

by the population to regulatory mechanisms over the last twenty years are sufficient to indicate that Nassau grouper face an extinction risk of concern. Declines in landings, catch per unit effort, and, by implication, abundance have been reported throughout its range, and it is now considered to be commercially extinct in a number of areas (Sadovy and Eklund, 1999). Further, heavy fishing, especially of spawning aggregations, and certain fishing practices such as spearfishing and the excessive capture of juveniles in small-mesh fish traps, are the attributed causes for severe declines (Sadovy and Eklund, 1999). The reported extirpations of spawning aggregations, in particular, causes us to be concerned that overexploitation may pose a significant risk to the Nassau grouper, as the demographic impacts of targeting the reproductive population can be much more serious than merely fishing down a stock's overall abundance.

In addition to the information on overutilization and inadequacy of existing regulatory mechanisms, the petitioner provided information addressing the other ESA section 4(a)(1) listing factors: the present and threatened destruction, modification, or curtailment of habitat or range, and the other natural or manmade factors that may be affecting the continued existence of Nassau grouper. However, because we have determined that the information provided on overutilization and inadequacy of existing regulatory mechanisms presents substantial information indicating the petitioned action may be warranted, we do not find a need to conduct a detailed analysis of the other submitted information here.

Petition Finding

We have determined after reviewing the information contained in the petition, as well as information readily available in our files, that there is substantial information indicating that the petitioned action may be warranted, based on the threats of overutilization for commercial, recreational, scientific or education purposes, and inadequacy of existing regulatory mechanisms. Because we have found that substantial information was presented on the above factors, we will commence a status review of the species. During our status review, we will fully address all five of the listing factors set out in section 4(a)(1). At the conclusion of the status review, we will determine whether the petitioned action is warranted. As previously noted, a “may be warranted” finding does not prejudice the outcome of the status review.

Information Sought

As required by section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(2)), we are to commence a review of the status of the species and make a determination within 12 months of receiving the petition as to whether the petitioned action is warranted. We intend that any final action resulting from this review be as accurate and as effective as possible. Therefore, we open a 60-day public comment period to solicit information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of Nassau grouper throughout its range including: (1) Status of historical and current spawning aggregation sites; (2) historical and current distribution, abundance, and population trends; (3) biological information (life history, genetics, population connectivity, etc.); (4) management measures, regulatory mechanisms designed to protect spawning aggregations, and enforcement information; (5) any current or planned activities that may adversely impact the species; and (6) ongoing or planned efforts to protect and restore the species and their habitats. We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents. Section 4(b)(1)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.11(b)) require that a listing determination be made solely on the basis of the best scientific and commercial data, without consideration of possible economic or other impacts of the determination. During the 60-day public comment period we are seeking information related only to the status of Nassau grouper throughout its range.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all “influential scientific information” and “highly influential scientific

information” disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered “influential scientific information,” we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

A complete list of references is available upon request from the Southeast Regional Office, Protected Resource Division (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 2, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120706221-2481-01]

RIN 0648-XC106

Atlantic Highly Migratory Species; 2013 Atlantic Shark Commercial Fishing Season

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish opening dates and adjust quotas for the 2013 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted as allowable based on any over- and/or underharvests experienced during the 2011 and 2012 Atlantic commercial shark fishing seasons. We propose to keep the porbeagle shark fishery closed in 2013 due to the small quota and

difficulties in accurately monitoring such a small quota. In addition, NMFS proposes season openings based on previously implemented adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic, including the Gulf of Mexico and Caribbean.

DATES: Written comments will be accepted until October 28, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0175, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2012–0175 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- *Mail:* Submit written comments to 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on the Proposed Rule to Establish Quotas and Opening Dates for the 2013 Atlantic Shark Commercial Fishing Season.”

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

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial quotas for species and species complexes, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Accounting for Under- and Overharvests

This proposed rule would adjust the quota levels for the different shark species and complexes for the 2013 Atlantic commercial shark fishing season based on over- and underharvests that occurred during the 2011 and 2012 fishing seasons, consistent with existing regulations at § 635.27(b)(1)(i). Over- and underharvests are accounted for in the same region and/or fishery in which they occurred the following year, depending on stock status. Shark stocks that are overfished, have overfishing occurring, or that have an unknown stock status, or complexes that contain one or more stocks that are overfished, have overfishing occurring, or that have an unknown stock status, will not have underharvest carried over in the following year. Stocks that are not overfished and have no overfishing occurring will have any underharvest carried over in the following year, up to 50 percent of the base quota.

Although there were underharvests in the sandbar shark, non-sandbar large coastal shark, blacknose shark, blue shark, and pelagic shark (other than porbeagle or blue sharks) fisheries, those underharvests cannot be carried over to the 2013 fishing season because those stocks have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. Porbeagle sharks have been declared to be overfished with overfishing

occurring, and the quota was overharvested in 2011 and 2012. Thus, for all of these species, the 2013 proposed quota would be equal to the appropriate base quota minus any overharvests that occurred in the 2011 and 2012 fishing seasons.

However, since the non-blacknose small coastal shark complex has been determined not to be overfished and has no overfishing occurring, the underharvest (up to 50 percent of the base quota) from the 2012 fishing season can be applied to the 2013 quota.

2013 Proposed Quotas

This rule proposes adjustments to the base commercial quotas due to over- and underharvests that occurred in 2011 and 2012, where allowable, taking into consideration the stock status as required under existing regulations.

The quotas in this proposed rule are based on dealer reports received as of August 22, 2012. In the final rule, we will adjust the quotas based on dealer reports received as of October 31, 2012. Thus, all of the 2013 proposed quotas for the respective shark complexes/species are subject to further adjustment for any overharvests reflected after considering the October 31 dealer reports. All dealer reports that are received after October 31, 2012, will be used to adjust the 2014 quotas, as appropriate. In addition, the 5-year quota reduction to account for overharvest of the non-sandbar large coastal shark and sandbar shark fisheries established in Amendment 2 to the 2006 Consolidated HMS FMP ends on December 31, 2012, and quotas will increase to annual base levels established in Amendment 2 to the 2006 Consolidated HMS FMP. We also propose to adjust the non-blacknose small coastal shark quota due to underharvest from the 2012 fishing season, and to adjust the porbeagle shark quota to account for overharvest from the 2011 and 2012 fishing season.

Due to the small quota and difficulties in accurately monitoring such a small quota, we propose to keep the porbeagle shark fishery closed in 2013. The porbeagle shark fishery landings in 2012 exceeded the quota by 259 percent with the addition of late reports in December 2011, which must be accounted for in 2013. The combined overharvest in 2011 and 2012 for the porbeagle shark fishery would result in a very small quota (0.5 mt dw; 1,001 lb dw). The proposed 2013 quotas by species and species group are summarized in Table 1.

TABLE 1—2013 PROPOSED QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES *

Species group	Region	2012 Annual quota (A)	Preliminary 2012 landings ¹ (B)	Overharvest/ Underharvest (C)	2013 Base annual quota (D)	2013 Proposed quota (D+C)	Season opening dates
Non-Sandbar Large Coastal Sharks.	Gulf of Mexico	392.8 (866,063 lb dw).	369.8 (815,236 lb dw).	.....	439.5 (968,922 lb dw).	439.5 (968,922 lb dw).	On or about January 1, 2013.
	Atlantic	183.2 (403,889 lb dw).	32.9 (72,648 lb dw).	.....	188.3 (415,126 lb dw).	188.3 (415,126 lb dw).	
Non-Sandbar Large Coastal Shark Research Quota.	No regional quotas.	37.5 (82,673 lb dw).	9.1 (20,015 lb dw).	.....	50.0 (110,230 lb dw).	50.0 (110,230 lb dw).	
Sandbar Research Quota.	.....	87.9 (193,784 lb dw).	24.7 (54,439 lb dw).	.....	116.6 (257,056 lb dw).	116.6 (257,056 lb dw).	
Non-Blacknose Small Coastal Sharks.	.....	332.4 (732,808 lb dw).	133.8 (294,871 lb dw).	110.8 ² (244,269 lb dw).	221.6 (488,539 lb dw).	332.4 (732,808 lb dw).	
Blacknose Sharks.	.....	19.9 (43,872 lb dw).	10.9 (23,991 lb dw).	.....	19.9 (43,872 lb dw).	19.9 (43,872 lb dw).	
Blue Sharks .....	.....	273.0 (601,856 lb dw).	8.6 (18,868 lb dw).	.....	273.0 (601,856 lb dw).	273.0 (601,856 lb dw).	
Porbeagle Sharks.	.....	0.7 (1,585 lb dw).	1.9 (4,105 lb dw).	- 1.2 ³ (2,747 lb dw).	1.7 (3,748 lb dw).	0.5 (1,001 lb dw).	Closed for 2013.
Pelagic Sharks Other Than Porbeagle or Blue.	.....	488 (1,075,856 lb dw).	99.7 (219,691 lb dw).	.....	488.0 (1,075,856 lb dw).	488.0 (1,075,856 lb dw).	On or about January 1, 2013.

*All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data through August 22, 2012, and quotas are subject to change based on landings through October 31, 2012.

¹ Landings are from January 1, 2012, until August 22, 2012, and are subject to change.

² This adjustment accounts for the underharvest in 2012. While the total underharvest is 198.6 mt dw, we may account for underharvest only up to 50 percent of the base annual quota or 110.8 mt dw (244,269 lb dw).

³ This adjustment accounts for overharvest in 2011 and 2012. After the final rule establishing the 2012 quotas, the porbeagle shark quota was overharvested by an additional <0.1 mt dw (227 lb dw). As of August 22, 2012, 1.1 mt dw (2,520 lb dw) was harvested above the 2012 porbeagle shark quota. The combined overharvest from 2011 and 2012 is 1.2 mt dw (2,747 lb dw).

1. Proposed 2013 Quotas for Non-Sandbar Large Coastal Sharks and Sandbar Sharks Within the Shark Research Fishery

The 2013 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for non-sandbar large coastal sharks and 116.6 mt dw (257,056 lb dw) for sandbar sharks. Since the 5-year quota reduction to account for overharvest of the non-sandbar large coastal shark and sandbar shark fisheries ends on December 31, 2012, the 2013 proposed quotas increase to the levels established in Amendment 2 to the 2006 Consolidated HMS FMP.

Within the shark research fishery, as of August 22, 2012, preliminary reported landings of non-sandbar large coastal sharks were at 24 percent (9.1 mt dw) of their 2012 quota levels, and sandbar shark reported landings were at 28 percent (24.7 mt dw) of their 2012 quota levels. Reported landings have not exceeded the 2012 quota to date. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(vii), we are not proposing to adjust 2013 quotas in the shark research fishery based on any overharvests.

Under § 635.27(b)(1)(i), because sandbar sharks and scalloped hammerhead sharks within the non-sandbar large coastal shark complex have been determined to be either overfished or overfished with overfishing occurring, underharvests for these species and/or complexes would not be applied to the 2013 quotas. Therefore, we propose 2013 quotas for non-sandbar large coastal sharks and sandbar sharks within the shark research fishery of 50.0 mt dw (110,230 lb dw) and 116.6 mt dw (257,056 lb dw), respectively. NMFS has analyzed the environmental effects of this base quota in the Environmental Impact Statement for Amendment 2. This base quota of 116.6 mt dw was implemented in Amendment 2, but the quota was reduced to 87.9 mt dw for 5 years to account for large overharvest in 2007.

2. Proposed 2013 Quotas for the Non-Sandbar Large Coastal Sharks in the Gulf of Mexico Region

The 2013 proposed quota for non-sandbar large coastal sharks in the Gulf of Mexico region is 439.5 mt dw (968,922 lb dw). Since the 5-year quota reduction for overharvest of the non-sandbar large coastal shark fishery ends

on December 31, 2012, the 2013 quotas would revert to the levels established in Amendment 2 to the 2006 Consolidated HMS FMP.

As of August 22, 2012, preliminary reported landings for non-sandbar large coastal sharks in the Gulf of Mexico region were at 94 percent (369.8 mt dw) of their 2012 quota levels. Reported landings have not exceeded the 2012 quota to date. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(vii), we are not proposing to adjust 2013 quotas in the non-sandbar large coastal sharks in the Gulf of Mexico region, because there have not been any overharvests.

Given the status of scalloped hammerhead sharks within the non-sandbar large coastal shark complex, any underharvests cannot be accounted for pursuant to § 635.27(b)(1)(iii). Therefore, we propose 2013 quotas for non-sandbar large coastal sharks in the Gulf of Mexico region of 439.5 mt dw (968,922 lb dw), consistent with Amendment 2 levels.

3. Proposed 2013 Quotas for the Non-Sandbar Large Coastal Sharks in the Atlantic Region

The 2013 proposed quota for non-sandbar large coastal sharks in the Atlantic region is 188.3 mt dw (415,126 lb dw). Since the 5-year quota reduction for overharvest of the non-sandbar large coastal shark fishery ends on December 31, 2012, the 2013 quotas would increase to the levels established in Amendment 2 to the 2006 Consolidated HMS FMP.

As of August 22, 2012, preliminary reported landings for non-sandbar large coastal sharks in the Atlantic region were at 18 percent (32.9 mt dw) of their 2012 quota levels. To date, reported landings do not exceed the quota. As such, we propose a 2013 commercial non-sandbar large coastal sharks quota in the Atlantic region of 188.3 mt dw (415,126 lb dw).

4. Proposed 2013 Quotas for Small Coastal Sharks and Pelagic Sharks

The 2013 proposed annual commercial quotas for non-blacknose small coastal sharks, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 332.4 mt dw (732,809 lb dw), 19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), 0.5 mt dw (1,001 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

As of August 22, 2012, preliminary reported landings of non-blacknose small coastal sharks, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 40 percent (133.8 mt dw), 55 percent (10.9 mt dw), 3 percent (8.6 mt dw), 259 percent (1.9 mt dw), and 20 percent (99.7 mt dw), of their 2012 quota levels, respectively. As described above, while we may adjust quotas for underharvests only when allowable depending on the stock status, we will adjust quotas for overharvests.

Non-blacknose small coastal sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(1)(i), any underharvests for the non-blacknose small coastal sharks therefore could be applied to the 2013 quotas. During the 2012 fishing season to date, the non-blacknose small coastal shark quota has been underharvested by 110.8 mt dw (244,269 lb dw). Accordingly, we propose to increase the 2013 non-blacknose small coastal shark quota to adjust for anticipated underharvests in 2012 as allowed. The proposed 2013 adjusted base annual quota for non-blacknose small coastal sharks is 332.4 mt dw (732,809 lb dw)

(221.6 mt dw annual base quota + 110.8 mt dw 2012 underharvest = 332.4 mt dw 2013 adjusted annual quota).

Porbeagle sharks have been declared to be overfished with overfishing occurring. Pursuant to § 635.27(b)(1)(i), any overharvests of porbeagle sharks would be applied to the 2013 quotas. In the final rule establishing the 2012 quotas, we accounted for an overharvest of porbeagle sharks of 1.0 mt dw (2,163 lb dw) using data that was reported as of October 31, 2011. Between that date and December 31, 2011, porbeagle sharks were overharvested by an additional 227 lb dw (less than 0.1 mt dw). As of August 22, 2012, an additional 1.1 mt dw (2,520 lb dw) has been overharvested above the 2012 porbeagle shark quota. The proposed 2013 adjusted annual commercial porbeagle quota is 0.5 mt dw (1,001 lb dw) (1.7 mt dw annual base quota – < 0.1 mt dw 2011 overharvest – 1.1 mt dw 2012 overharvest = 0.5 mt dw 2012 adjusted annual quota), but we propose to keep the fishery closed in 2013 due to the small quota and difficulties in accurately monitoring such a small quota.

Blacknose sharks and other pelagic species are overfished, have overfishing occurring, or have an unknown status. As of August 22, 2012, the 2012 commercial quota had not been reached or exceeded. Therefore, the 2013 proposed quotas would be the base annual quotas for blacknose sharks, blue sharks, and pelagic sharks (other than blue and porbeagle sharks), or (19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

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

For each fishery, we considered the seven “Opening Fishing Season Criteria” listed at § 635.27(b)(1)(ii). These include:

(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years; (C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years; (D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on

scientific and fishery information; (E) 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/complexes quotas; (F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or, (G) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

Thus, we examined the 2011 and 2012 over- and/or underharvests of the different species/complexes to determine the effects of the 2013 proposed quotas on fishermen across regional fishing area. The potential season length and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, we examined the seasonal variation of the different species/complex and the effects on fishing opportunities.

In addition to these criteria, we also considered other relevant factors, such as general input from the public and potential management measures in Amendment 5 to the 2006 Consolidated HMS FMP before arriving at the proposed opening dates for the 2013 Atlantic shark fisheries.

We propose that the 2013 Atlantic commercial shark fishing season for the non-sandbar large coastal sharks fishery in the Gulf of Mexico and Atlantic, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, open on or about January 1, 2013, with the publication of the final rule for this action.

In the Gulf of Mexico non-sandbar large coastal shark fishery, opening the fishing season again on or about January 1 would provide, to the extent practicable, equitable opportunities across the fisheries management region as it did for the 2012 fishing season. This opening date is consistent with all the criteria listed in § 635.27(b)(1)(ii), but particularly with the requirement that we consider the length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(1)(ii)(C)).

In the Atlantic region, we delayed the opening of the non-sandbar large coastal shark fishery until July 15 in 2010, 2011, and 2012, in order to allow for more equitably distributed shark fishing opportunities, as intended by

Amendment 2 to the 2006 Consolidated HMS FMP. In 2012, we proposed to open the Atlantic non-sandbar large coastal shark fishery on the effective date of the final rule implementing the Atlantic HMS Electronic Dealer Reporting System (76 FR 37750) or July 15, 2012, whichever occurred first. Because the Atlantic HMS Electronic Dealer Reporting System was delayed, the fishery opened on July 15. The HMS Electronic Dealer Reporting System final rule has now published and the system will be implemented on January 1, 2013 (77 FR 47303). As such, we are proposing to use the inseason trip limit adjustment criteria in the regulations per § 635.24(a)(8) for the first time. The inseason trip limit adjustment criteria would allow more equitable fishing opportunities across the fishery. The proposed opening date of January 1 would allow fishermen to harvest some of the 2013 quota at the beginning of the year, when sharks are more prevalent in the South Atlantic area. If it appears that the quota will be taken too quickly to allow fishermen throughout the entire region an opportunity to fish, we could reduce the commercial retention limits per while being consistent with § 635.27(b)(1)(ii)(A), (B), (C) and (E). This management measure is consistent with all the inseason trip limit adjustment criteria listed in § 635.24(a)(8), but particularly with the requirement that catch rates in one part of a region not preclude vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota (§ 635.24(a)(8)(vi)).

If that occurs, we would file with the Office of the Federal Register for publication notification of any inseason adjustments to reduce retention limits to between 0–36 sharks per trip. We could later increase the commercial retention limits per trip, such as on or about July 15, 2013, to provide fishermen in the North Atlantic area an opportunity to retain non-sandbar large coastal sharks when they are prevalent in that area, if warranted considering all relevant factors. Based on the fishing rates in the 2009 fishing season, if we open the fishery earlier than July 15 and do not adjust the commercial retention limits throughout the season, then fishermen in the South Atlantic area would likely catch the entire Atlantic quota before the sharks migrate to the North Atlantic area.

We also propose not to open the porbeagle fishery in 2013. The porbeagle fishery landings in 2012 exceeded the quota by 259 percent with the addition of late reports in December 2011, which must be accounted for in 2013. The

combined overharvest in 2011 and 2012 for the porbeagle fishery would result in a very small quota (0.5 mt dw; 1,001 lb dw). Due to the small quota and difficulties in accurately monitoring such a small quota, we propose to keep the fishery closed in 2013. This proposal is based on the availability of the annual quota based on overharvests in the previous fishing seasons (§ 635.27(b)(1)(ii)(A)).

At this time, we would be implementing the proposed quotas based on current regulations. Other future actions, such as the anticipated Amendment 5 to the 2006 Consolidated HMS FMP, which would address several recent shark stock assessments, could affect the quotas implemented in the 2013 shark season rule. Any changes to the quotas would be addressed in any such later Amendment.

All of the shark fisheries, except for porbeagle sharks (which would remain closed the entire year), would remain open until December 31, 2013, or until we determine that the fishing season landings for sandbar shark, non-sandbar large coastal sharks, blacknose sharks, non-blacknose small coastal sharks, blue 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 § 635.28(b)(1), we will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until we announce, via a notice in the **Federal Register**, that additional quota is available, the fishery for the shark species group and, for non-sandbar large coastal sharks, region, would remain closed, even across fishing years, consistent with § 635.28(b)(2).

Request for Comments

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. We solicit comments on this proposed rule by October 28, 2012 (see **DATES** and **ADDRESSES**).

Public Hearings

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

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated

HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

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

In compliance with section 603(b)(1) of the RFA, section 603(b)(1) of the RFA requires that we explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is being proposed to adjust the 2013 proposed quotas for non-sandbar large coastal sharks, sandbar sharks, blacknose sharks, non-blacknose small coastal sharks, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) based on any over- and/or underharvests from the previous fishing year. These adjustments are being implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, we would expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments. Not opening the porbeagle shark fishery in 2013 is due to the difficulties in accurately monitoring the small quota. This would have beneficial ecological impacts for porbeagle sharks, while the negative economic impacts are described below. An additional purpose is to use implemented management measures to allow inseason adjustments in the trip limits to slow the fishery down during the season, as necessary. This management measure would provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the species.

Under section 603(b)(2) of the RFA, we must explain the rule's objectives, which are to: (1) Adjust the annual quotas for porbeagle sharks due to overharvests in 2011 and 2012, and for non-blacknose small coastal sharks due to underharvests in 2012; (2) establish

the opening dates for all of the shark fisheries in the Atlantic and Gulf of Mexico regions; and, (3) consider the need to adjust the trip limits inseason for non-sandbar large coastal sharks.

Section 603(b)(3) of the RFA requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. We consider all HMS permit holders to be small entities because they either had average annual receipts of less than \$4.0 million for fish-harvesting, average annual receipts of less than \$6.5 million for Charter/headboat, 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 we consider to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 213 directed commercial shark permit holders, 265 incidental commercial shark permit holders, and 96 commercial shark dealers as of August 2012.

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

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

Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and the ESA, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. We do not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act.

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 Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest as allowable. Similarly, the ranges of management measures are consistent with the requirements of the Magnuson-Stevens Act that were previously analyzed in the EA with the 2011 shark quota specifications rule. Thus, NMFS has limited flexibility to modify the management measures or quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2010 ex-vessel price (\$0.67/large coastal shark lb, \$0.68/small coastal shark lb, \$1.21/pelagic lb, and \$13.48/lb for shark fins), fully harvesting the unadjusted 2013 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$6,242,548. We propose to keep the porbeagle shark fishery closed in 2013, which results in the total revenue loss of \$7,061 (if we kept it open, but reduced it by the overharvests of 2011 and 2012, the net revenue loss in the fishery would amount to \$5,175). The upward adjustment due to the underharvests in 2012 non-blacknose small coastal shark fishery would result in a \$330,740 gain in revenues. These

revenues are similar to the gross revenues analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP. The IRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that adjust the trip limits inseason through proposed and final rulemaking, are expected to be minimal. Amendments 2 and 3 to the 2006 Consolidated HMS FMP and the EA with the 2011 shark quota specifications rule assumed we would be conducting annual rulemakings and considered the IRFAs in the economic and other analyses at the time.

For this rule, we reviewed the criteria at § 635.27(b)(ii) to determine when opening each fishery would provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2013 fishing season, we are proposing to open the non-sandbar large coastal shark fishery in the Gulf of Mexico and Atlantic, shark research, blacknose shark, non-blacknose small coastal shark, and pelagic shark fisheries on the effective date of the final rule for this action (expected to be on or about January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis, because we are proposing not to change the opening dates of these fisheries from the status quo.

Opening the non-sandbar large coastal sharks in the Atlantic region on the effective date of the final rule for this action (expected to be on or about January 1) would result in short-term, direct, moderate, beneficial economic impacts as fishermen and dealers in the south Atlantic would be able to fish for non-sandbar large coastal sharks starting on or about January. South Atlantic fishermen would be able to fish earlier in the 2013 fishing season compared to the 2010, 2011, and 2012 fishing seasons, which did not start until July 15. South Atlantic fishermen commented during the public comment period for the 2011 and 2012 shark specification rulemaking that they felt that opening the fishery in July was not fair to them because, by July, the sharks have migrated north and are no longer available. With the implementation of the HMS electronic reporting system in 2013, we should be able to monitor the quota on a real-time basis. This ability, along with the inseason adjustment criteria in § 635.24(a)(8), should allow us the flexibility to further provide

equitable fishing opportunities for fishermen across all regions, to the extent practicable. Depending on how quickly the quota is being harvested, we could reduce the retention limits to 0–36 sharks per trip to ensure that fishermen farther north have sufficient quota for a fishery later in the 2013 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit will 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 potential January 1 and July 15 opening for the non-sandbar large coastal sharks would

have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the non-sandbar large coastal shark quota in 2013. Fishermen in the North Atlantic area did not have or had limited access to the non-sandbar large coastal shark 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 region as they would also have access to non-sandbar large coastal shark products in 2013. Thus, allowing the split season in 2013 would cause neutral cumulative economic impacts, 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.

We also propose to keep the porbeagle fishery closed in 2013. This action would cause direct and indirect moderate, adverse, short-term economic impacts on shark fishermen and other entities that rely on porbeagle sharks. The long-term economic impacts would be neutral if we open the porbeagle shark fishery in 2014 because the fishery would open in 2014 under the annual base quota of 1.7 mt dw.

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

Dated: October 3, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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