

represent the number of total estimated takes, based on observed takes extrapolated across total effort levels for this fishery. Each gear type must be considered independently, and if the actual calculated incidental captures or mortalities exceed the amount estimated below for a gear type, the 2003 BiOp specifies that formal consultation for that gear type must be re-initiated immediately.

The AA has determined that the list of actions in this rule, which seek to rebuild the LCS complex, prevent overfishing of the LCS complex, and prevent overfishing of other species of sharks, are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the CZMA. NMFS asked for states' concurrence with this determination during the proposed rule stage. Ten states replied affirmatively regarding the consistency determination. NMFS presumes that the remaining states that have not yet responded also concur with the determination. One state, Georgia, replied that allowing the use of gillnets, including the proposed striknet method, is not consistent with the State's CZMA program.

The State of Georgia objects to the consistency determination due to the continuing operation of the shark gillnet fishery in Federal waters impacting resources shared by adjacent state waters. Specifically, the State of Georgia raises a concern regarding the impact of the shark gillnet fishery on sea turtles, marine mammals, and sport fish. NMFS acknowledges the concern raised; however, under the Magnuson-Stevens Act's (16 U.S.C. 1801 *et seq.*) National Standards, the Agency must, among other things, base its actions upon the best scientific information available; implement conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery; and minimize bycatch and bycatch mortality to the extent practicable (16 U.S.C. 1851(a)(2), (1), and (9)).

National Standard 2, which requires that management measures be based on the best scientific information available, would preclude a closure of the shark gillnet fishery in Federal waters, or a partial closure just off Georgia, in this action. At this time, there is insufficient information to support such management measures. Data currently available indicate relatively low rates of bycatch and bycatch mortality of protected species and other finfish in

this fishery. Incidental capture of threatened and endangered species is regulated under the ESA. As discussed above, according to the October 29, 2003, BiOp prepared pursuant to the ESA, there are relatively low rates of bycatch and bycatch mortality in the shark gillnet fishery. The BiOp, which incorporates the best scientific information available, did not conclude that continuation of the shark gillnet fishery would jeopardize any endangered or threatened resources and included a new incidental take statement for the fishery. Therefore, NMFS is not prohibiting the use of this gear at this time.

In its decision to not ban gillnet gear, NMFS also considered other requirements of the Magnuson-Stevens Act, including but not limited to National Standards 1 and 9. Shark gillnets are the commercial gear that are used to primarily target SCS, a complex that is not, according to the latest SCS stock assessment, overfished. Based on the best scientific information available, this Amendment will manage the fishery for OY, consistent with National Standard 1, by preferring a quota level that would increase the SCS commercial quota from the level in the 1999 HMS FMP. Given that a quota increase is warranted under the stock assessment, closing the shark gillnet fishery in Federal waters would not achieve, on a continuing basis, the OY from the fishery.

With regard to bycatch, this Amendment minimizes bycatch and bycatch mortality to the extent practicable, consistent with National Standard 9. While this final rule does not prohibit the use of gillnet gear, NMFS did consider an alternative that would allow only the striknet method in the shark gillnet fishery and also a permanent closure of the fishery, which would make this rule fully consistent with Georgia's CZMA program. However, NMFS did not prefer either alternative, due to the lack of sufficient data and also taking into consideration the significant, negative social and economic impacts on the five vessels actively fishing in the shark gillnet fishery. Instead, this final rule will require all shark gillnet vessels to install and activate VMS during right whale calving season. In a future rulemaking, NMFS will examine additional gear modifications or other alternatives to reduce bycatch and bycatch mortality in this fishery. NMFS will also continue to work with existing take reduction teams and Fishery Management Councils to examine methods of reducing bycatch. Thus, NMFS finds that the final regulations implemented in the FMP

Amendment are consistent with Georgia's Coastal Zone Management Program to the maximum extent practicable.

Several measures in this final action (implementation of the commercial LCS and SCS quotas through regional quotas, removal of the commercial minimum size, and allowing recreational fishermen to retain one bonnethead shark per person per vessel with no minimum size) relieve restrictions. Currently, the Atlantic commercial shark fishery is operating under quotas established under an emergency rule extension that will expire on December 29, 2003 (68 FR 31983, May 29, 2003). The extension implements quotas based upon the 2002 LCS and SCS stock assessments and temporarily suspends a commercial minimum size and quotas from the 1999 HMS FMP, which were based upon a 1998 assessment. When the extension expires, the 1999 quotas and commercial minimum size will go back into effect. This final rule would increase the LCS and SCS quotas that would come into effect on December 30, 2003, with the expiration of the existing emergency rule. Specifically, the overall LCS quota would increase from 816 mt dw (1999 HMS FMP) to 1,017 mt dw and the SCS quota would increase from 359 mt dw (1999 HMS FMP) to 454 mt dw, thus relieving a restriction by allowing more retention of fish. Removal of the commercial minimum size and changes to the recreational minimum size and retention limit would also relieve regulatory requirements. Because this regulation relieves requirements, as stated above, pursuant to 5 U.S.C. 553(d)(1), the 30-day delayed effectiveness period for the above management measures is not applicable and these provisions will become effective on December 30, 2003.

In addition, there is good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness for the commercial quotas and removal of the commercial minimum size. After reviewing peer reviews of the 1998 assessment, which were required as part of a court-approved settlement agreement, NMFS determined that portions of that assessment did not constitute the best available science. The LCS and SCS quotas in this final action, which are based on the 2002 assessments, must be effective by December 30, 2003, otherwise, quotas that are more restrictive and not based on the best available science will go into effect, which is inconsistent with National Standard 2 of the Magnuson-Stevens Act. If the commercial minimum size is not removed by December 30, 2003, fishermen may