

user and the process by which a user may request that the toll free number be linked to his or her ten-digit telephone number in the TRS Numbering Directory. In its promotional materials, the provider may simply provide a link to this information on the provider's Web site. This approach will ensure that deaf and hard-of-hearing users who want to acquire or retain a toll free number can easily find the information they need to do so, while at the same time alleviating Sorenson's concern about the burden on providers.

17. We also clarify the *iTRS Toll Free Order* with respect to toll free service provider contact information. An iTRS provider may satisfy the requirement that it provide contact information by linking to the list of toll free service providers maintained on the 800 Service Management System (SMS/800) Web site. The Commission's Consumer and Governmental Affairs Bureau has produced an American Sign Language video explaining the *iTRS Toll Free Order*, and the accompanying text directs iTRS users to the SMS/800 Web site's list of toll free service providers, which provides the most up-to-date information. Given that the Commission itself directs deaf and hard-of-hearing consumers to the SMS/800 Web site for toll free service provider information, we find that it is reasonable to allow iTRS providers to do the same.

18. Finally, we deny Sorenson's request to establish a one-year end date for the customer notification requirements. At the end of the one-year transition period established in the *Order*, iTRS users will still be able to subscribe to toll free numbers and have them entered into the TRS Numbering Directory. Moreover, with the modified requirements set forth herein, we have significantly reduced the burden of providing such notice.

#### IV. Procedural Matters

##### A. Paperwork Reduction Act

19. This Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

##### B. Congressional Review Act

20. The rules previously adopted in the *iTRS Toll Free Order* were submitted to Congress and the

Government Accountability Office pursuant to the Congressional Review Act and remain unchanged by this Order on Reconsideration.

#### V. Ordering Clauses

21. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 4(i), 225, 251(e), 255, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 225, 251(e), 255, 405, and §§ 1.1 and 1.429 of the Commission's rules, 47 CFR 1.1, 1.429, that this Order on Reconsideration IS *adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

22. *It is further ordered*, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration and Clarification filed by Sorenson Communications, Inc. on October 27, 2011 is *granted* to the extent described herein and is otherwise *denied*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012-31098 Filed 12-21-12; 4:15 pm]

**BILLING CODE 6712-01-P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Railroad Administration

##### 49 CFR Part 219

[Docket No. FRA-2001-11213, Notice No. 16]

##### Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2013

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of determination.

According to data from FRA's Management Information System, the rail industry's random drug testing positive rate has remained below 1.0 percent for the last two years. The Federal Railroad Administrator (Administrator) has therefore determined that the minimum annual random drug testing rate for the period January 1, 2013, through December 31, 2013, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random

alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2013, through December 31, 2013. Railroads remain free, as always, to conduct random testing at higher rates.

**DATES:** This notice of determination is effective December 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gross, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (telephone 202-493-1342); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (telephone 719-633-8955).

Issued in Washington, DC on December 18, 2012.

**Karen J. Hedlund,**  
*Deputy Administrator.*

[FR Doc. 2012-30999 Filed 12-21-12; 4:15 pm]

**BILLING CODE 4910-06-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 635

[Docket No. 120706221-2705-02]

**RIN 0648-XC106**

##### Atlantic Highly Migratory Species; 2013 Atlantic Shark Commercial Fishing Season

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

**ACTION:** Final rule; fishing season notification.

**SUMMARY:** This final rule establishes the opening dates and quotas for the 2013 fishing season for the Atlantic commercial shark fisheries (sandbar sharks, non-sandbar large coastal sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks), non-blacknose small coastal sharks, or blacknose sharks). Baseline quotas are adjusted as required based on any over- and/or underharvests experienced during the 2011 and 2012 Atlantic commercial shark fishing seasons. We used previously-implemented regulatory criteria that contain adaptive management measures to determine the opening dates. We also plan to use these measures throughout the fishing year for inseason adjustments to the shark retention limits, as appropriate, to provide, to the extent practicable,

fishing opportunities for commercial shark fishermen in all regions and areas. These actions are expected to provide fishing opportunities for commercial shark fishermen in the northwestern Atlantic, including the Gulf of Mexico and Caribbean. In addition, we are keeping the porbeagle shark quota closed in 2013 due to overharvests from 2011 and 2012 that resulted in no quota availability for 2013.

**DATES:** This rule is effective on January 1, 2013. The 2013 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

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

**FOR FURTHER INFORMATION CONTACT:** Guý DuBeck or Karyl Brewster-Geisz at 301-427-8503 or (fax) 301-713-1917.

#### **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 Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635.

On October 10, 2012, we published a rule (77 FR 61562) proposing the 2013 opening dates for the Atlantic commercial shark fisheries, and quotas based on shark landings information as of August 22, 2012. The proposed rule also considered using adaptive management measures such as flexible opening dates for the fishing seasons (50 CFR 635.27(b)(1)(i)) and inseason adjustments to shark trip limits (50 CFR 635.24(a)(8)) to provide flexibility in managing the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. This rule is the first time NMFS anticipates using the inseason adjustments. The October 2012 proposed rule contains details regarding the proposal and how the quotas were calculated that are not repeated here.

The comment period on the proposed rule ended on October 28, 2012. During that time, we received 12 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As detailed more fully in the Response to Comments section, the fishing seasons for all the shark species/complexes will open on January 1, 2013, as proposed in the October 10, 2012

proposed rule. Also, some of the quotas have changed since the proposed rule based on updated landings information received as of November 26, 2012.

This final rule serves as notification of the 2013 opening dates of the Atlantic commercial shark fisheries and 2013 quotas, based on shark landings updates as of November 26, 2012, pursuant to 50 CFR 635.27(b)(1)(i) through (b)(1)(vi). This action does not change the annual base commercial quotas established under Amendments 2 and 3 to the 2006 Consolidated HMS FMP for sandbar sharks, non-sandbar large coastal sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks), non-blacknose small coastal sharks, or blacknose sharks. Any such changes would be performed through a separate action. Rather, this action adjusts the annual base commercial quotas based on over- and/or underharvests that occurred in 2011 and 2012, consistent with existing regulations.

##### **Response to Comments**

We received comments from 12 fishermen, dealers, and other interested parties on the proposed rule. All written comments can be found at <http://www.regulations.gov/> and by searching for RIN 0648-XC106.

##### *A. Non-Sandbar Large Coastal Shark Comments*

*Comment 1:* Commenters noted that non-sandbar large coastal shark meat is easier to sell in the Gulf of Mexico during the religious period of Lent (February 13 to March 30, 2013) and preferred an opening date of February 6, 2013.

*Response:* In the proposed rule, we considered a season opening date of January 1, 2013, to further equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all parts of the Gulf of Mexico region. This opening date is consistent with all the criteria listed in § 635.27(b)(1)(ii), but particularly with the requirement that we consider the length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(1)(ii)(C)). Taking into consideration these criteria, we have determined that keeping the proposed opening date of January 1, 2013, for the non-sandbar large coastal shark fishery in the Gulf of Mexico region promotes equitable fishing opportunities throughout this region. Such an opening date would not prevent fishermen and dealers from fishing for and selling sharks during the religious period of

Lent unless the quota was fully harvested by that time and the fishery closed.

As an example of how we considered the criteria, we note that the State of Louisiana closes its state waters from April 1 through June 30 for their shark pupping season. Therefore, if we opened the shark fishing season in February, Louisiana fishermen might not have the same opportunity as fishermen elsewhere in the Gulf of Mexico to harvest the available quota because state waters would close shortly after the season opened. This type of situation occurred in both 2011 and 2012, when fishermen from the State of Louisiana had only about a month to fish before the state closed their state waters to shark fishing. As such, we are not changing the proposed opening date of the non-sandbar large coastal shark fishery in order to ensure, to the extent practicable, that fishermen throughout the Gulf of Mexico have equitable fishing opportunities.

*Comment 2:* We received opposing comments regarding the proposed opening date for the Atlantic non-sandbar large coastal shark fishery. Fishermen from the southern portion of the Atlantic region supported the proposed opening date of January 1, as they feel that the opening date will provide them an opportunity to participate in a winter fishery. Fishermen from the northern portion of the Atlantic region did not want a January 1 opening date since they are concerned that they will not have an opportunity to harvest the quota.

*Response:* In recent years, in recognition that fishermen in the southern portion of the region could harvest the entire quota before the sharks have migrated north where they could be harvested by fishermen in the northern region, we have opened the non-sandbar large coastal shark fishing season in July. Such an opening date allows fishermen in both areas of the region an opportunity to fully harvest the quota, and was successful in providing fishing opportunities.

However, in 2013, we plan to open the non-sandbar large coastal shark fishery in the Atlantic region on January 1, 2013. As described in the proposed rule for that action, we plan to implement the adaptive management measures from the 2011 shark season rule (75 FR 76302; December 8, 2010) to adjust via inseason actions the retention limit for non-sandbar large coastal sharks. Specifically, if the quota is being harvested quickly and we calculate that the northern fishermen have not yet had an opportunity to fish for non-sandbar large coastal shark because the sharks

have not migrated, we can reduce the trip limits to slow fishing (e.g., change the trip limit from 36 sharks to 15 sharks or even 0 sharks) and then increase them again when we estimate that the sharks have migrated north. This process should ensure equitable fishing opportunities for fishermen along the Atlantic coast while accommodating fishermen's requests from both the southern and northern portions of the Atlantic region. We had not used these measures previously because of concern about our ability to monitor the quota on a real-time basis. However, with the implementation of the HMS electronic reporting system (77 FR 47303; August 8, 2012) on January 1, 2013, we should be able to monitor the quota on a real-time basis and respond quickly as needed. This ability, along with the inseason trip limit adjustment, should allow us the additional flexibility to further opportunities for all fishermen in all regions, to the extent practicable, while also ensuring that quotas are not exceeded.

*Comment 3:* Many commenters agreed with the effective "increase" in the non-sandbar large coastal shark quotas and retention limits in 2013 and asked for the reasoning behind this increase.

*Response:* In Amendment 2 to the 2006 Consolidated HMS FMP, we established a 5-year quota reduction to account for overharvest of the non-sandbar large coastal shark and sandbar shark fisheries that occurred in 2007. This 5-year quota reduction ends on December 31, 2012. Therefore, quotas and retention limits for large coastal sharks revert back to base levels in 2013, consistent with Amendment 2 to the 2006 Consolidated HMS FMP.

*Comment 4:* We received a request to investigate the geographical distribution of non-sandbar large coastal shark landings in the Atlantic throughout the season.

*Response:* This issue is beyond the scope of this rulemaking, which adjusts the quotas and establishes opening dates. We have reviewed this type of information in past rules, including in Amendment 1 to the 2006 Consolidated HMS FMP on Essential Fish Habitat (EFH) (74 FR 28018; June 12, 2009), Amendment 2 to the 2006 Consolidated HMS FMP on shark management (73 FR 35778, June 24, 2008; corrected at 73 FR 40658, July 15, 2008), and the 2011 shark season rule (75 FR 76302; December 8, 2010). In Amendment 1 to the 2006 Consolidated HMS FMP on EFH, we reviewed the geographical range of all HMS and analyzed the fishing impacts on the EFH for these species. We plan to review EFH in the future and such review necessarily

would include the species' geographical range and other relevant analyses, such as species distribution through time. Thus, while re-investigating the geographical distribution for the large coastal shark fishery is beyond the scope of this rulemaking, we may review the issue in future rulemakings.

*Comment 5:* NMFS should consider increasing the quotas of more dangerous shark species like tiger sharks.

*Response:* We do not manage sharks or establish shark quotas based on how dangerous a species may be. Rather, we manage sharks based on the best available science for a particular species and legal requirements, which include maintaining or conserving the stock and its yield. Tiger sharks are included as part of the non-sandbar large coastal shark complex for various reasons, including the lack of a stock specific assessment, the fact that tiger sharks are often caught on the same type of gear as other non-sandbar large coastal sharks, and because tiger sharks are not a major species in the commercial fishery. The quota for non-sandbar large coastal sharks was established in Amendment 2 to the 2006 Consolidated HMS FMP based on the best available science and legal requirements. We would consider establishing a species-specific commercial quota for tiger sharks in a future rulemaking if the scientific advice indicated such action was supportable and warranted.

#### *B. Porbeagle Shark Comments*

*Comment 6:* We received several comments regarding the proposal not to open the porbeagle shark quota in 2013. Several commenters supported NMFS' decision not to allow porbeagle shark landings because of the small amount of quota that we thought would be available at the proposed rulemaking stage. Other commenters indicated that not allowing porbeagle shark landings would result in a lot of dead discards, since porbeagle sharks are caught incidentally in other fisheries in the north Atlantic area.

*Response:* We proposed not to open the porbeagle shark quota in 2013 due to the small adjusted quota (0.5 mt dw) available once overharvests from 2011 and 2012 were accounted for, and due to difficulties in accurately monitoring such a small quota. Since the publication of the proposed rule, updated landings data indicate additional porbeagle shark landings, which resulted in a combined overharvest from 2011 and 2012 that exceeds the 2013 base commercial quota. Specifically, in 2011, updated landings data indicate an additional 0.8 mt dw (1,781 lb dw) of landings. In the

proposed rule, we accounted for 0.1 mt dw (227 lb dw) of 2011 porbeagle shark landings that were reported after the 2012 shark season rule was published. Additionally, as of November 26, 2012, a total of 1.9 mt dw was reported landed in 2012, which is 1.2 mt dw (2,614 lb dw) higher than the 2012 porbeagle shark quota. In total, the actual combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw). This combined overharvest exceeds the base 2013 commercial landings quota of 1.7 mt dw (3,748 lb dw) by 0.4 mt dw (874 lb dw). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(i)(A), the overharvested amount must be deducted from future years' fishing quotas. After the appropriate deductions, no quota is available for commercial porbeagle shark landings in 2013, and we are planning to reduce the 2014 fishing quota to account for the remaining overharvest.

We understand that not allowing porbeagle shark landings means that any porbeagle sharks that are caught incidentally during other fishing must be discarded, either alive or dead. However, while we account for dead discards in establishing the total allowable catch for the species, dead discards are not part of the commercial porbeagle shark quota. In Amendment 2 to the 2006 Consolidated HMS FMP, we established a rebuilding plan for porbeagle sharks that set the total allowable catch at 11.3 mt dw. This total allowable catch caps fishing mortality, which encompasses commercial landings, recreational landings, and commercial dead discards. The commercial porbeagle quota was established at 1.7 mt dw, while the recreational catch, including landings in tournaments, was 0.1 mt dw and commercial discards were 9.5 mt dw. Any dead discards that occur will be accounted for and used in future stock assessments and any adjustments that result from those assessments.

*Comment 7:* NMFS needs to address the large number of porbeagle sharks that are caught in the recreational fishery and add porbeagle sharks to the prohibited species list.

*Response:* This comment is beyond the scope of this rulemaking. This rulemaking focuses on adjusting the commercial shark quotas based on over- and underharvests from previous years and establishing opening dates for the 2013 commercial shark season. Restricting the catches of porbeagle sharks in the recreational fishery and any consideration of adding them to the prohibited species list could be

addressed in a future rulemaking if deemed appropriate at that time.

### C. General Comments

*Comment 8:* NMFS should stop all shark fishing.

*Response:* This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year and opening dates for the 2013 shark season. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendments 2 and Amendment 3 to the 2006 Consolidated HMS FMP, and are being reviewed again for some shark species in response to new stock assessments through draft Amendment 5 to the 2006 Consolidated HMS FMP.

*Comment 9:* A commenter was happy that NMFS did not change the regulations for the small coastal shark fisheries, including the non-blacknose and blacknose shark fisheries, in 2013.

*Response:* As noted in Response to Comment 8, the 2013 shark season rule establishes commercial quotas based on over- and underharvest in 2012, and sets the opening dates for the non-blacknose small coastal shark and blacknose shark fishing seasons. Since the non-blacknose small coastal shark fishery is not overfished with no overfishing occurring, any underharvests for the non-blacknose small coastal sharks therefore could be applied to the 2013 quotas, pursuant to 50 CFR 635.27(b)(i)(B). However, blacknose sharks are overfished with overfishing occurring, so the 2013 final quotas are the base annual quotas for blacknose sharks. Since both fisheries remained open for the entire year, we decided to open the fishery again on January 1. Any other changes to the fisheries beyond the opening dates and adjusting the quotas are outside the scope of this rulemaking.

*Comment 10:* We received a comment on how NMFS determines if a species is "underharvested." The commenter noted that annual landings less than the available quotas could indicate that stock populations have declined over time due to overfishing.

*Response:* A species is underharvested if the annual quota was not fully landed. In 2011, the Gulf of Mexico and Atlantic non-sandbar large coastal sharks, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and

blue sharks) quotas were all underharvested, since the landings did not reach the annual quotas. Even though many of the fishing quotas were underharvested, this does not necessarily indicate a decline in the stock populations. There are many factors that can impact the amount of shark fishing every year. Factors like weather, shark migratory patterns, and market prices would affect fishing effort and catch rates of shark fishermen. In addition, annual fishing quotas were established to end overfishing and to ensure that the stock can withstand the current fishing effort and continue to rebuild in the future. We assess stocks on a regular basis to ensure that stocks are rebuilding, if appropriate, and their status is being maintained or improved.

*Comment 11:* We received a question on how NMFS accounts for illegal landings or information withheld about commercial catches, and how they are factored into the final quotas.

*Response:* We use dealer landings and fishermen logbook data to establish the annual landings. To the extent that illegal landings are included in this data, they are considered in establishing annual landings and used for quota monitoring purposes. Some illegal landings are not reported in logbooks or dealer reports (e.g., sharks harvested by Mexican lanchas in the Gulf of Mexico) and are not used for quota monitoring purposes. However, when NMFS has estimates of illegal landings, NMFS uses that data to establish annual quotas, as appropriate, and in stock assessments, which in turn helps determine the annual baseline quotas. For the 2013 shark season rule, we used reported landings data from October 31 to December 31, 2011, and 2012 fishing year landings data as of November 26, 2012, to determine if any shark species or complex was overharvested. Any reported landings beyond November 26, 2012, will be accounted for the 2014 annual quotas. Management likely would not have access to landings information beyond November 26, 2012, until January 1, 2013. Therefore, we used the most recent available information to allow us to properly analyze the fishery and open the fishery in January.

*Comment 12:* We received a comment asking how the Agency defines the term "equitable fishing opportunities."

*Response:* We define equitable fishing opportunities as fair distribution of the annual quota to fishermen located throughout a region across states consistent with legal requirements including National Standard 4 of the Magnuson-Stevens Act. The adaptive management measures allowing

inseason adjustments to trip limits, in combination with the implementation of the HMS electronic dealer reporting system, which allows for more real-time reporting by dealers, should provide us a greater ability to ensure equitable fishing opportunities for fishermen located in the Atlantic or in the Gulf of Mexico regions. Inseason adjustment of the trip limit will provide us additional control over how slowly or quickly the quota is being taken and provide quota for fishermen throughout a region.

*Comment 13:* NMFS should give the increased sandbar shark research quota to the normal commercial fishery since the research fishery has harvested less than half of the 2012 sandbar shark quota.

*Response:* This comment is beyond the scope of this rulemaking. In part due to the small amount of sandbar shark quota available, in Amendment 2 to the 2006 Consolidated HMS FMP, we established a shark research fishery to maintain time series data for stock assessments and to meet our research objectives. The shark research fishery also allows selected commercial fishermen the opportunity to land and sell sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. Changes to this part of the fishery are outside the scope of this rulemaking. This issue could be analyzed in future rulemakings if deemed appropriate.

### Changes From the Proposed Rule

We made several changes to the proposed rule as described below.

1. We changed the final non-blacknose small coastal and porbeagle shark quotas based on landings updates through November 26, 2012. In the proposed rule, which was based on data available through August 22, 2012, the 2013 adjusted annual quota for the non-blacknose small coastal shark was 332.4 mt dw (732,808 lb dw). Based on updated landings data through November 26, 2012, the non-blacknose small coastal shark fishery was underharvested by 107.6 mt dw. Therefore, the 2013 adjusted annual quota for non-blacknose small coastal shark is 329.2 mt dw (725,645 lb dw) (221.6 mt dw annual base quota + 107.6 mt dw 2012 underharvest = 329.2 mt dw 2013 adjusted annual quota). Landings information beyond November 26, 2012, will not become available to us until January 1, 2013. This final rule used the most recent available information to allow us to properly analyze the fishery and open the fishery in January.

Since overharvests of the porbeagle quota occurred between October 31, 2011, and December 31, 2011, and during the 2012 fishing year, the available 2013 annual quota for porbeagle sharks at the proposed rule stage was thought to be 0.5 mt dw based on the August 22, 2012, shark landings data. Since the proposed rule published, updated landings data for 2011 indicate an additional 0.8 mt dw (1,781 lb dw) landings in excess of the 0.1 mt dw (227 lb dw) of porbeagle sharks that were accounted for as overharvested in the proposed rule. Additionally, as of November 26, 2012, a total of 1.9 mt dw was reported landed in 2012, which is 1.2 mt dw (2,614 lb dw) higher than the 2012 porbeagle shark quota. In total, the combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw). As such, the 2013 adjusted annual commercial porbeagle quota was

exceeded by 0.4 mt dw (874 lb dw) (1.7 mt dw annual base quota – 0.1 mt dw 2011 additional overharvest – 0.8 mt dw 2011 updated landings – 1.2 mt dw 2012 overharvest = – 0.4 mt dw 2013 adjusted annual quota). Thus, we will not allow commercial porbeagle shark landings in 2013, and are planning to reduce the 2014 fishing quota to account for the rest of the overharvest. Details of the resulting changes to the quota can be found in Table 1 and below.

2. We changed the reason for not opening the porbeagle shark quota in 2013. As noted above, in the proposed rule, we stated we would not allow porbeagle shark landings due to the small quota and difficulties in accurately monitoring such a small quota. However, as we state above, since the combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw), we are deducting the overharvested amount

from the 2013 fishing quota, will not allow porbeagle shark landings in 2013, and will reduce the 2014 annual quota to account for this overharvest.

#### *2013 Annual Quotas*

This final rule adjusts the commercial quotas due to over- and/or underharvests in 2011 and 2012 using information up to November 26, 2012. The 2013 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by us after November 26, 2012, will be used to adjust the 2014 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described above in the “Changes from the Proposed Rule” section.

**BILLING CODE 3510–22–P**

Table 1. 2013 Annual Quotas and Opening Dates for the Atlantic Shark Fisheries. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

Species Group	Region	2012 Annual Quota (A)	Preliminary 2012 Landings <sup>1</sup> (B)	Overharvest/ Underharvest (C)	2013 Base Annual Quota (D)	2013 Final Annual Quota (D+C)	Season Opening Dates
Non-Sandbar Large Coastal Sharks	Gulf of Mexico	392.8 (866,063 lb dw)	392.0 (864,173 lb dw)	-	439.5 (968,922 lb dw)	439.5 (968,922 lb dw)	January 1, 2013
	Atlantic	183.2 (403,889 lb dw)	123.3 (271,806 lb dw)	-	188.3 (415,126 lb dw)	188.3 (415,126 lb dw)	
Non-Sandbar Large Coastal Shark Research Quota	No regional quotas	37.5 (82,673 lb dw)	13.1 (28,909 lb dw)	-	50.0 (110,230 lb dw)	50.0 (110,230 lb dw)	
Sandbar Research Quota		87.9 (193,784 lb dw)	33.2 (73,244 lb dw)	-	116.6 (257,056 lb dw)	116.6 (257,056 lb dw)	
Non-Blacknose Small Coastal Sharks		332.4 (732,808 lb dw)	224.8 (495,702 lb dw)	107.6 <sup>2</sup> (237,106 lb dw)	221.6 (488,539 lb dw)	329.2 (725,645 lb dw)	

Blacknose Sharks		19.9 (43,872 lb dw)	14.7 (32,336 lb dw)	-	19.9 (43,872 lb dw)	19.9 (43,872 lb dw)	
Blue Sharks		273.0 (601,856 lb dw)	8.9 (19,627 lb dw)	-	273.0 (601,856 lb dw)	273.0 (601,856 lb dw)	
Porbeagle Sharks		0.7 (1,585 lb dw)	1.9 (4,199 lb dw)	-2.1 <sup>3</sup> (4,622 lb dw)	1.7 (3,748 lb dw)	-0.4 (-874 lb dw)	Closed for 2013
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	127.4 (280,899 lb dw)	-	488.0 (1,075,856 lb dw)	488.0 (1,075,856 lb dw)	January 1, 2013

<sup>1</sup> Landings are from January 1, 2012, until November 26, 2012, and are subject to change.

<sup>2</sup> This adjustment accounts for the underharvest in 2012. The total underharvest is 107.6 mt dw (237,106 lb dw).

<sup>3</sup> This adjustment accounts for overharvest in 2011 and 2012. After the final rule establishing the 2012 quotas, the porbeagle shark quota was overharvested by an additional 0.1 mt dw (227 lb dw). Also, updated landings data for 2011 indicate an additional 0.8 mt dw (1,781 lb dw). As of November 26, 2012, 1.2 mt dw (2,614 lb dw) was harvested in excess of the 2012 porbeagle shark quota. The combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw).

## BILLING CODE 3510-22-C

*Fishing Season Notification for the 2013 Atlantic Commercial Shark Fishing Season*

Based on the seven “Opening Fishing Season” criteria listed in 50 CFR 635.27(b)(1)(ii), the 2013 Atlantic commercial shark fishing season for the non-sandbar large coastal sharks fishery in the Gulf of Mexico and Atlantic, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) fisheries in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2013. The porbeagle shark quota will not open in 2013 due to overharvesting in 2011 and 2012.

Except for porbeagle sharks, all of the shark fisheries will remain open until December 31, 2013, unless we determine that the fishing season landings for sandbar shark, non-sandbar large coastal sharks, blacknose, non-blacknose small coastal sharks, blue sharks, or pelagic sharks (other than porbeagle or blue sharks) have reached, or are projected to reach, 80 percent of the available quota. At that time, consistent with § 635.27(b)(1), we will file for publication with the Office of the Federal Register a closure action for that shark species group and/or region that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until we announce that additional quota, if any, is available, the fishery for the shark species group and for the appropriate non-sandbar large coastal shark region will remain closed, even across fishing years, consistent with § 635.28(b)(2). As a reminder, the blacknose and non-blacknose small coastal shark fisheries will close together when landings reach 80 percent of either quota.

**Classification**

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law. Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator (AA) for Fisheries for NMFS has determined that there is good cause to waive the 30-day delay in effective date for the quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and non-sandbar large coastal shark fisheries in the Atlantic and Gulf of Mexico regions, because such a delay is contrary to the public interest. The

porbeagle shark quota is not subject to this waiver, because this quota will not open in 2013.

This final rule could not be completed sooner due to late-arriving information that was essential to formulating the action and informing the Agency decision-making process. A delay in effectiveness of this rule would cause negative economic impacts on fishermen and diminish the opportunity for the collection of scientific data, which is critical to properly managing the fisheries because needed information would not be available for stock assessments, resulting in negative ecological impacts on the fishery resource itself.

The final shark specifications are established based on dealer landings data that were received as of November 26, 2012. Dealers currently submit bi-weekly landings reports to the Southeast Fisheries Science Center, and late reporting is a common problem that we have taken affirmative steps to address with the implementation of electronic dealer reporting. Any landings received by a dealer between November 15 and 30, 2012, must be reported by December 10, 2012. However, management likely will not have access to that landings information until January 1, 2013, under the existing system (i.e., before implementation of the HMS electronic real-time dealer reporting system). Normal quality control procedures had to be applied to all shark landings data before the amount of over- or under-harvest could be calculated and applied to the 2013 quotas, making a later publication date for this action impracticable.

We have used the most recent available information to allow us to properly analyze the fishery and open the fishery in January. Any necessary adjustments to the landings report between November 27 and December 31 will be used in 2014. A delay in the effectiveness of the quotas in this rule will close the pelagic shark fishery from January 1, 2013, until a date 30 days after the publication date of this rule. Most pelagic shark species are captured incidentally in swordfish and tuna pelagic longline fisheries that will be open in early January. If the quotas in this rule are not made effective as close to January 1, 2013, as possible, fishermen will have to discard, dead or alive, any pelagic sharks that are caught. When the fishery is closed, bycatch and dead discards are likely to increase although the impacts on the resource are difficult to quantify. The rate of discards or bycatch fluctuates based on a variety of factors: Number of sharks captured; number of sharks that can be released

alive; number of more profitable swordfish or tuna species caught; space in the fish hold for these species; and duration of the fishing trip. The opening of the shark fishery allows fishermen to keep sharks that may otherwise have to be discarded dead.

Regarding the shark research fishery, we select a small number of fishermen to participate in the shark research fishery each year for the purpose of providing us biological and catch data to better manage the Atlantic shark fisheries. All the trips and catches in this fishery are monitored with 100 percent observer coverage. Delaying the opening of the shark research fishery would prevent us from maintaining the monthly time-series of wintertime abundance for shark species or collecting vital biological and regional data during this time of year. Not conducting the necessary research trips could prevent us from having information necessary for stock assessments, thereby limiting our ability to properly manage the shark fisheries to the benefit of the fishermen and the shark species, and contrary to the public interest.

Regarding the blacknose shark and non-blacknose small coastal shark fisheries, these fisheries have both a directed component, where fishermen target small coastal sharks, and an incidental component, where the fish are caught and, when the fishery is open, landed by fishermen targeting other species such as Spanish mackerel and bluefish. The incidental fishery catches small coastal shark throughout the year. Delaying this action for 30-days would force all fishermen to discard, dead or alive, any small coastal shark that are caught before this rule becomes effective. Opening the fishery as close to January 1, 2013, as possible ensures that any mortality associated with landings is counted against the commercial quota in real-time. Additionally, a month-long delay in opening the small coastal shark fishery would occur during the time period when fishermen typically target small coastal shark species. Therefore, fishermen would experience negative economic impacts that would continue until the small coastal shark fisheries were opened. Thus, delaying the opening of the small coastal shark fisheries would undermine the intent of the rule and is contrary to the public interest.

Regarding the non-sandbar large coastal shark fishery in the Atlantic and Gulf of Mexico region, we received comments from fishermen and dealers recommending an opening date in January or early February. This change

would allow south Atlantic fishermen to have a winter fishery, and to potentially get a better price per pound. However, delaying the opening of the non-sandbar large coastal shark fishery in the Atlantic and Gulf of Mexico region for an additional 30 days would have negative economic impacts on fishermen because they would not be able to fish for that period. Additionally, many of the primary species targeted in the non-sandbar large coastal shark fisheries are locally available in the southern portion of the Atlantic region in January and a 30-day delay would cause fishermen to miss out entirely on fishing opportunities, and the associated revenue. Therefore, delaying this action for 30 days is contrary to the public interest.

For the reasons described above, the AA finds good cause to waive the 30-day delay in effectiveness of the quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and non-sandbar large coastal shark fisheries in the Atlantic and Gulf of Mexico regions.

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the non-blacknose small coastal shark and porbeagle quotas based on over- and/or underharvests from the previous fishing season. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2013 annual quotas for non-sandbar large coastal sharks, sandbar sharks, non-blacknose small coastal sharks, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on over- and/or underharvests from the previous fishing year, where allowable. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP and its amendments.

In this rulemaking, we expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could

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

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2013 Atlantic Commercial Shark Season Specifications. We did not receive any comments specific to the IRFA. However, we received comments related to the overall economic impacts of the proposed rule (see Comments 1, 2, 3, 4, and 6 above). As described in the response to those comments relating to the season opening dates and consistent with § 635.27(b)(1)(ii), the opening date for the non-sandbar large coastal shark in the Atlantic and Gulf of Mexico regions will be implemented as proposed.

Section 604(a)(3) requires NMFS to provide an estimate of the number of small entities to which the rule would apply. We consider all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a "small" versus "large" business entity in this industry.

The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits and the related industries, including processors, bait houses, and equipment suppliers, all of which we consider to be small entities according to the size standards set by the SBA. As of October 2012, there were a total of approximately 215 directed commercial shark permit holders, 271 incidental commercial shark permit holders, and 92 commercial shark dealers.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance

requirements beyond those already analyzed in Amendments 2 and 3 to the consolidated HMS FMP.

Section 604(a)(5) of the Regulatory Flexibility Act requires NMFS to describe the steps taken to minimize the economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (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 rule consistent with the Magnuson-Stevens Act, we cannot exempt small entities or change the reporting requirements only for small entities. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA for the 2011 quota specifications rule. Thus, in this rulemaking, we adjust quotas established and analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest as allowable, as specified and allowable in existing regulations. The management measures implemented in this rule are within a range previously analyzed in the EA with the 2011 quota specifications rule. Thus, we have limited flexibility to exercise in carrying out the measures and quotas in this rule.

Based on the 2011 ex-vessel price (\$0.53/large coastal shark lb, \$0.75/small coastal shark lb, \$1.35/pelagic lb, and \$11.90/lb for shark fins), the 2013 Atlantic shark commercial baseline quotas could result in revenues of \$5,956,783. The adjustment due to the overharvests in 2011 and 2012 would result in a \$7,290 loss to the fleet in revenues in the porbeagle shark quota. Additional total fleet revenue losses of \$1,700 would occur in 2014. The adjustment due to the underharvests in 2012 would result in a \$318,908 gain in revenues in the non-blacknose small coastal shark fishery. These revenues

are similar to the gross revenues analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP. The FRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that delay the season openings and adjust the trip limits inseason via proposed and final rulemaking, were expected to be minimal. Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA for the 2011 quota specifications rule assumed we would be preparing annual rulemakings and considered the FRFAs in the economic and other analyses at the time.

For this final rule, we reviewed the criteria at § 635.27(b)(1)(ii)(A) through (b)(1)(ii)(E), as in the proposed rule, to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2011 and 2012 quotas were examined for the different species/complexes to determine the effects of the 2013 final

quotas on fishermen across regional fishing area. The potential season length and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, we examined the seasonal variation of the different species/complex and the effects on fishing opportunities. In addition to these criteria, we also considered other relevant factors, such as public comments to and potential management measures in Amendment 5 to the 2006 Consolidated HMS FMP before arriving at the final opening dates for the 2013 Atlantic shark fisheries. For the 2013 fishing season, we are opening the fisheries for non-sandbar large coastal sharks in the Gulf of Mexico and Atlantic, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) on January 1, 2013. The direct and indirect economic impacts will be neutral on a short- and long-term basis, because we do not change the opening dates of these fisheries from the status quo.

We will not be allowing landings of porbeagle shark in 2013. Not allowing porbeagle shark landings could result in short-term direct, minor, adverse economic impacts, as fishermen would have to fish in other fisheries to make up for lost porbeagle shark revenues during the 2013 fishing season. The combined overharvest (2.1 mt dw; 4,622 lb dw) from 2011 and 2012 exceeded the 2013 annual commercial porbeagle quota by 0.4 mt dw (874 lb dw). We will adjust the 2014 annual quota by 0.4 mt dw to account for this overharvest.

The long-term direct and indirect impacts could continue if the porbeagle shark quota is overharvested in future years.

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

Dated: December 19, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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