

§ 74.702 [Amended]

■ 9. Amend § 74.702 by removing the second sentence of paragraph (a)(1).

§ 74.786 [Amended]

■ 10. Amend § 74.786 by removing the second sentence of paragraph (b). Amend § 74.1201 by revising paragraph (j) to read as follows:

§ 74.1201 Definitions.

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(j) *AM Fill-in area*. The area within the greater of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast or a 25-mile (40 km) radius centered at the AM transmitter site.

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§ 74.1202 [Amended]

■ 11. Amend § 74.1202 by removing paragraph (b)(3).

■ 12. Amend § 74.1235 by revising paragraph (d) to read as follows:

§ 74.1235 Power limitations and antenna systems.

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(d) Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 250 watts effective radiated power in any direction or have a 34 dBu interference contour that exceeds 60 km. Applications for FM translator stations located within 320 kilometers of the Mexican border must adhere to the following provisions.

(1) Translator stations located within 125 kilometers of the Mexican border may operate with a maximum ERP of 250 watts (0.250 kW) but must not exceed an ERP of 50 watts (0.050 kW) in the direction of the Mexican border. A translator station may not produce an interfering contour in excess of 32 km from the transmitter site in the direction of the Mexican border, nor may the 60 dBu service contour of the translator station exceed 8.7 km from the transmitter site in the direction of the Mexican border.

(2) Translator stations located between 125 kilometers and 320 kilometers from the Mexican border may operate with a maximum ERP of 250 watts in any direction. However, in no event shall the location of the 60 dBu contour lie within 116.3 km of the Mexican border.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 210730-0156; RTID 0648-XT040]

Atlantic Highly Migratory Species; 2022 Atlantic Shark Commercial Fishing Year

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and retention limits and establish the opening date for the 2022 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any underharvests experienced during the 2021 fishing year. NMFS proposes the opening date and commercial retention limits 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, the Gulf of Mexico, and the Caribbean Sea.

DATES: Written comments must be received by September 7, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0056, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2021-0056" in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

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).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Lauren Latchford (lauren.latchford@noaa.gov) by phone at 301-427-8503.

FOR FURTHER INFORMATION CONTACT:

Lauren Latchford (lauren.latchford@noaa.gov), Derek Kraft (derek.kraft@noaa.gov), or Karyl Brewster-Geisz (karyl.brewster-geisz@noaa.gov) 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 Atlantic 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 default commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for underharvests and overharvests. The retention limits, commercial quotas, and accounting measures can be found at 50 CFR 635.24(a) and 635.27(b). Regulations also include provisions allowing flexible opening dates for the fishing year (§ 635.27(b)(3)) and inseason adjustments to shark trip limits (§ 635.24(a)(8)), which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. In addition, § 635.28(b)(4) lists species and/or management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). Lastly, pursuant to § 635.27(b)(3), any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas will be published in the **Federal Register**.

2022 Proposed Commercial Shark Quotas

NMFS proposes adjusting the quota levels for the various shark stocks and management groups for the 2022 Atlantic commercial shark fishing year

based on underharvests that occurred during the 2021 fishing year, consistent with existing regulations at 50 CFR 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. If a sub-regional quota is overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only for shark management groups that have shark stocks that do not have an unknown status or that have no overfishing occurring and are not overfished. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2021 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2022 quotas for certain management groups as shown in Table 1. All of the 2022 proposed quotas for the respective stocks and management groups will be subject to further adjustment in the final rule after

NMFS considers landings submitted in the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2022 quotas, as appropriate, noting that, in some circumstances, NMFS re-adjusts quotas during the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2021 fishing year for these management groups may be added to the respective 2022 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage implemented in Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal

shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2021 underharvests cannot be carried over to the 2022 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. There are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the ultimate decision will be based on current data at the time of the final rule.

The proposed 2022 quotas by species and management group are summarized in Table 1 and the description of the calculations for each stock and management group can be found below. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table 1 includes landings data as of July 9, 2021; final quotas are subject to change based on landings as of October 2021.

TABLE 1—2022 PROPOSED QUOTAS AND OPENING DATE FOR THE ATLANTIC SHARK MANAGEMENT GROUPS

Region or sub-region	Management group	2021 Annual quota	Preliminary 2021 landings ¹	Adjustments ²	2022 Base annual quota	2022 Proposed annual quota	Season opening dates
		(A)	(B)	(C)	(D)	(D + C)	
Western Gulf of Mexico.	Blacktip Sharks ³ ..	347.2 mt (765,392 lb).	210.7 mt (464,554 lb).	115.7 mt (255,131 lb).	231.5 mt (510,261 lb).	347.2 mt (765,392 lb).	January 1, 2022.
	Aggregated Large Coastal Sharks.	72.0 mt (158,724 lb).	66.6 mt (146,851 lb).	.....	72.0 mt (158,724 lb).	72.0 mt (158,724 lb).
	Hammerhead Sharks.	11.9 mt (26,301 lb).	<1.5 mt (<3,300 lb).	.....	11.9 mt (26,301 lb).	11.9 mt (26,301 lb).
Eastern Gulf of Mexico.	Blacktip Sharks ³ ..	37.7 mt (83,158 lb).	8.6 mt (18,858 lb)	12.6 mt (27,719 lb).	25.1 mt (55,439 lb).	37.7 mt (83,158 lb).	January 1, 2022.
	Aggregated Large Coastal Sharks.	85.5 mt (188,593 lb).	38.1 mt (84,047 lb).	.....	85.5 mt (188,593 lb).	85.5 mt (188,593 lb).
	Hammerhead Sharks.	13.4 mt (29,421 lb).	5.7 mt (12,458 lb)	.....	13.4 mt (29,421 lb).	13.4 mt (29,421 lb).
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	112.6 mt (248,215 lb).	23.1 mt (50,911 lb).	112.6 mt (248,215 lb).	112.6 mt (248,215 lb).	
	Smoothhound Sharks.	504.6 mt (1,112,441 lb).	—mt (—lb)	168.2 mt (370,814 lb).	336.4 mt (741,627 lb).	504.6 mt (1,112,441 lb).	
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt (372,552 lb).	38.7 mt (85,317 lb).	168.9 mt (372,552 lb).	168.9 mt (372,552 lb).	January 1, 2022.
	Hammerhead Sharks.	27.1 mt (59,736 lb).	10.2 mt (22,542 lb).	.....	27.1 mt (59,736 lb).	27.1 mt (59,736 lb).
	Non-Blacknose Small Coastal Sharks.	264.1 mt (582,333 lb).	32.8 mt (72,243 lb).	.....	264.1 mt (582,333 lb).	264.1 mt (582,333 lb).
	Blacknose Sharks (South of 34 °N lat. only).	17.2 mt (37,921 lb).	4.8 mt (10,617 lb)	.....	17.2 mt (37,921 lb).	17.2 mt (37,921 lb).
No regional quotas	Smoothhound Sharks.	1,802.6 mt (3,971,587 lb).	192.8 mt (425,130 lb).	600.9 mt (1,324,634 lb).	1,201.7 mt (2,649,268 lb).	1,802.6 mt (3,973,902 lb).	January 1, 2022.
	Non-Sandbar LCS Research.	50.0 mt (110,230 lb).	5.0 mt (11,129 lb)	.....	50.0 mt (110,230 lb).	50.0 mt (110,230 lb).
	Sandbar Shark Research.	90.7 mt (199,943 lb).	35.4 mt (78,074 lb).	.....	90.7 mt (199,943 lb).	90.7 mt (199,943 lb).
	Blue Sharks	273.0 mt (601,856 lb).	<1.0 mt (<2,200 lb).	.....	273.0 mt (601,856 lb).	273.0 mt (601,856 lb).
	Porbeagle Sharks	1.7 mt (3,748 lb) ..	0.0 mt (0 lb) .....	.....	1.7 mt (3,748 lb) ..	1.7 mt (3,748 lb).

TABLE 1—2022 PROPOSED QUOTAS AND OPENING DATE FOR THE ATLANTIC SHARK MANAGEMENT GROUPS—Continued

Region or sub-region	Management group	2021 Annual quota (A)	Preliminary 2021 landings ¹ (B)	Adjustments ² (C)	2022 Base annual quota (D)	2022 Proposed annual quota (D + C)	Season opening dates
	Pelagic Sharks Other Than Porbeagle or Blue.	488.0 mt (1,075,856 lb).	25.2 mt (55,566 lb).	.....	488.0 mt (1,075,856 lb).	488.0 mt (1,075,856 lb).	

¹ Landings are from January 1, 2021, through July 9, 2021, and are subject to change.

² Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the base quota.

³ This adjustment accounts for underharvest in 2021. This proposed rule would increase the overall Gulf of Mexico blacktip shark quota by 128.3 mt (282,850 lb). Since any underharvest would be divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota would be increased by 115.7 mt, while the eastern Gulf of Mexico blacktip shark quota would be increased by 12.6 mt.

1. Proposed 2022 Quotas for Shark Management Groups Where Underharvests Can Be Carried Over

The Gulf of Mexico blacktip shark management group (which is divided between the two sub-regions) and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring. Pursuant to § 635.27(b)(2)(ii), available underharvest (up to 50 percent of the base annual quota) from the 2021 fishing year for these management groups may be added to the respective 2022 base quotas.

The 2022 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (765,392 lb dw) and the eastern Gulf of Mexico sub-region is 37.7 mt dw (83,158 lb dw). As of July 9, 2021, preliminary reported landings for blacktip sharks in the western Gulf of Mexico sub-region were at 60.7 percent (210.7 mt dw) of their 2021 quota levels (347.2 mt dw), and blacktip sharks in the eastern Gulf of Mexico sub-region were at 22.7 percent (8.6 mt dw) of the sub-regional 2021 quota levels (37.7 mt dw). Reported landings in both sub-regions have not exceeded the 2021 quota to date. Pursuant to § 635.27(b)(1)(ii)(C), any underharvest would be divided between the two sub-regions, based on the percentages that are allocated to each sub-region. To date, the overall Gulf of Mexico blacktip shark management group is underharvested by 165.6 mt dw (365,138 lb dw). NMFS proposes to increase the western Gulf of Mexico blacktip shark quota by 115.7 mt dw which is 90.2 percent of the quota adjustment, while the eastern Gulf of Mexico blacktip shark sub-regional quota would increase by 12.6 mt dw, which is 9.8 percent of the quota adjustment (Table 1). Thus, the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 347.2 mt dw (765,392 lb dw), and the proposed eastern sub-regional Gulf of

Mexico blacktip shark commercial quota is 37.7 mt dw (83,158 lb dw).

The 2022 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw) and in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of July 9, 2021, there have been no smoothhound shark landings in the Gulf of Mexico region and 10.7 percent (192.8 mt dw) of their 2021 quota (1802.6 mt dw) in the Atlantic region. NMFS proposes to adjust the 2022 Gulf of Mexico and Atlantic smoothhound shark quotas for anticipated underharvests in 2021 to the full extent allowed. The proposed 2022 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2021 underharvest = 504.6 mt dw 2022 adjusted annual quota) and the proposed 2022 adjusted base annual quota for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2021 underharvest = 1,802.6 mt dw 2022 adjusted annual quota).

2. Proposed 2022 Quotas for Shark Management Groups Where Underharvests Cannot Be Carried Over

Consistent with the current regulations at § 635.27(b)(2)(ii), 2021 underharvests cannot be carried over to the 2022 fishing year for the following stocks or management groups because they are overfished, are experiencing overfishing, or have an unknown status: Sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups.

The 2022 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw), and the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw). The 2022 proposed

commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were 92.5 percent (66.6 mt dw) of the 2021 quota (72.0 mt dw), the aggregated LCS in the eastern Gulf of Mexico sub-region were 44.6 percent (38.1 mt dw) of the 2021 quota (85.5 mt dw), and the aggregated LCS fishery in the Atlantic were 22.9 percent (38.7 mt dw) of the 2021 quota. Reported landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2021 overall aggregated LCS quota to date. Given the unknown status of some species in the aggregated LCS complex, the aggregated LCS quota cannot be adjusted for any underharvests. Based on both preliminary estimates and catch rates from previous years, NMFS proposes that the 2022 quotas for aggregated LCS in the western and eastern Gulf of Mexico sub-regions, and the Atlantic region be equal to their annual base quotas without adjustment.

The 2022 proposed commercial quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region and western Gulf of Mexico sub-region are 11.9 mt dw (26,301 lb dw) and 13.4 mt dw (29,421 lb dw), respectively. For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. The 2022 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). As of July 9, 2021, preliminary reported landings of hammerhead sharks in the western Gulf of Mexico sub-region were

less than 12 percent (<2.3 mt dw) of the 2021 quota (11.9 mt dw), landings of hammerhead sharks in the eastern Gulf of Mexico sub-region were at 42.3 percent (5.7 mt dw) of the 2021 quota (13.4 mt dw), and landings of hammerhead sharks in the Atlantic region were at 37.7 percent (10.2 mt dw) of the 2021 quota. Reported landings from the Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2021 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Based on both preliminary estimates and catch rates from previous years, NMFS proposes that the 2022 quotas for hammerhead sharks in the western Gulf of Mexico and eastern Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment.

The 2022 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34 °N latitude. North of 34 °N latitude, retention, landing, or sale of blacknose sharks is prohibited. NMFS is not proposing any adjustments to the blacknose shark quota at this time. For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, preliminary reported landings of blacknose sharks were at 28.0 percent (4.8 mt dw) of the 2021 quota levels in the Atlantic region. Reported landings have not exceeded the 2021 quota to date. NMFS proposes that the 2022 Atlantic blacknose shark quota be equal to the annual base quota without adjustment.

The 2022 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (248,215 lb dw). The 2022 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, preliminary reported landings of non-blacknose SCS were at 20.5 percent (23.1 mt dw) of their 2021 quota level (112.6 mt dw) in the Gulf of Mexico region and were at 12.4 percent (32.8 mt dw) of the 2021 quota level in the Atlantic region. Reported landings have not exceeded the 2021 quota to date.

Given the unknown status of bonnethead sharks within the Gulf of Mexico and Atlantic non-blacknose SCS management groups, underharvests cannot be carried forward. Based on both preliminary estimates and catch rates from previous years, NMFS proposes that the 2022 quota for non-blacknose SCS in the Gulf of Mexico and Atlantic regions be equal to the annual base quota without adjustment.

The 2022 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, there were no preliminary reported landings of blue sharks or porbeagle sharks, and landings of pelagic sharks (other than porbeagle and blue sharks) were at 5.2 percent (25.2 mt dw) of the 2021 quota level (488.0 mt dw). Given that these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward. Based on preliminary estimates of catch rates from previous years, NMFS proposes that the 2022 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment.

The 2022 proposed commercial quotas within the shark research fishery are 50 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 9, 2021, preliminary reported landings of research LCS were at 10.1 percent (5.0 mt dw) of the 2021 quota, and sandbar shark reported landings were at 39 percent (35.4 mt dw) of their 2021 quota. Because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either overfished or overfishing is occurring, underharvests for these management groups cannot be carried forward. Based on preliminary estimates, NMFS proposes that the 2022 quota in the shark research fishery be equal to the annual base quota without adjustment.

Proposed Opening Date and Retention Limits for the 2022 Atlantic Commercial Shark Fishing Year

In proposing the commercial shark fishing season opening dates for all

regions and sub-regions, NMFS considered the “Opening Commercial Fishing Season Criteria,” which are the criteria listed at § 635.27(b)(3): The available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishery participation in past years, effects of the adjustment on accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology of target species (e.g., seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed openings.

In analyzing the criteria, NMFS examines the underharvests of the different management groups in the 2021 fishing year to determine the likely effects of the proposed commercial quotas for 2022 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examines the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities will be provided to fishermen in all areas. Lastly, NMFS examines the seasonal variation of the different species/management groups and the effects on fishing opportunities. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip in the eastern and western Gulf of Mexico sub-regions and in the Atlantic region, unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. NMFS may adjust the retention limit from zero to 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group is open under § 635.27 and § 635.28, respectively.

NMFS also considered the six “Inseason Trip Limit Adjustment Criteria” listed at § 635.24(a)(8). Those criteria are: The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports; the catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports; the estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season; effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; variations in seasonal distribution, abundance, or migratory

patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or 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 relevant quota.

In analyzing the criteria, NMFS examines landings submitted in dealer reports on a weekly basis and catch rates based upon those dealer reports and have found that, to date, landings and subsequent quotas have not been exceeded. Catch rates in one part of a sub-region reached 80 percent have been closed, and have not reached 100 percent of the available quota. In addition, that closure did not preclude vessels in another part of that region or

sub-region from having a reasonable opportunity to harvest a portion of the relevant quota. Given the pattern of landings over the previous years, seasonal distribution of the species and/or management groups has not had an effect on the landings within a region or sub-region.

After considering both sets of criteria in § 635.24 and 635.28, NMFS is proposing to open the 2022 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, on January 1, 2022, after the publication of the final rule for this action (Table 2). NMFS proposes to open the season on January 1, 2022, but

recognizes that the actual opening date is contingent on publication of the final rule in the **Federal Register**, and may vary accordingly. NMFS is also proposing to start the 2022 commercial shark fishing season with the commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). Proposed retention limits could change (as a result of public comments as well as updated catch rates and landings information submitted in dealer reports) in the final rule.

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

Region or sub-region	Management group	Quota linkages *	Season opening date	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are possible)
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked.		
Eastern Gulf of Mexico	Hammerhead Sharks.	Not Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip.
	Blacktip Sharks				Linked.
Gulf of Mexico	Aggregated Large Coastal Sharks.	Not Linked	January 1, 2022	N/A.
	Hammerhead Sharks.			
Atlantic	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2022	N/A.
	Smoothhound Sharks			
	Aggregated Large Coastal Sharks.	Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip.
	Hammerhead Sharks.			
	Non-Blacknose Small Coastal Sharks.	Linked (South of 34 °N lat. only).	January 1, 2022	N/A.
	Blacknose Sharks (South of 34 °N lat. only).			
No regional quotas	Smoothhound Sharks	Not Linked	January 1, 2022	N/A.
	Non-Sandbar LCS Research	Linked	January 1, 2022	N/A.
	Sandbar Shark Research.	Not Linked	January 1, 2022	N/A.
	Blue Sharks			
	Porbeagle Sharks.			
	Pelagic Sharks Other Than Porbeagle or Blue.			

* § 635.28(b)(4) lists species and/or management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)).

In the eastern and western Gulf of Mexico sub-regions, NMFS proposes opening the fishing season on January 1, 2022, for the aggregated LCS, blacktip sharks, and hammerhead shark management groups, with the commercial retention limits of 55 LCS other than sandbar sharks per vessel per trip for directed shark permits. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. The season opening criteria listed in § 635.27(b)(3) requires NMFS to consider the length of the season for the different species and/or management groups in the previous years (§ 635.27(b)(3)(ii) and (iii)) and

whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(v)). In addition, the criteria listed in § 635.24(a)(8) require NMFS to consider the catch rates of the relevant shark species/complexes based on landings submitted in dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at § 635.27(b)(3)(v) and § 635.24(a)(8)(ii), (v), and (vi)). Given these requirements, NMFS reviewed landings on a weekly basis for all species and/or management groups and

determined that fishermen have been able to participate in the fishery, and landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2021 overall aggregated LCS quota to date. For both the eastern and western Gulf of Mexico sub-regions combined, landings submitted in dealer reports received through July 9, 2021, indicate that 66 percent (104.7 mt dw), 57 percent (219.3 mt dw), and almost 30 percent (<8 mt dw) of the available aggregated LCS, blacktip, and hammerhead shark quotas, respectively, have been harvested. Therefore, for 2022, NMFS is proposing opening both the western and eastern Gulf of Mexico sub-regions with a commercial retention

limit of 55 sharks other than sandbar sharks per vessel per trip.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on January 1, 2022. The criteria listed in § 635.27(b)(3) consider the 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 (§ 635.27(b)(3)(v)). The 2021 data indicate that an opening date of January 1, coupled with inseason adjustments to the retention limit if later considered and needed, would provide a reasonable opportunity for fishermen in every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)), while accounting for variations in seasonal distribution of the different species in the management groups (§ 635.27(b)(3)(iv)). Because the quotas we propose for 2022 are the same as the quotas in 2021, NMFS proposes that the season lengths, and therefore, the participation of various fishermen throughout the region, would be similar in 2022 (§ 635.27(b)(3)(ii) and (iii)). Additionally, the January 1 opening date appears to meet the objectives of the 2006 Consolidated HMS FMP and its amendments (§ 635.27(b)(3)(vi)). In the recent past, NMFS has managed the fishery by opening the aggregated LCS and hammerhead shark management groups on January 1 with a relatively high retention limit. Once a certain percentage threshold was reached, the retention limit was reduced to a low limit, such as 3 LCS other than sandbar sharks per vessel per trip, and then the retention limit was increased again in mid-July. This approach allowed the fishery in the Atlantic region to remain open throughout the year, consistent with conservation and management measures for the stocks and requests from fishermen and states. However, landings data from 2016 to present indicate a decrease in annual landings in the aggregated LCS management group. As a result, in 2021 NMFS opened with a retention limit of 45 LCS other than sandbar sharks per vessel per trip, anticipating that it might later reduce the trip limit when landings reached approximately 40 percent of the quota and after considering appropriate factors. Instead, on March 23, 2021, NMFS increased the retention limit from 36 to the maximum limit of 55 LCS other than sandbar sharks per vessel per trip for all directed permit holders due to low landings (86 FR 16075; March 26, 2021). As of July 9, 2021, landings data indicate that, despite increasing the

retention limit to the maximum, only 22.9 percent of the aggregated LCS and 37.7 percent of the hammerhead shark commercial quotas have been landed. Considering this experience and the recent reduced landings compared to past years, NMFS proposes to open on January 1, 2022, with a retention limit of 55 LCS other than sandbar sharks per vessel per trip. Starting with the highest retention limit available could allow fishermen in the Atlantic region to more fully utilize the available science-based quota. As needed, NMFS may adjust the retention limit throughout the year to ensure equitable fishing opportunities throughout the region and ensure the quota is not exceeded (see the criteria at § 635.24(a)(8)). For example, if the quota is harvested too quickly, NMFS could consider reducing the retention limit as appropriate to ensure enough quota remains until later in the year. NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit.

All of the shark management groups would remain open until December 31, 2022, or until NMFS determines that the landings for any shark management group are projected to reach 80 percent of the quota given the realized catch rates, and are projected to reach 100 percent before the end of the fishing season, or until a quota-linked species or management group is closed. If NMFS determines that a non-quota-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (e.g., eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than four days from the date of filing. For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings have reached or are projected to reach 80 percent of applicable available overall, regional, and/or sub-regional quota and are projected to reach 100 percent of the relevant quota by the end of the fishing season, after considering the following criteria and other relevant factors: Season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives

of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. The fisheries for the shark species or management group would be closed (even across fishing years) from the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened.

If NMFS determines that a quota-linked species and/or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will publish in 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 four days from the date of filing. In that event, from the effective date and time of the closure until the season is reopened and additional quota is available (via the publication of another NMFS notice in the **Federal Register**), the fisheries for all quota-linked species and/or management groups will be closed, even across fishing years. The quota-linked species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34 °N latitude.

Request for Comments

Comments on this proposed rule and on NMFS' determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities (as discussed below in the Classification section), may be submitted via www.regulations.gov. NMFS solicits comments on this proposed rule by September 7, 2021 (see **DATES** and **ADDRESSES**).

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

NMFS determined that the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (June 24, 2008,

73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015) are consistent with 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, as required under the Coastal Zone Management Act. 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 NMFS 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 an opening date and adjust quotas for the 2022 fishing year for the Atlantic commercial shark fisheries does not change the framework previously consulted upon. Therefore, no additional consultation is required.

This rulemaking would implement previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMSFMP and its amendments, and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Impacts have been evaluated and analyzed in Amendments 2, 3, 5a, 6, and 9 to the 2006 Consolidated HMS FMP, which include Final Environmental Impact Statements (FEISs) for Amendments 2, 3, and 5a, and EAs for Amendments 6 and 9. The final rule for Amendment 2 implemented base quotas and quota adjustment procedures for sandbar shark and non-sandbar LCS species/management groups, and Amendments 3 and 5a implemented base quotas for Gulf of Mexico blacktip shark, aggregated LCS, hammerhead shark, blacknose shark, and non-blacknose SCS management groups and quota transfers for Atlantic sharks. The final rule for Amendment 6 implemented a revised commercial shark retention limit, revised base quotas for sandbar shark and non-blacknose SCS species/management groups, new sub-regional quotas in the Gulf of Mexico region for blacktip sharks, aggregated LCS, and hammerhead sharks, and new management measures for blacknose sharks. The final rule for Amendment 9 implemented management measures,

including commercial quotas, for smoothhound sharks in the Atlantic and Gulf of Mexico regions. In 2010, NOAA Fisheries prepared an EA with the 2011 quota specifications rule (75 FR 76302; December 8, 2010) that describes the impact on the human environment that would result from implementation of measures to delay the start date and allow for inseason adjustments. NMFS has determined that the quota adjustments and season opening dates of this proposed rule and the resulting impacts to the human environment are within the scope of the analyses considered in the FEISs and EAs for these amendments, and additional National Environmental Policy Act (NEPA) analysis is not warranted for this proposed rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (RFA). The factual basis for this determination is as follows.

The proposed rule would adjust quotas and retention limits and establish the opening date for the 2022 fishing year for the Atlantic commercial shark fisheries. NMFS would adjust quotas as required or allowable based on any overharvests and/or underharvests from the 2021 fishing year. NMFS has limited flexibility to otherwise modify the quotas in this proposed rule. In addition, the impacts of the quotas (and any potential modifications) were analyzed in previous regulatory flexibility analyses, including the initial regulatory flexibility analysis and the final regulatory flexibility analysis that accompanied the 2011 shark quota specifications rule. NMFS proposes the opening date and commercial retention limits 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, the Gulf of Mexico, and the Caribbean Sea. However, the effects this proposed rule would have on small entities would be minimal. Section 603(b)(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. SBA's regulations include provisions for an agency to

develop its own industry-specific size standards after consultation with SBA and providing 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**, which NMFS did on December 29, 2015 (80 FR 81194; 50 CFR 200.2). 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. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As of June 13, 2021, this proposed rule would apply to the approximately 207 directed commercial shark permit holders, 253 incidental commercial shark permit holders, 164 smoothhound shark permit holders, and 90 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 460 directed and incidental commercial shark permit holders, to date, only 10 permit holders landed sharks in the Gulf of Mexico region, and only 65 landed sharks in the Atlantic region. Of the 164 smoothhound shark permit holders, to date, only 63 permit holders landed smoothhound sharks in the Atlantic region, and 1 landed smoothhound sharks in the Gulf of Mexico region. As described below, NMFS has determined that all of these entities are small entities for purposes of the RFA.

Based on the 2020 ex-vessel price (Table 3), fully harvesting the unadjusted 2021 Atlantic shark commercial base quotas could result in total fleet revenues of \$8,481,742. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the base sub-regional quotas upward due to underharvests in 2021. The increase for the western Gulf of Mexico blacktip shark management group could result in a \$206,656 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a \$21,066 gain in total revenues for

fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas due to the underharvest in 2021. This would cause a potential gain in revenue of \$281,819 for the fleet in the Gulf of Mexico region, and a potential gain in revenue of \$1,217,953 for the fleet in the Atlantic region. Since a small business is defined as having annual receipts not in excess of \$11.0 million, and total Atlantic shark revenue for the entire fishery is \$9

million, each individual shark fishing entity would fall within the small business definition. NMFS has also determined that the proposed rule would not likely affect any small governmental jurisdictions.

All of these changes in gross revenues are similar to the gross revenues analyzed in the 2006 Consolidated HMS FMP and Amendments 2, 3 5a, 6, and 9 to the 2006 Consolidated HMS FMP. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small

entities from adjustments such as those contemplated in this action are expected to be minimal. In accordance with the 2006 Consolidated HMS FMP, as amended, and consistent with NMFS' statements in rules implementing Amendments 2, 3 5a, 6, and 9, and in the EA for the 2011 shark quota specifications rule, NMFS now conducts annual rulemakings in which NMFS considers the potential economic impacts of adjusting the quotas for underharvests and overharvests.

TABLE 3—AVERAGE EX-VESSEL PRICES PER lb dw FOR EACH SHARK MANAGEMENT GROUP, 2020

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Western Gulf of Mexico	Blacktip Shark	\$0.81	
	Aggregated LCS	0.80	
	Hammerhead Shark	0.74	
Eastern Gulf of Mexico	Blacktip Shark	0.76	
	Aggregated LCS	0.79	
	Hammerhead Shark		
Gulf of Mexico	Non-Blacknose SCS	0.71	
	Smoothhound Shark	0.76	
Atlantic	Aggregated LCS	1.13	
	Hammerhead Shark	0.57	
	Non-Blacknose SCS	1.12	
	Blacknose Shark	1.29	
	Smoothhound Shark	0.92	
No Region	Shark Research Fishery (Aggregated LCS)		
	Shark Research Fishery (Sandbar only)	1.30	
	Blue shark		
	Porbeagle shark		
	Other Pelagic sharks	1.31	
All	Shark Fins		\$5.15
Atlantic	Shark Fins		1.58
GOM	Shark Fins		9.44

In conclusion, as discussed above, this proposed rule would adjust quotas and retention limits and establish the opening date for the 2022 fishing year for the Atlantic commercial shark fisheries. Based on available data on commercial catch of sharks in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea, it appears that shark fishing is conducted by fishermen who already possess Federal permits and are adhering to Federal reporting requirements for all catch as well as other Federal shark regulations, whether they are in Federal or state waters. Given these factors, this action would not have an effect,

practically, on the regulations that shark fishermen currently follow. Furthermore, this action is not expected to affect the amount of sharks caught and sold or result in any change in the ex-vessel revenues those fishermen could expect. Therefore, NMFS has determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS invites comments from the public on the information in this determination that this proposed rule, if adopted, would not have a significant

economic impact on a substantial number of small entities.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: August 2, 2021.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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