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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170703617-8097-01]

RIN 0648-BG97

Atlantic Highly Migratory Species; Final Rule to Revise Atlantic Shark Fishery Closure Regulations

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

ACTION: Final rule.

SUMMARY: This final rule revises the current closure regulations for commercial shark fisheries. These changes affect commercial shark fisheries in the Atlantic Ocean, including the Gulf of Mexico and Caribbean. Revisions include changes to the landings threshold that prompts a closure and the minimum time between filing of the closure with the **Federal Register** and the closure becoming effective. This action is necessary to allow more flexibility when closing shark fisheries and to facilitate the use of available quota while still preventing overharvests.

DATES: This rule is effective on [*insert date 30 days after date of publication in the Federal Register*].

ADDRESSES: Copies of the supporting documents, including the Final Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility

Analysis (FRFA), and the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and amendments are available from the HMS website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Lauren Latchford at (301) 427-8503.

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SUPPLEMENTARY INFORMATION: Atlantic sharks are directly managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS published in the **Federal Register** (71 FR 59058, October 2, 2006) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This final rule modifies the current regulations related to closures for commercial shark fisheries.

Background

A brief summary of the background of this action is provided below; more detailed information can be found in the proposed rule (83 FR 8037, February 23, 2018) and is not repeated here. Additional information regarding Atlantic HMS management, specifically the commercial fisheries season structure, can be found in the Final EA for this action and the 2006 Consolidated HMS FMP and its amendments, found on the HMS website (see **ADDRESSES**).

On February 23, 2018, NMFS published a proposed rule (83 FR 8037) that proposed (1) changing the regulations from requiring a shark fishery species and/or management group to close when landings have reached or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, and instead allowing the fishery to remain open in such circumstances if the species and/or management group's landings are not projected to reach 100 percent before the end of the commercial fishing season, and (2) changing the minimum notice time between filing and the closure going into effect from five days to three. A 30-day public comment period closed on March 26, 2018. The comments received on the Draft EA and proposed rule, and our responses to those comments, are summarized below in the section labeled "Response to Comments."

After reviewing the public comments and consulting with the HMS Advisory Panel, this final action allows a shark fishery to remain open after the fishery's landings have reached or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season. This final action also changes the minimum notice time between filing of the closure notice with the Office of the Federal Register and the closure going into effect from five days to four days, which is a change from the proposed rule based on public comment.

Response to Comments

During the 30-day public comment period, NMFS held one webinar and presented information about the proposed rule at the HMS Advisory Panel meeting. In addition to

the nine verbal comments received at those meetings, NMFS also received 10 written comments regarding the proposed action from fishermen, states, environmental groups, academia, and other interested parties. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648-BG97. All of the comments received are summarized below.

Section A: Comments on Closure Threshold and Closure Notice Alternatives

Comment 1: NMFS received a number of comments regarding the closure threshold alternatives. Some commenters supported preferred Alternative 1f, while other commenters suggested combining Alternative 1e, which would establish criteria to use for evaluation of a closure, with the preferred Alternative 1f. Other commenters wanted to increase the federal fishery closure threshold for the shark management groups from 80 percent to greater than 90 percent because they felt the current weekly electronic reporting requirements for dealers increased the timeliness and accuracy of dealer reporting (compared to reporting requirements that were in place when the 80-percent buffer was implemented) and would allow for a smaller buffer while still preventing overharvest of the quota. Lastly, one commenter preferred Alternative 1a, No Action.

Response: After considering public comment and carefully reviewing the relevant data, NMFS is finalizing this action as proposed with preferred Alternative 1f, which would allow a shark fishery to remain open after the fishery's landings have reached or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season. With regard to comments preferring the combination

of Alternatives 1e and 1f, Alternative 1e would have established criteria such as examining stock status or patterns of over- and underharvest that NMFS would evaluate before determining if a closure notice is needed when any shark fishery species and/or management group landings reach or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota. If the evaluation of the specified criteria were to indicate that the fishery does not need to close at 80 percent, the fishery could remain open until landings reach, or are projected to reach, 90 percent. Alternative 1f, however, maintains the 80-percent threshold, and at that threshold, NMFS would review landings projections indicating whether a closure is needed to avoid exceedance of the available overall, regional, and/or sub-regional quota by the end of the season. If the species and/or management group's landings are not projected to reach 100 percent of the applicable quota before the end of the season, the fishery will remain open. Because Alternative 1e would require closing the fishery at 90 percent of the quota, regardless of whether the projections indicate the fishery would not exceed 100 percent of the quota before the end of the fishing season (which is what Alternative 1f would allow), NMFS is assuming that commenters who suggested combining these two alternatives actually were suggesting adding the criteria listed in Alternative 1e to Alternative 1f. NMFS does not prefer adding criteria to Alternative 1f because doing so would unnecessarily complicate the closure procedures, possibly confuse the regulated community, and would not necessarily enhance the accuracy of any closure notice. Requiring NMFS to step through specific criteria such as stock status that do not influence catch rates would add

complexity to the process and would not improve accuracy of the projections and in fact may delay needed closures in some circumstances.

Some commenters supported a higher closure threshold than was analyzed in the proposed alternatives, such as closure when quota use reaches 100 percent, because they felt the combination of weekly electronic dealer reporting with advanced projection methodologies should allow for full quota utilization before closing the fishery. Most states in the Gulf of Mexico require all state-only dealers to report electronically, but some states still allow for paper reports, and/or require reporting once a month rather than weekly. That, in combination with late dealer reports prevent NMFS from setting the threshold at full utilization because of the risk of exceeding the quota. The 80-percent fishery-closure threshold for the shark management groups was implemented in Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; 73 FR 40658, July 15, 2008). At that time, NMFS relied on hard copy dealer reports that were mailed to the Agency and were often several weeks, or even months, out of date. Since then, NMFS has established weekly electronic reporting with weekly compliance monitoring. While dealer reporting now is electronic, except for some state-only dealers, particularly in the Gulf of Mexico, and thus generally more timely, NMFS must still account for late reporting by shark dealers and provide a buffer to include landings received after the reporting deadline to avoid overharvests. A review of closures since NMFS began electronic reporting has showed that the current 80-percent threshold is not always effective at closing in time to prevent overharvest of small quotas, such as porbeagle sharks. Additionally, the review shows that on average, across all of the shark

fisheries, 16 percent of the quota is landed after a closure is announced. Therefore, a 90-percent or greater closure threshold would likely result in overharvests of the quotas. For stocks with small quotas, we can anticipate that this higher closure threshold would result in consistent overharvests, with little opportunity to account for the overharvests in the next year (because overharvests would occur again) and this could be expected to have moderate adverse direct ecological effects on such shark species and result in the need to close the fisheries in future years.

Regarding the commenter who preferred no action, that alternative would require NMFS to continue closing the relevant management group when 80 percent of its shark quota had been landed. However, in recent years as a result of monitoring the fishery and changing the trip limits throughout the year, several management groups (*e.g.*, aggregated large coastal sharks (LCS) and hammerhead sharks) are remaining open for the entire year and may not reach 80 percent of that quota until late in the year. Under no action, NMFS would close these fisheries once landings reach 80 percent of the quota even if it would be unlikely that the quota would be fully harvested. Instead, this final action would allow NMFS to keep those fisheries open for the entire year as long as projections indicate the quotas would not be exceeded by December 31 of each year.

Comment 2: Some commenters supported the proposed Alternative 2b, which would close sharks fisheries three days after the notice was filed with the Office of the Federal Register. Other commenters, including the States of North Carolina and Louisiana, supported the no action alternative and did not support proposed Alternative 2b because, they argued, three days would not allow time for states to implement

complementary measures by closing state water shark fisheries. Additionally, some commenters stated that some commercial pelagic longline participants take multi-day trips that could be interrupted by such an earlier closure notice. Finally, commenters were worried that a three-day notice would have safety issues if, after getting notice of a closure, fishermen decide to fish one or more trips before a closure occurs and without regard to any weather conditions.

Response: After considering public comment and reviewing the data, NMFS has decided to change from its originally preferred alternative providing three days' notice (Alternative 2b) to a new alternative that provides four days' notice (Alternative 2d) between filing of the closure notice with the Office of the Federal Register and the closure going into effect. This change is in response to comments that States need more than three days' notice in order to close state water shark fisheries at the same time as federal water shark fisheries. Closing with four days' notice adequately addresses our concerns about closing shark fisheries in a timely manner, while ensuring state and federal waters close at the same time to prevent confusion among fisherman, dealers, and enforcement. Additionally, the four-day preferred alternative increases flexibility to close the fishery as needed while still preventing overharvest and allowing sufficient time for fishermen to complete ongoing trips at the time of the closure. The allotted time before the closure becomes effective is also well within the range of the current directed shark trip lengths (*i.e.*, one to two days). Because the EA examined alternatives ranging from immediate closure to closure with five days' notice, this new alternative is within the range of originally proposed actions.

Regarding Alternative 1a, no action, NMFS does not prefer to keep the closure notice at five days because this alternative would not increase flexibility in NMFS' ability to manage the shark fisheries in a timely manner. As stated in the response to Comment 1, after NMFS announces a closure, approximately 16 percent of the quota is harvested before the fishery actually closes five days later. Under a no action alternative, continued landings during a five-day notice period would likely contribute to overharvests. When such overharvests occur on a frequent basis over the long-term, it can lead to overfishing, delayed rebuilding of overfished stocks, and overall negative impacts on fishermen and dealers. However, NMFS also recognizes that complementary state water closures are needed in order to prevent quotas from being overharvested. As such, in this final action, NMFS is finalizing a different alternative, Alternative 2d that changes the closure notification from five days to four days. This alternative is an appropriate compromise between needing to provide appropriate notice for states to implement complementary measures and for the closure to take effect quickly and prevent overharvests.

Regarding the concerns about the potential for fishermen to be out on long trips, and then having to discard their catch if they missed the closure date, historically (pre-2008), directed shark fishing trips, primarily targeting LCS, averaged between one and four days in length, but could be longer. However, because of reduced trip-based retention limits implemented in Amendment 2 in 2008, there has been a reduction in trip length, and the typical shark fishing trip is now only one or two days. Trips using pelagic longline gear, and interacting with pelagic sharks, can be longer, with the typical trip

lasting nine days. Pelagic longline trips usually do not land many sharks, and the sharks they do land tend to be sharks in the pelagic shark management groups, which have never closed. Therefore, the four-day closure notice should not affect pelagic longline trips. NMFS has determined that a four-day closure notice should allow fishermen enough time to finish their trips, while still providing NMFS the flexibility to close the fishery as needed while still preventing overharvest. Similarly, a four-day closure notice would also allow fishermen to safely fish one or two more trips, depending on weather and other factors, once the closure notice is announced.

Section B: General Comments

Comment 3: NMFS should stop all shark fishing.

Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to revise existing HMS regulations that require closure of shark fisheries with no fewer than five days' notice when landings or projections of landings reach 80 percent of the commercial quota. 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. The final rule does not reanalyze the overall management measures for sharks, which have been analyzed in the 2006 Consolidated HMS FMP and its amendments.

Comment 4: NMFS should provide more information about catch across all sectors including catch versus total allowable catch (TAC), catch and release mortality, and bycatch associated with other fisheries.

Response: This comment is beyond the scope of this rulemaking. This rulemaking updates and revises existing HMS regulations that require NMFS to close shark fisheries with no fewer than five days' notice, when landings or projections of landings reach 80 percent of the commercial quota. NMFS provides similar data in its annual Stock Assessment and Fishery Evaluation (SAFE) reports (<https://www.fisheries.noaa.gov/bulletin/2017-stock-assessment-and-fishery-evaluation-report-atlantic-highly-migratory-species>).

Comment 5: NMFS should provide the date and location of landings by region.

Response: NMFS currently provides shark landings by region and management group on a monthly basis (<https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-landings-updates>), and uses the landings in our decision process to determine fishery closures and annual fishery quotas. Additionally, NMFS provides aggregated information in its annual SAFE reports. Due to the confidentiality requirements of the Magnuson-Stevens Act, NMFS aggregates such data.

Changes from the Proposed Rule (83 FR 8037; February 23, 2018)

NMFS made one change to the proposed rule. Specifically, in § 635.28 (b)(2) and (b)(3), NMFS is changing from the proposed action of a three-day minimum notice time between filing of the closure notice with the Office of the Federal Register and the closure going into effect to four days. This change is being made in response to comments from States that they need more than three days' notice in order to implement complementary state water shark fishery closures. This change to a four-day notice should provide NMFS the flexibility to close the fishery as needed while still preventing

overharvests and allowing sufficient time for fishermen to complete ongoing trips at the time of the closure.

Classification

Pursuant to the Magnuson-Stevens Act, 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 laws.

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

This final rule is expected to be an Executive Order 13771 deregulatory action.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the RFA requires a succinct statement of the need for and objectives of the rule. The purpose of this final action is to allow shark fishermen to harvest available quota without exceeding it, consistent with conservation and management measures adopted in accordance with Magnuson-Stevens Act requirements to end overfishing and rebuild stocks. The final action is also intended to maximize economic benefits to stakeholders by allowing them to harvest available quota while achieving conservation goals, including preventing overfishing. To achieve this goal, this

action considers modifications to the percent landings threshold that results in a closure, and modifications to the minimum amount of time before a closure is effective.

Section 604(a)(2) requires a summary of significant issues raised by the public comment in response to the IRFA and a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS did not receive comments specific to the IRFA or any comments relating to economic impacts of the proposed action.

Section 604(a)(4) 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. This provision is made under the SBA's regulations for an agency to develop its own industry-specific size standards after consultation with 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**, which NMFS did on December 29, 2015 (80 FR 81194). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all

HMS permit holders to be small entities because they all had average annual receipts of less than \$11 million for commercial fishing.

The final rule would apply to the approximately 113 commercial shark dealers, 490 commercial limited access permit holders in the Atlantic shark fishery (221 directed and 269 incidental permits), and 154 open access smoothhound shark permit holders, based on an analysis of permit holders as of October 2017. Not all permit holders are active in the shark fishery in any given year. Active directed permit holders are defined as those with valid permits that landed one shark, based on HMS electronic dealer reports. Of those 221 commercial directed limited access permit holders, 32 (14 percent of permit holders) landed LCS, 30 (14 percent of permit holders) landed non-blacknose SCS, and 14 (6 percent of permit holders) landed blacknose sharks in the Atlantic. In the Gulf of Mexico region, 10 (5 percent of permit holders) landed LCS in the western sub-region, 6 (3 percent of permit holders) landed LCS in the eastern sub-region, and 8 (4 percent of permit holders) landed non-blacknose SCS throughout the region. Of directed limited access permit holders, 47 (21 percent of permit holders) landed pelagic sharks. Of the 154 open access smoothhound shark permit holders, 75 (49 percent of permit holders) landed sharks in the Atlantic region. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions.

Section 603(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements. The alternatives considered modify the percentage landings threshold that prompts a shark fishery closure

and the length of time between public notice and the effective date of a given fishery closure with the goal of avoiding under- and overharvests in these fisheries.

Section 604(a)(6) of the RFA requires agencies is to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. These impacts are summarized below and discussed in the accompanying Final EA.

Alternative 1a, the No Action alternative, would maintain the existing 80-percent threshold to close the shark fishery and maintain current shark quotas. Based on the 2017 ex-vessel prices, the potential average annual gross revenue for the 10 active directed permit holders from blacktip, aggregated LCS, and hammerhead shark meat in the western Gulf of Mexico sub-region would be \$312,411, and average annual gross revenue from shark fins would be \$187,631. Thus, potential average annual gross revenue by each active directed permit holder for blacktip, aggregated LCS, and hammerhead shark landings in the western Gulf of Mexico sub-region would be \$50,004 $((312,411+187,631)/10$ active vessels). The potential total average annual gross revenue for the six active directed permit holders from blacktip, aggregated LCS, and hammerhead shark meat in the eastern Gulf of Mexico sub-region would be \$113,327, and average annual gross revenue from shark fins would be \$70,954. Thus, potential total average annual gross revenue by each active directed permit holder for blacktip,

aggregated LCS, and hammerhead shark landings in the eastern Gulf of Mexico region would be \$30,713 $((113,327+30,713)/6$ active vessels). The potential total average annual gross revenue for the eight active directed permit holders for non-blacknose SCS and smoothhound shark meat in the Gulf of Mexico would be \$54,614, while revenue from shark fins would be \$33,682. Thus, potential total average annual gross revenue by each active directed permit holder for non-blacknose SCS in the Gulf of Mexico would be \$11,036 $((54,614+33,682)/8$ active vessels). Since there have been no landings of smoothhound sharks in the Gulf of Mexico, the annual gross revenue for the active directed permit holders would be zero. The potential annual gross revenues for the 32 active directed permit holders from aggregated LCS and hammerhead shark meat in the Atlantic would be \$283,630, while revenue from shark fins would be \$97,566. Thus, potential total average annual gross revenues by each active directed permit holder for aggregated LCS and hammerhead shark in the Atlantic would be \$11,912 $((283,630+97,566)/32$ active vessels). The potential annual gross revenues for the 30 active directed permit holders from non-blacknose SCS shark meat in the Atlantic would be \$266,150, while revenue from shark fins would be \$54,869. Thus, potential total average annual gross revenue by each active directed permit holder for non-blacknose SCS in the Atlantic would be \$10,700 $((266,150+54,869)/30$ active vessels). The potential annual gross revenues for the 14 active directed permit holders from blacknose shark meat in the Atlantic would be \$18,103, while revenue from shark fins would be \$3,412. Thus, potential total average annual gross revenue by each active directed permit holder for blacknose in the Atlantic would be \$1,537 $((18,103+3,412)/14$ active vessels).

The potential annual gross revenues for the 75 active directed permit holders from smoothhound shark meat in the Atlantic would be \$582,233, while revenue from shark fins would be \$48,808. Thus, potential total average annual gross revenues by each active directed permit holder for smoothhound shark in the Atlantic would be \$8,414 $((582,233+48,808)/75$ active vessels). The potential annual gross revenues for the 47 active directed permit holders from pelagic sharks (blue, porbeagle, shortfin mako, and thresher sharks) meat would be \$381,580, while revenue from shark fins would be \$20,134. Thus, potential total average annual gross revenues by each active directed permit holder for pelagic sharks would be \$8,547 $((381,580+20,134)/47$ active vessels). Alternative 1a would likely result in neutral direct short- and long-term socioeconomic impacts because shark fishermen would continue to operate under current conditions, with shark fishermen continuing to fish at similar rates. The No Action alternative could also have neutral indirect impacts to those supporting the commercial shark fisheries, since the retention limits, and thus current fishing efforts, would not change under this alternative.

Under Alternative 1b, NMFS would change the shark fishery closure threshold to 90 percent of the available overall, regional, and/or sub-regional quota. This alternative would be likely to have neutral direct and indirect short- and long-term socioeconomic impacts because the base quotas would not change for any of the management groups and fishermen would still be limited in the total amount of sharks that could be harvested. This alternative could potentially lead to minor beneficial direct economic impacts if fishermen can land available quota that may have remained unharvested under the current

80-percent threshold. For example, in 2017, the quota for the blacktip, aggregated LCS, and hammerhead management groups from the western Gulf of Mexico sub-region was underutilized by 310,546 lb dw or 25 percent of the adjusted annual base quota, valued at \$247,518 in potential ex-vessel revenue. Assuming all of this unharvested quota were caught, based on the 10 vessels that landed LCS in the western Gulf of Mexico sub-region, the individual vessel impact would be an approximate gain of \$31,055 per year. This does not include incidental permit holders, who would receive a smaller amount per year. For example, in the Atlantic, the blacknose shark management group was underutilized by 21,238 lb dw or 35 percent of the quota, valued at \$25,807 in potential ex-vessel revenue. Based on the 14 vessels that landed blacknose in the Atlantic region, the individual vessel impact would be an approximate gain of \$1,843 per year. This does not include incidental permit holders, who would receive a smaller amount per year.

Alternative 1b could also lead to minor adverse socioeconomic impacts in the short-term if the quotas are overharvested, which would lead to lower quotas the following year. In addition, this alternative could potentially lead to minor adverse socioeconomic impacts if there is a large increase of landings combined with late dealer reporting, after the fishery is closed, that resulted in overharvest. For instance, the current 80 percent threshold has not been effective at closing in time to prevent overharvest of shark species that have small quotas, such as porbeagle sharks. As such, changing the percent closure threshold to 90 percent might be detrimental to the porbeagle shark fishery, as it may not provide a sufficient buffer to prevent overharvest and season closures that occurred in 2013 and 2015. However, this negative impact would be only in the short-term, as

NMFS has the ability to monitor quotas on a weekly basis and promptly close the shark fishery.

Under Alternative 1c, NMFS would change the shark fishery closure threshold to 70 percent of the available overall, regional, and/or sub-regional quota. This change would potentially leave a larger buffer for fishermen to complete trips and receive delayed dealer reports. It is likely the change in threshold to 70 percent would have neutral direct and indirect short- and long-term socioeconomic impacts since none of the commercial quotas are being changed and NMFS is not expecting an increase in effort or fishing. This alternative could potentially have minor adverse direct socioeconomic impacts if there is a large amount of underharvest remaining every year, after accounting for late dealer reports, that fishermen would no longer be able to harvest as compared to the No Action alternative. For instance, a 10 percent decrease in realized revenue for the western Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark fisheries would equate to approximately \$50,004 (10 percent of \$500,042) loss in ex-vessel revenue. Based on the 10 vessels that landed LCS in the western Gulf of Mexico sub-region, the individual vessel impact would be an approximate loss of \$5,000 per year. This does not include incidental permit holders, who would receive a smaller amount per year. However, these would be only be in the short-term because the fisheries have achieved close to full quota utilization in recent years for some shark quotas.

Under Alternative 1d, NMFS would change the shark fishery closure threshold to 90 percent in the Atlantic Region, while maintaining the Gulf of Mexico closure threshold or overall non-regional threshold at 80 percent. Alternative 1d provides some

flexibility in assigning different closure thresholds between the Atlantic and Gulf of Mexico. In the Atlantic region, this alternative could potentially lead to minor beneficial direct economic impacts if fishermen can land available quota that may have remained unharvested under the current 80-percent threshold. For instance, a 10 percent increase in realized revenue for the Atlantic aggregated LCS and hammerhead shark fisheries would equate to an approximate \$38,119 (10 percent of \$381,196) gain in ex-vessel revenue. Based on the 32 vessels that landed LCS in the Atlantic region, the individual vessel impact would be an approximate increase of \$1,191 per year. This does not include incidental permit holders, who would receive a smaller amount per year. In the Gulf of Mexico region and for fisheries with no region, this alternative could likely result in neutral direct and indirect, short- and long-term socioeconomic impacts because shark fishermen would continue to operate under current conditions, with shark fishermen continuing to fish at similar rates. Impacts in the Gulf of Mexico would therefore be the same as those described in Alternative 1a.

Under Alternative 1e, when any shark fishery species and/or management group landings reach or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, NMFS would evaluate the following criteria to determine if a closure is needed at the 80-percent threshold:

- A. The stock status of the relevant species or management group and any linked species and/or management groups;
- B. The patterns of over- and underharvest in the fishery over the previous five years;

- C. The likelihood of continued landings after the federal closure of the fishery;
- D. The effects of the closure on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;
- E. The likelihood of landings exceeding the quota by December 31 of each year; and
- F. The impacts of the closure on the catch rates of other shark management groups, including likelihood of an increase in dead discards.

(See discussion in Chapter 2 of the Final EA.) This alternative would add flexibility to close a fishery depending on a set of criteria, helping to maximize management efficacy while preventing overharvest. If this increased flexibility in determining when to close a fishery leads to full quota utilization of management groups, while still preventing overharvest of shark fisheries, then fishermen could potentially see additional revenue from being able to land sharks that would otherwise have remained unharvested under the existing 80-percent threshold. For instance, a 20-percent increase in realized revenue for the Atlantic aggregated LCS and hammerhead shark fisheries would equate to an approximate \$76,239 (20 percent of \$381,196) gain in ex-vessel revenue. Based on the 32 vessels that landed LCS in the Atlantic region, the individual vessel impact would be an approximate increase of \$2,382 per year. This does not include incidental permit holders, who would receive a smaller amount per year. Based upon these criteria, the fishery could still operate similarly to the status quo 80-percent closure threshold, which would result in neutral socioeconomic impacts as described for Alternative 1a, the status quo alternative. As examples, if a shark species and/or management group quota reaches

80 percent by September 1, then NMFS would evaluate the criteria in Alternative 1e before determining if a closure is needed at the 80-percent threshold in the Gulf of Mexico and Atlantic regions. Based on criteria A (stock status of the relevant species or management group and any linked species and/or management groups) and C (continued landings after the federal closure), NMFS would likely close the shark species and/or management group quota in the Gulf of Mexico. In the Atlantic region, NMFS would likely also close the shark species and/or management group quota based on criteria A since all of the shark species and/or management groups in the region have an overfished or unknown stock status. This would lead to neutral socioeconomic impacts in both regions since there would be no change from current regulations. If a shark species and/or management group quota reaches 80 percent by December 1, then NMFS would need to evaluate all of the criteria closely before implementing a closure in either the Gulf of Mexico or Atlantic region. A key criterion to evaluate is the likelihood of landings exceeding the quota by December 31 of each year (Criteria E). In the Gulf of Mexico region, NMFS would also consider Criteria C (continued landings after the federal closure) and how this would impact the fishery. In the Atlantic region, NMFS would likely keep the fishery open as long as landings are not projected to exceed the quota by the end of the year.

Alternative 1f, the preferred alternative, will allow a shark fishery to remain open after the fishery's landings have reached or are projected to reach 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season. If the

80 percent threshold is reached but a closure is not necessary, NMFS will notify the public of this determination in the first monthly shark landings update listserv notice following achievement of the 80 percent level. If a closure is needed, NMFS will file a Notice in the Federal Register reflecting that determination and closing the fishery with the appropriate notice. This alternative, similar to Alternatives 1d and 1e, will provide the flexibility of achieving full quota utilization while still preventing overharvest. This alternative could therefore lead to neutral socioeconomic impacts, similar to Alternative 1a, the status quo alternative, if the landings are projected to reach 100 percent before the end of the fishing year. As examples, if landings of a shark species and/or management group reach 80 percent by September 1, then NMFS would likely have to close the fishery if it was in either the Gulf of Mexico or Atlantic regions since the landings would likely reach 100 percent before the end of the fishing year. This would cause neutral socioeconomic impacts since it would be the status quo for the fishery. If landings of a shark species and/or management group reach 80 percent by December 1, then NMFS would project whether the landings in the Gulf of Mexico and Atlantic regions would reach 100 percent before the end of the fishing year. If NMFS makes a determination that the landings would exceed 100 percent of the available quota before the end of the fishing year (December 31) absent a closure, then NMFS would keep the fishery open. Thus, this could lead to minor beneficial socioeconomic impacts since the quota could be fully utilized. A fishery reaching the 80-percent threshold without being projected to exceed its quota before the end of the season is most likely to occur late in the year.

Under Alternative 2a, NMFS would maintain the status quo and would not change the notice period of five days for the closure of a management group. This alternative would have no impact on the allowable level of fishing pressure, catch rates, or distribution of fishing effort. As such, it is likely that the No Action Alternative as well as this alternative in combination with any of the Alternatives 1b, 1c, 1d, 1e, or 1f would have both neutral direct and indirect, short- and long-term socioeconomic impacts. If there is a large amount of landings made during the five-day notice and a later closure under Alternatives 1b, 1c, or 1d, then there could be the potential for minor beneficial socioeconomic impacts for those fisheries who have underutilized the quota in recent years. The majority of fishing trips for sharks are currently one day in length, so a five-day closure notice should not result in regulatory discards for these trips. However, this alternative could potentially result in interrupted fishing activities, potentially resulting in regulatory discards if trips were underway at the time of the notice of the closure. For instance, pelagic longline fishing vessels, which can take trips that last several weeks, may need to discard any dead sharks onboard and in their hold if the vessel is unable to land the sharks before the closure is effective. However, NMFS expects few dead discards as a result of closure notices given that NMFS has implemented several management measures that prohibit retention of some sharks (*i.e.*, silky, oceanic whitetip, hammerhead sharks) on vessels with pelagic longline gear onboard. In combination with all other alternatives (*i.e.*, 1a, 1c, 1d, 1e, and 1f), except Alternative 1b, this alternative would allow fishermen to complete their fishing trips while still preventing overharvest. In combination with Alternative 1b (*e.g.*, 90-percent closure threshold), there is a risk of

overharvest if the landings rate was high before the closure date is effective and potential reduced quotas the following season.

Under Alternative 2b, NMFS would change the minimum notice period to three days instead of the current five-day notice once the fisheries reached a landings threshold necessitating a closure. This change would allow more timely action in closing shark fisheries, helping to prevent overharvest. In combination with all other Alternatives (1a, 1b, 1d, 1e, and 1f), except Alternative 1c, this alternative would reduce the risk of exceeding the quota, especially if the landings rate was high before the closure date is effective. In combination with Alternative 1c (*e.g.*, 70-percent closure threshold), this alternative would increase the risk of a significant underharvest and would cause minor adverse socioeconomic impacts. This alternative would have no impact on the allowable level of fishing pressure, catch rates, or distribution of fishing effort, as the commercial quotas would remain the same. Therefore, it is likely that this alternative would have both neutral direct and indirect, short- and long-term socioeconomic impacts. This alternative could potentially result in interrupted fishing activities for pelagic longline vessels, which generally take trips up to nine days in length, potentially resulting in regulatory discards if shark trips were underway at the time of the closure and the closure was immediate upon filing of the closure notice. However, NMFS expects few dead discards as a result of the closure notice timing as most pelagic longline fishermen do not target sharks and are unlikely to land many sharks given recent management measures to reduce shark mortality on pelagic longline vessels. In addition, the preferred time before the closure is effective is well within the range of the current directed shark trip lengths

(*i.e.*, one to two days). This alternative was preferred in the draft EA primarily because it would increase flexibility to close the fishery as needed while still preventing overharvest and allowing sufficient time for most fishermen to complete trips underway at the time of the notice of the closure. Based on public comment, this alternative is no longer preferred. A new preferred alternative (2d) better addresses concerns from the States that they need more than three days' notice in order to close state waters in conjunction with federal waters while also addressing NMFS' need to increase flexibility to close the fishery as needed while still preventing overharvest.

Under Alternative 2c, NMFS would change the timing of shark fishery species and/or management group closures to allow immediate closure upon filing of the closure notice with the Office of the Federal Register. This alternative would allow timely action in closing shark fisheries, helping to prevent overharvest. In combination with all other alternatives, this alternative would either reduce the risk of exceeding the quota (*i.e.*, Alternatives 1a, 1b, 1d, 1e, and 1f) or increase the risk of a significant underharvest (*i.e.*, Alternative 1c). Therefore, it is likely that this alternative would have both neutral direct and indirect, short- and long-term economic impacts. However, as described in above, this alternative could potentially result in interrupted fishing activities with little or no warning to the regulated community, potentially resulting in regulatory discards, if shark trips were underway at the time of the notice of the closure, with associated loss of revenue. Additionally, HMS AP members from several states indicated that some states would have difficulty closing state water fisheries immediately.

Under Alternative 2d, the new preferred alternative, NMFS will change the minimum notice period to four days instead of the current five-day notice once the landings reach a threshold necessitating a closure. This alternative is preferred because it addresses the concerns from the States that they need more than three days' notice in order to close state waters in conjunction with federal waters while addressing NMFS' need to increase flexibility to close the fishery as needed while still preventing overharvest. In combination with all other alternatives (*i.e.*, 1a, 1c, 1d, 1e, and 1f), except Alternative 1b, Alternative 2d will allow most fishermen, particularly those fishing for sharks, to complete their fishing trips while still reducing the risk of exceeding the quota, especially if landings rate increases substantially between the filing of the closure notice and the effective date of the closure. In combination with Alternative 1b (*e.g.*, 90-percent closure threshold), there is a risk of overharvest if the landings rate was high before the closure date is effective under Alternative 2d. This alternative would likely have both neutral direct and indirect short- and long-term socioeconomic impacts to shark fishery participants because the allowable level of fishing pressure, catch rates, distribution of fishing effort, and the commercial quotas would remain the same. This alternative is within the range of originally proposed actions, which covered potential closure notice between immediate closure and five days.

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, a listserv notice and a statement published online that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule and the guide are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

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

Dated: July 3, 2018.

Patricia A. Montanio,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

2. In § 635.24, revise paragraph (a)(8)(iii) to read as follows:

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

* * * * *

(a) * * *

(8) * * *

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season;

* * * * *

3. In § 635.28, revise paragraphs (b)(2) and (b)(3) to read as follows:

§ 635.28 Fishery closures.

* * * * *

(b) * * *

(2) *Non-linked quotas.* If the overall, regional, and/or sub-regional quota of a species or management group is not linked to another species or management group and that overall, regional, and/or sub-regional quota is available as specified by a publication in the **Federal Register**, then that overall, regional, and/or sub-regional commercial fishery for the shark species or management group will open as specified in § 635.27(b). When NMFS calculates that the overall, regional, and/or sub-regional landings for a

shark species and/or management group, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and is projected to reach 100 percent of the relevant quota by the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a notice of an overall, regional, and/or sub-regional closure, as applicable, for that shark species and/or shark management group that will be effective no fewer than 4 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 overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fisheries for that shark species or management group are closed, even across fishing years.

(3) *Linked quotas.* As specified in paragraph (b)(4) of this section, the overall, regional, and/or sub-regional quotas of some shark species and/or management groups are linked to the overall, regional, and/or sub-regional quotas of other shark species and/or management groups. For each pair of linked species and/or management groups, if the overall, regional, and/or sub-regional quota specified in § 635.27(b)(1) is available for both of the linked species and/or management groups as specified by a publication in the **Federal Register**, then the overall, regional, and/or sub-regional commercial fishery for both of the linked species and/or management groups will open as specified in § 635.27(b)(1). When NMFS calculates that the overall, regional, and/or sub-regional landings for any species and/or management group of a linked group have reached or are projected to reach 80 percent of the applicable available overall, regional, and/or sub-

regional quota as specified in § 635.27(b)(1) and are projected to reach 100 percent of the relevant quota before the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a notice of an overall, regional, and/or sub-regional closure for all of the species and/or management groups in that linked group that will be effective no fewer than 4 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 overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fishery for all species and/or management groups in that linked group is closed, even across fishing years.

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