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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160620545-6999-02]

RIN 0648-XF211

Atlantic Highly Migratory Species; Commercial Blacktip Sharks, Aggregated Large Coastal Sharks, and Hammerhead Sharks in the Western Gulf of Mexico Sub-Region; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial fishery for blacktip sharks, aggregated large coastal sharks (LCS) and hammerhead shark management groups in the western Gulf of Mexico sub-region. This action is necessary because the commercial landings of aggregated LCS in the western Gulf of Mexico sub-region for the 2017 fishing season exceeded 80 percent of the available commercial quota as of April 26, 2017, and the aggregated LCS and hammerhead shark management groups are quota-linked under the regulations. The blacktip shark fishery in the western Gulf of Mexico sub-region will be closed to minimize regulatory discards of aggregate LCS in the western Gulf of Mexico sub-region, which are often caught in conjunction with blacktip sharks in the commercial shark fisheries. This closure will affect anyone commercially fishing for sharks in the western Gulf of Mexico sub-region.

DATES: The commercial fishery for blacktip sharks, aggregated LCS and hammerhead shark management groups in the western Gulf of Mexico sub-region are closed effective 11:30 p.m. local time May 2, 2017 until the end of the 2017 fishing season on December 31, 2017, or until and if NMFS announces via a notice in the **Federal Register** that additional quota is available and the season is reopened.

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

SUPPLEMENTARY INFORMATION: The 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 § 635.5(b)(1), dealers must electronically submit reports on sharks that are first received from a vessel on a weekly basis through a NMFS-approved electronic reporting system. Reports must be received by no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Under § 635.28(b)(4), the quotas of certain species and/or management groups are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§635.28(b)(3)). The quotas for aggregated LCS and the hammerhead shark management groups in the western Gulf of Mexico sub-region are linked (§ 635.28(b)(4)(iii)). The blacktip shark quota in the western Gulf of Mexico sub-region is not linked to the aggregated LCS or hammerhead shark quotas. Regulations at § 635.28(b)(2) and § 635.28(b)(5)

authorize the closure of the blacktip shark fishery in the Gulf of Mexico at a regional or sub-regional level when landings have reached or are expected to reach 80 percent of the quota or, after considering certain criteria and relevant factors, before those situations occur.

Under § 635.28(b)(2) and § 635.28(b)(3), when NMFS calculates that the landings for any species and/or management group of either a non-linked or a linked group have reached or are projected to reach a threshold of 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups of either a non-linked or 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 and if NMFS announces, via 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 and specified non-linked species and/or management groups are closed, even across fishing years.

On November 23, 2016 (81 FR 84491), NMFS announced that for 2017, the commercial western Gulf of Mexico blacktip shark sub-regional quota was 331.6 metric tons (mt) dressed weight (dw) (730,425 lb dw), the western Gulf of Mexico aggregated LCS sub-regional quota was 72.0 mt dw (158,724 lb dw), and the western Gulf of Mexico hammerhead shark sub-regional quota was 11.9 mt dw (26,301 lb dw). Dealer reports received through April 26, 2017, indicate that 62.7 mt dw or 87 percent of the available western Gulf of Mexico aggregated LCS sub-regional quota has been landed, that 2.5 mt dw or 21 percent of the available western Gulf of Mexico hammerhead shark sub-regional quota has been landed, and that 203.9 mt dw or 61 percent of the available western Gulf of Mexico blacktip shark sub-regional quota has been landed. Based on these dealer reports, limits specified for a closure notice in the regulations for

the aggregated LCS and hammerhead shark management groups in the western Gulf of Mexico sub-region have been reached. Accordingly, NMFS is closing the commercial aggregated LCS and hammerhead management groups in the western Gulf of Mexico sub-region as of 11:30 p.m. local time May 2, 2017.

Regarding blacktip sharks in the western Gulf of Mexico sub-region, regulations at § 635.28(b)(5)(i)-(v) authorize the closure of the blacktip shark fishery 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. NMFS considered all of these criteria with respect to blacktip sharks in the western Gulf of Mexico sub-region, and in particular, considered sub-regional distribution and abundance (§ 635.28(b)(5)(ii)) and sub-regional catch rates (§ 635.28(b)(5)(v)). The directed shark fisheries in the western Gulf of Mexico sub-region exhibit a mixed species composition, with a high abundance and distribution of aggregated LCS caught in conjunction with blacktip sharks. As a result, NMFS believes that closing the aggregated LCS and hammerhead shark management groups while leaving only the blacktip shark fishery open in the western Gulf of Mexico sub-region could cause large numbers of regulatory discards of aggregated LCS species. Such discards could hinder the management goals and interfere with accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments (§ 635.28(b)(5)(iii)), which include preventing

overfishing while achieving on a continuing basis optimum yield and rebuilding overfished shark stocks. Such discards would also be contrary to National Standard 9, which requires that management measures minimize bycatch and bycatch mortality, particularly if the discards are dead and are of overfished species. A single closure for the blacktip, aggregated LCS, and hammerhead management groups in the western Gulf of Mexico sub-region would minimize regulatory discards, and help prevent overfishing, of aggregated LCS in the western Gulf of Mexico sub-region, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the criteria at §635.28(b)(5). Accordingly, NMFS is closing the commercial blacktip shark fishery in the western Gulf of Mexico sub-region as of 11:30 p.m. local time May 2, 2017.

All other shark species or management groups in the western Gulf of Mexico sub-region that are currently open will remain open, including the commercial Gulf of Mexico non-blacknose small coastal sharks (SCS), blue sharks, smoothhound sharks, and pelagic sharks other than porbeagle or blue.

At § 635.27(b)(1), the boundary between the Gulf of Mexico region and the Atlantic region is defined 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 south and west of that boundary is considered for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88° 00' W. long. (§ 635.27(b)(1)(ii)).

During the closure, retention of blacktip sharks, aggregated LCS, and/or hammerhead sharks management groups in the western Gulf of Mexico sub-region is prohibited for persons

fishing aboard vessels issued a commercial shark limited access permit under § 635.4. However, persons aboard a commercially permitted vessel that is also properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip could fish under the recreational retention limits for sharks and “no sale” provisions (§ 635.22 (c)). Similarly, persons aboard a commercially permitted vessel that possesses a valid shark research permit under § 635.32 and has a NMFS-approved observer onboard may continue to harvest and sell blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region pursuant to the terms and conditions of the shark research permit.

During this closure, a shark dealer issued a permit pursuant to § 635.4 may not purchase or receive blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region from a vessel issued an Atlantic shark limited access permit (LAP), except that a permitted shark dealer or processor may possess blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region that were harvested, off-loaded, and sold, traded, or bartered prior to the effective date of the closure and were held in storage consistent with § 635.28(b)(6). Additionally, a permitted shark dealer or processor may possess blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region that were harvested by a vessel issued a valid shark research fishery permit per § 635.32 with a NMFS-approved observer onboard during the trip the sharks were taken on as long as the LCS research fishery quota remains open. Similarly, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with relevant state regulations, purchase or receive blacktip sharks, aggregated LCS, and/or hammerhead sharks in the western Gulf of Mexico sub-region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in

state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway and any delay in this action would result in overharvest of the quotas for these species and management groups and be inconsistent with management requirements and objectives. The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of availability on the fishing grounds, the migratory nature of the species, and the regional variations. NMFS is not able to give notice sooner nor would sooner notice be practicable given the structure of the regulations, which require closure of the fishery at a certain quota percentage threshold, and that that threshold needs to be determined based on near real-time data to balance fishing opportunities against the management goal of preventing quota overharvests. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if a quota is exceeded, the stock may be negatively affected and fishermen ultimately could experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.28(b)(3) and § 635.28(b)(5) and is exempt from review under Executive Order 12866.

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

Dated: April 26, 2017.

Karen H. Abrams,

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National Marine Fisheries Service.

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