

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

**Dated:** August 26, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 110831548-3536-02]

RIN 0648-XC836

#### 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 68 metric tons (mt) dressed weight (dw) of non-blacknose small coastal shark (SCS) quota from the Atlantic region to the Gulf of Mexico region for the remainder of the 2013 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to commercial Atlantic shark permitted vessels.

**DATES:** The quota transfer is effective from September 2, 2013 until December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Peter Cooper 301-427-8503; fax 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its 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.*).

Under § 635.27(b)(2), NMFS may conduct inseason quota transfers of regional quotas between regions 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 any adjustment, NMFS considers the following determination criteria in § 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.

Based on dealer reports received as of August 14, 2013, NMFS estimates that 53.0 metric tons (mt) dressed weight (dw) (116,819 lb dw) or 78 percent of Gulf of Mexico non-blacknose SCS quota has been landed; 0.7 mt dw (1,565 lb dw) or 35 percent of the Gulf of Mexico blacknose quota has been landed; 72.6 mt dw (160,080 lb dw) or 28 percent of the Atlantic non-blacknose SCS quota has been landed; and 11.6 mt dw (25,580 lb dw) or 64 percent of the Atlantic blacknose quota has been landed. According to the regulations at § 635.28(b)(2), NMFS will close the Gulf of Mexico non-blacknose SCS and blacknose management groups once the Gulf of Mexico non-blacknose SCS quota reaches, or is projected to reach, 80 percent of the quota, because the quotas for the Gulf of Mexico non-blacknose SCS and Gulf of Mexico blacknose management groups are linked. Alternatively, under § 635.27(b)(2)(iii), if the criteria and relevant factors listed above are met, NMFS could transfer some of the SCS quota from the Atlantic region to the Gulf of Mexico region because the non-blacknose SCS regional quotas were established for management purposes and not as a result of a stock assessment. NMFS has considered these criteria and their applicability to the non-blacknose SCS and blacknose shark quotas in the Atlantic and Gulf of Mexico regions.

These considerations include, but are not limited to, the following:

- Regarding the first criterion listed above, biological samples collected by NMFS scientific observers on commercial vessels targeting blacknose and non-blacknose SCS 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 Gulf of Mexico non-blacknose SCS are approaching 80 percent of the quota (78 percent). Once the quota reaches, or is projected to reach 80 percent, both the Gulf of Mexico non-blacknose SCS and blacknose shark management groups would close.

- In relation to these potential quotas and considering the third, fourth, sixth, seventh, and eighth criteria, NMFS analyzed dealer landings data, catch trends, and potential migration of the species involved and determined that under current fishing rates, 68 mt dw is a reasonable amount of quota to transfer that would allow fishermen the opportunity to fully land non-blacknose SCS and blacknose shark quotas in both regions, while avoiding negative impacts to shark species. 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.

- In relation to the fifth criterion, this action is consistent with the quotas previously implemented and analyzed in the 2013 shark quota final rule (77 FR 75896, December 26, 2013) 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 upon the 2006 Consolidated HMS FMP goal: "Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems."

Based on these considerations and other relevant factors, NMFS has determined that a quota transfer is warranted, and is transferring 68 mt dw (149,914 lb dw) from the Atlantic non-blacknose SCS quota to the Gulf of Mexico non-blacknose SCS quota as of 11:30 p.m. local time on September 2, 2013. This quota transfer results in an

adjusted quota of 135.7 mt dw (299,075 lb dw) for the Gulf of Mexico non-blacknose SCS management group, and an adjusted quota of 193.5 mt dw (426,570 lb dw) for the Atlantic non-blacknose SCS management group. Based on dealer reports as of August 14, 2013, NMFS estimates that 53.0 metric tons (mt) dressed weight (dw) (116,819 lb dw) or 39 percent of this adjusted Gulf of Mexico non-blacknose SCS quota has been landed, and 72.6 mt dw (160,080 lb dw) or 37.5 percent of this adjusted Atlantic non-blacknose SCS quota has been landed.

The transfer of quota between the Gulf of Mexico non-blacknose SCS and Atlantic non-blacknose SCS management groups is appropriate per § 635.27(b)(2)(iii), because the Gulf of Mexico non-blacknose SCS and Atlantic non-blacknose SCS management groups contain the same species between regions (Atlantic sharpnose, finetooth, and bonnethead sharks) and because the quota is split between the regions for management purposes and not as a result of a stock assessment. This quota transfer will provide commercial fishermen additional opportunity to harvest the Gulf of Mexico blacknose quota and not be limited by the Gulf of Mexico non-blacknose SCS quota. Gulf of Mexico non-blacknose SCS and blacknose sharks are often caught together in the same fisheries; therefore,

the quota linkage between these two management groups was created to prevent exceeding the Gulf of Mexico blacknose shark quota through discarded bycatch of blacknose sharks once the Gulf of Mexico blacknose shark landings have reached, or are projected to reach, 80 percent of the quota. The decision to transfer 68 mt dw of non-blacknose SCS quota from the Atlantic to the Gulf of Mexico region was based in part on recent dealer landings reports and projected landings rates. These projections indicate that transferring 68 mt dw non-blacknose SCS quota from the Atlantic region to the Gulf of Mexico region could allow the non-blacknose SCS fisheries in each region to remain open through the end of the 2013 fishing year, if landings and fishing rates do not increase substantially.

At § 635.27(b)(1)(ii), the boundary between the Gulf of Mexico region and the Atlantic region is defined 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.

Depending on future quota availability, we may consider additional quota transfers to provide fishermen the opportunity to fully harvest available

quotas in the Atlantic and Gulf of Mexico regions, or close fisheries if quotas are reached, but any such action would occur in another **Federal Register** notice.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway and any delay in this action could result in unnecessary closure of the Gulf of Mexico non-blacknose SCS and blacknose shark quotas. This would be inconsistent with management requirements and objectives of the 2006 Consolidated HMS FMP, and would unnecessarily limit fishing opportunities. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.27(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2013.

**Kelly Denit,**

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