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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160620545-6999-02]

RIN 0648-XF347

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Groups Retention Limit Adjustment

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 25 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2017 fishing season or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted. This retention limit adjustment will affect anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective at 11:30 p.m. local time April 15, 2017 through the end of the 2017 fishing season on December 31, 2017, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Guý DuBeck, or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.24(a)(8), NMFS may adjust the commercial retention limit in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors See § 635.24(a)(8)(i) through (vi). After considering these criteria as discussed below, we have concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year. Since landings have reached 20 percent of the quota and are projected to reach 80 percent before the end of the 2017 fishing season, NMFS is reducing the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar per vessel per trip.

- NMFS considered the inseason retention limit adjustment criteria listed in § 635.24(a)(8), which includes (broken down by bullet points): The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports.

Based on dealer reports, 32.9 mt dw or 19.5 percent of the 168.9 mt dw shark quota for the aggregated LCS management group has already been harvested in the Atlantic region. This means that approximately 80 percent of the quota remains. These levels this early in the season indicate that the quota is being harvested too quickly and unless action is taken to slow harvest, fishermen in the Atlantic region may not have an opportunity to fish in the region for the remainder of the year.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the average catch rate of landings data from dealer reports, the amount of aggregated LCS harvested on a daily basis is high. While fishermen are landing sharks within their per-trip limit of 25 fish per trip on a given day, they are making multiple trips a day that overall result in high numbers of aggregated LCS being caught rapidly throughout the fishery. This daily average catch rate means that aggregated LCS are being harvested too quickly to ensure fishing opportunities throughout the season. If the per trip limit is left unchanged, aggregated LCS would likely be harvested at such a high rate that there would not be enough aggregated LCS quota remaining to keep the fishery open year-round, precluding equitable fishing opportunities for the entire Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach 80 percent of the quota, NMFS would have to close the aggregated LCS management group as well as any other management group with “linked quotas” such as the hammerhead shark management group. Current catch rates would likely result in reaching this limit by the beginning of July. A closure so early in the year would preclude fishing opportunities in the Atlantic region for the remainder of the year.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Reducing the retention limit for the aggregated LCS and hammerhead management group from 25 to 3 LCS per trip would allow for fishing opportunities later in the year consistent with the FMP's objectives to ensure equitable fishing opportunities throughout the fishing season and to limit bycatch and discards.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. As a result, by slowing the harvest and reducing landings on a per-trip basis, both fisheries could remain open for the remainder of the year.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

Based on dealer reports, and given NMFS' notice to the regulated community (81 FR 84491) that a goal of this year's fishery was to ensure fishing opportunities throughout the fishing

season, NMFS has concluded that the aggregated LCS quota is being harvested too quickly to meet conservation and management goals for the fishery. If the harvest of these species is not slowed down, we estimate that the fishery would close by the beginning of July. Closing the fishery so early would prevent fishermen from other parts of the Atlantic region from having the same opportunities to harvest the aggregated LCS quota later in the year.

On November 23, 2016 (81 FR 84491), NMFS announced that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 metric tons (mt) dressed weight (dw) (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. In that final rule, NMFS also announced that if it appeared that the quota is being harvested too quickly, precluding fishing opportunities throughout the entire region (e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would reduce the commercial retention limit to 3 LCS other than sandbar sharks. Dealer reports through April 6, 2017, indicate that 32.9 mt dw or 19.5 percent of the available quota for the aggregated LCS fishery has been harvested. If the average catch rate indicated by these reports continues, the landings could reach 80 percent of the quota by the beginning of July. Once the landings reach 80 percent of the quota, consistent with § 635.28(b)(3) (“linked quotas”), NMFS would close any species and/or management group of a linked group.

Accordingly, as of 11:30 p.m. local time April 15, 2017, NMFS is reducing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 25 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. If the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-

hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, then they are exempted from the retention limit adjustment.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip for the rest of the 2017 fishing season, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Atlantic region.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Providing prior notice and an opportunity for comment is impracticable because the catch and landings that need to be reduced are ongoing and must be reduced immediately to meet conservation and management objectives for the fishery. Continued fishing at those levels during the time that notice and comment takes place would result in the much of the quota being landed and could result in a very early closure of the fishery, contrary to the objectives of the existing conservation and management measures in place for those species. These objectives

include ensuring that fishing opportunities are equitable and that bycatch and discards are minimized. Allowing fishing to continue at the existing rates even for a limited time is contrary to these objectives and would thus be impracticable. It would also be contrary to the public interest because, if the quota continues to be caught at the current levels, the quota will not last throughout the remainder of the fishing season and a large number of fishermen would be denied the opportunity to land sharks from the quota. Furthermore, continued catch at the current rates, even for a limited period, could result in eventual quota overharvests, since it is still so early in the fishing year. The AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) for the same reasons. This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866. NMFS has concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year.

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

Dated: April 10, 2017.

Karen H. Abrams,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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