

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 33 percent of the available LCS quota would likely be taken by the second week of April and 42 percent of the available LCS quota would likely be taken by the end of April. Dealer data also indicate that, on average, approximately 10 mt dw of LCS are reported received by dealers after a Federal closure. This is approximately 60 percent of the available quota. Thus, if catch rates in 2004 are similar to the average catch rates from 2000 to 2003, 93 percent (33 + 60 percent) of the quota could be caught over the entire semiannual season if Federal waters are closed during the second week of April. If the fishery remains open until the last week of April, the quota would likely be exceeded. Accordingly, the AA has determined that the North Atlantic LCS quota for the first 2004 semiannual season will likely be attained by April 15, 2004. Thus, the North Atlantic LCS fishery will close on April 15, 2004, at 11:30 p.m. local time.

When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Classification

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

This final rule has been determined to be not significant for purposes of Executive Order 12866.

As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the draft Amendment 1 and its proposed rule (68 FR 45196, August 1, 2003) and prepared an FRFA for the final Amendment 1 and this final rule. The FRFA examines the economic impacts of the management alternatives on small entities in order to determine ways to minimize economic impacts. A summary of the information presented in the FRFA is below. Amendment 1 provides further

discussion of the economic impacts of all the alternatives considered.

The need for and objective of the final rule are fully described in the preamble of the proposed rule (68 FR 45196, August 1, 2003) and in final Amendment 1 and are not repeated here.

As set forth above, NMFS received many comments on the proposed rule and draft Amendment 1 during the comment period. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments on the potential for substantial impacts related to the proposed commercial quota reductions, implementation of trimester seasons and regional quotas, gillnet restrictions, VMS requirements, and the time/area closure. In summary, commenters noted that commercial quota reductions, VMS requirements, and the bottom longline time/area closure offshore North Carolina would put fishermen out of business and create less economic stability among industry participants; implementation of trimester seasons and regional quotas could disrupt existing markets and lead to insufficient income; and requiring the strikenet method only would not allow the commercial shark gillnet fishery to continue while minimizing interactions, as it was originally intended.

The economic analyses and IRFA for the proposed rule acknowledged that reductions in commercial quotas, implementation of trimesters, regional quotas, VMS requirements, and the time/area closure would likely result in economic impacts to the fishery as a whole, some of which may be significant for small entities/vessel owners. However, all of these alternatives, when compared to the other alternatives considered, mitigate undesirable or greater economic impacts associated with continued overfishing, shortened seasons, bycatch of vulnerable species, and economic instability of fishery participants and associated fishing communities in the long-term. The combination of these preferred alternatives is necessary for LCS to rebuild and SCS to achieve optimum yield, consistent with the objectives of this rule, the Magnuson-Stevens Act, and other domestic laws.

In order to mitigate some of the economic impacts, NMFS will delay effectiveness of trimester seasons, VMS requirements, and the time/area closure in order to give fishermen time to (1) purchase VMS units, (2) work with dealers to enhance market prices and plan out advertising strategies with grocers, and (3) prepare and plan for the closure. Furthermore, NMFS re-

evaluated and refined the size of the proposed time/area closure. The revised time/area closure, which is anticipated to affect only eight vessels as opposed to 13 anticipated in the proposed rule, mitigates the economic impacts to small entities directly affected by the revised closure by \$17,956 in total gross revenues as compared with the original preferred alternative. Finally, the final regulations will permit the use of drift gillnets with possible gear modifications or other measures being implemented in a future rulemaking, based upon further study.

NMFS considers all permit holders to be small entities. In October 2002, there were approximately 251 directed shark permit holders and 376 incidental shark permit holders for a total of 627 permit holders who were authorized to fish for sharks. As of September 2003, there were approximately 256 directed permit holders and 351 incidental permit holders for a total of 607 permit holders who are authorized to fish for sharks and could be affected by the preferred alternatives outlined in the final rule. Only about 20 percent of all permit holders are actually active in the fishery. Currently, 120 vessels (*i.e.*, number of vessels that reported landings of shark during 2001) would be directly affected by changes (*i.e.*, increases/decreases) in shark quotas or other changes to the commercial management measures.

The revised time/area closure would have a direct economic impact on a total of 23 vessels (out of 256 total directed permits issued in 2003 ~ 9 percent) with directed shark permits. As of September 2003, only eight vessels with home ports in North Carolina reported shark landings during 2001.

NMFS knows of fewer than 11 shark fishermen who have used drift gillnet gear to target sharks at some point in the past and only five in recent years. These five vessels would have been affected by the strikenet only requirement in the proposed rule; however, NMFS is not implementing that requirement.

The recreational requirements proposed in this rulemaking could affect all recreational HMS permit holders including HMS angling category permit holders (~ 18,249 as of September 2003) and HMS charter/headboat permit holders (~ 4,041 as of September 2003). These permit holders can target any HMS; however, few actually target sharks.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by these regulations, particularly the shift to trimester seasons for commercial fisheries, reduction in commercial LCS