

[Federal Register: December 28, 2001 (Volume 66, Number 249)]
[Rules and Regulations]
[Page 67118-67121]
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[DOCID:fr28de01-21]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 011218303-1303-01; I.D. **110501B**]
RIN 0648-AP70

Atlantic Highly Migratory Species; Commercial Shark Management Measures

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

ACTION: Emergency rule; request for comments; fishing season notification.

SUMMARY: NMFS issues an emergency rule to establish the commercial quotas for large and small coastal sharks at 1,285 metric tons (mt) dressed weight (dw) and 1,760 mt dw, respectively. These regulations are necessary to ensure that the regulations in force are consistent with a court-approved settlement agreement and are based on the best available science. NMFS also notifies eligible participants of the opening and closing dates for the Atlantic large coastal sharks (LCS), small coastal sharks (SCS), pelagic sharks, blue sharks, and porbeagle sharks fishing seasons.

DATES: This emergency rule is effective as of 12:01 a.m., local time, on January 1, 2002, through July 1, 2002.

The fishery opening for LCS is effective January 1, 2002 through 11:30 p.m., local time, April 15, 2002. The LCS closure is effective from 11:30 p.m., local time, April 15, 2002, through June 30, 2002.

The fishery opening for SCS, pelagic sharks, blue sharks, and porbeagle sharks is effective January 1, 2001, through June 30, 2001, unless otherwise modified or superseded through publication of a closure notice in the Federal Register.

Comments on the emergency rule must be received no later than 5 p.m. on March 28, 2002.

ADDRESSES: Written comments on this emergency rule must be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the Environmental Assessment and Regulatory Impact Review prepared for this emergency rule may be obtained from Margo Schulze-

[[Page 67119]]

Haugen or Karyl Brewster-Geisz at the same address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

On November 21, 2000, Southern Offshore Fishing Association and other commercial fishermen and dealers (plaintiffs) and NMFS reached a settlement agreement that prescribed actions to be taken by both parties in order to resolve issues raised in two lawsuits brought against NMFS by the plaintiffs. The first lawsuit was filed on May 2, 1997, regarding the LCS quota decrease of 50 percent. The second lawsuit was filed on June 25, 1999, regarding the commercial shark measures in the HMS FMP and its implementing regulations.

On December 7, 2000, Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida entered an order approving the settlement agreement. The settlement agreement required NMFS to maintain the 1997 commercial LCS quotas and the catch accounting/monitoring procedures pending an independent review of the 1998 LCS stock assessment. The settlement agreement also required NMFS to maintain the 1997 SCS commercial quota pending a new SCS stock assessment. On March 6, 2001, NMFS published in the Federal Register an emergency rule implementing the measures in the settlement agreement pending the results of the independent peer review (65FR 13441). That emergency rule expired on September 4, 2001.

In October 2001, NMFS received from Natural Resources Consultants Inc. the complete peer reviews of the 1998 LCS stock assessment. Three of the four reviews found that the scientific conclusions and scientific management recommendations contained in the 1998 LCS stock assessment were not based on scientifically reasonable uses of the appropriate fisheries stock assessment techniques and on the best available (at the time of the 1998 LCS stock assessment) biological and fishery information relating to LCS. Because of this conclusion, NMFS regards the management recommendations of the 1996 stock assessment to be an appropriate basis for any rulemaking, pending completion of a new stock assessment. Thus, having considered the peer review's overall conclusion, the terms of the settlement agreement, statements by the individual reviewers, and the recommendations of the 1996 stock assessment, NMFS will maintain the 1997 commercial LCS quota level until a new LCS stock assessment that employs improved assessment techniques and addresses the recommendations and comments of the four reviewers can be completed and independently peer reviewed. NMFS anticipates completion of a new LCS stock assessment in early 2002. Additionally, consistent with the court-approved settlement agreement, NMFS will maintain the SCS commercial shark quota at the 1997 level pending a new stock assessment in early 2002.

NMFS initially determined that the settlement agreement is appropriate because it will conserve Atlantic sharks while maintaining a sustainable fishery in the long-term; move the management process for Atlantic sharks forward through quality-controlled scientific assessment and appropriate rulemaking; and promote confidence in the management process and its underlying science. NMFS continues to maintain this view.

This emergency rule is necessary to manage and conserve LCS based on the best scientific information available, pending completion of a new stock assessment and consistent with the terms of the court-approved settlement agreement. At this time, NMFS considers the best available science to be the recommendations of the 1996 stock assessment in combination with current landings data and the independent reviews of the 1998 stock assessment. Without this emergency rule, the reduced LCS and SCS commercial quotas of 816 mt dw and 329 mt dw, respectively, adopted in the HMS FMP and based on the

1998 LCS stock assessment would be in force. However, the independent peer review found that some of the techniques used in the 1998 LCS stock assessment were not appropriate and some of the data used were unreliable. Implementing these quotas prior to completion of a new stock assessment would be inconsistent with both the court-approved settlement agreement and the recommendations of the 1996 stock assessment.

Commercial Management Measures

Pending completion of new LCS and SCS stock assessments, this emergency rule establishes the LCS commercial quota at 1,285 mt dw; establishes the SCS commercial quota at 1,760 mt dw; suspends the regulation on the ridgeback LCS minimum size; suspends the regulation on counting dead discards and state landings after Federal closures against Federal quotas for all sharks; suspends the regulation on season-specific quota adjustments for LCS and SCS; and establishes a regulation that adjusts the LCS or SCS quota based on the previous season's landings. All of the above management measures will be re-evaluated upon completion of the stock assessments and the LCS peer review before they are re-implemented. This emergency rule does not affect commercial management measures for pelagic sharks, except for counting dead discards or state landings against the quota, and does not affect the management measures for prohibited species.

NMFS considered other alternatives including implementing the HMS FMP quotas based on the 1998 stock assessment, implementing the ridgeback LCS minimum size, counting state landings after a Federal closure and dead discards against Federal quotas, and changing the pelagic shark sub-quotas into one pelagic shark quota. However, based on the comments and recommendations of the reviewers, the recommendations of the 1996 stock assessment, current landings data, and the fact that the next stock assessment will consider the efficacy of most of these management measures, NMFS concluded that, for the short duration of this emergency rule (180 days with a possible extension of another 180 days), the management measures implemented would conserve and maintain the shark stocks while having few impacts on the fishery. Upon completion of the new stock assessments and the independent review of the new LCS stock assessment, NMFS will take the appropriate actions based on the additional information to ensure the conservation of Atlantic sharks while rebuilding shark stocks and maintaining a sustainable fishery in the long-term.

NMFS is making one additional adjustment. NMFS will count any overharvest or underharvest in one season against the following season for LCS and SCS. In the past, this accounting method was used only for overharvest and underharvest in the first season; any overharvest in the second season was not counted against the following season's semiannual quota (nor was any underharvest added to the next year). This lack of across-year accounting resulted in the annual quotas being exceeded in several years. This change is to ensure that the fishing mortality is accounted for and does not exceed the fishing mortality

[[Page 67120]]

recommended by the 1996 stock evaluation workshop while also ensuring that fishermen have an opportunity to catch the available quota.

Recreational Management Measures

This emergency rule does not change the recreational management measures for Atlantic sharks. NMFS did consider re-instating the 1997 recreational retention limits of two sharks of any species per trip, with no minimum size, and an additional two Atlantic sharpnose sharks per person per trip. However, based on current and past landings data, the recommendation of the 1996 stock assessment, and individual

statements of the peer reviewers, NMFS believes that re-instating the 1997 retention limit could result in a level of fishing mortality that is not consistent with the recommendations of the 1996 stock evaluation workshop. Thus, for the duration of this emergency rule, NMFS will maintain the current regulations. NMFS will take appropriate action with respect to recreational fishing regulations at the earliest practicable date upon completion of the new stock assessments and the independent review of the new LCS stock assessment.

Annual Landings Quotas

The 2002 annual landings quotas for LCS and SCS are established at 1,285 mt dw and 1,760 mt dw, respectively. The 2002 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw, 273 mt dw, and 92 mt dw, respectively.

Of the 697 mt dw established for the second 2001 semiannual LCS season (66 FR 33918, June 26, 2001), 604 mt dw was taken. NMFS is adding the remaining 93 mt dw to the available quota for the first 2002 semiannual fishing season. As such, the LCS quota for the first 2002 semiannual season is 735.5 mt dw. The SCS first semiannual quota for 2002 is established at 880 mt dw. The first 2002 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw, 136.5 mt dw, and 46 mt dw, respectively.

NMFS will take appropriate action before July 1, 2002, in order to determine and announce the second 2002 semiannual quotas for Atlantic sharks.

Fishing Season Notification

The first semiannual fishing season of the 2002 fishing year for the commercial fishery for LCS, SCS, and pelagic sharks in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open January 1, 2002. To estimate the closure dates of the LCS, NMFS used the average daily catch rates for each species group from the first seasons from the years 1998, 1999, 2000, and 2001 while also considering the reporting dates of permitted shark dealers. Looking at weekly catch rates in recent years, between 92 and 103 percent of the available quota would likely be taken between the first and second weeks of April. The end of the second week of April corresponds with the end of the first of two monthly reporting periods for permitted shark dealers. Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the LCS quota for the first 2002 semiannual season will likely be attained by April 15, 2002. Thus, the LCS fishery will close April 15, 2002, 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.

Catch Limits

The existing prohibited species provisions in 50 CFR part 635 will remain in effect. A list of prohibited shark species can be found in Table 1 of Appendix A to part 635, subpart D. In addition, the limited access provisions for commercial harvests will remain in effect, including trip limits for directed and incidental limited access shark permit holders.

Those vessels that have not been issued a limited access permit under 50 CFR 635.4 may not sell sharks and are subject to the recreational size limits and retention limits specified at 50 CFR 635.20(e) and 635.22(c), respectively. The recreational fishery is not affected by any closure in the commercial fishery.

Comment Period

NMFS is accepting comments regarding this emergency rule for 90 days through March 28, 2002. Comments on these management measures were also requested in an emergency rule published on March 6, 2001 (65 FR 13441). NMFS expects new LCS and SCS stock assessments to be completed in early 2002. Based on these stock assessments and any comments received on this rule, NMFS will modify these regulations through a standard rulemaking process as appropriate.

Classification

These emergency regulations are published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The AA has determined that these emergency regulations are necessary to ensure that regulations in force are consistent with the court-approved settlement agreement and with the best available science, which at this time is considered to be the recommendations of the 1996 stock assessment in combination with current landings data and the individual peer reviews of the 1998 stock assessment.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact on the human environment would result. This emergency rule is of limited duration. The quota levels established in this rule are based on stock assessment results that found these levels were appropriate to maintain the stocks pending implementation of a rebuilding plan. While the most recent 1998 LCS stock assessment indicated that maintaining these quota levels could result in further stock declines, the results of the independent peer review indicate that some of the techniques and data used in the 1998 LCS stock assessment were not appropriate and that models used in earlier stock assessments should have been re-assessed and utilized if appropriate. Thus, applying the results and recommendations of earlier assessments pending new LCS and SCS assessments is the appropriate action to conserve Atlantic sharks, ensure the long-term sustainability of shark fisheries, and ensure management of Atlantic sharks is based on the best available science.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. Because the fishing quotas and the catch accounting/ monitoring procedures for the LCS or SCS fisheries, as adopted in the HMS FMP and its implementing regulations, have been thus far enjoined by court order and later by the settlement agreement, maintaining the 1997 management measures for the duration of this emergency rule will not change the

[[Page 67121]]

current economic benefits or costs associated with the fisheries. Similarly, because the recreational retention limit has been in place since 1999 and because of the relatively short duration of this emergency rule, these management measures will not change the current economic benefits or costs associated with the recreational fisheries.

This emergency rule to establish the 2002 landings quotas and other shark management actions has been determined to be not significant for the purposes of Executive Order 12866.

Additionally, the ancillary action announcing the fishing season is taken under 50 CFR 635.27(b) and is exempt from review under Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the Federal Register for this emergency rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). It would be impracticable to provide prior notice and opportunity for comment because it would prevent the agency from meeting the requirements of a court-approved settlement agreement, and ensuring that management measures in place at the beginning of the 2001 shark fishing season (January 1, 2002) are based on the best available science. If these regulations are not in place at the beginning of the 2001 shark fishing season then more restrictive management measures (e.g. lower annual landings quotas and measures to count dead discards against that lower quota) that could significantly impact the fishery, and that currently lack an adequate scientific basis, would be in place. Comments received on this emergency rule will be considered by NMFS when determining whether to extend this emergency rule for another 180 day period and during development of a new rule. The public will have additional opportunities to comment on these or similar measures during the next rulemaking process expected shortly after completion of the new stock assessments that are anticipated in early 2002.

The AA, under 5 U.S.C. 553(d)(3), also finds that there is good cause to waive the 30-day delay in the effective date of this emergency rule, as is normally required. The AA finds that this measure is necessary to meet the requirements of the court-approved settlement agreement and to achieve the agency's goals, as described herein. Given NMFS's ability to communicate these regulations to fishing interests rapidly through the HMS Fax network, NOAA weather radio, press releases, mailing lists, and the HMS Infoline, the fact that the public has had notice about the settlement agreement and its possible effects since December 2000, and the fact that the management measures implemented in this emergency rule are less restrictive than the management measures currently in effect, the AA believes that affected fishermen and other interested persons will have sufficient and timely notice of this action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 19, 2001.

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

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635--ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

Sec. 635.20 [Amended]

2. In Sec. 635.20, paragraph (e)(1) is suspended.

3. In Sec. 635.27, paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iv)(A) and (b)(1)(iv)(C) are suspended, and paragraphs (b)(1)(iv)(D), (b)(1)(v), and (b)(1)(vi) are added to read as follows:

Sec. 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(D) NMFS will adjust the next year's corresponding semiannual quota for pelagic sharks to reflect actual landings during any semiannual period. NMFS will adjust the semiannual quota for large coastal and small coastal sharks to reflect actual landings during the previous semiannual period. Such adjustment shall be an increase or decrease equivalent to the amount of underharvest or overharvest. NMFS will file, for publication in the Federal Register, notification of any adjustment at least 30 days prior to the start of the next fishing season.

(v) Large coastal sharks. The annual commercial quota for large coastal sharks is 1,285 mt dw, divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual large coastal shark season is 642.5 mt dw unless otherwise specified in the Federal Register as provided in paragraph (b)(1)(iv) of this section. The length of each large coastal shark season will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file, for publication in the Federal Register, notification of the length of each season for large coastal sharks at least 30 days prior to the beginning of the season.

(vi) Small coastal sharks. The annual commercial quota for small coastal sharks is 1,760 mt dw, divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual small coastal shark season is 880 mt dw unless otherwise specified in the Federal Register as provided in paragraph (b)(1)(iv) of this section.

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4. In Sec. 635.28, paragraph (b)(1) is suspended, and paragraph (b)(4) is added to read as follows:

Sec. 635.28 Closures.

* * * * *

(b) * * *

(4) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as specified at Sec. 635.27(b)(1)(v). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to Sec. 635.4.

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[FR Doc. 01-31832 Filed 12-27-01; 8:45 am]
BILLING CODE 3510-22-S