

notifications to be published at a later date in the **Federal Register**.

Response to Comments

A number of individuals and groups provided both written and verbal comments during the public comment period. The comments are summarized below together with NMFS' responses. Additionally, several questions were raised during the waiting period for the FEIS. While not required, NMFS has, along with the other comments below, provided further clarification to respond to some of the questions raised. All comments are grouped in a layout similar to the layout of the preamble of the proposed rule.

1. LCS Rebuilding Time Frame

Comment 1: The proposed rebuilding time frame is illegal and runs counter to the precautionary approach. The LCS complex can and must be rebuilt within the 10-year time limit envisioned by Congress.

Response: The National Standard 1 Guidelines, 50 CFR § 600.310, specify two strategies for determining the rebuilding time frame. First, if a stock can rebuild in less than 10 years, the rebuilding time frame can be no longer than 10 years. Second, if a stock will take 10 years or more to rebuild, the rebuilding time frame can be as long as the time to rebuild with no fishing plus a mean generation time. The HMS FMP specifies that, because of their slow growth and low reproductive potential, a 70-percent probability should be used for rebuilding the stock for sharks. The HMS FMP states that a 70-percent probability should be used as a guide to ensure that the intended results of management actions are realized and to assess the relative merits of one rebuilding time frame over another (see the HMS FMP at 3–61 and 3–289). The HMS FMP also uses a low probability of a negative outcome (less than 20-percent probability) as a guide for evaluating management measures.

Under the 70-percent probability, the amount of time required for rebuilding under no fishing is 10 years or greater. Thus, the second rebuilding strategy, discussed above, would apply. After taking into account the biology of the stocks, the results of the 2002 LCS stock assessment, the requirements of the Magnuson-Stevens Act and the National Standard Guidelines, the criteria in the HMS FMP, and the status of the fishing communities that rely on economic activities involving the capture of these fish, NMFS does not believe that a 10-year rebuilding period is appropriate for the LCS complex. The 26-year rebuilding period established in

Amendment 1 is consistent with the Magnuson-Stevens Act, the National Standard Guidelines at 50 CFR part 600, subpart D, and the HMS FMP.

Comment 2: If prohibiting fishing for 10 years does not quite give a 70-percent chance of rebuilding the LCS complex to MSY, then prohibit fishing for 20 years.

Response: As discussed above, the HMS FMP establishes a 70-percent probability as a guide for shark management measures. Eliminating fishing would not achieve a 70-percent probability of rebuilding within 10 years; therefore, NMFS has established a rebuilding period of 11 years (no fishing period) plus one mean generation time. Prohibiting shark fishing for 20 years would give an 86-percent chance of rebuilding the LCS complex to maximum sustainable yield (MSY). However, prohibiting shark fishing for 20 years is not required by the Magnuson-Stevens Act, which allows NMFS to consider a number of factors when determining the rebuilding time frame, including impacts on fishing communities. If NMFS were to prohibit fishing for 20 years, a number of businesses including fishermen, processors, and suppliers, could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. Additionally, prohibiting fishing for 20 years would eliminate the fishery-dependent data that is needed to accurately assess the status of the stocks. Given these impacts, the objectives of the HMS FMP and Amendment 1, the requirements of the Magnuson-Stevens Act and other domestic law, and the results of the 2002 large and small coastal shark stock assessments, NMFS does not believe that shark fishing should be prohibited for 20 years.

Comment 3: Our confidence in the 70-percent chance to rebuild figure is low given the number of uncertainties and deficiencies in the plan particularly the fact that the quota is not reduced by 50 percent, the time/area closures to protect juveniles will not be implemented immediately, there is no size limit in place, and NMFS has not accounted for all sources of mortality such as state landings.

Response: While some uncertainty is inherent in developing any rebuilding plan, based on the best available scientific information, NMFS is confident that the combination of management measures in Amendment 1 should have a 70-percent chance of rebuilding the LCS complex. The 2002 LCS stock assessment found that reducing the catches by 50 percent

would have, on average, a 67-percent chance of rebuilding LCS in 30 years. While the rebuilding time frame in the amendment is shorter than 30 years and the commercial quota is reduced by 45 percent, not 50 percent, NMFS is implementing a number of other management measures that should reduce fishing mortality and increase the reproductive potential of several stocks in the LCS complex. For example, the time/area closure will protect juvenile sharks as recommended by the 2002 LCS stock assessment. Numerous studies have shown that protecting this life stage provides the greatest benefit to increasing the population size. Thus, the time/area closure will be more effective at protecting juvenile sharks and rebuilding the population than a commercial minimum size because a minimum size would force commercial fishermen to discard undersized sharks, which would not be counted against the commercial trip limit. This could result in more sharks being caught and potentially discarded. In the long-term, if dead discards were to increase as a result of a minimum size, then the commercial and recreational portions of the optimum yield would decrease and both the commercial quota level and recreational retention limit could be reduced. A minimum size in the recreational fishery does not raise the same concerns because the recreational fishery is believed to have low post-release mortality rates and has already been limited to one shark per trip, not including the exception for Atlantic sharpnose and bonnethead sharks.

NMFS is also implementing other management measures, such as the requirement for commercial fishermen to carry and use line cutters and dehooking devices, that should minimize the mortality of sharks that are caught and released. Together, these management measures, along with accounting for all sources of fishing mortality (including both Federal and State commercial landings, dead discards, and recreational catches), increasing and improving education and outreach, and increasing compliance with the recreational regulations, should give the LCS complex a 70-percent chance of rebuilding within the rebuilding time frame.

An additional significant aspect of the HMS FMP is the requirement that NMFS conduct periodic stock assessments for species or species-groups. If new information indicates that the LCS complex is not likely to be rebuilt within the required time frame, NMFS can adjust management measures, as necessary, to ensure the