

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 8, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130402317–3707–01]

RIN 0648–XC611

Atlantic Highly Migratory Species; 2014 Atlantic Shark Commercial Fishing Season

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish opening dates and adjust quotas for the 2014 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted as allowable based on any over- and/or underharvests experienced during 2013 and previous fishing seasons. In addition, NMFS proposes season openings based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: Written comments will be accepted until September 23, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0112, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0112, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on the Proposed Rule to Establish Quotas and Opening Dates for the 2014 Atlantic Shark Commercial Fishing Season.”

- *Fax:* 301–427–8503, Attn: Karyl Brewster-Geisz or Guý DuBeck.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record

and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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 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.

Accounting for Under- and Overharvests

This proposed rule would adjust the quota levels for the different shark stocks and management groups for the 2014 Atlantic commercial shark fishing season based on over- and underharvests that occurred during 2013 and previous fishing seasons, consistent with existing regulations at 50 CFR 635.27(b)(2). Over- and underharvests are accounted for in the same region and/or fishery in which they occurred the following year or, for overharvests, spread over a number of subsequent fishing years to a maximum of 5 years. Shark stocks or management groups that contain one or more stocks that are overfished, have overfishing occurring, or that have an unknown status, will not have underharvest carried over in the following year. Stocks 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.

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, blacknose shark, blue shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2013 underharvests cannot be carried over to the 2014 fishing season because those stocks or management groups have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. The porbeagle shark management group was not opened in 2013 due to overharvests from both 2011 and 2012 (2.1 mt dw; 4,622 lb dw). Since these overharvests exceeded the 2013 porbeagle base quota, we still need to reduce the 2014 base quota to account for the remaining overharvest (0.4 mt dw; 824 lb dw). Thus, for all of these management groups, the 2014 proposed quotas would be equal to the appropriate base quota minus any overharvests that occurred in 2013 and previous fishing seasons, as applicable.

For Gulf of Mexico blacktip shark and non-blacknose small coastal shark (SCS) management groups, which have been determined not to be overfished and have no overfishing occurring, available underharvest (up to 50 percent of the base quota) from the 2013 fishing season can be applied to the 2014 quota, and we propose to do so in 2014.

2014 Proposed Quotas

This rule proposes adjustments to the base commercial quotas due to over- and underharvests that occurred in 2013 and previous fishing seasons, where allowable, taking into consideration the stock status as required under existing regulations.

The quotas in this proposed rule are based on dealer reports received as of July 16, 2013. In the final rule, we will adjust the quotas based on dealer reports received as of November 15, 2013. Thus, all of the 2014 proposed quotas for the respective stocks and management groups will be subject to further adjustment after we consider the November 15 landings data. All dealer reports that are received after November 15, 2013, will be used to adjust the 2015 quotas, as appropriate.

We are proposing to spread the 2012 overharvest of the blacknose shark quota

across 5-years in both the Atlantic and Gulf of Mexico regions. In the final rule establishing quotas for the 2013 shark season (77 FR 75896; December 26, 2012), we established the blacknose shark quota as the base quota without adjustment, as dealer reports received by November 15, 2012, did not indicate any overharvest. However, after that final rule published, we received late dealer reports with blacknose shark landings from both before and after November 15, 2012, that indicated the 2012 blacknose shark quota was exceeded by 18 percent or 3.5 mt dw. Since that final rule published, we have finalized and implemented Amendment 5a to the 2006 Consolidated HMS FMP, which, among other things, established Atlantic and Gulf of Mexico regional quotas for blacknose sharks. Because the 2012 overharvest was the result of landings in both the Atlantic and Gulf of Mexico regions, to account for the overharvest amount, we are proposing to split the total overharvest between the regions based on the percent of landings of blacknose sharks reported in each region. Seventy-two percent of the 3.5 mt dw overharvest (2.5 mt dw) would therefore count against the Atlantic region quota and 28 percent or 1.0 mt dw would count against the Gulf of Mexico region quota.

Current regulations allow us to spread out the overharvest accounting over as many as 5 years, depending on the status of the stock. We are proposing to spread out the overharvest accounting over 5 years, the maximum allowable time period, and we are specifically requesting comments on whether we should adjust the quotas over 5 or fewer years (2, 3, or 4) or simply account for the entire overharvest in 2014. As described below, we are proposing to spread the overharvest over 5 years based on economic and ecological impacts. In the Atlantic region, accounting for the overharvest over 5 years would result in an overharvest reduction of 0.5 mt dw per year, each year through 2018. The 0.5 mt dw reduction represents only 3 percent of the Atlantic region blacknose quota and thus would have minor economic impacts on the fishermen and neutral ecological impacts on the stocks over 5 years. If we reduced the 2014 quota by the full overharvest amount (2.5 mt dw) in 1 year, this 14 percent reduction from

the base quota could negatively impact fishermen because the reduced quota would be below regional landings from past fishing seasons and could result in closing the SCS fishery in the Atlantic region earlier than it would otherwise close because of the linkage to and reduced quota within the blacknose management group. If the entire SCS fishery in the Atlantic region is closed early, then our ability to collect data on all SCS, including blacknose sharks, and therefore conduct stock assessments, could be impeded for the time period that the fishery is closed. We do not believe that accounting for the overharvests over time (0.5 mt dw per year for 5 years) would affect the status of the Atlantic blacknose stock.

In the Gulf of Mexico region, accounting for all of the overharvest in 1 year would substantially reduce the Gulf of Mexico regional blacknose quota and potentially close the regional non-blacknose SCS quota substantially earlier than it would otherwise close due to the quota linkage. Similar to the situation described above, if the entire SCS fishery in the Gulf of Mexico region is closed early, then our ability to collect data on all SCS, including blacknose sharks, and therefore conduct stock assessments, could be impeded for the time period that the fishery is closed. Because the Gulf of Mexico overharvest is relatively large compared to the Atlantic region, it is likely the closure would last longer and could be most of the year. However, spreading out the overharvest accounting across 5 years would result in 0.2 mt dw being taken from the Gulf of Mexico regional base quotas every year through 2018. We do not believe that accounting for the overharvest over time would impede rebuilding of the Gulf of Mexico blacknose stock since the ecological impacts would be neutral.

For the porbeagle shark management group, we are proposing to reduce the 2014 annual quota to account for overharvests from 2011 and 2012. While the management group was closed in 2013, we still need to account for part of the 2011 and 2012 overharvests. Nevertheless, based on landings to date, we do expect the porbeagle shark management group to open in 2014.

The proposed 2014 quotas by species and management group are summarized in Table 1.

Table 1. 2014 Proposed Quotas and Opening Dates for the Atlantic Shark Management Groups. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data as of July 16, 2013; final quotas are subject to change based on landings as of November 15, 2013.

| Management Group | Region | 2013 Annual Quota (A) | Preliminary 2013 Landings ¹ (B) | Adjustments (C) | 2014 Base Annual Quota (D) | 2014 Proposed Annual Quota (D+C) | Season Opening Dates |
|------------------------------------|--------------------|--|--|---|--------------------------------|----------------------------------|-----------------------------|
| Aggregated Large Coastal Sharks | Gulf of Mexico | 157.5 mt dw (347,317 lb dw) | 147.6 mt dw (325,476 lb dw) | - | 157.5 mt dw (347,317 lb dw) | 157.5 mt dw (347,317 lb dw) | On or about January 1, 2014 |
| | Atlantic | 168.9 mt dw (372,552 lb dw) | 88.1 mt dw (194,327 lb dw) | - | 168.9 mt dw (372,552 lb dw) | 168.9 mt dw (372,552 lb dw) | |
| Blacktip Sharks | Gulf of Mexico | 256.6 mt dw (565,700 lb dw) | 231.3 mt dw (509,984 lb dw) | 25.3 mt dw (55,716 lb dw) | 256.6 mt dw (565,700 lb dw) | 281.9 mt dw (621,416 lb dw) | |
| Hammerhead Sharks | Gulf of Mexico | 25.3 mt dw (55,722 lb dw) | 10.1 mt dw (22,156 lb dw) | - | 25.3 mt dw (55,722 lb dw) | 25.3 mt dw (55,722 lb dw) | |
| | Atlantic | 27.1 mt dw (59,736 lb dw) | 8.4 mt dw (18,523 lb dw) | - | 27.1 mt dw (59,736 lb dw) | 27.1 mt dw (59,736 lb dw) | |
| Non-Sandbar LCS Research | No regional quotas | 50.0 mt dw (110,230 lb dw) | 10.7 mt dw (23,582 lb dw) | - | 50.0 mt dw (110,230 lb dw) | 50.0 mt dw (110,230 lb dw) | |
| Sandbar Shark Research | | 116.6 mt dw (257,056 lb dw) | 27.2 mt dw (59,884 lb dw) | - | 116.6 mt dw (257,056 lb dw) | 116.6 mt dw (257,056 lb dw) | |
| Non-Blacknose Small Coastal Sharks | Gulf of Mexico | 67.7 mt dw (149,161 lb dw) ² | 36.8 mt dw (81,062 lb dw) | 22.8 mt dw (50,159 lb dw) ³ | 45.5 mt dw (100,317 lb dw) | 68.3 mt dw (150,476 lb dw) | |

| | | | | | | |
|---|--------------------|---|-------------------------------|---|----------------------------------|----------------------------------|
| | Atlantic | 261.5 mt dw (576,484 lb dw) ² | 53.5 mt dw (117,985 lb dw) | 88.0 mt dw (194,111 lb dw) ⁴ | 176.1 mt dw (388,222 lb dw) | 264.1 mt dw (582,333 lb dw) |
| Blacknose Sharks | Gulf of Mexico | 2.0 mt dw (4,513 lb dw) | 0.6 mt dw (1,411 lb dw) | -0.2 mt dw (-437 lb dw) ⁵ | 2.0 mt dw (4,513 lb dw) | 1.8 mt dw (4,076 lb dw) |
| | Atlantic | 18.0 mt dw (39,749 lb dw) | 10.8 mt dw (23,784 lb dw) | -0.5 mt dw (-1,111 lb dw) ⁵ | 18.0 mt dw (39,749 lb dw) | 17.5 mt dw (38,638 lb dw) |
| Blue Sharks | | 273.0 mt dw (601,856 lb dw) | 4.5 mt dw (9,885 lb dw) | - | 273.0 mt dw (601,856 lb dw) | 273.0 mt dw (601,856 lb dw) |
| Porbeagle Sharks | No regional quotas | 0 mt dw (0 lb dw) | 0 mt dw (0 lb dw) | -0.4 ⁶ (adjustments from 2012 overharvests) | 1.7 mt dw (3,748 lb dw) | 1.3 mt dw (2,874 lb dw) |
| Pelagic Sharks Other Than Porbeagle or Blue | | 488 mt dw (1,075,856 lb dw) | 55.5 mt dw (122,342 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, 2013, until July 16, 2013, and are subject to change.

² As described in the final rule for Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318, July 3, 2013), the non-blacknose SCS quota was under-harvested in 2012 by 107.6 mt dw and we carried that underharvest to the 2013 fishing season. Since Amendment 5a to the 2006 Consolidated HMS FMP established regional non-blacknose SCS quotas, we split that underharvest amount based on the regional landings (79.4 percent in the Atlantic and 20.6 percent in the Gulf of Mexico), and adjusted the 2013 Atlantic and Gulf of Mexico regional non-blacknose SCS quotas accordingly to be 45.5 mt for Atlantic non-blacknose SCS and 176.1 mt for Gulf of Mexico non-blacknose SCS.

³ This adjustment accounts for underharvest in 2013. While the total underharvest is 30.9 mt dw, we may account for underharvest only up to 50 percent of the base annual quota or 22.8 mt dw (50,159 lb dw).

⁴ This adjustment accounts for underharvest in 2013. While the total underharvest is 208 mt dw, we may account for underharvest only up to 50 percent of the base annual quota or 88.0 mt dw (194,111 lb dw).

⁵ This adjustment accounts for overharvest in 2012. After the final rule establishing the 2012 quotas published, late dealer reports indicated the blacknose shark quota was overharvested by 3.5 mt dw (7,742 lb dw). Since Amendment 5a to the 2006 Consolidated HMS FMP established regional quotas, we propose a 5-year adjustment of the overharvest amount by the percentage of landings in 2012. Thus, we propose to reduce the Gulf of Mexico blacknose sharks by 0.2 mt dw (437 lb dw) and the Atlantic blacknose sharks by 0.5 mt dw (1,111 lb dw) for the next 5 years.

⁶ This adjustment accounts for overharvest in 2011 and 2012. In 2013, we did not open the porbeagle shark management group due to overharvest from 2011 and 2012 (2.1 mt dw; 4,622 lb dw). This overharvest amount exceeded the 2013 base annual quota by 0.4 mt dw (874 lb dw), therefore, 0.4 mt dw (874 lb dw) is proposed to be reduced from the 2014 base annual quota.

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1. Proposed 2014 Quotas for the Aggregated Large Coastal Sharks in the Gulf of Mexico Region

The 2014 proposed quota for aggregated large coastal sharks in the Gulf of Mexico region is 157.5 mt dw (347,317 lb dw). As of July 16, 2013, preliminary reported landings for aggregated large coastal sharks in the Gulf of Mexico region were at 94 percent (147.6 mt dw) of their 2013 quota levels. Reported landings have not exceeded the 2013 quota to date. Given the unknown status of some of the shark species within the Gulf of Mexico aggregated large coastal shark management group, underharvests cannot be carried over to 2014 pursuant to § 635.27(b)(2). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b), we are not proposing to adjust 2014 quotas for aggregated large coastal sharks in the Gulf of Mexico region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

2. Proposed 2014 Quotas for the Aggregated Large Coastal Sharks in the Atlantic Region

The 2014 proposed quota for aggregated large coastal sharks in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of July 16, 2013, preliminary reported landings for aggregated large coastal sharks in the Atlantic region were at 52 percent (88.1 mt dw) of their 2013 quota levels. Reported landings have not exceeded the 2013 quota to date. Given the unknown status of some of the shark species within the Atlantic aggregated large coastal shark management group, any underharvests cannot be accounted for pursuant to § 635.27(b)(2). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b), we are not proposing to adjust 2014 quotas for aggregated large coastal sharks in the Atlantic region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

3. Proposed 2014 Quotas for the Blacktip Sharks in the Gulf of Mexico Region

The 2014 proposed quota for blacktip sharks in the Gulf of Mexico region is 281.9 mt dw (621,416 lb dw). As of July 16, 2013, preliminary reported landings for blacktip sharks in the Gulf of Mexico region were at 90 percent (231.3 mt dw) of their 2013 quota levels. Reported

landings have not exceeded the 2013 quota to date. Gulf of Mexico blacktip sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2), any underharvests for blacktip sharks within the Gulf of Mexico region therefore could be applied to the 2014 quotas as allowable. During the 2013 fishing season to date, the Gulf of Mexico blacktip shark quota has been underharvested by 25.3 mt dw (55,716 lb dw). Accordingly, we propose to increase the 2014 Gulf of Mexico blacktip shark quota to adjust for anticipated underharvests in 2013 as allowed. The proposed 2014 adjusted base annual quota for Gulf of Mexico blacktip sharks is 281.9 mt dw (621,416 lb dw) (256.6 mt dw annual base quota + 25.3 mt dw 2013 underharvest = 281.9 mt dw 2014 adjusted annual quota).

4. Proposed 2014 Quotas for Hammerhead Sharks in the Gulf of Mexico and Atlantic Region

The 2014 proposed commercial quotas for hammerhead sharks in the Gulf of Mexico and Atlantic regions are 25.3 mt dw (55,722 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. As of July 16, 2013, preliminary reported landings for hammerhead sharks were at 40 percent (10.1 mt dw) of their 2013 quota levels in the Gulf of Mexico region, and were at 31 percent (8.4 mt dw) of their 2013 quota levels in the Atlantic region. Reported landings have not exceeded the 2013 quota to date. Given the overfished status of hammerhead sharks, any underharvests cannot be accounted for pursuant to § 635.27(b)(2). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b), we are not proposing to adjust 2014 quotas for hammerhead sharks in the Gulf of Mexico and Atlantic regions, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

5. Proposed 2014 Quotas for Research Large Coastal Sharks and Sandbar Sharks Within the Shark Research Fishery

The 2014 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research large coastal sharks and 116.6 mt dw (257,056 lb dw) for sandbar sharks. Within the shark research fishery, as of July 16, 2013, preliminary reported landings of research large coastal sharks were at 21 percent (10.7 mt dw) of their 2013 quota levels, and sandbar shark reported landings were at

23 percent (27.2 mt dw) of their 2013 quota levels. Reported landings have not exceeded the 2013 quota to date. Under § 635.27(b)(2), because sandbar sharks and scalloped hammerhead sharks within the research large coastal shark management group have been determined to be either overfished or overfished with overfishing occurring, underharvests for these management groups would not be applied to the 2014 quotas. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b), we are not proposing to adjust 2014 quotas in the shark research fishery because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

6. Proposed 2013 Quotas for the Non-Blacknose Small Coastal Sharks in the Gulf of Mexico and Atlantic Regions

The 2014 proposed annual commercial quotas for non-blacknose small coastal sharks in the Gulf of Mexico and Atlantic regions are 68.3 mt dw (150,476 lb dw) and 264.1 mt dw (582,333 lb dw), respectively. As of July 16, 2013, preliminary reported landings of non-blacknose small coastal sharks were at 54 percent (36.8 mt dw) of their 2013 quota levels in the Gulf of Mexico region, and were at 20 percent (53.5 mt dw) of their 2013 quota levels in the Atlantic region. Non-blacknose small coastal sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2), any underharvests for the non-blacknose small coastal sharks therefore could be applied to the 2014 quotas. During the 2013 fishing season to date, the non-blacknose small coastal shark quota has been underharvested by 46.6 mt dw (102,666 lb dw) in the Gulf of Mexico region and 221.5 mt dw (488,103 lb dw) in the Atlantic region. Consistent with current regulations at § 635.27(b)(2), we may increase the 2014 base annual quota by an equivalent amount of the underharvest up to 50 percent above the base annual quota. Accordingly, we propose to increase the 2014 non-blacknose small coastal shark quota to adjust for anticipated underharvests in 2013 as allowed. The proposed 2014 adjusted base annual quota for non-blacknose small coastal sharks in the Gulf of Mexico region is 68.3 mt dw (150,476 lb dw) (45.5 mt dw annual base quota + 22.8 mt dw 2013 underharvest = 68.3 mt dw 2014 adjusted annual quota). The proposed 2014 adjusted base annual quota for non-blacknose small coastal sharks in the Atlantic region is 264.1 mt dw (582,333 lb dw) (176.1 mt dw annual base quota + 88.0

mt dw 2013 underharvest = 264.1 mt dw 2014 adjusted annual quota).

7. Proposed 2014 Quotas for Blacknose Sharks in the Gulf of Mexico and Atlantic Region

The 2014 proposed annual commercial quotas for blacknose sharks in the Gulf of Mexico and Atlantic regions are 1.8 mt dw (4,076 lb dw) and 17.5 mt dw (38,638 lb dw), respectively. As of July 16, 2013, preliminary reported landings of blacknose sharks were at 31 percent (0.6 mt dw) of their 2013 quota levels in the Gulf of Mexico region, and were at 60 percent (10.8 mt dw) of their 2013 quota levels in the Atlantic region. The 2013 commercial quotas have not been reached or exceeded. Blacknose sharks have been declared to have an unknown status in the Gulf of Mexico region and declared to be overfished with overfishing occurring in the Atlantic region. Pursuant to § 635.27(b)(2), any overharvests of blacknose sharks would be applied to the regional quotas over a maximum of 5 years. As described above, the 2012 blacknose quota was overharvested so we are proposing to adjust the regional quotas over 5 years to mitigate the impacts of adjusting for the overharvest in 1 year. Therefore, consistent with § 635.27(b), the 2014 proposed adjusted base quota for blacknose sharks in the Gulf of Mexico region is 1.8 mt dw (4,076 lb dw) (2.0 mt dw annual base quota – 0.2 mt dw 2012 adjusted 5-year overharvest = 1.8 mt dw 2014 adjusted annual quota). In the Atlantic region, the 2014 proposed adjusted base quota for blacknose sharks is 17.5 mt dw (38,638 lb dw) (18.0 mt dw annual base quota – 0.5 mt dw 2012 adjusted 5-year overharvest = 17.5 mt dw 2014 adjusted annual quota).

8. Proposed 2014 Quotas for Pelagic Sharks

The 2014 proposed annual commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273 mt dw (601,856 lb dw), 1.3 mt dw (2,874 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

As of July 16, 2013, preliminary reported landings of blue sharks and pelagic sharks (other than porbeagle and blue sharks) were at 2 percent (4.5 mt dw) and 11 percent (55.5 mt dw) of their 2013 quota levels, respectively. These pelagic species are overfished, have overfishing occurring, or have an unknown status. Therefore, the 2014 proposed quotas would be the base annual quotas (without adjustment) for blue sharks and pelagic sharks (other than blue and porbeagle sharks), or 273

mt dw (601,856 lb dw) and 488 mt dw (1,075,856 lb dw), respectively.

As of July 16, 2013, preliminary reported landings of porbeagle sharks was 0 percent (0 mt dw) of its 2013 quota levels, respectively. Porbeagle sharks have been declared to be overfished with overfishing occurring. Pursuant to § 635.27(b), any overharvests of porbeagle sharks would be applied to the 2014 quotas. As described above, the overharvests from 2011 and 2012 exceeded the 2013 base annual quota by 0.4 mt dw (874 lb dw). Consistent with § 635.27(b), we are proposing to adjust the 2014 quota to account for the remaining amount of overharvest. Thus, the proposed 2014 adjusted annual commercial porbeagle quota is 1.3 mt dw (2,874 lb dw) (1.7 mt dw annual base quota – 0.4 mt dw 2011/2012 overharvest = 1.7 mt dw 2014 adjusted annual quota).

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

For each fishery, we considered the seven “Opening Fishing Season Criteria” listed at § 635.27(b)(3). These include:

(i) The available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (ii) Estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years; (iii) Length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years; (iv) Variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information; (v) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas; (vi) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or, (vii) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

Specifically, we examined the 2013 and previous fishing years’ over- and/or underharvests of the different management groups to determine the effects of the 2014 proposed quotas on fishermen across regional fishing area. We also examined the potential season length and previous catch rates to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, we examined the seasonal variation of the different

species/management groups and the effects on fishing opportunities.

We propose that the 2014 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, open on or about January 1, 2014, with the publication of the final rule for this action.

In the Gulf of Mexico region, opening the fishing season again on or about January 1 for aggregated large coastal sharks, blacktip sharks, and hammerhead sharks would provide, to the extent practicable, equitable opportunities across the fisheries management region as it did for the 2013 fishing season. This opening date is consistent with all the criteria listed in § 635.27(b)(3), but particularly with the criterion that we consider the length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years.

In the Atlantic region, we propose opening the aggregated LCS and hammerhead shark management groups on or about January 1, 2014. In 2013, we opened the fishery at the beginning of the year to allow for more equitably distributed shark fishing opportunities, as intended by Amendment 2 to the 2006 Consolidated HMS FMP. Since the HMS Electronic Dealer Reporting System was implemented on January 1, 2013, we have been able to manage the quotas on a weekly basis to ensure equitable fishing opportunities. In addition, we may use the inseason trip limit adjustment criteria to allow more equitable fishing opportunities across the fishery. These equitable fishing opportunities across the fishery are different between the Gulf of Mexico and Atlantic regions. Because of the migratory patterns of the sharks, all Gulf of Mexico shark fishermen have access to the resource on January 1, whereas Atlantic shark fishermen do not, so weekly tracking can support inseason adjustments. The proposed opening date of January 1 would allow fishermen to harvest some of the 2014 quota at the beginning of the year, when sharks are more prevalent in the South Atlantic area. If it appears that the quota will be taken too quickly to allow fishermen throughout the entire region an opportunity to fish, we could reduce the commercial retention limits to ensure that catch rates in one part of a region not preclude vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota (§ 635.24(a)(8)(vi)).

If landings rates indicate that quota may be taken too quickly to allow fishermen throughout the region an opportunity to fish, we would file for publication with the Office of the Federal Register notification of any inseason adjustments to reduce retention limits to between 0–36 sharks per trip. We could later increase the commercial retention limits per trip, such as on or about July 15, 2014, to provide fishermen in the North Atlantic area an opportunity to retain aggregated large coastal sharks and hammerhead sharks when they are prevalent in that area, if warranted considering all relevant factors.

All of the shark management groups would remain open until December 31, 2014, or until we determine that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota. In the final rule for Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318, July 3, 2013), we established non-linked and linked quotas and explained that the 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. At that time, consistent with § 635.28(b)(1) for non-linked quotas (e.g., Gulf of Mexico blacktip or pelagic sharks), we will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group, 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 we announce, 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.

For linked quotas consistent with § 635.28(b)(2), we will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until we announce, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for all linked species and/or management groups is closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; Gulf of Mexico hammerhead sharks and Gulf of

Mexico aggregated LCS; Atlantic blacknose and Atlantic non-blacknose SCS; and Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS. We may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. Before taking any inseason action, we would consider the criteria listed at § 635.28(b)(4).

In 2012 and 2013, NMFS determined that the proposed rule to implement Amendment 5 to the 2006 Consolidated HMS FMP (77 FR 70552; November 26, 2012) and final rule to implement Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish opening dates and adjust quotas for the 2014 fishing season for the Atlantic commercial shark fisheries does not change the framework previously consulted upon; therefore, no additional consultation is required.

Request for Comments

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. We solicit comments on this proposed rule by September 23, 2013 (see **DATES** and **ADDRESSES**). In addition to comments on the entire rule, we are specifically requesting comments on the proposed 5-year adjustment for the blacknose shark quota to account for the overharvest of blacknose sharks in 2012. We are proposing to spread the overharvested amount over a 5-year period (2014 to 2018). This scenario would allow the blacknose shark and non-blacknose SCS fisheries, which are linked fisheries, to operate over those 5 years with minimal impacts. Since the overharvested quota would be spread over 5 years, the Gulf of Mexico blacknose shark quota would be reduced by 0.2 mt dw (437 lb dw) per year and the adjusted quota would be 1.8 mt dw (4,076). If additional overharvest occurs, the adjusted blacknose shark quota could be further reduced to account for this potential overharvest. In the Atlantic region, the

blacknose shark quota would be reduced by 0.5 mt dw (1,111 lb dw) per year and the adjusted quota would be 17.5 mt dw (38,638 lb dw). Similar to the adjusted Gulf of Mexico blacknose shark quota, this adjusted quota might be adjusted further in future years to address any additional overharvests. Another possible scenario for the overharvested amount would be to take the full 2012 overharvested amount from the 2014 regional blacknose shark quotas. If we took the full overharvest amount from the 2014 quotas, the Gulf of Mexico blacknose shark quota would be reduced by 1.0 mt dw (2,185 lb dw) and the adjusted quota would be 1.0 mt dw (2,328 lb dw). In the Atlantic region, the blacknose shark quota would be reduced by 2.5 mt dw (5,557 lb dw) and the adjusted quota would be 15.5 mt dw (34,192 lb dw). In 2014, this second scenario could result in an early fishery closure in the Gulf of Mexico region if the reduced blacknose shark quota reached or was projected to reach 80 percent sooner than it has in the past, which could result in adverse impacts for blacknose and non-blacknose fishermen and dealers. While the potential for closure in the Atlantic region would be less, reducing the quota by 2.5 mt dw could close the fishery sooner than usual resulting in similar adverse impacts for Atlantic blacknose and non-blacknose fishermen and dealers. This second scenario would not have any impacts beyond 2014.

Public Hearings

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Guý DuBeck or Karyl Brewster-Geisz by phone at 301–427–8503.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the

SUMMARY section of the preamble. The IRFA analysis follows.

In compliance with section 603(b)(1) of the RFA, we are required to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is being proposed to establish the 2014 commercial shark fishing quotas and fishing seasons. Without this rule, the commercial shark fisheries would close on December 31, 2013, and would not open until another action was taken. This action would be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, we expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments.

Under section 603(b)(2) of the RFA, we must explain the rule's objectives, which are to: Adjust the baseline quotas for all Atlantic shark management groups based on any over- and/or underharvests from the previous fishing years and to establish the opening dates of the various management groups in order to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the species.

Section 603(b)(3) of the RFA requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 Fed.Reg. 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards,

all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action and solicits public comment on the analyses in light of the new size standards.

We consider all HMS permit holders to be small entities because they either had average annual receipts of less than \$4.0 million for fish-harvesting, average annual receipts of less than \$7.0 million for Charter/headboat, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. 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. The proposed rule would apply to the approximately 216 directed commercial shark permit holders (130 in the Atlantic and 86 in the Gulf of Mexico regions), 261 incidental commercial shark permit holders (156 in the Atlantic and 105 in the Gulf of Mexico regions), and 97 commercial shark dealers (66 in the Atlantic and 31 in the Gulf of Mexico regions) as of July 2013.

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

In compliance with section 603(c) of the RFA, each IRFA must also contain a description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. Additionally, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives.

These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act and the ESA, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities; therefore, there are no alternatives discussed that fall under the first and fourth categories described above. We do 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 with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest as allowable. Similarly, the proposed quotas and opening date are consistent with the requirements of the Magnuson-Stevens Act that were previously analyzed in the EA with the 2011 shark quota specifications rule. Thus, NMFS has limited flexibility to modify the quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2013 ex-vessel price, fully harvesting the unadjusted 2014 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$5,347,674 (see Table 2). Of the 216 vessels with directed shark permits, only 136 vessels landed sharks in 2012 and are considered active. Based on these 136 active permitted vessels, the total fleet revenues would result in an average of \$39,321 per active vessel.

For several species, we are proposing to adjust their baseline quotas upward due to the underharvests in 2013. For

example, the upward adjustment for the Gulf of Mexico blacktip shark management group could result in a \$59,894 gain in total revenues for the fleet. We expect that those revenues would be equally split between the 50 active shark permit holders who landed blacktip sharks in the Gulf of Mexico. This could result in an additional \$1,198 per vessel. The Gulf of Mexico and Atlantic non-blacknose small coastal shark management groups were also adjusted upward due to underharvests. For the fleet, these adjustments could result in a \$63,953 and \$216,240 gain in revenues, respectively. On an individual vessel basis, the 11 active vessels that landed these species in the Gulf of Mexico region could earn approximately \$5,814 on average and the 36 active vessels that landed these species in the Atlantic region could earn approximately \$6,007 on average.

We are proposing to reduce the baseline for other species due to

overharvests. For instance, we propose to reduce the blacknose shark management group for the next 5 years to account for overharvest in 2012. This would cause a potential loss in revenue of \$577 for the fleet in the Gulf of Mexico region, or \$64 on average for the 9 active vessels, and \$1,238 for the fleet in the Atlantic region, or \$69 on average for the 18 active vessels. If we took the full overharvest amount from the 2014 quotas, the Gulf of Mexico blacknose shark adjusted quota would be 1.0 mt dw (2,328) and would cause a potential loss in revenue of \$2,786 for the fleet, or \$310 on average for the 9 active vessels. In the Atlantic, the blacknose shark adjusted quota would be 15.5 mt dw (34,192 lb dw) and would cause a potential loss in revenue of \$6,191 for the fleet, or \$344 on average for the 18 active vessels. In addition, the porbeagle shark management group was overharvested in 2011 and 2012. Under the proposed quotas, the potential

revenue loss from the porbeagle baseline quota would be \$1,411 for the fleet, which could cause a loss of \$157 in average for the 9 active vessels that landed porbeagle sharks in 2012.

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—resulting from rules such as this one that adjust the trip limits inseason through proposed and final rulemaking—are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, we assumed that we would be conducting annual rulemakings and considering the potential the economic impacts of adjusting the quotas for under- and overharvests at that time.

TABLE 2—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2013*

| Year | Species | Region | Price |
|------|----------------------|----------------|---------|
| 2013 | Aggregated LCS | Gulf of Mexico | \$0.48 |
| | | Atlantic | 0.67 |
| | Blacktip Shark | Gulf of Mexico | 0.48 |
| | | Atlantic | 0.60 |
| | Hammerhead Shark | Gulf of Mexico | 0.32 |
| | | Atlantic | 0.60 |
| | LCS Research | Both | 0.57 |
| | Sandbar Research | Both | 0.57 |
| | Non-Blacknose SCS | Gulf of Mexico | 0.68 |
| | | Atlantic | 0.77 |
| | Blacknose Shark | Gulf of Mexico | 0.68 |
| | | Atlantic | 0.77 |
| | Blue shark | Both | 0.27 |
| | Porbeagle shark | Both | ** 1.15 |
| | Other Pelagic sharks | Both | 1.80 |
| | Shark Fins | Gulf of Mexico | 11.90 |
| | | Atlantic | 6.88 |
| | Both | 9.39 | |

* The ex-vessel prices are based on 2013 dealer reports through July 16, 2013.

** Since the porbeagle shark management group was closed for 2013, there was no 2013 price data. Thus, we used price data from 2012.

For this rule, we also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2014 fishing season, we are proposing to open the aggregated large coastal sharks, blacktip sharks,

hammerhead sharks, sandbar sharks, non-blacknose small coastal sharks, blacknose sharks, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) management groups on the effective date of the final rule for this action (expected to be on or about January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis, because we are proposing not to change the opening dates of these fisheries from the status quo.

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

Dated: August 16, 2013.

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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