



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170605543-7999-02]

RIN 0648-XF486

Atlantic Highly Migratory Species; 2018 Atlantic Shark Commercial Fishing Season

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

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the 2018 opening date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the quotas for the 2018 fishing season based on over- and/or underharvests experienced during 2017 and previous fishing seasons. The large coastal shark (LCS) retention limit for directed shark limited access permit holders is 45 LCS other than sandbar sharks per trip in the Gulf of Mexico region and 25 LCS other than sandbar sharks per trip in the Atlantic region. These retention limits for directed shark limited access permit holders may decrease or increase during the year after considering the specified inseason action regulatory criteria to provide, to the extent practicable, equitable fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2018. The 2018 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Highly Migratory Species (HMS) Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck, Karyl Brewster-Geisz, or Gray Redding 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 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.

On August 22, 2017 (82 FR 39735), NMFS published a proposed rule for the 2018 opening dates for the Atlantic commercial shark fisheries, commercial shark fishing quotas based on shark landings information reported as of July 14, 2017, and the commercial shark retention

limits for each region and sub-region. The August 2017 proposed rule (82 FR 39735; August 22, 2017) for the 2018 season contains details about the action that are not repeated here. The comment period on the proposed rule ended on September 21, 2017.

During the comment period, NMFS received approximately 13 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section below, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups on January 1, 2018, as proposed. For directed shark limited access permit holders, the blacktip, aggregated LCS, and hammerhead management groups in the entire Gulf of Mexico region will start the fishing season with a retention limit of 45 LCS other than sandbar sharks per vessel per trip, which is a change from the proposed rule's retention limit of 50 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing season with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, as proposed. The retention limit for incidental shark limited access permit holders for all regions has not changed from the proposed rule and remains at 3 LCS other than sandbar sharks per trip and a combined total of 16 small coastal sharks (SCS) and pelagic sharks, combined per trip consistent with § 635.24(a)(3) and (4). Additionally, the retention limit for blacknose sharks for all permit holders in the Atlantic region south of 34⁰⁰' N. lat. has not changed from the proposed rule and is 8 blacknose sharks per trip consistent with § 635.24 (a)(4).

This final rule serves as notification of the 2018 opening dates for the Atlantic commercial shark fisheries and 2018 retention limits and quotas, based on shark landings data

updated as of October 23, 2017, and considering the “opening commercial fishing season” criteria at § 635.27(b)(3). Criteria considered include 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 of target species (e.g., seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings. While this action adjusts certain quotas as allowable, this action does not establish or change the annual baseline commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. The baseline quotas were established under previous actions, and any changes to those baseline quotas would be performed through a separate action. Rather, this action adjusts the annual commercial quotas for 2018 based on over- and/or underharvests that occurred in 2017 and previous fishing seasons, consistent with existing regulations, and establishes the opening dates for the fisheries. All of the shark management group adjusted quotas remain the same as proposed.

Response to Comments

NMFS received approximately 13 written and oral comments on the proposed rule from fishermen, dealers, and other interested parties. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648-XF486. NMFS received approximately six oral comments through phone conversations or at the HMS Advisory Panel meeting on September 6, 2017. All of the comments received are summarized below.

A. LCS Management Group Comments

Comment 1: NMFS received comments regarding the proposed opening date of January 1 for the western Gulf of Mexico LCS fisheries. Some commenters supported the proposed January 1 opening date for both Gulf of Mexico sub-regions, while other commenters supported a delayed western Gulf of Mexico opening date of January 15 or February 1 to coincide with the religious holiday of Lent, which is often associated with higher ex-vessel prices.

Response: After considering public comment and the “opening commercial fishing season” criteria (§ 635.27(b)(3)) described in the proposed rule, NMFS has determined that opening the Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups on January 1, as proposed, will promote equitable fishing opportunities throughout the Gulf of Mexico region. In reaching this determination, NMFS considered, in particular, the regulatory criterion regarding the length of the season in previous years for the different species and/or management groups and whether fishermen had been able to participate in the fishery in those years (§ 635.27(b)(3)(iii)), and found that with a January 1 opening date in 2016, the length of the fishing season provided all fishermen with equitable fishing opportunities to participate in the fishery in 2016. Specifically, in 2016, NMFS opened the season on January 1 and closed it on March 12, 2016 (81 FR 12602). In other words, in 2016, while the fishery closed before April 1 (which is when the State of Louisiana annually plans a state-water closure), all fishermen in the sub-region had the same opportunities. In 2017, NMFS opened the season on February 1 and closed it on May 2, 2017 (82 FR 20447). The delayed opening in 2017 allowed Louisiana state-water fishermen only two months to fish given the State of Louisiana’s annual state-water closure from April 1 through June 30; fishermen in other parts of the sub-region could continue fishing after April 1. Thus, opening the season in January should give all fishermen in the sub-

region a fishing season of equal duration given the State of Louisiana closure, and an equitable opportunity to harvest the quota before the state-water closure.

Comment 2: NMFS received comments regarding the proposed change in the commercial retention limit for the blacktip, aggregated LCS, and hammerhead management groups in the eastern Gulf of Mexico sub-region from the default (and current) level of 45 to 50 LCS other than sandbar sharks per vessel per trip. NMFS received a comment in support of the proposed higher retention limit of 50 LCS other than sandbar sharks per vessel per trip and a comment in support of the current retention limit of 45 LCS other than sandbar sharks per vessel per trip to ensure the season lasts most of the year.

Response: NMFS has determined that the default retention limit of 45 LCS other than sandbar sharks per vessel per trip at the start of the season will ensure equitable fishing opportunities in the eastern Gulf of Mexico sub-region. In the proposed rule, because the management groups remained open all of 2016 and because the relevant management groups were underharvested in 2016, NMFS proposed a higher trip limit (50 LCS other than sandbar sharks per vessel per trip) in order to allow fishermen to fully harvest the blacktip, aggregated LCS, and hammerhead management group quotas, presuming that future catch rates might be expected to be similar. However, as of October 23, 2017, the landings in 2017 are higher than at that time in 2016, and NMFS is considering whether it will be necessary to close the fishery to avoid overharvest of the quota. With the updated information showing an increase in the 2017 eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead management group landings, NMFS has decided to start the commercial retention limit at 45 LCS other than sandbar sharks

per vessel per trip. However, NMFS may adjust the retention limit during the fishing season as appropriate after considering the relevant regulatory criteria.

Comment 3: NMFS received comments in support the proposed opening date of January 1, retention limit, and inseason retention limit adjustments for the aggregated LCS and hammerhead management groups in the Atlantic region as long as majority of the quota is available later in the year.

Response: After considering the “opening commercial fishing season” regulatory criteria in light of the comments, which reflected support of the proposed opening date, NMFS has decided to open the fisheries in the Atlantic region on January 1, as proposed. Specifically, on January 1, 2018, the LCS fisheries in the Atlantic region will open with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders. The January 1 opening date should allow fishermen in the southern and northern portions of the Atlantic region the opportunity to fish at the beginning of the year. NMFS will consider further adjusting the commercial retention limit during the season as appropriate, after considering the applicable criteria, to provide all fishermen in the Atlantic region fishing opportunities later in the year as well, since the majority of the quota should still be available and the majority of fishing occurs later in the year. The proposed rule stated that, if it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish, NMFS will consider reducing the commercial retention limit after a portion of the quota is harvested (e.g., 20 percent) and later consider raising the commercial retention limit to 36 LCS other than sandbar sharks per vessel per trip around July 15 to allow greater fishing opportunities later in the year. This is the same approach that has been used in 2016 and

2017. Specifically, in 2017, NMFS started with a retention limit of 25 LCS other than sandbar sharks per vessel per trip on January 1 and then reduced the commercial retention to 3 LCS other than sandbar sharks per vessel per trip on April 15, 2017 (82 FR 17765; April 13, 2017) when the aggregated LCS quota reached 19.5% of the available quota. NMFS increased the retention limit to 36 LCS other than sandbar sharks per vessel per trip on July 16, 2017 (82 FR 32490; July 14, 2017) and, as of the drafting of this final rule, the current fishing season remains open. Thus, based on how the most recent previous seasons have operated to date, NMFS has determined that a lower retention limit at the start of the season will allow NMFS to more easily and closely monitor the quota and catch rates in the beginning of the year to help ensure equitable fishing opportunities later in the year, while acknowledging that the majority of quota generally is harvested later in the year (see the criteria listed at § 635.24(a)(8)(iii)).

B. General Comments

Comment 4: NMFS received several comments in support of the proposed rule and more generally in favor of regulating commercial shark fishing, while other commenters opposed any regulations that allow shark fishing. Commenters who supported the regulation of shark fisheries stated the importance of sharks to the ecosystem. However, one commenter expressed concern about adequate enforcement of the quotas and retention limits including concerns about falsified reporting. The commenters who were opposed to the proposed rule specifically requested a closure of all shark fisheries; wanted more scientific justification of the LCS retention limit change; and were concerned about the mortality of prohibited sharks and other bycatch, shark finning, and consistency with unspecified provisions in international agreements,

such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response: In this rule, NMFS's goal is to establish quotas for the Atlantic shark fisheries based upon the baseline quotas previously established in the 2006 Consolidated HMS FMP and its amendments (<http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/index.html>), and based on allowable adjustments as a result of over- or underharvests in 2017 and previous years.

Generally, when establishing the shark commercial baseline quotas, NMFS uses the total allowable catch (TAC) calculated during the stock assessment. NMFS then subtracts all other sources of mortality, including recreational landings, commercial discards, post-release mortality, and research set-aside mortality; the remaining portion is the commercial baseline quota. In establishing these baseline quotas through an FMP amendment, NMFS takes into account the fishery impacts on essential fish habitat, protected resources, and the environment in general in order to fulfill requirements for the associated FMP amendment along with socioeconomic value of these shark species to various groups. Thus, the commenter's concern that the impacts of fishing for sharks on the environment and other protected species have not been properly analyzed nor considered are not warranted.

Regarding the comment about adequate enforcement and falsified reporting, NMFS takes enforcement of these regulations seriously. If suspected illegal activities are observed in any fishery and/or region, specific information regarding such incidents can be reported to NOAA Office of Law Enforcement Division (<http://www.nmfs.noaa.gov/ole/>) through the national enforcement hotline at 1-800-853-1964. All commercial shark landings and quotas are monitored with the HMS electronic dealer reporting system, which has been in use since 2013.

This improvement in commercial quota monitoring technology and the weekly reporting provides more information on each dealer transaction, including all shark landings to the species level, and ensures that quotas are not exceeded. Overall, this improvement helps with monitoring of commercial landings of all shark species and with closing management groups in an efficient and timely manner. In addition, NMFS can verify and detect falsified reporting by dealers and fishermen by cross-checking dealer reports to fishermen's logbooks.

Regarding comments that requested a closure of all sharks fisheries or that raised concerns regarding the scientific justification of the range of allowable retention limits adopted in an earlier rulemaking (Amendment 6 to the 2006 Consolidated HMS FMP) and the mortality of prohibited sharks and other bycatch, the comments are outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas for the 2018 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2018 shark seasons. The quotas and general management measures were established in previous rulemakings, which were the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected on 73 FR 40658; July 15, 2008), 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), Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015), and Amendment 5b to the 2006 Consolidated HMS FMP (82 FR 16478; April 4, 2017). In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS analyzed, among other things, the impacts and justification for increasing the LCS retention limit to a maximum of 55 LCS other than sandbar sharks per vessel per trip. In Amendment 5b to the 2006 Consolidated HMS FMP,

NMFS implemented management measures to end overfishing of dusky sharks, which is a prohibited species, and clarified the annual catch limits (ACLs) for the prohibited shark species complex. Management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while rebuilding overfished shark stocks and preventing overfishing.

Regarding the concerns about shark finning, the United States by federal law has prohibited shark finning since 2000. The Shark Finning Prohibition Act of 2000 amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to prohibit any person under U.S. jurisdiction from engaging in the finning of sharks, possessing shark fins aboard a fishing vessel without the corresponding carcass, or landing shark fins without the corresponding carcass. Since 2008 in Atlantic HMS fisheries and then in 2011 nationally via the Shark Conservation Act, fishermen have been required to land sharks with fins naturally attached, with one narrow exception related to smooth dogfish so long as certain requirements are met (see Amendment 9 to the 2006 Consolidated HMS FMP).

Regarding the concerns about violating international agreements, NMFS management of the Atlantic shark fisheries is undertaken consistent with applicable international agreements and both international and domestic legal requirements are considered in our development of FMPs. NMFS continues to work with the International Commission for the Conservation of Atlantic Tunas (ICCAT) and other international entities such as CITES to appropriately and effectively manage the stocks throughout their range. Although the commenter did not specify the international agreement provisions about which they were concerned, there are no international agreement provisions that would directly affect the actions undertaken in this rulemaking related to LCS and SCS quotas, allocations, or fishing mortality levels. NMFS will continue to work

with the international community to promote conservation in fisheries that span international jurisdictions.

Changes from the Proposed Rule

NMFS made one change to the proposed rule. Specifically, NMFS changed the retention limit for directed shark limited access permit holders at the start of the commercial shark fishing season for the blacktip, aggregated LCS, and hammerhead shark management groups in the eastern Gulf of Mexico region from 50 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. As explained above, NMFS changed the retention limit after considering the “opening commercial fishing season” criteria (§ 635.27(b)(3)), public comment, and the 2017 landings data in order to promote equitable fishing opportunities throughout the sub-region. We clearly noted in the proposed rule that retention limits might change in response to public comment, and this level is within the allowable range and consistent with the range established in recent years. Thus, the regulated community had sufficient notice of this possible change between the proposed and final rule.

2018 Annual Quotas

This final rule adjusts the 2018 commercial quotas due to over- and/or underharvests in 2017 and previous fishing seasons, based on landings data through October 23, 2017. The 2018 annual quotas by species and management group are summarized in Table 1. Any dealer reports that are received by NMFS after October 23, 2017, will be used to adjust the 2019 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the “Changes from the Proposed Rule” section.

Table 1. 2018 Annual Quotas for the Atlantic Shark Fisheries. (All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw).

Region or Sub-region	Management Group	2017 Annual Quota (A)	Preliminary 2017 Landings ¹ (B)	Adjustments ² (C)	2018 Baseline Annual Quota (D)	2018 Final Adjusted Annual Quota (D+C)
Western Gulf of Mexico	Blacktip Sharks	331.6 mt dw (730,425 lb dw)	206.6 mt dw (455,535 lb dw)	115.7 mt dw (255,131 lb dw) ³	231.5 mt dw (510,261 lb dw)	347.2 mt dw (765,392 lb dw)
	Aggregated Large Coastal Sharks	72.0 mt dw (158,724 lb dw)	65.8 mt dw (145,115 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)	2.5 mt dw (5,490 lb dw)	-	11.9 mt dw (26,301 lb dw)	11.9 mt dw (26,301 lb dw)
Eastern Gulf of Mexico	Blacktip Sharks	36.0 mt dw (79,359 lb dw)	24.9 mt dw (54,918 lb dw)	12.6 mt dw (27,719 lb dw) ³	25.1 mt dw (55,439 lb dw)	37.7 mt dw (83,158 lb dw)
	Aggregated Large Coastal Sharks	85.5 mt dw (188,593 lb dw)	57.6 mt dw (127,022 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)	6.8 mt dw (15,059 lb dw)	-	13.4 mt dw (29,421 lb dw)	13.4 mt dw (29,421 lb dw)

Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt dw (248,215 lb dw)	49.4 mt dw (108,965 lb dw)	-	112.6 mt dw (248,215 lb dw)	112.6 mt dw (248,215 lb dw)
	Smoothhound Sharks	504.6 mt dw (1,112,441 lb dw)	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)	104.4 mt dw (230,205 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	7.9 mt dw (17,448 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)	92.9 mt dw (204,851 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)	17.2 mt dw (37,921 lb dw)	7.0 mt dw (15,344 lb dw)	-	17.2 mt dw (37,921 lb dw)	17.2 mt dw (37,921 lb dw)
	Smoothhound Sharks	1,802.6 mt dw (3,973,902 lb dw)	337.5 mt dw (744,146 lb dw)	600.9 mt dw (1,324,634 lb dw)	1,201.7 mt dw (2,649,268 lb dw)	1,802.6 mt dw (3,973,902 lb dw)
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	12.2 mt dw (26,913 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)

	Sandbar Shark Research	90.7 mt dw (199,943 lb dw)	45.8 mt dw (100,982 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)	< 2.3 mt dw (< 5,000 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)
	Porbeagle Sharks	1.7 mt dw (3,748 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)	91.5 mt dw (201,822 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)

¹ Landings are from January 1, 2017, through October 23, 2017, and are subject to change.

² 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 baseline quota.

³ This adjustment accounts for underharvest in 2017. This final rule increases the overall Gulf of Mexico blacktip shark quota by 128.3 mt dw (282,850 lb dw). Since any underharvest is divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota is increased by 115.7 mt dw, or 90.2 percent of the underharvest, while the eastern Gulf of Mexico blacktip shark quota is increased by 12.6 mt dw, or 9.8 percent of the underharvest.

Fishing Season Notification for the 2018 Atlantic Commercial Shark Fishing Seasons

NMFS considered the seven “opening commercial fishing season” criteria listed in § 635.27(b)(3), as discussed above and as described in the proposed rule (82 FR 39735; August 22, 2017). These include, among other things: the available annual quotas based on any over- and/or underharvests experienced during the previous seasons; the estimated season length based on available quotas and catch rates from previous years; the length of the season in the previous years and whether fishermen were able to participate in the fishery in those years; and 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.

Regarding the LCS retention limit, as shown in Table 2, for directed shark limited access permit holders, the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark management groups will start the commercial fishing season at 45 LCS other than sandbar sharks per vessel per trip, and the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing season at 25 LCS other than sandbar sharks per vessel per trip. These retention limits could be changed throughout the year based on consideration of the inseason trip limit adjustment criteria at 50 CFR 635.24(a)(8). In the Atlantic region specifically, as described above, NMFS will closely monitor the quota at the beginning of the year. If it appears that either the quota for the Atlantic aggregated LCS or the hammerhead shark management groups is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish (e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS will consider reducing the commercial retention limit, then consider raising it later in the season. Based on prior years’ fishing activity, to allow more

consistent fishing opportunities later in the year, NMFS anticipates considering raising the commercial retention limit to the default limit of 36 LCS other than sandbar sharks per vessel per trip around July 15, 2018.

All of the shark management groups will remain open until December 31, 2018, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota; however, consistent with § 635.28(b)(5), NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. Additionally, NMFS has previously established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown in Table 2. NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group including any linked quotas, and/or region 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 the shark species or management group are closed, even across fishing years.

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 available)
----------------------	------------------	----------------	----------------------	---

Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2018	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2018	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2018	N/A
Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2018	25 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 considering an inseason reduction (e.g., to 3 or fewer LCS other than sandbar sharks per vessel per trip), and later considering an inseason increase to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2018]
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2018	N/A
	Blacknose Sharks (South of 34° N. lat. only)			
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2018	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2018	N/A
	Porbeagle Sharks			

	Pelagic Sharks Other Than Porbeagle or Blue			
--	---	--	--	--

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the RFA requires an explanation of the purpose of the rulemaking. The purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to establish the 2018 Atlantic commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the Atlantic commercial shark fisheries would close on December 31, 2017, and would not reopen until another action was taken. This final rule will 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. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other

fishermen in the region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2018 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS received comments related to the overall economic impacts of the proposed rule, and those comments and NMFS' assessment of and response to them are summarized previously in the preamble (see Comment 1). As described in the responses to those comments relating to the season opening dates, consistent with § 635.27(b)(3), the opening date for all of the commercial shark fisheries will be implemented as proposed (January 1, 2018).

Section 604(a)(3) of the RFA requires NMFS 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 (80 FR 81194, December 29, 2015). 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 October 2017, the final rule would apply to the approximately 222 directed commercial shark permit holders, 269 incidental commercial shark permit holders, 148 smoothhound shark permit holders, and 113 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 491 directed and incidental commercial shark permit holders, only 36 permit holders landed sharks in the Gulf of Mexico region and only 97 landed sharks in the Atlantic region. Of the 148 smoothhound shark permit holders, only 77 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 final rule would not likely affect any small governmental jurisdictions.

Section 604(a)(4) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments.

Section 604(a)(5) of the RFA requires NMFS to describe the steps taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. 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 that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule on small entities. 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 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 small entities. Thus, there are no alternatives discussed that fall under the first, second, 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 as adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) for the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this

rulemaking, NMFS adjusted the baseline quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close on December 31 of each year, or when NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota, and do not open until NMFS takes action, such as this rulemaking to re-open the fisheries. Thus, not implementing these management measures would negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2016 ex-vessel price, fully harvesting the unadjusted 2018 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$7,779,285 (see Table 3). For the Gulf of Mexico blacktip shark management group, NMFS will increase the baseline sub-regional quotas due to the underharvests in 2017. The increase for the western Gulf of Mexico blacktip shark management group would result in a \$218,647 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group would result in a \$32,902 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS will increase the baseline quotas due to the underharvest in 2017. This would cause a potential gain in revenue of \$581,718 for the fleet in the Gulf of Mexico region and a potential gain in revenue of \$1,084,557 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 FRFAs 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, 2016.

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Western Gulf of Mexico	Blacktip Shark	\$0.56	\$11.00
	Aggregated LCS	\$0.52	\$11.06
	Hammerhead Shark	\$0.83	\$11.08
Eastern Gulf of Mexico	Blacktip Shark	\$0.89	\$10.67
	Aggregated LCS	\$0.56	\$11.23
	Hammerhead Shark	\$0.25	\$15.95
Gulf of Mexico	Non-Blacknose SCS	\$0.38	\$8.68
	Smoothhound Shark	\$1.50	\$1.91
Atlantic	Aggregated LCS	\$0.79	\$5.54
	Hammerhead Shark	\$0.38	\$5.73
	Non-Blacknose SCS	\$0.71	\$2.92
	Blacknose Shark	\$0.98	\$2.92
	Smoothhound Shark	\$0.75	\$1.91
No Region	Shark Research Fishery (Aggregated LCS)	\$0.70	\$9.47
	Shark Research Fishery (Sandbar only)	\$0.68	\$9.47
	Blue shark	\$0.75	\$3.58
	Porbeagle shark*	\$1.54	\$3.58
	Other Pelagic sharks	\$1.54	\$3.58

*Used other pelagic shark ex-vessel prices for porbeagle sharks ex-vessel prices since there currently are no landings of porbeagle sharks.

For this final rule, NMFS reviewed the “opening commercial fishing season” criteria at § 635.27(b)(3)(i) through (vii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2017 and previous fishing season quotas were examined for the different species/complexes to determine the effects of the 2018 final quotas on fishermen across regional fishing areas. The potential season lengths and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered updated landings data and public comments on the proposed rule before arriving at the final opening dates for the 2018 Atlantic shark management groups. For the 2018 fishing season, NMFS is opening the shark management groups on January 1, 2018. The direct and indirect economic impacts will be neutral on a short- and long-term basis for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, Gulf of Mexico non-blacknose shark SCS, Atlantic non-blacknose shark SCS, Atlantic blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, because NMFS did not change the opening dates of these fisheries from the status quo of January 1.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1 will result in short-term, direct, moderate, beneficial economic impacts, as fishermen and dealers in the southern portion of the Atlantic region will be able to fish for and sell aggregated LCS and hammerhead sharks starting in January. These fishermen will be able to

fish earlier in the 2018 fishing season compared to the 2010, 2011, 2012, 2014, and 2015 fishing seasons, which did not start until June or July. The opening date and retention limits finalized in this rule for the Atlantic region are the same as those for the current season and similar to those for the 2016 and 2017 seasons. For both 2016 and 2017, the fishery remained open all year with some modifications to the retention limit throughout the year.

Based on public comment on past season rules, some Atlantic fishermen in the southern and northern parts of the region prefer a January 1 opening for the fishery as long as the majority of the quota is available later in the year. With the implementation of the HMS electronic reporting system in 2013, NMFS now monitors the quota on a more real-time basis compared to the paper reporting system that was in place before 2013. This ability, along with the inseason retention limit adjustment criteria in § 635.24(a)(8), allows NMFS the flexibility to further provide equitable fishing opportunities for fishermen across all regions, to the extent practicable. Depending on how quickly the quota is being harvested, as was done in 2016 and 2017, NMFS will consider reducing the commercial retention limit, then consider raising it later in the season to ensure that fishermen farther north have sufficient quota for a fishery later in the 2018 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit for directed shark limited access permit holders is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the northern portion of the Atlantic region, a January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure

quota is available later in the season, will have direct, minor, beneficial economic impacts in the short-term for fishermen as they will potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen will be able to target or retain aggregated LCS while targeting non-blacknose SCS. There will be indirect, minor, beneficial economic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this region as they will also have access to aggregated LCS products earlier than in past seasons. Thus, opening the aggregated LCS and hammerhead shark management groups in January and using inseason trip limit adjustments to ensure the fishery is open later in the year in 2018 will cause beneficial cumulative economic impacts, because it allows for a more equitable distribution of the quotas among constituents in this region, consistent with the 2006 Consolidated HMS FMP and its amendments.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a listserv summarizing fishery information

and regulations for Atlantic shark fisheries for 2018. This listserv also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see

ADDRESSES).

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

Dated: November 15, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2017-25203 Filed: 11/21/2017 8:45 am; Publication Date: 11/22/2017]