

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 110913585-2001-02]

RIN 0648-BB36

#### Atlantic Highly Migratory Species; 2012 Atlantic Shark Commercial Fishing Season

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

**ACTION:** Final rule; fishing season notification.

**SUMMARY:** This final rule establishes the opening dates and adjusts quotas for the 2012 fishing season for the Atlantic commercial shark fisheries. Quotas were adjusted based on over- and/or underharvests experienced during the 2010 and 2011 Atlantic commercial shark fishing seasons. In addition, NMFS is using previously-implemented adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas to determine the opening dates. These actions are expected to provide fishing opportunities for commercial shark fishermen in the northwestern Atlantic, including the Gulf of Mexico and Caribbean.

**DATES:** The 2012 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Guy DuBeck at (301) 427-8503 or (fax) (301) 713-1917.

#### 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 HMS Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635.

On October 31, 2011, NMFS published a rule (76 FR 67121) that proposed the 2012 opening dates of the Atlantic commercial shark fisheries and quotas based on shark landings information as of August 31, 2011. The proposed rule also considered using adaptive management measures such as flexible opening dates for the fishing seasons and inseason adjustments to shark trip limits to provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. The proposed rule contained details regarding the adaptive management measures and a brief summary of recent management history. Those details are not repeated here.

Approximately 15 comments from the public were received on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As detailed more fully in the Response to Comments section, as a result of public comment, in the final rule NMFS has changed the opening date of the non-sandbar large coastal shark (LCS) fishery in the Gulf of Mexico region from March 1, 2012, to February 15, 2012. The other shark species/complexes will open as proposed in the October 31, 2011, proposed rule.

This final rule serves as notification of the 2012 opening dates of the Atlantic commercial shark fisheries and 2012 quotas, based on shark landings updates as of October 31, 2011, pursuant to § 635.27(b)(1)(i-vi). This action does not change the annual base and adjusted annual base commercial quotas established under Amendments 2 and 3 to the 2006 Consolidated HMS FMP for sandbar sharks, non-sandbar LCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks), non-blacknose SCS, or blacknose sharks. Any such changes would be performed through a separate action. Rather, this action adjusts the commercial quotas based on over- and/or underharvests that occurred in 2010 and 2011, consistent with existing regulations.

##### Response to Comments

During the proposed rule stage, NMFS received approximately 15 comments from fishermen, dealers, and other interested parties. All written comments

can be found at <http://www.regulations.gov/> and by searching for RIN 0648-BB36.

**Comment 1:** NMFS received several comments regarding the proposed opening date for the non-sandbar LCS fishery. One comment noted that shark meat is easier to sell in the Gulf of Mexico during the religious period of Lent, which runs from February 22 to April 7, 2012. Other comments indicated that shark dealers and fishermen would prefer for the fishery to open on February 15, since the targeted shark species would no longer be in their fishing areas by March 1.

**Response:** In the proposed rule, NMFS considered a season opening date of March 1, 2012, to allow for the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all parts of the Gulf of Mexico region. Under the criteria listed at § 635.27(b)(1)(ii), NMFS examined the season length from previous fishing years, variation in seasonal distribution and abundance of sharks, and the effects of catch rates in one part of a region precluding fishing opportunities for vessels in another part of that region before making a decision. Taking into consideration these criteria, NMFS has determined that changing the opening date of the non-sandbar LCS fishery in the Gulf of Mexico region is allowable and will continue to promote equitable fishing opportunities in this region. Also, changing the opening date will not compromise the resource due to variations in seasonal distribution, abundance, and migratory patterns of the non-sandbar LCS species. As such, based on comments received from fishermen and dealers in different areas of the Gulf of Mexico requesting NMFS to open on February 15, NMFS is changing the proposed opening date of the non-sandbar LCS from March 1, 2012, to February 15, 2012.

**Comment 2:** NMFS should stop all shark fishing.

**Response:** This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year and opening dates for the 2012 shark season. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendment 2 and Amendment 3, and are being reviewed again for some shark species in Amendment 5 (76 FR 62331; October 7, 2011) and Amendment 6 (76 FR 57709;

September 16, 2011), both of which are in the scoping phase.

*Comment 3:* Some Florida fishermen supported the NMFS proposed opening for the non-sandbar LCS fishery in the Atlantic region, which includes U.S. waters from Maine to east coast of Florida, on the effective date of the final rule implementing the Atlantic HMS electronic dealer reporting system, or July 15, 2012, whichever comes sooner. Fishermen in the southern portion of the Atlantic region were supportive of timing the fishery so that they will have an opportunity to participate in a winter fishery this year.

*Response:* NMFS implemented the adaptive management measures from the 2011 shark season rule (75 FR 76302; December 8, 2010) to allow for flexible opening dates and ensure equitable fishing opportunities for fishermen along the Atlantic coast. These adaptive management measures will allow NMFS to accommodate the south Atlantic fishermen's comments regarding timing to allow for a winter fishery. With the implementation of the HMS electronic reporting system, NMFS should be able to monitor the quota on a real-time basis. This ability, along with the inseason trip limit adjustment, should allow NMFS additional flexibility in furtherance of opportunities for all fishermen in all regions, to the extent practical. Depending on how quickly the quota is being harvested, NMFS could reduce the retention limits to 0–32 sharks per trip to ensure that fishermen further north have ample quota for a fishery later in the 2012 fishing season.

*Comment 4:* NMFS should stop the retention of hammerhead sharks by recreational fishermen.

*Response:* This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust the commercial fishing quotas and opening dates for the 2012 shark fisheries seasons. The final rule does not reanalyze the recreational management measures for sharks, which were analyzed in Amendment 2, Amendment 3, and the final rule implementing the International Commission for the Conservation of Atlantic Tunas recommendations that prohibit the retention, transshipping, landing, storing, or selling of hammerhead and oceanic whitetip sharks (76 FR 53652; August 29, 2011). Management measures for scalloped hammerhead sharks will be considered and analyzed through Amendment 5 (76 FR 62331; October 7, 2011).

*Comment 5:* NMFS needs to be clear and consistent with their messages to the public. The proposed opening for

the porbeagle fishery was very confusing in its wording and there was a mistake in the proposed rule and email notice. This is difficult for the public to decipher, as the wording is not clear and/or the math seems not to be accurate. NMFS should take care that its public notices are both accurate and clear.

*Response:* NMFS agrees that its messages to the public should be clear and that there was a mistake in the proposed rule and email notice. NMFS proposed opening the porbeagle fishery on or about January 1, 2012, if the total overharvest from 2011 had not reached 80 percent of the 2012 annual base quota. The proposed rule and email notice stated that if “overharvest continues to occur and the level reaches 60 percent or more of the 2012 base quota (1.3 mt dw; 2,988 lb dw), NMFS would not open the fishery in 2012.” This sentence misstated the applicable regulatory language from § 635.28(b)(2), which provides that when NMFS calculates that the landings for the shark species/complex has reached or is projected to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species/complex. Thus, the proposed rule should refer to “80 percent or more of the 2012 base quota” and not 60 percent.

*Comment 6:* Both scalloped hammerhead and porbeagle sharks are in a decline and face extinction. These species have been petitioned to be listed under the Endangered Species Act (ESA). In light of the information in these petitions and ongoing legal actions, NMFS should halt all fishing activities on both species.

*Response:* Under Amendment 2, scalloped hammerhead sharks are managed as part of the non-sandbar large coastal complex, and porbeagle sharks are managed with a separate species-specific quota and other management measures. NMFS has undertaken scoping for Amendment 5, which will address information in a new stock assessment for scalloped hammerhead sharks within the timeframe required by the Magnuson-Stevens Act (MSA). The current fishery management plans and the best available science do not indicate that fishing of either species must stop completely. A petition to list species under the ESA triggers a process under the ESA, which does not require halting fishing activity under either the ESA or the MSA pending the agency's consideration of the petition. Recently, NMFS announced a 90-day finding on a petition to list scalloped hammerhead

sharks as threatened or endangered under the ESA (76 FR 72891; November 28, 2011). Applying the appropriate standards from the listing review process, NMFS found that there is “substantial scientific or commercial information indicating that the petitioned action may be warranted.” This finding does not carry with it any additional protection for the species. NMFS now will conduct a status review of the species to determine if the petition action is warranted. To ensure that the status review is comprehensive, NMFS is soliciting scientific and commercial information pertaining to this species from any interested party. Information and comments are due by January 27, 2012, and the Agency intends to make its decision in August 2012. If a decision is made that listing scalloped hammerhead sharks under the ESA is warranted, then the Agency would publish a proposed rule to list the species, designate critical habitat, and accept public comments before any final actions. Additionally, the Agency is reviewing management measures for scalloped hammerhead sharks through the Amendment 5 rulemaking process (76 FR 62331; October 7, 2011). Comments on scoping for Amendment 5 are due on December 31, 2011. The petition to list porbeagle sharks under the ESA received a negative 90-day finding (75 FR 39656; July 12, 2010). NMFS determined that the petition did not present substantial scientific information indicating the petitioned action may be warranted. Currently, NMFS's decision not to initiate a status review for porbeagle sharks is being challenged in federal court.

#### *Changes From the Proposed Rule*

NMFS made several changes to the proposed rule as described below.

1. NMFS changed the opening date of the non-sandbar LCS fishery in the Gulf of Mexico in the final rule from March 1, 2012, to February 15, 2012. As described in the response to comment above, this change is being made to address public comment. Opening of the non-sandbar LCS fishery in the Gulf of Mexico region earlier in the year balances the comments received from all constituents in the Gulf of Mexico region and should provide equitable shark fishing opportunities to all participants in the Gulf of Mexico region, to the extent practicable. Also, this change was within the range of possible actions analyzed in the proposed rule pursuant to § 635.27(b)(1)(ii).

2. NMFS made changes in the final quotas of the non-blacknose SCS and porbeagle shark fisheries based on

landings updates through October 31, 2011. In the proposed rule, NMFS proposed a quota for the commercial non-blacknose SCS fishery of 310.6 mt dw based on shark landings updates as of August 31, 2011. Using adjusted landings through October 31, 2011, and correcting for an error in accounting for harvests in 2010, this final rule establishes the 2012 commercial non-

blacknose SCS quota of 332.4 mt dw. In the proposed rule, the commercial porbeagle fishery was proposed to be 0.8 mt dw based on the August 31, 2011, shark landings updates. Using adjusted landings through October 31, 2011, this rule establishes the 2012 porbeagle quota to be 0.7 mt dw. All of the details of the resulting changes to the quota can be found in Table 1 and below.

### 2012 Annual Quotas

This final rule adjusts the commercial quotas due to over- and/or underharvests in 2010 and 2011. The 2012 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by NMFS after October 31, 2011, will be used to adjust the 2013 quotas, as appropriate.

**TABLE 1—2012 ANNUAL QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES. ALL QUOTAS AND LANDINGS ARE DRESSED WEIGHT (DW), IN METRIC TONS (MT), UNLESS SPECIFIED OTHERWISE**

Species group	Region	2011 Annual quota (A)	Preliminary 2011 landings <sup>1</sup> (B)	Adjustments (C)	2012 Base annual quota <sup>2</sup> (D)	2012 Annual quota (D+C)	Season opening dates
Non-Sandbar Large Coastal Sharks.	Gulf of Mexico .....	351.9 (775,740 lb dw).	327.7 (722,444 lb dw).	2.3 (adjustment from 2010) <sup>3</sup> .	390.5 (860,896 lb dw).	392.8 (866,063 lb dw).	February 15, 2012.
	Atlantic .....	190.4 (419,756 lb dw).	148.0 (326,354 lb dw).	−4.6 (2010 overharvest) <sup>4</sup> .	187.8 (414,024 lb dw).	183.2 (403,889 lb dw).	Effective Date for HMS Electronic Dealer Reporting System or July 15, 2012, whichever comes first.
Non-Sandbar LCS Research.	No regional quotas.	37.5 (82,673 lb dw).	37.0 (81,627 lb dw).	N/A <sup>5</sup> .....	37.5 (82,673 lb dw).	37.5 (82,673 lb dw).	January 24, 2012.
Sandbar Shark Research.	.....	87.9 (193,784 lb dw).	60.2 (132,778 lb dw).	N/A <sup>5</sup> .....	87.9 (193,784 lb dw).	87.9 (193,784 lb dw).	
Non-Blacknose Small Coastal Sharks.	.....	314.4 (693,257 lb dw).	177.1 (390,439 lb dw).	110.8 <sup>6</sup> (adjustment from 2011).	221.6 (488,539 lb dw).	332.4 (732,808 lb dw).	
Blacknose Sharks	.....	19.9 (43,872 lb dw).	14.0 (30,971 lb dw).	N/A <sup>5</sup> .....	19.9 (43,872 lb dw).	19.9 (43,872 lb dw).	
Blue Sharks .....	.....	273.0 (601,856 lb dw).	7.2 (15,968 lb dw).	N/A <sup>5</sup> .....	273.0 (601,856 lb dw).	273.0 (601,856 lb dw).	
Porbeagle Sharks	.....	1.6 (3,479 lb dw).	2.5 (5,430 lb dw).	−1.0 <sup>7</sup> (adjustments from 2010 and 2011 overharvests).	1.7 (3,748 lb dw).	0.7 (1,585 lb dw).	
Pelagic Sharks Other Than Porbeagle or Blue.	.....	488.0 (1,075,856 lb dw).	102.1 (225,068 lb dw).	N/A <sup>5</sup> .....	488.0 (1,075,856 lb dw).	488.0 (1,075,856 lb dw).	

<sup>1</sup> Landings are from January 1, 2011, until October 31, 2011, and are subject to change.

<sup>2</sup> 2012 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).

<sup>3</sup> This adjustment accounts for the 2.3 mt dw (5,167 lb dw) that was overestimated in the landings used in the final rule establishing the 2011 quotas.

<sup>4</sup> This adjustment accounts for the 4.6 mt dw (10,135 lb dw) overharvest reflected in the landings used in the final rule establishing the 2011 quotas.

<sup>5</sup> Although there were underharvests in the non-sandbar LCS research, shark research, non-sandbar large coastal shark (LCS), blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) fisheries, those underharvests cannot be carried over to the 2012 fishing season because those fisheries have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. See 50 CFR 635.27(b)(1)(i)(B).

<sup>6</sup> This adjustment accounts for the underharvest in 2011. While the total underharvest is 137.3 mt dw, NMFS may account for underharvest only up to 50 percent of the base annual quota or 110.8 mt dw (244,269 lb dw).

<sup>7</sup> This adjustment accounts for overharvest in 2010 and 2011. After the final rule establishing the 2011 quotas, the porbeagle sharks were overharvested by an additional 0.1 mt dw (212 lb dw). As of October 31, 2011, 0.9 mt dw (1,951 lb dw) was harvested above the 2011 porbeagle shark quota.

### 1. 2012 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

No overharvests of the non-sandbar LCS and sandbar shark quotas within the shark research fishery occurred during the 2011 fishing year and, given the status of the stocks, any underharvests cannot be accounted for pursuant to § 635.27(b)(1)(iii). Therefore, the 2012 base annual quotas within the shark research fishery will be 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

### 2. 2012 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

No overharvests of the non-sandbar LCS in the Gulf of Mexico region occurred during the 2011 fishing year and, given the status of the stocks, any underharvests cannot be accounted for pursuant to § 635.27(b)(1)(iv). Therefore, the 2012 annual quota for non-sandbar LCS in the Gulf of Mexico region does not need to be adjusted. However, in the final rule establishing the 2011 quotas (75 FR 76302, December 8, 2010), NMFS accounted for an overharvest of non-sandbar LCS of 38.6 mt dw (85,156 lb dw) using data that were reported as of October 31, 2010. Between that date and

December 31, 2010, the reported landings were reduced by 2.3 mt dw due to normal quality control procedures that occur when updated data are supplied. Thus, as stated in the proposed rule, in order to reflect the best available data and in accordance with § 635.27(b)(1)(i), NMFS is adding the amount that was deducted from the 2011 annual quota, based on preliminary numbers that were later corrected, to the 2012 non-sandbar LCS quota in the Gulf of Mexico region. Thus, the 2012 annual commercial non-sandbar LCS quota is 392.8 mt dw (866,063 lb dw) (390.5 mt dw annual base quota + 2.3 mt dw 2010

overestimated landings = 392.8 mt dw 2012 adjusted annual quota).

### 3. 2012 Quotas for the Non-Sandbar LCS in the Atlantic Region

No overharvests of the non-sandbar LCS in the Atlantic region occurred during the 2011 fishing year and, given the status of the stocks, any underharvests cannot be accounted for pursuant to § 635.27(b)(1)(iv). Therefore, the 2012 annual quota for non-sandbar LCS in the Atlantic region does not need to be adjusted to account for 2011 landings. However, in the final rule establishing the 2011 quotas, NMFS stated that the reported landings as of October 31, 2010, did not exceed the 2010 quota. Between that date and December 31, 2010, the Atlantic non-sandbar LCS quota was overharvested by 4.6 mt dw. As such, this overharvest must be accounted for in the 2012 quota. Accordingly, the 2012 annual commercial non-sandbar LCS quota is 183.2 mt dw (403,889 lb dw) (187.8 mt dw annual base quota – 4.6 mt dw 2010 over estimated landings = 183.2 mt dw 2012 adjusted annual quota).

### 4. 2012 Quotas for SCS and Pelagic Sharks

No overharvests of blacknose shark, blue sharks, and pelagic sharks other than porbeagle or blue sharks occurred between October 31, 2010 and December 31, 2010, or during the 2011 fishing year. Given the status of the stocks, underharvests cannot be accounted for pursuant to § 635.27(b)(1)(v) through (vi). Therefore, the 2012 annual base quotas for blacknose sharks, blue sharks and pelagic sharks other than porbeagle or blue sharks will be 19.9 mt dw (43,872 lb dw), 273.0 mt dw (601,856 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively.

Regarding non-blacknose SCS, NMFS has declared this complex to be not overfished and to have no overfishing occurring. Therefore, in this final rule establishing the 2012 quotas, NMFS may account for underharvest up to 50 percent of the base annual quota. Preliminary landings through October 31, 2011, indicate that 177.1 mt dw were landed out of an adjusted quota of 314.4 mt dw. While 137.3 mt dw remained un-harvested, because the base quota is 221.6 mt dw, the maximum amount that NMFS may carry forward is 110.8 mt dw. Therefore, the 2012 adjusted annual quota for non-blacknose SCS is 332.4 mt dw (732,808 lb dw) (221.6 mt dw annual base quota + 110.8 mt dw 2011 underharvest = 332.4 mt dw 2012 adjusted annual quota).

Since overharvests of the porbeagle fishery occurred between October 31, 2010, and December 31, 2010, and during the 2011 fishing year, the 2012 annual quota for porbeagle fishery needs to be adjusted to account for 2010 and 2011 landings. In the final rule establishing the 2011 quotas, NMFS accounted for an overharvest of porbeagle sharks of 0.1 mt dw (269 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, porbeagle sharks were overharvested by an additional 0.1 mt dw (212 lb dw). Additionally, as of October 31, 2011, 0.9 mt dw (1,951 lb dw) was overharvested above the 2011 porbeagle shark quota. As such, the 2012 adjusted annual commercial porbeagle quota is 0.7 mt dw (1,585 lb dw) (1.7 mt dw annual base quota – 0.1 mt dw 2010 overharvest – 0.9 mt dw 2011 additional overharvest = 0.7 mt dw 2012 adjusted annual quota).

### *Fishing Season Notification for the 2012 Atlantic Commercial Shark Fishing Season*

Based on the seven “Opening Fishing Season” criteria listed in 50 CFR 635.27(b)(1)(ii), the 2012 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 24, 2012. The non-sandbar LCS in the Gulf of Mexico region will open on February 15, 2012. The non-sandbar LCS fishery in the Atlantic region will open on the effective date of the final rule implementing the Atlantic HMS electronic dealer reporting system, or July 15, 2012, whichever comes sooner.

All of the shark fisheries will remain open until December 31, 2012, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) have reached, or are projected to reach, 80 percent of the available quota. At that time, consistent with § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a closure action for that shark species group and/or region that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a **Federal Register** action that additional quota, if any, is available, the fishery for the shark species group and, for non-sandbar LCS, region will remain closed,

even across fishing years, consistent with § 635.28(b)(2). As a reminder, the blacknose and non-blacknose SCS fisheries will close together when landings reach 80 percent of either quota.

### **Classification**

NMFS has determined that this action is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law. Pursuant to 5 U.S.C. 553(d)(3), The Assistant Administrator (AA) for Fisheries for NMFS has determined that there is good cause to waive the 30-day delay in effective date of the quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and Gulf of Mexico non-sandbar large coastal shark fisheries. The effective date for the Atlantic non-sandbar LCS fishery will not be subject to this waiver because this fishery will not open until later in the year, and therefore is not affected by the 30 day delay. This final rule could not be completed sooner due to late-arriving information that was essential to the action. Additionally, a delay in effectiveness of this rule would cause negative economic impacts on fisherman and diminish the opportunity for the collection of scientific data, which is critical to properly manage the fisheries, resulting in negative ecological impacts on the fishery resource itself.

The final shark specifications are set based on dealer landings data that were received as of October 31, 2011. Dealers currently submit bi-weekly landings reports to the Southeast Fisheries Science Center, and late reporting is a common problem, a problem that NMFS is attempting to address with the implementation of electronic dealer reporting. Any landings received by a dealer between October 15–31, 2011, were required to be reported to NMFS by November 10, 2011. Normal quality control procedures had to be applied to all shark landings data before the amount of over- or under-harvest could be calculated and applied to the 2012 quotas. NMFS could not finalize this rule without this data, and thus could not publish the rule 30 days in advance of the start of the shark season, January 1, 2012.

Allowing for a delay in the effectiveness of the quotas in this rule would result in the closure of the pelagic shark fishery from January 1, 2012, until 30 days after the publication date of this rule. Most pelagic shark species are captured incidentally in swordfish and tuna pelagic longline

fisheries that will be open in early January. If the quotas in this rule are not made effective on or close to January 1, 2012, as possible, fishermen would be forced to discard, dead or alive, any pelagic sharks that are caught. When the fishery is closed, bycatch and dead discards are likely to increase although the impacts on the resource would be difficult to quantify. The rate of discards or bycatch fluctuates based on a variety of factors: Number of sharks captured, number of sharks that can be released alive, number of more profitable swordfish or tuna species caught, space in the fish hold for these species, and duration of the fishing trip. The opening of the shark fishery allows fishermen to keep sharks that may otherwise have to be discarded dead.

Regarding the shark research fishery, NMFS selects a small number of fishermen to participate in the shark research fishery each year for the purpose of providing NMFS biological and catch data to better manage the Atlantic shark fisheries. All the trips and catches in this fishery are monitored with 100 percent observer coverage. Delaying the opening of the shark research fishery would prevent NMFS' ability to maintain the monthly time-series of wintertime abundance for shark species or to collect vital biological and regional data during this time of year. Preventing NMFS from conducting the necessary research trips could limit the ability of NMFS to properly manage the shark fisheries, which would be contrary to the public interest.

Regarding the blacknose shark and non-blacknose SCS fisheries, these fisheries have both a directed component, where fishermen target SCS, and an incidental component, where the fish are caught and—when the fishery is open—landed by fishermen targeting other species such as Spanish mackerel and bluefish. The incidental fishery catches SCS throughout the year. Delaying this action to allow for a 30-day delay in effectiveness would force all fishermen to discard, dead or alive, any SCS that are caught before this rule becomes effective. Opening the fishery as close to January 1, 2012, as possible, would ensure that any mortality associated with landings would be counted against the commercial quota in real-time. Additionally, a month-long delay in opening the SCS fishery would occur during the time period when fishermen typically target SCS species. Therefore, fishermen would experience negative economic impacts that would continue until the SCS fisheries were opened. Thus, delaying the opening of the SCS

fisheries would undermine the intent of the rule and is contrary to the public interest.

Regarding the Gulf of Mexico non-sandbar LCS fishery, NMFS received comments from fishermen and dealers to change the opening from the proposed date to February 15, 2012. In mid-February, market demand for shark meat increases and fishermen get a better price per pound. Delaying the opening of the non-sandbar LCS fishery would impose negative economic impacts on Gulf of Mexico fishermen. Additionally, many of the primary species targeted in the non-sandbar LCS fishery are locally available at this time and a delay would cause fishermen to miss out on fishing opportunities. Opening the fishery on February 15, 2012, would balance the comments received from all constituents in the Gulf of Mexico region and should provide equitable shark fishing opportunities to all participants in the Gulf of Mexico region, to the extent practicable. Delaying this action to allow for a 30-day delay in effectiveness would be detrimental to the public's interest. For the reasons described above, the AA finds good cause to waive the 30-day delay in effectiveness of the quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and Gulf of Mexico non-sandbar large coastal shark fisheries.

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the non-sandbar LCS, non-blacknose SCS, and porbeagle quotas based on over- and/or underharvests from the previous fishing season. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2012 annual quotas for non-sandbar LCS, sandbar sharks, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on over- and/or underharvests from the previous fishing year, where allowable. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP and its Amendments. Thus,

NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there will be positive effects for others as NMFS is delaying the 2012 non-sandbar LCS shark fishery season in the Gulf of Mexico and Atlantic regions to allow for a more equitable distribution of the available quotas among constituents. A delay in the opening of the season in the Gulf of Mexico region until February 15, 2012, could potentially result in minor negative economic impacts to fishermen who would have to fish in other fisheries to make up for any lost non-sandbar LCS revenues during January and part of February, while shark dealers and other entities that deal with shark products could experience minor negative economic impacts as they may have to diversify during the beginning of the season. A delay in the opening of the season in the Atlantic region until the effective date of the final rule implementing the Atlantic HMS electronic dealer reporting system would potentially result in minor negative economic impacts to shark fishermen who would have fished earlier in the season, such as in the southeast Atlantic where sharks are available early in the fishing season. These South Atlantic shark fishermen could have the possibility to fish for sharks earlier than in previous fishing seasons.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS's assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2012 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS did receive comments related to the overall economic impacts of the proposed rule (see Comments 1 and 3 above). As a result of these comments and consistent with § 635.27(b)(1)(ii), NMFS adjusted the opening date for the non-sandbar LCS in the Gulf of Mexico region.

Section 604(a)(3) requires NMFS to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5

million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a "small" versus "large" business entity in this industry.

The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits (LAP) and the related industries, including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. As of October 2011, there were a total of approximately 217 directed commercial shark permit holders, 262 incidental commercial shark permit holders, and 117 commercial shark dealers.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in Amendment 2 and 3 to the consolidated HMS FMP.

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

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and

the EA with the 2011 quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this rulemaking, NMFS adjusts quotas established and analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest as allowable. The management measures implemented in this rule are within a range previously analyzed in the EA with the 2011 quota specifications rule. Thus, NMFS has limited flexibility that it could exercise on the management measures or quotas in this rule.

Based on the 2010 ex-vessel price (\$0.67/LCS lb, \$0.68/SCS lb, \$1.21/pelagic lb, and \$13.48/lb for shark fins), the 2012 Atlantic shark commercial baseline quotas could result in revenues of \$5,973,806. The adjustments due to over-estimated landings for 2010 would result in a \$6,944 gain in revenues in the Gulf of Mexico non-sandbar LCS fishery. The adjustment due to the overharvests in 2011 would result in a \$13,621 loss in revenues in the Atlantic non-sandbar LCS fishery and a \$4,075 loss in revenue in the porbeagle fishery. The adjustment due to the underharvests in 2011 would result in a \$330,740 gain in revenues in the non-blacknose SCS fishery. These revenues are similar to the gross revenues analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP. The FRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that delay the season openings and adjust the trip limits inseason via proposed and final rulemaking, were expected to be minimal. Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA with the 2011 quota specifications rule assumed NMFS would be preparing annual rulemakings and considered the FRFAs in the economic and other analyses at the time.

For this rule, NMFS reviewed the criterion at 50 CFR § 635.27(b)(1)(ii)(A–E) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary based on the available annual quota, catch rates, and number of fishing participants during the year. For the 2012 fishing season, NMFS is opening the shark research, blacknose shark, non-blacknose SCS, porbeagle shark, and pelagic shark fisheries on January 24, 2012. The direct and indirect economic impacts would be neutral on a short- and long-term

basis, because NMFS would not change the opening dates of these fisheries from the status quo.

NMFS would delay the opening of the non-sandbar LCS in the Gulf of Mexico region until February 15, 2012. The delay in the Gulf of Mexico non-sandbar LCS fishing season could result in short-term direct, minor, adverse economic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February of the 2012 fishing season. The short-term effects for delaying the season could cause indirect, minor, adverse economic impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. However, long-term direct and indirect impacts are not anticipated as the delay would only be about one month for the 2012 fishing season. In addition, NMFS does not anticipate that the delay would result in changes in ex-vessel prices as 2010 median ex-vessel prices for non-sandbar LCS meat and fins in the Gulf of Mexico region ranged from \$0.36–\$0.40/lb dw and \$15.46 to \$17.67/lb dw, respectively, from January through February.

NMFS is delaying the opening of the non-sandbar LCS in the Atlantic region until the effective date of the HMS electronic reporting system. The delay in the Atlantic non-sandbar LCS fishing season would result in short-term, direct, moderate, beneficial economic impacts as fishermen and dealers in the south Atlantic would not be able to fish for non-sandbar LCS starting in January but may still be able to fish earlier in the 2012 fishing season compared to the 2010 and 2011 fishing season, which did not start until July 15. With the implementation of the HMS electronic reporting system, NMFS should be able to monitor the quota on a real-time basis. This ability, along with the inseason adjustment criteria in 50 CFR 635.24(a)(8)(i)–(vi), should allow NMFS the flexibility in furtherance of opportunities for all fishermen in all regions, to the extent practical. Depending on how quickly the quota was being harvested, NMFS could reduce the retention limits to 0–32 sharks per trip to ensure that fishermen further north have ample quota for a fishery later in the 2012 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit would depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct

economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the North Atlantic area, a split opening for the non-sandbar LCS fishery would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the non-sandbar LCS quota in 2012. Fishermen in the North Atlantic area did not have or had limited access to the non-sandbar LCS quota in 2009. There

would be indirect, minor, beneficial economic impacts in the short and long-term for shark dealers and other entities that deal with shark products in this area as they would also have access to non-sandbar LCS products in 2012. Thus, allowing the split season in 2012 would cause neutral cumulative economic impacts across the region, since it would allow for a more equitable distribution of the quotas among constituents in this region,

which was the original intent of Amendment 2 to the 2006 Consolidated HMS FMP.

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

Dated: January 19, 2012.

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