

requirement, NMFS is providing time for fishermen to adjust to and prepare for the changes. The commercial quotas, elimination of the commercial minimum size, and certain other measures will be effective at the start of the 2004 fishing year to ensure that more restrictive measures do not go into effect. NMFS provided the approximate dates of effectiveness for the requirements in the Executive Summary of Amendment 1 and before the Response to Comments section of this rule.

*Comment 16:* Are you leaving the 4,000 lb LCS trip limit alone? NMFS should consider some type of trip limit tolerance because the trip limit is not working well now that sandbar and blacktip sharks are not overfished.

*Response:* This rule will not change the 4,000 lb LCS directed trip limit. In the Issues and Options paper released during the public scoping phase of Amendment 1, NMFS indicated that changing the 4,000 lb LCS directed trip limit could be one of the management measures addressed in Amendment 1. However, given the possible changes as a result of Amendment 1, NMFS felt some of the items in the Issues and Options paper, including the 4,000 lb LCS trip limit were beyond the scope of this rulemaking. NMFS may consider those issues in a future rule.

*Comment 17:* NMFS should allow fishermen to fish until the quota is caught instead of scheduling closure dates. I am afraid that if we have a couple of years where we do not catch the quota because of weather, that the quota will be taken away from us. NMFS should monitor landings and allow the season to remain open until the quota is filled.

*Response:* Before the HMS FMP, NMFS monitored the landings and gave five days notice before closing the fishery. This technique led to the quota being exceeded, derby fishing, and unreliable markets because no one knew when the fishery would be closing. Additionally, some dealers and fishermen delayed sending in their reports in an effort to keep the fishery open longer. To address these concerns, in the HMS FMP, NMFS decided to announce, based on previous catch rates, the closing date of the fishery before the fishery opened. Additionally, any over-or underharvest would come off of or be added to the same season's quota of the following year (e.g., first semi-annual season to first semi-annual season). This technique appears to be working (e.g., fewer seasonal quotas have been exceeded and fishing seasons have lengthened) and during scoping few fishermen wanted to change the

current system. With the transition to trimester and regional quotas, there may be some adjustment needed in terms of calculating catch rates and estimating the length of the seasons in each region; however, NMFS does not intend to "take quota away" because of underharvests. In the future, NMFS might adjust the percent of quota available in each fishing season (e.g., if one season is always exceeded while another season always has quota left, some of the quota may be moved to the first season from the second) or might adjust the percent of quota available to each region (e.g., if one region always exceeds its quota while another region does not land its full portion, some of the quota from the second region might be transferred to the first region).

However, any such adjustment would require a rulemaking and would not change the overall total quota available.

*Comment 18:* NMFS should be relying on an observer report from 1994 through 2002, not a report from recent years.

*Response:* NMFS is using the best available science which includes several observer reports that cover only one or two years each.

*Comment 19:* NMFS should re-examine the five percent fin ratio rule. The legal percentage does not work accurately unless the sandbar shark catch is blended down by other LCS with smaller fins.

*Response:* NMFS first implemented the five percent fin ratio in the 1993 Shark FMP. This ratio was based on research that indicated that the average ratio of fin weight (including first dorsal, pectorals, and lower caudal fins) to dressed weight of the carcass was 3.6 percent and the sandbar fin ratio was 5.1 percent. Observer data indicate that, except for a couple of years, the fin ratio for all observed sharks has been under five percent. In December 2000, the Shark Finning Prohibition Act was signed. This Act, which implements the five percent finning ratio for all shark fisheries in the United States, was fully implemented through a final rule released in February 2002. Thus, any changes to the five percent fin ratio would have to be the result of Congress modifying the Act.

*Comment 20:* Because porbeagle sharks are often caught while pursuing cod, mackerel, and other New England finfish, northeast groundfish commercial fishermen should be allowed to keep one porbeagle shark per day per trip without a commercial shark fishing permit.

*Response:* Since 1993, fishermen who have caught and sold sharks in Federal waters have been required to have a Federal shark permit. In 1999, NMFS

implemented a limited access program for the Atlantic shark fisheries. Under this program, any fisherman who had a Federal shark permit and reported landing a limited number of sharks could qualify for either a directed or incidental Federal shark limited access permit. This program was implemented to reduce latent effort in the shark fishery and reduce overcapitalization in order to rebuild the LCS complex and prevent overfishing on other shark species. From past experience, NMFS knows that porbeagle sharks are highly susceptible to overfishing. Until a stock assessment on porbeagle sharks indicates that the porbeagle shark is not overfished and is not experiencing overfishing, NMFS does not want to re-open that sector of the shark fishery. However, those fishermen wishing to land porbeagle sharks can either obtain a commercial permit from someone leaving the fishery or obtain a recreational permit. Any porbeagle sharks that are landed would have to be caught with an authorized gear type.

*Comment 21:* NMFS has not done one iota to protect mako sharks except limit recreational fishermen. While the proposed rule does have some positive proposals that limit commercial fishing, conservation of the most important recreational sharks left, pelagic sharks, continues to be ignored.

*Response:* NMFS is working with ICCAT to collect data in order to conduct an international stock assessment of pelagic sharks. Because pelagic sharks traverse the Atlantic Ocean, NMFS is not able to conduct an accurate stock assessment without data from other countries. The international stock assessment is expected to occur in 2004. Once the international stock assessment is complete, NMFS will consider the results and will modify the management measures for pelagic sharks, as appropriate.

*Comment 22:* NMFS should consider converting directed shark permits that have been inactive since July 1999 to incidental permits. This could help reduce latent effort from becoming active during the rebuilding period.

*Response:* NMFS is considering several options to could lead to changes in the current limited access program in a future rule. NMFS will consider comments such as this one at that time.

*Comment 23:* The number of shark permits should be reduced to 10.

*Response:* In 1999, NMFS implemented a limited access program in the commercial shark fishery to reduce latent effort and capitalization in the fishery. This program established two types of commercial shark permits: directed and incidental. The directed