on the available quota and historic catch rates during August and September. Fishermen indicated that there is a likelihood of an increased harvest of LCS during October and November, and that leaving the fishery open until December 15 could have resulted in an overharvest. Thus, NMFS opted for a precautionary approach of an earlier closing date. In the event that the quota is not caught during this period, NMFS may consider a longer season in the future.

#### Available Quotas

The calculations and details for establishing the regional quotas are described in the proposed rule (March 10, 2005, 70 FR 11922) and are not repeated here. For the Gulf of Mexico, the final LCS quotas for the second and third trimester seasons are 147.8 and 167.7 mt dw, respectively, and the final SCS quotas for the second and third trimester seasons are 30.5 and 31.7 mt dw, respectively.

For the South Atlantic, the final LCS quotas for the second and third trimester seasons are 182.0 and 187.5 mt dw, respectively, and the final SCS quotas for the second and third trimester seasons are 281.3 and 201.0 mt dw, respectively.

For the North Atlantic, the final LCS quotas for the second and third trimester seasons are 65.2 and 4.8 mt dw, respectively, and the final SCS quotas for the second and third

trimester seasons are 23.0 and 15.9 mt dw, respectively.

The 2005 second and third trimester quotas for pelagic (other than blue and porbeagle), blue, and porbeagle sharks are established at 162.7 mt dw (358,688 lb dw), 91.0 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

#### Fishing Season Notification for the Second Season

The second trimester fishing season of the 2005 fishing year for LCS will open on July 6, 2005, in the South Atlantic and Gulf of Mexico regions, and on July 21, 2005, in the North Atlantic region. The second trimester season LCS fishery will close on July 23, 2005, at 11:30 p.m. local time in the Gulf of Mexico, and on August 31, 2005, at 11:59 p.m. local time in the South Atlantic and North Atlantic regions.

The second trimester fishing season of the 2005 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on May 1, 2005. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the Assistant Administrator (AA) will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

To estimate the LCS fishery opening and closing dates for the second season, NMFS calculated the average reported catch rates for each region from the second semi-annual season in recent years (2000–2004). These catch rates were used to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvests in one region will result in an equivalent increase or decrease in the following year's quota for that region.

Because state landings during a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received during the Federal closure dates of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1)(iii), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in

managing the fishery, in recent years NMFS has opened and closed the Federal LCS fishery on either the 15th or the end of any given month. However, based on available quota, historic catch rates, and the recent change counting state landings against the quota, NMFS has decided to allow the Gulf of Mexico LCS fishery to remain open for 18 days during the second trimester season, rather than the usual two or four weeks. An 18-day season will allow the quota to be harvested without exceeding the quota. A two-week season would only have allowed 75 percent of the quota to be harvested.

Based on average LCS catch rates in recent years (2000–2004) for the Gulf of Mexico region, approximately 92 percent of the available second trimester LCS quota (148.0 mt dw) would likely be taken in 18 days and 108 percent of the available LCS quota would likely be taken in three weeks. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 4 percent of the available quota. If catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 96 percent (92 + 4 percent) of the second trimester quota could be caught if the season were open for 18 days, and 112 percent (108 + 4) of the quota could be caught if the season were open for three weeks. If the fishery were to remain open for three weeks, the quota would likely be exceeded. Thus, the LCS fishery in the Gulf of Mexico region will open on July 6, 2005, and close at 11:30 p.m. on July 23, 2005.

Based on average LCS catch rates in recent years (2000–2004) for the South Atlantic region, and accounting for reduction in effort due to the time/area closure off North Carolina, approximately 89 percent of the available second trimester LCS quota (182.0 mt dw) would likely be taken in eight weeks and 107 percent of the available LCS quota would likely be taken in nine weeks. Dealer data also indicate that, on average, approximately 17 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 9 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 98 percent (89 percent + 9 percent) of the quota could be caught in eight weeks, and 116 percent (107 percent + 9 percent) of the quota could be caught in nine weeks. Thus, in order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester

season, the LCS fishery in the South Atlantic will open on July 6, 2005, and close at 11:59 p.m. on August 31, 2005.

Based on average LCS catch rates in recent years (2000–2004) for the North Atlantic region, approximately 80 percent of the available second trimester LCS quota (65.2 mt dw) would likely be taken in five weeks and 89 percent of the available LCS quota would likely be taken in six weeks. Dealer data also indicate that, on average, approximately 12 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 18 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 98 percent (80 + 18 percent) of the quota could be caught in five weeks, and 107 percent (89 percent + 18 percent) in six weeks. Thus, allowing the fishery to stay open for six weeks could result in an overharvest. In order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester season, the North Atlantic will open on July 21, 2005 and close at 11:59 p.m. on August 31, 2005.

#### **Fishing Season Notification for the Third Season**

The third trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on September 1, 2005. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

NMFS will close the third trimester season LCS fishery in the North Atlantic on September 15, 2005, at 11:30 p.m. local time, in the Gulf of Mexico on October 31, 2005, at 11:30 p.m. local time, and in the South Atlantic on November 15, 2005, at 11:30 p.m. local time.

Since the LCS fishery has historically been closed during much of the third trimester period, NMFS used average LCS catch rates from August and September in recent years (2000–2004) to estimate the third trimester season catch rates and closure dates for each of the regions. NMFS used this precautionary approach of averaging catch rates from August and September because of the potential for higher effort in September than has been observed in the past, and to reduce the likelihood of an overharvest. Using catch rates from

August alone may not be appropriate because catch rates during that month have been higher historically than during September, and because it does not fall within the third trimester season. However, using catch rates from September alone may also not be appropriate because of the lack of data during that month. Hence, NMFS used the average of the two-month catch rates.

In the Gulf of Mexico, approximately 79 percent of the available third trimester LCS quota (167.8 mt dw) would likely be taken by the end of October and 99 percent of the available LCS quota would likely be taken by the second week of November. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 4 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 82 percent (79 percent + 4 percent) of the quota could be caught by the end of October. If the fishery were to remain open until the second week of November, the quota would likely be exceeded (99 percent + 4 percent = 103 percent). Accordingly, NMFS will close the Gulf of Mexico LCS fishery on October 31, 2005, at 11:30 p.m. local time.

In the South Atlantic, approximately 86 percent of the available third trimester LCS quota (187.5 mt dw) would likely be taken by the second week of December and 98 percent of the available LCS quota would likely be taken by the end of December. Dealer data also indicate that, on average, approximately 18 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 10 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 96 percent (86 percent + 10 percent) of the quota could be caught by the second week of December. If the fishery were to remain open until the end of December, the quota would likely be exceeded (98 percent + 10 percent = 108 percent). However, since publishing the proposed rule (March 10, 2005, 70 FR 11922), NMFS has received comments from fishermen with historical knowledge of the fishery that landings may actually increase in late October or early November. As a precautionary step to avoid an overharvest, NMFS will close the South Atlantic LCS fishery on November 15, 2005, at 11:30 p.m. local time.

In the North Atlantic region, approximately 70 percent of the available third trimester LCS quota (4.8

mt dw) would likely be taken by the second week of September and 140 percent of the available LCS quota would likely be taken by the end of September. Dealer data also indicate that, on average, approximately 7 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 138 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 210 percent (70 percent + 140 percent) of the quota could be caught by the second week of September. Accordingly, NMFS will close the North Atlantic LCS fishery on September 15, 2005, at 11:30 p.m. local time. This is the shortest season duration that NMFS believes is reasonable to ensure harvest of the 4.8 mt dw quota. Although the percentage overharvest is high, the actual landings during a Federal closure in the North Atlantic (7 mt dw) are low compared to the overall LCS quota (<1 percent), and NMFS does not believe that this would have a negative ecological impact on the LCS rebuilding plan.

#### **Classification**

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification was published in the proposed rule. No comments were received regarding the economic impact of this rule. As a result, no Final Regulatory Flexibility Act analysis was prepared. This final rule will not increase overall quotas, landings or regional percentages for LCS or SCS, implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions.

The AA finds that good cause exists to waive the 30-day delay in effective date for the May 1, 2005, start of the second trimester fishing season for SCS, pelagic, blue, and porbeagle shark fisheries. NMFS received updated landings reports for the first and second 2004 fishing seasons on February 17, 2005. These data were necessary for making over- or underharvest adjustments to the quotas consistent with 50 CFR 635.27(b)(1)(vi). Although preliminary reports from earlier reporting periods were available, NMFS needed to obtain the most recent landings data available to establish appropriate quotas and season lengths based on the best available information for the 2005 second and third trimester

seasons. The February 17, 2005, report on commercial shark landings was the first report received from dealers since the end of the 2004 second semi-annual season, as well as the first report received for the 2005 first trimester season. If the 30-day delay in effective date is not waived, then commercial fishermen in the SCS, pelagic, blue, and porbeagle shark fisheries will not be able to fish on May 1, 2005. Not allowing them to fish for these species, which are not overfished and are not at risk of an overharvest, would have negative economic impacts. Negative economic impacts would include elimination of all shark landings during a time in which fishermen have historically been allowed to fish, loss of anticipated revenues, marketing opportunities, predictability in the supply and availability of shark products, and general disruption to the Atlantic commercial shark fishery. Since the LCS commercial fishing season has been shortened in recent years to adjust for lower LCS landings quotas, fishermen have come to rely on landings of SCS, pelagic, blue, and porbeagle sharks during times when the LCS fishery is closed. Not allowing the fishery to remain open during this period would likely result in fishermen having to target other species, switch to new gears, or leave the fishery entirely. Other provisions of this final rule, including the opening dates for LCS, would have a 30-day delay in effectiveness from the date of publication of this rule. Accordingly, pursuant to 5 U.S.C. 553(d)(1), a delay in effective date is waived for the above-referenced May 1, 2005, start date.

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

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management (CZM) programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. NMFS asked for states concurrence with this determination during the proposed rule stage. Three states replied affirmatively regarding the consistency determination, and one state (Texas) indicated that its CZM program no longer issues consistency determinations for federally managed fishing activities. NMFS presumes that the remaining states that have not yet responded concur with the determination.

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

Dated: April 22, 2005.

**Rebecca Lent,**

*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 679

[Docket No. 041126333-5040-02; I.D. 042105C]

#### Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to allow the deep-water species fisheries by vessels using trawl gear in the GOA to resume.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 24, 2005, through 1200 hrs, A.l.t., July 5, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

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

NMFS closed directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on April 8, 2005 (70 FR 19338, April 13, 2005).

NMFS has determined that approximately 60 metric tons of halibut

remain in the second seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the deep-water species fisheries by vessels using trawl gear in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The reopening is effective 1200 hrs, Alaska local time (A.l.t.), April 24, 2005, through 1200 hrs, A.l.t., July 5, 2005. The species and species groups that comprise the deep-water species fishery are all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the fishery, not allow the full utilization of the species and species groups that comprise the deep-water species fisheries, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 22, 2005.

**Galen R. Tromble**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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