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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 160620545-6545-01]**

**RIN 0648-XE696**

**Atlantic Highly Migratory Species; 2017 Atlantic Shark Commercial Fishing Season**

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

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

**SUMMARY:** This proposed rule would establish quotas, opening dates, and retention limits for the 2017 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any over- and/or underharvests experienced during 2016 and previous fishing seasons. In addition, NMFS proposes season opening dates and commercial retention limits based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

**DATES:** Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*. An operator-assisted, public conference call and webinar will be held on September 22, 2016, from 2 p.m. to 4 p.m., EST.

**ADDRESSES:** The conference call information is phone number (888) 635-5002; participant passcode 5315520. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar, go to:

<https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=ea9172a6c1907b6efc462ce9117952e21>, event password: noaa. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA-NMFS-2016-0096, 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-2016-0096](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0096), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, 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).

Presentation materials and copies of the supporting documents are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Guý DuBeck by phone at 301-427-8503.

**FOR FURTHER INFORMATION CONTACT:** Guý DuBeck or Karyl Brewster-Geisz at 301-427-8503.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

*2017 Proposed Quotas*

This proposed rule would adjust the quota levels for the different shark stocks and management groups for the 2017 Atlantic commercial shark fishing season based on over- and

underharvests that occurred during 2016 and previous fishing seasons, consistent with existing regulations at 50 CFR 635.27(b). Over- and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of 5 years. Shark stocks or management groups that contain one or more stocks that are overfished, have overfishing occurring, or have an unknown status, will not have underharvest carried over in the following year. Stocks that are not overfished and have no overfishing occurring may have any underharvest carried over in the following year, up to 50 percent of the base quota.

The quotas in this proposed rule are based on dealer reports received as of July 15, 2016. In the final rule, NMFS will adjust the quotas as needed based on dealer reports received as of a date in mid-October 2016. Thus, all of the 2017 proposed quotas for the respective stocks and management groups will be subject to further adjustment after NMFS considers the mid-October dealer reports. All dealer reports that are received after the October date will be used to adjust the 2018 quotas, as appropriate.

For the sandbar shark, aggregated LCS, hammerhead shark, non-blacknose SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2016 underharvests cannot be carried over to the 2017 fishing season because those stocks or management groups have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. Thus, for all of these management groups, the 2017 proposed quotas would be equal to the applicable base quota minus any overharvests that occurred in 2016 and/or previous fishing seasons, as applicable.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark

management groups in the Gulf of Mexico and Atlantic regions have been determined not to be overfished and to have no overfishing occurring, available underharvest (up to 50 percent of the base quota) from the 2016 fishing season for these management groups may be applied to the respective 2017 quotas, and NMFS proposes to do so.

The proposed 2017 quotas by species and management group are summarized in Table 1; the description of the calculations for each stock and management group can be found below.

**Table 1. 2017 Proposed Quotas and Opening Dates for the Atlantic Shark Management Groups. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data as of July 15, 2016; final quotas are subject to change based on landings as of October 2016. 1 mt = 2,204.6 lb.**

Region or Sub-region	Management Group	2016 Annual Quota (A)	Preliminary 2016 Landings <sup>1</sup> (B)	Adjustments <sup>2</sup> (C)	2017 Base Annual Quota (D)	2017 Proposed Annual Quota (D+C)	Season Opening Dates
Eastern Gulf of Mexico	Blacktip Sharks	28.9 mt dw (63,189 lb dw)	18.0 mt dw (39,584 lb dw)	10.9 mt dw (23,961 lb dw) <sup>3</sup>	25.1 mt dw (55,439 lb dw)	36.0 mt dw (79,400 lb dw)	January 1, 2017
	Aggregated Large Coastal Sharks	85.5 mt dw (188,593 lb dw)	42.9 mt dw (93,593 lb dw)	-	85.5 mt dw (188,593 lb dw)	85.5 mt dw (188,593 lb dw)	
	Hammerhead Sharks	13.4 mt dw (29,421 lb dw)	6.7 mt dw (14,865 lb dw)	-	13.4 mt dw (29,421 lb dw)	13.4 mt dw (29,421 lb dw)	
Western Gulf of Mexico	Blacktip Sharks	266.5 mt dw (587,396 lb dw)	166.2 mt dw (366,497 lb dw)	100.3 mt dw (220,542 lb dw) <sup>3</sup>	231.5 mt dw (510,261 lb dw)	331.8 mt dw (730,803 lb dw)	
	Aggregated Large Coastal Sharks	72.0 mt dw (158,724 lb dw)	66.1 mt dw (145,624 lb dw)	-	72.0 mt dw (158,724 lb dw)	72.0 mt dw (158,724 lb dw)	
	Hammerhead Sharks	11.9 mt dw (26,301 lb dw)	16.8 mt dw (37,063 lb dw)	-	11.9 mt dw (23,301 lb dw)	11.9 mt dw (23,301 lb dw)	
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	107.3 mt dw (236,603 lb dw)	41.0 mt dw (90,320 lb dw)	-	112.6 mt dw (248,215 lb dw)	112.6 mt dw (248,215 lb dw)	
	Smoothhound Sharks	336.4 mt dw (741,627)	0 mt dw (0 lb dw)	168.2 mt dw (370,814 lb dw)	336.4 mt dw (741,627)	504.6 mt dw (1,112,441 lb dw)	

Atlantic	Aggregated Large Coastal Sharks	168.9 mt dw (372,552 lb dw)	42.0 mt dw (92,692 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	January 1, 2017
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	9.6 mt dw (21,122 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)	
	Non-Blacknose Small Coastal Sharks	264.1 mt dw (582,333 lb dw)	40.4 mt dw (89,048 lb dw)	-	264.1 mt dw (582,333 lb dw)	264.1 mt dw (582,333 lb dw)	
	Blacknose Sharks (South of 34° N. lat. only)	15.7 mt dw (34,653 lb dw)	12.2 mt dw (26,916 lb dw)	-	17.2 mt dw (37,921 lb dw)	17.2 mt dw (37,921 lb dw) <sup>4</sup>	
	Smoothhound Sharks	1,201.7 mt dw (2,647,725 lb dw)	183.2 mt dw (403,795 lb dw)	600.9 mt dw (1,323,862 lb dw)	1,201.7 mt dw (2,647,725 lb dw)	1,802.6 mt dw (3,971,587 lb dw)	
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	7.2 mt dw (15,829 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)	January 1, 2017
	Sandbar Shark Research	90.7 mt dw (199,943 lb dw)	34.9 mt dw (77,050 lb dw)	-	90.7 mt dw (199,943 lb dw)	90.7 mt dw (199,943 lb dw)	
	Blue Sharks	273.0 mt dw (601,856 lb dw)	0 mt dw (0 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)	
	Porbeagle Sharks	0 mt dw (0 lb dw)	0 mt dw (0 lb dw)	-	1.7 mt dw (3,748 lb dw)	1.7 mt dw (3,748 lb dw)	
	Pelagic Sharks Other Than Porbeagle or Blue	488.0 mt dw (1,075,856 lb dw)	54.1 mt dw (119,336 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)	

<sup>1</sup> Landings are from January 1, 2016, through July 15, 2016, and are subject to change.

<sup>2</sup> Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the base quota.

<sup>3</sup> This adjustment accounts for underharvest in 2016. This proposed rule would increase the overall Gulf of Mexico blacktip shark quota by 111.2 mt dw (244,504 lb dw). Since any underharvest would be divided based on the sub-regional quota percentage split, the eastern Gulf of Mexico blacktip shark quota would be increased by 10.9 mt dw, or 9.8 percent of the underharvest, while the western Gulf of Mexico blacktip shark quota would be increased by 100.3 mt dw, or 90.2 percent of the underharvest.

<sup>4</sup> Based on overharvest in 2012 and 2015, NMFS had previously reduced the Atlantic blacknose shark base annual quota by 1.5 mt dw (3,268 lb dw) each year through 2018. However, in 2016, the Atlantic blacknose shark quota was underharvested by 3.5 mt dw (7,737 lb dw). NMFS is proposing to use the 2016 underharvest to cover the remaining overharvest amount of 3.0 mt dw (6,536 lb dw) and not to adjust the 2017 Atlantic blacknose shark base annual quota.

*1. Proposed 2017 Quotas for the Blacktip Sharks in the Gulf of Mexico Region*

The 2017 proposed commercial quota for blacktip sharks in the eastern Gulf of Mexico sub-region is 36.0 mt dw (79,400 lb dw) and the western Gulf of Mexico sub-region is 331.8 mt dw (730,803 lb dw). As of July 15, 2016, preliminary reported landings for blacktip sharks in the eastern Gulf of Mexico sub-region were at 62 percent (18.0 mt dw) of their 2016 quota levels (28.9 mt dw), while the blacktip sharks in the western Gulf of Mexico sub-region were also at 62 percent (166.2 mt dw) of their 2016 quota levels (266.5 mt dw). Reported landings have not exceeded the 2016 quota to date, and the western Gulf of Mexico sub-region fishery was closed on March 12, 2016 (81 FR 12602). Gulf of Mexico blacktip sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for blacktip sharks within the Gulf of Mexico region therefore could be applied to the 2017 quotas up to 50 percent of the base quota. Any underharvest would be split based on the sub-regional quota percentages of 9.8 percent for eastern Gulf of Mexico blacktip sharks and 90.2 percent for western Gulf of Mexico blacktip sharks (§ 635.27(b)(1)(ii)). To date, the overall Gulf of Mexico blacktip shark management group was underharvested by 111.2 mt dw (244,504 lb dw). Accordingly, NMFS proposes to increase the 2017 eastern Gulf of Mexico blacktip shark quota by 10.9 mt dw (111.2 mt dw underharvest in 2016 \* 9.8 percent = 10.9 mt dw eastern sub-region underharvest) and increase the 2017 western Gulf of Mexico blacktip shark quota by 100.3 mt dw (111.2 mt dw underharvest in 2016 \* 90.2 percent = 100.3 mt dw western sub-region underharvest). Thus, the proposed eastern sub-regional Gulf of Mexico blacktip shark commercial quota is 36.0 mt dw and the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 331.8 mt dw.

## *2. Proposed 2017 Quotas for the Aggregated LCS in the Gulf of Mexico Region*

The 2017 proposed commercial quota for aggregated LCS in the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw) and the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw). As of July 15, 2016, preliminary reported landings for aggregated LCS in the eastern Gulf of Mexico sub-region were at 50 percent (42.5 mt dw) of their 2016 quota levels (85.5 mt dw), while the aggregated LCS in the western Gulf of Mexico sub-region were at 92 percent (66.1 mt dw) of their 2016 quota levels (72.0 mt dw). Reported landings have not exceeded the 2016 quota to date, and the western aggregated LCS sub-region fishery was closed on March 12, 2016 (81 FR 12602). Given the unknown status of some of the shark species within the Gulf of Mexico aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2017 quotas for aggregated LCS in the eastern Gulf of Mexico and western Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

## *3. Proposed 2017 Quota for the Aggregated LCS in the Atlantic Region*

The 2017 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of July 15, 2016, the aggregated LCS fishery in the Atlantic region is still open and preliminary landings indicate that only 25 percent of the quota has been harvested. Given the unknown status of some of the shark species within the Atlantic aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with current regulations at §

635.27(b)(2), NMFS proposes that the 2017 quota for aggregated LCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests and underharvests cannot be carried over due to stock status.

#### *4. Proposed 2017 Quotas for Hammerhead Sharks in the Gulf of Mexico Region*

In the Gulf of Mexico, hammerhead shark quotas are divided into two sub-regions: western and eastern. The 2017 proposed commercial quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region and western Gulf of Mexico sub-region are 13.4 mt dw (29,421 lb dw) and 11.9 mt dw (23,301 lb dw), respectively. As of July 15, 2016, preliminary reported landings for hammerhead sharks in the eastern Gulf of Mexico sub-region were at 50 percent (6.7 mt dw) of their 2016 quota levels (13.4 mt dw), while landings of hammerhead sharks in the western Gulf of Mexico sub-region were at 141 percent (16.8 mt dw) of their 2016 quota levels (11.9 mt dw). Even though the reported landings in the western Gulf of Mexico exceed the 2016 sub-regional quota, which was closed on March 12, 2016 (81 FR 12602), the total regional Gulf of Mexico reported landings have not exceeded the 2016 quota to date. Consistent with the regulations implemented through Amendment 6 to the Consolidated HMS FMP, sub-regional quota overages (e.g., western Gulf of Mexico sub-region) are only deducted in the next year if the total regional quota (e.g., Gulf of Mexico region) is also exceeded. Thus, pursuant to § 635.27(b)(2)(i), at this time, because the overall regional quota has not been overharvested, NMFS is not proposing to adjust the western Gulf of Mexico sub-region quota to account for the overharvest. However, because the eastern Gulf of Mexico sub-region is open and quota is still available in that sub-region, NMFS expects that landings will continue to occur. If landings in the eastern Gulf of Mexico sub-region exceed 8.5 mt dw (18,659 lb dw) (i.e., the

remainder of the total regional Gulf of Mexico quota), then NMFS would reduce the western Gulf of Mexico sub-region quota to account for overharvests, pursuant to § 635.27(b)(2)(i). If the quota is not fully harvested, given the overfished status of hammerhead sharks, NMFS would not carry forward any underharvests, pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), at this time, NMFS proposes that the 2017 quotas for hammerhead sharks in the eastern Gulf of Mexico and western Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status. However, as noted above, if landings in the eastern Gulf of Mexico sub-region exceed 8.5 mt dw, NMFS would adjust the western Gulf of Mexico sub-region quota accordingly in the final rule.

#### *5. Proposed 2017 Quotas for Hammerhead Sharks in the Atlantic Region*

The 2017 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). Currently, the hammerhead shark fishery in the Atlantic region is still open and preliminary landings as of July 15, 2016, indicate that only 35 percent of the quota has been harvested. Given the overfished status of hammerhead sharks, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2017 quota for hammerhead sharks in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

#### *6. Proposed 2017 Quotas for Research LCS and Sandbar Sharks within the Shark Research*

### *Fishery*

The 2017 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 15, 2016, preliminary reported landings of research LCS were at 14 percent (7.2 mt dw) of their 2016 quota levels (50.0 mt dw), and sandbar shark reported landings were at 39 percent (34.9 mt dw) of their 2016 quota levels (27.1 mt dw). Reported landings have not exceeded the 2016 quotas to date. Under § 635.27(b)(2)(ii), because sandbar sharks and scalloped hammerhead sharks within the research LCS management group have been determined to be either overfished or overfished with overfishing occurring, underharvests for these management groups cannot be carried forward to the 2017 quotas. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2017 quota in the shark research fishery be equal to the annual base quota without adjustment because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

### *7. Proposed 2017 Quota for the Non-Blacknose SCS in the Gulf of Mexico Region*

The 2017 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (248,215 lb dw). As of July 15, 2016, preliminary reported landings of non-blacknose SCS were at 38 percent (41.0 mt dw) of their 2016 quota level (107.3 mt dw) in the Gulf of Mexico region. Reported landings have not exceeded the 2016 quota to date. Given the unknown status of bonnethead sharks within the Gulf of Mexico non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at §

635.27(b)(2), NMFS proposes that the 2017 quota for non-blacknose SCS in the Gulf of Mexico region be equal to the annual base quota without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

#### *8. Proposed 2016 Quota for the Non-Blacknose SCS in the Atlantic Region*

The 2017 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of July 15, 2016, preliminary reported landings of non-blacknose SCS were at 15 percent (40.4 mt dw) of their 2016 quota level (264.1 mt dw) in the Atlantic region. Though reported landings had not yet reached or exceeded the 2016 quota, the fishery south of 34°N latitude was closed on May 29, 2016 (81 FR 18541), due to the quota linkage with blacknose sharks in the Atlantic region. The non-blacknose SCS fishery north of 34°N latitude remains open at this time. Given the unknown status of bonnethead sharks within the Atlantic non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2017 quota for non-blacknose SCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

#### *9. Proposed 2017 Quota for the Blacknose Sharks in the Atlantic Region*

The 2017 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). As of July 15, 2016, preliminary reported landings of blacknose sharks were at 78 percent (12.2 mt dw) of their 2016 quota levels (15.7 mt dw) in the Atlantic region. The fishery was closed on May 29, 2016 (81 FR 18541). In the final rule establishing quotas for

the 2014 shark season (78 FR 70500; November 26, 2013), NMFS spread out the 2012 overharvest (2.5 mt dw; 5,555 lb dw) of the blacknose shark quota across 5 years (2014 through 2018) in the Atlantic region by 0.5 mt dw (1,111 lb dw) each year. This approach for spreading large overharvests over several years up to 5 years is consistent with the approach adopted in Amendment 2 to the 2006 Consolidated HMS FMP (see § 635.27(b)(2)(i)), which determined to spread out the pay back over five years depending on the magnitude of the overharvest and the potential impact on the fishery (73 FR 40658; July 15, 2008). In 2015, the blacknose shark quota was overharvested by 3.0 mt dw (6,471 lb dw). In the final rule establishing quotas for the 2016 shark season (80 FR 74999; December 1, 2015), NMFS spread this 2015 overharvest amount over 3 years at 1.0 mt dw (2,157 lb dw) each year from 2016 through 2018. Thus, in the final rule establishing quotas for the 2016 shark season, NMFS decided to reduce the blacknose shark base annual quota by 1.5 mt dw (3,268 lb dw), based on the 2012 and 2015 overharvest amount, in 2016, 2017, and 2018. On May 29, 2016, NMFS closed the Atlantic blacknose shark management group because the quota was projected to exceed 80 percent. However, as of July 15, 2016, the Atlantic blacknose shark quota was underharvested by 3.5 mt dw (7,737 lb dw). This underharvest (3.5 mt dw) is greater than the remaining amount of the 2012 and 2015 overharvests (3.0 mt dw)(6,636 lb dw). As such, NMFS is proposing to use the 2016 underharvest to cover the remaining 2012 and 2015 overharvest. Pursuant to § 635.27(b)(2), because blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic region, NMFS could not carry forward the remaining underharvest (0.5 mt dw). Therefore, NMFS proposes that the 2017 Atlantic blacknose shark quota be equal to the annual base quota without adjustment. Note, the blacknose shark quota is available in the Atlantic

region only for those vessels operating south of 34° N. latitude. North of 34° N. latitude, retention, landing, and sale of blacknose sharks are prohibited.

#### *10. Proposed 2017 Quotas for the Smoothhound Sharks in the Gulf of Mexico Region*

The 2017 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw). As of July 15, 2016, there are no preliminary reported landings of smoothhound sharks in the Gulf of Mexico region. Gulf of Mexico smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Gulf of Mexico region therefore could be applied to the 2017 quotas up to 50 percent of the base quota. Accordingly, NMFS proposes to increase the 2017 Gulf of Mexico smoothhound shark quota to adjust for anticipated underharvests in 2016 as allowed. The proposed 2017 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (1,112,441 lb dw) (336.4 mt dw annual base quota + 168.2 mt dw 2016 underharvest = 504.6 mt dw 2017 adjusted annual quota).

#### *11. Proposed 2017 Quotas for the Smoothhound Sharks in the Atlantic Region*

The 2017 proposed commercial quota for smoothhound sharks in the Atlantic region is 1,802.6 mt dw (1,323,862 lb dw). As of July 15, 2016, preliminary reported landings of smoothhound sharks were at 15 percent (183.2 mt dw) of their 2016 quota levels (1,201.7 mt dw) in the Atlantic region. Atlantic smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Atlantic region therefore could be applied to the 2017 quotas up to 50 percent of the base quota. Accordingly, NMFS proposes to increase the

2017 Atlantic smoothhound shark quota to adjust for anticipated underharvests in 2016 as allowed. The proposed 2017 adjusted base annual quota for Atlantic smoothhound sharks is 1,802.6 mt dw (1,323,862 lb dw) (1,201.7 mt dw annual base quota + 600.9 mt dw 2016 underharvest = 1,802.6 mt dw 2017 adjusted annual quota).

#### *12. Proposed 2017 Quotas for Pelagic Sharks*

The 2017 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 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. As of July 15, 2016, there are no preliminary reported landings of blue sharks and porbeagle sharks, while preliminary reported landings of pelagic sharks (other than porbeagle and blue sharks) were at 11 percent (54.1 mt dw) of their 2016 quota level (488.0 mt dw). Given that these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2017 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

#### *Proposed Opening Dates and Retention Limits for the 2017 Atlantic Commercial Shark Fishing Season*

For each fishery, NMFS considered the seven “Opening Commercial Fishing Season Criteria” listed at § 635.27(b)(3). The “Opening Fishing Season” criteria consider factors such as the available annual quotas for the current fishing season, estimated season length and average

weekly catch rates from previous years, length of the season and fishermen participation in past years, impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology target species (e.g., seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings.

Specifically, as described above and below, NMFS examined the 2016 and previous fishing years' over- and/or underharvests of the different management groups to determine the effects of the 2017 proposed commercial quotas on the shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examined the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities be provided to fishermen in all areas. Lastly, NMFS examined the seasonal variation of the different species/management groups and the effects on fishing opportunities.

As described below, NMFS also considered the six "Inseason trip limit adjustment criteria" listed at § 635.24(a)(8) for directed shark limited access permit holders intending to land LCS other than sandbar sharks. Those criteria are: the amount of remaining shark quota in the relevant area or region, to date, based on dealer reports; the catch rates of the relevant shark species/complexes, to date, based on dealer reports; estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates; effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or effects of catch rates in one part of a region precluding vessels in another part of that region from having a

reasonable opportunity to harvest a portion of the relevant quota.

After considering these criteria, NMFS is proposing that the 2017 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, open on or about January 1, 2017, after the publication of the final rule for this action (Table 2). NMFS is also proposing to start the 2017 commercial shark fishing season with the commercial retention limit of 30 LCS other than sandbar sharks per vessel per trip in the western Gulf of Mexico sub-region, 45 LCS other than sandbar sharks per vessel per trip in the eastern Gulf of Mexico sub-region, and 36 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). However, at the time of writing this proposed rule, some management groups remain open and, for those management groups that are already closed, landings are still being calculated and checked for quality control and assurance. Thus, NMFS may implement different opening dates and commercial retention limits in the final rule if there are underharvested quotas or quota exceedances in 2016 that are not accounted for in this proposed rule.

**Table 2. Quota Linkages, Season Opening Dates, and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group.**

Region or Sub-region	Management Group	Quota Linkages	Season Opening Dates	Commercial Retention Limits for Directed Shark Limited Access Permit Holders (inseason adjustments are possible)
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2017	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Western Gulf of	Blacktip Sharks	Not Linked	January 1, 2017	30 LCS other than sandbar sharks per vessel per trip

Mexico	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2017	N/A
	Smoothhound Sharks	Not Linked	January 1, 2017	N/A
Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2017	36 LCS other than sandbar sharks per vessel per trip  If quota is landed quickly (e.g., if approximately 20 percent of quota is caught at the beginning of the year), NMFS anticipates an inseason reduction (e.g., to 3 or fewer LCS other than sandbar sharks per vessel per trip), then an inseason increase to 45 LCS other than sandbar sharks per vessel per trip around July 15, 2017
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2017	N/A
	Blacknose Sharks (South of 34° N. lat. only)			
	Smoothhound Sharks	Not Linked	January 1, 2017	N/A
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2017	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2017	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

In the Gulf of Mexico region, we are opening the fishing season on or about January 1, 2017, for the aggregated LCS, blacktip sharks, and hammerhead shark management groups with the commercial retention limits of 30 LCS other than sandbar sharks per vessel per trip for directed shark permit holders in the western sub-region—and 45 LCS other than sandbar sharks per vessel per trip for directed shark permit holders in the eastern sub-region. This would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. This opening date takes into account all the season opening criteria listed in § 635.27(b)(3), and particularly the criteria that NMFS consider the length of the season for the different species and/or management group in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§635.27(b)(3)(v)). The proposed commercial retention limits take into account the criteria listed in § 635.24 (a)(8), and particularly the criterion that NMFS consider the catch rates of the relevant shark species/complexes based on dealer reports to date (§635.24(a)(8)(ii)). Similar to the retention limit adjustment process described for the Atlantic region, NMFS may consider adjusting the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at § 635.27(b)(3)(v) and § 635.24(a)(8)(ii), (v), and (vi)). In 2016, the quota in the western Gulf of Mexico sub-region was harvested quickly and NMFS closed these management groups on March 12, 2016 (81 FR 12602) (see the criteria listed at § 635.27(b)(3)(i), (ii), and (iii) and § 635.24(a)(8)(i) and (iii)). As such, in 2017, NMFS is proposing a slightly lower trip limit in order to slow the harvest level and ensure the management group is open until at least April 2017, which is when the State of Louisiana closes state waters

to shark fishing and when that State has asked that we close Federal shark fisheries to match state regulations if quotas are limited (see the criteria listed at § 635.27(b)(3)(vii) and 635.24(a)(8)(iii)). In the eastern Gulf of Mexico, NMFS is proposing the same commercial trip limit for these management groups that was set in 2016. Currently, the aggregated LCS, blacktip shark, and hammerhead shark management groups are still open in the eastern Gulf of Mexico sub-region (see the criteria listed at § 635.27(b)(3)(i), (ii), (iii), and (v), and § 635.24(a)(8) (i), (ii), (iii), (v), and (vi)). If those fisheries close, and after the overall preliminary landings for the Gulf of Mexico region are estimated for the 2016 fishing season, NMFS could make changes to the 2017 opening dates and commercial retention limits if necessary to ensure equitable fishing opportunities.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on or about January 1, 2017. This opening date is the same date that these management groups opened in 2016, although that decision later attracted significant attention and opposition from shark advocates, particularly within the scuba diving community, with respect to what they argue to be a lemon shark aggregation site (see discussion below). As described below, this opening date also takes into account all the criteria listed in § 635.27(b)(3), and particularly the criterion that NMFS consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§635.27(b)(3)(v)). In 2016, the data indicate that an opening date of January 1 provided a reasonable opportunity for every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)) while accounting for variations in seasonal distribution of the different species in the management groups (§

635.27(b)(3)(iv)). Furthermore, in 2016, the fishing season for the aggregated LCS and hammerhead shark management groups remains currently open with 25 percent of the quotas available as of July 15, 2016. Because the quotas in 2017 are proposed to be the same as the quotas in 2016, NMFS expects that the season lengths and therefore the participation of various fishermen throughout the region, would be similar in 2017 (§ 635.27(b)(3)(ii) and (iii)). Based on the recent performance of the fishery, the January 1 opening date appears to be meet the objectives of the 2006 Consolidated HMS FMP and its amendments (§635.27(b)(3)(vi)). Therefore, there is no information that indicates changing the opening date is necessary.

After the final rule for the 2016 shark season published on December 1, 2015 (80 FR 74999), and well outside the close of the public comment period for that rule (September 17, 2015), NMFS received extensive public comments opposing the January 1 opening date (for the aggregated LCS and hammerhead shark management groups) because of their concerns about a lemon shark aggregation site off the east coast of Florida which has become a popular local shark scuba diving site. Commenters requested that NMFS change the opening date to the summer months (e.g., June or July) to protect this lemon shark aggregation. NMFS also received a petition to postpone the opening date in the Atlantic region signed by more than 18,000 people. NMFS responded to the petition as a petition for emergency rulemaking but did not change the January 1 start date in response. Based on these comments and the petition, NMFS held a public conference call on December 11, 2015, to answer public questions regarding the Atlantic commercial shark fishery. NMFS also gave a presentation on the biology and current stock status of lemon sharks at the March 2016 HMS Advisory Panel meeting. Data presented at the Advisory Panel meeting indicated that lemon sharks may be more productive than previously

thought, the commercial shark fishery is not having a significant impact on lemon sharks in the aggregation area or elsewhere, and current data on relative abundance suggest population is stable. Landings of lemon sharks to date in the Atlantic region are approximately 4,855 mt dw (2.2 lb dw), which are less than the average landings over the past 6 years (see the criteria at § 635.27(b)(3)(iv), (v), and (vi) and § 635.24(a)(8)(ii), (iv), and (v)). There is no evidence that these landings have negatively impacted the lemon shark population according to the Southeast Fisheries Science Center scientists. Furthermore, NMFS considered information in the comments received on the December 2015 final rule in proposing a start date for 2017 and has determined they presented no new or additional information that was not previously considered by the agency that would warrant a different opening date. Therefore, NMFS is proposing the same opening dates for the 2017 fishing season. This opening date meets the management objectives of the 2006 Consolidated HMS FMP and its amendments (see the criteria at § 635.27(b)(3)(vi)) particularly in regard to ensuring fishermen throughout the region have reasonable opportunities to harvest a portion of the different species and/or management group quotas (see the criteria at § 635.27(b)(3)(v) and (vii)) while also considering important scientific information on the seasonal distribution, abundance, and migratory patterns of the different species within the management group (see the criteria at § 635.27(b)(3)(ii)). As described above, the fishery has performed well, and in accordance with the objectives of the 2006 Consolidated HMS FMP, under the January 1 opening date. Therefore, there is no information suggesting that changing the opening date is necessary. However, NMFS will consider through this rulemaking any comments on the opening date and any new information on lemon sharks (or other species) not previously considered, and may in the final rule, adjust the opening dates if warranted. The

Notice of Availability for Amendment 10 to the 2006 Consolidated HMS FMP, which should be publishing soon, will address essential fish habitat and potential habitat areas of particular concern for HMS species, including lemon sharks.

In addition, for the aggregated LCS and hammerhead shark management groups in the Atlantic region, NMFS is proposing that the commercial retention trip limit for directed shark limited access permit holders on the proposed opening date be 36 LCS other than sandbar sharks per vessel per trip. This retention limit should allow fishermen to harvest some of the 2017 quota at the beginning of the year when sharks are more prevalent in the South Atlantic area (see the criteria at § 635.24(a)(3)(i), (ii), (v), and (vi)). As was done in 2016, if it appears that the quota is being harvested too quickly (i.e., about 20 percent) to allow directed fishermen throughout the entire region an opportunity to fish and ensure enough quota remains until later in the year, NMFS would reduce the commercial retention limits to incidental levels (3 LCS other than sandbar sharks per vessel per trip) or another level calculated to reduce the harvest of LCS taking into account § 635.27(b)(3) and the inseason trip limit adjustment criteria listed in § 635.24(a)(8), particularly the consideration of whether catch rates in one part of a region or sub-region are precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota (§ 635.24(a)(8)(vi)). If the quota continues to be harvested quickly, NMFS could reduce the retention limit to 0 LCS other than sandbar sharks per vessel per trip to ensure enough quota remains until later in the year. If either situation occurs, NMFS would publish in the Federal Register notification of any inseason adjustments of the retention limit to an appropriate limit of sharks per trip. In 2016, NMFS reduced the retention limit to 3 LCS other than sandbar sharks on April 2, 2016 (81 FR 18541)

when hammerhead shark landings reached approximately 24 percent of the hammerhead quota, and did not need to reduce it further.

Also, as was done in 2016, NMFS will consider increasing the commercial retention limits per trip at a later date if necessary to provide fishermen in the northern portion of the Atlantic region an opportunity to retain non-sandbar LCS after considering the appropriate inseason adjustment criteria. Similarly, at some point later in the year (e.g., July 15), potentially equivalent to how the 2016 fishing season operated, NMFS may consider increasing the retention limit to the default level (45 LCS other than sandbar sharks per vessel per trip) or another amount, as deemed appropriate, after considering the inseason trip limit adjustment criteria. If the quota is being harvested too quickly or too slowly, NMFS could adjust the retention limit appropriately to ensure the fishery remains open most of the rest of the year. Since the fishery is still open with majority of the quota available, NMFS will monitor the rest of the fishing season and could make changes to the proposed 2017 opening date if necessary to ensure equitable fishing opportunities.

All of the shark management groups would remain open until December 31, 2017, or until NMFS determines that the fishing season landings for any shark management group have reached, or are projected to reach, 80 percent of the available quota. If NMFS determines that a non-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (e.g., eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the Federal Register a notice of closure for that shark species, shark management group, region, and/or sub-region that will be effective no

fewer than 5 days from date of filing. For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings reach, or are expected to reach, 80 percent of the quota after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

If NMFS determines that a linked shark species or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will publish in the Federal Register a notice of closure for all of the species and/or management groups in a linked group 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 the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups are closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34° N. latitude. NMFS may close

the fishery for the Gulf of Mexico blacktip shark before landings reach, or are expected to reach, 80 percent of the quota, after considering the criteria listed at § 635.28(b)(5).

### **Request for Comments**

Comments on this proposed rule may be submitted via <http://www.regulations.gov> by mail, and at a public hearing. NMFS solicits comments on this proposed rule by September 27, 2016 (see **DATES** and **ADDRESSES**).

In addition to comments on the entire proposed rule, NMFS is specifically requesting comments on the proposed accounting of the 2012 and 2015 overharvest of Atlantic blacknose sharks from the 2016 underharvest. As described above, in 2016, NMFS closed the Atlantic blacknose shark management group once the quota was projected to exceed 80 percent. As of July 15, 2016, the Atlantic blacknose shark quota was underharvested by 3.5 mt dw (7,737 lb dw). This underharvest (3.5 mt dw) is greater than the remaining amounts of the 2012 and 2015 overharvests (3.0 mt dw)(6,636 lb dw). As such, NMFS is proposing to use the 2016 underharvest to cover the remaining 2012 and 2015 overharvest. This proposal would reduce potential negative social and economic impacts on the blacknose shark and non-blacknose SCS fisheries, which are linked fisheries in the Atlantic region south of 34° N. latitude while maintaining the ecological benefits of the current blacknose shark rebuilding plan. If NMFS continued to spread the overharvest from 2012 and 2015 through 2018, the Atlantic blacknose shark quota in 2017 would be reduced by 1.5 mt dw (3,268 lb dw) in 2017 and the 2017 adjusted quota would be 15.7 mt dw (34,653 lb dw). However, if NMFS uses the 2016 underharvest to cover the remaining overharvest 2012 and 2015 overharvest, the blacknose shark quota would not be reduced in 2017 or 2018 as a result of the 2012 and 2015 overharvests. As a result of this

proposal, the 2017 annual base quota would be 17.2 mt dw (37,921 lb dw), which could result in the fishery remaining open longer in the Atlantic region south of 34° N. latitude and have social and economic beneficial impacts for blacknose and non-blacknose fishermen and dealers.

During the comment period, NMFS will hold one conference call and webinar for this proposed rule. NMFS is requesting comments on any of the measures or analyses described in this proposed rule. The conference call and webinar will be held on September 22, 2016, from 2 – 4 p.m. EST. Please see the **DATES** and **ADDRESSES** headings for more information.

The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (e.g., all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all 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 those that do not may be removed from the conference call.

### **Classification**

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

These proposed specifications are exempt from review under Executive Order 12866.

NMFS determined that the final rules to implement Amendment 2 to the 2006

Consolidated HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea as required under the Coastal Zone Management Act. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish opening dates and adjust quotas for the 2017 fishing season for the Atlantic commercial shark fisheries does not change the framework previously consulted upon; therefore, no additional consultation is required.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA analysis follows.

Section 603(b)(1) of the RFA requires agencies to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is being proposed to establish the 2017 commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the commercial shark fisheries would close on December 31, 2016, and would not open until another action was taken. This proposed rule

would be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments.

Section 603(b)(2) of the RFA requires agencies to explain the rule's objectives. The objectives of this rule are to: adjust the baseline quotas for all Atlantic shark management groups based on any over- and/or underharvests from the previous fishing year(s); establish the opening dates of the various management groups; and establish the retention limits for the blacktip shark, aggregated large coastal shark, and hammerhead shark management groups in order to provide, to the extent practicable, equitable opportunities across the fishing management regions and/or sub-regions while also considering the ecological needs of the different shark species.

Section 603(b)(3) of the RFA 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 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, December 29, 2015). 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 had average annual receipts of less than \$11 million for commercial fishing.

As of July 2016, the proposed rule would apply to the approximately 224 directed commercial shark permit holders, 272 incidental commercial shark permit holders, 89 smoothhound shark permit holders, and 108 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 496 directed and incidental commercial shark permit holders, only 23 permit holders landed sharks in the Gulf of Mexico region and only 88 landed sharks in the Atlantic region. Of the 89 smoothhound shark permit holders, only 49 permit holders landed smoothhound sharks in the Atlantic region and none landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements as domestically implemented, domestic laws, and FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National

Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

Section 603(c) of the RFA requires each IRFA to contain a description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. 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 for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities; therefore, 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 aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) that

accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest as allowable. Thus, NMFS has limited flexibility to modify the quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2015 ex-vessel price, fully harvesting the unadjusted 2017 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$8,265,467 (see Table 3). For the Gulf of Mexico blacktip shark management group, NMFS is proposing to increase the baseline sub-regional quotas due to the underharvests in 2016. The increase for the eastern Gulf of Mexico blacktip shark management group could result in a \$24,141 gain in total revenues for fishermen in that sub-region, while the increase for the western Gulf of Mexico blacktip shark management group could result in a \$222,196 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the baseline quotas due to the underharvest in 2016. This would cause a potential gain in revenue of \$270,323 for the fleet in the Gulf of Mexico region and a potential gain in revenue of \$965,095 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for

under- and overharvests at that time.

**Table 3. Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2015.**

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Gulf of Mexico	Blacktip Shark	\$0.51	\$9.95
	Aggregated LCS	\$0.55	\$9.96
	Hammerhead Shark	\$0.61	\$11.98
	Non-Blacknose SCS	\$0.35	\$6.72
	Smoothhound Shark*	\$0.65	\$1.58
Atlantic	Aggregated LCS	\$0.80	\$4.73
	Hammerhead Shark	\$0.65	\$10.25
	Non-Blacknose SCS	\$0.73	\$4.36
	Blacknose Shark	\$0.97	\$4.00
	Smoothhound Shark*	\$0.65	\$1.58
No Region	Shark Research Fishery (Aggregated LCS)	\$0.68	\$9.24
	Shark Research Fishery (Sandbar only)	\$0.76	\$10.62
	Blue shark	\$0.60	\$2.93
	Porbeagle shark	\$1.50	\$2.93
	Other Pelagic sharks	\$1.50	\$2.93

\*Ex-vessel prices for smoothhound sharks come from HMS dealers who submitted landings data voluntarily before it was a requirement on March 15, 2016.

For this proposed rule, NMFS also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen, to the extent practicable, while also considering the ecological needs of the different species. The opening dates of the fishing season(s) could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2017 fishing season, NMFS is proposing to open all of the shark management groups on the effective date of the final rule for this action (expected to be on or about January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis because NMFS is not proposing to change the opening dates of these fisheries from the status quo.

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

Dated: August 22, 2016

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National Marine Fisheries Service.

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