

timeframes to bring a claim. HRSA invites comments on deadlines for responses to submissions by the participants, the government and deciding body or official and the consequences of failure to meet a particular deadline.

(8) Discovery Procedures

HRSA is requesting input on the process used for discovery of information from participating manufacturers and covered entities. HRSA will need to determine the scope of documents (information, reports, answers, records, accounts, papers, documentary evidence, etc.) and interrogatories eligible for discovery. HRSA will also need to determine under what circumstances (irrelevancy, privileged information, unduly burdensome, etc.) protective orders should be utilized. Procedures to ensure the confidentiality of information discovered will also need to be developed. Finally, a determination will need to be made as to the power to compel discovery from third parties given that OPA has limited direct regulatory authority through the 340B Program over entities and individuals outside of 340B participating drug manufacturers and covered entities.

(9) Manufacturer Audits

The administrative dispute resolution requirements of the Affordable Care Act set forth that manufacturers must conduct an audit of a covered entity prior to bringing a claim. HRSA currently has guidelines regarding the requirements for initiating an audit (61 FR 65406). However, over the history of the 340B Program manufacturers have rarely utilized the process in the guidelines to conduct an audit. HRSA invites comments on whether it is appropriate or necessary to modify the guidelines concerning audits prior to implementing the administrative dispute resolution regulation or whether the current final guidelines are sufficient.

(10) Consolidation of Manufacturer Claims

HRSA is required to create a process for consideration of whether requests by a manufacturer or manufacturers to consolidate claims by more than one manufacturer against the same covered entity are "appropriate and consistent with the goals of fairness and economy of resources." HRSA seeks comments on how to create this process, the evidence to be considered, timing of requests to join in a consolidated claim, and the interests to be weighed.

(11) Covered Entity Consolidation of Claims

Similar to the consolidation of manufacturer claims, HRSA is required to create a process for consideration of requests for consolidation of particular covered entity claims. HRSA invites comment on whether the standard for manufacturers and covered entities should differ and whether there should be a presumption of allowing such consolidation of claims absent a finding that consolidation would be inconsistent with the goals of fairness and economy of resources.

(12) Claims by Organizations Representing Covered Entities

The legislation provides for claims by organizations representing entities. HRSA is interested in input on when a third party can bring claims on behalf of member covered entities in the context of a binding formal dispute resolution process and how to ensure that the group in fact represents the interests of the covered entities. In order to ensure that such organizations actually represent the interests of covered entities, HRSA is contemplating that prior to seeking to file a claim on behalf of covered entities, such groups must have a signed agreement with the covered entities. The agreement would indicate that the organization is authorized to bring a claim on behalf of the covered entities; the precise nature of the claim; that the covered entities agree to participate in good faith and abide by discovery procedures; and that the covered entities agree to be bound by any decision of the decision-making official or body. HRSA contemplates a decision-making official or body having the authority to not allow claims that would result in unfairness or a substantial waste of resources.

(13) Integration of Dispute Resolutions With Other Provisions in the Affordable Care Act

In addition to the compliance tools already available to HRSA, such as audits and alternative dispute resolution, the Affordable Care Act provides HRSA with many additional tools to monitor compliance. These additional tools include establishing procedures to verify the accuracy of ceiling prices; creating processes for manufacturers to refund overcharges; selective auditing of manufacturers; annual recertification of covered entities; and providing access to ceiling price information. The use of the new administrative dispute resolution authority must be used in conjunction with these other compliance tools to

ensure its most effective use. HRSA invites comments concerning the relationship between administrative dispute resolution and other oversight mechanisms.

While these thirteen areas were identified for comment, we welcome comments on any other issues that stakeholders believe are key to implementing an effective alternate dispute resolution process.

Dated: September 14, 2010.

Mary K. Wakefield,
Administrator.

[FR Doc. 2010-23460 Filed 9-17-10; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100825390-0431-01]

RIN 0648-BA17

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to provide background information and request public comment on potential adjustments to the regulations governing the U.S. Atlantic shark fishery to address several specific issues currently affecting management of the shark fishery and to identify specific goals for management of fishery in the future. NMFS is requesting public comment regarding the potential implementation of changes to the quota and/or permit structure that are currently in place for the Atlantic shark fishery. NMFS is also requesting comments on the implementation of programs such as catch shares, limited access privilege programs (LAPPs), individual fishing quotas (IFQs), and/or sectors for the Atlantic shark fishery.

DATES: Written comments regarding the issues in this ANPR must be received no later than 5 p.m. on January 14, 2011.

Public meetings to obtain additional comments on the items discussed in this ANPR will be held in September, October, November, and December 2010. Please see the **SUPPLEMENTARY INFORMATION** section of this ANPR for specific dates, times, and locations.

ADDRESSES: You may submit comments, identified by "0648-BA17", by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- *Fax:* 301-713-1917, Attn: Margo Schulze-Haugen.

- *Mail:* NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and generally will be posted to portal <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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Related documents, including the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments and the 2009 Stock Assessment and Fishery Evaluation (SAFE) Report are available upon request at the mailing address noted above or on the HMS Management Division's Web page at: <http://www.nmfs.noaa.gov/sfa/hms/>.

Public meetings to obtain additional comments on the items discussed in this ANPR will be held in New Jersey, North Carolina, Maryland (HMS Advisory Panel (AP) meeting), Florida, and Louisiana. *Please see* the

SUPPLEMENTARY INFORMATION section of this ANPR for specific dates, times, and locations.

FOR FURTHER INFORMATION CONTACT:

Karyl Brewster-Geisz, LeAnn Southward Hogan or Delisse Ortiz at 301-713-2347 or fax at 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In 1999, NMFS revised the 1993 Shark FMP and included swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP was amended in 2003, and in 2006, NMFS consolidated the Atlantic tunas, swordfish, and shark FMP and its amendments and the Atlantic billfish FMP and its amendments into the 2006 Consolidated Atlantic HMS FMP. The 2006 Consolidated HMS FMP was amended in 2008 and 2010 to address

management needs in the Atlantic shark fishery.

I. Background

The Fishery Conservation Amendments of 1990 (Pub. L. 101-627) amended the Magnuson Fishery Conservation and Management Act (later renamed the Magnuson-Stevens Fishery Conservation and Management Act or Magnuson-Stevens Act) and gave the Secretary of Commerce (Secretary) the authority to manage HMS in the Exclusive Economic Zone (EEZ) of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea under authority of the Magnuson-Stevens Act (16 U.S.C. 1811, 16 U.S.C. 1854(f)(3)). The Secretary has delegated the authority to manage Atlantic HMS to NMFS.

In 1993, NMFS implemented the FMP for Sharks of the Atlantic Ocean. Some of the management measures in the 1993 FMP included:

- Establishing a fishery management unit (FMU) consisting of 39 frequently-caught species of Atlantic sharks, separated into three groups for assessment and regulatory purposes (Large Coastal Sharks (LCS), Small Coastal Sharks (SCS), and pelagic sharks);

- Establishing calendar year commercial quotas for the LCS and pelagic sharks and dividing the annual quota into two equal half-year quotas that applied to the following two fishing periods—January 1 through June 30 and July 1 through December 31;

- Establishing a recreational trip limit of four sharks per vessel for LCS or pelagic shark species groups and a daily bag limit of five sharks per person for sharks in the SCS species group;

- Establishing a framework procedure for adjusting commercial quotas, recreational bag limits, species size limits, management units, fishing year, species groups, estimates of maximum sustainable yield (MSY), and permitting and reporting requirements;

- Prohibiting finning by requiring that the ratio between wet fins and dressed carcass weight at landing not exceed five percent;

- Prohibiting the sale by recreational fishermen of sharks or shark products caught in the EEZ;

- Requiring annual commercial permits for fishermen who harvest and sell shark products (meat products and fins); and

- Establishing a permit eligibility requirement that the owner or operator (including charter vessel and headboat owners/operators who intend to sell their catch) show proof that at least 50 percent of earned income has been derived from the sale of the fish or fish

products or charter vessel and headboat operations or at least \$20,000 from the sale of fish during one of three years preceding the permit request.

Based in part on the results of the 1998 LCS stock assessment, in April 1999, NMFS published the final 1999 FMP for Atlantic Tunas, Swordfish and Sharks, which included numerous measures to rebuild or prevent overfishing of Atlantic sharks in commercial and recreational fisheries. The 1999 FMP amended and replaced the 1993 FMP. Some of the management measures related to sharks that changed in the 1999 FMP included:

- Reducing commercial LCS and SCS quotas;

- Establishing ridgeback and non-ridgeback categories of LCS;

- Implementing a commercial minimum size for ridgeback LCS;

- Reducing recreational retention limits for all sharks;

- Establishing a recreational minimum size for all sharks except Atlantic sharpnose;

- Implementing limited access in commercial fisheries;

- Establishing new procedures for counting dead discards and state landings of sharks after Federal fishing season closures against Federal quotas; and

- Establishing season-specific over- and underharvest adjustment procedures.

In 2002, additional LCS and SCS stock assessments were conducted. Based on these assessments, NMFS re-examined many of the shark management measures in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and amended the 1999 FMP (Amendment 1). The changes in Amendment 1 to the 1999 FMP affected all aspects of shark management. The final management measures in Amendment 1 included, among other things:

- Aggregating the LCS;

- Using MSY as a basis for setting commercial quotas;

- Eliminating the commercial minimum size;

- Establishing regional commercial quotas and trimester commercial fishing seasons, adjusting the recreational bag and size limits, establishing gear restrictions to reduce bycatch or reduce bycatch mortality; and

- Establishing a time/area closure off the coast of North Carolina.

The 2006 Consolidated HMS FMP consolidated the management of all Atlantic HMS into one comprehensive FMP, adjusted the regulatory framework measures, continued the process for updating HMS Essential Fish Habitat

(EFH), and combined and simplified the objectives of the previous FMPs. Measures that were specific to the shark fisheries included, but were not limited to:

- Mandatory protected species safe handling and release workshops and certifications for all vessel owners and operators that have pelagic longline (PLL) or bottom longline (BLL) gear on their vessels and that had been issued or were required to be issued any of the HMS limited access permits (LAPs) to participate in HMS longline and gillnet fisheries.
- Mandatory Atlantic shark identification workshops for all federally permitted shark dealers to train shark dealers to properly identify shark carcasses; and
- The requirement that the second dorsal fin and the anal fin remain on all sharks through landing.

In 2005/2006, new stock assessments were conducted on the LCS complex, and sandbar, blacktip, porbeagle, and dusky sharks. Based on the results of those assessments, NMFS amended the 2006 Consolidated HMS FMP (Amendment 2). NMFS implemented management measures consistent with recent stock assessments for sandbar, porbeagle, dusky, and blacktip sharks and the LCS complex. Some of the management measures implemented in Amendment 2 included:

- Initiating rebuilding plans for porbeagle, dusky, and sandbar sharks consistent with stock assessments;
- Implementing commercial quotas and retention limits consistent with stock assessment recommendations to prevent overfishing and rebuild overfished stocks;
- Modifying recreational measures to reduce fishing mortality of overfished stocks and stocks with overfishing occurring;
- Modifying reporting requirements;
- Requiring that all Atlantic sharks be offloaded with fins naturally attached; and
- Collecting shark life history information via the implementation of a shark research program.

An SCS stock assessment was finalized during the summer of 2007 which assessed finetooth, Atlantic sharpnose, blacknose, and bonnethead sharks. Based on the results of this assessment, NMFS amended the 2006 Consolidated HMS FMP (Amendment 3). The measures in Amendment 3 included, among other things:

- Implementing a rebuilding plan for blacknose sharks;
- Implementing commercial SCS quotas consistent with stock assessment recommendations;

- Taking action at the international level to end overfishing of shortfin mako sharks; and
- Promoting the release of shortfin mako sharks in the recreational and commercial fisheries.

A. Need for Action

As outlined above, since sharks have been federally managed, there have been many changes to the regulations and major rules related to sharks, either through FMP amendments or regulatory amendments, in order to respond to results of stock assessments, changes in stock status, and other fishery fluctuations. Despite modifications to the regulations or Amendments to the FMP in order to respond to these changes, the Atlantic shark fishery, particularly the LCS portion of the fishery, continues to be faced with problems such as commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, “derby” fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices. Rather than react to these issues every year with a new regulation or every other year with a new FMP amendment, NMFS would like to be more proactive in management and explore methods to establish more flexible regulations that would consider the changing needs of the fishery. To achieve this objective, NMFS must establish specific long-term management goals for the shark fishery, including the goals of rebuilding overfished stocks, preventing overfishing, and the other objectives of the 2006 Consolidated HMS FMP and its amendments. In this ANPR, NMFS requests comments and input on what the specific fishery goals should be and on potential short-term and long-term changes to the Atlantic shark fishery in order to achieve those goals.

II. Potential Management Solutions

A. Quota Structure Changes

Several changes could be made to the current shark quota structure. Currently, NMFS calculates the total allowable catch (TAC) for a shark species based on stock assessments. NMFS partitions these TACs into commercial landings, recreational landings, and dead discards. NMFS bases the commercial quotas on the commercial landings partition and adjusts them according to rebuilding plans to end overfishing. Within this overall quota structure, NMFS is considering changes. NMFS is considering, among other things: Managing the species in complexes only

with no individual species quotas; having species-specific quotas only; moving species within a complex to different complexes; re-considering regional quotas; establishing bycatch quotas for prohibited shark species or protected resources; and limiting quotas by gear type such as gillnet quotas, BLL quotas, and recreational quotas.

Managing the species in complexes only, with no individual species quotas, would re-establish the method of shark management established in the 1993 FMP. For example, the fishery could return to an LCS complex, an SCS complex, and a pelagic shark complex. Managing the shark species by complexes in this way simplified season opening dates and the process for setting quotas. The species complex management approach worked well when the stock assessments were conducted on the complex, but became complicated when stock assessments began to be completed for individual species because stock assessment recommendations for TACs were given for individual species rather than for the complex. NMFS is seeking public comment on how, if NMFS were to return to this management structure, quotas should be set if the stock status of species differs within a complex. Should the overall complex quota be based on the species with the poorest stock status, the best stock status, or an average stock status? How should NMFS determine within which complex a species should be placed? Should the complex be based on biology, gear type, stock status, or something else?

If NMFS were to move forward with species-specific quotas, this could result in more than twenty individual shark quotas. If each shark species had an individual quota, the season for each species could open and close at different times during the year. Currently, species-specific quotas within the shark fishery are based on recommendations from species-specific stock assessments. NMFS is seeking public comment on how, if a particular species has no species-specific stock assessment, the quotas should be derived. In the SCS fishery, there is a species-specific quota and a complex quota, and when the species-specific quota is caught, both the species-specific and the complex quotas are closed. If NMFS were to move to individual species quotas only, should these quotas be linked or should they close independently of each other? If the quotas were not linked, how should NMFS account for dead discards of each species?

NMFS is considering whether blacktip sharks should be moved from

the LCS complex to the SCS complex because this species tends to be caught with the same gear as the other SCS species, or whether this species should be removed from the LCS complex and managed separately. NMFS is seeking public comment on how blacktip sharks should be managed, including whether, if blacktip sharks were moved to the SCS complex, should the SCS complex quota be adjusted? If blacktip sharks were managed with an individual quota, how should this quota be derived? Are there other species that should move to different complexes or have their own quota?

Other possible changes to the current shark quota structure could include re-considering regional quotas. Currently, the LCS quotas are separated into an Atlantic quota and a Gulf of Mexico quota, and the SCS and pelagic shark fisheries have no regional quotas. In the past, the LCS fishery was managed in three regions: The Gulf of Mexico, North Atlantic and South Atlantic. The purpose of the three regions was to provide flexibility to adjust regional quotas to reduce mortality of juvenile and reproductive female sharks, provide fishing opportunities when sharks were present in various regions, and account for differences between species' utilization of various pupping grounds. When the LCS fishery was managed in three regions, however, NMFS received feedback from fishery participants that this approach was not meeting the related goals to providing fishing opportunities. One reason for this was because there were instances when fishing effort would change in these regions and NMFS would have to transfer quota among regions to compensate for one region's overharvest and another region's underharvests of the regional quota. Due to regional differences in migration patterns and seasonality of some shark species, some fishery participants have expressed interest in further splitting the LCS quotas in the Atlantic and Gulf of Mexico. NMFS is seeking public comment on these management issues and approaches, including: If additional regional quotas were developed, where should these regions occur and how should the quotas be determined? Similarly, if NMFS were to implement quotas specific to gear type, such as gillnet gear, BLL, and rod and reel, how should these quotas be established?

B. Permit Structure Changes

Several changes could be made to the Atlantic shark permit structure. Currently, the directed and incidental commercial shark permits are LAPs and no new commercial permits are being

issued. NMFS implemented LAPs in the 1999 FMP for Atlantic Tunas, Swordfish and Sharks to remove latent effort from HMS commercial fisheries. As of November 2009, there were 221 directed permits and 282 incidental limited access permits in the Atlantic shark fishery. Currently, if new participants would like to join the fishery, they must find a participant who is willing to sell/transfer his or her commercial permit. There are upgrading restrictions that apply to all directed limited access permit holders. An owner may upgrade a vessel with a directed limited access permit or transfer the directed limited access permit to another vessel only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the original qualifying vessel's specifications. In addition, if a permit is expired for more than a year, the permit becomes permanently invalid and can no longer be renewed. NMFS therefore is considering and seeks public comment on management measures such as: Permit stacking; a use or lose permit system; and matching permit capacity to the shark quotas.

If NMFS were to implement a permit stacking system (as explained below), this would likely mean that fishermen with multiple shark LAPs could use them concurrently on one vessel and that the trip limits of the individual permits could be used concurrently as well. For example, the current non-sandbar LCS trip limit is 33 per trip. Under permit stacking, if two directed shark permits were stacked onto one vessel, that vessel would have a trip limit of 66 non-sandbar LCS per trip. Such a system could provide additional opportunities and security for fishermen who have access to more than one permit and could provide for a more efficient use of resources where fishermen only need to pay fuel costs for one vessel rather than two or more vessels. While this approach may provide benefits for fishermen, NMFS also wants to explore the appropriate limits on permit stacking. For instance, such a system could provide for inactive permits to be brought back into the fishery resulting in additional effort and exacerbating current fishing problems. NMFS is seeking public comment on these types of issues, including, how many permits could be stacked onto one vessel? How would inactive/latent permits be handled, and could they be stacked onto an active vessel? Should incidental shark permits be eligible for stacking and could fishermen without

multiple permits be able to buy additional permits in order to stack them on a vessel? How would a permit stacking system incorporate the upgrading restrictions that are currently in place?

If NMFS were to implement a use or lose permit system, this may mean that fishermen who do not use their commercial shark permit for a specified amount of time would lose the permit and would be unable to re-enter the shark fishery. NMFS is seeking public comment and input on these types of measures, including how and whether this type of use or lose system should apply to directed and incidental shark permit holders and how long should permits remain inactive before they are lost. What should NMFS do with the permits that are lost? Should those permits be removed from the fishery permanently or should NMFS sell those permits to other fishermen?

Another potential solution would be to limit the number of permits to match the effort needed to catch the quota over the entire year. NMFS is seeking public comment on these types of measures, including how and whether NMFS could implement a permit system of this type, and whether both inactive and active permits could be removed from the fishery. This type of system would be different from the current LAP system, as that system was designed to remove latent effort only. If permit numbers were matched to the amount of quota, how should those permits be allocated? Should the permits be given to the most active and directed shark fishermen (which would result in the fewest number of permits) or to the least active shark fishermen (which would result in more permits but could remove the fishermen who rely on the fishery the most)?

C. Catch Shares

NMFS has received multiple questions and requests from fishermen and other shark fishery constituents to consider catch shares for the Atlantic shark fishery. Requests to consider catch shares have come from gillnetters in Florida and BLL fishermen in the Gulf of Mexico. Additionally, fishermen throughout the fishery, including fishermen who fish only in state waters, have asked what catch shares would mean for the shark fishery. To be responsive to these requests, this section will give background information on catch shares, including sectors, and pose questions related to how these programs would apply to the Atlantic shark fishery.

"Catch share" is an umbrella term that is used to describe fishery management

programs that provide a portion of the TAC to individuals, cooperatives, communities, or other eligible entities. Catch shares can include LAPPs, IFQs, sectors, and fishery cooperatives. Catch shares can address a variety of fishery needs such as lengthening fishing seasons, lowering operating costs, improving market conditions, promoting safe fishing operations, reducing bycatch and discard mortality, and improving quota monitoring and timely reporting. Catch shares can also address different fishery goals such as eliminating overfishing, stopping derby fishing, and improving socio-economic conditions. In addition, catch shares can address fishery concerns such as loss of small boats and fleets, exclusion of small vessel owners or new entrants, and sustainability of fishing communities.

Each catch share program is unique and there are many elements to consider when designing one for a specific fishery. For example, the design needs to consider eligibility or who will participate in the catch share program, as well as the allocation of quota shares. When considering quota allocation, the duration of the quota shares, transferability of the shares, and preventing excessive accumulation of shares are important issues to consider. It is also important to consider how to protect existing fishery communities and business sectors and ensure the stability and participation of traditional operations. Many catch share programs apply to commercial fishermen, but recreational fishermen are an important part of most fisheries. As such, another consideration is the allocation between commercial and recreational fishermen and whether shares can be moved between those sectors. An additional element of a catch share program that should be considered is the monitoring and enforcement of the program and how to ensure compliance within the catch share program.

When considering catch shares for the Atlantic shark fishery, NMFS has the following design questions: Should a catch share program encompass all species of Atlantic sharks? Should there be species-specific catch share programs within the Atlantic shark fishery? Should NMFS consider a pilot catch share program for certain species or regions? If a federal shark catch share program were implemented, how would that work with the different states or the Atlantic States Marine Fishery Commission (ASMFC)? Would the states or ASMFC have their own allocation, or would they be included in the federal catch share allocation? Since most of the current catch share programs apply to

commercial fisheries, should the recreational shark fishery be considered for a catch share program? If so, how would that work? If not, how would the TAC be allocated between the two sectors?

As described above, a catch share is an umbrella term that describes many types of programs. One type of catch share program is a sector program. A sector is a group of persons acting as an entity to which NMFS has granted a share or fraction of the TAC in order to achieve objectives and goals within a fishery consistent with an FMP. The allocation share to a sector would be to the group, not to individuals, and distribution of that allocation share to members of the group is internal to the group and is not handled by NMFS. A sector can negotiate and enforce plans, agreements and contracts similar to those required of fishing communities and regional fishery associations. The sector participants can select who would participate, and participation would be voluntary. The rules within a sector would be set up by the sector but would be agreed upon by NMFS. When considering sectors for the Atlantic shark fishery, a group of fishermen could decide on a sector approach and work with NMFS to design regulations specific to that sector that addressed the needs of the group. The regulations within a shark sector could include season openings and quota shares, among other things. Anyone outside of a sector within the shark fishery would follow general shark regulations. For example, for a number of years, directed shark gillnet fishermen, because of their experience with the gear and with working with the Atlantic Large Whale Take Reduction Team (ALWTRT), have been requesting that NMFS limit access of new participants into the shark gillnet fishery. Under a sector scenario, those fishermen could form a sector with specific gillnet regulations. Additionally, a number of fishermen along the Atlantic Ocean and in the Gulf of Mexico have been requesting NMFS to re-establish regions to allow them to fish when certain species of sharks are in their area. Under a sector scenario, those fishermen could form sectors (*e.g.*, a North Atlantic sector and an eastern Gulf of Mexico sector). NMFS would then work with those sectors to establish specific season openings and quota allocations. Permit holders outside the sector, even if fishing in the same area, would not necessarily have the same season opening or quota availability as fishermen in that sector.

As described above, sectors are just one type of catch share program. There are numerous examples in the United

States and around the world of different types of catch share programs. Such a program is designed specifically for each fishery to address the problems in that fishery. Some catch share programs that appear successful are: The Alaska IFQ Halibut and Sablefish Program (http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/ak_halibut_sablefish.pdf) and the Georges Bank Cod Hook Sector (http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/gbcod_hooksector.pdf). NMFS is seeking public comment and input on catch share issues, including whether a type of catch share program may appear to provide the most opportunity and stability for the fishery. Which type of catch share program should NMFS consider or not consider and for what reasons? For additional information on catch shares please visit the NOAA Fisheries Catch Shares Web site at, http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/index.htm.

III. Shark Management Process

In considering the above options for the shark fishery, it is also important to consider the different aspects of the rulemaking process. Currently, the Atlantic shark fishery is managed under the 2006 Consolidated HMS FMP and its amendments. In certain cases, NMFS must amend the FMP; for example, when NMFS receives new fishery information such as new stock assessment information indicating a stock is overfished, NMFS must prepare an FMP amendment in order to develop a rebuilding plan for that particular shark species and to end overfishing. FMP amendments may be warranted due to other types of new information and generally take approximately two years to complete and implement. The public is involved in the amendment process during scoping and again at the proposed rule stage. An example of a recent amendment is Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484, June 1, 2010), which was based on the 2007 SCS stock assessment that indicated NMFS needed to establish a rebuilding plan and end overfishing of blacknose sharks.

Unlike FMP amendments, regulatory amendments are changes to the regulations that can be made without amending the FMP. Regulatory amendments are often the result of new information (*e.g.*, the quota was filled faster than expected) and generally take about a year to complete and implement. Examples of past changes that have been made with regulatory amendments include implementing trip limits, implementing biological opinion requirements, changing regional quotas,

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

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

IV. Summary

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

V. Submission of Public Comments

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

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

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

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

VI. Public Meetings

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

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

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

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

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

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

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

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

Classification

This action is not significant pursuant to Executive Order 12866.

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

Dated: September 14, 2010.

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

[FR Doc. 2010-23438 Filed 9-17-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100622276-0307-02]

RIN 0648-AY98

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

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

ACTION: Proposed rule; request for comments.

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

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