

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 64**

[CG Docket Nos. 02–278 and 05–338]

**Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** This document contains revisions to the final regulations of the Telephone Consumer Protection Act of 1991 (TCPA). The regulations relate to unwanted telephone solicitations pursuant to the TCPA.

**DATES:** Effective December 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Erica McMahon or Lynne Montgomery, Consumer & Governmental Affairs Bureau, (202) 418–2512.

**SUPPLEMENTARY INFORMATION:** The Commission published a document in the *Federal Register* on July 25, 2003, 68 FR 44144, which revised the TCPA rules and adopted new regulations to provide consumers with options for avoiding unwanted telephone solicitations. The Commission revises the final regulations to reflect recent updates to other provisions of part 64 relative to the TCPA.

**List of Subjects in 47 CFR Part 64**

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k) secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Amend § 64.1200 by revising paragraph (c) introductory text to read as follows:

**§ 64.1200 Delivery restrictions.**

\* \* \* \* \*

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(12) of this section, to:

\* \* \* \* \*

■ 3. Amend § 64.1601 by revising paragraph (e) to read as follows:

**§ 64.1601 Delivery requirements and privacy restrictions.**

\* \* \* \* \*

(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(10) must transmit caller identification information.

\* \* \* \* \*

[FR Doc. E6–21308 Filed 12–13–06; 8:45 am]

**BILLING CODE 6712–01–P****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 060925247–6323–02; I.D. 091106B]

**RIN 0648–AU84****Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures**

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

**ACTION:** Final rule and temporary rule for emergency action; request for comments on temporary rule for emergency action.

**SUMMARY:** This combined final and temporary rule for emergency action establishes the 2007 first trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks and publishes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. The final rule also opens the existing mid-Atlantic shark closed area in July 2007, pending available quota. This combined rule is needed to address over- and underharvests that occurred in the Atlantic shark fishery in the first trimester of 2006.

**DATES:** *Final Rule:* The pelagic shark quotas, North Atlantic regional LCS and SCS quotas, North Atlantic regional LCS season, South Atlantic regional LCS quota and season opening and closing dates are provided in Table 2 under **SUPPLEMENTARY INFORMATION.**

The revision to the mid-Atlantic shark closed area under § 635.21(d)(1) is effective January 1, 2007.

*Temporary Rule for Emergency Action:* The Gulf of Mexico regional LCS and SCS quotas, Gulf of Mexico regional LCS season, and South Atlantic regional

SCS quota are being taken via a temporary rule for emergency action and are effective on January 1, 2007, until June 12, 2007.

The Atlantic commercial shark quotas and fishing season opening and closing dates for the temporary rule for emergency action as set forth in this document are provided in Table 2 under **SUPPLEMENTARY INFORMATION.**

Comments on the temporary rule for emergency action must be received no later than February 12, 2007.

**ADDRESSES:** For copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA), please contact Michael Clark at 1315 East-West Highway, Silver Spring, MD 20910, or at (301) 713–1917 (fax). Copies are also available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>. Written comments on the temporary rule for emergency action portions of this action may be submitted to Michael Clark, Highly Migratory Species Management Division via:

- E-mail: [SF1.091106B@noaa.gov](mailto:SF1.091106B@noaa.gov). Include in the subject line the following identifier: I.D. 091106B.

- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope “Comments on the Emergency Rule for 2007 1st Trimester Season Lengths and Quotas.”

- Fax: 301–713–1917.
- Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Clark or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

**SUPPLEMENTARY INFORMATION:****Background**

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS recently finalized a Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP) that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks. The HMS FMP is implemented by regulations at 50 CFR part 635.

Currently, the Atlantic shark annual quotas, with the exception of pelagic sharks, are split among three regions based on historic landings. Consistent with 50 CFR 635.27(b)(1)(iii) and (iv), the annual LCS quota (1,017 mt dw) is split 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

annual SCS quota (454 mt dw) is split among the three regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic. The regional quotas for LCS and SCS are divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings of 4, 88, and 8 percent for LCS, and 1, 9, and 90 percent for SCS in the first, second, and third trimester seasons, respectively, in the North Atlantic. Consistent with 50 CFR 635.27(b)(1)(iii) and (vi), any over- or underharvest in a given region from the 2006 first trimester season will be carried over to the 2007 first trimester season in that region.

On October 5, 2006 (71 FR 58778), NMFS published a draft EA and proposed rule that examined the regional quotas and proposed season lengths for the 2007 first trimester season for LCS managed under the HMS FMP. This rule was based on dealer reports received by August 24, 2006, indicating that approximately 230

percent (326.1 mt dw) of the LCS for the South Atlantic region had been reported harvested during the first trimester of 2006. At that time, the Gulf of Mexico and North Atlantic regions had reported approximately 46 and 6 percent of their LCS quotas, respectively, as being harvested.

On October 20, 2006, NMFS was informed that due to late Federal shark dealer reports, significant landings of LCS and SCS from the Gulf of Mexico region during the first trimester in 2006 may not have been included in previous published landings estimates and the proposed rule. On November 1, 2006, NMFS published a second **Federal Register** notice (71 FR 64213) extending the comment period on the proposed rule to November 13, 2006. On November 13, 2006, NMFS published a revised shark landings update and extended the comment period for the proposed rule to November 17, 2006 (71 FR 66154). As of November 13, 2006, landings estimates indicated that 151.1 percent (336.6 mt dw) of the LCS quota and 527 percent (78 mt dw) of the SCS

quota for the Gulf of Mexico region had been landed during the first trimester of 2006. Additionally, landings estimates for the South Atlantic region increased to a total of 287.2 percent (393.1 mt dw) of the LCS quota and 15.6 percent (44.5 mt dw) of the SCS quota for the first trimester of 2006. The North Atlantic region harvested only 3.8 percent (0.2 mt dw) of its LCS quota and 0 percent of the SCS quota during the first trimester in 2006.

To address the overharvests in the South Atlantic and Gulf of Mexico regions and the underharvest in the North Atlantic region, NMFS is implementing LCS and SCS management measures outlined in Table 1 via this combined final and temporary rule for emergency action. These measures are necessary to ensure that over- and underharvests from 2006 are accounted for and social and economic impacts of the over- and underharvests are analyzed. The overall annual baseline quota for LCS and SCS has not been affected.

TABLE 1. QUOTA AND SEASON MANAGEMENT ACTIONS THAT WILL BE TAKEN FOR ATLANTIC SHARKS IN DIFFERENT MANAGEMENT REGIONS.

| Species Complex      | Region         |                                 |                                 |
|----------------------|----------------|---------------------------------|---------------------------------|
|                      | North Atlantic | South Atlantic                  | Gulf of Mexico                  |
| Large Coastal Sharks | Final Rule     | Final Rule                      | Temp. rule for emergency action |
| Small Coastal Sharks | Final Rule     | Temp. rule for emergency action | Temp. rule for emergency action |
| All Pelagic Sharks   |                | Final rule                      |                                 |

Two of the five alternatives that were initially analyzed in the draft EA and proposed rule no longer apply. These were alternative 2 (to adjust the South Atlantic regional LCS quota for the first trimester by transferring up to 10 percent of the 2006 first trimester quota from the Gulf of Mexico region) and alternative 5 (to transfer LCS underharvest from the Gulf of Mexico's first trimester of 2006 to the South Atlantic region in 2007). Since an underharvest of LCS in the Gulf of Mexico region during the 2006 first trimester no longer exists, quota cannot be transferred in 2007 to cover the overharvest of LCS in the South Atlantic region during the 2006 first trimester. The alternatives that were analyzed (former alternatives 1, 3, and 4) have been renumbered as alternatives A1, A2, and A3. The renumbered alternatives have been carried forward and analyzed in the final EA. NMFS is finalizing preferred alternative A2, which was also the preferred alternative in the proposed rule. The preamble of the October 5, 2006, proposed rule (71 FR 58778)

contains the alternatives that have been carried forward and analyzed in the final EA and final rule and is not repeated here. The final two alternatives (Alternatives A4 and A5) would have modified the percent of the annual baseline quota each region received based on recent harvest (A4) or would have spread the impacts of the current overharvest out over several years (A5).

Due to the overharvest of LCS and SCS in the Gulf of Mexico during the 2006 first trimester, NMFS analyzed four new alternatives to address the LCS quota and season length in the Gulf of Mexico region and SCS quotas in the South Atlantic and Gulf of Mexico regions. One alternative (alternative B1), if selected, would maintain existing procedures for addressing regional trimester over- and underharvests for SCS when establishing the regional quotas for the first trimester of 2007 (status quo). This alternative would close the Gulf of Mexico regional SCS fishery during the 2007 first trimester due to the extensive overharvest in the 2006 first trimester. It would also apply

the underharvests in the first trimester of 2006 to the 2007 first trimester for the North and South Atlantic regions, resulting in 2007 first trimester quotas of 18.8 mt dw and 371.6 mt dw, respectively. NMFS did not select this alternative because it would cause negative economic impacts on the Gulf of Mexico region by not allowing a SCS fishery during the 2007 first trimester.

The preferred alternative (alternative B2) transfers 63.2 mt dw of the South Atlantic's regional SCS underharvest during the 2006 first trimester to the Gulf of Mexico region in the 2007 first trimester. This gives the Gulf of Mexico region a 15.1 mt dw SCS quota and affords them a SCS fishery that would have otherwise not been possible. NMFS prefers this alternative because it has positive economic impacts in the Gulf of Mexico region. In addition, NMFS does not anticipate that the quota transfer in this alternative will affect the South Atlantic region since the region has never caught their full SCS quota in a given trimester, and NMFS is still adjusting their quota with significant

underharvest of SCS during each trimester. Finally, NMFS anticipates minimal ecological impacts by the quota transfer, given the similar catch composition of SCS between the South Atlantic and Gulf of Mexico regions. Unlike blacktip sharks, SCS are not thought to exhibit population structure between the Atlantic Ocean and Gulf of Mexico.

The third new alternative (alternative B3), if selected, would transfer 126.4 mt dw of the South Atlantic's regional SCS underharvest during the 2006 first trimester to the Gulf of Mexico region in the 2007 first trimester. This amount would cover the overharvest of SCS in the Gulf of Mexico during the 2006 first trimester (63.2 mt dw) as well as give the region additional SCS quota during the 2007 first trimester. NMFS did not select this alternative because under the other preferred alternative, alternative A2, the South Atlantic region will be closed to directed LCS fishing during the 2007 first trimester. Therefore, the South Atlantic region might need a larger SCS quota during the 2007 first season to compensate for the LCS fishery closure.

The last new alternative (alternative B4), if selected, would transfer SCS underharvests from each region during the 2006 first trimester into a reserve category that would then be used to cover the overharvest of any region in the 2007 first trimester. NMFS did not select this alternative because it could cause negative economic impacts in the North and South Atlantic regions and because this type of action would be more appropriate in a permanent rule rather than a temporary rule. Under the status quo, alternative B1, the 2006 first trimester underharvests in the North and South Atlantic regions would carry over to their quotas in the 2007 first trimester, resulting in 2007 first trimester quotas of 18.8 and 371.6 mt dw, respectively. However, under this alternative, the North and South Atlantic regions would allocate their baseline first trimester SCS quotas of 0.1 and 131.5 mt dw, respectively. This would be a difference in SCS quota of 18.7 and 240.1 mt dw, respectively.

#### **Response To Comments**

Comments on the October 5, 2006, proposed rule (71 FR 58778) received from October 5, 2006, through November 17, 2006, are summarized below and are organized according to issue, together with NMFS' responses.

##### *A. Economic Aspects of the Shark Fishery*

*Comment 1:* NMFS received a comment regarding the phase-out of

most, if not all, of the U.S. Atlantic commercial shark fishery, and a buyback program because numerous fishermen will be affected by the abbreviated fishing season in 2007 and pending regulations based upon the LCS and dusky shark stock assessment. Stopgap measures such as the institution of minimum sizes, retention of all fins for better species identification, and designation of additional closed areas do not appear, at the time, to be capable of slowing the decline of LCS. Directed commercial fisheries for sandbar and other LCS fisheries cannot continue much longer, except perhaps with a tightly limited and monitored commercial fishery directed at the blacktip shark in the Gulf of Mexico.

*Response:* This rule addresses overharvests that occurred in the South Atlantic and Gulf of Mexico regions and establishes the appropriate fishing seasons and quotas for the first trimester of 2007, consistent with the rebuilding plan established in 2003 (December 24, 2003; 68 FR 74746). An amendment to the Consolidated Highly Migratory Species Fishery Management Plan will be forthcoming in 2007 (November 7, 2006; 71 FR 65086). The amendment will implement measures to address the recent stock assessments for LCS and dusky sharks, which indicate that these species are in need of more protective measures to prevent further declines in their abundance. The measures included in this amendment will be wide-ranging and evaluate the most effective means of aligning harvest of LCS with the most recent stock assessments. Such measures could include those listed in the comment. Additionally, NMFS is currently reviewing a buyback business plan conducted by the Gulf of Mexico and South Atlantic Fisheries Foundation for the industry and submitted to NMFS in September 2006.

*Comment 2:* NMFS received numerous comments stating that shark fishermen are also impacted by restrictions and management measures in other fisheries, especially the reef fish, snapper/grouper, and golden tilefish fisheries. Fishermen in Cocoa Beach, FL indicated that quota cuts in the golden tilefish fishery off the Atlantic coast of Florida coupled with the proposed closure of the LCS fishery in this region will cost fishermen a lot of money. The effect on the commercial shark business is that some vessels will go into bankruptcy. NMFS' statements of "no significant impacts" regarding the collective impact of these actions has no bearing on reality.

*Response:* NMFS realizes that there are few participants in HMS fisheries that depend solely on the species under the purview of the HMS Management Division. Shark fishermen participants also target reef fish, snapper/grouper, mackerel, and golden tilefish either on the same trip or at different times of the year. Pelagic longline fishermen target swordfish and tunas in addition to dolphin and/or wahoo. Current regulations state that if overharvests of LCS or SCS occur, these overharvests must be taken into consideration when establishing subsequent years' quota for that trimester. In the analyses that established these regulations, NMFS took into account the fact that few, if any, HMS fishermen rely solely on HMS fish and that closures and opening of other fisheries affect whether or not HMS fishermen will fish for HMS species. This current rulemaking attempts to provide fishermen with every opportunity to catch LCS and SCS while maintaining consistency with existing regulations and preventing overfishing of managed species. NMFS is also working on methods to improve fishery management on a more ecosystem-based level. In regard to the statement regarding "no significant impact," NMFS did not state in the proposed rule that the proposed actions would have no significant impact on a substantial number of small entities. Rather, NMFS conducted an Initial Regulatory Flexibility Analysis (IRFA) consistent with the Regulatory Flexibility Act. While NMFS received several comments regarding the potential economic impacts of the proposed rule, NMFS did not receive any comments specific to the IRFA. Nonetheless, NMFS considered the economic impacts and conducted a FRFA for the final rule portion of this action. A summary of the FRFA is provided below in the Classification section.

*Comment 3:* The ultimate solution for the participants in the shark fishery and for fisheries management is the implementation of individual fishing quotas (IFQs). All of the serious shark fishermen that I am in contact with would support IFQs. Allocation could be related to catch history. They would be willing to pay for observers if necessary. This would allow the fishermen to fish when the sharks are there and when the market is right and when it did not conflict with other fisheries.

*Response:* NMFS agrees that implementation of IFQs could be beneficial for both fishermen and the resource. However, implementation of IFQs will take several years as NMFS

and fishermen would need to devise a program that would split the quota among participants in an equitable and appropriate manner. The development of such a program would also likely require an Environmental Impact Statement (EIS) and is beyond the scope of this rulemaking, which was only meant to establish season lengths and quotas for the first season of 2007, consistent with existing regulations. As stated in previous documents, NMFS would like to review the existing HMS commercial permit structure in the near future. Such a review could include IFQs as a potential solution to some of the problems in the current permit structure.

*Comment 4:* The economic impacts of closing the South Atlantic region are more likely neutral because the fishermen harvested 230 percent of the region's trimester quota in 2006, so they attained the economic benefits already.

*Response:* While fishermen received greater revenues in the first trimester of 2006 resulting from the overharvest, those economic benefits would not likely address the future cash flow issues that fishing operations may face in the future due to extended closures. The economic impacts of closing the South Atlantic region would likely include decreases in employment, financing costs to cover fixed costs, difficulty covering fixed costs, and potential negative cash flows that could result in business failures of marginal operators. In addition, the lack of LCS supply to South Atlantic dealers during this period would potentially impact those dealers' ability to meet the demands of their customers for prolonged periods potentially resulting in lost clients as buyers shift their demand to other regions. Finally, shoreside support businesses would also likely receive lower demands for gear, fuel, and other services if the closures result in less fishing activity by affected vessels.

*Comment 5:* The negative economic impacts were underestimated, the South Atlantic is closed for LCS in October, meaning the South Atlantic will experience a 10 month closure of this fishery and not just 6 months as stated.

*Response:* NMFS acknowledges that the South Atlantic will in fact experience a closure in the South Atlantic region for LCS that, in total, is longer than six months. The analysis for previous rules accounted for the closure period at the end of 2006. As such, technically, the scope of analysis for this particular rulemaking starts on January 1, 2007, and the baseline for analysis in this rule already factors in the closure period at the end of 2006.

However, NMFS takes prior closures and potential future closures into consideration when determining the type of management actions to implement. Thus, in this rulemaking, NMFS is opening the entire South Atlantic region, including the Mid-Atlantic shark closed area, for the month of July, pending available quota, to ensure that all fishermen in the South Atlantic region have the same opportunity to fish in their region in the second season of 2007. This action is being taken after considering the impacts of a long closure on the region (October 3, 2006, to July 2007), the potential for a longer closure or short 2nd season given the overharvest in the second season of 2006, and closures in other fisheries.

*Comment 6:* Alternative 5, transfer the LCS underharvest from the Gulf of Mexico's first trimester of 2006 to the South Atlantic first trimester of 2007 is preferable because it would provide some economic benefits for the shark fishery in case it is phased out.

*Response:* Alternative 5 would have distributed a portion of the originally anticipated LCS underharvest from the Gulf of Mexico's landings from the first trimester of 2006 to the South Atlantic first trimester of 2007, thus providing for a first trimester season for 2007 in the South Atlantic. While this alternative would have provided some revenue generating opportunities in the South Atlantic, this alternative was not selected as it would not account for the overharvest experienced in the South Atlantic region during the first trimester of 2006, resulting in additional fishing mortality in 2007 and negative ecological impacts as a consequence. Furthermore, the potential exists for the South Atlantic region to exceed its 2007 first trimester quota, exacerbating future potential economic and ecological impacts as a result.

Revised 2006 first trimester harvest numbers now indicate that the Gulf of Mexico's landing from the first trimester resulted in an overharvest of 113.9 mt of LCS. Therefore, a quota transfer from the Gulf of Mexico region to the South Atlantic region for the 2007 first trimester no longer exists, and therefore this alternative was not considered in the final rule and EA.

#### *B. Quota Monitoring and Trimester Seasons*

*Comment 7:* NMFS received several comments, including one from the State of North Carolina, regarding the mechanisms for reporting and quota monitoring, including: the Agency needs real-time quota monitoring to prevent this from happening in the

future; and quotas for sharks should be like they are for flounder - you should be allowed to go fishing wherever you want and allow fishermen to land fish even when the season is closed; NMFS should develop some additional transparency on the data collection; and NMFS should look for independent means to verify 2006 landings and investigate how long this situation has existed.

*Response:* NMFS realizes there were problems with reporting shark dealer landings during the first trimester season of 2006. Several weeks after the publication of the proposed rule on October 2, 2006, NMFS became aware of extensive landings by several shark dealers that were not received by the Agency during the first trimester of 2006. Incomplete or non-submitted data make it difficult for the Agency to effectively monitor quotas and establish future seasons based on these landings. Accordingly, NMFS is pursuing options to ensure that these issues do not occur in the future and to investigate problems that have occurred in the past. While implementation of real-time quota monitoring may be an effective substitute for the twice monthly reporting regime currently in place, such a system would still depend on shark dealers to submit their data in a timely manner and would require additional time and Agency resources that are beyond the objectives of this rulemaking. Similar to other fisheries, sharks need to be managed in a comprehensive way, including managing them through the use of time/area closures and quotas.

*Comment 8:* NMFS received several comments regarding quotas in general and the trimester seasons, including: quotas used to be beneficial and some regulation is a good thing, but trimester seasons are ineffective and semi-annual seasons are better; there are conflicts with the openings and closings of other fisheries with the trimester fishing seasons as currently configured; dividing the fishing year into two parts allowed for more flexibility and was more workable for the fishermen; and the Agency needs to re-evaluate how the quota that was transferred between the South Atlantic and Gulf of Mexico regions back in 2004; if the South Atlantic regional quota were at pre-transfer levels, the overharvest may not have been as severe.

*Response:* This rule will not address the trimester seasons or shark fishing regions that were established in 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish and Sharks, and the subsequent rulemaking (November 30, 2004, 69 FR 69537).

When NMFS first implemented the trimester seasons, NMFS thought the trimesters would provide fishermen with more fishing opportunities later in the year (September through December) when they were traditionally not allowed to fish under the semi-annual seasons and to protect large pregnant female sharks and their pups from excessive fishing pressure. Similarly, NMFS thought regional quota allocations would provide NMFS with the ability to manage each region in a manner that would benefit commercial shark fishing and fishermen in that region. Under the current regime, regions that did not experience an overharvest are not penalized by quota reductions for overharvests that may occur in the adjacent region. The November 30, 2004, rulemaking adjusted the regional quota allocations based on landings data that were more recent (through 2003) than the landings information analyzed for the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish and Sharks (through 2001). These data indicated that landings in the Gulf of Mexico region had increased, and therefore, that region was given more quota. Effectively, this resulted in an 11 percent adjustment between the Gulf of Mexico and South Atlantic region for LCS. Had this adjustment not been initiated, the South Atlantic region would have still experienced an LCS overharvest in the first trimester of 2006 large enough to warrant a closure of the fishery, and the Gulf of Mexico region would also have had a larger overharvest. NMFS will likely re-examine trimester and regional quotas in the amendment to the Consolidated HMS FMP.

*Comment 9:* Carrying forward underharvests does not seem like a good idea. The Agency should only carry underharvests over for a year. Any more than that does not make any sense. It could allow the quota to get too high. Eventually the base quota becomes meaningless.

*Response:* This rulemaking did not consider modifications to the existing regulations for adjustment of subsequent quotas based on over- or underharvests that occur in a given trimester season and region. In addition, underharvests is only a major issue for SCS and the first trimester in the North Atlantic region for LCS. NMFS will be conducting a stock assessment for SCS in 2007, at which time NMFS can evaluate the effect of recent carry overs on SCS populations. NMFS agrees that carrying substantial underharvest forward every year could allow the quota to get too high and could have negative ecological

impacts if the entire adjusted quota is taken in one year. However, carrying forward smaller underharvests provides fishermen with additional fishing opportunities in the future, especially in circumstances where the fishermen were not able to catch their quota because of factors outside their control (i.e., hurricanes, oceanographic conditions, etc.). Similarly, removing overharvests from the next year's trimester ensures that overfishing does not occur and fisheries are managed at quota levels that are consistent with the most recent stock assessment and corresponding optimum (OY) or maximum sustained yield (MSY). The issue of substantial underharvests for bluefin tuna was recently addressed in the Consolidated HMS FMP where no more than the 100 percent of the baseline allocation can be carried forward. Similar measures could be addressed for sharks in the upcoming amendment.

*Comment 10:* NMFS received numerous comments expressing concern about the landings for large coastal sharks, including: why did the South Atlantic exceed their quota by so much?; the reported landings for the South Atlantic region do not make sense because most of the boats fishing for shark are based in the Gulf of Mexico and most of the effort is in that region; landings reported in Key West should be carefully analyzed because this port is unique in that boats can fish either the Gulf of Mexico or South Atlantic and land in Key West; and errors in reporting areas fished can influence the decision making process in a way that is potentially unfair to one region or another.

*Response:* The original proposed rule that was published on October 5, 2006, was based on landings reports that had been received through August 24, 2006. Due to the extensive overharvest of LCS in the South Atlantic region, the original dealer reports were scrutinized to ensure that there were no landings, including the ones in Key West, mistakenly attributed to the South Atlantic region's quota. In mid-October, NMFS received information that indicated that the August 24, 2006, landings data were incomplete because they did not include all the shark dealer landings for the first trimester of 2006. Landings reports that had not previously been received by the Agency were received and drastically modified the estimated landings for LCS in the Gulf of Mexico and South Atlantic regions and SCS in the Gulf of Mexico region that the proposed rule was based upon. Additionally, the Agency examined other data sources to identify

dealers that were reporting shark landings via other reporting requirements.

Errors in reporting, late reporting, and no reporting are unfair to fishermen in all regions who rely on the Agency's quota monitoring to make decisions on whether or not they should or can fish for sharks. As described in the response to comment 7, the Agency is taking steps to ensure it will not happen again.

### C. Season Lengths

*Comment 11:* NMFS received several comments on opening the second trimester in May, including: it was my hope when we switched to regional quotas that the Gulf of Mexico would be open in May, which would benefit the Gulf of Mexico and the South Atlantic by creating a year round market for sharks; when everyone opens at the same time you glut the market and we have fish in the Gulf of Mexico in May; and, is it possible to open the second trimester season in May in the South Atlantic as a result of the extensive period of time that region is proposed to be closed?

*Response:* The rulemaking did not evaluate quotas and season lengths for the second trimester of 2007. These measures will be addressed in a subsequent rulemaking once more landings data are available for the 2006 second and third trimester seasons. Traditionally, shark fishing in the second trimester begins in July to avoid concerns regarding pupping seasons for various species in the Gulf of Mexico and South Atlantic regions and to avoid conflicts with the fourth of July food markets. Opening the second trimester in May might be an option for consideration for the Gulf of Mexico region. However, given the decision to open the mid-Atlantic shark closed area in July, pending available quota, it is unlikely the South Atlantic region would open earlier than July for the second season.

### D. Quota Transfer

*Comment 12:* NMFS received comments for and against transferring LCS quota from the Gulf of Mexico region to the South Atlantic region, including: any opening of the first trimester South Atlantic fishery would be better than nothing. Whether the quota allocation is transferred from the Gulf of Mexico or otherwise justified, it would be a welcome alternative to tying up the boats. Perhaps it could begin February 1, 2007, when the migration in the South Atlantic is well underway; I am concerned about shifting blacktip quota from the Gulf of Mexico region to the South Atlantic region because these

are unique populations of blacktip sharks, furthermore, since the 2006 LCS assessment stated that the population status of blacktip sharks in the South Atlantic is unknown, fishing pressure in that region should not be increased; Alternative 5, a one year, one time 120 mt dw transfer, will not make much difference; I support a one-time transfer of quota from the Gulf of Mexico region to the South Atlantic region; the State of Louisiana opposes reallocation of Gulf of Mexico quota to the South Atlantic region because the underharvest that occurred during the first trimester of 2006 was a result of the hurricane season of 2005, and underharvests in other fisheries have also taken place; and transferring quotas appears to provide economic benefit for fishermen but provides no conservation benefit to species.

*Response:* The Agency is aware of the economic consequences of closing the South Atlantic region to LCS fishing during the first trimester of 2007. An alternative that would transfer underharvest from the Gulf of Mexico region to the South Atlantic region was considered in the proposed rule (October 5, 2006; 71 FR 58778). As a result of revised landings estimates, which indicate that the Gulf of Mexico no longer has underharvest to transfer, this is no longer a viable alternative. Overharvests experienced by the South Atlantic region (278 percent) and the Gulf of Mexico (151 percent) limit the viable options available for the first trimester 2006 LCS fisheries, while not resulting in overfishing. As such, LCS quota transfers, as outlined in the proposed rule alternatives 1, 2, and 5, will no longer be considered in this rule making.

Under the preferred alternative, alternative B2, during the 2007 first trimester, the Gulf of Mexico region will receive a quota transfer of 63.2 mt dw from the South Atlantic's regional SCS underharvest in 2006. Unlike LCS populations, SCS are not thought to exhibit population structure between the Atlantic and Gulf of Mexico basins. In addition, SCS quotas for each region were based on historical landings, and the trimester quotas were based on public comment, and the catch composition of SCS are similar among the two regions. Therefore, the ecological impacts of reallocating SCS quota from one region to another would most likely be minimal, and would allow fishermen in the Gulf of Mexico region a SCS fishery in the first trimester of 2007 that would otherwise not be possible.

*Comment 13:* The State of Louisiana submitted a comment stating concern

over the proposed open season for LCS and the fact that this will conflict with a state imposed shark closure in Louisiana water that exists between April 1 and June 30 each year.

*Response:* As a result of revised landings estimates, the Gulf of Mexico region no longer has an underharvest of LCS. As such, the season in the Gulf of Mexico will only last two weeks in the beginning of January, and there should no longer be conflicts with the closure in Louisiana state waters.

*E. Preferred Alternative A2 (formerly alternative 3)*

*Comment 14:* NMFS received several comments in support of the preferred alternative, to close the entire South Atlantic region for LCS during the first trimester of 2007, and open the entire South Atlantic region, including the mid-Atlantic shark closed area in July 2007, pending availability of quota, including: I find the preferred alternative in the proposed rule to be the most acceptable option offered by NMFS because transferring overharvest and underharvest between regions makes no biological sense given the current LCS status; closing the South Atlantic region until July is justified given the overharvest in the first trimester of 2006, and will help to protect pregnant female sandbar sharks along the Atlantic coast; and the preferred alternative would be good for the Gulf of Mexico region because we would have single access to the LCS. The market would not be flooded in January as it usually is.

*Response:* The preferred alternatives have changed since the October 5, 2006, rulemaking as a result of revised landings data received after the proposed rule had published. These data indicate an overharvest for LCS in the Gulf of Mexico during the first trimester of 2006, which will result in the Gulf of Mexico having a two-week LCS season instead of the full trimester as proposed. The transfer of quota from the Gulf of Mexico region is no longer an option. The preferred alternatives account for overharvests in the LCS and SCS fisheries while providing additional fishing opportunities to offset the negative ecological impacts of a six month closure in the South Atlantic region.

*Comment 15:* NMFS received several comments opposing the preferred alternative and that NMFS should reverse course and further protect depleted populations of these shark species.

*Response:* In light of the extensive overharvest of LCS that occurred in the South Atlantic during the first trimester

of 2006, NMFS has preferred to close the LCS fishery for six months, and NMFS is opening the mid-Atlantic shark closed area in July, pending available quota. This time period for a closure of the entire South Atlantic region encompasses the entire first trimester season of 2007 plus two additional months (May and June). While this opening will allow for some limited fishing, it will not cause further harm to the species. NMFS realizes that the ecological impacts of this alternative would be neutral or slightly negative; however, as described in the EA, this alternative is the best balance of all the factors (social, economic, and ecological) that the Agency must consider during a rulemaking.

*F. Mid-Atlantic Shark Closed Area*

*Comment 16:* NMFS received numerous comments expressing concern about reopening the mid-Atlantic shark closed area in July 2007 depending upon availability of quota for that region and trimester, including: I question opening the mid-Atlantic shark closed area in July of 2007, this may be balanced by a larger closure (South Atlantic wide) January through June, however, the closed area was closed for a reason; the Agency needs to ensure that there are no adverse ecological impacts as a result of opening the mid-Atlantic shark closed area; what is the ecological value of the closed area off North Carolina?; the benefits of reopening a closed area need to be weighed against the fact that this may set a precedent for opening other closed areas; what will the ecological impacts be of opening the closed area?; why would you not need an EIS to modify the closed area since an EIS was required to implement the closure?; the EA provides dubious justification for the assertions that it met Council of Environmental Quality (CEQ) context and intensity criteria that actions taken will not significantly jeopardize the sustainability of target and non-target species. The EA stated that NMFS does not know the extent of the impact; what does the BLL closed area have to do with any of this, the overharvest was for the entire region not just the mid-Atlantic closed area; the mid-Atlantic shark closed area raises National Standard 4 issues; the majority of the HMS advisory panel (AP) stated at the October 2006 meeting, that the proposal to relax the time area closure was without merit; and, everyone should consider the ramifications of North Carolina closing its state waters.

*Response:* The mid-Atlantic shark closed area is of ecological value as both an area of high localized density of

sandbar and dusky sharks and as a Habitat Area of Particular Concern (HAPC) as an important nursery and pupping ground for these species. Although this time/area closure is of limited geographic extent, it was established for ecological reasons, not to discriminate against any particular region or user group as prohibited under National Standard 4. Comparing landings reported in the Coastal Fisheries logbooks from the South Atlantic region between 2002–2004 (without closed area) with 2005 (with closed area) indicates that landings of LCS decreased by 22.3 percent after implementation of the mid-Atlantic shark closed area. Landings of sandbar sharks in the South Atlantic region decreased by 26.7 percent in 2005 compared to 2002–2004, which could have been a result of the mid-Atlantic shark closed area. Specific to the month of July in the South Atlantic region, landings of LCS and sandbar sharks have decreased by 9.7 and 18 percent, respectively. The Agency only has one year of logbook data (2005) since the implementation of the closure, therefore, it is difficult to discern exactly what the actual ecological impacts of opening the closure for an additional month in 2007 would be. Overall ecological impacts of the preferred alternative, which includes opening the closed area for one month, is expected to be neutral or slightly negative. While the quota overage that occurred in 2006 must be accounted for ecologically, NMFS must consider the social and economic repercussions of such actions. As described below in the response to comment 17, the preferred alternative is the best balance of these interests. NMFS feels that the potential negative ecological impact of opening the mid-Atlantic shark closed area for a portion of the month of July 2007 would be minor, particularly compared to the potential economic and social impacts to fishermen and communities that rely on the area if the area remains closed.

In regard to the statement about conducting an EIS to open the closed area, the Agency must consider numerous factors in determining the NEPA action required. In this case, the Agency determined that an EIS is not necessary for the action regarding opening the closed area in part because, given the limited size and magnitude of this one time, one month opening of the mid-Atlantic closed area, NMFS does not anticipate significant effects individually or cumulatively on the environment. Nor does NMFS consider this action to be a major action. An EIS would be more likely if the Agency were

more permanent or lengthy changes to the closed area. Additionally, the LCS overharvest that occurred in the South Atlantic in 2006 was unique, and occurred just prior to the release of a new LCS stock assessment report. The results of the stock assessment will most likely lead to modifications to the current structure of shark management in the Atlantic, making it very unlikely that a precedent would be set by this action. Given the results of the recent stock assessment, NMFS intends to take a more species-specific approach, compared to the current approach based on the complex as a whole, to managing sharks based on the individual stock assessments of LCS, sandbar, dusky, and porbeagle sharks. Thus, given the changes likely in shark management in the near future, this action is likely not precedent setting and likely will not be repeated.

*Comment 17:* NMFS also received a number of comments regarding the effects of the time area closure, specifically on sandbar and dusky sharks including: the closed area is for pups of dusky and sandbar sharks, given the assessment for sandbars, why are you opening up the closed area?; it is just a month reopening, but these stocks are in bad shape; sandbar and dusky assessments underscore the need for highly protective management measures to ensure that dusky sharks do not slip further towards extinction; NMFS should act now to strengthen conservation measures for dusky and sandbar sharks; NMFS should not open the mid-Atlantic time area closure because it is designed to protect juvenile sandbar sharks (they need 70 years to rebuild); the EA admits that the change would increase fishing mortality on dusky and sandbar sharks but it does not quantify the extent to which mortality will increase; NMFS admits an 18-percent reduction in sandbar shark landings as a result of the mid Atlantic closure before and after the closure was established; the EA dismissed the impact of the additional fishing mortality on sandbar and dusky sharks as a result of opening the mid Atlantic time area closure; the prohibited status of dusky sharks alone has not improved the status of dusky sharks, therefore, time area closure is also necessary; is the closed area part of the existing provisions of the rebuilding timeframe for sandbar sharks?; EA is vague about the impacts of proposed action on individual shark species; some of the species are likely to be disproportionately affected by the proposed actions; it is clearly inappropriate to manage sharks by

multi-species complexes; would any good data be available as a result of opening the closed area; NMFS needs to ensure that observers are present onboard vessels that fish in July in the mid-Atlantic shark closed area in order to get data regarding landings and bycatch; this closed area has caused a great deal of controversy since its inception, opening for a short time period may provide some good data and determine whether or not the controversy initiated by the closure has been worthwhile; and closed area off a single jurisdiction should be eliminated from consideration, and trip limits and quotas are far more fair and equitable management tools.

*Response:* Alternative A2, the preferred alternative, would close the South Atlantic region to LCS fishing during the first trimester of 2007 and open the mid-Atlantic shark closed area in July 2007. The mid-Atlantic shark closed area was implemented to protect neonate and juvenile dusky and sandbar sharks by reducing discards and preventing bycatch of prohibited species during January through July. The Agency's decision to open the mid-Atlantic shark closed area in July, depending on available quota, is based on the realization that the LCS fishery in the South Atlantic region will experience a closure from the conclusion of the 2006 third trimester season (October 3, 2007) until July 1, 2007, or nine months. Historically, the second semi-annual or trimester season has opened in July. The opening of this closed area depends on the level of overharvest in the second trimester of 2006 in the South Atlantic region. Current landings estimates indicate the South Atlantic region landed 135.5 percent (205.5 mt dw) of their 2006 second trimester quota (151.7 mt dw) (November 13, 2006, 71 FR 66154); given this overharvest, the second season may not be open as long as in previous years, and may only occur for a few weeks in July 2007. If NMFS does not consider opening the mid-Atlantic shark closed area during a portion of the month of July 2007, then depending on the start date of the 2007 second trimester in the South Atlantic region, fishermen that normally fish in the closed area would not have an LCS fishery in Federal waters until September 2007, when the third LCS season traditionally opens, unless they moved to another area. This is equivalent of an 11 month LCS fishery closure in that area. Meanwhile, other areas in the South Atlantic region would have a fishery in July 2007, which would be the start of the second



trimester season. Thus, this opening may result in increased opportunity between fishery participants in the vicinity of the mid-Atlantic shark closed area and those in other portions of the South Atlantic region. Therefore, given the limited opening of the area and the amount of time the South Atlantic region will be closed (October 2006 to at least July 2007), NMFS feels that the potential negative ecological impact of opening the mid-Atlantic shark closed area for a portion of July 2007 would be minor.

The ecological impacts of this alternative are similar to alternative A1, with the exception of the impacts of opening the mid-Atlantic shark closed area. NMFS does anticipate that opening the closure for a portion of the month of July will potentially increase dead discards of dusky and sandbar sharks compared to maintaining the closure through July. However, under the existing rebuilding plan, the numbers of dead discards that may occur as a result of opening this area in for one month are anticipated to be minor. It is anticipated the number of neonates and juveniles affected by opening the closure during a portion of July will be relatively minor, especially since no fishing in the entire South Atlantic region will occur between January through June, a time during which pregnant females and neonate sandbar sharks begin to pup off the coast of Florida and dusky sharks start to pup between South Carolina and Maryland (NMFS, 2003).

According to the analyses in the 2003 Amendment 1 to the 1999 FMP Atlantic Tunas, Swordfish, and Sharks, over 80 percent of all dusky sharks observed caught in the Atlantic were caught in January through June. Of those dusky sharks observed caught in the closed area, 86 percent were caught from January through June. In July, the number of dusky sharks observed in the closed was less than 13 percent of all dusky sharks observed throughout the year. The highest catches occurred during the months of January and March. Similarly, approximately 70 percent of all sandbars observed caught in the Atlantic were caught in January through June and 81 percent were observed caught in the closed area from January through June. For sandbar sharks, 18 percent were observed caught in the closed area in July, with the month of January having the highest catches. Thus, opening the closed area for a portion of July would help mitigate the economic hardships in this region while potentially creating minor negative ecological impacts due the lack of a LCS fishery in the 2007 first

trimester in the entire South Atlantic region.

As described above in the response to comment 16, data indicate that landings of LCS decreased by 22.3 percent after implementation of the mid-Atlantic shark closed area and landings of sandbar sharks in the South Atlantic region decreased by 26.7 percent in 2005 compared to 2002–2004. Specific to the month of July in the South Atlantic region, landings of LCS and sandbar sharks have decreased by 9.7 and 18 percent, respectively. These reductions could have been due to the implementation of the closed area. Data also indicate that only 6 percent of the effort (i.e., number of hooks) occurred in the closed area for the month of July compared to the rest of the Atlantic throughout the year (NMFS, 2003). However, given that the Agency only has one year of logbook data (2005) since the implementation of the closure, therefore, it is difficult to discern exactly what the actual ecological impacts of opening the closure for an additional month in 2007 would be. Nonetheless, the Agency feels that the ecological impacts of opening the closure for one month would be neutral or slightly negative.

Currently, vessels are randomly selected to carry observers; however, NMFS agrees that valuable information could be retrieved during the one month opening. As such, NMFS is investigating its ability (e.g., available resources) to increase observer coverage in that area and time and the information that could be collected (including the possibility of placing pop-up archival satellite tags on released animals). NMFS will let affected fishermen know of any changes in observer coverage, as appropriate.

#### G. General Comments

*Comment 18:* The failure to land the quota for porbeagle sharks is likely a testament to the scarcity of porbeagles. Canadian porbeagles are to be listed as endangered under their Species Risk Act, and the International Union for the Conservation of Nature (IUCN) has also listed porbeagles as endangered. NMFS has recently placed them on the Species of Concern list. In doing so, NMFS acknowledged that only approximately 15 percent of the porbeagle population is estimated to be mature breeding females. NMFS should revoke the quota for porbeagles and add them to the Prohibited Species category.

*Response:* Only 0.5 mt dw of the porbeagle 2006 first trimester quota was landed for all regions. NMFS does not expect an increase in fishing pressure on porbeagle sharks during 2007 as fishermen that catch porbeagles as

bycatch prefer to target swordfish and tuna (i.e., they are not targeting porbeagles) since swordfish and tuna meat have higher market values. However, due to the overfished status of this species (November 7, 2006; 71 FR 65086), NMFS will develop a rebuilding plan for porbeagles in the upcoming amendment to the Consolidated HMS FMP. Any necessary changes in porbeagle quota will be considered at that time.

*Comment 19:* Shark quotas have been too small, and the shark science is incorrect; my catches have been increasing even though the seasons have been shortened. Why are our quotas still being reduced?; and with some rebuilding times measured in hundreds of years, what is the Agency's intention in terms of maintaining a viable fishery?

*Response:* The current LCS quotas were established in accordance with the 2002 LCS stock assessment and implemented by the 2003 Amendment to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks. Any changes to these quotas, based on the 2005/2006 LCS stock assessment, 2005 porbeagle shark assessment, and 2006 dusky shark assessment will be done in an amendment to the 2006 Consolidated HMS FMP. While an individual fisherman's catches may have increased during different periods of time, the stock assessments indicated that the overall catch rates for most species individually assessed (except for the Gulf of Mexico blacktip sharks) are on the decline. In the 2002 assessment, LCS were overfished with overfishing occurring and sandbar sharks had overfishing occurring. Based on the current assessments, sandbar, and dusky sharks have been determined to be overfished with overfishing occurring, and porbeagle sharks have overfishing occurring. As such, NMFS has adjusted quotas, and will continue to adjust quotas for these species, as appropriate, to rebuild these stocks and end overfishing. As part of these adjustments, NMFS will consider commercial and recreational management measures that will provide some level of commercial and recreational fishing as well as the opportunity to rebuild the resource.

*Comment 20:* The sandbar shark assessment changed dramatically from the last assessment, primarily as a result of the maturity ogives. There is significant concern surrounding this change and a formal review of the data needs to be accomplished before new measures are proposed. Additionally, continued citation of the dusky shark assessment that has been neither peer-



reviewed nor based on an accepted modeling technique is premature.

*Response:* The maturity ogives used in the 2006 sandbar shark assessment were based on the best available science for sandbar sharks. The current LCS stock assessment, including the blacktip and sandbar sharks assessments, were conducted under the Southeast Data and Review (SEDAR) process. During the peer review process of the assessment, the reviewers requested analyses using the maturity ogive from the 2002 stock assessment. The result of that sensitivity analysis was similar to the result using the updated ogive. The dusky shark assessment was started in 2002, before the SEDAR process was initiated. This assessment was done at the request of the industry and others, who wanted more species-specific assessments conducted. The modeling techniques used in this assessment are based on commonly accepted assessment practices that have been internally reviewed within the NMFS. In addition, staff members of the Southeast Fisheries Science Center that were involved in the 2005/2006 LCS stock assessment, and are therefore familiar with appropriate stock assessment approaches, conducted the dusky shark assessment. Therefore, this assessment constitutes the best available science for dusky sharks.

#### Changes From the Proposed Rule

NMFS has made several changes from the October 5, 2006, proposed rule (71 FR 58778) regarding the Gulf of Mexico's regional SCS and LCS quotas and LCS season and the South Atlantic's regional SCS quotas. These changes are outlined below. The proposed management measures for the North Atlantic regional LCS and SCS and South Atlantic regional LCS and pelagic sharks did not change. Similarly, the proposed measure to open the mid-Atlantic closure in the month of July, pending available quota, did not change.

1. In the proposed rule, NMFS proposed that the Gulf of Mexico region would have a LCS quota of 295.8 mt dw. This proposal was based on landings estimates as of August 24, 2006. Updated landings estimates on November 13, 2006 (71 FR 66154), indicated that Gulf of Mexico region harvested 151.1 percent (336.6 mt dw) of their LCS quota during the first trimester of 2006. Thus, due to the additional landings reports and the overharvest of LCS in the Gulf of Mexico region during the 2006 trimester, NMFS is adjusting the quota to 62.3 mt dw (176.1 mt dw regional and baseline quota – 113.8 mt dw overharvest).

2. In the proposed rule, NMFS proposed that the Gulf of Mexico region would have a LCS season of January 1, 2007, until April 30, 2007. As described in the proposed rule, this season length was based on calculations of the average catch rates from January through April during the first season in recent years (2003–2006) and the available quota. Because state landings during a Federal closure are counted against the quota, NMFS also considered the average amount of quota reported as received during the Federal closure dates of the years used to estimate catch rates. Based on revised landings estimates, the season length for the Gulf of Mexico region must be recalculated.

Based on the average January LCS catch rates in recent years in the Gulf of Mexico region, NMFS calculates that approximately 91.6 percent of the available first trimester LCS quota (62.3 mt dw) would likely be taken in two weeks, and 137.4 percent of the available LCS quota would likely be taken in three weeks. Dealer data also indicate that, on average, approximately 4 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 6.4 percent of the available quota. If catch rates in 2007 are similar to the average catch rates from 2003 to 2006, 98 percent (91.5 + 6.4 percent) of the first trimester quota could be caught in two weeks, and 144 percent (137.4 + 6.4) of the quota could be caught in three weeks. Thus, NMFS will open the fishery in the Gulf of Mexico region on January 1, 2007, and close the fishery on January 15, 2007 (two weeks).

3. In the proposed rule, NMFS proposed that the Gulf of Mexico, South Atlantic, and North Atlantic regions would have SCS quotas of 24.9, 374.0, and 18.7 mt dw, respectively. This proposal was also based on landings estimates as of August 24, 2006. Updated landings estimates on November 13, 2006 (71 FR 66154), indicated that Gulf of Mexico region harvested 527 percent (78 mt dw) of their SCS quota during the first trimester of 2006. Meanwhile, the South and North Atlantic regions harvested 44.5 and 0 mt dw, respectively, of their SCS quotas. Due to the additional landings reports, NMFS is allocating 63.2 mt dw of the SCS underharvest in the South Atlantic region during the 2006 first trimester to the Gulf of Mexico during the 2007 first trimester. This will result in a SCS quota of 15.1 mt dw for the Gulf of Mexico region and 307.3 mt dw of SCS quota in the South Atlantic region during the first trimester of 2007. Based on the underharvest in the 2006 first trimester (18.7 mt dw), the

North Atlantic region will have a 2007 first trimester SCS quota of 18.8 mt dw.

#### Quotas for First Trimester 2007

Pursuant to 50 CFR 635.27(b)(1)(iii) and (iv), the 2007 annual base landings quotas are 1,017 mt dw (2,242,078 lb dw) for LCS and 454 mt dw (1,000,888.4 lb dw) for SCS. The 2007 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. This final and temporary rule for an emergency action does not change these overall base landings quotas. Table 2 describes the quotas for LCS, SCS, and pelagic sharks for the various regions (if applicable) for the first trimester of 2007 adjusted for over- and underharvests that occurred during the first trimester of 2006.

Existing regulations do not allow underharvests of pelagic sharks to be carried forward to the next fishing management period. As of August 24, 2006, approximately 20.3 mt dw had been reported landed in the 2006 first trimester fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(iv). The 2007 first trimester season quotas for pelagic, blue, and porbeagle sharks are 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

#### Fishing Season Notification and Quotas for the First Trimester Season 2007

The first trimester fishing season of the 2007 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 January 1, 2007 (Table 2). When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle sharks, the Assistant Administrator (AA) will file notification of closures at the Office of the Federal Register at least 14 days before the effective date, consistent with 50 CFR 635.28(b)(2).

Pursuant to 50 CFR 635.5(b)(1), 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 provide consistency and predictability in managing the fishery, NMFS aims to close the Federal LCS fishery on either

the 15th or the last day of any given month.

### Final Opening and Closing Dates and Quotas

Final opening and closing dates for the 2007 first trimester season, by region

and species group, are provided in Table 2.

TABLE 2. SEASONS AND QUOTAS FOR LCS, SCS, AND PELAGIC SHARKS FOR THE FIRST TRIMESTER OF 2007. ALL QUOTAS AND LANDINGS ARE DRESSED WEIGHT, IN METRIC TONS, UNLESS SPECIFIED OTHERWISE.

| First Trimester Season 2007                       |                       |                      |                                         |                        |                                     |
|---------------------------------------------------|-----------------------|----------------------|-----------------------------------------|------------------------|-------------------------------------|
| Species Group (Annual Quota)                      | Region (Allocation)   | Opening Date         | Closure Date                            | Quota                  | Rule Type                           |
| Large Coastal Sharks (1,017)                      | Gulf of Mexico (52 %) | January 1, 2007      | January 15, 2007, 11:30 p.m. local time | 62.3 (137,347 lb dw)   | Temp. rule for emergency action     |
|                                                   | South Atlantic (41 %) | Closed Entire Season |                                         | -112.9 (248,899 lb dw) | Final Rule                          |
|                                                   | North Atlantic (7 %)  | January 1, 2007      | April 30, 2007, 11:30 p.m. local time   | 7.9 (17,416 lb dw)     | Final Rule                          |
| Small Coastal Sharks (454)                        | Gulf of Mexico (10 %) | January 1, 2007      | To be determined, as necessary          | 15.1 (33,289 lb dw)    | Temp. rule for emergency action     |
|                                                   | South Atlantic (87 %) |                      |                                         | 308.4 (679,899 lb dw)  | Temporary rule for emergency action |
|                                                   | North Atlantic (3 %)  |                      |                                         | 18.8 (41,446 lb dw)    | Final Rule                          |
| Blue Sharks (273)                                 | No regional quotas    | January 1, 2007      | To be determined, as necessary          | 91 (200,619 lb dw)     | Final Rule                          |
| Porbeagle sharks (92)                             |                       |                      |                                         | 30.7 (67,681 lb dw)    | Final Rule                          |
| Pelagic Sharks other than porbeagle or blue (488) |                       |                      |                                         | 162.7 (358,688 lb dw)  | Final Rule                          |

### Comment Period

NMFS is accepting comments on the temporary rule for emergency action portion of this action through February 12, 2007.

### Classification

NMFS has determined that this action is consistent with section 304(c)(6) of the Magnuson-Stevens Act, including the national standards, and other applicable law. The emergency actions are published under the authority of Section 305(c) of the Magnuson-Stevens Act.

Under 5 U.S.C. 553(b)(5), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comments on the emergency portion of this action as such prior notice and opportunity for public comment is impracticable and contrary to the public interest.

Prior notice and opportunity for public comment is impracticable and contrary to the public interest because it would prevent NMFS from taking immediate action to stem the overharvest of LCS and SCS in the Gulf

of Mexico region in the 2006 first trimester. NMFS was not aware of these overharvests until the end of October 2006 and did not have definitive estimates of landings until mid-November 2006. As the fishing season for LCS and SCS opens on January 1, 2007, NMFS has insufficient time to allow for public comments on this action as it needs to implement these emergency measures in time for the season to open as otherwise further overfishing could occur with no management measures in place to halt it. Previous catch rates indicate that fishermen could catch almost 37 percent of the baseline LCS quota in the South Atlantic region if the fishery remains open until January 15, 2007, and almost 55 percent if the fishery remained open through the third week of January. Similarly, previous catch rates indicate that the entire available LCS quota for the first 2007 season in the Gulf of Mexico region could be taken in the first two weeks of January. Given the fact that fishermen caught almost three times the available LCS quota in the South Atlantic in 2006 and experienced

overharvests in the Gulf of Mexico region for LCS, such an additional harvest and increase in fishing mortality would be contrary to the rebuilding plan outlined in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and would cause serious damage to the resource. If action is not taken, fishing mortality would increase, contrary to the rebuilding plan outlined in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and serious damage to the fishery resource could occur.

Similarly, the Assistant Administrator find good cause under 5 U.S.C.(d)(3) to waive part of the 30-day delay in effectiveness of the this entire combined action. NMFS needs to implement these measures in a timely manner to address the overharvest of LCS in the Gulf of Mexico and South Atlantic regions in the 2006 first trimester and prevent serious damage to the fishery resources. Due to late Federal shark dealer reports, which NMFS received during the comment period for the initial proposed rule, significant landings of LCS and

SCS from the Gulf of Mexico region during the first 2006 trimester were not included in previous published landings estimates and the proposed rule. NMFS needs to implement this action immediately in order to prevent fishing for LCS in the South Atlantic region starting in January 1, 2007. Without this action, the baseline quota levels will take effect and fishermen could begin to fish for LCS on January 1, 2007, in all regions, including those that had significant overharvests in 2006. Previous catch rates indicate that fishermen could catch almost 37 percent of the baseline LCS quota in the South Atlantic region if the fishery remains open until January 15, 2007, and almost 55 percent if the fishery remained open through the third week of January. Similarly, previous catch rates indicate that the entire available LCS quota for the first 2007 season in the Gulf of Mexico region could be taken in the first two weeks of January. Given the fact that fishermen caught almost three times the available LCS quota in the South Atlantic in 2006 and experienced overharvests in the Gulf of Mexico region for LCS, such an additional harvest and increase in fishing mortality would be contrary to the rebuilding plan outlined in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and would cause serious damage to the resource.

This combined final and temporary rule for emergency action has been determined to be not significant for purposes of Executive Order 12866.

In compliance with Section 604 of the Regulatory Flexibility Act, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule portion of this action (not the action taken via emergency action) that could minimize economic impacts on small entities. Each of the statutory requirements of Section 604 of the Regulatory Flexibility Act has been addressed, and a summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see ADDRESSES). The temporary rule for emergency action portion of this rulemaking is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule. As stated in the preamble and in the proposed rule, the objective of this rule

is to establish the quotas and season length for the 2007 first season of the Atlantic shark fishery consistent with the Consolidated HMS FMP and the rebuilding plan established in the 2003 Amendment 1 to the Atlantic Tunas, Swordfish, and Sharks FMP. NMFS needs to implement this action in order to maintain fishing mortality at the levels designated in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks to prevent serious damage to the fishery resource.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public comment in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made as a result of the comments. The IRFA was done in the draft EA for the 2007 first trimester season for the LCS South Atlantic quota management alternatives considered for the proposed rule. NMFS received several comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's responses are included earlier in this action. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments related to economic issues and concerns. NMFS has addressed these comments in the "Response to Comments" section of this action. The specific economic concerns are also summarized here.

Comments were received suggesting the economic impacts of closing the South Atlantic region are more likely neutral because the overharvest of the region's trimester quota in 2006 resulted in fishermen already receiving the economic benefits. While fishermen received greater revenues in the first trimester of 2006 resulting from the overharvest, those economic benefits would not likely address the economic impacts of future cash flow issues that fishing operations may face due to extended closures in the future.

Public comment also indicated that Alternative 5 in the proposed rule was preferable to fishermen because it would provide some economic benefits for the shark fishery in case it is phased out. Alternative 5 in the proposed rule would have distributed a portion of the originally anticipated LCS underharvest from the Gulf of Mexico region's landings from the first trimester of 2006 to the South Atlantic region first trimester of 2007. This transfer would have provided for a limited first trimester season for 2007 in the South Atlantic region. While this alternative

would have provided some revenue generating opportunities in the South Atlantic region, this alternative was not selected as it would not account for the overharvest experienced in the South Atlantic region during the first trimester of 2006, resulting in additional fishing mortality in 2007 and negative ecological impacts as a consequence. Furthermore, the potential exists for the South Atlantic region to exceed its 2007 first trimester quota, exacerbating future potential economic and ecological impacts as a result. Revised 2006 first trimester harvest numbers now indicate that the Gulf of Mexico's landing from the first trimester resulted in an overharvest of 113.9 mt of LCS. After calculating 2007 and 2008 adjusted quotas for the South Atlantic region, NMFS determined that this alternative would not allow for a first trimester season in 2007, and therefore this alternative is now not further analyzed.

Finally, NMFS also received comment that the negative economic impacts were underestimated in the proposed rule since the South Atlantic region was closed for LCS in October 2006, meaning the South Atlantic would experience a 10 month closure of this fishery and not just the six months stated. NMFS acknowledges that the South Atlantic region will in fact experience a closure in the South Atlantic region for LCS that is in total longer than six months. Given that the analysis for previous rules already accounted for the closure period at the end of 2006, technically the scope of analysis for this particular rulemaking starts on January 1, 2007, and the baseline for analysis in this rule factors in the closure period at the end of 2006. Nonetheless, NMFS did consider the economic impacts of a nine-month closure (October 3, 2006, to the end of June 2007) and closures in other fisheries when determining the final action.

No changes were made in the rule as a result of these comments.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. NMFS considers all HMS permit holders to be small entities because they either had gross receipts less than \$3.5 million for fish-harvesting, gross receipts less than \$6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. These are the Small Business Association size standards for defining a small versus large business entity in this industry. As of February 2006, there were a total of 552 commercial permit holders in the Atlantic shark fishery

(240 directed and 312 incidental permits). Comparing 2005 logbook data with permit holders indicates that there were 86 active vessels in the Gulf of Mexico region, 46 active vessels in the South Atlantic region, and 6 active vessels in the North Atlantic region. More information regarding the numbers of small entities involved in the fishery and their locations can be found in Chapter 6 of the EA (see ADDRESSES).

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603(c)(1)-(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

- Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- Use of performance rather than design standards; and,
- Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders in this fishery to be small entities. In order to meet the objectives of this final rule, consistent with Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while,

concurrently, complying with the Magnuson-Stevens Act.

NMFS considered five different alternatives (A1 - A5) in the final rule portion of this rulemaking for LCS quota and season length for the North and South Atlantic and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives included: status quo (alternative A1), closing the South Atlantic region during the first trimester of 2007 and opening the entire South Atlantic region including the mid-Atlantic shark closed area in July 2007 pending available quota (alternative A2), opening the mid-Atlantic shark closed area on January 1, 2007, through July 31, 2007, dependant on available quota for LCS during the first and second trimester seasons of 2007 (alternative A3), modification of the percent of the annual baseline quota each region received based on recent harvest (alternative A4), and spreading the impacts of the current overharvest out over several years (alternative A5). Closing the South Atlantic region during the first trimester and opening the entire South Atlantic region including the mid-Atlantic shark closed area in July 2007 pending available quota is the preferred alternative (alternative A2).

Alternative A1 is the status quo alternative and would maintain existing procedures for addressing regional trimester over- and underharvests when establishing the regional quotas and seasons for the first trimester of 2007 and it would also maintain the existing mid-Atlantic shark closed area. Positive economic benefits may be realized in the North Atlantic regions because that region would be open, with ample quota, throughout the entire first trimester 2007. This alternative is not preferred, as it would result in negative economic impacts for the South Atlantic region and Gulf of Mexico region, compared to the preferred alternative.

In and of itself, alternative A1 does not create any new economic burdens on the shark commercial industry that was not included in previous rulemaking. Regardless, the unexpected magnitude of the 2006 first trimester overharvest would result in no commercial fishing for LCS in the entire South Atlantic region from January 1 to July 31, 2007, and there would be no fishing with bottom longline gear permitted in the mid-Atlantic shark closed area until August 1, 2007, per status quo. In addition, as a result of the revised landings numbers indicating a significant overharvest in the Gulf of Mexico, the Gulf of Mexico fishing season for the first trimester of 2007 will

only be from January 1 to January 15, 2007.

If not for the overharvest in 2006, the first trimester quota available would have been 137.6 mt of LCS in the South Atlantic. Using a median ex-vessel price of \$0.51 for LCS and \$12.61 for shark fin reported in HMS Dealer reports from 2002 to 2005 for the South Atlantic region and adjusted for inflation, the value of this harvest would have been approximately \$146,976 for LCS fresh (95 percent of the quota weight) and \$191,266 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have an estimated direct revenue impact on South Atlantic regional commercial shark fishing activity of approximately \$338,242. There will also be continued economic hardship compared to the preferred alternative for fishing operations using BLL gear that are dependant on LCS in the vicinity of the mid-Atlantic shark closed area since they would not be permitted to fish until August 1, 2007. Using the median ex-vessel prices for the first trimester of 2006 of \$0.45 and \$14.00 for LCS flesh and shark fins, respectively, the estimated revenue for the first trimester in 2006 from the 184.3 mt in overharvest was \$625,902. However, a closure during the first trimester of 2007 would result in disrupted revenue flows and result in negative economic impacts. Maintaining the mid-Atlantic shark closed area would result in no fishing with bottom longline gear permitted in the mid-Atlantic shark closed area until August 1, 2007. This could impact some of the vessels dependant on fishing with BLL gear in this region.

If not for the overharvest in 2006 in the Gulf of Mexico, the first trimester quota available would have been 176.1 mt of LCS in the Gulf of Mexico. However, it is instead an adjusted quota of 62.3 mt of LCS. Using a median ex-vessel price of \$0.43 for LCS and \$16.56 for shark fin reported in HMS Dealer reports from 2002 to 2005 for the Gulf of Mexico region and adjusted for inflation, the value of this 113.8 mt reduction in the available quote for the first trimester of 2007 is approximately \$102,487 for LCS fresh (95 percent of the quota weight) and \$207,733 for shark fins (based on the 5 percent shark fin to carcass ratio required by regulation). Therefore, the 2006 overharvest is estimated to have an estimated direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately \$310,220. Using the median ex-vessel prices for the first trimester of 2006 of \$0.40 and \$17.75 for LCS flesh and

shark fins, respectively, the estimated revenue for the first trimester in 2006 from the 113.8 mt in overharvest was \$317,998. However, a closure during the first trimester of 2007 would result in disrupted revenue flows and result in negative economic impacts.

Overall, the economic impact of reduced 2007 LCS quota for both the South Atlantic and Gulf of Mexico regions would result in a total economic impact of \$648,462 in reduced revenues. While those past excess revenues exceed the 2007 estimated reductions in revenues from LCS, it is still likely that fishing operations will face economic impacts due to dramatic cash flow reductions in 2007 and, potentially, beyond since it is likely that 2006 excess revenues were not retained by fishermen to offset future shortfalls since reductions in quota were likely unanticipated at the time. Some of these impacts might be mitigated somewhat for vessels that can fish in other regions or fisheries. However, these opportunities will likely be limited and result in additional costs associated with adjusting current fishing practices. The Agency received public comment indicating that quota reductions in the golden tilefish fishery will also impact participants fishing with bottom longline gear in the Cape Canaveral, FL, area as many of these fishermen depend on LCS and golden tilefish.

Alternative A2, the preferred alternative, which would close the entire South Atlantic region for LCS during the first trimester of 2007 and open the entire region including the mid-Atlantic shark closed area region in July 2007, pending availability of quota, could minimize the economic costs associated with the South Atlantic regional overharvest. As described above for Alternative A1, the 2006 overharvest is estimated to have a direct revenue impact on regional commercial shark fishing activity of approximately \$338,242 for the South Atlantic and \$310,220 for the Gulf of Mexico. In 2005, 46 vessels reported landings in the South Atlantic region, indicating that the LCS closure could result in a loss of revenue of approximately \$7,353 per vessel. There were also 86 vessels reporting landings in the Gulf of Mexico, indicating that the LCS reduced quota in this region for the first trimester could result in a loss of revenues of approximately \$3,607 per vessel. However, this alternative might provide an additional month of fishing opportunities for vessels that may not be able to participate in the South Atlantic regional fishery during the first six months of 2007. Compared to pre-closure landings (2002–2004), landings

in 2005 of LCS decreased by 13.9 mt dw which may have been a result of the closed area. This additional month of access to the mid-Atlantic shark closed area during the month of July is estimated to potentially result in an additional \$34,188 in gross shark revenues based on the difference in landings that may occur as a result of reopening the mid-Atlantic shark closed area.

Alternative A3 would open the mid-Atlantic shark closed area on January 1, 2007, through July 31, 2007, dependant on available quota for LCS during the first and second trimester seasons of 2007. Given the preliminary landings data as of November 13, 2006 (71 FR 66154), it is likely quota will not be available since the data indicate that extensive overharvests in the South Atlantic region would result in no available quota in that region. The impacts of this alternative would be similar to the preferred alternative or the status quo alternative as lack of available quota would prevent fishing in the South Atlantic region during the first trimester. In addition, updated landings data for LCS in the Gulf of Mexico region indicate that a transfer of LCS quota from the Gulf of Mexico region to the South Atlantic region is no longer a feasible option. This alternative is not preferred because the preferred alternative achieves similar objectives, yet ensures that the ecological benefits of maintaining the mid-Atlantic shark closed area are maintained through June 2007.

Alternatives (A4 and A5) were also considered. These two alternatives would have modified the percent of the annual baseline quota each region received based on recent harvest (A4) or would have spread the impacts of the current overharvest out over several years (A5). These two alternatives were not preferred given the data used for modifying the current regional allocation did not consider the overharvest (logbooks from 2006 are not available for analyses yet) and given the Agency's decision to amend shark management based on the results of the latest assessments (November 7, 2006; 71 FR 65086).

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

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

Dated: December 7, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

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

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

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

■ 2. In § 635.21, paragraph (d)(1) is revised to read as follows:

#### **§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(d) \* \* \*

(1) If bottom longline gear is on board a vessel issued a permit under this part 635, persons on board that vessel may not fish or deploy any type of fishing gear in the mid-Atlantic shark closed area from January 1 through July 31 each calendar year, except that in 2007 the mid-Atlantic shark closed area will be closed from January 1 through June 30 and may open in July, contingent upon available quota.

\* \* \* \* \*

[FR Doc. 06–9667 Filed 12–8–06; 2:52 pm]

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

#### **RIN 0648–AT60**

[Docket No. 061020273–6321–02; I.D. 101606A]

#### **Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2007 Summer Flounder, Scup, and Black Sea Bass Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2007 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including commercial scup possession limits. This action prohibits federally permitted commercial vessels from