

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635****[Docket No. 211108–0227; RTID 0648–XC106]****Atlantic Highly Migratory Species; Commercial Shark Quota Transfer**

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS is transferring 11.3 metric tons (mt) dressed weight (dw) of aggregated large coastal shark (LCS) quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region, and 6.8 mt dw of western Gulf of Mexico hammerhead shark sub-region quota to the Atlantic hammerhead shark region quota for the remainder of the 2022 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason quota transfers and affects commercial Atlantic shark permitted vessels and dealers.

DATES: Effective June 28, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck, Ann Williamson, or Karyl Brewster-Geisz, at 301–427–8503.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Section 635.27(b) describes the baseline quotas for different shark management groups and regions, describes the process for annual adjustments to those baseline quotas, and includes the criteria to consider for inseason quota transfers between regions and sub-regions. Section 635.28(b) describes quotas that are linked for management purposes.

On November 12, 2021 (86 FR 62737), NMFS announced the 2022 commercial western Gulf of Mexico aggregated LCS (72.0 mt dw; 158,724 lb dw) and hammerhead shark (11.9 mt dw; 26,301 lb dw) sub-regional quotas, eastern Gulf of Mexico aggregated LCS (85.5 mt dw; 188,593 lb dw) sub-regional quota, and Atlantic hammerhead shark (27.1 mt

dw; 59,736 lb dw) regional quota. Based on dealer reports received as of May 20, 2022, NMFS estimates that in the western Gulf of Mexico sub-region, 65.7 mt (144,732 lb) or 91 percent of the aggregated LCS sub-regional quota and less than 2.0 mt dw (less than 4,400 lb dw) or less than 17 percent of the hammerhead sub-regional quota has been landed. In the eastern Gulf of Mexico sub-region, 31.1 mt dw (68,582 lb dw) or 36 percent of the aggregated LCS sub-regional quota has been landed. In the Atlantic region, 18.5 mt dw (40,874 lb dw) or 68 percent of the hammerhead shark regional quota has been landed.

Regulations provide that quotas for certain shark species and/or management groups are linked, including Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; and western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS (see § 635.28(b)(4)). Regulations further provide that for each pair of linked species and/or management groups, if landings reach, or are projected to reach, a threshold of 80 percent of the available quota and are also projected to reach 100 percent of the available quota before the end of the 2022 fishing year, NMFS will close the relevant shark management groups (see § 635.28(b)(3)). At this time, without further action, NMFS projects that both the western Gulf of Mexico aggregated LCS and Atlantic hammerhead shark management group quotas could be reached by August 15, 2022, and September 15, 2022, respectively. If that happens, NMFS would need to close the western Gulf of Mexico aggregated LCS group and the linked western Gulf of Mexico hammerhead group, as well as the Atlantic aggregated LCS and the linked Atlantic hammerhead management groups.

Under § 635.27(b)(2), NMFS may transfer quota inseason between regions or sub-regions. Such transfers may occur for species or management groups that are the same in both regions or sub-regions and the quota is split for management purposes and not as a result of a stock assessment. As described at § 635.27(b)(1)(ii), the sub-regional splits for the quotas in the Gulf of Mexico region were done for management purposes. Therefore, NMFS may transfer aggregated LCS quota between Gulf of Mexico sub-regions. As described at § 635.27(b)(1)(iii)(C), the regional and sub-regional splits for the overall hammerhead quota were done for

management purposes. Therefore, NMFS may transfer hammerhead quota between the Atlantic and Gulf of Mexico regions. Before making any such transfer, NMFS must consider the following determination criteria in § 635.27(b)(2)(iii), and other relevant factors: (1) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status of the respective shark species and/or management group; (2) the catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; (3) the projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year; (4) effects of the adjustment on the status of all shark species; (5) effects of the adjustment on accomplishing the objectives of the fishery management plan; (6) variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group; (7) effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota; and/or (8) review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

NMFS has determined that, for the Gulf of Mexico aggregated LCS sub-regional landings, the eastern Gulf of Mexico aggregated LCS sub-regional landings are not projected to reach their quota by the end of the year and that the western Gulf of Mexico aggregated LCS sub-regional quota has exceeded 80 percent (93 percent) of their quota and are projected to reach their quota by the end of the year. Therefore, NMFS has considered the inseason quota transfer criteria, documented in the Quota Transfer section below, and determined that a transfer from the sub-regional eastern Gulf of Mexico aggregated LCS quota to the western Gulf of Mexico aggregated LCS quota is warranted to avoid potential closure of the western Gulf of Mexico aggregated LCS quota and the western Gulf of Mexico hammerhead shark quota, which are linked under 50 CFR 635.28(b)(4)(iii), while fishing opportunities still exist.

For the hammerhead shark landings, the western Gulf of Mexico hammerhead sub-regional landings are relatively low when compared to past fishing seasons, hammerhead sharks are not targeted nor landed in the western

Gulf of Mexico sub-region, and that the Atlantic hammerhead regional quota is nearing 80 percent (63 percent) of their quota and are projected to reach their quota by the end of the year. Therefore, NMFS has considered the inseason quota transfer criteria, documented in the Quota Transfer section below, and determined that a transfer from the western Gulf of Mexico hammerhead shark quota to the Atlantic hammerhead shark quota is warranted to avoid potential closure of the Atlantic hammerhead shark quota and the Atlantic aggregated LCS quota, which are linked under 50 CFR 635.28(b)(4)(i), while fishing opportunities still exist.

Quota Transfer

After fully considering all the criteria listed above, NMFS is taking action to transfer aggregated LCS quota from the eastern Gulf of Mexico sub-regional quota to the western Gulf of Mexico sub-regional quota, and hammerhead shark management group quota from the western Gulf of Mexico sub-regional quota to the Atlantic hammerhead shark quota. NMFS' consideration of the relevant criteria found at § 635.27(b)(2)(iii) includes, but is not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(b)(2)(iii)(A)), biological samples collected by NMFS scientific observers on commercial vessels targeting aggregated LCS and hammerhead sharks continue to provide NMFS with valuable data for ongoing scientific studies of shark age and growth, migration, and reproductive status. This is especially important for the upcoming bull, spinner, and tiger shark assessments in 2024.

Regarding the catches of the quotas to date and the likelihood of a fishery closure if no adjustment is made, commercial shark dealer data show that landings of the western Gulf of Mexico aggregated LCS have exceeded 80 percent of the quota (93 percent), while landings of the Atlantic hammerhead shark are approaching 80 percent of the quota (63 percent). Once the landings exceed the threshold of 80 percent of the quotas and are also projected to reach 100 percent before the end of the 2022 fishing year, the western Gulf of Mexico aggregated LCS and hammerhead shark management groups, and the Atlantic aggregated LCS and hammerhead shark management groups will close absent a transfer of additional quota.

NMFS also analyzed landings data, catch trends, and potential migration of

the species involved (§ 635.27(b)(2)(iii)(C)–(D) and (F)–(H)) and determined that under current fishing rates, 11.3 mt dw of eastern Gulf of Mexico sub-regional aggregated LCS and 6.8 mt dw of western Gulf of Mexico hammerhead shark management groups are reasonable amounts of quota to transfer, allowing fishermen the opportunity to fully utilize the available shark quotas while avoiding negative economic impacts that would occur by closing the shark management groups. This action will not have impacts beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments and thus is not expected to negatively impact the stock.

Regarding the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(b)(2)(iii)(E)), this action is consistent with the quotas previously implemented and analyzed in the 2022 shark quota final rule (86 FR 62737; November 12, 2021) and in the final rules implementing Amendment 5a (78 FR 40317; July 3, 2013) and Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015). Specifically, this action is consistent with the objective of providing opportunities to fully harvest shark quotas without exceeding them.

Based on the considerations above, NMFS is transferring 11.3 mt dw of eastern Gulf of Mexico aggregated LCS sub-regional quota to the western Gulf of Mexico aggregated LCS sub-regional quota, and 6.8 mt dw of western Gulf of Mexico hammerhead shark sub-regional quota to the Atlantic hammerhead shark management group quota as of June 28, 2022. This quota transfer results in adjusted quotas of 74.2 mt dw for aggregated LCS in the eastern Gulf of Mexico sub-region, 83.3 mt dw for aggregated LCS and 5.1 mt dw for the hammerhead shark management group in the western Gulf of Mexico sub-region, and 33.9 mt dw for the hammerhead shark management group in the Atlantic region. If landings and fishing rates do not increase substantially, transferring Gulf of Mexico aggregated LCS sub-regional and Atlantic hammerhead shark regional quotas could allow the fisheries in each sub-region and region to remain open through the end of the 2022 fishing year.

Therefore, NMFS adjusts the eastern and western Gulf of Mexico aggregated LCS and hammerhead management group sub-regional quotas and the Atlantic hammerhead shark management group quota for the remainder of the 2022 shark fishing year, unless NMFS announces another quota transfer in the **Federal Register** or

close the fishery. NMFS may also announce future retention limit adjustments as needed throughout the remainder of the 2022 shark fishing year.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N lat., proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88°00' W long. (§ 635.27(b)(1)(ii)).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments to respond to the unpredictable nature of shark species availability on the fishing grounds, the migratory nature of these species, and the regional variations in the shark fisheries. Affording prior notice and an opportunity for public comment regarding this quota transfer is impracticable. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available data as of May 20, 2022, in deciding whether to transfer a portion of the eastern Gulf of Mexico sub-regional aggregated LCS quota to the western Gulf of Mexico sub-regional aggregated LCS quota and western Gulf of Mexico sub-regional hammerhead shark quota to the Atlantic regional hammerhead shark quota. If NMFS was to offer a public comment period, after having appropriately considered that data, it could preclude fishermen from harvesting aggregated LCS and hammerhead sharks in the western Gulf of Mexico sub-region and Atlantic region that are legally available consistent with all of the regulatory criteria.

With quota available, and with no additional expected impacts to the stock, it would be contrary to the public interest to preclude fishing

opportunities for fishermen in sub-regions or regions when quota is still available for harvest. Analysis of available data shows that transfer of the quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region would result in minimal risks of exceeding the aggregated LCS quotas in the Gulf of Mexico region, and transfer of the quota from the western Gulf of Mexico sub-region to the Atlantic region would result in minimal risks of exceeding the hammerhead shark quotas in either sub-region or region. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the commercial shark quotas and the inseason adjustment criteria. Additionally, NMFS provides

notification of inseason adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on *hmspermits.noaa.gov*. Therefore, the AA finds good cause under 5 U.S.C.

553(b)(B) to waive prior notice and the opportunity for public comment.

This quota transfer needs to be effective upon filing for public inspection with the Office of the Federal Register, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the quota transfer, and to not preclude fishing opportunities for fishermen in sub-regions or regions when quota is

still available for harvest. Foregoing opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota designated in the 2006 Consolidated HMS FMP and amendments.

Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

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

Dated: June 24, 2022.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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