

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

Comments and Responses

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

LCS Commercial Annual Quota

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

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

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

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

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

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

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

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

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

Commercial LCS Size Limits

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

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

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

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

SCS Commercial Annual Quota

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

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