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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 160129062-6643-01]**

**RIN 0648-BF49**

**Atlantic Highly Migratory Species; Commercial Retention Limit for Blacknose Sharks and Non-Blacknose Small Coastal Sharks in the Atlantic Region**

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

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

**SUMMARY:** NMFS is proposing modifications to the commercial retention limits for blacknose sharks and non-blacknose small coastal sharks (SCS) in the Atlantic region. The action would reduce discards of non-blacknose SCS while increasing the utilization of available Atlantic non-blacknose SCS quota and rebuilding and ending overfishing of Atlantic blacknose sharks. The Agency is proposing a measure that would establish a commercial retention limit of eight blacknose sharks for all Atlantic shark limited access permit holders in the Atlantic region south of 34°00' N. latitude. In addition, NMFS is proposing to make two small, unrelated administrative changes to existing regulatory text to remove cross-references to an unrelated section and a section that does not exist. These two changes are administrative in nature, and no impacts to the environment or current fishing operations are expected. The proposed action could affect fishermen in the south Atlantic management area who hold commercial shark limited access permits.

**DATES:** Written comments must be received by September 20, 2016. NMFS will hold an operator-assisted public hearing via conference call and webinar for the draft Environmental Assessment (EA) and this proposed rule on August 16, 2016, from 2 p.m. to 4 p.m. NMFS will also hold one public hearing for this proposed rule on August 24, 2016. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2016-0095, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0095](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0095), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, Chief, Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold one public hearing in Cocoa Beach, FL and one conference call on this proposed rule. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents, including the draft EA, Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic HMS FMP are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Guý DuBeck at 301-427-8503.

**FOR FUTHER INFORMATION CONTACT:** Guý DuBeck, Larry Redd, Cliff Hutt, or Karyl Brewster-Geisz by phone at 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Atlantic sharks are directly managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to issue regulations has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. NMFS published in the **Federal Register** (71 FR 59058) final regulations, effective November 1, 2006 implementing the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This proposed rule considers modifying the commercial retention limits for blacknose sharks and non-blacknose SCS in the Atlantic region south of 34°00' N. latitude.

## **Background**

A brief summary of the background of this proposed action is provided below. Additional information regarding Atlantic HMS management can be found in the Draft

EA for this proposed action, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>.

NMFS manages four SCS species: blacknose, Atlantic sharpnose, finetooth, and bonnethead. All of these species except blacknose sharks are managed in a management group called the “non-blacknose SCS.” Blacknose sharks were assessed separately and declared overfished with overfishing occurring and thus are managed separately, subject to a rebuilding plan. Nevertheless, gillnet fishermen in the South Atlantic area typically fish for and land all four of the SCS species. Thus, any management measure changes to either the blacknose shark or non-blacknose SCS management groups could impact all of these fishermen. Thus, while NMFS analyzed the stock impacts separately, NMFS discussed the economic impacts cumulatively at times and refer to the “overall SCS fishery,” which means the fishery for all four species in the South Atlantic management area.

This proposed rule considers modifying the commercial retention limits for blacknose sharks and non-blacknose SCS in the Atlantic region. This rulemaking only focuses on the Atlantic region since NMFS prohibited the retention and landings of blacknose sharks in the Gulf of Mexico in 2015. The action will reduce discards of non-blacknose SCS while increasing the utilization of available Atlantic non-blacknose SCS quota and rebuilding and ending overfishing of Atlantic blacknose sharks.

Since the completion of the 2007 blacknose shark stock assessment, NMFS has conducted numerous rulemakings regarding all SCS, including blacknose sharks, in order to rebuild blacknose sharks and end overfishing, consistent with the 2006 Consolidated

HMSFMP. The 2007 stock assessment of blacknose sharks assessed blacknose sharks as one stock, and determined that the stock was overfished and overfishing was occurring.

On June 1, 2010 (75 FR 30484), NMFS published a final rule for Amendment 3 to the 2006 Consolidated HMS FMP that, among other things, established blacknose shark and non-blacknose SCS quotas. In the proposed rule, because of the blacknose stock status, NMFS proposed prohibiting the use of gillnet gear in waters south of North Carolina. However, based on comments received during that rulemaking that fishermen could catch non-blacknose SCS while avoiding blacknose sharks when using gillnet gear, the final rule continued to allow landings of SCS sharks with gillnet gear, but linked the quotas for the non-blacknose SCS and blacknose shark fisheries to create an incentive to avoid the incidental catch of blacknose sharks. After that rulemaking, in monthly landings updates and other documents, NMFS encouraged fishermen to avoid blacknose sharks in order to extend the non-blacknose SCS season. For the first two years under this quota linkage, fishermen successfully avoided landing blacknose sharks. This avoidance meant that both the non-blacknose SCS fishery remained open most of the year and the blacknose shark quota was not exceeded.

In 2011, a new stock assessment for blacknose sharks was completed. This assessment concluded that there are two stocks of blacknose sharks—one in the Atlantic and one in the Gulf of Mexico and assessed them separately. The assessment for the Atlantic blacknose shark stock was accepted by the peer reviewers, and NMFS determined that the Atlantic blacknose shark stock is overfished and overfishing is occurring (76 FR 62331, October 7, 2011). The assessment for the Gulf of Mexico stock was not accepted by the peer reviewers. As such, NMFS declared the stock status to be

unknown. On July 3, 2013 (78 FR 40318), NMFS published a final rule for Amendment 5a to the 2006 Consolidated HMS FMP which, among other things, divided the blacknose quota into separate regional quotas (Atlantic and Gulf of Mexico) consistent with the assessment determination that there are two separate stocks. NMFS continued to link the regional blacknose and non-blacknose SCS quotas and therefore divided the non-blacknose SCS quota into separate regional quotas as well, to parallel the division of the blacknose shark stocks. While NMFS established quotas for the two regions, those quotas were not further broken down into commercial retention limits because the quota linkages between the blacknose shark fishery and the non-blacknose SCS fishery alone were expected to create adequate incentive to avoid blacknose sharks.

More recently, NMFS has seen signs that fishermen using gillnet gear in the Atlantic region are no longer avoiding blacknose sharks. In 2012, the overall blacknose shark quota for the Atlantic and Gulf of Mexico regions was exceeded, and the blacknose shark quota in the Atlantic region was exceeded again in 2015. Additionally, the blacknose and non-blacknose SCS fisheries have been closing earlier each year (September 30, 2013 (blacknose sharks and non-blacknose SCS in the Atlantic and Gulf of Mexico regions); July 28, 2014 (blacknose sharks and non-blacknose SCS in the Atlantic region); June 7, 2015 (blacknose sharks and non-blacknose SCS in the Atlantic region)). A review of the landings data indicate the early closures are a result of some fishermen who have been landing large numbers of blacknose sharks relative to other fishermen. These early closures mean that the non-blacknose SCS quota remains underutilized (less than 40 percent was harvested in 2013 and less than 60 percent harvested in both 2014 and 2015). These closures also mean that non-blacknose SCS are

discarded even if quota is available because all SCS species must be discarded once the fisheries are closed.

To reduce the discards of non-blacknose SCS while not increasing landings of blacknose sharks, on August 18, 2015 (80 FR 50074), NMFS published a final rule for Amendment 6 to the 2006 Consolidated HMS FMP. This final rule, among other things, prohibited the retention and landings of blacknose sharks in the Gulf of Mexico region. In the Atlantic region, NMFS established a management boundary along 34° N. latitude for the non-blacknose SCS fishery, removed the quota linkage between non-blacknose SCS and blacknose shark quotas north of the boundary, and prohibited the retention and landings of blacknose sharks north of that boundary since blacknose sharks are rarely caught there. South of the new management boundary, NMFS maintained the non-blacknose SCS and blacknose shark quota linkage and reduced the blacknose shark quota to account for the potential dead discards north of the boundary. Thus, in August 2015, after implementation of Amendment 6, the non-blacknose SCS fishery re-opened north of 34° N. latitude (August 18, 2015, 80 FR 50074) upon publication of the final rule. From August through December, fishermen were able to land an additional 40.5 mt dw, or 15 percent of the non-blacknose SCS quota, after the fishery reopened. However, the non-blacknose SCS fishery remained closed south of 34° N. latitude and fishermen in that area were still required to discard all non-blacknose SCS caught after June 7, 2015.

NMFS recently took action again to close the commercial blacknose shark and non-blacknose SCS fisheries in the Atlantic region south of 34° N. latitude because the commercial landings of Atlantic blacknose sharks for the 2016 fishing season were projected to exceed 80 percent of the available commercial quota (81 FR 33604; May 29,

2016). This indicates that some fishermen south of 34° N. latitude are continuing to land large numbers of blacknose sharks relative to other fishermen even though this results in earlier closures and the potential loss of access to the available non-blacknose SCS quota because of the linkage.

Additionally, since publishing Amendment 6, NMFS has received comments from fishermen and the South Atlantic Fishery Management Council stating that fishermen in the Spanish mackerel gillnet fishery with HMS permits are having to discard otherwise marketable non-blacknose SCS south of the 34° N. latitude management boundary due to the quota linkage, even though non-blacknose SCS quota remains available. Thus, in preparing this proposed rule NMFS considered alternatives to prevent the overharvest and discard of blacknose sharks, maximize the utilization of available non-blacknose SCS quota, extend the season for non-blacknose SCS fisheries, and improve economic opportunities. Specifically, NMFS considered establishing commercial retention limits within the existing quotas for either the blacknose sharks or non-blacknose SCS in the Atlantic region south of 34° N. latitude.

NMFS prepared a draft EA, RIR, and an IRFA, which present and analyze the anticipated environmental, social, and economic impacts of each alternative considered for this proposed rule. The complete list of alternatives and related analyses is provided in the draft EA/RIR/IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rulemaking is available from NMFS (see **ADDRESSES**).

NMFS considered three alternatives for this proposed action. All three alternatives would apply only in the SCS fishery south of 34°00' N. latitude in the

Atlantic region. Alternative 1, the No Action alternative, would maintain the status quo and the current regulations and practices in the blacknose and non-blacknose SCS fishery. Alternative 2 would establish a commercial retention limit for non-blacknose SCS that would be in effect once the blacknose shark quota is reached for directed shark limited access permit holders. Alternative 3 would establish a commercial retention limit for blacknose sharks for all Atlantic HMS limited access permit holders that would be in effect while the blacknose shark quota is available; once the blacknose shark quota is reached, retention of blacknose would be prohibited. Under both Alternatives 2 and 3, NMFS considered a range of three sub-alternatives.

Under Alternative 1, the No Action alternative, NMFS would not implement any new commercial retention limits for blacknose sharks or non-blacknose SCS in the Atlantic region for Atlantic shark directed limited access permit holders (shark incidental limited access permit holders are already limited to a retention limit of 16 combined SCS and pelagic sharks per trip). Instead, the blacknose and non-blacknose SCS quotas would continue to be linked by region and, south of 34°00' N. latitude, access to both quotas would be closed when the blacknose shark quota (17.2 mt dw; 37,921 lb dw) is reached. Logbook data from 2010 through 2015 indicates that on average fishermen take 207 trips per year to land the blacknose shark quota and land approximately 212 lb dw of blacknose sharks per trip. However, the average landings per trip are increasing, and correspondingly, the number of trips needed to land the quota is decreasing. In 2015, the average blacknose shark landings were 402 lb dw per trip, and logbook data indicate that fishermen took approximately 94 trips to harvest the baseline blacknose shark quota. Given that the fishing season has been closing earlier each year for the last several years,

NMFS expects the trend of decreasing number of trips and increasing weight per trip to continue if no further action is taken. Under this alternative, available non-blacknose SCS quota would continue to go unharvested, likely in increasingly large amounts. Because this alternative would maintain the status quo, this alternative would have minor adverse ecological impacts on blacknose sharks as the overharvests may continue to occur and blacknose sharks may continue to be subject to overfishing. However, this alternative would likely have positive ecological benefits for non-blacknose SCS because the early closure of the fishery leaves the non-blacknose SCS quota underutilized. Overall, maintaining the status quo for both the blacknose shark and non-blacknose SCS management groups would have neutral to positive ecological impacts.

With regard to socioeconomic impacts, Alternative 1 would likely continue to result in underutilization of the non-blacknose SCS quota as a result of the early closure of both blacknose and non-blacknose SCS management groups. Between 2014 and 2015, the Atlantic non-blacknose SCS quota has been underutilized by an average of 314,625 lb dw (54 percent of the quota). This represents foregone revenues of \$298,583 assuming an average value of \$0.74/lb dw for meat and \$4.18/lb dw for fins. NMFS expects that Alternative 1, the No Action alternative, would have minor adverse socioeconomic impacts on the non-blacknose SCS fisheries as it would continue to allow for underutilization of the Atlantic non-blacknose SCS quota.

Under Alternative 2, NMFS would implement a commercial retention limit for non-blacknose SCS and remove the quota linkage to blacknose sharks south of 34°00 N latitude. In Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484; June 1, 2010), NMFS linked the blacknose shark and non-blacknose SCS quotas to address the

blacknose shark stock determination and implement measures to rebuild and end overfishing of blacknose sharks. Without the quota linkage, fishermen would be able to continue to harvest non-blacknose SCS after the blacknose shark quota was fully harvested but would need to discard blacknose sharks once that fishery closed. While many fishermen are able to avoid blacknose sharks when fishing for non-blacknose SCS, in order to allow for any non-blacknose SCS landings after a blacknose shark closure, NMFS estimated how many blacknose sharks could potentially be discarded dead by vessels harvesting non-blacknose SCS once the blacknose shark quota (17.2 mt dw; 37,921 lb dw) has been harvested and the fishery is closed. This additional mortality would be counted against the total allowable catch of blacknose sharks upfront, and the overall commercial retention limit for blacknose shark quota would be reduced accordingly.

Under Alternative 2a, NMFS would implement a commercial retention limit of 50 non-blacknose SCS per trip once the blacknose shark quota is reached and remove the quota linkage to blacknose sharks for shark directed limited access permit holders fishing south of 34°00 N latitude. Under this alternative, NMFS would also reduce the baseline blacknose shark quota to 15.0 mt dw (33,069 lb dw) due to the estimated number of blacknose sharks that would be discarded dead while harvesting non-blacknose SCS (985 sharks). NMFS expects that this alternative would have minor adverse ecological impacts on blacknose sharks in the Atlantic region as this alternative would likely not change the current fishing practices and the commercial quota for blacknose sharks would still likely be landed quickly, potentially resulting in overharvests due to data reporting lags. Additionally, this alternative would have neutral ecological impacts on

non-blacknose SCS in the region as fishermen could land 50 non-blacknose SCS per trip until reaching the quota, thus utilizing the non-blacknose SCS quota, without exceeding it. Overall, the commercial retention limit for non-blacknose SCS would have minor adverse ecological impacts for the SCS fishery, which means the fishery for all four SCS species in the South Atlantic management area. The reduction in blacknose shark quota could cause the closure of blacknose shark fishery even earlier in the year but this closure would no longer close the non-blacknose SCS fishery. This reduction in the blacknose shark quota would result in estimated lost revenues of \$5,193 compared to the current baseline quota under Alternative 1, assuming an average value of \$0.87 lb dw for meat and \$4.00 lb dw for fins of blacknose sharks. However, this alternative would generate an estimated 286 additional trips landing non-blacknose SCS at 50 non-blacknose SCS per trip, generating \$34,470 in revenue from for non-blacknose SCS. As such, this alternative should have minor beneficial economic impacts on the overall SCS fishery.

NMFS also analyzed two other alternatives that would implement commercial retention limits when the blacknose shark quota is reached and remove the quota linkage to blacknose sharks for shark directed limited access permit holders. Alternative 2b would establish a commercial retention limit of 150 non-blacknose SCS, and Alternative 2c would establish a commercial retention limit of 250 for non-blacknose SCS. Under Alternative 2b, the baseline blacknose shark quota would be adjusted to 10.5 mt dw (23,148 lb dw) due to the estimated number of dead discard blacknose sharks (2,956 sharks) which likely would occur in the non-blacknose SCS fishery. Similar to Alternative 2a, NMFS expects that this alternative would have minor adverse ecological impacts on the blacknose sharks in the Atlantic region as some directed permit holders

could continue to land large numbers of blacknose sharks relative to other fishermen until the blacknose shark quota is landed, which could increase the amount of blacknose shark dead discards after the blacknose fishing season is closed because the quota linkage would be removed. Similar to Alternative 2a, this alternative would have neutral ecological impacts on the non-blacknose sharks in the region as fishermen could land 150 non-blacknose SCS per trip until reaching the quota, thus utilizing the non-blacknose SCS quota without exceeding it. However, this alternative would have minor adverse ecological impacts for the overall SCS fishery because dead discards would continue after the blacknose shark quota is reached. The reduction in blacknose shark quota would result in estimated lost revenues of \$15,808, assuming an average value of \$0.87 lb dw for meat and \$4.00 lb dw for fins of blacknose sharks. This alternative would generate an estimated 286 additional trips landing non-blacknose SCS at 150 non-blacknose SCS per trip, resulting in a revenue gain of \$65,139 for non-blacknose SCS. As such, this alternative should have minor beneficial economic impacts on the overall SCS fishery.

Under Alternative 2c, the baseline blacknose shark quota would be reduced to 6.1 mt dw (13,448 lb dw) due to the estimated number of dead discard blacknose sharks (4,927 sharks) which likely would occur in the non-blacknose SCS fishery under this scenario. NMFS expects that this alternative would have minor adverse ecological impacts on the blacknose sharks in the Atlantic region as some directed permit holders would continue to land large numbers of blacknose sharks relative to other fishermen until the blacknose shark quota is landed, increasing the amount of blacknose dead discards after the blacknose fishing season is closed due to the elimination of the quota linkage. This alternative would have neutral ecological impacts on the non-blacknose

sharks in the region as fishermen could land 250 non-blacknose SCS per trip until reaching the quota, thus utilizing the non-blacknose SCS quota without exceeding it. Similar to Alternative 2a, the commercial retention limit for non-blacknose SCS would have minor adverse ecological impacts for the overall SCS fishery because dead discards would continue after the blacknose shark quota is reached. This alternative would result in estimated lost revenues of \$26,217 assuming an average value of \$0.87 lb dw for meat and \$4.00 lb dw for fins of blacknose sharks. This alternative would generate an estimated 286 additional trips landing non-blacknose SCS at 250 non-blacknose SCS per trip, resulting in a revenue gain of \$80,339 for non-blacknose SCS. As such, this alternative should have moderate beneficial economic impacts on the overall SCS fishery.

Under Alternative 3, NMFS would establish a commercial retention limit for blacknose sharks per trip for all Atlantic HMS limited access permit holders in the Atlantic region south of 34°00' N. latitude when the blacknose shark quota is available; when the blacknose shark quota is reached, retention of blacknose sharks would be prohibited. To determine the number of trips that would harvest the blacknose shark quota, NMFS divided the current baseline shark quota (17.2 mt dw or 37,921 lb dw) by the product of the retention limit of the sub-alternative and 5 lb dw (which is the average weight of each blacknose shark, based on observer data). For example, under Alternative 3c, the preferred alternative, NMFS would establish a commercial retention limit of eight blacknose sharks per trip for Atlantic HMS directed and incidental limited access permit holders. This retention limit would allow an average of 40 lb dw blacknose sharks per trip (8 sharks \* 5 lb dw) and would result in an estimated 948 trips to land the baseline blacknose shark quota (37,919 lb dw/40 lb dw). This retention limit is be much lower

when compared to the blacknose sharks landed per trip and number of trips that harvested the quota in previous years. In 2014 and 2015, between 243 and 402 lb dw of blacknose sharks were harvested per trip, and the quota was fully harvested in approximately 156 and 94 trips, respectively. Since most fishermen prefer not to discard any fish, NMFS believes this alternative has the potential to influence fishermen to revert to the fishing practices observed in 2010 and 2011 when blacknose sharks were actively avoided when fishing for non-blacknose SCS. NMFS expects that this alternative would have moderate beneficial ecological impacts on the blacknose sharks in the Atlantic region since the lower blacknose shark landings per trip would reduce the rate of landings such that the quota is not exceeded and might result in underharvests. Thus, this alternative could aid in the rebuilding of blacknose sharks and help prevent quota exceedances. This alternative would also have neutral ecological impacts for non-blacknose SCS as NMFS expects that that quota would be fully utilized without being exceeded. Overall, the commercial retention limit for blacknose sharks would have moderate beneficial ecological impacts for the overall SCS fishery. Additionally, this alternative would also have minor beneficial socioeconomic impacts as the fishermen could still land blacknose sharks and the fishery would remain open for a longer period of time, increasing SCS revenues by as much as \$98,664 a year on average if the non-blacknose SCS quota is fully utilized. Any financial losses due to underutilization of the blacknose shark quota would be minimal by comparison.

NMFS also analyzed two other blacknose shark retention limit alternatives that are not preferred at this time. Alternative 3a would establish a retention limit of 50 blacknose sharks per trip for directed limited access permit holders (shark incidental

limited access permit holders would continue to be limited to a total of 16 pelagic and SCS sharks per trip). This retention limit would allow an average of 250 lb dw blacknose sharks per trip and would result in an estimated 152 trips to land the blacknose shark quota. The retention limit of 50 blacknose sharks could potentially cause the SCS fisheries to close as early as June or July if every trip landing blacknose sharks lands the full retention limit, although this is highly unlikely. Under Alternative 3b, NMFS would establish a commercial retention limit of 16 blacknose sharks per trip for directed limited access permit holders. This retention limit would allow an average of 80 lb dw blacknose sharks per trip and would result in an estimated 474 trips to land the full blacknose shark quota. NMFS expects that both of these alternatives would have minor to moderate beneficial ecological impacts on Atlantic blacknose sharks as all Atlantic shark limited access permit holders would be expected to revert to how they had been fishing in 2010 and 2011 and actively avoiding blacknose sharks when fishing for non-blacknose SCS. For non-blacknose SCS, these alternatives would have neutral impacts as the stock would be fished under the level established, resulting in a fishery that would be underutilized. Overall, establishing the commercial retention limit would have beneficial impacts for Alternatives 3a and 3b for the SCS fishery. Additionally, these alternatives would also have minor beneficial socioeconomic impacts to the Atlantic SCS fishery as they would allow for the potential full-utilization of the non-blacknose SCS quota, and potentially increase average revenues by \$98,664 per year. Any foregone revenue due to underutilization of the blacknose shark quota would be minimal in comparison.

Currently, NMFS prefers to establish a commercial retention limit of eight blacknose sharks per trip (Alternative 3c) since the retention limit would have moderate

beneficial ecological impacts on blacknose sharks, neutral ecological impacts on non-blacknose SCS, and minor beneficial socioeconomic impacts for SCS fishermen because they should be able to fully utilize the non-blacknose SCS quota. NMFS does not prefer Alternative 1 (No Action alternative) since this alternative does not meet the objectives of the rule, could result in continued overharvests of the blacknose shark quota, and would continue to underutilize the non-blacknose shark SCS quota. NMFS does not prefer Alternatives 2a, 2b, and 2c establishing a commercial retention limit for non-blacknose SCS, because that could lead to an increase in dead discards of blacknose sharks while targeting non-HMS species and non-blacknose SCS depending on the commercial retention limit. In addition, the reduced blacknose shark quotas due to the estimated dead discards of blacknose sharks when the quota linkage is removed, would implement a commercial retention limit for non-blacknose SCS south of 34°00'N. latitude earlier in the fishing season when the blacknose shark fishery is closed than the preferred alternative. Thus, the non-blacknose SCS quota may not be fully utilized under the alternatives. Furthermore, NMFS does not expect the economic benefits of Alternatives 2a, 2b, or 2c to be as high as the benefits expected under any of the sub-alternatives under Alternative 3. NMFS does not prefer Alternative 3a which would set a retention limit of 50 blacknose sharks per trip could cause the blacknose shark quota to be filled relatively quickly result in and the closure of the non-blacknose SCS fishery before the end of the fishing season. Regarding Alternative 3b, which would set a retention limit of 16 blacknose sharks per trip, at the HMS Advisory Panel meeting in March 2016, NMFS received comments from Panel members who supported maximizing the number of trips per year to land blacknose sharks as would be done in Alternative 3c rather than

Alternative 3b. Panel members were concerned that Alternative 3b would not guarantee a year-round fishery for SCS because some fishermen would land the maximum number per trip (16 blacknose sharks per trip) and close the fishery and NMFS agreed with this statement.

### **Administrative Changes**

In addition to the preferred alternative described above, NMFS is proposing to make two small, unrelated administrative changes to existing regulatory text. Specifically, in two locations in § 635.24(a), the regulations make reference to paragraphs (a)(4)(iv) through (vi); those cross-references are unnecessary because the Commercial Caribbean Small Boat permit under (a)(4)(iv) is a separate permit from the limited access permits and there is no (a)(4)(v) regulation. Because NMFS is already proposing changes to § 635.24(a) through this rulemaking, NMFS has decided to use this opportunity to propose removal of those cross-references. This action is administrative in nature, reflects current practice, and would not have environmental impacts or effects on current fishing operations.

### **Public Hearings**

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax and comments may also be submitted at a public hearing. NMFS solicits comments on this proposed rule through September 20, 2016. During the comment period, NMFS will hold one public hearing and one conference call for this proposed rule. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guý DuBeck at 301-427-8503, at least 7 days prior to the meeting. NMFS has

also asked to present information on the proposed rule and draft EA to the South Atlantic Fishery Management Councils at their meetings during the public comment period.

Please see their meeting notices for dates, times, and locations.

**Table 1. Dates, Times, and Locations of Upcoming Public Hearing and Conference Call.**

<b>Venue</b>	<b>Date/time</b>	<b>Meeting locations</b>	<b>Location contact information</b>
Conference call	August 16, 2016, 2 p.m. – 4 p.m.		To participate in conference call, call: (888) 635-5002 Passcode: 6429428 To participate in webinar, RSVP at: <a href="https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e2a3c0722f8a4bee1c303445a56b6a065">https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e2a3c0722f8a4bee1c303445a56b6a065</a> , A confirmation email with webinar log-in information will be sent after RSVP is registered.
Public Hearing	August 24, 2016, 5 p.m. – 8 p.m.	Cocoa Beach, FL	Cocoa Beach Public Library 550 North Brevard Avenue Cocoa Beach, FL 32931 (321) 868-1104

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments. The NMFS representative will attempt to structure the meeting so that all the attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules,

and, if they do not they may be asked to leave the hearing or may not be allowed to speak during the conference call.

### **Classification**

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained below. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires Agencies to describe reasons why the action is being considered. This proposed action is designed to implement management measures for the blacknose and non-blacknose SCS fisheries that will reduce dead discards of non-blacknose SCS while increasing the utilization of the Atlantic non-blacknose SCS quota and rebuilding and ending overfishing of Atlantic blacknose sharks.

Section 603(b)(2) requires Agencies to describe the objectives of the proposed rule. NMFS has identified the following objectives, which are consistent with existing statutes such as the Magnuson-Stevens Act and its objectives, with regard to this proposed action:

- Obtaining optimum yield from the blacknose and non-blacknose-SCS fisheries;
- Reducing dead discards of sharks, particularly small coastal sharks;
- Continuing to rebuild the Atlantic blacknose shark stock; and
- Ending overfishing of the Atlantic blacknose shark stock.

Section 603(b)(3) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under the SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they all had average annual receipts of less than \$11 million for commercial fishing.

As of 2015, the proposed rule would apply to the approximately 224 directed commercial shark permit holders and 275 incidental commercial shark permit holders. Not all permit holders are active in the shark fishery in any given year. Active directed

permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 499 permit holders, only 27 permit holders landed SCS in the Atlantic region and, of those, only 13 landed blacknose sharks. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements. The alternatives considered would adjust the commercial retention limits for the SCS fisheries, which would be a new compliance requirement for the shark fishery participants in the Atlantic region south of 34°00'N. latitude but is similar to other compliance requirements the fishermen already follow.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include the Magnuson-Stevens Act, the Atlantic Tunas Convention Act (ATCA), the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act (ESA), the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has been determined not to duplicate, overlap, or conflict with any Federal rules.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant

economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Alternative 1, the No Action alternative, would not implement any new commercial retention limits for blacknose sharks and non-blacknose SCS in the Atlantic region south of 34°00’N. latitude beyond those already in effect for current Atlantic shark

limited access permit holders. NMFS would continue to allow fishermen with a direct limited access permit to land unlimited sharks per trip (within available quotas), and allow fishermen with an incidental permit to land 16 combined SCS and pelagic sharks per vessel per trip. Amendment 3 to the 2006 Consolidated HMS FMP established, among other things, a quota for blacknose shark separate from the SCS quota. The 2011 blacknose shark stock assessment determined that separate stocks of blacknose sharks existed in the Gulf of Mexico and the Atlantic Ocean. Amendment 5a to the 2006 Consolidated HMS FMP established, among other things, regional quotas for non-blacknose SCS and blacknose sharks in the Gulf of Mexico and the Atlantic Ocean in 2013. These blacknose shark and non-blacknose SCS quotas are linked by region and the regional SCS fishery is closed when the blacknose shark quota is reached. These linkages have resulted in the early closure of the entire SCS fishery due to high blacknose shark landings. Closure of the fishery as a result of Atlantic blacknose rapid harvest leaves the non-blacknose shark SCS quota underutilized. Between 2014 and 2015, the Atlantic non-blacknose SCS quota has been underutilized by an average of 314,625 lb dw or 54 percent of the quota. This represents an average ex-vessel loss of \$298,583, assuming an average value of \$0.74/lb dw for meat and \$4.18/lb dw for fins. Based on the 27 vessels that landed SCS in the Atlantic, the per-vessel impact would be an approximate loss of \$11,059 per year.

Alternative 2a would implement a commercial retention limit of 50 non-blacknose SCS per trip and remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south 34°00'N. latitude once the blacknose shark quota is reached. Additionally, this alternative would adjust the blacknose shark

quota to 15.0 mt dw (33,069 lb dw). Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of \$5,193 for the fishery, while increased landings of non-blacknose SCS would result in an overall estimated average ex-vessel revenue gain of \$34,470 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of \$29,277 in average ex-vessel revenue for the fishery, or \$1,084 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 2b would implement a commercial retention limit of 150 non-blacknose SCS per trip and remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south 34°00'N. latitude once the blacknose shark quota is reached. Additionally, this alternative would adjust the blacknose shark quota to 10.5 mt dw (23,148 lb dw). Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of \$15,808 for the fishery, while increased landings of non-blacknose SCS would result in an overall estimated average ex-vessel revenue gain of \$65,139 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of \$49,331 in average ex-vessel revenue for the fishery, or approximately \$1,827 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 2c would implement a commercial retention limit of 250 non-blacknose SCS per trip and remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south 34°00'N. latitude once the blacknose shark quota is reached. This alternative would also adjust the blacknose shark quota to 6.1 mt dw (13,448 lb dw). Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of \$26,217 for the fishery, while increased

landings of non-blacknose SCS would result in an estimated average ex-vessel revenue gain of \$80,339 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of \$54,122 in average ex-vessel revenue for the fishery, or approximately \$2,004 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 3a would establish a commercial retention limit of 50 blacknose sharks per trip for shark directed limited access permit holders in the Atlantic region south 34°00'N. latitude. This alternative would most likely convert the blacknose shark fishery to an incidental fishery as the per-trip value of 50 blacknose sharks would only be \$270 (\$218 for meat and \$52 for fins) for the estimated 13 vessels that land blacknose sharks in the Atlantic. Based on 2015 HMS electronic reporting system (eDealer) reports, 49 trips, or 32% of the overall number of trips, landed blacknose sharks in excess of a commercial retention limit of 50 blacknose sharks (250 lb dw). This alternative would likely increase the number of trips needed to fill the blacknose shark quota when compared to the average from 2010 through 2015 under Alternative 1. A retention limit of 50 blacknose sharks could potentially cause the SCS fisheries to close as early as June or July if every trip landing blacknose sharks landed the full retention limit, but this is highly unlikely.

Alternative 3b would establish a commercial retention limit of 16 blacknose sharks per trip all Atlantic shark limited access permit holders in the Atlantic region south 34°00'N. latitude. This alternative would have minor beneficial economic impacts as a retention limit of this size would allow an average of 80 lb dw blacknose sharks per trip and would take approximately 474 trips for fishermen to land the full blacknose shark

quota. Based on 2015 eDealer reports, 83 trips, or 55% of the overall number of trips, landed blacknose sharks in excess of a commercial retention limit of 16 blacknose sharks (80 lb dw). This alternative would dramatically increase the number of trips needed to fill the blacknose shark quota when compared to the yearly averages under Alternative 1. Currently, the linkage between the blacknose shark quota and the non-blacknose SCS quota causes the closure of both fisheries once the smaller blacknose shark quota is attained. NMFS expects that, under this alternative, the blacknose shark quota would not be filled and therefore would not close the SCS fisheries in the South Atlantic region. Thus, this alternative would have minor beneficial economic impacts to the Atlantic SCS fisheries as it would allow for the potential full-utilization of the non-blacknose SCS quota, and potentially increase total ex-vessel revenue by as much as \$298,583 a year. However, given monthly trip rates in the Atlantic, the non-blacknose SCS quota is likely to remain under-utilized. Using calculations based on observed trip and landings rates of non-blacknose SCS in 2015, a more likely result of this alternative would be additional landings of 104,962 lb dw of non-blacknose SCS valued at \$98,664, or approximately \$3,654 per vessel for the 27 vessels that participated in the fishery in 2015. Any financial losses due to under-utilization of the blacknose shark quota would be minimal in comparison.

Alternative 3c, the preferred alternative, would establish a commercial retention limit of eight blacknose sharks per trip all Atlantic shark limited access permit holders in the Atlantic region south 34°00'N. latitude. This alternative would have moderate beneficial economic impacts as a retention limit of this size would allow an average of 40 lb dw blacknose sharks per trip and would take approximately 948 trips to land the full

blacknose shark quota. Based on 2015 eDealer reports, 105 trips, or 69% of the overall number of trips, landed blacknose sharks in excess of the commercial retention limit of eight blacknose sharks (40 lb dw). This alternative would dramatically increase the number of trips needed to fill the blacknose shark quota when compared to the yearly averages under Alternative 1. Currently, the linkage between the blacknose shark quota and the non-blacknose SCS quota causes the closure of both fisheries once the smaller blacknose shark quota is attained. NMFS expects that, under this alternative, the blacknose shark quota would not be filled and would not close the SCS fisheries in the Atlantic region south 34°00'N. latitude. Thus, this would have moderate beneficial economic impacts as the fishermen would still be allowed to land blacknose sharks and the fishery would remain open for a longer period of time, significantly increasing non-blacknose SCS revenues by as much as \$298,583 a year on average if the non-blacknose SCS quota is fully utilized. However, given monthly trip rates in the Atlantic, the non-blacknose SCS quota is likely to remain under-utilized. Using calculations based on observed trip and landings rates of non-blacknose SCS in 2015, a more likely result of this alternative would be additional landings of 104,962 lb dw of non-blacknose SCS valued at \$98,664, or approximately \$3,654 per vessel for the 27 vessels that participated in the fishery in 2015. Any financial losses due to under-utilization of the blacknose shark quota would be minimal in comparison.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,  
Reporting and recordkeeping requirements, Treaties.

Dated: July 28, 2016.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

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

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

2. In § 635.24, revise paragraphs (a)(2), (a)(3), (a)(4)(ii), and (a)(4)(iii) to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

\* \* \* \* \*

(a) \* \* \*

(2) The commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does

not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between zero and 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in § 635.24(a)(8).

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4)\* \* \*

(ii) A person who owns or operates a vessel that has been issued a shark LAP and is operating south of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), may retain, possess, land, or sell blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management groups are open per §§ 635.27 and 635.28. Such persons may retain, possess, land, or sell no more than 8 blacknose sharks

per vessel per trip. A person who owns or operates a vessel that has been issued a shark LAP and is operating north of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), or a person who owns or operates a vessel that has been issued a shark LAP and is operating in the Gulf of Mexico region, as defined at § 635.27(b)(1), may not retain, possess, land, or sell any blacknose sharks, but may retain, possess, land, or sell non-blacknose SCS if the respective non-blacknose SCS management group is open per §§ 635.27 and 635.28.

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks.

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