

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

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

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

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

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

#### Accounting for all Fishing Mortality

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

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

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

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

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

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

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

#### Seasonal Quota Adjustments

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

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

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

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

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

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

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

#### Bycatch and Prohibited Species

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

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

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

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