DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160129062–6999–02]

RIN 0648–BF49

Atlantic Highly Migratory Species; Commercial Retention Limit for Blacknose Sharks and Non-Blacknose Small Coastal Sharks in the Atlantic Region

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

ACTION: Final rule.

SUMMARY: This final rule establishes a commercial retention limit of eight blacknose sharks for all Atlantic shark limited access permit holders in the Atlantic region south of 34°00′ N. latitude. NMFS manages four small coastal shark (SCS) species in the Atlantic: Blacknose, Atlantic sharpnose, finetooth, and bonnethead. All of these species except blacknose sharks are managed in a management group called the ''non-blacknose SCS.'' This action is being taken to reduce discards of non-blacknose small coastal sharks (SCS) while increasing the utilization of available Atlantic non-blacknose SCS quota and aid in rebuilding and ending overfishing of Atlantic blacknose sharks. The final action affects fishermen who fish in the Atlantic region and who hold commercial shark limited access permits. In addition, this final rule implements two small, unrelated administrative changes to existing regulatory text to remove cross-references to an unrelated section and a section that does not exist. These two changes are administrative in nature, and are not expected to result in any impacts to the environment or current fishing operations.

DATES: Effective on January 13, 2017.

ADDRESSES: Copies of the supporting documents—the Final Environmental Assessment (EA) for this final action, the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments, and the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports—are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting the HMS Management Division by phone at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck, Larry Redd, Cliff Hutt, or Karyl Brewster-Geisz by telephone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic sharks are directly managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to issue regulations has been delegated from the Secretary of Commerce to the Assistant Administrator (AA) for Fisheries, NOAA. NMFS published in the **Federal Register** (71 FR 59058) final regulations, effective November 1, 2006 implementing the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This final rule establishes a commercial retention limit of eight blacknose sharks per trip in the Atlantic region south of 34°00′ N. latitude.

Background

NMFS published a proposed rule on August 3, 2016 (81 FR 51165), outlining the alternatives analyzed in the Draft EA, identifying the preferred alternative, and soliciting public comments on the measures, which would impact the blacknose shark and non-blacknose SCS fisheries in the Atlantic region. Specifically, the proposed rule proposed establishing a commercial retention limit of eight blacknose sharks in the Atlantic region south of 34°00′ N. latitude but also considered alternatives that would establish a commercial retention limit of non-blacknose SCS for shark directed access permit holders in the Atlantic region south of 34°00′ N. latitude once the blacknose shark quota is reached, as well as two other alternatives regarding potential commercial retention limits for blacknose sharks. The full description of the management and conservation measures considered is included in both the Final EA and the proposed rule and is not repeated here. The comment period for the Draft EA and proposed rule ended on September 20, 2016. The comments received, and responses to those comments, are summarized below under the heading labeled Response to Comments.

This final rule establishes a commercial retention limit of eight blacknose sharks for all Atlantic shark limited access permit holders in the Atlantic region south of 34°00′ N. latitude. This rulemaking only focuses on the Atlantic region south of 34°00′ N. latitude since NMFS prohibited the retention and landings of blacknose sharks in the Gulf of Mexico and north of 34°00′ N. latitude in 2015. This final action should reduce discards of non-blacknose SCS while increasing the utilization of available Atlantic non-blacknose SCS quota and aid in rebuilding and ending overfishing of Atlantic blacknose sharks.

Finally, this rule makes administrative changes to existing regulatory text. Specifically, in two locations in § 635.24(a), the regulations make reference to paragraphs (a)(4)(iv) through (vi); those cross-references are unnecessary because the Commercial Caribbean Small Boat permit under (a)(4)(iv) is a separate permit from the shark limited access permits and there is no (a)(4)(v) and (a)(4)(vi) regulations. This final rule implements changes to the regulations in 50 CFR part 635 to correct those regulatory cross-references.

Response to Comments

During the proposed rule stage, NMFS received 15 written and oral comments. NMFS also received feedback from: The HMS Advisory Panel on September 8, 2016; constituents who attended the conference call/webinar held on August 16, 2016; and constituents who attended the public hearing on August 24, 2016, in Cocoa Beach, FL. Additionally, NMFS consulted with the South Atlantic Fishery Management Council on September 15, 2016. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS' responses. All written comments submitted during the comment period can be found at *http://www.regulations.gov by searching for NOAA-NMFS-2016-0095.*

Comment 1: NMFS received a number of comments regarding the preferred retention limit of eight blacknose sharks per trip within the Atlantic region south of 34°00′ N. latitude. The South Atlantic Fishery Management Council, a number of HMS Advisory Panel members, and other commenters supported the preferred retention limit of eight blacknose sharks per trip within the Atlantic region south of 34°00′ N. latitude. Some commenters were concerned that the preferred retention limit was not low enough and would still result in the early closure of the non-blacknose SCS fishery. Some commenters suggested that the preferred retention limit of eight blacknose sharks per trip should apply only to directed shark limited access permit holders and that incidental shark limited access permit holders should not be allowed to land blacknose sharks or should have a lower retention limit. Lastly, other

commenters suggested that NMFS should adjust the blacknose shark retention limit on an inseason basis, similar to what is done in the large coastal shark fishery.

Response: In this final action, NMFS is establishing a commercial retention limit of eight blacknose sharks per trip because the retention limit would have moderate beneficial ecological impacts on blacknose sharks, neutral ecological impacts on non-blacknose SCS, and minor beneficial socioeconomic impacts for SCS fishermen because they would be able to continue utilizing the non-blacknose SCS quota. Based on the analyses conducted, NMFS believes this retention limit would allow between 40 and 96 lb dw blacknose sharks to be landed per trip, depending on the average weight of blacknose sharks used. Using these weights landed per trip, the full blacknose shark quota could be landed in approximately 395 to 948 trips. This result is more than double and could be as high as 10 times the number of trips that harvested the blacknose quota from the 2011 to 2015 average. As such, the final retention limit of eight blacknose sharks per trip should allow for the blacknose and non-blacknose SCS quotas to remain open throughout the year and not cause the fisheries to close early. Because the retention limit should allow for the fisheries to remain open and because incidental shark permit holders by definition do not target sharks, NMFS does not believe it is necessary to consider separate blacknose retention limits by permit type. Regarding the comment about inseason adjustments to the retention limit, NMFS did not consider establishing an adjustable retention limit for blacknose sharks because this species should only be landed at incidental levels in order to allow for rebuilding and the final action to establish an eight blacknose shark retention limit should prevent early closure of the SCS fishery. NMFS may revisit inseason adjustments to the blacknose shark retention limit in the future as warranted.

Comment 2: NMFS received a comment suggesting that the average dressed weight for blacknose sharks should be increased from the 5 lb dw used in the latest stock assessment to 10 to 20 lb dw because larger blacknose sharks are more typically landed in the fishery.

Response: In all the calculations in the proposed rule, NMFS used an average dressed weight of 5 lb for blacknose sharks. This average weight is the average weight that was derived for the 2011 stock assessment using a length-weight conversion function. However, based on these public comments, NMFS reviewed data from observed bottom longline and gillnet trips that landed blacknose sharks in the years 2013 through 2015 and found that these data indicate that fishermen are landing blacknose sharks with an average weight of 12 lb dw. As a result, NMFS provided information on both weights in the final EA and final rule. Based on data analysis, using either average weight would support using an eight blacknose shark retention limit and accomplish the goals of the rulemaking.

Comment 3: NMFS received a comment requesting the removal of the quota linkage between the blacknose shark and the South Atlantic non-blacknose SCS quotas so that fishermen would not have to discard non-blacknose SCS after the blacknose quota is filled.

Response: The objectives of this action are to continue rebuilding the Atlantic blacknose shark stock; to aid in ending overfishing of the Atlantic blacknose shark stock; to aid in achieving optimum yield in the blacknose and non-blacknose-SCS fisheries; and to reduce dead discards of small coastal sharks. The quota linkage was established to prevent further overfishing and aid in rebuilding blacknose sharks. Without the quota linkage, fishermen would lose an important incentive for avoiding blacknose sharks, thus jeopardizing the rebuilding plan for blacknose sharks and potentially increasing overfishing of blacknose sharks.

Comment 4: NMFS received a comment suggesting that the SCS season open in September instead of January.

Response: The final action does not reanalyze the overall start date for SCS, which was analyzed in the 2006 Consolidated HMS FMP and its amendments. NMFS could consider this in a future rulemaking.

Comment 5: NMFS received a comment requesting that the 80-percent threshold closure policy for shark fisheries be changed.

Response: 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. The 80-percent threshold closure policy refers to NMFS calculating that the overall, regional, and/or sub-regional landings for any species and/or management group has reached or is projected to reach 80 percent of the available overall, regional, and/or sub-regional quota and NMFS closing the species and/or management groups for the rest of the season. Based on current experiences with monitoring quotas for all shark species and management groups, NMFS believes that the 80-percent threshold allows for all or almost the entire 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 and provide a buffer to include landings received after the reporting deadline in an attempt to avoid overharvests. NMFS will continue to evaluate the 80-percent threshold and may consider changes in a future rulemaking.

Comment 6: NMFS received a comment suggesting that an Atlantic blacknose update stock assessment be performed in 2019 along with the Atlantic blacktip benchmark assessment.

Response: Most of the domestic shark stock assessments follow the Southeast Data, Assessment Review (SEDAR) process. 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. With regard to the timing of upcoming shark stock assessments, NMFS aims to conduct a number of shark stock assessments every year and to regularly reassess these stocks. The number of species that can be assessed each year depends on whether assessments are establishing baselines or are only updates to previous assessments. Assessments also depend on ensuring there are data available for a particular species. In addition to the shark assessments being conducted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), NMFS intends to conduct, through the SEDAR process, a sandbar shark benchmark assessment in 2017, a Gulf of Mexico blacktip shark update assessment in 2018, and an Atlantic blacktip benchmark assessment in 2019. NMFS will continue to monitor options for future stock assessments, including an assessment for Atlantic blacknose sharks.

Classification

The NMFS Assistant Administrator has determined that the final rule is necessary for the conservation and management of the Atlantic shark fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 604 (c)(1)–(4)). The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Under Section 604(a)(1) of the RFA, the management goals and objectives of the preferred alternative are to provide for the sustainable management of SCS species under authority of the Secretary consistent with the requirements of the Magnuson-Stevens Act and other statutes which may apply to such management, including the Endangered Species Act, Marine Mammal Protection Act, and Atlantic Tunas Convention Act. The Magnuson-Stevens Act mandates that the Secretary provide for the conservation and management of HMS through development of an FMP for species identified for management and to implement the FMP with necessary regulations. In addition, the Magnuson-Stevens Act directs the Secretary, in managing HMS, to prevent overfishing of species while providing for their optimum yield on a continuing basis and to rebuild fish stocks that are considered overfished. The management objective of the preferred alternative is to implement management measures for the Atlantic SCS fishery that will further the objective of preventing overfishing while achieving (on a continuing basis) optimum yield, and aid in rebuilding overfished shark stocks.

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the Agency's assessment of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule and Draft EA during the public comment period. Summarized public comments and NMFS' responses to them are included in Appendix A of this document. Section 604(a)(3) of the RFA requires the Agency to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made in the rule as a result of such comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA nor the public in response to this document.

Section 604(a)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. 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 have average annual receipts of less than $11 million for commercial fishing.

This final rule would apply to the 499 commercial shark permit holders in the Atlantic shark fishery, based on an analysis of permit holders as of November 2015. Of these permit holders, 224 have directed shark permits and 275 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. Active directed permit holders are defined as those with valid permits that landed one shark based on 2015 HMS electronic dealer reports. Of the 499 permit holders, only 27 permit holders landed SCS in the Atlantic region and of those only 13 landed blacknose sharks. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions.

Section 604(a)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements. The alternatives considered would adjust the commercial retention limits for the SCS fisheries, which would mean new compliance requirements for the shark fishery participants in the Atlantic region south of 34°00′ N. latitude, but which are similar to other compliance requirements the fishermen already follow.

Section 604(a)(5) of the RFA requires a description of the steps the Agency has taken to minimize any significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the RFA 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, or any part thereof, for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and the Endangered Species Act, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first 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. As described below, NMFS analyzed several different alternatives in this final rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

Alternative 1, the No Action alternative, would not implement any new retention limits for blacknose sharks or non-blacknose SCS in the Atlantic region south of 34°00′ N. latitude beyond those already in effect for current Atlantic shark limited access permit holders. NMFS would continue to allow fishermen with a direct limited access permit to land unlimited sharks per trip and allow fishermen with an incidental permit to land 16 combined SCS and pelagic sharks per vessel per trip. In 2010, Amendment 3 to the 2006

Consolidated HMS FMP established, among other things, a quota for blacknose sharks separate from the SCS quota. The 2011 blacknose shark stock assessment determined that separate stocks of blacknose sharks existed in the Gulf of Mexico and the Atlantic. Amendment 5a to the 2006 Consolidated HMS FMP established, among other things, regional quotas for non-blacknose SCS and blacknose sharks in the Gulf of Mexico and the Atlantic in 2013. These blacknose shark and non-blacknose SCS quotas are linked by region and the regional SCS fishery closes when the blacknose quota is reached. This linkage has resulted in the early closure of the entire SCS fishery due to high abundance of blacknose shark landings. Closure of the fishery as a result of Atlantic blacknose rapid harvest leaves the non-blacknose shark SCS quota underutilized. Between 2014 and 2015, the Atlantic non-blacknose SCS quota was underutilized by an average of 314,625 lb dw, or 54 percent of the quota. This represents an average annual ex-vessel loss of $298,583 for the fishery, assuming an average value for 2014–2015 of $0.74/lb dw for meat and $4.18/lb dw for fins. Based on the 27 vessels that landed SCS in the Atlantic, the individual vessel impact would be an approximate loss of $11,059 per year.

Alternative 2a would remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south of 34°00′ N. latitude once the blacknose shark quota is reached and would implement a commercial retention limit of 50 non-blacknose SCS per trip at that point. Additionally, this alternative would adjust the blacknose shark quota to 15.0 mt dw (33,069 lb dw) assuming a 5 lb dw carcass, or 11.8 mt dw (26,089 lb dw) assuming a 12 lb dw carcass. Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of $5,275 for the fishery assuming a 5 lb dw carcass, or $12,660 assuming a 12 lb dw carcass. Conversely, increased landings of non-blacknose SCS would result in an overall estimated average ex-vessel revenue gain of $34,470 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of $21,810 to $29,195 in average ex-vessel revenue for the fishery per year depending on the average carcass weight of blacknose sharks, or $808 to $1,081 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 2b would remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south of 34°00′ N. latitude once the blacknose shark quota is reached and would implement a commercial retention limit of 150 non-blacknose SCS per trip at that point. Additionally, this alternative would adjust the blacknose shark quota to 10.5 mt dw (23,148 lb dw) assuming a 5 lb dw carcass, or 1.1 mt dw (2,521 lb dw) assuming a 12 lb dw carcass. Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of $15,783 for the fishery assuming a 5 lb dw carcass, or $37,878 assuming a 12 lb dw carcass. Conversely, increased landings of non-blacknose SCS would result in an overall estimated average ex-vessel revenue gain of $65,139 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of $27,261 to $49,357 in average ex-vessel revenue for the fishery per year depending on the average carcass weight of blacknose sharks, or approximately $1,010 to $1,828 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 2c would remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south of 34°00′ N. latitude once the blacknose shark quota is reached and would implement a commercial retention limit of 250 non-blacknose SCS per trip at that point. This alternative would also adjust the blacknose shark quota to 6.1 mt dw (13,448 lb dw) assuming a 5 lb dw carcass, or 0.0 mt dw (0.0 lb dw) assuming a 12 lb dw carcass. Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of $26,295 for the fishery assuming a 5 lb dw carcass, or $40,575 assuming a 12 lb dw carcass. Conversely, increased landings of non-blacknose SCS would result in an estimated average ex-vessel revenue gain of $80,339 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of $39,764 to $54,044 in average ex-vessel revenue for the fishery per year depending on the average carcass weight of blacknose sharks, or approximately $1,473 to $2,002 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 3a would establish a commercial retention limit of 50 blacknose sharks per trip for shark directed limited access permit holders in the Atlantic region south of 34°00′ N. latitude and maintain the quota linkage between blacknose sharks and non-blacknose SCS. This alternative would have minor beneficial to neutral economic impacts as a retention limit of this size would allow an average of 250 to 600 lb dw blacknose sharks per trip and would take an estimated 63 to 152 trips for fishermen to land the full blacknose shark quota. This alternative will prevent targeted take of blacknose sharks as the per trip value of 50 blacknose sharks would range between $270 ($218 for meat and $52 for fins) assuming an average weight of 5 lb dw per blacknose shark, and $642 ($522 for meat and $120 for fins) assuming an average weight of 12 lb dw for the estimated 13 vessels that land blacknose sharks in the Atlantic. Based on 2015 eDealer reports, 106 trips landed blacknose sharks, and between 14 and 33 percent landed blacknose sharks in excess of a commercial retention limit of 50 blacknose sharks depending on the average trip weight used in the calculations (250–600 lb dw). This alternative would likely increase the number of trips needed to fill the blacknose shark quota when compared to the average from 2010 through 2015 under Alternative 1. A retention limit of 50 blacknose sharks could potentially cause the SCS fisheries to close as early as June or July if every trip landing blacknose sharks landed the full retention limit but, since few fishermen land that many blacknose sharks per trip now, NMFS believes a change in behavior as a result of this alternative is unlikely.

Alternative 3b would establish a commercial retention limit of 16 blacknose sharks per trip for all Atlantic shark limited access permit holders in the Atlantic region south of 34°00′ N. latitude and maintain the quota linkage between blacknose sharks and non-blacknose SCS. This alternative would have minor beneficial economic impacts as a retention limit of this size would allow an average of 80 to 192 lb dw blacknose sharks per trip and would take an estimated 198 to 474 trips for fishermen to land the full blacknose shark quota. Based on 2015 eDealer reports, 38 to 55 percent of the overall number of trips landed blacknose sharks in excess of a commercial retention limit of 16 blacknose sharks depending on the average trip weight used in the calculations (80–192 lb dw). This alternative would dramatically increase the number of trips needed to fill the blacknose shark quota when compared to the yearly averages under Alternative 1. Currently, the linkage between the blacknose shark quota and the non-blacknose SCS quota causes the closure of both fisheries once the lower blacknose shark quota is attained. NMFS expects that, under this alternative, the blacknose shark quota would not be filled and the SCS fisheries in the South Atlantic region

would not close early. Thus, this alternative would have minor beneficial economic impacts to the Atlantic SCS fisheries as it would allow for the potential full-utilization of the non-blacknose SCS quota, and potentially increase total ex-vessel revenue by as much as $298,583 a year. However, given the low monthly trip rates occurring to harvest SCS in the Atlantic, the non-blacknose SCS quota is likely to remain underutilized. Using calculations based on observed trip and landings rates of non-blacknose SCS in 2015, a more likely result of this alternative would be additional landings of 104,962 lb dw of non-blacknose SCS valued at $98,664, or approximately $3,654 per vessel for the 27 vessels that participated in the fishery in 2015. Any financial losses due to underutilization of the blacknose shark quota would be minimal in comparison.

Alternative 3c, the preferred alternative, would establish a commercial retention limit of eight blacknose sharks per trip for all Atlantic shark limited access permit holders in the Atlantic region south of 34°00′ N. latitude and maintain the quota linkage between blacknose sharks and non-blacknose SCS. Because this retention limit would be less than the current retention limit for shark incidental limited access permit holders, the retention limit for shark incidental limited access permit holders would need to change slightly. The adjusted retention limit for incidental permit holders would still allow fishermen to land a total of 16 pelagic or small coastal sharks per trip but, of those sharks, no more than eight could be blacknose sharks. This alternative would have moderate beneficial economic impacts as a retention limit of this size would allow an average of 40 to 96 lb dw blacknose sharks per trip and would take an estimated 395 to 948 trips to land the full blacknose shark quota. Based on 2015 eDealer reports, 55 to 70 percent of the overall number of trips landed blacknose sharks in excess of the commercial retention limit of eight blacknose sharks depending on the average trip weight used in the calculations (40–96 lb dw). This alternative would dramatically increase the number of trips needed to fill the blacknose shark quota when compared to the yearly averages under Alternative 1. Currently, the linkage between the blacknose shark quota and the non-blacknose SCS quota causes the closure of both fisheries once the lower blacknose shark quota is attained. NMFS expects that, under this alternative, the blacknose shark quota would not be filled and the SCS fisheries in the South Atlantic region would not close early. Thus, this would have moderate beneficial economic impacts as the fishermen would still be allowed to land blacknose sharks and the fishery would remain open for a longer period of time, significantly increasing non-blacknose SCS revenues by as much as $298,583 a year on average if the non-blacknose SCS quota is fully utilized. However, given current monthly trip rates in the Atlantic the non-blacknose SCS quota is likely to remain underutilized. Using calculations based on observed trip and landings rates of non-blacknose SCS in 2015, a more likely result of this alternative would be additional landings of 104,962 lb dw of non-blacknose SCS valued at $98,664, or approximately $3,654 per vessel for the 27 vessels that participated in the fishery in 2015. Any financial losses due to underutilization of the blacknose shark quota would be minimal in comparison.

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, a listserv notice to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the HMS Management Division (see **ADDRESSES**), and the guide, *i.e.,* the listserv notice, will be sent to all fishermen who hold commercial shark limited access permits. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 7, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.24, revise paragraphs (a)(2), (a)(3), (a)(4)(ii), and (a)(4)(iii) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(2) The commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between zero and 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) * * *

(ii) A person who owns or operates a vessel that has been issued a shark LAP and is operating south of 34°00′ N. lat. in the Atlantic region, as defined at § 635.27(b)(1), may retain, possess, land, or sell blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management groups are open per §§ 635.27 and 635.28. Such

persons may retain, possess, land, or sell no more than 8 blacknose sharks per vessel per trip. A person who owns or operates a vessel that has been issued a shark LAP and is operating north of 34°00′ N. lat. in the Atlantic region, as defined at § 635.27(b)(1), or a person who owns or operates a vessel that has been issued a shark LAP and is operating in the Gulf of Mexico region, as defined at § 635.27(b)(1), may not retain, possess, land, or sell any blacknose sharks, but may retain, possess, land, or sell non-blacknose SCS if the respective non-blacknose SCS management group is open per §§ 635.27 and 635.28.

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 160706587–6999–02]

RIN 0648–BG21

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 16

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

ACTION: Final rule.

SUMMARY: This final rule implements regulations in Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Amendment 16 protects deep-sea corals from the effects of commercial fishing gear in the Mid-Atlantic. The management measures implemented in this rule are intended to protect deep-sea coral and deep-sea coral habitat while promoting the sustainable utilization and conservation of several different marine resources managed under the authority of the Mid-Atlantic Fishery Management Council.

DATES: Effective January 13, 2017.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331. The EA/RIR/IRFA is also accessible online at *http://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Supervisory Fishery Policy Analyst, (978) 281–9288, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2013, the Council published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (78 FR 3401) for Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) to consider measures to protect deep-sea corals from the impacts of commercial fishing gear in the Mid-Atlantic. The Council conducted scoping meetings during February 2013 to gather public comments on these issues. Following further development of Amendment 16 through 2013 and 2014, the Council conducted public hearings in January 2015. Following public hearings, and with disagreement about the boundaries of the various alternatives, the Council held a workshop with various stakeholders on April 29–30, 2015, to further refine the deep-sea coral area boundaries. The workshop was an example of effective collaboration among fishery managers, the fishing industry, environmental organizations, and the public to develop management recommendations with widespread support. The Council adopted Amendment 16 on June 10, 2015, and submitted Amendment 16 on August 15, 2016, for final review by NMFS, acting on behalf of the Secretary of Commerce. NMFS published a Notice of Availability (NOA) announcing its review of Amendment 16 on September 2, 2016 (81 FR 60666), and a proposed rule including implementing regulations on September 27, 2016 (81 FR 66245). The public comment period for both the NOA and proposed rule ended on November 1, 2016.

The Council developed the action, and the measures described in this notice, under the discretionary provisions for deep-sea coral protection in section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This provision gives the Regional Fishery Management Councils the authority to:

(A) Designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) Designate such zones in areas where deep-sea corals are identified under section 408 (this section describes the deep-sea coral research and technology program), to protect deep-sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep-sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) With respect to any closure of an area under the Magnuson-Stevens Act that prohibits all fishing, ensure that such closure:

(i) Is based on the best scientific information available;

(ii) Includes criteria to assess the conservation benefit of the closed area;

(iii) Establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) Is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: Users of the area, overall fishing activity, fishery science, and fishery and marine conservation.

Consistent with these provisions, the Council recommended the measures in Amendment 16 to balance the impacts of measures implemented under this discretionary authority with the management objectives of the Mackerel, Squid, and Butterfish FMP and the value of potentially affected commercial fisheries.

Approved Measures

Deep-Sea Coral Protection Area

This final rule creates a deep-sea coral protection area in Mid-Atlantic waters. It consists of a broad zone that starts at a depth contour of approximately 450 meters (m) and extends to the U.S. Exclusive Economic Zone (EEZ) boundary, and to the north and south to the boundaries of the Mid-Atlantic waters (as defined in the Magnuson-Stevens Act). In addition, the deep-sea coral protection area includes 15 discrete zones that outline deep-sea canyons on the continental shelf in Mid-Atlantic waters. The deep-sea coral area, including both broad and discrete zones, is one continuous area.