

need a greater percentage of habitat identified as EFH to ensure its ability to rebuild compared to a species that is not overfished. NMFS also considered identifying EFH based on the entire geographic range of a species.

To update EFH identified for sandbar, blacktip, finetooth, nurse, and dusky sharks, NMFS considered updated fishery dependent and independent data for these species and considered new information regarding the biology of these species. NMFS also considered changes in fishing practices and areas since the 1999 HMS FMP. As a result, NMFS is proposing slight changes to the EFH identified for individual life stages and slight changes to the size ranges used to define each life stage. Maps and specific changes are fully described in the DEIS for Amendment 1.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

As required under the Regulatory Flexibility Act, NMFS has prepared an IRFA. The IRFA examines the impacts of the preferred alternatives and any significant alternatives to the proposed rule that could minimize any significant economic impacts on small entities. A summary of the information presented in the IRFA is below. Amendment 1 provides further discussion of the economic impacts of all the alternatives considered. NMFS does not believe that the proposed regulations would conflict with any relevant regulations, federal or otherwise (5 U.S.C. 603(b)(5)).

NMFS considers all commercial permit holders to be small entities according to the Small Business Administration's size standard for defining a small entity (5 U.S.C. 603(b)(3)). NMFS estimates that, as of October 2002, there are approximately 251 directed shark permit holders and 376 incidental shark permit holders for a total of 627 commercial permit holders who are authorized to fish for and sell sharks commercially and who could be affected by the preferred alternatives outlined in the proposed rule. Only 120 of these vessels (approximately 20 percent of all permit holders) reported landings of shark during 2001. These 120 vessels could be affected by all proposed commercial requirements including managing LCS as one group, the proposed quota level, regional quotas, trimester quotas, and bycatch reduction methods. There are 34 permit holders (approximately 5 percent of all permit holders) located in Virginia, South Carolina and North Carolina. These permit holders could be directly affected by the proposed time/area

closure in the mid-Atlantic Bight. Additionally, NMFS knows of fewer than 11 shark fishermen who have used drift gillnet gear at some point in the past and only six in recent years. These six vessels could be affected by the shark gillnet gear requirements of the proposed rule including prohibiting drift gillnet gear while allowing strikenet gear and requiring VMS during right whale calving season.

The proposed recreational requirements could also affect all recreational HMS permit holders including HMS Angling category permit holders (approximately 9,372 as of May 2003) and HMS Charter/Headboat permit holders (approximately 2,412 as of May 2003) because some of these permit holders target sharks. While there are a number of permit holders in these categories, these permit holders can target any HMS; few actually target sharks.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by the proposed regulations, particularly the shift to trimester seasons for commercial fisheries, reduction in commercial LCS quota/ increase in commercial SCS quota, and time/area closure off North Carolina during the winter commercial fishery. However, the proposed rule does not apply directly to them. Rather it applies only to permit holders and fishermen. As such, the economic impacts on these other sectors are discussed in Amendment 1 but not in the IRFA.

Some of the preferred alternatives in this document may result in additional reporting, recordkeeping, and compliance requirements (5 U.S.C. 603(b)(4)). The proposed rule includes a requirement that would require approximately six gillnet shark fishing vessels and approximately 10 directed category bottom longline shark fishing vessels (22 vessels have reported fishing in the area but 12 of those would likely already have VMS due to a requirement in the pelagic longline fishery) to install VMS units at an initial average cost of approximately \$1,900–3,250 (\$1,600–2,500 per unit and \$300–750 installation fee), an average annual maintenance cost of approximately \$500/year, and approximately \$1.44/day for position reports. This alternative would likely increase costs but should not increase the needed skill level required for HMS fisheries.

Some of the proposed regulations such as defining the recreational authorized gear, prohibiting drift gillnet gear, implementing a time/area closure, installing VMS, obtaining gear to reduce bycatch or bycatch mortality, and

applying for display permits could change compliance regarding the way and areas in which fishermen fish and set their gear and could require an increase in the skill level needed to participate in HMS fisheries. However, only the time/area closure, installing VMS, and the prohibition on drift gillnet gear would be likely to have significant negative economic impacts on some permit holders because these measures have definite expenditures or costs associated with them. Permit holders that are not directly affected by the proposed closure could experience some economic benefits as a result of the closure because more of the quota from January through July could be harvested in their area. Prohibiting drift gillnet gear would likely result in negative economic impacts for some of the six vessels actively fishing in the gillnet fishery, but overall would not directly affect the vast majority of the shark fishing fleet because these six vessels make up a small percentage of participants in the fishery. The other alternatives listed that could change compliance and/or reporting requirements would likely only have minor, if any, economic impacts on small entities.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, many of the proposed measures such as quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions would not be as effective with different compliance and reporting requirements. Thus, there are no alternatives available under the first and fourth categories listed above.