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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357-5999-02]

RIN 0648-XF501

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group Retention Limit Adjustment

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 36 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2017 fishing season or until NMFS announces via a document in the *Federal Register* another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on July 16, 2017 through December 31, 2017, or until NMFS announces via a document in the *Federal Register* another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Guý DuBeck, or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Atlantic shark fisheries have separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except for the shark research fishery for LCS and sandbar sharks, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limits in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors (see § 635.24(a)(8)(i) through (vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention

limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will allow use of available aggregated LCS and hammerhead shark management group quotas and will provide fishermen throughout the Atlantic region equitable fishing opportunities for the rest of the year. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 3 to 36 LCS other than sandbar shark per vessel per trip. Based on public comments NMFS received during the rulemaking for the 2017 Atlantic Shark Commercial Fishing Season Rule (81 FR 84491; November 23, 2016), constituents preferred the historical retention limit of 36 LCS other than sandbars sharks per vessel per trip to the default retention limit of 45 LCS other than sandbars sharks per vessel per trip, because they believed it would ensure the quota lasted longer and the fishing season could stay open later in the year.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which includes (broken down by bullet points):

- The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports.

Based on dealer reports through June 16, 2017, 52.6 metric tons (mt) dressed weight (dw) (116,048 pounds (lb) dw), or 31 percent, of the 168.9 mt dw shark quota for aggregated LCS and 4.9 mt dw (10,836 lb dw), or 18 percent, of the 27.1 mt dw shark quota for the hammerhead management groups have been harvested in the Atlantic region. This means that approximately 69 percent of the aggregated LCS quota remains available and approximately 82 percent of the hammerhead shark quota remains available. NMFS took action previously this year to reduce retention rates, after considering the need for all regions to have an equitable opportunity to

utilize the quota. Given the geographic distribution of the sharks at this time of year (i.e., they are heading north before moving south again later in the year), the retention limit needs to be adjusted upwards to ensure that fishermen in the Atlantic region have an opportunity to fully utilize the quotas in the region throughout the remainder of the year.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of aggregated LCS and hammerhead sharks harvested in the Atlantic region on a daily basis is low. Using current catch rates, projections indicate that landings would not reach 80 percent of the quota before the end of the 2017 fishing season (December 31, 2017). In other words, this daily average catch rate means that aggregated LCS and hammerhead sharks are being harvested too slowly to promote fishing opportunities and ensure full utilization of the quota in the Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach 80 percent of either the aggregated LCS or hammerhead shark quotas, NMFS would, as required by the regulations, close the aggregated LCS and hammerhead shark management groups since they are “linked quotas.” Current catch rates would likely result in the fisheries remaining open for the remainder of the year, but with the quotas being underutilized in the Atlantic region. The higher retention limit should help make it possible to more fully utilize the quota in the Atlantic region.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS

FMP and its amendments.

Increasing the retention limit on the aggregated LCS and hammerhead management group in the Atlantic region from 3 to 36 LCS other than sandbar sharks per vessel per trip would allow for fishing opportunities later in the year, consistent with the FMP's objective to ensure equitable fishing opportunities throughout the fishing season. The higher retention limit is also consistent with the FMP's objective to limit bycatch and discards of sharks, because fishermen will be able to retain sharks that currently must be disposed of as bycatch or discards under the current retention limit of 3 LCS other than sandbar sharks per vessel per trip.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate the sharks move farther north in the summer and then return south in the fall. Increasing the retention limit in the Atlantic region at this time provides for fishing opportunities by fishermen farther north as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. As a result, by increasing the harvest and landings on a per-trip basis, fishermen throughout the region will likely experience equitable fishing opportunities.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS has previously provided notice to the regulated community (81 FR 84491;

November 23, 2016, and 82 FR 17765; April 13, 2017) that a goal of this year's fishery is to ensure fishing opportunities throughout the fishing season and fishing region. While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, NMFS estimates that the fishery would still remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a portion of the quota.

On November 23, 2016 (81 FR 84491), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 mt dw (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. We had published a proposed rule on August 29, 2016 (81 FR 59167) and accepted public comment. In the final rule, NMFS also announced that if it appeared that the quota is being harvested too quickly, thus precluding fishing opportunities throughout the entire region (e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and then later consider increasing the retention limit, perhaps to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2017, consistent with the applicable regulatory requirements. In April 2017, dealer reports indicated that landings had exceeded 20 percent of the quota, and NMFS therefore reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar sharks per vessel per trip

on April 6, 2017 (82 FR 17765; April 13, 2017) after considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8). Based on dealer reports through June 16, 2017, approximately 69 percent and 82 percent of the aggregated LCS and hammerhead shark quotas remain, respectively. At this point in the season, fishermen in the Atlantic region may not have an opportunity to fully utilize the quotas in the region for the remainder of the year if the retention limits are not increased, and available quota will be underutilized.

Accordingly, as of July 16, 2017, NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 36 LCS other than sandbar sharks per vessel per trip for the rest of the 2017 fishing season, or until NMFS announces via a document in the *Federal Register* another adjustment to the retention limit or a fishery closure, if warranted.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to

the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and equitable fishing opportunities. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2015) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and provide equitable fishing opportunities to fishermen throughout a region. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas while sharks are present in their region. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Atlantic region will begin on July 15, 2017. Prior notice would result in delays in increasing the retention limit and would adversely affect those shark fishermen that would otherwise have an opportunity to harvest more than the current retention limit of 3 LCS other than sandbar sharks per vessel per trip and could result in low catch rates and underutilized quotas. Analysis of available data shows that adjustment of the LCS commercial retention limit upward to 36 would result in minimal risks of exceeding the aggregated LCS and hammerhead shark quotas in the Atlantic region based on our

consideration of previous years' data, in which the fisheries have opened in July. With quota available and with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise allowable through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Adjustment of the LCS commercial retention limit in the Atlantic region is effective July 15, 2017, to minimize any unnecessary disruption in fishing patterns, to allow the impacted fishermen to benefit from the adjustment, and to not preclude fishing opportunities by fishermen farther north as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(a)(2) and is exempt from review under Executive Order 12866.

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

Dated: July 10, 2017.

Emily H. Menashes,
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Office of Sustainable Fisheries,
National Marine Fisheries Service.

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