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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

Docket No. 200911-0242

RIN 0648-XT038

Atlantic Highly Migratory Species; 2021 Atlantic Shark Commercial Fishing Year

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and retention limits and establish the opening date for the 2021 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any overharvests and/or underharvests experienced during the 2020 fishing year. NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Written comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0108, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-0108,

click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Lauren Latchford (lauren.latchford@noaa.gov) by phone at 301-427-8503.

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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 Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic

commercial shark fisheries, the 2006 Consolidated Atlantic HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for underharvests and overharvests. Regulations also include provisions allowing flexible opening dates for the fishing year 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.

2021 Proposed Commercial Shark Quotas

NMFS proposes adjusting the quota levels for the different shark stocks and management groups for the 2021 Atlantic commercial shark fishing year based on overharvests and underharvests that occurred during the 2020 fishing year, consistent with existing regulations at 50 CFR 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. If a sub-regional quota is overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only if NMFS knows the status of all species in the management group, none of the species in the group are overfished, and there is no overfishing in the group. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2020 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2021 quotas for certain management groups as shown in Table 1. All of the 2021 proposed quotas for the respective stocks and management

groups will be subject to further adjustment in the final rule after NMFS considers the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2021 quotas, as appropriate, noting that in some circumstances, NMFS re-adjusts quotas in the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2020 fishing year for these management groups may be added to the respective 2021 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage implemented in Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (80 FR 50073; August 18, 2015).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2020 underharvests cannot be carried over to the 2021 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. With the exception of the sub-regional western Gulf of Mexico overharvest of the aggregated LCS quota, which will be discussed below, there are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the ultimate decision will be based on current data at the time of the final rule.

The proposed 2021 quotas by species and management group are summarized in Table 1; the description of the calculations for each stock and management group can be found below. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table 1 includes landings data as of July 10, 2020; final quotas are subject to change based on landings as of October 2020. 1 mt = 2,204.6 lb.

Table 1 -- 2021 Proposed Quotas and Opening Date for the Atlantic Shark Management Groups.

Region or Sub-region	Management Group	2020 Annual Quota (A)	Preliminary 2020 Landings ¹ (B)	Adjustments ² (C)	2021 Base Annual Quota (D)	2021 Proposed Annual Quota (D+C)	Season Opening Dates
Western Gulf of Mexico	Blacktip Sharks ³	347.2 mt dw (765,392 lb dw)	204.4 mt dw (450,612 lb dw)	115.7 mt dw (255,131 lb dw)	231.5 mt dw (510,261 lb dw)	347.2 mt dw (765,392 lb dw)	January 1, 2021
	Aggregated ⁴ Large Coastal Sharks	72.0 mt dw (158,724 lb dw)	78.9 mt dw (173,959 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)	< 2.3 mt dw (< 5,000 lb dw)	-	11.9 mt dw (26,301 lb dw)	11.9 mt dw (26,301 lb dw)	
Eastern Gulf of Mexico	Blacktip Sharks ³	37.7 mt dw (83,158 lb dw)	3.5 mt dw (7,726 lb dw)	12.6 mt dw (27,719 lb dw)	25.1 mt dw (55,439 lb dw)	37.7 mt dw (83,158 lb dw)	January 1, 2021
	Aggregated Large Coastal Sharks	85.5 mt dw (188,593 lb dw)	50.9 mt dw (112,266 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)	< 2.7 mt dw (< 6,000 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)	25.2 mt dw (55,563 lb dw)	-	112.6 mt dw (248,215 lb dw)	112.6 mt dw (248,215 lb dw)	January 1, 2021
	Smoothhound Sharks	504.6 mt dw (1,112,441 lb dw)	1.4 mt dw (3,144 lb dw)	168.2 mt dw (370,814 lb dw)	336.4 mt dw (741,627 lb dw)	504.6 mt dw (1,112,441 lb dw)	
Atlantic	Aggregated Large Coastal Sharks	168.9 mt dw (372,552 lb dw)	36.8 mt dw (81,217 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	January 1, 2021
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	10.6 mt dw (23,340 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)	44.0 mt dw (96,939 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)	2.6 mt dw (5,753 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 (3,971,587 lb dw)	121.1 mt dw (266,965 lb dw)	600.9 mt dw (1,323,862 lb dw)	1,201.7 mt dw (2,649,268 lb dw)	1,802.6 mt dw (3,971,587 lb dw)	
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	< 2.5 mt dw (< 5,500 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)	January 1, 2021
	Sandbar Shark Research	90.7 mt dw (199,943 lb dw)	< 4.5 mt dw (< 10,000 lb dw)	-	90.7 mt dw (199,943 lb dw)	90.7 mt dw (199,943 lb dw)	
	Blue Sharks	273.0 mt dw (601,856 lb dw)	0 mt dw (0 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)	
	Porbeagle Sharks	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)	28.8 mt dw (63,485 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, 2020, through July 10, 2020, 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 base annual quota.

³ This adjustment accounts for underharvest in 2020. This proposed rule would increase the overall Gulf of Mexico blacktip shark quota by 128.3 mt dw (282,850 lb dw). Since any underharvest would be divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota would be increased by 115.7 mt dw, or 90.2 percent of the quota adjustment, while the eastern Gulf of Mexico blacktip shark quota would be increased by 12.6 mt dw, or 9.8 percent of the quota adjustment.

⁴ While there is an overharvest of the western Gulf of Mexico Aggregated LCS sub-regional quota in 2020, NMFS does not expect the full Gulf of Mexico regional quota to be filled, and is thus proposing to maintain the full baseline quota in 2021. However, if the Gulf of Mexico regional quota is filled or exceeded, the sub-regional quota would be adjusted accordingly.

1. Proposed 2021 Quotas for the Gulf of Mexico Region Shark Management Groups

The 2021 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (765,392 lb dw) and the eastern Gulf of Mexico sub-region is 37.7 mt dw (83,158 lb dw; Table 1). As of July 10, 2020, preliminary reported landings for blacktip sharks in the western Gulf of Mexico sub-region were at 59 percent (204.4 mt dw) of their 2020 quota levels (347.2 mt dw), and blacktip sharks in the eastern Gulf of Mexico sub-region were at 9 percent (3.5 mt dw) of the sub-regional 2020 quota levels (37.7 mt dw). Reported landings in both sub-regions have not exceeded the 2020 quota to date. Gulf of Mexico blacktip sharks are not overfished, are not experiencing overfishing, and do not have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for blacktip sharks within the Gulf of Mexico region therefore may be applied to the 2020 quotas, up to 50 percent of the base annual quota. Additionally, any underharvest would be divided between the two sub-regions, based on the percentages that are allocated to each sub-region, which are set forth in § 635.27(b)(1)(ii)(C). To date, the overall Gulf of Mexico blacktip shark management group is underharvested by 177.0 mt dw (390,212 lb dw). Accordingly, NMFS proposes to increase the western Gulf of Mexico blacktip shark quota by 115.7 mt dw or 90.2 percent of the quota adjustment, while the eastern Gulf of Mexico blacktip shark sub-regional quota would increase by 12.6 mt dw, or 9.8 percent of the quota adjustment (Table 1). Thus, the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 347.2 mt dw (765,392 lb dw), and the proposed eastern sub-regional Gulf of Mexico blacktip shark commercial quota is 37.7 mt dw (83,158 lb dw).

The 2021 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw), and the eastern Gulf of Mexico sub-region is 85.5 mt dw

(188,593 lb dw; Table 1). As of July 10, 2020, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were at 110 percent (78.9 mt dw) of the 2020 quota (72.0 mt dw), while the aggregated LCS in the eastern Gulf of Mexico sub-region were at 60 percent (50.9 mt dw) of the 2020 quota levels (85.5 mt dw). While the aggregated LCS management group landings have been exceeded in the western Gulf of Mexico sub-region, the current combined catch rates for both sub-regions (82 percent; 129.8 mt dw) indicate that the overall regional 2020 quota is not likely to be exceeded before the end of the fishing year. NMFS will continue to monitor these landings for the remainder of the 2020 fishing year. If the combined aggregated LCS quotas are exceeded, then the 2020 quota would be adjusted to account for any overharvest.

The 2021 proposed commercial quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region and western Gulf of Mexico sub-region are 11.9 mt dw (26,301 lb dw) and 13.4 mt dw (29,421 lb dw), respectively (Table 1). As of July 10, 2020, preliminary reported landings for hammerhead sharks in the western Gulf of Mexico sub-region were less than 20 percent (<2.3 mt dw) of the 2020 quota levels (11.9 mt dw), while landings of hammerhead sharks in the eastern Gulf of Mexico sub-region were at less than 20 percent (<2.7 mt dw) of the 2020 quota levels (13.4 mt dw). Reported landings from both Gulf of Mexico and Atlantic regions have not exceeded the 2020 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Therefore, based on both preliminary estimates and catch rates from previous years and the fact that the 2020 overall hammerhead shark quota has not been overharvested to date, and consistent with the current regulations at § 635.27(b)(2)(ii), NMFS proposes that the 2021 quotas for hammerhead sharks in the western Gulf of Mexico and eastern Gulf of Mexico sub-regions be equal to their annual base quotas

without adjustment.

The 2021 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (248,215 lb dw). As of July 10, 2020, preliminary reported landings of non-blacknose SCS were at 22 percent (25.2 mt dw) of their 2020 quota level (112.6 mt dw) in the Gulf of Mexico region. Reported landings have not exceeded the 2020 quota to date. Given the unknown status of bonnethead sharks within the Gulf of Mexico non-blacknose SCS management group, underharvests cannot be carried forward, pursuant to § 635.27(b)(2)(ii). Based on both preliminary estimates and catch rates from previous years, and because there have not been any overharvests, NMFS proposes that the 2021 quota for non-blacknose SCS in the Gulf of Mexico region be equal to the annual base quota without adjustment.

The 2021 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw). As of July 10, 2020, preliminary reported landings of smoothhound sharks were less than 1 percent (1.4 mt dw) in the Gulf of Mexico region. Gulf of Mexico smoothhound sharks are not overfished, are not experiencing overfishing, and do not have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Gulf of Mexico region therefore could be added to the 2021 quotas up to 50 percent of the base annual quota. Accordingly, NMFS proposes to increase the 2021 Gulf of Mexico smoothhound shark quota to adjust for anticipated underharvests in 2020 to the full extent allowed. The proposed 2021 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2020 underharvest = 504.6 mt dw 2021 adjusted annual quota).

2. Proposed 2021 Quotas for the Atlantic Region Shark Management Groups

The 2021 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of July 10, 2020, the aggregated LCS fishery in the Atlantic region is still open, and preliminary landings indicate that only 22 percent (36.8 mt dw) of the quota has been harvested. Given the unknown status of some of the shark species within the Atlantic aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with current regulations at § 635.27(b)(2), NMFS proposes that the 2021 quota for aggregated LCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests, and underharvests cannot be carried over due to stock status.

The 2021 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). Currently, the hammerhead shark fishery in the Atlantic region is still open and preliminary landings as of July 10, 2020, indicate that 39 percent (10.6 mt dw) of the Atlantic regional quota has been harvested. Reported landings from both Gulf of Mexico and Atlantic regions have not exceeded the 2020 overall hammerhead quota to date. Given the overfished status of hammerhead sharks, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2021 quota for hammerhead sharks in the Atlantic region be equal to the annual base quota without adjustment.

The 2021 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of July 10, 2020, preliminary reported landings of non-blacknose SCS were at 17 percent (44.0 mt dw) of the 2020 quota level in the Atlantic region.

Reported landings have not exceeded the 2020 quota to date. Given the unknown status of bonnethead sharks within the Atlantic non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates of catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2021 quota for non-blacknose SCS in the Atlantic region be equal to the annual base quota without adjustment.

The 2021 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34° N. latitude. North of 34° N. latitude, retention, landing, or sale of blacknose sharks is prohibited. NMFS is not proposing any adjustments to the blacknose shark quota at this time. As of July 10, 2020, preliminary reported landings of blacknose sharks were at 15 percent (2.6 mt dw) of the 2020 quota levels in the Atlantic region. Reported landings have not exceeded the 2020 quota to date. Pursuant to § 635.27(b)(2), because blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic region, NMFS could not carry forward the remaining underharvest. Therefore, NMFS proposes that the 2021 Atlantic blacknose shark quota be equal to the annual base quota without adjustment.

The 2021 proposed commercial quota for smoothhound sharks in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of July 10, 2020, preliminary reported landings of smoothhound sharks were at 6.7 percent (121.1 mt dw) of their 2020 quota levels in the Atlantic region. Atlantic smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Atlantic region therefore could be applied to

the 2021 quotas up to 50 percent of the base annual quota. Accordingly, NMFS proposes to increase the 2021 Atlantic smoothhound shark quota to adjust for anticipated underharvests in 2020 as allowed. The proposed 2021 adjusted base annual quota for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2019 underharvest = 1,802.6 mt dw 2021 adjusted annual quota).

3. Proposed 2021 Quotas for Shark Management Groups with No Regional Quotas

The 2021 proposed commercial quotas within the shark research fishery are 50 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 10, 2020, preliminary reported landings of research LCS were at less than 5 percent (<2.5 mt dw) of the 2020 quota, and sandbar shark reported landings were at less than 5 percent (<4.5 mt dw) of their 2020 quota. Under § 635.27(b)(2)(ii), because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either overfished or overfishing is occurring, underharvests for these management groups cannot be carried forward. Therefore, based on preliminary estimates, and consistent with the regulations at § 635.27(b)(2), NMFS proposes that the 2021 quota in the shark research fishery be equal to the annual base quota without adjustment because there have not been any overharvests, and because underharvests cannot be carried over due to stock status.

The 2021 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. As of July 10, 2020, there were no preliminary reported landings of blue sharks or porbeagle sharks, and landings of pelagic sharks (other than porbeagle and blue sharks) were at 5.9 percent (28.8 mt dw) of the 2020 quota level

(488.0 mt dw). Given that these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2021 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

Proposed Opening Date and Retention Limits for the 2021 Atlantic Commercial Shark Fishing Year

In proposing the commercial shark fishing season opening dates for all regions and sub-regions, NMFS considers regulatory criteria listed at § 635.27(b)(3) and other relevant factors such as the available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishery participation in past years, impacts to accomplishing objectives of the 2006 Consolidated Atlantic 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 openings.

In analyzing the criteria, NMFS examines the overharvests and underharvests of the different management groups in the 2020 fishing year to determine the likely effects of the proposed commercial quotas for 2021 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examines the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities be provided to fishermen

in all areas. Lastly, NMFS examines the seasonal variation of the different species/management groups and the effects on fishing opportunities. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip in the eastern and western Gulf of Mexico sub-regions and in the Atlantic region, unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. NMFS may adjust the retention limit from zero to 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group is open under §§ 635.27 and 635.28, after considering the six “inseason trip limit adjustment criteria” listed at § 635.24(a)(8). Those criteria are: the amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports; the catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports; the 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; effects of the adjustment on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

After considering all these criteria, NMFS is proposing to open the 2021 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, on January 1, 2021, after the

publication of the final rule for this action (Table 2). NMFS proposes to open the season on January 1, 2021, but recognizes that the actual opening date is contingent on publication in the **Federal Register**, and may vary accordingly. NMFS is also proposing to start the 2021 commercial shark fishing season with the commercial retention limit of 45 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 36 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). Proposed retention limits could change as a result of public comments as well as updated catch rates and landings information available when drafting the final rule.

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

Region or Sub-region	Management Group	Quota Linkages	Season Opening Date	Commercial Retention Limits for Directed Shark Limited Access Permit Holders (inseason adjustments are possible)
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2021	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2021	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, 2021	N/A
	Smoothhound Sharks	Not Linked	January 1, 2021	N/A

Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2021	36 LCS other than sandbar sharks per vessel per trip
	Hammerhead Sharks			If quota is landed quickly (<i>e.g.</i> , if approximately 40 percent of quota is caught at the beginning of the year), NMFS anticipates considering an inseason reduction (<i>e.g.</i> , to 3 or fewer LCS other than sandbar sharks per vessel per trip), then an inseason increase to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2021 ¹
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2021	N/A
	Blacknose Sharks (South of 34° N. lat. only)			8 Blacknose sharks per vessel per trip (applies to directed and incidental permit holders)
	Smoothhound Sharks	Not Linked	January 1, 2021	N/A
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2021	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2021	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

¹ NMFS is proposing changing the percent of quota harvested at which it considers adjusting the retention limit. Rather than 35 percent, NMFS would consider adjustment to 40 percent to allow fishermen in the Atlantic region to more fully utilize the quota.

In the eastern and western Gulf of Mexico sub-regions, NMFS proposes opening the fishing season on January 1, 2021, for the aggregated LCS, blacktip sharks, and hammerhead shark management groups, with the commercial retention limits of 45 LCS other than sandbar sharks per vessel per trip for directed shark permits. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. This opening date takes into account all the season opening criteria

listed in § 635.27(b)(3), and particularly the criteria that require NMFS to consider the length of the season for the different species and/or management groups in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(v)). The proposed commercial retention limits take into account the criteria listed in § 635.24(a)(8), and particularly the criterion that requires NMFS to consider the catch rates of the relevant shark species/complexes based on dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at § 635.27(b)(3)(v) and § 635.24(a)(8)(ii), (v), and (vi)). For both the eastern and western Gulf of Mexico sub-regions combined, dealer reports received through July 10, 2020, indicate that 58 percent (200.4 mt dw), 110 percent (78.9 mt dw), and less than 15 percent (< 0.5 mt dw) of the available blacktip, aggregated LCS, and hammerhead shark quotas, respectively, has been harvested. Therefore, for 2021, NMFS is considering opening both the western and eastern Gulf of Mexico sub-regions with a commercial retention limit of 45 sharks other than sandbar sharks, per vessel per trip.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on January 1, 2021. This opening date also takes into account all the criteria listed in § 635.27(b)(3), and particularly the criterion that NMFS consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§ 635.27(b)(3)(v)). The 2020 data indicates that an opening date of January 1, coupled with inseason adjustments to the retention limit, provided a reasonable opportunity for fishermen in

every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)), while accounting for variations in seasonal distribution of the different species in the management groups (§ 635.27(b)(3)(iv)). Because the quotas we propose for 2021 are the same as the quotas in 2020, NMFS proposes that the season lengths, and therefore, the participation of various fishermen throughout the region, would be similar in 2021 (§ 635.27(b)(3)(ii) and (iii)). Based on the recent performance of the fishery, the January 1 opening date appears to meet the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments (§ 635.27(b)(3)(vi)). NMFS' review of the landings data from 2016 to the present has shown a decrease in landings over time in the aggregated LCS and hammerhead management groups. In the Final Rule to Establish Adjusted Base Annual Quotas, Opening Dates, and Retention Limits for the 2020 Atlantic Shark Commercial Fishing Year (84 FR 65690; November 29, 2019), NMFS increased the starting retention limit from 25 to 36, and the percentage threshold from 20 to 35 percent. NMFS proposes to follow the same trip adjustment criteria in 2021, but because landings continue to remain low, NMFS is proposing to change the percent of quota harvested at which it considers adjusting the retention limit from 35 to 40 percent. Changing the percent of quota harvested could allow fishermen in the Atlantic region to more fully utilize the quota. Changing the percentage of quota harvested is a management benchmark NMFS has used (and announced as part of the rulemaking process) in previous seasons to help determine at which point it will consider an inseason action to adjust the retention limits.

In addition, for the aggregated LCS and hammerhead shark management groups in the Atlantic region, NMFS proposes opening the fishing year with the commercial retention limit for directed shark limited access permit holders of 36 LCS other than sandbar sharks per vessel per

trip. This retention limit should allow fishermen to harvest some of the 2021 quota at the beginning of the year when sharks are more prevalent in the South Atlantic area (see the criteria at § 635.24(a)(3)(i), (ii), (v), and (vi)). As was done in 2020, if it appears that the quota is being harvested too quickly to allow directed fishermen throughout the entire region an opportunity to fish and ensure enough quota remains until later in the year, NMFS would consider either reducing the commercial retention limits to incidental levels (3 LCS other than sandbar sharks per vessel per trip), or setting another level calculated to reduce the harvest of LCS in accordance with the opening commercial fishing season criteria listed in § 635.27(b)(3) and the inseason trip limit adjustment criteria listed in § 635.24(a)(8). If the quota continues to be harvested quickly, NMFS could consider reducing the retention limit to 0 LCS other than sandbar sharks per vessel per trip to ensure enough quota remains until later in the year. If either situation occurs, NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit. NMFS will consider increasing the commercial retention limits per trip at a later date, after considering the appropriate inseason adjustment criteria, if necessary to provide fishermen in the northern portion of the Atlantic region an opportunity to retain aggregated LCS and hammerhead sharks. Similarly, at some point later in the year, NMFS may consider increasing the retention limit to a higher retention limit of aggregated LCS other than sandbar sharks per vessel per trip, as deemed appropriate, after considering the inseason trip limit adjustment criteria. If the quota is being harvested too quickly or too slowly, NMFS could adjust the retention limit appropriately to ensure the fishery remains open most of the rest of the year.

All of the shark management groups would remain open until December 31, 2021, or until NMFS determines that the landings for any shark management group 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, or when the quota-linked management group is closed. If NMFS determines that a non-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (*e.g.*, eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than four days from the date of filing (This is pursuant to 50 CFR part 635, as most recently amended by the July 9, 2018, final rule (83 FR 31677) revising Atlantic highly migratory species shark fishery closure regulations). For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings have reached or are projected to reach 80 percent of applicable available overall, regional, and/or sub-regional quota and are projected to reach 100 percent of the relevant quota by the end of the fishing season, after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. The fisheries for the shark species or management group would be closed (even across fishing years) 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.

If NMFS determines that a linked shark species or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas and the Final Rule to Revise Atlantic Highly Migratory Species Shark Fishery Closure Regulations (83 FR 31677; July 9, 2018), NMFS will publish in the **Federal Register** a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than four days from the date of filing. In that event, from the effective date and time of the closure until NMFS announces that the season is reopened and additional quota is available (via the publication of another notice in the **Federal Register**), the fisheries for all linked species and/or management groups will be closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34° N. latitude.

Request for Comments

Comments on this proposed rule may be submitted via www.regulations.gov. NMFS solicits comments on this proposed rule by [*insert date 30 days after date of publication in the FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

Classification

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

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

NMFS determined that the final rules to implement Amendment 2 to the 2006 Consolidated Atlantic HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Amendment 5a to the 2006 Consolidated Atlantic HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated Atlantic HMS FMP (80 FR 73128; November 24, 2015) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic, including the Gulf of Mexico and the Caribbean Sea, as required under the Coastal Zone Management Act. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise NMFS of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish an opening date and adjust quotas for the 2021 fishing year for the Atlantic commercial shark fisheries does not change the framework previously consulted upon. Therefore, no additional consultation is required.

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

Section 603(b)(1) of the RFA requires agencies to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated Atlantic HMS FMP and its amendments, would adjust quotas and retention limits and establish the opening date for

the 2021 Atlantic commercial shark fishing year, consistent with regulations at 50 CFR 635.27(b).

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

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. SBA's regulations include provisions for an agency to develop its own industry-specific size standards after consultation with SBA and providing 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; 50 CFR 200.2). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing

industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As of July 10, 2020, the proposed rule would apply to the approximately 218 directed commercial shark permit holders, 263 incidental commercial shark permit holders, 159 smoothhound shark permit holders, and 104 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 481 directed and incidental commercial shark permit holders, only 18 permit holders landed sharks in the Gulf of Mexico region, and only 85 landed sharks in the Atlantic region. Of the 159 smoothhound shark permit holders, only 61 permit holders landed smoothhound sharks in the Atlantic region, and none landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

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

Endangered Species Act, the National Environmental Policy Act, and the Coastal Zone Management Act.

Section 603(c) of the RFA requires each IRFA to contain a description of any significant alternatives to the proposed rule, which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. Additionally, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and 4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities, because all of the entities affected are considered small entities. For similar reasons, 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 would implement previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated Atlantic HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule

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

Based on the 2019 ex-vessel price (Table 3), fully harvesting the unadjusted 2021 Atlantic shark commercial base quotas could result in total fleet revenues of \$9,997,263. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the base sub-regional quotas upward due to underharvests in 2020. The increase for the western Gulf of Mexico blacktip shark management group could result in a \$241,691 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a \$27,645 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas due to the underharvest in 2020. This would cause a potential gain in revenue of \$393,063 for the fleet in the Gulf of Mexico region, and a potential gain in revenue of \$1,112,680 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the gross revenues analyzed in the 2006 Consolidated Atlantic HMS FMP and Amendments 2, 3 5a, 6, and 9 to the 2006 Consolidated Atlantic HMS FMP. The final RFAs for those amendments concluded that the economic impacts on these small entities from adjustments such as those contemplated in this action are expected to be minimal. In accordance with the 2006 Consolidated Atlantic HMS

FMP, as amended, and consistent with NMFS' statements in rule implementing Amendments 2, 3 5a, 6, and 9, and in the EA for the 2011 shark quota specifications rule, NMFS now conducts annual rulemakings in which NMFS considers the potential economic impacts of adjusting the quotas for underharvests and overharvests.

Table 3 -- Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2019.

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Western Gulf of Mexico	Blacktip Shark	\$0.70	\$9.16
	Aggregated LCS	\$0.73	\$15.81
	Hammerhead Shark	\$0.52	\$12.00
Eastern Gulf of Mexico	Blacktip Shark	\$0.75	\$8.00
	Aggregated LCS	\$0.56	\$12.00
	Hammerhead Shark	\$0.50	\$13.43
Gulf of Mexico	Non-Blacknose SCS	\$0.59	\$5.81
	Smoothhound Shark	\$1.06	-
Atlantic	Aggregated LCS	\$0.99	\$3.51
	Hammerhead Shark	\$0.46	-
	Non-Blacknose SCS	\$1.02	\$4.60
	Blacknose Shark	\$1.27	
	Smoothhound Shark	\$0.78	\$1.68
No Region	Shark Research Fishery (Aggregated LCS)	\$0.86	\$15.15
	Shark Research Fishery (Sandbar only)	\$0.68	-
	Blue shark	-	-
	Porbeagle shark	\$0.36	\$2.51
	Other Pelagic sharks	\$1.35	\$7.60

For this rule, NMFS also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen, to the extent practicable, while also considering the ecological needs of the different species. The opening date of the fishing year could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2021 fishing year, NMFS is proposing to open all of the shark management groups on the effective date of the final rule for this action

(which is expected to be January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis, because NMFS is not proposing to change the opening date of these fisheries from the status quo.

For all of the reasons explained above, this action, if implemented, will not have a significant economic impact on a substantial number of small entities.

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

Dated: September 14, 2020.

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