

Dated: May 20, 2003.

Rebecca Lent,

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

■ For the reasons set out in the preamble,
50 CFR part 216 is amended as follows:

**PART 216—REGULATIONS
GOVERNING THE TAKING AND
IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216
continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless
otherwise noted.

■ 2. In § 216.15, a new paragraph (h) is
added to read as follows:

§ 216.15 Depleted species.

* * * * *

(h) Eastern North Pacific Southern
Resident stock of killer whales (*Orcinus
orca*). The stock includes all resident
killer whales in pods J, K, and L in the
waters of, but not limited to, the inland
waterways of southern British Columbia
and Washington, including the Georgia
Strait, the Strait of Juan de Fuca, and
Puget Sound.

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DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

50 CFR Part 635

[Docket No. 021219321-2321-01; I.D.
120901A]

RIN 0648-AQ39

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

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

ACTION: Emergency rule; extension of
expiration date; request for comments;
fishing season notification.

SUMMARY: NMFS extends the expiration
date of the emergency rule that
established the commercial annual
quotas for ridgeback and non-ridgeback
large coastal sharks (LCS) at 783 metric
tons (mt) dressed weight (dw) and 931
mt dw, respectively; established the
commercial annual quota for small
coastal sharks (SCS) at 326 mt dw; and
suspended the regulation regarding the
commercial ridgeback LCS minimum
size. NMFS clarifies that the provision
to count dead discards against the

commercial quota applies to dead
discards by HMS fishermen only. NMFS
also notifies eligible participants of the
opening and closing dates for the
second semi-annual 2003 Atlantic LCS,
SCS, pelagic shark, blue shark, and
porbeagle shark fishing seasons. This
emergency rule extension is necessary
to ensure that the regulations in force
are based on the best available science.

DATES: The expiration date of the
emergency rule published December 27,
2002 (67 FR 78990), is extended to
December 29, 2003.

The fishery opening for ridgeback and
non-ridgeback LCS is effective July 1,
2003, through 11:30 p.m., local time,
September 15, 2003. The ridgeback and
non-ridgeback LCS closures are effective
from 11:30 p.m., local time, September
15, 2003, through December 31, 2003.
The fishery opening for SCS, pelagic
sharks, blue sharks, and porbeagle
sharks is effective July 1, 2003, through
December 31, 2003, unless otherwise
modified or superseded through
publication of a closure notice in the
Federal Register.

Comments on this action must be
received no later than 5 p.m. on July 14,
2003.

ADDRESSES: Written comments on this
action must be mailed to Christopher
Rogers, Chief, NMFS Highly Migratory
Species Management Division, 1315
East-West Highway, Silver Spring, MD
20910; or faxed to 301-713-1917.
Comments will not be accepted if
submitted via email or the Internet.
Copies of the Environmental
Assessment and Regulatory Impact
Review (EA/RIR) prepared for the initial
emergency rule and copies of the
supplemental EA prepared for this
extension may be obtained from Karyl
Brewster-Geisz at the same address or
may be obtained on the web at [http://
www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html).

FOR FURTHER INFORMATION CONTACT:
Karyl Brewster-Geisz or Chris Rilling at
301-713-2347.

SUPPLEMENTARY INFORMATION: The
Atlantic shark fisheries are managed
under the authority of the Magnuson-
Stevens Fishery Conservation and
Management Act (Magnuson-Stevens
Act). The Fishery Management Plan for
Atlantic Tunas, Swordfish, and Sharks
(HMS FMP) is implemented by
regulations at 50 CFR part 635.

On May 8, 2002, NMFS announced
the availability of the first SCS stock
assessment since 1992 (67 FR 30879).
The Mote Marine Laboratory and the
University of Florida provided NMFS
with another SCS stock assessment in
August 2002. Both these stock
assessments indicate that overfishing is

occurring on finetooth sharks. The three
other species in the SCS complex
(Atlantic sharpnose, bonnethead, and
blacknose) are not overfished and
overfishing is not occurring.

On October 17, 2002, NMFS
announced the availability of the LCS
stock assessment (67 FR 64098), which
currently constitutes the best available
science for LCS. The results of this stock
assessment indicate that the LCS
complex is still overfished and
overfishing is occurring; that sandbar
sharks are no longer overfished but that
overfishing is occurring; and that
blacktip sharks are rebuilt and
overfishing is not occurring. The peer
review process for the 2002 LCS stock
assessment, required under the
December 2000 settlement agreement
with commercial fishermen, was
completed in mid-December, 2002.

As a result of these stock assessments,
NMFS published an emergency rule on
December 27, 2002 (67 FR 78990), that
implemented management measures
based on the best available science. The
December 2002 emergency rule expires
on June 30, 2003.

This extension to the December 2002
emergency rule (1) maintains the
commercial annual quotas for ridgeback
and non-ridgeback LCS at 783 mt dw
and 931 mt dw, respectively; (2)
maintains the commercial annual quota
for SCS at 326 mt dw; and (3) continues
to suspend the regulation regarding the
commercial ridgeback LCS minimum
size. This emergency rule does not affect
commercial management measures for
pelagic sharks and does not affect the
management measures for prohibited
species or recreational fisheries.

The extension is necessary to manage
and conserve LCS and SCS based on the
best scientific information available.
Without this emergency rule extension,
the reduced LCS and SCS commercial
quotas of 816 mt dw and 329 mt dw,
respectively, adopted in the HMS FMP
and based on the 1998 LCS stock
assessment, would be in force,
inconsistent with the terms of the court-
approved settlement agreement and
with National Standard 2 of the
Magnuson-Stevens Act. The settlement
agreement with commercial fishermen
explicitly provided that NMFS could
adjust LCS quotas and other
management measures in the 1999 HMS
FMP based on the 2002 LCS stock
assessment after completion of a peer
review process, but could take
emergency action as needed based on
the assessment pending completion of
the review process.

NMFS is developing Amendment 1 to
the HMS FMP for Atlantic sharks in
response to the new stock assessments.

NMFS recently completed scoping hearings on Amendment 1 to the HMS FMP and is developing a proposed rule for public review and comment. The proposed rule should be available during the summer of 2003 and the final rule should be effective by January 1, 2004.

Comments and Responses

NMFS conducted four public hearings on the emergency rule (68 FR 1024, January 8, 2003) and received many written and oral comments over a 50 day comment period. In addition, HMS Advisory Panel members provided NMFS with comments specific to the shark emergency rule at a meeting in Silver Spring, Maryland on February 10–12, 2003. Comments were submitted by recreational and commercial fishing organizations, state agencies, conservation groups, and the general public. The following is a summary of the major comments together with NMFS' responses. The comments are arranged by topic similar to the organizational structure of the EA/RIR.

LCS Commercial Annual Quota

Comment 1: The LCS quota established by the December 27, 2002, emergency rule is 2 million pounds dw less than the 1996 quota. The 1996 quota level would be available now if NMFS had assessed certain species of shark such as bull, dusky, silky, spinner, three species of hammerheads, and tiger. This is especially true given that dusky and tiger sharks, in particular, have shown large increases in catch lately.

Response: The status of the LCS stock and the quota set in the emergency rule are based on the results of the 2002 LCS stock assessment which represents the best available science. The stock assessment was conducted for individual species for which there was sufficient information and for the complex as a whole to account for other species. The information from the stock assessment on the LCS complex as a whole indicates the LCS complex is overfished and that overfishing is occurring. This result does not warrant an increase in quotas for the species mentioned. Information may be available to conduct a stock assessment on dusky sharks in the future.

Comment 2: The NMFS EA/RIR failed to describe which models were used to arrive at the quota levels. The EA/RIR did not provide the justification for choosing certain models. Additionally, NMFS did not acknowledge that uncertainty levels are high. NMFS should establish formal criteria for selecting appropriate models for

determining quotas prior to completion of the stock assessment and not after. Also, NMFS should consider incorporating formal decision analysis techniques as part of the stock assessment.

Response: NMFS relied on overall conclusions and findings of the stock assessment to determine quota levels consistent with the status of stocks. Similarly, determinations as to whether a stock is overfished or whether overfishing is occurring are based on the overall conclusions and findings of the stock assessment. The conclusions and findings of the stock assessment are based on balancing the results of all models, the appropriate application of the models, the sensitivity of the models to the data, and the convergence of the models. NMFS will consider formally identifying the criteria used to balance the results of the models in advance of the next stock assessment.

Comment 3: Increasing the LCS quota was unjustified and could result in an increase in effort, which in turn, could result in an increase in bycatch of sharks and protected species.

Response: NMFS set the ridgeback quota on a slightly reduced level from the average ridgeback harvest, based on average landings of each species, as a precautionary measure to ensure the species in the ridgeback LCS group, other than sandbar sharks, do not decline further. A similar process was followed to ensure that the non-ridgeback LCS, other than blacktip and spinners, do not decline further. The addition of 20 percent to the blacktip portion of the non-ridgeback quota level corresponds to the lower end of the increase suggested for blacktip sharks by the 2002 LCS stock assessment. NMFS does not expect the LCS quotas established in the emergency rule to result in increased fishing effort. From 1999 to 2001, the average LCS landings for all fishermen, including fishermen fishing in state waters, has been 1,693 mt dw and has ranged from 1,616 to 1,778 mt dw. The total ridgeback and non-ridgeback quota under the emergency rule is within this range of recent landings at 1,714 mt dw. Under this landings level, the stock assessment found that the status of the LCS complex as a whole has improved since 1998. Because a number of states now close state waters with the closure of federal waters, because state landings are considered in LCS quota monitoring, and because federal permits are under a limited access system, NMFS does not expect an increase in LCS landings or effort or an increase in non-target finfish or protected species impacts.

Comment 4: The LCS quota appears to be appropriate and does not pose significant risk to the continued rebuilding of the sandbar shark or the LCS complex. Additionally, experience shows that fishermen can target and produce catches that are largely dominated by blacktip sharks.

Response: NMFS agrees. As described in response to comment 2, NMFS believes the quotas are appropriate.

Commercial LCS Size Limits

Comment 1: The method of measuring ridgeback sharks described in the final rule for the HMS FMP (64 FR 29090, May 28, 1999) will not work properly.

Response: This extension to the emergency rule suspends the minimum size requirement. NMFS will re-consider this comment when developing management alternatives for Amendment 1 to the HMS FMP.

Comment 2: NMFS should provide an explanation as to why the ridgeback minimum size was lifted.

Response: The ridgeback minimum size requirement was finalized in the 1999 HMS FMP based in part on the status of sandbar sharks according to the 1998 LCS stock assessment. Due to a lawsuit by the commercial fishing industry, the regulation was never implemented. In 2002, NMFS conducted another LCS stock assessment that found that sandbar sharks were no longer overfished. Given that sandbar sharks are rebuilding without a minimum size requirement and given that implementation of a minimum size requirement can increase discards of sandbar and other sharks, NMFS believes that implementation of a minimum size could slow rebuilding of sandbar sharks and other LCS. NMFS will re-examine in Amendment 1 to the HMS FMP the implications, including those regarding dead discard, of implementing the minimum size in the commercial fishery.

SCS Commercial Annual Quota

Comment 1: The SCS quota should not have been reduced because the assessment for finetooth sharks was incomplete and NMFS needs to gather more information about this species.

Response: A stock assessment for SCS was completed in 2002. This stock assessment examined all SCS individually and as a whole complex and found that overfishing is occurring on finetooth sharks. While the stock assessment states that findings for finetooth sharks should be regarded more cautiously from the results for some of the other species because it used shorter catch-per-unit-effort series and it lacked some bycatch estimates

and catches in some years, the results of the stock assessment are still considered the best available science and NMFS must manage the fishery accordingly. In Amendment 1 to the HMS FMP, NMFS plans to examine the available information for finetooth and other SCS to determine the sources of fishing mortality and consider other alternatives, such as time/area closures, that may reduce fishing effort on finetooth sharks while minimizing impacts on the SCS fishery.

Comment 2: Because finetooth, blacknose, and bonnethead may not be legally taken by recreational fishermen in federal or state waters because they do not reach the 4.5 foot FL size limit, commercial fishermen should be allowed to land more.

Response: The SCS quota capped landings at the highest level of landings by commercial fishermen, including fishermen fishing in state waters. This quota cap was implemented to ensure fishing effort did not increase on finetooth sharks pending Amendment 1 to the HMS FMP.

Comment 3: NMFS estimates of shark bycatch in the shrimp trawl fleet would exceed the annual quota for SCS.

Response: NMFS acknowledges the incorrect estimates provided in the EA/RIR and clarifies in this emergency rule extension that only dead discards from HMS fisheries will be counted against the federal commercial SCS quota. Bycatch and discards in non-HMS fisheries are considered in the stock assessment. NMFS will work with the appropriate management body to minimize shark bycatch in those fisheries, to the extent practicable.

Accounting for all Fishing Mortality

Comment 1: Dead discards should not be counted against future shark quotas. The number of dead discards should only be used in stock assessments that set quotas, in order to prevent confusion among fishermen.

Response: Dead discards are used in stock assessments to determine the current level of fishing mortality and the status of the stocks. The stock assessment does not set the quota; instead the stock assessment provides estimates on the current rate of fishing mortality, the current biomass level, the rate of fishing mortality that the stock may be able to withstand, and the biomass level that could support maximum sustainable yield. From those estimates, NMFS can calculate a total allowable catch level. The quota level set in this emergency rule should be considered a commercial total allowable catch, including all state and federal landings and dead discards in HMS

fisheries. NMFS is considering other methods for setting commercial landings quotas in Amendment 1 to the HMS FMP.

Comment 2: NMFS should be commended for including state landings and dead discards in the quota. However, NMFS has not demonstrated that raising the quota to account for state landings and discards will not increase landings further.

Response: The LCS ridgeback and non-ridgeback quotas in the emergency rule are based on average landings from 1999 to 2001 including landings after federal closures. Any state landings and dead discards by HMS fishermen will be counted against the federal commercial quota. Additionally, if the catch quota is exceeded, the quota for the following year will be reduced. Similarly, dead discards will also reduce the quota in future years. Thus, overall landings should not increase. As described above, because a number of states now close state waters with the closure of federal waters, because state landings are considered in LCS quota monitoring, and because federal permits are under a limited access system, NMFS does not expect an increase in LCS landings or effort or an increase in non-target finfish or protected species impacts.

Comment 3: NMFS should explain why accounting for dead discards will not take effect until 2005.

Response: There is a time lag between the season closure dates and when all final landings are reported, entered into a database, and checked for quality control. Logbook data being reported in 2003 will not be fully entered and checked until late spring/early summer 2004. At that time, NMFS will attempt to verify logbook data with dealer and observer reports. However, the actual amount of dead discards for 2003 will not be available until after the fishing seasons for 2004 have begun or ended. Thus, dead discards from 2003 cannot be used to adjust the catch quota until 2005.

Seasonal Quota Adjustments

Comment 1: NMFS should consider staggered closure dates. Closing the fishery early would allow NMFS to tally the catch to date and then reopen it if there is quota remaining.

Response: NMFS has tried this approach in the past and received numerous complaints from fishermen. Because most shark fishermen are permitted in numerous fisheries, after the shark season is closed, many of them refit their vessels to fish for other species. If NMFS then reopens the fishery, fishermen once again need to refit their vessels. Additionally,

staggered closure dates with no advanced notice of when or if the fishery will reopen makes it difficult for fishermen to maintain a market niche. NMFS may examine this issue in Amendment 1 to the HMS FMP or in a future rulemaking.

Comment 2: NMFS should consider moving the season start date from July 1 to June 1 for better market opportunities during the Fourth of July holiday season. Similar consideration should be given to moving the January 1 start date to December 1.

Response: Changing the season start date may have ecological and economic impacts. An analysis of these impacts needs to be fully considered by the public and NMFS before implementation. NMFS may consider changing season start dates in Amendment 1 to the HMS FMP or in a future rulemaking.

Comment 3: The seasons for ridgeback and non-ridgeback LCS are out of sync with one another and will result in additional discards. NMFS should set a single season closure date for both ridgeback and non-ridgeback LCS. This would also help with enforcement of fishing season closures.

Response: The opening and closure dates for ridgeback and non-ridgeback LCS are based in part on catch rates in previous years. When setting the opening and closure dates, NMFS also considered the fact that, even though fishermen can target certain species, ridgeback LCS could be discarded during the non-ridgeback LCS season. NMFS may consider a single season closure and other options in Amendment 1 to the HMS FMP.

Bycatch and Prohibited Species

Comment 1: NMFS should consider time/area closures to protect juvenile sharks.

Response: Time/area closures may have ecological and economic impacts. The impacts of any closures need to be fully considered by the public and NMFS before implementation. Additionally, some time/area closures to protect juvenile sharks may require coordination with states. NMFS may consider time/area closures as part of Amendment 1 to the HMS FMP.

Comment 2: The LCS fishery should be closed in April to protect pregnant females and pups.

Response: NMFS is considering several alternatives to protect pregnant female sharks and pups in Amendment 1 to the HMS FMP. These alternatives include time/area closures, regional quotas, and changing fishing season start dates.

Comment 3: Dusky sharks are of particular concern due to incidental mortality. This mortality will continue as long as there is a directed shark fishery that is unable to selectively fish certain species. NMFS should conduct a thorough evaluation and reporting of the incidental mortalities of prohibited and overfished species occurring in the fishery.

Response: NMFS believes that many fishermen target certain species of sharks. However, bycatch of other species is inevitable. The latest observer report for the bottom longline fishery indicates that dusky sharks represent approximately one percent of the total shark catch. In Amendment 1 to the HMS FMP, NMFS is considering options to reduce bycatch in the shark fishery.

Comment 4: NMFS should reconsider the prohibition of dusky sharks, and several other coastal shark species such as the Atlantic angel, bignose, Caribbean reef, Caribbean sharpnose, and night sharks. NMFS should set a bycatch quota of 100,000 pounds dw for bignose sharks.

Response: As noted above, according to the latest observer report for the bottom longline fishery, dusky sharks comprise approximately one percent of the total shark catch. The other species listed are either not observed caught or comprise less than one percent of total shark catch in aggregate. NMFS may consider several options to address prohibited species and reduce bycatch as part of Amendment 1 to the HMS FMP.

Comment 5: Dusky, night, and sand tiger sharks are so depleted that they are considered candidates for listing under the Endangered Species Act (ESA). NMFS should assess and reduce unintentional bycatch of these species.

Response: NMFS will be considering various options in Amendment 1 to the HMS FMP to reduce bycatch, as required by the Magnuson-Stevens Act. NMFS recently completed a status review under ESA for dusky sharks and hopes to complete status reviews for night and sand tiger sharks in the near future. The results of the dusky shark status review indicated that recent years have shown an increase in abundance but that catch rates are still much lower than catch rates in the late seventies and early eighties.

Comment 6: NMFS should consider slot sizes to protect large females.

Response: NMFS is examining several options to reduce bycatch as part of Amendment 1 to the HMS FMP. NMFS may consider this option at that time.

General

Comment 1: State regulations should mirror federal regulations, particularly with regard to closures.

Response: NMFS agrees and will work with states during and after the amendment process in order to reach this goal.

Comment 2: The emergency rule sidestepped the process of giving the public an opportunity to comment on management decisions.

Response: NMFS agrees that the public should be given every opportunity to comment on management decisions. The current emergency rule was necessary because, once the December 2001 emergency rule expired, certain measures from the 1999 HMS FMP, which were no longer based on the best available science, would have gone into place unless regulations were promulgated to replace them. While prior notice and comment were impracticable in this case, NMFS held four public hearings on the emergency rule, received comments from the HMS Advisory Panel members at a February 2003 meeting, and gathered significant public input which was considered in the decision to extend the emergency rule.

Comment 3: NMFS should not have proceeded with new quotas before peer reviews were complete. The peer reviews did not endorse raising the LCS quota.

Response: The peer review process, per the settlement agreement with the commercial industry, was not complete until mid-December 2002. If NMFS had waited for the peer reviews before moving forward with a rule, the commercial regulations in the HMS FMP would have gone into place, contrary to National Standard 2 of the Magnuson-Stevens Act. Those regulations in the HMS FMP could have caused substantial harm to the fishing industry. NMFS did consider the peer reviews of the 2002 LCS stock assessment once they were available and found that they were generally positive and supported the 2002 LCS stock assessment. Additionally, the peer reviews themselves were not intended to endorse quota recommendations, but rather to provide an unbiased review of methodology and appropriateness of stock assessment models and interpretation of those models. All peer reviews concluded that the models and methodology used were appropriate. Had the peer reviews been negative or concluded that models were inappropriate, NMFS would have acted immediately to revise the emergency rule.

Comment 4: The Advisory Panel should have been consulted on the emergency rule.

Response: NMFS makes every effort to consult the Advisory Panel prior to issuing FMP amendments or major and/or controversial rules. As described above, the Advisory Panel did provide comments during the comment period on the emergency rule. Additionally, NMFS is in the process of developing Amendment 1 to the HMS FMP that will take into consideration the comments and opinions of the Advisory Panel, stakeholders, conservationists and the public.

Comment 5: NMFS should report which states are allowing shark landings after federal closures and the magnitude of these landings for each state.

Response: NMFS provided a summary of this information at the Advisory Panel meeting and plans to make it available in Amendment 1 to the HMS FMP.

Comment 6: NMFS should implement minimum size limits for recreational fishermen.

Response: NMFS currently has a minimum size limit for recreational shark fishermen. Except for Atlantic sharpnose, recreational fishermen are authorized to keep one shark per vessel per trip larger than 4.5 feet fork length. There is no minimum size for Atlantic sharpnose sharks. NMFS may consider other minimum size requirements for recreational fishermen in Amendment 1 to the HMS FMP.

Comment 7: Based on the improved stock picture provided by the 2002 SCS assessment, NMFS should consider increasing the recreational bag and size limits for SCS. Recreational fishermen have been unfairly penalized by LCS and SCS assessments in the past.

Response: NMFS is examining several options for recreational fishing as part of Amendment 1 to the HMS FMP. NMFS may consider this option at that time.

Comment 8: Vessel upgrading restrictions are a safety concern. The current management regime forces smaller boats to fish further offshore in adverse conditions.

Response: Vessel upgrading restrictions were implemented to control excess fishing capacity in the shark fishery. NMFS believes that announcing the duration of the shark fishing season ahead of time should allow fishermen to avoid fishing under adverse conditions. NMFS is considering an amendment to some of the limited access regulations and will consider this issue in that process.

Comment 9: NMFS should leave a quota for incidental catch.

Response: NMFS is considering several quota alternatives in Amendment 1 to the HMS FMP and may consider this comment in that or in another rulemaking.

Comment 10: Harvesting sharks for meat or cartilage is completely unnecessary.

Response: NMFS disagrees. Sharks are a fishery resource that contributes to the food supply, economy, and health of the Nation as described in the Magnuson-Stevens Act.

Comment 11: NMFS should educate the public about sharks and their behavior to dispel the "Jaws" misconception. Sharks are much more economically valuable alive than dead.

Response: NMFS agrees that there are misconceptions about sharks and has made efforts to educate the public through various media including the internet. For instance, in early 2002, NMFS announced the availability of a website devoted exclusively to shark education at <http://www.nmfs.noaa.gov/sharks/> and will soon release an identification guide for all HMS including sharks. NMFS agrees that sharks are economically valuable, both as a harvested resource, and as a component of the marine environment that user groups, such as scuba divers, may wish to observe in the wild. NMFS believes that the sustainable harvest of sharks will not prevent segments of the population who derive economic benefit from sharks living in the wild or in public display facilities to continue doing so.

Comment 12: Sharks are top predators in the marine food chain and harvesting them will disrupt the food web.

Response: NMFS agrees that sharks are an important component of the marine environment and current regulations are designed to promote a sustainable fishery. Through sound conservation and management, NMFS believes that shark populations can be rebuilt and that the ocean's food web will not be disrupted.

Comment 13: NMFS should lobby Asians to stop shark finning.

Response: NMFS cannot regulate fishing vessels from other countries. However, the Shark Finning Prohibition Act which was passed on December 21, 2000, and implemented on February 2, 2002 (67 FR 6194), prevents any person subject to U.S. jurisdiction from engaging in shark finning (finning is the practice of removing the fin or fins from a shark and discarding the remainder of the shark). Additionally, the Shark Finning Prohibition Act requires the United States to initiate discussions with other nations regarding the prohibition on shark finning. NMFS has

been working with other countries in regard to this. By becoming a signatory nation to the United Nations Food and Agriculture Organization's International Plan of Action on Sharks, the United States has agreed that shark conservation is a concern, both domestically and internationally. The United States has also agreed that all nations and international fishery organizations should take action to ensure that shark populations are monitored, and fishery conservation measures are implemented, to protect sharks from over-exploitation.

Comment 14: Sharks are going extinct.

Response: While some sharks species are overfished, NMFS does not believe they are going extinct. To the contrary, the most recent LCS and SCS stock assessments indicate that several of the most heavily exploited species are no longer overfished and that others are showing positive signs of recovery. Species that are of particular concern are on the candidate species list for listing under ESA, or are on the prohibited species list. However, no species are listed under the ESA at this time.

Comment 15: Sharks may be an important cure for cancer.

Response: NMFS agrees that sharks may be important in our search for cures to certain diseases, and NMFS fully supports further research in this area.

Clarification of the Dead Discard Accounting

After receiving public comments on the emergency rule issued December 27, 2002 (67 FR 78990), NMFS noted some confusion regarding which dead discards are counted against the commercial shark quotas. This confusion presented itself particularly in regard to SCS. Specifically, shrimp trawl discards of SCS from 1998 to 2000 ranged from 570 mt dw to 1,093 mt dw annually with an average of 744 mt dw of discards annually. This average amount is 418 mt dw greater than the SCS annual quota of 326 mt dw established by the emergency rule. As analyzed in the HMS FMP, the provision to count dead discards against the annual quota applies only to incidental catch by fishermen that hold HMS fishing permits.

Annual Landings Quotas

The 2003 annual landings quotas for LCS and SCS are maintained at 783 metric tons mt dw for ridgeback LCS, 931 mt dw for non-ridgeback LCS, and 326 mt dw for SCS. The 2003 quota levels for pelagic, blue, and porbeagle sharks are maintained at 488 mt dw, 273 mt dw, and 92 mt dw, respectively.

Of the 655.5 mt dw established for the second 2002 semiannual LCS season (67 FR 37354, May 29, 2002), 589 mt dw was taken. As explained in the notice announcing the first 2003 semiannual season (67 FR 78990, December 27, 2002), NMFS is adding the remaining 65 mt dw to the available quota for the second 2003 semiannual LCS fishing season. In the past, landings between the ridgeback and non-ridgeback LCS species groups have been approximately the same. Thus, this additional amount will be split equally between the ridgeback and non-ridgeback LCS species groups. As such, the ridgeback LCS quota for the second 2003 semiannual season is 424 mt dw. The non-ridgeback LCS quota for the second 2003 semiannual season is 498 mt dw. The SCS second 2003 semiannual quota is established at 163 mt dw. The second 2003 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw, 136.5 mt dw, and 46 mt dw, respectively.

Fishing Season Notification

The second semiannual fishing season of the 2003 fishing year for the commercial fishery for ridgeback and non-ridgeback LCS, SCS, and pelagic sharks in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open July 1, 2003. To estimate the closure dates of LCS, NMFS used the average catch rates for each species group from the second seasons from the years 2000, 2001, and 2002 and also considered the reporting dates of permitted shark dealers and the potential for discards. Based on average ridgeback LCS catch rates in recent years, approximately 75 percent of the available ridgeback LCS quota would likely be taken by the second week of September and approximately 90 percent of the available ridgeback LCS quota would likely be taken by the last week of September. Based on average non-ridgeback catch rates in recent years, approximately 80 percent on the non-ridgeback LCS quota would likely be taken by the second week in September and approximately 95 percent of the non-ridgeback LCS quota would likely be taken by the last week in September. The second week corresponds with the end of the first biweekly reporting period for September for permitted shark dealers. In order to ensure the quota is not exceeded once dead discards and state landings are accounted for, NOAA Fisheries believes closing the fishery by the second week of September is prudent. Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the ridgeback and non-ridgeback LCS

quotas for the second 2003 semiannual season will likely be attained by September 15, 2003. Thus, the ridgeback and non-ridgeback LCS fisheries will close September 15, 2003, at 11:30 p.m. local time.

When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closure at the Office of the **Federal Register** at least 14 days before the effective date.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Act. The AA has determined that these emergency regulations are necessary to ensure that regulations in force are consistent with the best available science and a court-approved settlement agreement.

NMFS prepared an EA for the initial emergency rule that describes the impact on the human environment and found that no significant impact on the human environment would result. During the public comment period, NMFS became aware that several corrections and clarifications were needed for the initial EA. As a result, NMFS prepared a supplemental EA. None of the corrections or clarifications changed the findings of the EA or NMFS' decision to extend the emergency rule. Thus, the supplemental EA found that no significant impact on the human environment would result from extending the emergency rule. This emergency rule extension is of limited duration. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here. NMFS intends to have management measures in Amendment 1 to the HMS FMP in place by January 1, 2004.

NMFS also prepared a RIR for the emergency rule which assesses the economic costs and benefits of the action. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here.

This emergency rule extension to establish the 2003 landings quotas and

other shark management actions has been determined to be not significant for the purposes of Executive Order 12866.

Additionally, the ancillary action announcing the fishing season is taken under 50 CFR 635.27(b) and is exempt from review under Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

Pursuant to provisions of 15 CFR part 930 and Section 307 of the Coastal Zone Management Act of 1972, state Coastal Zone Management (CZM) Programs, including Puerto Rico and the U.S. Virgin Islands, were advised of NMFS' determination that the emergency rule was consistent with the enforceable provisions of the CZM Programs. Of the eleven responses received, all concurred with NMFS' determination.

The AA finds that it is unnecessary and contrary to the public interest to provide prior notice of and an opportunity for public comment on this emergency rule extension. In the initial emergency rule published on December 27, 2002 (67 FR 78990), NMFS requested, and subsequently received, comments on these management measures. Therefore, the agency has the authority to extend the emergency rule for another 180 days.

This emergency rule extension contains the same measures as in the initial emergency rule and must be in place by July 1, 2003, otherwise LCS quotas and certain other management measures from the 1999 HMS FMP, which were based on the 1998 LCS stock assessment, will go into effect. After reviewing the independent peer reviews of the 1998 assessment, which were required as part of a court-approved settlement agreement, NMFS determined that portions of the 1998 assessment did not constitute the best available science. Allowing the LCS quotas from the 1999 FMP to go into effect, thus, would be inconsistent with National Standard 2 of the Magnuson-Stevens Act and also would result in a significant adverse economic impact to LCS fishermen, as fishing quotas that have been at least 1,285 mt dw for LCS since 1997 would be reduced by at least 36 percent. Additionally, the settlement agreement contemplated that NMFS would not adjust LCS quotas and other management measures in the 1999 HMS FMP until after a peer review process on a new LCS stock assessment was

complete, but could take emergency action as needed pending completion of the review process.

Since publication of the initial emergency rule, NMFS has held four public hearings and solicited comment on the rule during a 50 day comment period, reviewed and analyzed the findings of the peer reviews of the 2002 LCS stock assessment, and continued to work on Amendment 1 to the HMS FMP to address long-term, comprehensive shark management measures based on the 2002 LCS and SCS stock assessments. NMFS also developed an issues and options paper for Amendment 1 to the HMS FMP, and held seven scoping meetings including one at the February 2003 meeting of the HMS and Billfish Advisory Panels. NMFS has received extensive public comment on the emergency rule as a result of these processes, and as noted above, this extension would not change any measures from the initial emergency rule.

NMFS will consider many of the comments received on this action in the course of developing Amendment 1 to the HMS FMP. Therefore, for all of the above reasons, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment.

Dated: May 22, 2003.

Rebecca J. 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 648

[Docket No. 030314060-3126-02; I.D. 021003E]

RIN 0648-AQ57

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 3

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 3 (Framework 3) to the Atlantic Mackerel, Squid, and