

**SUMMARY:** The United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, “Services” or “we”) previously proposed to amend regulations governing interagency cooperation under the Endangered Species Act of 1973 (Act) (73 FR 47868–47875; August 15, 2008).

The Services proposed these regulatory changes to improve the effectiveness and efficiency of the section 7(a)(2) consultation process. This **Federal Register** notice advises the public that we (FWS and NOAA) have prepared a Draft Environmental Assessment (Draft EA) under the National Environmental Policy Act (NEPA) that assesses the potential environmental effects of the proposed regulatory changes currently under consideration. The Draft EA is available for public review at the following Web site: <http://www.doi.gov/issues/esa.html>.

**DATES:** To ensure consideration, we must receive written comments by November 6, 2008.

**ADDRESSES:** Comments may be submitted in two ways: (1) Through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments; or (2) by U.S. mail or hand-delivery to Public Comment Processing, Attention: 1018-AT50, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203. We will not accept e-mail or faxes.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

**FOR FURTHER INFORMATION CONTACT:**

Office of the Assistant Secretary for Fish and Wildlife and Parks, 1849 C Street, NW., Washington, DC 20240, telephone: 202–208–4416; or James H. Lecky, Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: 301–713–2332.

**SUPPLEMENTARY INFORMATION:** The Endangered Species Act of 1973, as amended (“Act”; 16 U.S.C. 1531 *et seq.*) provides that the Secretaries of the Interior and Commerce (the “Secretaries”) share responsibilities for implementing most of the provisions of the Act. Generally, marine species are under the jurisdiction of the Secretary of Commerce and all other species are under the jurisdiction of the Secretary of the Interior. With respect to agency consultation pursuant to Section 7 of the Act, authority to administer the Act has been delegated by the Secretary of the Interior to the Director of the FWS and by the Secretary of Commerce through the Administrator of the National Oceanic and Atmospheric Administration to the Assistant Administrator for NMFS.

On May 15, 2008, Secretary Kempthorne announced that he would propose common sense modifications to the existing regulations that implement this section of the ESA in order to provide greater clarity and certainty to the inter-agency consultation process. In the **Federal Register** notice proposing the regulatory modifications analyzed in this EA, the Services noted the importance of refining the ESA section 7(a)(2) consultation process to better set forth certain regulatory definitions and the applicability of this important interagency process.

While neither NEPA nor its implementing regulations require that EAs be made available for public comment, the Services’ have concluded that it is appropriate in this instance to provide an opportunity for public review and comment on the draft EA, as set forth above.

Dated: October 23, 2008.

**David M. Verhey,**

*Acting Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.*

**Samuel D. Rauch,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 080723890–81314–01]

RIN 0648–AX03

#### Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would adjust quotas for the 2009 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks managed under Amendment 2 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) based on any over- and/or underharvests experienced during the 2008 Atlantic commercial shark fishing season. The purpose of this proposed action is to provide advance notice of quotas for the Atlantic commercial shark fishery and address any over- and/or underharvests that may have occurred in the Atlantic shark fishery during the 2008 fishing season.

**DATES:** Written comments will be accepted until November 26, 2008.

**ADDRESSES:** You may submit comments, identified by 0648–AX03, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: 301–713–1917, Attn: Karyl Brewster-Geisz

- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Proposed Rule for 2009 Atlantic Commercial Shark Fishing Season.”

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain

anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Karyl Brewster-Geisz by phone: 301-713-2347, or by fax: 301-713-1917, or Jackie Wilson by phone: 240-338-3936.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations outlined in the 2006 Consolidated HMS FMP and its amendments are implemented at 50 CFR part 635.

On July 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658, July 15, 2008) implementing Amendment 2 to the 2006 Consolidated HMS FMP. That final rule established the annual quotas for all Atlantic shark fisheries and also established adjusted base annual quotas for non-sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. That final rule also established accounting measures for under- and overharvests and redefined the regions in the shark fishery.

As a result of that final rule, the Atlantic shark annual quotas and adjusted base annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with the exception of non-sandbar LCS quota outside of the shark research fishery. The non-sandbar LCS quota outside the research fishery is split between the Atlantic Ocean and Gulf of Mexico. The boundary delineating these two regions is a line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring

and setting of quotas, is considered to be within the Atlantic region.

**Accounting for Under- and Overharvests**

Consistent with 50 CFR 635.27(b)(1)(vii)(A), if the available quota in a particular region or in the research fishery for non-sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the available quota for sandbar sharks, SCS, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks (other than porbeagle or blue sharks) by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), NMFS will deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

If an annual quota for sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock/complex (e.g., sandbar sharks, porbeagle sharks, non-sandbar LCS, or blue

sharks) or specific species within a quota group (e.g., blacknose sharks within the SCS complex) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar sharks and non-sandbar LCS until December 31, 2012).

Currently, blacknose sharks within the SCS complex and sandbar sharks have been determined to be overfished with overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks (other than porbeagle or blue sharks) have an unknown stock status. Finally, blacktip sharks in the Gulf of Mexico region were determined to not be overfished with no overfishing occurring. However, blacktip sharks were placed in the non-sandbar LCS complex for the Atlantic and Gulf of Mexico regions, the status of which has been determined to be unknown. Therefore, since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2008 Atlantic commercial shark fishing season will be applied to the 2009 annual quotas or adjusted base quotas. Thus, the 2009 proposed quotas will be equal to the base annual quota for SCS, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) or the adjusted base annual quota for sandbar sharks and non-sandbar LCS, minus any potential overharvests that may have occurred in the 2008 season.

**2009 Proposed Quotas**

This proposed rule does not propose any changes to the overall adjusted base and annual commercial quotas as established under Amendment 2 to the 2006 Consolidated HMS FMP. Proposed 2009 quotas for the 2009 Atlantic commercial shark fishing season by species and species group are summarized in Tables 1 and 2.

TABLE 1. 2009 PROPOSED QUOTAS FOR NON-SANDBAR LCS AND SANDBAR SHARKS FOR THE 2009 COMMERCIAL SHARK FISHING SEASON.

All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

Species Group	Region	2008 Base Annual Quota <sup>1</sup>	80 Percent of 2008 Available Quota	Preliminary 2008 Landings <sup>2</sup>	Overharvest	2009 Base Annual Quota	2009 Proposed Quota	Proposed Season
Non-Sandbar Large Coastal Sharks	Gulf of Mexico	390.5 (860,896 lb dw)	312.4 (688,717 lb dw)	96.4 (212,652 lb dw)	390.5 (860,896 lb dw)	390.5 (860,896 lb dw)	Effective date of final rule — To be determined	
	Atlantic	187.8 (414,024 lb dw)	150.2 (331,131 lb dw)	118.6 (261,466 lb dw)	—	187.8 (414,024 lb dw)	187.8 (414,024 lb dw)	
Non-Sandbar LCS Research Quota	No regional quotas	37.5 (82,673 lb dw)	30.0 (66,138 lb dw)	3.3 (7,275 lb dw)	—	37.5 (82,673 lb dw)	37.5 (82,673 lb dw)	
Sandbar Research Quota		87.9 (193,784 lb dw)	70.3 (154,983 lb dw)	27.2 (59,965 lb dw)	—	87.9 (193,784 lb dw)	87.9 (193,784 lb dw)	

<sup>1</sup>2008 annual base quotas are the quotas being implemented from July 24, 2008, until December 31, 2012.<sup>2</sup>Landings are from January 1, 2008 until September 15, 2008, and are subject to change.

TABLE 2. 2009 PROPOSED QUOTAS FOR SCS AND PELAGIC SHARKS FOR THE 2009 COMMERCIAL SHARK FISHING SEASON.

All quotas and landings are dressed weight, in metric tons, unless specified otherwise.

Species Group	Region	2008 Annual Quota	80 Percent of 2008 Available Quota	Preliminary 2008 Landings <sup>1</sup>	Overharvest	2009 Annual Quota	2009 Proposed Quota	Proposed Season
Small Coastal Sharks	No regional quotas	454 (1,000,888 lb dw)	363.2 (800,710 lb dw)	154.7 (341,054 lb dw)	—	454 (1,000,888 lb dw)	454 (1,000,888 lb dw)	Effective date of final rule — To be determined
Blue Sharks		273 (601,856 lb dw)	218.4 (481,485 lb dw)	0.6 (1,224 lb dw)	—	273 (601,856 lb dw)	273 (601,856 lb dw)	
Porbeagle Sharks		1.7 (3,748 lb dw)	1.36 (2,998 lb dw)	0.9 (1,888 lb dw)	—	1.7 (3,748 lb dw)	1.7 (3,748 lb dw)	
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	390.4 (860,676 lb dw)	103.5 (228,139 lb dw)	—	488 (1,075,856 lb dw)	488 (1,075,856 lb dw)	

<sup>1</sup>Landings are from January 1, 2008, until September 15, 2008, and are subject to change.

As of September 15, 2008, no Atlantic commercial shark quotas have been exceeded during the 2008 Atlantic commercial shark fishing season. The 2009 proposed quotas for the respective shark complexes/species are subject to change in the final rule for this action, based on any final calculations that reveal, if any, overharvests in the 2008 season.

#### *1. Proposed 2009 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery*

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual commercial quotas

within the shark research fishery are 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks. This proposed rule does not propose any changes to any of the overall adjusted base commercial quotas.

Within the shark research fishery, as of September 15, 2008, preliminary reported landings of non-sandbar LCS were at 8.8 percent (3.3 mt dw), and sandbar shark reported landings were at 30.9 percent (27.2 mt dw). These reported landings do not exceed the available quota. Therefore, based on preliminary estimates, the 2009 proposed quotas do not need to be

reduced based on any overharvests, consistent with the current regulations at 50 CFR 635.27(b)(1)(vii).

Under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2009 quotas. Therefore, the 2009 proposed quotas would be the adjusted base annual quotas for non-sandbar LCS and sandbar sharks within the shark research fishery (37.5 mt dw (82,673 lb

dw) and 87.9 mt dw (193,784 lb dw), respectively).

### 2. Proposed 2009 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region is 390.5 mt dw (860,896 lb dw). As of September 15, 2008, preliminary reported landings were at 24.7 percent (96.4 mt dw) for non-sandbar LCS in the Gulf of Mexico region. These reported landings do not exceed the available quota. However, since the status of this complex is unknown, any underharvest would not be applied to the 2009 adjusted base annual quota. Therefore, the 2009 proposed quota would be the adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region or 390.5 mt dw (860,896 lb dw), as established in Amendment 2 and its final rule.

### 3. Proposed 2009 Quotas for the Non-Sandbar LCS in the Atlantic Region

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non-sandbar LCS in the Atlantic region is 187.8 mt dw (414,024 lb dw). As of September 15, 2008, preliminary reported landings were at 63.2 percent (118.6 mt dw) for non-sandbar LCS in the Atlantic region. These landings do not exceed the available quota. However, since the status of this complex is unknown, any underharvest would not be applied to the 2009 adjusted base annual quota. Therefore, the 2009 proposed quota would be the adjusted base annual quota for non-sandbar LCS in the Atlantic region or 187.8 mt dw (414,024 lb dw), as established in Amendment 2 and its final rule.

### 4. Proposed 2009 Quotas for SCS and Pelagic Sharks

Pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 annual commercial quotas for small coastal sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively. This proposed rule does not propose any changes to these overall annual commercial quotas.

As of September 15, 2008, preliminary reported landings of SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 34.1 percent (154.7

mt dw), 0.2 percent (0.6 mt dw), 52.9 percent (0.9 mt dw), and 21.2 percent (103.5 mt dw), respectively. These landings do not exceed the available quotas. However, under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2009 quotas. Therefore, the 2009 proposed quotas would be the annual quotas for SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than blue and porbeagle sharks) (454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively).

### Proposed Fishing Season Notification for the 2009 Atlantic Commercial Shark Fishing Season

The 2009 Atlantic commercial shark fishing season for non-sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open upon the effective date of the final rule for this action. The fishery will remain open until December 31, 2009, unless NMFS calculates that the fishing season landings for sandbar shark, non-sandbar LCS, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) has reached, or is projected to reach, 80 percent of the available quota. At that time, consistent with 50 CFR 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non-sandbar LCS, region would remain closed, even across fishing years, consistent with 50 CFR 635.28(b)(2).

### Request for Comments

Comments on this proposed rule may be submitted via email, mail, or fax. NMFS solicits comments on this proposed rule by November 26, 2008 (see **DATES** and **ADDRESSES**).

### Classification

This proposed rule is published under the authority of the Magnuson-Stevens

Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.27(b)(1)(vii), the purpose of this action is to adjust the Atlantic shark annual quotas based on over- and/or underharvests from the 2008 commercial shark fishing season. This proposed rule will not increase the overall quotas or landings for non-sandbar LCS, sandbar sharks, SCS, blue, porbeagle, or pelagic sharks (other than porbeagle or blue sharks), and is not expected to increase fishing effort or protected species interactions.

On July 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658) for Amendment 2 to the 2006 Consolidated HMS FMP that established adjusted base annual quotas for non-sandbar LCS and sandbar sharks. The final rule also established annual quotas for SCS, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks). A final regulatory flexibility analysis (FRFA) conducted for the final rule for Amendment 2 to the Consolidated HMS FMP indicated that, as of October 2007, there were approximately 231 directed commercial shark permit holders, 296 incidental commercial shark permit holders, and 269 Atlantic shark dealer permit holders, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). As of 2008, there were approximately 214 directed commercial shark permit holders, 285 incidental commercial shark permit holders, and 128 commercial shark dealers. The FRFA concluded that the economic impacts on these small entities, resulting from adjusting the quotas for under- or overharvests in subsequent years via proposed and final rulemaking, were expected to be minimal.

However, the FRFA did expect negative economic impacts based on the new quotas and retention limits established in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP. Amendment 2 to the 2006 Consolidated HMS FMP estimated that, based on 2006 ex-vessel prices, vessels operating within the research fishery could make \$437,963 in gross revenues from sandbar and non-sandbar LCS landings. Since 5 to 10 vessels were anticipated to participate in the research fishery, NMFS estimated that the average gross revenues per vessel on sandbar shark and non-sandbar LCS landings would range from \$87,593 (*i.e.*, \$437,963 / 5 vessels) to \$43,796 (*i.e.*, \$437,963 / 10 vessels). Based on the quotas established outside the shark research fishery, it was estimated that vessels operating outside the research

fishery could expect gross revenues of \$516,285 in the Atlantic region and \$1,273,269 in the Gulf of Mexico region from non-sandbar LCS landings, based on 2006 ex-vessel prices. In total, vessels operating within, and outside, of the research fishery were expected to have gross revenues of \$2,227,517 in sandbar and non-sandbar LCS landings. This was a 55-percent reduction in gross revenues from sandbar sharks and non-sandbar LCS under the status quo (gross revenues based on directed and incidental permit holders' landings prior to the implementation of Amendment 2 to the 2006 Consolidated HMS FMP were \$4,903,001).

This proposed rule would not change the overall adjusted base annual non-sandbar LCS and sandbar shark quotas nor would it change the annual quotas for SCS, blue, porbeagle, or pelagic sharks (other than porbeagle or blue

sharks) established in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP, or implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions. This proposed rule would adjust the quotas for each species/species complex based on any over- and/or underharvests from the 2008 Atlantic commercial shark fishing season consistent with 50 CFR 635.27(b)(1)(vii).

Since the 2009 proposed quotas for non-sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) would be the same as those implemented in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP, there are no expected economic impacts to fishermen other than those already analyzed in

Amendment 2 to the 2006 Consolidated HMS FMP. Thus, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 2 to the 2006 Consolidated HMS FMP and its final rule (73 FR 35778, corrected at 73 FR 40658).

This proposed rule has been determined to be not significant for purposed of Executive Order 12866.

Dated: October 21, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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