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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XT016

Atlantic Highly Migratory Species; Atlantic Commercial Shark Fisheries

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS is transferring 5 metric tons (mt) dressed weight (dw) of blacktip quota, 50 mt dw of aggregated large coastal shark (LCS) quota, and 8 mt dw of hammerhead shark management group quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region for the remainder of the 2019 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason quota transfers and applies to commercial Atlantic shark permitted vessels.

DATES: Effective [*insert date of filing for public inspection with the Office of the Federal Register*], through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck or Karyl Brewster-Geisz, 301-427-8503.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic 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.).

Based on dealer reports received as of August 30, 2019, NMFS estimates that in the eastern Gulf of Mexico sub-region, 7.1 mt dw (15,733 lb dw) or 26 percent of the blacktip sub-regional quota, 58.1 mt dw (128,025 lb dw) or 68 percent of the aggregated LCS sub-regional quota, and 9.1 mt dw (20,125 lb dw) or 68 percent of the hammerhead sub-regional quota has been landed. In the western Gulf of Mexico sub-region, 60.1 mt dw (132,396 lb dw) or 23 percent of the blacktip sub-regional quota, 11.8 mt dw (25,929 lb dw) or 16 percent of the aggregated LCS sub-regional quota, and <0.5 mt dw (<1,300 lb dw) or less than 5 percent of the hammerhead sub-regional quota has been landed. Regulations provide that NMFS will close the eastern Gulf of Mexico aggregated LCS and hammerhead shark management groups once landings reach, or are projected to reach, a threshold of 80 percent of the available aggregated LCS or hammerhead shark quota and are also projected to reach 100 percent before the end of the 2019 fishing year (§ 635.28(b)(3)). Regulations also provide that NMFS will close the sub-regional eastern Gulf of Mexico blacktip management group before landings reach, or are expected to reach, 80 percent of the quota.

Under § 635.27(b)(2), NMFS may transfer quota between regions inseason for species or management groups where the species are the same between regions and the quota is split between regions for management purposes and not as a result of a stock assessment. Before making such adjustments, NMFS considers the following determination criteria from § 635.27(b)(2)(iii) and other relevant factors: (1) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status

of the respective shark species and/or management group; (2) the catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; (3) the projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year; (4) effects of the adjustment on the status of all shark species; (5) effects of the adjustment on accomplishing the objectives of the fishery management plan; (6) variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group; (7) effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota; and/or (8) review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

Given that western Gulf of Mexico blacktip, aggregated LCS, and hammerhead sub-regional landings are low relatively late in the year and that the eastern Gulf of Mexico aggregated LCS and hammerhead sub-regional quotas are nearing 80 percent (68 percent), NMFS has considered the inseason quota transfer criteria and determined that a transfer from the sub-regional western quotas to the eastern quotas is warranted to avoid potential closure of those fisheries while fishing opportunities still exist.

Quota Transfer

After fully considering all the criteria listed above, NMFS is taking action to transfer blacktip quota, aggregated LCS quota, and hammerhead shark management group quotas from the western Gulf of Mexico sub-regional quota to the eastern Gulf of Mexico sub-regional quota. Under § 635.27(b)(2)(iii), NMFS may transfer quotas between regions and sub-regions of the

same species or management group, as appropriate, after considering the regulatory determination criteria, listed above. NMFS's consideration of the relevant criteria includes, but is not limited to, the following:

Regarding the first criterion, biological samples collected by NMFS scientific observers on commercial vessels targeting aggregated LCS and hammerhead sharks continue to provide NMFS with valuable data for ongoing scientific studies of shark age and growth, migration, and reproductive status. Regarding the second criterion, commercial shark dealer data show that landings of the eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead sharks are approaching 80 percent of the quota (68 percent). Once the landings reach, or are projected to reach a threshold of 80 percent of the quotas and are also projected to reach 100 percent before the end of the 2019 fishing year, the eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups would close.

Considering the third, fourth, sixth, seventh, and eighth criteria, NMFS analyzed landings data, catch trends, and potential migration of the species involved and determined that under current fishing rates, 5 mt dw of blacktip, 50 mt dw of aggregated LCS, and 8 mt dw of hammerhead shark management groups are reasonable amounts of quota to transfer, which would allow fishermen the opportunity to fully utilize the available shark quota, while avoiding negative economic impacts by closing the shark management groups. This action will not have impacts beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments and thus is not expected to negatively impact the stock.

Regarding the fifth criterion, this action is consistent with the quotas previously implemented and analyzed in the 2019 shark quota final rule (83 FR 60777; November 27, 2018)

and in the final rule implementing Amendment 5a to the 2006 Consolidated Atlantic HMS FMP. Specifically, this action is consistent with the objective of providing opportunities to fully harvest shark quotas without exceeding them.

Based on the considerations above, NMFS is transferring 5 mt dw of blacktip, 50 mt dw of aggregated LCS, and 8 mt dw of hammerhead shark management group quotas from the western Gulf of Mexico sub-regional quota to the eastern Gulf of Mexico sub-regional quota as of *[insert date of filing for public inspection with the Office of the Federal Register]*. This quota transfer results in adjusted quotas of 32.7 mt dw for blacktip, 135.5 mt dw for aggregated LCS, and 21.4 mt dw for the hammerhead shark management group in the eastern Gulf of Mexico sub-region and 250.8 mt dw for blacktip, 22 mt dw for aggregated LCS, and 3.9 mt dw for the hammerhead shark management group in the western Gulf of Mexico sub-region. If landings and fishing rates do not increase substantially, transferring quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region could allow the blacktip, aggregated LCS, and hammerhead fisheries in each sub-region to remain open through the end of the 2019 fishing year.

Therefore, NMFS adjusts the eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead management group sub-regional quotas for the remainder of the 2019 shark fishing year, unless we announce another quota transfer or adjustment in the **Federal Register** or close the fishery.

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 south and west of that boundary is considered

for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88° 00' W. long (§ 635.27(b)(1)(ii)). Persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4 may still retain blacktip sharks, aggregated LCS, and/or hammerhead sharks management groups in the eastern Gulf of Mexico sub-region (east of 88° 00' W. long).

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 quota transfers 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 allowing fishermen to capitalize on underutilized quota. Adjustment of the blacktip, aggregated LCS, and hammerhead fisheries quota in the eastern and western Gulf of Mexico sub-regions will become effective on *[insert date of filing with the Office of the Federal Register]*. Analysis of available data shows that transfer of the quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region would result in minimal risks of exceeding the blacktip shark, aggregated LCS, and hammerhead shark quotas in the Gulf of Mexico region. 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. The transfer of quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region is effective *[insert date of filing with the Office of the Federal Register]*, to minimize any unnecessary disruption in fishing patterns and to allow the impacted fishermen to benefit from the adjustment. 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 temporary rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

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

Dated: September 12, 2019.

Jennifer M. Wallace,
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Office of Sustainable Fisheries,
National Marine Fisheries Service.

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