

■ d. Revising the last sentence of paragraph (l)(2).

The revisions read as follows:

§ 62.23 WYO companies authorized.

(a) * * * Arrangements entered into by WYO companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled “Financial Assistance/Subsidy Arrangement.” Each year, at least six months before the effective date of the “Financial Assistance/Subsidy Arrangement,” FEMA must publish in the **Federal Register** and make available to the WYO companies the terms for subscription or re-subscription to the “Financial Assistance/Subsidy Arrangement.”

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(f) * * * In furtherance of this end, the Federal Insurance Administrator has established “A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program.”

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(i) * * *

(1) WYO companies will adjust claims in accordance with general company standards, guided by NFIP Claims manuals. The Arrangement provides that claim adjustments shall be binding upon the FIA.

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(l) * * *

(2) * * * Participating WYO companies must also maintain evidence of compliance with paragraph (l)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan.

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Appendix A to Part 62 [Removed]

■ 3. Remove Appendix A to Part 62.

Appendix B to Part 62 [Removed]

■ 4. Remove Appendix B to Part 62.

Dated: November 17, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160620545-6999-02]

RIN 0648-XE696

Atlantic Highly Migratory Species; 2017 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 date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the quotas for the 2017 fishing season based on over- and/or underharvests experienced during 2016 and previous fishing seasons. The large coastal shark (LCS) retention limit for directed shark limited access permit holders will start at 45 LCS other than sandbar sharks per trip in the Gulf of Mexico region and at 25 LCS other than sandbar sharks per trip in the Atlantic region. These retention limits for directed shark limited access permit holders may decrease or increase during the year after considering the specified inseason action regulatory criteria to provide, to the extent practicable, equitable fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2017. The 2017 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.

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 are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On August 29, 2016 (81 FR 59167), NMFS published a rule proposing the 2017 opening dates for the Atlantic commercial shark fisheries, commercial shark fishing quotas based on shark landings information reported as of July 15, 2016, and the commercial shark retention limits for each region and sub-region. The August 2016 proposed rule (81 FR 59167; August 29, 2016) for the 2017 season contains details that are not repeated here. The comment period on the proposed rule ended on September 28, 2016.

During the comment period, NMFS received approximately 300 written and oral comments on the proposed rule. Those comments, along with the Agency’s responses, are summarized below. As further detailed in the Response to Comments section below, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups except the blacktip, aggregated LCS, and hammerhead shark management groups in the western Gulf of Mexico sub-region on January 1, 2017, as proposed in the August 29, 2016, proposed rule. The blacktip, aggregated LCS, and hammerhead shark management groups in the western Gulf of Mexico sub-region will open on February 1, 2017, which is a change from the proposed rule. For directed shark limited access permit holders, the blacktip, aggregated LCS, and hammerhead management groups in the entire Gulf of Mexico region will start the fishing season with a retention limit of 45 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing season with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, which is a change from the proposed rule. The retention limit for incidental shark limited access permit

holders for all regions has not changed from the proposed rule and remains at 3 LCS other than sandbar sharks per trip and a combined total of 16 small coastal sharks (SCS) and pelagic sharks, combined per trip consistent with § 635.24(a)(3) and (4).

This final rule serves as notification of the 2017 opening dates for the Atlantic commercial shark fisheries and 2017 quotas, based on shark landings data updated as of October 14, 2016, and considering the “opening commercial fishing season” criteria at § 635.27(b)(3). These criteria consider 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 fishermen participation in past years, impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology target species (e.g., seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings. This action does not establish or change the annual base commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. The base quotas were established under previous actions, and any changes to those base quotas would be performed through a separate action. Rather, this action adjusts the annual commercial quotas for 2017 based on over- and/or underharvests that occurred in 2016 and previous fishing seasons, consistent with existing regulations and establishes the opening dates for the fisheries. Only the adjusted blacktip quota in the Gulf of Mexico region has changed since the proposed rule, based on updated landings information as of October 14, 2016; all other quotas remain the same as proposed.

Response to Comments

NMFS received approximately 300 written and oral comments on the proposed rule from fishermen, dealers, and other interested parties. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648-XE696. NMFS received approximately 10 oral comments through phone conversations or at the HMS Advisory Panel meeting on September 8, 2016. All of the oral comments are represented with the written comments below.

A. LCS Management Group Comments

Comment 1: NMFS received comments regarding the proposed

opening dates for the western Gulf of Mexico LCS fisheries on January 1. Some commenters supported the proposed January 1 opening date for both Gulf of Mexico sub-regions, while other commenters supported a delayed western Gulf of Mexico opening date of February 1 to coincide with the religious holiday of Lent.

Response: After considering public comment, NMFS has determined that changing the opening date to February 1 for the blacktip shark, aggregated LCS, and hammerhead shark management groups in the western Gulf of Mexico region, in combination with the change in retention limit (see discussion in Comment 2), will promote equitable fishing opportunities throughout this region. In reaching this determination, NMFS considered, in particular, the regulatory criterion regarding the length of the season in previous years for the different species and/or management groups and whether fishermen had been able to participate in the fishery in those years (§ 635.27(b)(3)(iii)). In 2016, NMFS opened the season on January 1 and closed it on March 12, 2016 (81 FR 12602; March 10, 2016). The State of Louisiana annually plans a state-water closure from April 1 through June 30. However, once NMFS announced that it was closing the Federal fishery, the State of Louisiana closed its waters as well, 2 weeks before its initially planned closure. Shark fishermen and dealers in the western Gulf of Mexico who were not expecting the closure did not have as much of an opportunity to fish as those few fishermen who fished earlier. Based on 2016 landings data, the majority of the shark landings from the western Gulf of Mexico region did not begin to occur until February, which is when other non-shark fisheries close. If NMFS were to open the fishery on January 1, 2017, it is likely that once again the fishery would need to close earlier than April 1 and a number of fishermen who would otherwise participate in the shark fishery based on traditional expectations would not have the opportunity. Furthermore, based on the review of the landings data, delaying the opening until February 1 will provide more equitable fishing opportunities. Thus, opening the season in February, in combination with the higher retention limit (see change discussion in Comment 2), should give all fishermen in the sub-region an equitable opportunity to harvest the quota before the state-water closure.

Comment 2: NMFS received comments regarding the proposed commercial retention limit for the blacktip, aggregated LCS, and hammerhead management groups in the

western Gulf of Mexico sub-region. Specifically, some commenters from the western Gulf of Mexico sub-region preferred a retention limit of 45 LCS other than sandbar sharks per vessel per trip instead of the proposed 30 LCS other than sandbar sharks per vessel per trip.

Response: NMFS has determined that the default retention limit of 45 LCS other than sandbar sharks per vessel per trip at the start of the season will ensure equitable fishing opportunities in the western Gulf of Mexico sub-region. In the proposed rule, NMFS proposed a lower trip limit (30 LCS other than sandbar sharks per vessel per trip) in order to slow the harvest level due to the potential for a reduced hammerhead shark quota based on the 2016 sub-regional overharvest and given that the Aggregated LCS and hammerhead shark quotas are linked. The lower proposed trip limit was also intended to ensure the management groups remain open until at least April 2017, which is when the State of Louisiana closes state waters to shark fishing and when that State has asked that we close Federal shark fisheries to match state regulations if quotas are limited (see the criteria listed at § 635.27(b)(3)(vii) and 635.24(a)(8)(iii)). With the change in the western Gulf of Mexico LCS fisheries opening date to February 1 (see Comment 1), and because there are no sub-regional blacktip shark, aggregated LCS, and hammerhead shark management group quota adjustments due to overharvest, NMFS no longer believes a lower retention limit is needed to slow the harvest level to ensure the management groups will remain open until at least April 2017. Rather, NMFS will start the commercial retention limit at 45 LCS other than sandbar sharks per vessel per trip as of February 1, 2017, which is the retention limit preferred in public comments. However, NMFS may utilize the inseason retention limit adjustment during the fishing season if needed to ensure the quotas are not harvested too quickly and the management groups remain open at least until April 2017.

Comment 3: NMFS received several comments regarding the proposed opening date and retention limits for the aggregated LCS and hammerhead management groups in the Atlantic region. Regarding the opening dates, some commenters from the southern and northern part of the Atlantic region supported the proposed opening date of January 1 for the aggregated LCS and hammerhead management groups and retention limits. Some of these commenters requested that NMFS modify the retention limits on an

inseason basis to ensure the majority of the quota remains available later in the year since there are no other fisheries open in Florida at the end of the year. Other commenters suggested that NMFS delay the opening of the Atlantic region fishery until the western Gulf of Mexico LCS fisheries closes to ensure better market prices for the shark products. Additionally, comments from some of the fishermen in the southern part of the region preferred lowering the proposed retention limit of 36 to a lower retention limit of three to five LCS other than sandbar sharks per vessel per trip on January 1 with the potential for later inseason retention limit adjustments to ensure the opportunity to fish for sharks in October through December because they participate in other, non-shark fisheries at the beginning of the year and in the shark fisheries later in the year. NMFS also received comments that the LCS retention limit in the Atlantic region should stay at 36 LCS other than sandbar sharks per vessel per trip all season long and that NMFS should not later consider increasing the retention limit to 45 LCS other than sandbar sharks per vessel per trip since the aggregated LCS and hammerhead shark management groups quotas have not increased.

Response: After considering the “opening commercial fishing season” criteria in light of the comments, which reflected general support of the proposed opening date, NMFS has decided to open the fisheries in the Atlantic region on January 1, 2017, as proposed, but with a lower retention limit than proposed. Specifically, on January 1, 2017, the LCS fisheries in the Atlantic region will open with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders. NMFS has determined that a lower retention limit at the start of the season will allow NMFS to more easily and closely monitor the quota and catch rates in the beginning of the year to help ensure equitable fishing opportunities later in the year, while still allowing the majority of quota to be harvested later in the year (see the criteria listed at § 635.24(a)(8)(iii)). NMFS chose 25 LCS other than sandbar sharks per vessel per trip because that is the commercial retention limit for the fishery from October 19, 2016, through the rest of the 2016 fishing season (81 FR 72007; October 19, 2016), and would not cause additional changes in fishing practices, thus minimizing any economic or compliance issues within the fishery. Also, this change seemed a reasonable amount between that of an incidental

level (3 LCS other than sandbar sharks per vessel per trip) and maximum retention levels (between 36 and 55 LCS other than sandbar sharks per vessel per trip). The January 1 opening date, in combination with this reduced retention limit, should allow fishermen in the southern and northern portions of the Atlantic region the opportunity to fish at the beginning of the year, while providing all fishermen in the Atlantic region fishing opportunities later in the year, when the majority of fishing occurs, as the majority of the quota should still be available.

The proposed rule stated that, if it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish, NMFS will consider reducing the commercial retention limit after a portion of the quota is harvested (e.g., 20 percent) and later consider raising the commercial retention limit to 45 LCS other than sandbar sharks per vessel per trip around July 15 to allow greater fishing opportunities later in the year. After considering public comment, NMFS anticipates that it would consider increasing the commercial retention limit around July 15, 2017, as this was the date used for prior season opening dates and was the date NMFS increased the retention limit in 2016 (81 FR 44798; July 11, 2016).

Regarding the request to delay the fishery in the Atlantic region until the shark fisheries in the Gulf of Mexico close, NMFS decided to not delay the LCS fisheries opening date in the Atlantic region until the western Gulf of Mexico fisheries are closed since this would not promote equitable fishing opportunities throughout the Atlantic region. In past fishing seasons, the LCS fisheries in the Gulf of Mexico have closed as early as March 17 or as late as July 17, and never on the same date year to year. Without knowing when the western or eastern Gulf of Mexico LCS fisheries will close, NMFS could not evaluate the “opening commercial fishing season” criteria (§ 635.27(b)(3)) when choosing an opening date for the Atlantic region based on the commenters’ request. Thus, NMFS is not making a change in response to this comment and will open the Atlantic LCS fisheries on January 1. NMFS will consider adjusting the commercial retention limit during the season as appropriate to ensure equitable fishing opportunities.

Regarding the comments that having the LCS fisheries in the Atlantic and western Gulf of Mexico regions open at the same time will impact the market prices, while NMFS considers economic

impacts as required, market prices are not one of the criteria NMFS evaluates when choosing an opening date. However, in the past, the LCS fisheries in the Atlantic and Gulf of Mexico regions have been open at the same time, and during those times, NMFS has noticed impacts on the ex-vessel prices in either region. For example, in 2016, when both regional LCS fisheries were open in January, the ex-vessel price for Atlantic aggregated LCS was at its lowest when compared to the rest of the year, but was higher than the western Gulf of Mexico aggregated LCS ex-vessel prices.

Comment 4: NMFS received comments regarding the overharvest of the western Gulf of Mexico sub-regional hammerhead shark quota. Some commenters were concerned that NMFS did not propose to adjust the western Gulf of Mexico sub-regional hammerhead shark quota even though the quota was overharvested by 41 percent in 2016.

Response: Based on landings through October 14, 2016, NMFS is not adjusting the western Gulf of Mexico sub-regional hammerhead shark quota in this final rule. As stated in the proposed rule, even though the reported landings in the western Gulf of Mexico exceeded the 2016 sub-regional quota, the total regional Gulf of Mexico reported landings have not exceeded the 2016 regional quota as of October 14, 2016. The regulations implemented through Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), provide that sub-regional quota overages (e.g., western Gulf of Mexico sub-region) are only deducted from the next year’s quota if the total regional quota (e.g., Gulf of Mexico region) is exceeded. Thus, at this time, because the overall regional quota has not been overharvested, NMFS is not adjusting the western Gulf of Mexico sub-region quota to account for the overharvest. However, because the eastern Gulf of Mexico sub-region remains open at the time of this final rulemaking and quota is still available in that sub-region, NMFS expects that landings will continue to occur. If landings in the eastern Gulf of Mexico sub-region exceed 8.5 mt dw (18,594 lb dw) (i.e., the remainder of the total regional Gulf of Mexico quota), then NMFS will take additional action to reduce the western Gulf of Mexico sub-region quota to account for overharvests in 2018.

B. General Comments

Comment 5: NMFS received some comments in support of the proposed rule regulating commercial shark fishing, while other commenters

opposed the regulations that allow for increased adjusted quotas as a result of underharvest. Specifically, those in opposition were concerned with the accuracy and the potential for under reporting of shark landings.

Response: As discussed in the proposed rule, shark stocks or management groups that are not overfished and have no overfishing occurring may have any underharvest carried over in the following year, up to 50 percent of the base quota (81 FR 59167; August 29, 2016). Since the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions have been determined not to be overfished and to have no overfishing occurring, available underharvest from the 2016 fishing season for these management groups may be applied to the respective 2017 quotas to the extent allowable, and NMFS is doing so in this final rule.

All commercial shark landings and quotas are monitored with the HMS electronic dealer reporting system, which has been in use since January 1, 2013. This improvement in commercial quota monitoring technology and the weekly, as opposed to biweekly, reporting on paper provides more information on each dealer transaction, including a requirement of reporting all shark landings to the species level, and ensures that quotas are not exceeded. Overall, this improvement helps with monitoring of commercial landings of all shark species and with closing management groups in a more efficient and timely manner.

Comment 6: NMFS received approximately 280 comments in support of more conservative shark management measures by, for example, implementing lower commercial shark fishing quotas or prohibiting all commercial shark fishing to stop shark finning.

Response: These comments are outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. The quotas and general management measures were established in previous rulemakings, which were the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected on 73 FR 40658; July 15, 2008), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to

the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015).

Management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while also rebuilding overfished shark stocks and preventing overfishing. NMFS currently is considering conservation and management to rebuild the dusky shark stock and prevent overfishing in Amendment 5b to the 2006 Consolidated HMS FMP (81 FR 71672; October 18, 2016). The comment period for that rulemaking ends on December 22, 2016.

Comment 7: NMFS received a comment suggesting that we change the start of the fishing year for all shark species from January to September.

Response: This comment is outside the scope of this rulemaking because the fishing year is defined in the regulations as January 1 to December 31. The rule did not reanalyze the overall start date of the shark fishing year, which was established in the 2006 Consolidated HMS FMP.

Comment 8: NMFS received a comment suggesting that we not implement these regulations until such time that adequate shark research can be accomplished.

Response: Management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while preventing overfishing and to rebuild overfished shark stocks. Domestic shark stock assessments are generally conducted through the Southeast Data, Assessment, and Review (SEDAR) process, in which NMFS participates. This process is also used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils and is designed to provide transparency throughout the stock assessment process. Generally, SEDAR stock assessments have three stages (data availability, assessment models, and peer review). Meetings in these stages may be face-to-face or by webinar or conference call. All meetings are open to the public. All reports from all stages of the process are available online at <http://www.sefsc.noaa.gov/sedar/>. The SEDAR process can take several months to over a year depending on whether the species has been assessed before, if a species needs a full review of a previous assessment, or if the assessment is more of an update to previous assessments. Because the process takes so long and because of the large number of shark stocks that need to be assessed, there are times where we have reviewed stock assessments that were completed and peer reviewed outside of the SEDAR process and have determined the assessment to be

appropriate for management. We have done that for both porbeagle and scalloped hammerhead sharks. Additionally, there are some shark stocks that are assessed internationally via the process established by ICCAT. In all cases, we ensure the data and models used are appropriate, all sources of mortality are considered, and that the end result constitutes the best available science, consistent with National Standard 2 and other requirements.

Comment 9: NMFS received comments asserting that sharks are worth more to eco-tourism than commercial fishermen.

Response: In adjusting quotas for the 2017 shark seasons based on over- and underharvests from the previous years and setting opening dates and commercial retention limits for the 2017 shark seasons, NMFS considers specific regulatory criteria, including 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 fishermen participation in past years, impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology target species (e.g., seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings. NMFS does not consider the economic impacts of sharks to eco-tourism compared to commercial shark fishing. Such impacts are appropriately considered when establishing the base quotas.

Comment 10: NMFS received a comment expressing concern about the high mercury levels in shark meat. Specifically, the commenter is concerned that NMFS still allows fishing for sharks even though the health impacts are well known about high levels of mercury in shark meat.

Response: This comment is outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons.

Comment 11: NMFS received comments regarding the stock status of hammerhead shark and other shark species. Some commenters requested more protective management for hammerhead sharks and other shark species due to their threatened or endangered stock status listing by the International Union for the Conservation of Nature (IUCN).

Response: This comment is outside the scope of this rulemaking, because

the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. NMFS published Amendment 5a on July 3, 2013 (78 FR 40318) which implemented quotas for the hammerhead shark complex, including scalloped hammerhead sharks, linked the hammerhead shark quota to the aggregated LCS quota, and established a hammerhead shark recreational minimum size limit to reduce fishing mortality and rebuild the scalloped hammerhead stock. That rulemaking addressed this issue and it is not further addressed in this rulemaking.

Comment 12: NMFS received a comment requesting that NMFS implement individual fishing quotas for each of the three species of hammerhead sharks within the hammerhead shark management group.

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. The current hammerhead shark quota was established in Amendment 5a to the 2006 Consolidated HMS FMP based on the best available science (78 FR 40318; July 3, 2013). In that rulemaking, NMFS decided to include all hammerhead shark landings in one quota because the three hammerhead sharks are difficult to differentiate, with the most evident differences being small differences in the shape of the front of the head. Once the head has been removed and the carcass has been dressed, species identification becomes more difficult. NMFS intends to conduct stock assessments on scalloped, smooth, and great hammerhead sharks in the future, as soon as practicable given timing, resource limits, and data availability and NMFS could consider individual fishing quotas for each of the three species of hammerhead sharks in the future if warranted and supportable.

Comment 13: NMFS received comments regarding state-water landings and discards of sharks with no observer coverage and fewer requirements and training than Federal fishermen. The commenters supported the need to have consistency between state, Council, and Federal regulations.

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from

the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. Many states allow landings of sharks by state-permitted fishermen. However, these fishermen must comply with the state fishing regulations, which in some cases are the same as Federal regulations or, in other cases, are more restrictive. NMFS will continue to work closely with the states to ensure consistent regulations for shark fishing, to the extent practicable.

Comment 14: NMFS received comments that all quota linkages should be removed since it has contributed to underfishing for the past several years.

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. The current LCS and SCS quota linkages were implemented in the final rules for Amendment 5a and Amendment 6 to the 2006 Consolidated HMS FMP and NMFS is citing the rationale provided in the previous rulemakings. The issue of removing quota linkages is not being re-considered or re-addressed in this rulemaking now.

As explained in those rulemakings, quota linkages were created for shark species that are in separate management groups, but that have the potential to be caught together on the same shark fishing trip (e.g. aggregated LCS and hammerhead sharks). If the quota for one management group has been harvested and the management group is closed, that species could still be caught as bycatch by fishermen targeting other shark species, possibly resulting in excess mortality and negating some of the conservation benefit of management group closures. In addition, shark quota linkages were put into place as part of the rebuilding plans for shark species that are overfished in order to reduce excess mortality of the overfished species during commercial fishing for other shark species. Thus, NMFS closes the linked shark management groups together.

Comment 15: NMFS received comments requesting that we consider increasing the Federal fishery closure trigger for the shark management groups from 80 percent to greater than 90 percent to prevent quota underharvests and to promote harvesting quotas fully for the greater profitability for fishermen and for increased access to shark products for consumers.

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to

adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. The 80-percent Federal fishery closure trigger for the shark management groups was implemented in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP and NMFS is citing the rationale provided in the previous rulemakings. The issue of changing this closure trigger is not being re-considered or re-addressed in this rulemaking now.

As explained in Amendment 2, NMFS' goal is to allow shark fishermen to harvest the full quota without exceeding it in order to maximize economic benefits to stakeholders while achieving conservation goals, including preventing overfishing and rebuilding overfished stocks. Based on past experiences with monitoring quotas for HMS species, the 80-percent threshold works well, allowing for all or almost all of the quota to be harvested without exceeding the quota. As such, NMFS expects that, in general, the quotas would be harvested between the time that the 80-percent threshold is reached and the time that the season actually closes. In addition, NMFS must also account for late reporting by shark dealers even with the improved electronic dealer system. Closing shark fisheries when 80 percent of quotas have been harvested provides a buffer to include landings received after the reporting deadline in an attempt to avoid overharvests.

Comment 16: NMFS received a comment to present all shark landings by species in addition to management group, particularly for hammerhead sharks given the listing of hammerhead sharks on Appendix II of the Convention on International Trade in Endangered Species (CITES).

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to adjust quotas for the 2017 shark seasons based on over- and underharvests from the previous years and set opening dates and commercial retention limits for the 2017 shark seasons. NMFS presents the shark landings by species and region in the annual Stock Assessment and Fisheries Evaluation (SAFE) Report that is released in December of each year, consistent with confidentiality requirements.

CITES is an international treaty designed to control and regulate international trade of certain animal and plant species that are now or potentially may be threatened with extinction and are affected by trade. Some shark

species (e.g., oceanic whitetip sharks, great, scalloped, and smooth hammerhead sharks, and porbeagle sharks) are now listed on Appendix II, which imposes strict trade monitoring and could impact the ability of dealers to sell these species to international costumers. Additionally, starting in October 2017, silky and thresher sharks will be listed on Appendix II. Due to this listing, any U.S. fishermen or dealer who wishes to export these shark products will have to obtain a CITES permit in order to export or re-export these products.

Changes From the Proposed Rule

NMFS made four changes to the proposed rule, as described below.

1. NMFS changed the final blacktip shark quota in the western Gulf of Mexico sub-region from the 331.8 mt dw (730,803 lb dw) in the proposed rule to 331.6 mt dw (730,425 lb dw), a difference of 378 lb dw, based on updated landings through October 14, 2016. The 2017 shark season proposed rule (81 FR 59167; August 29, 2016) was based on dealer reports available through July 15, 2016. NMFS explained in the proposed rule that it would adjust the proposed quotas based on dealer reports as of mid-October or mid-November 2015. Based on updated landings data through October 14, 2016, the overall available adjustment amount for the blacktip shark management group in the western Gulf of Mexico sub-region was 100.1 mt dw (220,164 lb dw), resulting in a small reduction in the amount of quota that could be carried over to 2017. Landings information beyond October 14, 2016, was not available while NMFS was writing this rule. Any landings between October 14 and December 31, 2016, will

be accounted for in the 2018 shark fisheries quotas, as appropriate.
 2. NMFS changed the retention limit for directed shark limited access permit holders at the start of the commercial shark fishing season for the aggregated LCS and hammerhead shark management groups in the Atlantic region from 36 LCS other than sandbar sharks per vessel per trip to 25 LCS other than sandbar sharks per vessel per trip. As explained above, NMFS changed the retention limit after considering the “opening commercial fishing season” criteria (§ 635.27(b)(3)), public comment, and the 2016 landings data in order to promote equitable fishing opportunities throughout the Atlantic region.

3. NMFS changed the retention limit for directed shark limited access permit holders for the aggregated LCS, blacktip shark, and hammerhead shark management groups in the western Gulf of Mexico sub-region from 30 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. As explained above, NMFS changed the retention limit after considering the “opening commercial fishing season” criteria (§ 635.27(b)(3)), public comment, and the 2016 landings data in order to promote equitable fishing opportunities throughout the Gulf of Mexico region.

4. NMFS changed the fishing season opening date for the western Gulf of Mexico from January 1, to February 1, 2017. NMFS changed the opening date based upon public comments that indicated a preference for a delayed opening when market conditions would be more optimal in that sub-region.

2017 Annual Quotas

This final rule adjusts the 2017 commercial quotas due to over- and/or

underharvests in 2016 and previous fishing seasons, based on landings data through October 14, 2016. Based on overharvest in 2012 and 2015, NMFS had previously reduced the Atlantic blacknose shark base annual quota by 1.5 mt dw (3,268 lb dw) in 2016, 2017, and 2018. However, in 2016, the Atlantic blacknose shark quota was underharvested by 3.5 mt dw (7,725 lb dw). In the proposed rule for this action, NMFS noted that preliminary reported landings of blacknose sharks were at 78 percent (12.2 mt dw) of their 2016 quota levels (15.7 mt dw) in the Atlantic region. Given this large underharvest, NMFS notified the public that rather than spread out the previous years’ overharvests over several years, it proposed to use the 2016 underharvest to cover the remaining 2012 and 2015 overharvest. Since NMFS received no comments on this proposal, 3.0 mt dw of the 2016 quota will be used to account for the past years’ overharvests. An underharvest of 0.5 mt dw occurs in 2016 after this accounting but, pursuant to § 635.27(b)(2), NMFS cannot carry forward underharvest because blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic region. Therefore, the 2017 Atlantic blacknose shark quota is equal to the annual base quota without adjustment.

The 2017 annual quotas by species and management group are summarized in Table 1. Any dealer reports that are received by NMFS after October 14, 2016, will be used to adjust the 2018 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the “Changes from the Proposed Rule” section.

TABLE 1—ANNUAL QUOTAS FOR THE ATLANTIC SHARK FISHERIES

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw]

Region or sub-region	Management group	2016 annual quota (A)	Preliminary 2016 landings ¹ (B)	Adjustments ² (C)	2017 Base annual quota (D)	2017 Final annual quota (D+C)
Eastern Gulf of Mexico.	Blacktip Sharks ...	28.9 mt dw (63,189 lb dw).	18.7 mt dw (41,116 lb dw).	10.9 mt dw (23,920 lb dw) ³ .	25.1 mt dw (55,439 lb dw).	36.0 mt dw (79,359 lb dw)
	Aggregated Large Coastal Sharks.	85.5 mt dw (188,593 lb dw).	54.2 mt dw (119,592 lb dw).	.....	85.5 mt dw (188,593 lb dw).	85.5 mt dw (188,593 lb dw)
	Hammerhead Sharks.	13.4 mt dw (29,421 lb dw).	6.8 mt dw (14,955 lb dw).	.....	13.4 mt dw (29,421 lb dw).	13.4 mt dw (29,421 lb dw)
Western Gulf of Mexico.	Blacktip Sharks ...	266.5 mt dw (587,396 lb dw).	165.7 mt dw (365,385 lb dw).	100.1 mt dw (220,164 lb dw) ³ .	231.5 mt dw (510,261 lb dw).	331.6 mt dw (730,425 lb dw)
	Aggregated Large Coastal Sharks.	72.0 mt dw (158,724 lb dw).	66.1 mt dw (145,791 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).	16.8 mt dw (37,128 lb dw).	.....	11.9 mt dw (23,301 lb dw).	11.9 mt dw (23,301 lb dw)

TABLE 1—ANNUAL QUOTAS FOR THE ATLANTIC SHARK FISHERIES—Continued

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw]

Region or sub-region	Management group	2016 annual quota (A)	Preliminary 2016 landings ¹ (B)	Adjustments ² (C)	2017 Base annual quota (D)	2017 Final annual quota (D+C)
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	107.3 mt dw (236,603 lb dw).	60.6 mt dw (133,648 lb dw).	.....	112.6 mt dw (248,215 lb dw).	112.6 mt dw (248,215 lb dw)
	Smoothhound Sharks.	336.4 mt dw (741,627).	0 mt dw (0 lb dw)	168.2 mt dw (370,814 lb dw).	336.4 mt dw (741,627).	504.6 mt dw (1,112,441 lb dw)
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt dw (372,552 lb dw).	113.2 mt dw (249,661 lb dw).	.....	168.9 mt dw (372,552 lb dw).	168.9 mt dw (372,552 lb dw)
	Hammerhead Sharks.	27.1 mt dw (59,736 lb dw).	12.5 mt dw (27,542 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).	50.7 mt dw (111,793 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).	15.7 mt dw (34,653 lb dw).	12.2 mt dw (26,928 lb dw).	.....	17.2 mt dw (37,921 lb dw).	17.2 mt dw (37,921 lb dw) ⁴
No regional quotas	Smoothhound Sharks.	1,201.7 mt dw (2,647,725 lb dw).	287.4 mt dw (633,605 lb dw).	600.9 mt dw (1,323,862 lb dw).	1,201.7 mt dw (2,647,725 lb dw).	1,802.6 mt dw (3,971,587 lb dw)
	Non-Sandbar LCS Research.	50.0 mt dw (110,230 lb dw).	14.6 mt dw (32,167 lb dw).	.....	50.0 mt dw (110,230 lb dw).	50.0 mt dw (110,230 lb dw)
	Sandbar Shark Research.	90.7 mt dw (199,943 lb dw).	41.5 mt dw (91,568 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).	< 1.0 mt dw (< 2,000 lb dw).	.....	273.0 mt dw (601,856 lb dw).	273.0 mt dw (601,856 lb dw)
	Porbeagle Sharks	0 mt dw (0 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).	77.4 mt dw (170,675 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, 2016, through October 14, 2016, 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 quota.

³ This adjustment accounts for underharvest in 2016. This final rule would increase the overall Gulf of Mexico blacktip shark quota by 111.0 mt dw (244,084 lb dw). Since any underharvest would be divided based on the sub-regional quota percentage split, 10.9 mt dw (9.8 percent of the overall regional quota adjustment) is being added to the eastern Gulf of Mexico blacktip shark base quota, and 100.1 mt dw (90.2 percent of the overall regional quota adjustment) is being added to the western Gulf of Mexico blacktip shark base quota.

⁴ Based on overharvest in 2012 and 2015, NMFS had previously reduced the Atlantic blacknose shark base annual quota by 1.5 mt dw (3,268 lb dw) in 2016, 2017, and 2018. However, in 2016, the Atlantic blacknose shark quota was underharvested by 3.5 mt dw (7,725 lb dw). NMFS will use the 2016 underharvest to cover the remaining overharvest amount of 3.0 mt dw (6,536 lb dw). Thus the 2017 Atlantic blacknose shark quota will be equal to base annual quota.

Fishing Season Notification for the 2017 Atlantic Commercial Shark Fishing Seasons

Based on the seven “opening commercial fishing season” criteria listed in § 635.27(b)(3), NMFS is opening the 2016 Atlantic commercial shark fishing seasons on January 1, 2017, except for the aggregated LCS, blacktip shark, and hammerhead shark management groups in the western Gulf of Mexico sub-region which will open on February 1, 2017 (Table 2).

Regarding the LCS retention limit, as shown in Table 2, for directed shark limited access permit holders, the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark management groups will start the commercial fishing season at 45 LCS

other than sandbar sharks per vessel per trip, and the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing season at 25 LCS other than sandbar sharks per vessel per trip. In the Atlantic region, as described above, NMFS will closely monitor the quota at the beginning of the year. If it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish (e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS will consider reducing the commercial retention limit, then consider raising it later in the season. Based on prior years’ fishing activity, to allow greater fishing opportunities later in the year, NMFS anticipates

considering raising the commercial retention limit to the default limit of 36 LCS other than sandbar sharks per vessel per trip around July 15, 2017. Any retention limit reductions and increases will be based on consideration of the trip limit adjustment criteria at 50 CFR 635.24(a)(8).

All of the shark management groups will remain open until December 31, 2017, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota; however, consistent with § 635.28(b)(5), NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. Additionally,

NMFS has previously established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown

in Table 2. NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group including any linked quotas, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure

until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP

Region or sub-region	Management group	Quota linkages	Season opening dates	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are available)
Eastern Gulf of Mexico.	Blacktip Sharks	Not Linked	January 1, 2017	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks. Hammerhead Sharks. Blacktip Sharks	Linked.		
Western Gulf of Mexico.	Aggregated Large Coastal Sharks. Hammerhead Sharks. Blacktip Sharks	Not Linked	February 1, 2017	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks. Hammerhead Sharks.	Linked.		
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2017	N/A
Atlantic	Aggregated Large Coastal Sharks.	Linked	January 1, 2017	25 LCS other than sandbar sharks per vessel per trip. [If quota is landed quickly (e.g., if approximately 20 percent of quota is caught at the beginning of the year), NMFS anticipates considering an inseason reduction (e.g., to 3 or fewer LCS other than sandbar sharks per vessel per trip), and later considering an inseason increase to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2017]
	Hammerhead Sharks. Non-Blacknose Small Coastal Sharks. Blacknose Sharks (South of 34 °N. lat. only).	Linked (South of 34 °N. lat. only).	January 1, 2017	
No regional quotas	Non-Sandbar LCS Research. Sandbar Shark Research.	Linked	January 1, 2017	N/A
	Blue Sharks Porbeagle Sharks. Pelagic Sharks Other Than Porbeagle or Blue.	Not Linked	January 1, 2017	N/A

Classification

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

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the Gulf of Mexico blacktip shark, Gulf of Mexico smoothhound shark, and Atlantic smoothhound shark

management group quotas based on underharvests from the previous fishing season(s). The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the RFA requires an explanation of the purpose of the rulemaking. The purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to establish the 2017 Atlantic commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the Atlantic

commercial shark fisheries would close on December 31, 2016, and would not reopen until another action was taken. This final rule will be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening

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

Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2017 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS received comments related to the overall economic impacts of the proposed rule, and those comments and NMFS' assessment of and response to them are summarized above (see Comments 3 and 9 above). As described in the responses to those comments relating to the season opening dates, consistent with § 635.27(b)(3), the opening date for the all of the commercial shark fisheries will be implemented as proposed (January 1, 2017), except for the western Gulf of Mexico sub-region, which will open on February 1, 2017.

Section 604(a)(4) of the RFA requires NMFS to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes (80 FR 81194, December 29, 2015). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As of October 2016, the proposed rule would apply to the approximately 223 directed commercial shark permit holders, 271 incidental commercial shark permit holders, 103 smoothhound shark permit holders, and 111 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 494 directed and incidental commercial shark permit holders, only 40 permit holders landed sharks in the Gulf of Mexico region and only 99 landed sharks in the Atlantic region. Of the 103 smoothhound shark permit holders, only 59 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.

Section 604(a)(5) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments.

Section 604(a)(6) of the RFA requires NMFS to describe the steps taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule on small entities. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt

small entities or change the reporting requirements only for small entities because all the entities affected are small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) for the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this rulemaking, NMFS adjusted the base quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close on December 31 of each year, or when NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota, and do not open until NMFS takes action, such as this rulemaking to re-open the fisheries. Thus, not implementing these management measures would negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2015 ex-vessel price, fully harvesting the unadjusted 2017 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$8,265,467 (see Table 3). For the Gulf of Mexico blacktip shark management group, NMFS will increase the baseline sub-regional quotas due to the underharvests in 2016. The increase for the eastern Gulf of Mexico blacktip shark management group would result in a \$24,099 gain in total revenues for fishermen in that sub-region, while the increase for the western Gulf of Mexico blacktip shark management group would result in a \$221,815 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS will

increase the baseline quotas due to the underharvest in 2016. This would cause a potential gain in revenue of \$270,323 for the fleet in the Gulf of Mexico region and a potential gain in revenue of \$965,095 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In

the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

TABLE 3—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2015

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Gulf of Mexico	Blacktip Shark	\$0.51	\$9.95
	Aggregated LCS	0.55	9.96
	Hammerhead Shark	0.61	11.98
	Non-Blacknose SCS	0.35	6.72
	Smoothhound Shark*	0.65	1.58
Atlantic	Aggregated LCS	0.80	4.73
	Hammerhead Shark	0.65	10.25
	Non-Blacknose SCS	0.73	4.36
	Blacknose Shark	0.97	4.00
	Smoothhound Shark*	0.65	1.58
No Region	Shark Research Fishery (Aggregated LCS)	0.68	9.24
	Shark Research Fishery (Sandbar only)	0.76	10.62
	Blue shark	0.60	2.93
	Porbeagle shark	1.50	2.93
	Other Pelagic sharks	1.50	2.93

* Ex-vessel prices for smoothhound sharks come from HMS dealers who submitted landings data voluntarily before it was a requirement on March 15, 2016.

For this final rule, NMFS reviewed the “opening commercial fishing season” criteria at § 635.27(b)(3)(i) through (vii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2016 and previous fishing season quotas were examined for the different species/complexes to determine the effects of the 2017 final quotas on fishermen across regional fishing areas. The potential season lengths and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered other relevant factors, such as recent landings data and public comments, before arriving at the final opening dates for the 2017 Atlantic shark management groups. For the 2017 fishing season, NMFS is opening the shark management groups on January 1, 2017, except for the aggregated LCS, blacktip shark, and hammerhead shark management groups in the western Gulf of Mexico sub-region, which will open on February 1, 2017. The direct and indirect economic impacts will be neutral on a short- and long-term basis

for the eastern Gulf of Mexico blacktip shark, eastern Gulf of Mexico aggregated LCS, eastern Gulf of Mexico hammerhead shark, Gulf of Mexico non-blacknose shark SCS, Atlantic non-blacknose shark SCS, Atlantic blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, because NMFS did not change the opening dates of these fisheries from the status quo. For the aggregated LCS, blacktip shark, and hammerhead shark management groups in the western Gulf of Mexico sub-region, the delayed opening to February 1, 2017, anticipates minor positive short- and long-term economic impacts, because, according to public comments, ex-vessel prices for sharks are expected to be higher at that time in that sub-region.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1 will result in short-term, direct, moderate, beneficial economic impacts, as fishermen and dealers in the southern portion of the Atlantic region will be able to fish for and sell aggregated LCS and hammerhead sharks starting in January. These fishermen will be able to fish earlier in the 2017 fishing season compared to the 2010, 2011, 2012, 2014, and 2015 fishing seasons, which did not start until June or July. Based on public

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

In the northern portion of the Atlantic region, a January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure quota is available later in the season, will have direct, minor, beneficial economic impacts in the short-term for fishermen as they will potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen will be able to target or retain aggregated LCS while targeting non-blacknose SCS. There will be indirect, minor, beneficial economic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this region as they will also have access to aggregated LCS products earlier than in past seasons. Thus, opening the aggregated LCS and hammerhead shark management groups in January and using inseason trip limit adjustments to ensure the fishery is open later in the year in 2017 will cause beneficial cumulative economic impacts, because it allows for a more equitable distribution of the quotas among constituents in this region, consistent with the 2006 Consolidated HMS FMP and its amendments.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a listserv summarizing fishery information and regulations for Atlantic shark fisheries for 2017. This listserv also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

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

Dated: November 17, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160531477-6999-02]

RIN 0648-BG10

Atlantic Highly Migratory Species; Removal of Vessel Upgrade Restrictions for Swordfish Directed Limited Access and Atlantic Tunas Longline Category Permits

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

ACTION: Final rule.

SUMMARY: This final rule removes vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category limited access permits (LAPs). Currently, regulations allow for upgrading vessels or transferring permits to another vessel only if the vessel upgrade or permit transfer results in an increase of no more than 35 percent in length overall, gross registered tonnage, and net tonnage, as measured relative to the baseline vessel specifications (*i.e.*, the specifications of the vessel first issued a Highly Migratory Species (HMS) LAP). This final rule eliminates these restrictions on upgrades and permit transfers. This action affects vessel owners issued swordfish directed and Atlantic tunas Longline category LAPs and fishing in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on December 23, 2016.

ADDRESSES: Other documents relevant to this final rule are available from the Atlantic HMS Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee by phone at 202-670-6637 or Rick Pearson by phone at 727-824-5399.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202-670-6637 or Rick Pearson by phone at 727-824-5399.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish and tuna fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801

et seq., and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Background

This final rule removes vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs. A brief summary of the background of this final rule is provided below. The details were described in the proposed rule for this action (81 FR 48731, July 26, 2016) and are not repeated here. Additional information regarding Atlantic HMS management can be found in the 2006 Consolidated Atlantic HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>. The comments received on the proposed rule for this action, and NMFS' responses to those comments, are summarized below in the section labeled “Response to Comments.”

In 1999, NMFS issued initial LAPs in the Atlantic swordfish and shark fisheries (64 FR 29090, March 28, 1999). To be eligible to fish with pelagic longline gear, a vessel had to be issued a swordfish directed or incidental LAP, a shark directed or incidental LAP, and an Atlantic tunas Longline category permit. After initial issuance of these permits, no new permits were issued by NMFS, but permits could be transferred to other vessels. Swordfish and shark directed LAPs included restrictions on vessel upgrading and permit transfers. Vessel upgrades and permit transfers were allowed only if the upgrade or permit transfer to another vessel did not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage relative to the respective specifications of the first vessel issued the initial LAP (the baseline vessel). Additionally, vessels could only be upgraded one time. These vessel upgrading restrictions were put into place to limit capacity in the swordfish fishery. Incidental LAPs for these species did not have vessel upgrading restrictions. Upgrading restrictions for Atlantic tunas Longline category LAPs were not explicitly implemented in the 1999 rule. However, as a practical effect, Atlantic tunas Longline category LAPs were limited by the same upgrading restrictions as the swordfish and shark