

be unacceptable to conduct a test with a well-worn, faded blue flag.

*iv. Consider Daylight, Darkness, and Weather Conditions to the Extent Those Factors Might Skew the Test Results.*

The railroad's procedures should allow a medical examiner to inform the testing officer that a particular examinee must be tested at night (*i.e.*, under darkness) or during the day with bright sunshine, or under some other condition, so that the test can appropriately focus on the examinee's known color vision deficiency found during the initial medical testing and will be an accurate indicator of whether the examinee can safely perform anticipated locomotive engineer or conductor duties. For most people, signal visibility will be the greatest at night and more challenging during the daytime in bright sun when the sky is clear. Field testing conducted at sunrise or sunset may pose a greater likelihood that severe glare could skew test results such that it would be difficult for individuals with normal color vision to identify a signal indication or aspect. FRA's regulations do not prohibit a railroad from requiring multiple field tests under different operating or working conditions, and certainly some examinees will warrant such testing based on their known vision deficiency. Likewise, if a test is conducted during a snowstorm, rainstorm, fog, or other weather conditions that would inhibit a person's vision, acceptable sight distances should be adjusted accordingly, and in some instances, may suggest that a test cannot be verified as reliable and should be voided.

*d. Comparability.*

*i. Implement Procedures To Address Bias Accusations.* To effectively address accusations that a particular test was unfairly designed, implemented, or scored, a railroad should allow the examinee to bring along a volunteer witness of the examinee's choosing, and all participants, including witnesses, should be afforded an opportunity to record their observations regarding whether testing procedures were followed and the conditions under which the test was conducted. The testing officer should have a standard method that will capture the names and contact information of any witnesses who observe the test, and the railroad should permit the examinee and any witnesses an opportunity to submit their observations in writing for direct review by the railroad's medical examiner. The railroad should provide the medical examiner with the authority to void any test in which the examinee or another witness makes a substantial showing that bias or prejudice may have led to

a test failure and, in such a situation, request that a new test be conducted with a different testing officer.

*ii. Create Adequate Records and Provide to Examinee.* Because an examinee who fails a field test and is subsequently denied certification or recertification may request FRA to review that decision, each railroad should be prepared to provide the examinee with the results of any field tests. A railroad should consider developing a method or protocol by which the testing officer offers a copy of the completed test form to the examinee upon completion of the test. The railroad may want the testing officer to record on the form whether the examinee was offered a copy of the form, and whether the examinee accepted receipt. The form may also include a signature line for the examinee to acknowledge receipt of the completed test form.

Issued in Washington, DC, on November 17, 2015.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 110819516-5913-02]

RIN 0648-BB02

#### Atlantic Highly Migratory Species; Smoothhound Shark and Atlantic Shark Management Measures

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

**ACTION:** Final rule; fishery notification.

**SUMMARY:** This final rule implements Amendment 9 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 9) to bring smoothhound sharks under Federal management and establishes an effective date for previously-adopted shark management measures finalized in Amendment 3 to the 2006 Consolidated Atlantic HMS FMP (Amendment 3) and the 2011 Final Rule to Modify the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries (August 10, 2011) (2011 HMS Trawl Rule). Specifically, this final rule

establishes Atlantic and Gulf of Mexico regional smoothhound shark annual commercial quotas based on recent stock assessments; implements the shark gillnet requirements of the 2012 Shark and Smoothhound Biological Opinion (BiOp); and modifies current regulations related to the use of vessel monitoring systems (VMS) by Atlantic shark fishermen using gillnet gear. The term "smoothhound sharks" collectively refers to smooth dogfish (*Mustelus canis*), Florida smoothhound (*M. norrisi*), Gulf smoothhound (*M. sinuamexicanus*), small eye smoothhound (*M. higmani*), and any other *Mustelus* spp. that might be found in U.S. waters of the Atlantic, Gulf of Mexico, and Caribbean, collectively. This rule also implements the smooth dogfish specific provisions in the Shark Conservation Act of 2010 (SCA). The SCA requires that all sharks landed from Federal waters in the United States be landed with their fins naturally attached to the carcass, but includes a limited exception for smooth dogfish. For the Federal Atlantic shark fisheries, current HMS regulations require federally-permitted shark fishermen to land all sharks with fins naturally attached to the carcass. The SCA's fins-attached requirement is being addressed nationwide through a separate ongoing rulemaking. This final rule only addresses the provision contained in the SCA that allows at-sea fin removal of Atlantic smooth dogfish.

Additionally, NMFS will hold an operator-assisted, public conference call and webinar on December 15, 2015, to discuss the methodology used to calculate the Atlantic and Gulf of Mexico smoothhound shark quotas (see **ADDRESSES**).

**DATES:** Effective March 15, 2016. An operator-assisted, public conference call and webinar will be held on December 15, 2015, from 2:00 p.m. to 4:00 p.m., EST.

**ADDRESSES:** The conference call-in phone number is 1-800-857-9816; participant pass code is 9776014. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public questions. To join the webinar go to: <https://noaa-meets.webex.com/noaa-meets/j.php?MTID=m812c15f48b46787ea7475fc010c7099e>, enter your name and email address, and click the "JOIN" button. If requested, the meeting number is 991 661 137 and the meeting password is NOAA. Participants who have not used WebEx before will be prompted to download and run a plug-

in program that will enable them to view the webinar.

Copies of Amendment 9, including the Final Environmental Assessment (EA) and other relevant documents, are available from the HMS Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms/>. Copies of the 2015 smoothhound shark stock assessment results are available on the Southeast Data Assessment and Review (SEDAR) Web site at <http://sedarweb.org/sedar-39>.

**FOR FURTHER INFORMATION CONTACT:**

Steve Durkee by phone: 202-670-6637 or Karyl Brewster-Geisz by phone: 301-427-8503 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** Atlantic sharks are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to promulgate regulations under the Magnuson-Stevens Act has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, which detailed management measures for Atlantic HMS fisheries, including for the smoothhound shark and Atlantic shark fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This final rule implements the conservation and management measures from Amendment 9 in the Atlantic shark and smoothhound shark fisheries and the measures in Amendment 3 and 2011 HMS Trawl Rule in the Atlantic smoothhound shark fishery.

**Background**

A brief summary of the background of this final action is provided below. A more detailed history of the development of these regulations and the alternatives considered are described in the Final Environmental Assessment (EA) for Amendment 9, which can be found online on the HMS Web site (see **ADDRESSES**).

NMFS published a proposed rule on August 7, 2014 (79 FR 46217), outlining the alternatives analyzed in the Draft EA, identifying preferred alternatives, and soliciting public comments on the measures, which would impact the smoothhound shark and Atlantic shark fisheries. Specifically, the proposed rule included the following measures: For smooth dogfish only, modifying prohibitions on at-sea fin removal to be consistent with the SCA; implementing Term and Condition 4 of the 2012 Shark BiOp; based on updated catch data,

adjusting the smoothhound shark quota finalized in Amendment 3; and modifying the VMS requirements for shark gillnet vessels. The full description of the management and conservation measures considered is included in both the Final EA for Amendment 9 and the proposed rule and is not repeated here.

The comment period for the Draft EA and proposed rule for Amendment 9 ended on November 14, 2014. The comments received, and responses to those comments, are summarized below under the heading labeled Response to Comments.

Management measures in Amendment 9 will impact both the smoothhound shark and Atlantic shark fisheries. This rule finalizes most of the management measures, but modifies others, that were contained in the Draft EA and proposed rule for Amendment 9. This section provides a summary of the final management measures being implemented by Amendment 9 and notes changes from the proposed rule to this final rule. Measures that are different from the proposed rule, or measures that were proposed but not implemented, are described in detail under the heading titled Changes from the Proposed Rule.

This final rule implements the smooth dogfish-specific measures in the SCA to establish an allowance for the removal of smooth dogfish fins while at sea. To implement the measures, the proposed rule considered three categories of requirements—catch composition, state permitting, and geographic applicability of the exceptions—and a range of alternatives within each category (“sub-alternatives”). Only fishermen that meet the requirements under all three of these categories and that are, as specified in the Act, fishing within 50 nautical miles of shore and possess fins in an amount that does not exceed 12 percent of the carcass weight, would be authorized to remove smooth dogfish fins at sea.

For catch composition, NMFS preferred in the proposed rule a sub-alternative that would have required that smooth dogfish make up at least 75 percent of the retained catch on board and that no other sharks could be retained. For state permitting, the proposed rule included a sub-alternative that would have required an individual to hold a state commercial fishing permit that allows smooth dogfish retention, in addition to a Federal smoothhound permit. With regard to geographic applicability, the proposed rule included a sub-alternative that would have applied the SCA exception for smooth dogfish along the entire Atlantic coast but not to Florida’s coast

in the Gulf of Mexico. During the public comment period, NMFS received support for the two proposed sub-alternatives related to state fishing permits and geographic applicability of the SCA provisions. However, NMFS received many comments opposing the catch composition requirement of 75 percent and the “no other sharks on board” provision. Commenters expressed concern that these requirements do not meet the intent of the statutory exception because they do not reflect the mixed nature of catch in the smooth dogfish fishery and would render the exception largely meaningless. They also stated that the catch composition requirement would lead to excessive dead discards and would be burdensome.

As detailed under the Changes from the Proposed Rule heading, NMFS is implementing the two sub-alternatives related to state fishing permits and geographic applicability of the exception as originally proposed. NMFS is changing the catch composition requirement and will require smooth dogfish to make up at least 25 percent of the total retained catch in order to remove the fins of smooth dogfish while at sea. Additionally, fishermen may retain other sharks on board provided that the fins of other shark species remain naturally attached to the carcass through offloading. Only fishermen adhering to the measures in the three sub-alternatives, as well as fishing within 50 nautical miles of shore and possessing fins in an amount that does not exceed 12 percent of the carcass weight, will be authorized to remove smooth dogfish fins at sea.

This final rule also establishes separate Atlantic and Gulf of Mexico regional smoothhound shark total allowable catches (TACs) and commercial quotas based on the results of the 2015 Southeast Data Assessment and Review (SEDAR) 39 stock assessments for smoothhound sharks. The assessments were finalized and peer reviewed in March 2015. On June 29, 2015, NMFS issued a stock status determination notice (80 FR 36974) that stated that “[d]ata from tagging and genetic research in SEDAR 39 support the existence of two distinct Atlantic and Gulf of Mexico stocks of smooth dogfish separated by peninsular Florida. Therefore, smooth dogfish was treated as two separate stocks, one in the Atlantic region and one in the Gulf of Mexico region.” 80 FR 36974 (June 29, 2015). Each stock had a status of not overfished with no overfishing occurring. Based on public comments requesting that commercial quotas be based on stock assessments and not

landings, NMFS is implementing regional smoothhound shark TACs and commercial quotas based on SEDAR 39, instead of the proposed, single overall quota based on landings data.

Specifically, while we proposed an overall commercial quota of 1,739.9 mt dw covering both the Atlantic and Gulf of Mexico regions (using commercial landings data in the absence of a stock assessment), this final rule establishes separate regional TACs and commercial quotas within those TACs as follows: An Atlantic regional smoothhound shark TAC of 1,430.6 mt dw with a commercial quota of 1,201.7 mt dw, and a Gulf of Mexico regional smoothhound shark TAC of 509.6 mt dw with a commercial quota of 336.4 mt dw. Implementing these science-based TACs and commercial quotas will ensure continued sustainable harvest of smoothhound sharks in the Atlantic and Gulf of Mexico regions and increase the likelihood of maintaining healthy smoothhound shark stocks in both regions. Additional details are provided below under the heading Changes from the Proposed Rule.

Term and Condition (TC) 4 of the 2012 Shark BiOp addressed soak time and net check requirements for gillnet gear. In order to comply with TC 4, this final rule modifies the soak time and net check requirements based on the type of gillnet gear used in the Atlantic shark and smoothhound shark fisheries. NMFS has determined that current regulations meet the specifications for other TCs in the 2012 BiOp. This final rule will establish a soak time limit of 24 hours for sink gillnet gear and a 0.5 to 2 hour net check requirement for drift gillnet gear in the Atlantic shark and smoothhound shark fisheries. This requirement would not significantly change smoothhound shark fishing practices, since most smoothhound shark gillnet fishermen primarily use sink gillnet gear and those fishermen already use a soak time of 24 hours or less.

This final rule also modifies current regulations related to the use of VMS by federal directed shark permit holders using gillnet gear. Before this rule, federal directed shark permit holders with gillnet gear on board were required to use VMS regardless of vessel location in order to simplify compliance and outreach for fishermen operating across multiple regions. This requirement was implemented as part of the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks to ensure shark gillnet vessels were complying with the Atlantic Large Whale Take Reduction Plan (ALWTRP) time/area closures and observer

requirements (50 CFR 229.32). However, since implementation, it has become apparent that while some fishermen do fish in multiple regions, many do not fish in or even near the Southeast U.S. Monitoring Area. As such, this final rule will require federal directed shark permit holders with gillnet gear on board to use VMS only in the vicinity of the Southeast U.S. Monitoring Area, pursuant to ALWTRP requirements. Requirements to minimize large whale interactions would not change; rather, only the geographic area of the VMS requirement would change, consistent with the ALWTRP.

This final rule also establishes an effective date for previously-adopted smoothhound shark management measures in Amendment 3 and the 2011 HMS Trawl Rule. The final rule implementing conservation and management measures in Amendment 3 published on June 1, 2010 (75 FR 30484) but delayed the effective date of the smoothhound shark management measures until approximately 2012 pending approval for the data collection measures under the Paperwork Reduction Act (PRA) by the Office of Management and Budget (OMB), to provide time for implementation of a permit requirement, to provide time for NMFS to complete a Biological Opinion under Section 7 of the Endangered Species Act (ESA), and to provide time for affected fishermen to change business practices, particularly as it related to keeping shark fins attached to the carcass through offloading. OMB approved the PRA data collection in May of 2011 and NMFS met informally with smoothhound shark fishermen along the east coast in the fall of 2010. In November 2011, NMFS published a rule (76 FR 70064, November 10, 2011) that indefinitely delayed the effective date for all smoothhound shark management measures in both Amendment 3 and in another rule, the 2011 Final Rule to Modify the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries (76 FR 49368, August 10, 2011 (2011 HMS Trawl Rule)), to provide time for NMFS to consider the smooth dogfish-specific provisions in the SCA and for NMFS to finalize a Biological Opinion on the federal actions in Amendment 3, among other things. Previously-adopted management measures from Amendment 3 that will become effective on January 1, 2016, include: A research set-aside quota; an accountability measure (AM), which closes the fishery when smoothhound shark landings reach, or are expected to reach, 80 percent of the quota; a requirement for

a dealer permit to purchase smoothhound sharks; a requirement for dealers to report smoothhound shark purchases; a smoothhound permit requirement for commercial and recreational fishing and retention; a requirement for vessels fishing for smoothhound sharks to carry an observer, if selected; a requirement for vessels fishing for smoothhound sharks to comply with applicable Take Reduction Plans pursuant to the Marine Mammal Protection Act (MMPA); and a requirement for commercial vessels to sell catch only to Federally-permitted shark dealers. Management measures affecting smoothhound sharks in the HMS Trawl Rule will allow retention of smoothhound sharks caught incidentally with trawl gear, provided that the total smoothhound shark catch on board or offloaded does not exceed 25 percent of the total catch by weight.

Finally, this rule makes administrative changes to the observer regulations. Currently, the Atlantic shark fishery observer program is administered by the Southeast Fisheries Science Center (SEFSC). However, a portion of the commercial smoothhound shark fishery occurs in the Northeast region in an area typically covered by observer programs administered out of the Northeast Fisheries Science Center (NEFSC). Since the fishery spans the geographic area of both the NEFSC and SEFSC, smoothhound shark observer regulations need to accommodate the administrative processes of both programs. The two regional science center observer program processes are slightly different. The SEFSC process is currently outlined in the 50 CFR part 635 regulations but the NEFSC process is not. Thus, this final rule implements changes to the observer regulations in 50 CFR part 635 to incorporate the relevant portions of the NEFSC observer regulations found at 50 CFR part 648.

#### Response to Comments

During the proposed rule stage, NMFS received approximately 500 written comments from fishermen, States, environmental groups, academia and scientists, and other interested parties. NMFS also received feedback from the HMS Advisory Panel; constituents who attended the two public hearings in October 2014 in Toms River, New Jersey, and Manteo, North Carolina; and constituents who attended the conference calls/webinars held on September 24 and November 4, 2014. Additionally, NMFS consulted with the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Regional Fishery Management Councils, along with the Atlantic States and Gulf

States Marine Fisheries Commissions. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS's responses. All written comments submitted during the comment period can be found at <http://www.regulations.gov> by searching for NOAA-NMFS-2014-0100.

#### *Implementation of the Smooth-Dogfish Specific Provisions of the Shark Conservation Act*

*Comment 1:* NMFS received comments in support of Alternative A1, which would not implement the smooth dogfish-specific measures in the Shark Conservation Act of 2010 and would require fins and tails of all smooth dogfish to remain naturally attached through offloading. Commenters felt that these exceptions to the U.S. ban on at-sea shark fin removal would jeopardize our nation's reputation as a shark conservation champion, and hurt U.S. arguments in support of Regional Fishery Management Organizations' adoption of fins attached requirements. Commenters also felt that the fins naturally attached method was widely recognized as the best practice for accurate data collection and enforcement of finning bans. Commenters felt that adopting a fins attached exception for smooth dogfish would undermine state bans on finning and would widen loopholes in certain state bans on the trade in shark fin products.

*Response:* The Shark Conservation Act of 2010, which includes the smooth dogfish-specific exception, became Federal law upon Presidential signature on January 4, 2011. Thus, NMFS must implement the law in a manner that reflects Congressional intent. The Congressional provision clearly creates an exception that allows removal of smooth dogfish shark fins at sea under certain circumstances and did not leave the Agency discretion to forego implementation of the exception.

*Comment 2:* NMFS received a comment stating that the 12 percent fin-to-carcass ratio included in the smooth dogfish-specific provision of the SCA was too high and should be lower.

*Response:* The 12 percent fin-to-carcass ratio is explicitly included in the smooth dogfish-specific provision of the SCA. Thus, NMFS must implement the provision as mandated. Nevertheless, some data support that a 12 percent fin-to-carcass ratio may be a close approximation of the true ratio for smooth dogfish. In the Atlantic States Marine Fisheries Commission (ASMFC) Shark Board briefing materials prepared for a May 21, 2013 meeting, the States

of New Jersey and New Carolina provided analyses of smooth dogfish fin-to-carcass ratios using both landings data and direct measurements of processed sharks. Those analyses found a range of fin-to-carcass ratios from 7.5 percent to 13 percent, depending on the level of processing (e.g. whether the belly flaps were removed, whether the tail was retained).

*Comment 3:* NMFS received a large volume of comments expressing concern that the smooth dogfish-specific provision of the Shark Conservation Act allows finning of sharks. These commenters asked NMFS not to implement this provision and many of the comments provided information about the negative ecological impacts of sharks finning.

*Response:* The large volume of comments opposing finning of smooth dogfish appears to be based on a misunderstanding on this action. Finning, which is the removal of shark fins and disposal of the carcass at sea, has been prohibited in Atlantic U.S. shark fisheries since 1993, and will continue to be prohibited in all Atlantic shark fisheries. The exception in the Act allows for the removal of the fins at sea rather than requiring the sharks to be landed with their fins attached as the Act requires for other shark species. The fins and the carcasses still must be landed together.

#### *Sub-Alternatives—Issue 1: Catch Composition*

*Comment 4:* NMFS received several comments, including from the SAFMC, MAFMC, and the States of New Jersey, North Carolina and Maryland, opposing the proposed sub-alternative A2-1c that smooth dogfish must make up at least 75 percent of the retained catch (no other sharks can be retained). Commenters felt that the 75 percent catch composition would be difficult to enforce and burdensome for fishermen. Some felt that the 75 percent would lead to waste and discarding in cases where fishermen found that their catch percentages did not qualify them for the at-sea processing allowance. Others emphasized that the smoothhound fishery is a mixed fishery, and that fishermen needed more flexibility if the SCA exception were to have any utility. NMFS also received comments that the 75 percent catch composition was inconsistent with ASMFC requirements and that the new federal requirements might push fishermen into state waters where there are no catch composition requirements. Commenters felt that as a consequence, fishermen may avoid obtaining a federal smoothhound shark permit, leading to less data for federal

mangers. NMFS received support from the MAFMC and the state of New Jersey for sub-alternative A2-1b that would require smooth dogfish make up at least 25 percent of the retained catch. NMFS also received some limited support for the 75 percent catch composition.

*Response:* In the Draft EA and proposed rule, NMFS interpreted the phrase "fishing for smooth dogfish" to mean fishing with the object of commercially harvesting smooth dogfish, but also emphasized that the SCA had specified that the exception applies when an individual is fishing "for" smooth dogfish as opposed to fishing "for" other species and incidentally catching smooth dogfish or simply stating that it applies "when fishing." We then preferred a sub-alternative that smoothhound sharks must make up 75 percent of the retained catch on board a vessel to constitute a trip fishing "for" smooth dogfish and stated that this would preclude fishermen on trips for other species but who incidentally catch smooth dogfish from removing smooth dogfish fins at sea. The catch composition threshold of 75 percent is used in other fisheries that interact with HMS (e.g., incidental swordfish catch in the squid trawl fishery) to distinguish between directed and incidental fisheries and NMFS felt this high level of retention was an appropriate way to identify those fishing "for" smooth dogfish.

Based on public comments, however, it has become apparent that the 75 percent level used in other fisheries is not appropriate in the smooth dogfish fishery and does not accurately reflect fishing practices in that fishery. To verify the feedback from commenters, NMFS reviewed data on the mixed nature of the smoothhound shark fishery and how well catch composition reflects the fishery and discovered that, as asserted by the commenters, the smooth dogfish fishery is far more mixed than NMFS assumed in the proposed rule. As a result, implementing a 75 percent catch composition requirement would make the exception largely meaningless. Thus, while NMFS' objective for the implementation of the smooth dogfish-specific provision of the SCA remains the same as described in the Draft EA, and NMFS still needs to give meaning to the phrase "fishing for smooth dogfish" as opposed to simply "fishing," NMFS agrees with the majority of the commenters that a catch composition requirement of 25 percent is more appropriate. This is consistent with the smooth dogfish-specific provision in the SCA that limits the exception to those fishermen that are

fishing “for” smooth dogfish while acknowledging the need for enhanced flexibility in a mixed fishery. The reasons for the change include the four following factors, which were reflected in public comment on the proposed rule:

- Sink gillnet gear, the predominant gear used in the directed smooth dogfish fishery, often catches other species along with the targeted species. If a fisherman retains other legal species in an amount greater than 25 percent of the total retained catch, it does not necessarily mean that effort was not being directed on smooth dogfish, it could simply mean that other species were encountered in a greater amount than anticipated.

- Although a 75 percent catch composition is an appropriate indicator of target species in other HMS fisheries, such as the squid trawl fishery, it is not appropriate at this time in the smooth dogfish fishery. In the squid trawl fishery, swordfish caught in squid trawls can only be retained if at least 75 percent of the retained catch is squid, indicating that squid is the targeted fishery. In that fishery, the catch is predominantly squid but swordfish that are feeding on the squid are sometimes inadvertently caught. The smooth dogfish fishery is a more mixed fishery and the target species is often co-located with other species, resulting in less certainty of target species catch levels

- When fishermen decide to remove fins from smooth dogfish while at sea, the fins are not removed at the end of the trip. Rather, the fins are removed shortly after the smooth dogfish is brought on board in order to maintain the highest quality product. This processing method negates the benefits of a high catch composition requirement. For example: If a fisherman is directing effort on smooth dogfish and removing the fins as the smooth dogfish are brought on board, that fisherman does not know what the final catch composition will be. The first part of the trip could be 100 percent smooth dogfish, but if the catch transitions to predominantly other species, the fisherman may have found that he no longer meets the high catch composition requirement. In that case, the fisherman has two options: To either discard all the smooth dogfish carcasses and fins that have been processed or discard the non-smooth dogfish catch in an amount that will meet the catch composition requirement. Either way, a high catch composition could lead to unnecessary regulatory discards. Although this last example could also pertain to the preferred 25 percent catch composition, the lower threshold

provides a greater amount of flexibility and reduces the instances of regulatory discards, consistent with National Standard 9.

- Smooth dogfish, and the fishery that targets them, closely follow specific water temperature gradients. Fisherman intending to land primarily smooth dogfish may find their gear in sub-optimal water temperatures leading to lower smooth dogfish catch despite the intention to directly target the species and resulting in a lower catch composition than expected.

*Comment 5:* NMFS received comments that NMFS was interpreting the smooth dogfish-specific provisions in the SCA incorrectly because the provision does not specify its application to the directed or incidental smooth dogfish fishery and that limiting fishermen to a directed fishery would only serve to inflict financial hardships on fishermen.

*Response:* The SCA does not explicitly state that it applies only to directed fisheries; however, the relevant SCA statutory text, (“an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*)”) included descriptive language such as “engaged in” and “for” that NMFS understood to be more limiting than if the statute had simply said “while fishing.” We thus interpreted “fishing for smooth dogfish” to limit the exception to those fishing primarily for smooth dogfish, as reflected by the 75 percent retention requirement. Had Congress intended to allow all trips to remove smooth dogfish fins at sea, this qualifying language and emphasis on fishing “for” smooth dogfish would not have been included. As explained in the previous response, the final rule’s lower percentage requirement for smooth dogfish catch composition (25 percent v. 75 percent) should address some of the concerns about the practicality of the proposed rule’s catch composition requirements in light of the very mixed nature of the fishery, while still ensuring that the exception is limited to those fishing “for” smooth dogfish.

*Comment 6:* NMFS received comments, including from the SAFMC, MAFMC, NCDMR, and the States of New Jersey and Maryland opposing the “no other sharks on board” provision. The commenters stated that this provision would be burdensome for fishermen and would lead to unnecessary waste and discards of other valuable shark species since it is a mixed, variable fishery. Others noted that NMFS is interpreting the smooth dogfish-specific provisions of the SCA incorrectly because “no other sharks on board” is never mentioned in the statute

and that it is inconsistent with ASMFC requirements. Additionally, NMFS received comments stating that a large number of common thresher sharks are often caught with smooth dogfish and if these species had to be discarded, this would be wasteful and could lead to economic impacts to shark fishermen.

*Response:* After considering public comment, NMFS has determined that it is more appropriate and consistent with the SCA to implement Sub-Alternative A2–1e, which allows other sharks to be retained when removing smooth dogfish fins at sea, provided those sharks are maintained in a condition where the fins and tail remain naturally attached to the carcass through landing. This measure is included in the new sub-alternative based on public comment and additional analyses, and in recognition that a prohibition on having other sharks on board would likely increase regulatory discards, contrary to National Standard 9. The smooth dogfish fishery is more mixed than previously thought, and other sharks, particularly spiny dogfish and common thresher sharks, make up a portion of the catch and contribute considerable revenue to fishermen participating in the smooth dogfish fishery. Under the new preferred sub-alternative, fishermen would not have to choose whether to land smooth dogfish with the fins removed or another species of shark. This is a change from the proposed rule, which would have prohibited retention of other sharks when removing the fins from smooth dogfish at sea. As proposed, a fisherman who wanted to remove fins of smooth dogfish at sea would have had to discard all non-smooth dogfish sharks even if they were dead and were otherwise legal to retain based on species, size, and permits. Alternatively, as proposed, a fisherman could decide to retain non-smooth dogfish sharks and discard any smooth dogfish carcasses and fins that had already been processed. In either situation, as proposed, dead discards would likely increase, given the mixed catches in the smooth dogfish fishery.

Allowing other sharks onboard is consistent with the objective of Amendment 9 to narrowly focus the at-sea fin removal allowance for the smooth dogfish fishery and would not undermine the enforcement of the limited smooth dogfish exception or impact the conservation of non-smooth dogfish sharks because smooth dogfish carcasses can be readily differentiated from other non-smoothhound shark carcasses by the presence of a pre-dorsal ridge. As a practical matter, smooth dogfish and other smoothhound species

are indistinguishable in the field. But geographically, smooth dogfish largely are the only smoothhound species found in the Atlantic, which is the only place where smooth dogfish fins can be removed, thus largely alleviating that identification concern. Under the new preferred sub-alternative, other sharks would be allowed on board while removing smooth dogfish fins at sea as long as the fins of non-smooth dogfish sharks remain naturally attached through offloading as currently required. NMFS will monitor all shark catches and discards and dead discards to ensure the conservation of all shark species and will take the additional action, as necessary, to address any conservation or management issues that may arise.

#### *Sub-Alternatives—Issue 2: State Fishing Permit*

*Comment 7:* NMFS received several comments, including from the MAFMC and the States of New Jersey and Maryland, supporting the preferred Sub-Alternative A2–2b to require any state commercial fishing permit appropriate for the retention of smoothhound sharks when removing smooth dogfish fins at sea. Some of these comments noted the non-preferred sub-alternative, which would require a smoothhound-specific state commercial fishing permit, could require new regulations and may necessitate cost recovery of permit administration.

*Response:* NMFS agrees that requiring a smoothhound-specific state fishing permit could be burdensome to states and fishermen. In the Draft EA and proposed rule, NMFS asked for comment on this issue, particularly from the states that would need to develop and administer a smoothhound-specific permit. The states that commented on this issue were unanimously opposed to a smoothhound-specific permit and favored the preferred Sub-Alternative A2–2b. For these reasons, NMFS will implement Sub-Alternative A2–2b as proposed.

#### *Sub-Alternatives—Issue 3: Geographic Applicability*

*Comment 8:* NMFS received comments, including from the MAFMC and the State of Florida, in support of the preferred Sub-Alternative A2–3b to apply the exception for smooth dogfish along the Atlantic Coast and not to Florida's coast in the Gulf of Mexico. Conversely, NMFS also received a comment stating that the exception should be applicable in the Gulf of Mexico so that the historical boundaries between the Gulf and South Atlantic

Councils are honored and the State of Florida can manage the fishery in a balanced way.

*Response:* As a practical matter, smooth dogfish and other smoothhound species are indistinguishable in the field. The best available scientific information indicates that smooth dogfish are the predominant smoothhound shark species along the Atlantic coast (only a handful of Florida smoothhound have ever been recorded in the Atlantic and those have been near southern Florida). In the Gulf of Mexico, however, there are at least three different smoothhound species, with no practical way to readily distinguish among them. By limiting the exception to the Atlantic region, as specified at § 635.27(b)(1), this sub-alternative will ensure that the exception only applies where the population is almost entirely smooth dogfish, reducing identification problems and inadvertent finning violations. Furthermore, the State of Florida found the preferred sub-alternative limiting the exception to the Atlantic to be consistent with the Florida Coastal Management Program.

#### *Commercial Quota Adjustment for the Smoothhound Shark Fishery*

*Comment 9:* Multiple commenters, including the SAFMC, the States of Maryland, New Jersey, Georgia, and the Commonwealth of Virginia, suggested that none of the landings-based methodologies should be used to establish a smoothhound shark quota. Instead, NMFS should base the quota on the SEDAR 39 smoothhound shark stock assessment that was underway at that time, and which was proposed as an alternative, although the results had not yet been finalized at the time of proposed rule publication. NMFS also received comments opposing the preferred alternative B3, establishing a smoothhound quota equal to the maximum annual landings from 2004–2013 plus two standard deviations because some commenters thought this quota was too high and seemed contrary to a risk averse approach.

*Response:* NMFS agrees that it is preferable to establish scientifically-based quotas using results from the SEDAR 39 stock assessments. Since publication of the proposed rule, the SEDAR 39 stock assessments have been completed. Based on the availability of the stock assessment results and public comments, NMFS no longer prefers the alternative to establish a landings-based quota and now is basing the quotas on the results of the stock assessments. Thus, NMFS is establishing a smoothhound shark TAC of 1,430.6 mt dw and a commercial quota of 1,201.7

mt dw in the Atlantic region, and a TAC of 509.6 mt dw and commercial quota of 336.4 mt dw in the Gulf of Mexico region, based on results of SEDAR 39. Section 2 of the Final EA provides a summary of the calculations used to determine these quotas.

*Comment 10:* NMFS received a comment asking NMFS not to wait until the stock assessment was completed and to implement Alternative B1, the smoothhound quota of 715.5 mt dw established in Amendment 3 to the 2006 Consolidated HMS FMP.

*Response:* NMFS recognizes the benefits of establishing a quota to limit mortality in the commercial fisheries. However, based on the timing of both this action and the SEDAR 39 stock assessments, NMFS determined that establishing scientifically-based quotas using results of the stock assessments outweigh benefits of implementing a landings-based quota. Since the stock assessments are now available, NMFS is establishing quotas based on those stock assessments.

#### *Biological Opinion Implementation*

*Comment 11:* NMFS received support for the preferred alternative C4 to establish a 24-hour soak time limit for sink gillnets and a 0.5 to 2 hour net check requirement for drift gillnet gear. The MAFMC and State of New Jersey also expressed support for the preferred alternative but asked that the definitions of sink and drift gillnets be clarified so that a sink gillnet cannot be mistaken for a net that is drifting in the water column. The State of Maryland expressed support for alternative C3 (24-hour soak time for smoothhound permit holders) stating that net checks are not enforceable. NMFS also received comments suggesting that gillnet fishermen should be required to do both net checks and limit soak time to 24 hours. Other commenters asked NMFS to consider a reduced soak time because they felt that 24 hours was too long and would not reduce the risk of large whale interactions.

*Response:* NMFS agrees that a 24-hour soak time limit for sink gillnets and a 0.5 to 2 hour net check requirement for drift gillnet gear are appropriate ways to implement the Term and Condition 4 of the 2012 Shark BiOp. NMFS also agrees that the definitions of sink and drift gillnet need to be clear so as not to confuse fishery participants and enforcement officials. As detailed in the Final EA, most smoothhound shark gillnet fishermen will be required to limit soak times to 24 hours since they primarily use sink gillnet gear. This requirement will not significantly change smoothhound shark fishing

practices. With regard to other Atlantic shark fishermen, fishermen who use sink gillnet gear will be required to limit soak times to 24 hours and those that use drift gillnets will be required to perform net checks at least every 2 hours. Currently, all Atlantic shark fishermen that use gillnet gear to fish for or who are in possession of any large coastal, small coastal, or pelagic shark, regardless of gillnet type, are required to perform net checks at least every 2 hours (see § 635.21(e)(3)(v)). During the net checks, fishermen are required to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. In the 2012 Shark BiOp, the requirement to use either net checks or the 24-hour set limitation was determined to ensure that any incidentally taken ESA-listed species are detected and released in a timely manner, reducing the likelihood of mortality. As such, NMFS has determined that this alternative will likely have short and long-term minor beneficial ecological impacts on protected resources because it will implement one of the Terms and Conditions of the 2012 Shark BiOp to minimize impacts on protected resources. Because this alternative complies with the 2012 Shark BiOp, has beneficial ecological impacts to protected species, and allows all smoothhound shark gillnet fishermen to continue current fishing practices, NMFS will implement soak time limits for sink gillnets and net checks for drift gillnets, as proposed, in the final rule.

*Comment 12:* NMFS received a comment stating that NMFS has not received authorization of the incidental take of endangered large whales that may result due to the operation of the fishery. The comment stated that without incidental take of endangered whales authorized under both the MMPA and ESA, federal management violates those laws. The commenter stated that NMFS must acquire take authorization under the MMPA section 101(a)(5)(E) for the expected whale takes associated with the smoothhound fishery and that NMFS must delay Amendment 9 until completion of a negligible impact analysis for North Atlantic right whale, humpback whale and fin whale. NMFS also received comments stating that (1) since the completion of the BiOp, critical habitat has been designated for loggerhead sea turtles, which triggers the requirement to reinstate consultation in the shark fishery, and (2) the Draft EA fails to discuss effects of the fishery on loggerhead critical habitat.

*Response:* As required by section 7(a)(2) of the ESA, the HMS Management Division of NMFS Office of

Sustainable Fisheries consulted with the NMFS Protected Resources Division (PRD) over proposed Atlantic shark fishery management measures in December 2009. That consultation was completed in 2012, and the Shark BiOp was issued in December 2012. The Biological Opinion concluded that the actions as proposed—including the operation of the smoothhound fishery—were not likely to jeopardize the continued existence of Atlantic sturgeon, smalltooth sawfish or any species of ESA-listed large whales or sea turtles.

Section 9 and regulations implementing section 4(d) of the ESA prohibit the “take” or incidental take of listed species without an exemption. Under the terms of Section 7(b)(4) and Section 7(o)(2), otherwise prohibited take that is incidental to and not intended as part of the agency action may be permitted if it complies with reasonable and prudent measures (RPMs) and terms and conditions of an incidental take statement (ITS). Two RPMs were included in the 2012 Shark BiOp to minimize the effects of the action on sea turtles, smalltooth sawfish, and Atlantic sturgeon by the smoothhound and Atlantic shark fisheries and to monitor the level of incidental take: (1) Minimize the Potential Effects to Sea Turtles, Smalltooth Sawfish, Atlantic Sturgeon and Marine Mammals, and (2) Monitor the Frequency and Magnitude of Incidental Take. One remaining term and condition will be implemented in this final rule and will require gillnet fishermen to conduct net checks and limit gillnet soak times mitigating or reducing interactions with protected species.

Since finalizing the 2012 BiOp, NMFS issued a final determination to list four separate DPSs of the scalloped hammerhead shark (*Sphyrna lewini*) under the ESA (79 FR 38214, July 3, 2014). The DPSs are Central and Southwest Atlantic, Indo-West Pacific, Eastern Atlantic, and Eastern Pacific. The Eastern Atlantic and Eastern Pacific DPSs are listed as endangered, and the Central and Southwest Atlantic and the Indo-West Pacific DPSs are listed as threatened. NMFS determined that each of the DPSs was significant and distinct based on genetic, behavioral, and physical factors, and in some cases, differences in the control of exploitation of the species across international boundaries. On August 27, 2014, NMFS published a final rule to list the following 20 coral species as threatened: Five in the Caribbean, including Florida and the Gulf of Mexico (*Dendrogyra cylindrus*, *Orbicella annularis*, *Orbicella*

*faveolata*, *Orbicella franksi*, and *Mycetophyllia ferox*); and 15 in the Indo-Pacific (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora lokani*, *Acropora pharaonis*, *Acropora retusa*, *Acropora rudis*, *Acropora speciosa*, *Acropora tenella*, *Anacropora spinosa*, *Euphyllia paradivisa*, *Isopora crateriformis*, *Montipora australiensis*, *Pavona diffluens*, *Porites napopora*, and *Seriatopora aculeata*). Two Caribbean species currently listed as threatened (*Acropora cervicornis* and *Acropora palmata*) still warranted listing as threatened. The Central and Southwest Atlantic DPS of scalloped hammerhead shark and the seven Caribbean species of coral occur within the boundary of Atlantic HMS commercial and recreational fisheries.

On October 30, 2014, based on the new listings, NMFS requested re-initiation of ESA section 7 consultation on the continued operation and use of HMS gear types (bandit gear, bottom longline, buoy gear, handline, and rod and reel) and associated fisheries management actions in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS has preliminarily determined that the ongoing operation of the fisheries is consistent with existing biological opinions and is not likely to jeopardize the continued existence of the Central and Southwest DPS of scalloped hammerhead sharks or the threatened coral species or result in an irreversible or irretrievable commitment of resources which would foreclose formulation or implementation of any reasonable and prudent alternative measures for these species.

Regarding marine mammals, the final 2014 MMPA List of Fisheries classified the southeastern Atlantic shark gillnet fishery as Category II (occasional serious injuries and mortalities). The southeastern Mid-Atlantic and Gulf of Mexico shark BLL shark fishery is classified as Category III (remote likelihood or no known serious injuries or mortalities). Commercial passenger fishing vessel (charter/headboat) fisheries are subject to Section 118 and are listed as a Category III fishery. This action would not significantly increase fishing effort rates, levels, or locations or fishing mortality. The preferred alternatives would not increase effort because the smoothhound quotas are based on the most recent smoothhound shark stock assessments (SEDAR 39). In addition, final management measures are not expected to alter interactions with protected species.

### *Atlantic Shark Gillnet Vessel Monitoring System Requirements*

*Comment 13:* NMFS received support for the preferred alternative of requiring directed shark permit holders with gillnet gear on board to use VMS only in the Southeast U.S. Monitoring Area, including from the States of North Carolina, New Jersey, and Maryland, and the MAFMC. NMFS also received comments preferring the status quo stating that VMS should be required regardless of where the vessel is fishing.

*Response:* Currently, under Federal HMS regulations, Atlantic shark gillnet fishermen are required to use VMS at certain times of the year regardless of where they are fishing. However, per 50 CFR 229.32(h)(2)(i), the implementing regulations for the Atlantic Large Whale Take Reduction Plan (ALWTRP), Atlantic shark gillnet fishermen are only required to have VMS if they are fishing in the Southeast U.S. Monitoring Area. Because NMFS has determined that VMS is not necessary for Atlantic shark gillnet fishermen in the other ALWTRP restricted areas through the implementation of the ALWTRP regulations, NMFS believes it is best to maintain consistency with these regulations. Maintaining consistency between the Atlantic HMS and ALWTRP regulations will reduce confusion, help fishermen comply with these regulations more easily, and will avoid unnecessary economic burdens on shark fishery participants.

### *Previously Adopted Smoothhound Shark Measures in Amendment 3 and the HMS Trawl Rule*

*Comment 14:* NMFS received a comment stating that smoothhound sharks should be managed by the Regional Fishery Management Councils in cooperation with ASMFC.

*Response:* As detailed in Amendment 3 to the 2006 Consolidated Atlantic HMS FMP, smoothhound sharks are "oceanic sharks" as defined by the Magnuson-Stevens Act and are subject to management by the Secretary of Commerce under that Act. Please refer to Amendment 3 to the 2006 Consolidated Atlantic HMS FMP for a detailed explanation of why smoothhound sharks are appropriately subject to Federal management.

*Comment 15:* NMFS received a comment stating that the Federal smoothhound permit could trigger an increase in directed smooth dogfish effort. A comment was also received suggesting that the fishery, once permitted, should not be open access and that a control date should be set to discourage new entrants.

*Response:* Based on the nature of the fishery, which is labor-intensive and high-volume, additional management burdens such as permit requirements are unlikely to result in an increase in effort. In fact, a slight reduction is more likely. Since effort increases are not expected, NMFS does not believe that introducing a limited access permit in this fishery is necessary at this time. Nevertheless, this action will implement scientifically-based quotas and landings will be closely monitored to ensure that total mortality does not exceed scientifically-determined limits. If, in fact, directed smooth dogfish effort increases, protections will be in place to ensure that fishing pressure does not exceed sustainable levels while NMFS considers if additional measures are necessary.

*Comment 16:* NMFS received a comment from the State of Maryland stating that they are concerned about the measure to close the fishery when 80 percent of the smoothhound quota has been caught. They feel that this measure may limit access to some states later in the year. The State of Maryland recommends working with the other Atlantic states to close each state's smoothhound fishery once 80 percent of the state's allocation has been harvested.

*Response:* In all quota-managed Atlantic shark fisheries, NMFS closes the applicable fishery when landings reach, or are expected to reach, 80 percent of the quota. This measure mitigates for possible late reporting, which could result in quota overharvests. Based on the success of this measure in the other shark fisheries, NMFS prefers to implement the 80-percent accountability measure (AM) in the smoothhound shark fisheries as finalized in Amendment 3 to the 2006 Consolidated HMS FMP rather than risk exceeding the quotas in the smoothhound fisheries.

Through Addendum II to the Coastal Sharks Interstate FMP, the ASMFC instituted state shares of the Federal smoothhound shark quota. Although this system was finalized in May 2013 before the Federal smoothhound shark quota was effective, Addendum II proactively divided the quota among several of the Atlantic states in an amount that would total 100 percent of the Federal quota. This agreement among the Atlantic states to limit each state's harvest does not impact nor influence the Federal quota. Although NMFS recognizes that closing the fishery when landings reach, or are expected to reach, 80 percent of the quota could prevent some states from harvesting their full state share of the quota per the ASMFC plan, the measure

is an important and effective way to ensure that the sustainability of the smoothhound shark fishery is not jeopardized by overharvests.

*Comment 17:* NMFS received a comment stating that NMFS should not implement the smoothhound retention allowance from the 2011 HMS Trawl Rule because the increased retention will lead to increased fishing mortality and this mortality will not be adequately quantified and counted against the quota. There are no reporting requirements with open access permits and fisheries tend to underreport incidental catches.

*Response:* Since January 1, 2013, all commercial landings of Atlantic HMS, regardless of gear type or permit, are required to be reported on a weekly basis. Through these weekly reports, NMFS monitors commercial landings of Atlantic HMS, which will include smoothhound sharks upon implementation of this action. Trawl gear and open access permits do not present unique reporting concerns. Allowing smoothhound sharks to be landed by fishermen who use trawl gear or possess an open access permit does not raise unique concerns about the sustainability of the fishery.

### *General Comments*

*Comment 18:* NMFS received comments that Amendment 9 is too narrowly focused on smoothhound sharks and should instead consider all species managed under the 2006 Consolidated HMS FMP. The commenter asserts that a multispecies management approach is preferable. Furthermore, the commenter noted that NMFS' decision to include all HMS in a single, consolidated FMP effectively categorizes all HMS fisheries as a single "fishery." Thus, all National Standards (NS) under the Magnuson-Stevens Act must be considered in the context of all HMS, not just smoothhound sharks and Atlantic sharks. Specifically, the commenter suggested that NS 3 ("To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination") requires NMFS to optimize access and management of all HMS, not just smoothhound sharks and Atlantic sharks. Additionally, the commenter felt that NS 1, which mandates achieving optimum yield from each fishery, should be applied across all HMS since all HMS should be categorized as one single fishery.

*Response:* While a multispecies management approach is advantageous in some instances, NMFS disagrees that

Amendment 9 should broadly consider all HMS (including tunas, billfish, and swordfish) as a single fishery. In 2006, NMFS merged all Atlantic HMS management into a single, consolidated FMP. In the 2006 Consolidated Atlantic HMS FMP, NMFS noted that the interrelated nature of HMS fisheries and the need to consider management actions together necessitated merging the two existing HMS FMPs into one FMP. In addition, NMFS identified some adverse ramifications stemming from separation of the plans, including unnecessary administrative redundancy and complexity, loss of efficiency, and public confusion over the management process. It is important to note that NMFS consolidated management of all HMS under one FMP because of the interrelated nature of some of the fisheries and to streamline administration, not because all HMS constitute a single fishery. As appropriate, NMFS analyzes the impacts of management actions for each HMS fishery and optimizes management for all affected HMS fisheries. The Environmental Assessment appropriately considers any effects on the environment, including effects on other fish stocks or fisheries that may result from the actions in Amendment 9. The analyses show that the actions considered in Amendment 9 are unlikely to affect non-smoothhound shark fisheries or Atlantic shark fisheries. The management objectives are narrowly focused on smoothhound sharks, smooth dogfish, and/or Atlantic sharks caught in gillnet gear, the predominant gear type used in the directed smoothhound shark fishery. None of the fisheries considered in this action are likely to encounter other non-smoothhound shark or Atlantic shark in large numbers. Billfish, swordfish, tunas, and pelagic sharks are unlikely to co-occur with the smoothhound sharks nor can swordfish or tunas be retained if caught in gillnet gear. The one exception is the measure to establish an effective date for the 2011 HMS Trawl Rule. Trawl gear does have the potential to interact with a variety of HMS, including smoothhound sharks, Atlantic sharks, and swordfish. The 2011 HMS Trawl rule, recognizing the potential interaction between trawl gear and some HMS, considered an allowance for the limited retention of incidentally caught swordfish and smoothhound sharks. As such, that action considered impacts and explicitly optimized access to affected HMS. With respect to consistency with NS 1 and 3, each HMS management action considers all National Standards in the context of the

affected HMS. For detailed information about Amendment 9's consistency with National Standards, please see Section 10 of the Final EA.

#### **Changes From the Proposed Rule (79 FR 46217, August 7, 2014)**

NMFS made several changes from the proposed rule, as described below.

1. *Catch Composition and "No Other Sharks" Requirements for Removing Smooth Dogfish Fins at Sea* (§ 635.30(c)(5)(iii)). The SCA has provisions related to the removal of smooth dogfish fins while at sea that apply when an individual is fishing "for" smooth dogfish. Thus, the proposed rule considered sub-alternatives to apply the exception only to those fishing with the object of commercially harvesting smooth dogfish by focusing on catch composition. This final rule is not implementing the preferred catch composition sub-alternative (75 percent of retained catch must be smooth dogfish), but another sub-alternative (25 percent smooth dogfish) that had been discussed in the proposed rule and analyzed in the draft EA.

NMFS received numerous public comments that the 75 percent catch composition requirement did not adequately reflect the mixed nature of the smooth dogfish fishery and would lead to excessive dead discards. Based on this public comment, NMFS reconsidered the 75 percent smooth dogfish requirement, and determined that it does not properly reflect fishing "for" smooth dogfish. According to public comment, fishermen that fish for smooth dogfish often encounter and retain other species of fish. NMFS verified this by evaluating data from vessel trip reports (VTR). On trips that landed smooth dogfish caught in sink gillnet gear between 2003 and 2014, smooth dogfish only made up 36 percent of the total retained catch while other species such as croaker, bluefish, monkfish, and spiny dogfish made up the remainder. See Final EA at Section 3.4.1 for further detail. If NMFS retained the 75 percent requirement, then this could result in dead discards as well as lost revenues from those species. The 25 percent requirement adopted in the final rule better reflects fishing "for" smooth dogfish, and is within the range of alternatives considered and analyzed in the proposed rule.

Related to the catch composition change and concern about discards, this final rule also makes a change from the proposed rule by allowing retention of other shark species provided that their fins remain naturally attached to the carcass through offloading. This

measure is included based on public comment and additional analyses and recognizing that a prohibition on having other sharks on board would likely increase regulatory discards. Specifically, additional analyses indicate that the smooth dogfish fishery is more mixed than previously thought, and that other sharks, particularly spiny dogfish and common thresher sharks, make up a portion of the catch and revenue for fishermen also fishing for smooth dogfish. Given that fishermen process smooth dogfish as they are brought on board, including removing the fins where allowable, the proposed rule approach would have forced fishermen to choose whether to land smooth dogfish with the fins removed (and discard the other species) or land the other species of shark with the fins attached and discard the smooth dogfish with their fins removed at sea. As proposed, a fisherman who wanted to remove smooth dogfish fins at sea would not have been able to retain non-smooth dogfish sharks even if those sharks were dead and otherwise legally retainable based on species, size, and permits. In either situation, as proposed, dead discards would likely have increased given the mixed catches in the smooth dogfish fishery. Thus, other sharks will be allowed on board when smooth dogfish fins have been removed at sea as long as the fins of the non-smooth dogfish sharks remain naturally attached through offloading, as is currently required.

Allowing other sharks on board should not raise enforcement concerns or impact the conservation of non-smooth dogfish sharks because smooth dogfish carcasses can be readily differentiated from other shark carcasses by the presence of a pre-dorsal ridge. While other "ridgeback sharks" have an interdorsal ridge, smooth dogfish are the only shark species in the Atlantic that have a pre-dorsal ridge. We will work with the Office of Law Enforcement to ensure that they are aware of this identifying feature and will update outreach information for shark identification including relevant workshops as appropriate to make permitted shark fishermen and dealers aware of the distinction. NMFS will also continue to monitor all shark catches and discards and take additional action, if necessary to address non-compliance.

The changes in this final rule are consistent with the conservation and management objectives of the Magnuson-Stevens Act and Amendment 9 and the SCA. These changes will not impact the conservation of smooth dogfish or other sharks because landings of these species, regardless of catch

composition percentage, will be capped at or under the commercial quota through AMs and/or closures. These changes thus will not have an effect on the status of these stocks, nor are other adverse environmental impacts anticipated. They will also provide for a flexible, profitable, and sustainable smooth dogfish fishery.

2. *Atlantic and Gulf of Mexico Regional Commercial Smoothhound Shark Quotas* (§ 635.27(b)(1)(xi)). NMFS proposed a smoothhound shark quota equal to the maximum annual landings from 2004–2013 plus two standard deviations (1,739.9 mt dw) using commercial landings data in the absence of a stock assessment and methodology outlined in Amendment 3. At that time, NMFS anticipated that the SEDAR 39 stock assessment for smoothhound sharks would be completed in 2014. Consequently, the proposed rule discussed, and the draft EA analyzed, a quota alternative that would “implement a TAC and smoothhound shark quota(s) consistent with the results of the 2014 smoothhound shark stock assessment if the results become available before publication of the final rule for this action.” (See Alternative B4 in the Draft EA for Amendment 9). The proposed rule also stated that “[t]he 2014 smoothhound shark stock assessment could separate one or more of the stocks into regional stocks between the Atlantic and Gulf of Mexico,” and that for the purposes of the environmental analyses, “NMFS assumes one overarching quota but these alternatives and analyses could apply to multiple regions as well.”

During the public comment period on the proposed rule and draft EA, commenters expressed concern about implementing a smoothhound shark commercial quota based on historical landings, and requested that NMFS wait for SEDAR 39 to be completed. Based on these comments, in this final rule, NMFS is implementing region-specific commercial quotas based on SEDAR 39. Specifically, this final rule establishes an overall TAC of 1,940.2 mt implemented as follows: An Atlantic regional smoothhound shark TAC of 1,430.6 mt dw with a commercial quota of 1,201.7 mt dw, and a Gulf of Mexico regional smoothhound shark TAC of 509.6 mt dw with a commercial quota of 336.4 mt dw. Although the TAC identified in the final rule is inclusive of sources of mortality other than a commercial quota (which is thus necessarily less than the TAC), the overall TAC in the final rule is only 201 mt more than the 1,739.9 mt dw commercial quota from the proposed rule. Thus, establishing a TAC of this

level does not raise concerns about requiring additional environmental analyses or additional regulatory action, which may have been the case if the stock assessment had identified a significantly greater allowable TAC (and resultant commercial quota) than those anticipated and analyzed in the proposed rule. The proposed rule presented and analyzed an alternative that anticipated the stock assessment would determine that “the commercial smoothhound shark quota should be set at approximately equal to or greater than 1,739.9 mt dw.” As acknowledged in the EA, even with a higher quota, effort is likely to remain the same relative to current effort. Thus the ecological, economic and social impacts of quota establishing a quota greater than 1,739.9 mt would be within the range analyzed in the Draft EA. In the final rule, the combined regional commercial quotas (1,538.1 mt) are twelve percent less than the original proposed overall quota (1,739.9 mt) but higher than recent annual commercial landings. Both the commercial quotas and the overall TAC in this final rule are within the range of actions considered in the proposed rule and analyzed in the draft EA.

With regard to the regional quota approach, in the Draft EA, NMFS acknowledged that the stock could be split between two regions based on the SEDAR 39 stock assessments and that the analyses performed for one overarching quota could apply to multiple regions. Based on information supplied during the Data Workshop for SEDAR 39, including tagging data, the stock assessment scientists decided to split smoothhound sharks into two regional stocks, with smooth dogfish in the Atlantic and smooth dogfish, Florida smoothhound, and Gulf smoothhound in the Gulf of Mexico. This regional split, however, does not affect the impact analyses detailed in the Draft EA under Alternative B4, scenario 4. As noted in Section 3.4 of the Draft EA and as confirmed in the SEDAR 39 stock assessments, the smoothhound shark fishery primarily occurs in the Mid-Atlantic region and is composed entirely of smooth dogfish catch. In the Gulf of Mexico region, only a very small, negligible, number of commercial landings occur and there is no commercial fishery. Thus, the Draft EA Alternative B4 quota analyses were informed entirely by data from the Atlantic region including catch location, price data, landings data, and fishery operations. If NMFS applied the single over-arching quota analyses to regional smoothhound shark quotas at the Draft stage, there would have been no

information available for the Gulf of Mexico and, with no commercial fishery in that region, a finding of neutral impact. In the Atlantic region where the fishery is located, all impacts detailed in the Draft EA would apply because all data, including catch location, price data, landings data, and fishery operations, came from the Atlantic. Furthermore, the Atlantic smoothhound shark stock assessment would not have resulted in any new impacts because the assessment found current harvest levels and effort are sustainable with no changes required. In summary, the impact analyses detailed in the Draft EA under Alternative B4, scenario 4 are equally applicable to two regional quotas as to one over-arching quota. The changes in this final rule are consistent with the conservation and management objectives of the Magnuson-Stevens Act and Amendment 9 and based on the best scientific information available. Implementing TACs based on the stock assessment results would ensure continued sustainable harvest of smoothhound sharks in the Atlantic and Gulf of Mexico regions and increase the likelihood of maintaining healthy smoothhound shark stocks in both regions.

3. *Administrative changes* (§§ 635.2, 635.7(g)). NMFS is making minor clarifications to the drift and sink gillnet definitions at § 635.2 to indicate that drift gillnets typically are “floating” in the water column and that sink gillnets are fished on or near the “ocean” bottom and can have weights “and/or” anchors. Additionally, NMFS is changing the administrative processes by which vessels are selected for at-sea observer coverage at § 635.7(g). The changes were made, in part, based on consultation with the Northeast and Southeast Observer Programs so that smoothhound shark observer selection is consistent with both programs. The administrative changes to this section should not have any practical effect; rather, they will ensure that the selection processes currently in place may continue.

4. *Administrative Additions* (§ 635.19(d)). NMFS is adding language to § 635.19(d) to indicate that trawl gear is an authorized gear for the capture and retention of smoothhound sharks subject to the restrictions specified in § 635.24(a)(7). Regulatory text to authorize retention of smoothhound sharks caught in trawl gear was added to other sections of § 635, including § 635.24(a)(7), and was discussed in the proposed rule but was inadvertently omitted from this part of the regulatory text itself. No substantive changes will occur as a result.

### Commercial Fishing Season Notification

Pursuant to the measures being implemented in this final rule, the 2016 base quotas for smoothhound sharks in the Atlantic and Gulf of Mexico regions would be 1,201.7 mt dw and 336.4 mt dw, respectively. The fishing season for the smoothhound shark fishery will open on January 1, 2016.

### Classification

The AA has determined that this final rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law.

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires a succinct statement of the need for and objectives of the rule. Chapter 1 of the Final EA and the final rule fully describe the need for and objectives of this final rule. The purpose of this final rulemaking, consistent with the Magnuson-Stevens Act, the ESA, and the MMPA, and the 2006 Consolidated HMS FMP and its amendments, is to provide for the sustainable management of smoothhound sharks and Atlantic shark species. The management objectives are to achieve the following: Implement the smooth dogfish-specific provisions of the SCA; implement smoothhound shark quotas based on the results of SEDAR 39; implement Term and Condition 4 of the 2012 Shark BiOp related to gillnet impacts on ESA-listed species; and revise Atlantic shark gillnet VMS regulations in compliance with the ALWTRP, per the MMPA.

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA and a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received many comments on the proposed rule and the Draft EA during the public comment period. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included above. NMFS did not

receive comments specifically on the IRFA.

Section 604(a)(4) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The small business size standard for Finfish Fishing is \$ 20.5 million, for Shellfish Fishing is \$5.5 million, and for Other Marine Fishing is \$7.5 million. See 79 FR 33647 (June 24, 2014). Under any of these standards, all Atlantic HMS permit holders subject to this rulemaking would be considered small entities.

NMFS does not have exact numbers on affected commercial fishermen. The smoothhound shark commercial permit has not yet been established, so NMFS does not know how many smoothhound shark fishermen will be impacted. An annual average of 169 vessels reported retaining smooth dogfish through VTR from 2003–2014. This is NMFS' best estimate of affected smoothhound shark fishermen.

Additionally, while the retention of sharks in Federal waters requires one of two limited access commercial shark permits, these permits do not specify gear type, including gillnets. For this reason, NMFS does not know the exact number of affected shark gillnet fishermen. As of May 21, 2015, there are 208 directed shark and 253 incidental shark permit holders. Logbook records indicate that there are usually about 18 Atlantic shark directed permit holders that use gillnet gear in any year. However, the universe of directed permit holders using gillnet gear can change from year to year and could include anyone who holds an Atlantic shark directed permit.

As of May 21, 2015, there are 97 Atlantic shark dealers. These dealers could be affected by these measures to varying degrees. Not all of these dealers purchase smoothhound sharks and those that do are concentrated in the Mid-Atlantic region. NMFS will know more about the number of affected dealers when smoothhound reporting requirements become effective. Similarly, not all of these dealers purchase Atlantic sharks caught with gillnet gear. The number is likely low and is concentrated in Florida and the Gulf of Mexico.

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The Federal commercial smoothhound shark permit requirement analyzed in Amendment 3 will become effective upon the effective date of this rule. NMFS submitted a PRA change request to The Office of Management and Budget (OMB) to add this permit to the existing HMS permit PRA package

(OMB control number 0648–0327). OMB subsequently approved the change request to add the Federal commercial smoothhound shark permit to the HMS permit PRA package in May 2011. In November 2015, NMFS submitted a revision to transfer the previously approved commercial smoothhound shark permit from the HMS permit PRA package (OMB Control Number 0648–0327) to the Southeast Regional Office (SERO) permit PRA package (OMB Control Number 0648–0205). That request is still pending approval. Once OMB approves the request, NMFS will issue a notice in the **Federal Register** announcing the approval of the information collection requirements and the availability of applications for the commercial smoothhound shark permit. This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under OMB Control number 0648–0372. Public reporting burden will be reduced under the modified VMS requirements under this final rule. The burden estimate burden will be reduced by this rule, but the changes will be requested as part of the 2016 extension, at which time the estimate of the burden change will be more accurate.

The RFA requires a description of the steps the Agency has taken to minimize any significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the Agency that affect small entities was rejected. These impacts are discussed below and in the FRFA for Amendment 9. Additionally, the RFA (5 U.S.C. 603 (c)(1)–(4)) lists four general categories of “significant” alternatives that could assist an agency in the development of significant alternatives. These categories of alternatives are: Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; use of performance rather than design standards; and, exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with Magnuson-Stevens Act and ESA, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are

considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does 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. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this rulemaking and provided the rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed are described below. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

#### *Alternatives To Implement the Smooth Dogfish-Specific Provisions of the Shark Conservation Act of 2010*

With regard to the implementation of the SCA, NMFS considered two alternatives. Alternative A1, which would not implement the smooth dogfish-specific provisions of the SCA and would instead implement the fins-attached requirement finalized in Amendment 3, and Alternative A2, which would implement the smooth dogfish-specific provisions of the SCA and has sub-alternatives that address the specific elements of the of the smooth dogfish-specific provisions.

Alternative A1 would not implement the smooth dogfish-specific provisions of the SCA and would require all smooth dogfish to be landed with fins naturally attached. This alternative would change current fishing practices since smooth dogfish caught in the directed and incidental fisheries are fully processed while at sea. As a result, this Alternative A1 would likely lead to reduced landings and a lower ex-vessel price because the product would not be fully processed. This could lead to adverse socioeconomic impacts.

Under Alternative A2, the preferred alternative, an allowance for the removal of smooth dogfish fins at sea would increase efficiency in the smooth dogfish fishery and provide a more highly processed product for fishermen to sell to dealers. Quantifying the financial benefits is difficult because baseline effort and increases in efficiency cannot be calculated, but the benefit would fall somewhere between the two extremes of \$0 and \$699,364, the ex-vessel value of the entire fishery (Section 3.6.2). Assuming that amount is spread evenly across all 169 vessels per year that retain smooth dogfish (Section

6.1), the benefit to individual vessels would be \$4,138. However, vessels and trips retain smooth dogfish in widely varying amounts, thus, this per vessel estimate may not provide an accurate picture of individual revenues.

Supporting entities, such as bait and tackle suppliers, ice suppliers, dealers, and other similar businesses, could experience increased revenue if the efficiency of fin removal at sea results in a higher quality product. However, while supporting businesses would benefit from the increased profitability of the fishery, they do not solely rely on the smooth dogfish fishery. In the long-term, it is likely that changes in the smooth dogfish fishery would not have large impacts on these businesses.

#### *Catch Composition Sub-Alternatives*

Under Sub-Alternative A2-1a, smooth dogfish could make up any portion of the retained catch on board provided that no other sharks are retained. This sub-alternative would authorize smooth dogfish fishermen to retain any non-shark species of fish while still availing themselves of the at-sea fin removal allowance. Smooth dogfish are often caught incidentally during other fishing operations, thus, this sub-alternative would allow fishermen to maximize the profitability of each trip and allow individual operators the flexibility to make decisions, before the trip and while on the water, as to the retained catch composition that would maximize ex-vessel revenues. Under this alternative, fishermen could remove smooth dogfish fins at sea during any type of trip including those trips that are directing effort on other non-shark species. This alternative would maintain the current practice in the fishery and vessels could continue to have ex-vessel revenues of \$699,364 per year across the entire fishery (Section 3.6.2).

Under Sub-Alternative A2-1b, fishermen could avail themselves of the at-sea fin removal allowance only if smooth dogfish comprise 25 percent of the retained catch on board. This sub-alternative would authorize smooth dogfish fishermen to retain some non-shark species of fish while still availing themselves of the at-sea fin removal allowance. This sub-alternative would allow some fishermen to maintain the profitability of each trip and allow individual operators some flexibility to make decisions, before the trip and while on the water, as to the retained catch composition that would increase ex-vessel revenues. This increase in flexibility would be to a lesser extent than Sub-Alternative A2-1a which would not have a catch composition

requirement, but greater than the other sub-alternatives that limit the fins-attached exception to higher catch composition percentages. This sub-alternative would decrease total ex-vessel revenues relative to the current level of \$699,364 per year (Section 3.6.2).

Under Sub-Alternative A2-1c fishermen could avail themselves of the at-sea fin removal allowance only if smooth dogfish comprise 75 percent of the retained catch on board. This sub-alternative would allow fishermen limited flexibility to maintain the profitability of each trip and would allow fishermen to make decisions, before the trip and while on the water, as to the retained catch composition that would increase ex-vessel revenues. While limited, the flexibility in this alternative would be greater than in sub-alternative A2-1d, which would require smooth dogfish catch composition of 100 percent. Because some fishermen catch smooth dogfish along with other species, this sub-alternative could decrease the number of mixed species trips where fishermen could take advantage of the at-sea fin removal allowance. This sub-alternative would likely decrease total ex-vessel revenues relative to the current level of \$699,364 per year.

Sub-Alternative A2-1d would require smooth dogfish to comprise 100 percent of the retained catch on board the vessel in order for fishermen to avail themselves of the at-sea fin removal allowance for smooth dogfish. This sub-alternative would eliminate the ability of mixed trips to take advantage of the at-sea fin removal, and would reduce flexibility in deciding which species to retain on each fishing trip. However, approximately 31 vessels (annual average 2003–2014) on directed smooth dogfish trips often only retain smooth dogfish due to the processing practices in place. Thus, these fishermen would not be impacted by a 100 percent smooth dogfish requirement and would benefit from the ability to remove the smooth dogfish fins at sea. This sub-alternative would likely decrease total ex-vessel revenues relative to the current level of \$699,364 per year.

Sub-Alternative A2-1e, the preferred sub-alternative, would, similar to Sub-Alternative A2-1b, allow fishermen to avail themselves of the at-sea fin removal allowance only if smooth dogfish comprise 25 percent of the retained catch on board. However, under Sub-Alternative A2-1e, other sharks could be retained as well, provided they are maintained with the fins naturally attached to the carcass. This sub-alternative would allow some

fishermen to maintain the profitability of each trip and allow individual operators some flexibility to make decisions, before the trip and while on the water, as to the retained catch composition that would increase ex-vessel revenues. This increase in flexibility would be to a lesser extent than Sub-Alternative A2–1a, which would not have a catch composition requirement, but greater than the other sub-alternatives that limit the fins-attached exception to higher catch composition percentages. This sub-alternative would decrease total ex-vessel revenues relative to the current level of \$699,364 per year (Section 3.6.2).

#### *State Fishing Permit Requirement Sub-Alternatives*

Sub-Alternative A2–2a would require federal smoothhound permitted fishermen to obtain a smooth dogfish-specific state commercial fishing license in order to be able to remove smooth dogfish fins at sea. The requirement to obtain a smooth dogfish-specific state commercial fishing license may be more difficult for fishermen who are in states that do not have smooth dogfish-specific permits in place. This sub-alternative would result in the increased burden on fishermen to obtain another permit, and depending upon the state, could result in an additional permit charge. Since most permits are valid for one year, fishermen would likely need to renew the permit each year for as long as they wish to retain smooth dogfish and remove the fins while at sea. Because not all states have smooth dogfish-specific permits, NMFS does not prefer this alternative.

Sub-Alternative A2–2b, the preferred alternative, would require fishermen to hold any state commercial fishing permit that allows retention of smooth dogfish. It is likely, however, that most smooth dogfish fishermen already hold this type of state permit and would be unaffected by this requirement. This sub-alternative would likely be the most straightforward for regulatory compliance because the permit requirement would be the simpler than sub-alternative A2–2a. Thus, NMFS prefers this sub-alternative.

#### *Geographic Applicability of Exception Sub-Alternatives*

NMFS considered two alternatives for Geographic Application of the SCA exception. Under Sub-Alternative A2–3a, the exception would apply along the Atlantic Coast and the Florida west coast in the Gulf of Mexico. As explained earlier, as a practical matter, smooth dogfish and other smoothhound

species are indistinguishable, although smoothhound are distinguishable from other ridgeback sharks by the presence of a pre-dorsal ridge. The best available scientific information indicates that smooth dogfish are likely the only smoothhound shark species along the Atlantic coast. In the Gulf of Mexico, however, there are at least three different smoothhound species, with no practical way to distinguish among them. This sub-alternative would apply the smooth dogfish exception 50 nautical miles from the baseline of all the States that fall under the SCA definition of “State.” This sub-alternative could result in other smoothhound sharks indirectly falling under the exception, because they cannot be distinguished from smooth dogfish. NMFS does not expect any impacts because there is no commercial fishery for smooth dogfish in the Gulf of Mexico at this time. However, NMFS does not prefer this sub-alternative because, if a fishery does develop, species misidentification could result in enforcement action.

Under Sub-Alternative 3b, the preferred sub-alternative, the exception would only apply along the Atlantic coast and not the Florida west coast in the Gulf of Mexico. By not extending the exception into the Gulf of Mexico, this sub-alternative would ensure that the SCA’s exception to the fins-attached requirements for smooth dogfish would only apply along the Atlantic Coast where the population is almost entirely smooth dogfish, reducing identification problems and inadvertent finning violations. NMFS does not expect any impacts because, at this time, there is no commercial fishery for smooth dogfish in the Gulf of Mexico. NMFS prefers this sub-alternative because it simplifies enforcement and compliance without adverse impacts. This sub-alternative would not affect total ex-vessel revenues relative to the current level of \$699,364 per year.

#### *Smoothhound Shark Commercial Quotas*

With regard to the smoothhound quota alternatives, NMFS considered four alternatives. Alternative B1, which would implement the smoothhound shark quota finalized in Amendment 3; Alternative B2, which would establish a rolling quota based on the most recent five years of landings data; Alternative B3, which would calculate the smoothhound quota using the same method as in Amendment 3 but would use updated smoothhound landings information; and Alternative B4, which would establish smoothhound shark quotas that reflects the results of the

SEDAR 39 smoothhound shark stock assessments.

Alternative B1 would implement the quota finalized in Amendment 3 (715.5 mt dw), which was based on highest annual landings from (1998 to 2007) and adding two standard deviations. Current reported smoothhound shark landings are higher than the quota level in Alternative B1. As such, implementing this quota would prevent fishermen from fishing at current levels, resulting in lost revenues. In 2010 when landings peaked, total smoothhound shark landings totaled 2,688,249 lb dw (ACCSP data) resulting in ex-vessel revenues across the entire smoothhound sink gillnet fishery of \$2,458,135 (2,688,249 lb of meat, 322,590 lb of fins). Implementation of the Amendment 3 quota (715.5 mt dw) would result in ex-vessel revenues of only \$1,442,367 (1,577,391 lb of meat, 189,287 lb of fins), which is \$1,015,768 less than current ex-vessel revenues. Both of these estimates assume \$1.62/lb for fins, \$0.72/lb for meat, and a 12 percent fin-to-carcass ratio (prices based on 2014 dealer data and fin-to-carcass ratio based on the SCA). Seventy-five percent of all landings in the smoothhound shark fishery come from sink gillnets and there are approximately 77 vessels that use sink gillnet gear to fish for smoothhound sharks in any given year. Assuming an average of 77 sink gillnet vessels fishing for smoothhound sharks, the quota in this alternative would result in annual ex-vessel revenues of \$18,732 per vessel which is less than 2010 ex-vessel revenues of \$31,923 per vessel. This is an average across all directed and incidental sink gillnet vessels and this individual annual vessel ex-vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks.

The quota in Alternative B1 does not accurately characterize current reported landings of smoothhound sharks. Vessels that fish for smoothhound sharks likely fished opportunistically on multiple species of coastal migratory fish and elasmobranchs, and it is unlikely that any sector within the fishing industry in the Northeast (fisherman, dealer, or processor) relies wholly upon smoothhound sharks. Longer-term impacts are expected to be neutral given the small size of the fishery and the generalist nature of the sink gillnet fishery.

Alternative B2 would establish a rolling smoothhound shark quota set above the maximum annual landings for the preceding five years; this quota would be recalculated annually to account for the most recent landing

trends within the smoothhound complex (2016 quota would be 1,729 mt dw based on 2010–2014 data). The 2016 quota under this alternative is likely to result in annual revenues of \$3,485,466 (3,811,753 lb of meat, 457,410 lb of fins) assuming an ex-vessel price of \$1.62 lb for fins and \$0.72 lb for meat. Seventy-five percent of all landings in the smoothhound shark fishery come from sink gillnets and there are approximately 77 vessels that use sink gillnet gear to fish for smoothhound sharks. Assuming an average of 77 sink gillnet vessels fishing for smoothhound sharks, the quota in this alternative would result in individual vessel annual revenues of \$45,266 which is more than 2010 ex-vessel revenues of \$31,923 per vessel. This is an average across all sink gillnet vessels, regardless of catch levels, and this individual annual vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks.

Setting the quota above current landings levels should allow the fishery to continue, rather than be closed, allowing for NMFS to collect more information that can be used in future stock assessments. Alternative B2 is consistent with the intent of Amendment 3, which was to minimize changes to the fishery while information on catch and participants was collected. Because landings in the smoothhound shark fishery are likely underreported, it is unclear at this time whether the increase in reported landings is due to existing smoothhound fishermen reporting in anticipation of future management or increased effort (e.g., new entrants into the fishery). While a rolling quota would cover all current reporting and likely cover all underreporting of landings, the fishery could grow exponentially if reported landings continue to increase over consecutive years, possibly resulting in stock declines and in turn a potential loss of revenue to the fishing industry. The rolling quota could also lead to lower quotas in consecutive years if landings decrease over time. Thus, the changing nature of the rolling quota could lead to uncertainty in the fishery and could cause direct and indirect minor adverse socioeconomic impacts in the long term.

Alternative B3 would create a smoothhound quota equal to the maximum annual landings from 2005–2014 plus two standard deviations and would equal 1,733.9 mt dw. This alternative would establish a smoothhound quota two standard deviations above the maximum annual landings reported over the last ten years which is the method used to calculate

the smoothhound shark quota that was finalized in Amendment 3. This quota would result in potential annual revenues in the entire fishery of \$3,495,345 (3,822,556 lb of meat, 458,707 lb of fins) assuming an ex-vessel price of \$1.62 lb for fins and \$0.72 for meat. Seventy-five percent of all landings in the smoothhound shark fishery come from sink gillnets and there are approximately 77 vessels that use sink gillnet gear to fish for smoothhound sharks. Assuming an average of 77 sink gillnet vessels fishing for smoothhound sharks, the quota proposed in this alternative would result in individual vessel annual revenues of \$45,394. This is an average across all sink gillnet vessels, regardless of catch levels, and this individual annual vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks.

At the time of publication for the Draft EA, the SEDAR 39 smoothhound stock assessments were underway, but not yet complete. In anticipation that the final stock assessments could be finalized before this final rule, NMFS considered a range of scenarios under Alternative B4 to implement potential results and scenarios, recognizing that results beyond the scope of those analyzed could require additional analysis or regulatory action. The SEDAR 39 stock assessment is now final; thus, the scenarios considered in the Draft EA are no longer appropriate to consider. Rather, NMFS has analyzed the actual results of the stock assessments, which would establish an Atlantic smoothhound commercial quota of 1,201.7 mt dw and a Gulf of Mexico smoothhound shark quota of 336.4 mt dw. These quotas would result in annual revenues of \$2,422,251.54 (2,649,006 lb of meat, 317,881 lb fins), assuming an ex-vessel price of \$1.62 lb for fins and \$0.72 lb for meat. Seventy-five percent of all landings in the smoothhound shark fishery come from sink gillnets and there are approximately 77 vessels that use sink gillnet gear to fish for smoothhound sharks. Assuming an average of 77 sink gillnet vessels fishing for smoothhound sharks, the quota in this alternative would result in individual vessel annual revenues of \$31,458. This is an average across all sink gillnet vessels, regardless of catch levels, and this individual annual vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks. The quotas under Alternative B4 are both consistent with the intent of Amendment 3, which was to minimize changes to the fishery while information

on catch and participants was collected, while also implementing science-based quotas to ensure continued sustainable harvest of smoothhound sharks in the Atlantic and Gulf of Mexico regions. NMFS anticipates short-term, direct minor beneficial socioeconomic impacts under this alternative given the combined commercial quotas for the Atlantic and Gulf of Mexico regions under this alternative would result in increased revenues compared to the commercial quota under Alternative B1, though lower than those anticipated under Alternatives B2 or B3. These commercial quotas would allow the fishery to continue at the rate and level observed in recent years into the future without having to be shut down prematurely. Given that the fishery would expect to operate as it currently does, NMFS anticipates in the short term, indirect, minor, positive socioeconomic impacts for shark dealers and processor. Since this alternative establishes scientifically-based quotas and would result in beneficial socioeconomic impacts, NMFS prefers this alternative.

#### *Biological Opinion Implementation*

In order to implement TC 4 of the 2012 Shark BiOp in the smoothhound shark fishery, NMFS considered 4 alternatives. The No Action alternative, which would not implement TC 4 of the 2012 Shark BiOp; alternative C2, which would require smoothhound shark fishermen to conduct net checks at least every 2 hours; alternative C3, which would require smoothhound shark fishermen to limit their gillnet soak time to 24 hours and those smoothhound shark fishermen that also have a Atlantic shark limited access permit to check their nets at least every 2 hours; and finally, Alternative C4, which would require smoothhound and Atlantic shark fishermen using sink gillnet to soak their nets no longer than 24 hours and those fishermen using drift gillnets to check their nets at least every 2 hours.

Alternative C1 would not implement the BiOp term and condition that would require all smoothhound shark permit holders to either check their gillnet gear at least every 2.0 hours or limit their soak time to no more than 24 hours. This alternative would likely result in short and long-term neutral direct socioeconomic impacts. Under Alternative C1, smoothhound shark fishermen would continue to fish as they do now and so this alternative would not have economic impacts that differ from the status quo. Similarly, this alternative would likely result in neutral short and long-term indirect

socioeconomic impacts since supporting businesses including dealers and bait, tackle, and ice suppliers would not be impacted.

Alternative C2 would require smoothhound shark fishermen using gillnet gear to conduct net checks at least every 2.0 hours to check for and remove any protected species, and would likely result in short and long-term direct moderate adverse socioeconomic impacts. Some smoothhound shark gillnet fishermen fish multiple nets at one time or deploy their net(s), leave the vicinity, and return later. Alternative C2 would require these fishermen to check each gillnet at least once every 2 hours, making fishing with multiple nets or leaving nets unattended difficult. This would likely lead to a reduction in effort and landing levels, resulting in lower ex-vessel revenues. Quantifying the loss of income is difficult without information characterizing the fishery including the number of nets fished. However, limiting the amount of fishing effort in this manner is likely to reduce total landings of smoothhound sharks or, in order to keep landing levels high, extend the length of trips. Landings of incidentally caught fish species could be reduced as well, although under preferred Sub-Alternative A2-1c, smoothhound shark fishermen that wish to remove smooth dogfish fins at sea could not retain other species. This alternative would not have a large impact on supporting businesses such as dealers or bait, tackle, and ice suppliers since these businesses do not solely rely on the smoothhound shark fishery. The smoothhound shark fishery is small relative to other fisheries. Thus, Alternative C2 would likely result in short and long-term indirect neutral socioeconomic impacts. Alternative C2 would impact the approximately 77 vessels that annually catch smoothhound sharks with gillnet gear (annual average from 2003–2014, Table 3.1).

Alternative C3 would establish a gillnet soak time limit of 24 hours for smoothhound shark permit holders. Under this alternative, fishermen holding both an Atlantic shark limited access permit and a smoothhound shark permit must abide by the 24 hour soak time restriction and conduct net checks at least every 2 hours. This alternative would likely result in short- and long-term direct minor adverse socioeconomic impacts to those smoothhound permitted fishermen that also have an Atlantic shark limited access permit and therefore would be required to check their nets at least every 2 hours. Currently, smoothhound

shark gillnet fishermen sometimes fish multiple nets or leave nets unattended for short periods of time. Rarely are these nets soaked for more than 24 hours, thus, this alternative would not impact smoothhound shark gillnet fishermen that do not have an Atlantic shark limited access permit. Adverse socioeconomic impacts resulting from this alternative would likely occur to the subset of smoothhound shark fishermen that also hold an Atlantic shark limited access permit. These smoothhound shark fishermen would be at a disadvantage to other smoothhound shark fishermen that do not have an Atlantic shark limited access permit because they would be required to check their gillnets at least every 2 hours which is a large change in the way the smoothhound shark fishery currently operates. Dropping the Atlantic shark permit to avoid the net check requirement is unlikely to be feasible because Atlantic shark permits allow limited access (NMFS is no longer issuing new permits) and cannot be easily obtained. Additionally, pelagic longline fishermen are required to have an incidental or directed shark permit when targeting swordfish or tunas, even if they are not fishing for sharks, due to the likelihood of incidental shark catch. In practical terms, this could result in smoothhound shark gillnet fishermen abiding by the 2 hour net check requirement even if they do not fish for Atlantic sharks and only hold a Atlantic shark limited access permit to fish for swordfish or tunas (note that gillnets cannot be used to target swordfish or tunas, but some vessels may switch gears between trips). For this subset of fishermen, basing gillnet requirements on permit types could introduce fishing inefficiencies when compared to other smoothhound fishermen, likely resulting in adverse socioeconomic impacts to these fishermen. It is unlikely that this alternative would have a large impact on supporting businesses such as dealers or bait, tackle, and ice suppliers since these businesses do not solely rely on the smoothhound shark fishery. The smoothhound shark fishery is small relative to other fisheries. It is difficult to determine the number of fishermen that would be adversely affected because NMFS does not yet know which vessels will obtain a smoothhound shark fishing permit. However, it is likely that this number will be approximately equal to 169 which is the average annual number of vessel that retain smoothhound sharks (Section 3.4).

Alternative C4, the preferred alternative, would establish a soak time limit of 24 hours for fishermen using sink gillnet gear and a 2 hour net check requirement for fishermen using drift gillnet gear in the Atlantic shark and smoothhound shark fisheries. Drift gillnets would be defined as those that are unattached to the ocean bottom with a float line at the surface and sink gillnet gear would be defined as those with a weight line that sinks to the ocean bottom, has a submerged float line, and is designed to be fished on or near the bottom. Alternative C4 would likely result in neutral short and long-term direct socioeconomic impacts. Smoothhound shark fishermen, who typically use sink gillnets, would be required to limit soak times to 24 hours and as discussed above, this requirement is unlikely to significantly alter smoothhound shark fishing practices. Drift gillnet fishermen, who are more likely to target Atlantic sharks rather than smoothhound sharks, would be required to check their nets at least every 2 hours, as is currently required. Thus, this alternative is unlikely to have any socioeconomic impacts to Atlantic shark and smoothhound shark fishermen because it would not change current fishing practices. Similarly, this alternative would likely result in neutral short and long-term indirect socioeconomic impacts because supporting businesses including dealers and bait, tackle, and ice suppliers should not be impacted. Alternative C4 would impact the approximately 77 vessels that annually catch smoothhound sharks with gillnet gear (annual average from 2003–2014, Table 3.1). Because Alternative C4 would have minimal economic impact but is still consistent with the 2012 Shark BiOp, NMFS prefers this alternative.

#### *Atlantic Shark Gillnet Vessel Monitoring System Requirements*

NMFS also considered two alternatives to streamline the current VMS requirements for Atlantic shark fishermen with gillnet gear on board. The No Action alternative would maintain the current requirement to have VMS on board when fishing for Atlantic sharks with gillnet regardless of where the vessel is fishing and alternative D2 would require VMS on board only for Atlantic shark fishermen using gillnet gear in an area specified by the ALWTRP requirements at 50 CFR 229.32.

Alternative D1 would maintain the current requirement of requiring Atlantic shark permit holders fishing with gillnet gear to have VMS on board, regardless of where the vessel is fishing.

These VMS requirements were put in place as an enforcement tool for complying with the ALWTRP requirements set forth in 50 CFR 229.32. Atlantic shark gillnet fishermen are only required to have VMS if they are fishing in the Southeast U.S. Monitoring Area. See 50 CFR 229.32(h)(2)(i). Purchasing and installing a VMS unit costs approximately \$3,500, and monthly data transmission charges cost, on average, approximately \$44.00. Because these monthly costs are currently incurred whenever a shark gillnet fishermen is fishing, these costs can affect the fishermen's annual revenues. Although the affected fishermen already have VMS installed, they continue to pay for transmission and maintenance costs, and could need to buy a new unit if theirs fails. It is possible that a NMFS VMS reimbursement program could defray part of the purchase cost, but is not certain. Thus, it is likely that this alternative could have short and long-term direct minor adverse socioeconomic impacts to fishermen due to the cost of purchasing and maintaining a VMS unit. While the retention of sharks in federal waters requires one of two limited access commercial shark permits, these permits do not specify gear type, including gillnets. For this reason, NMFS does not know the exact number of affected shark gillnet fishermen. As of October 11, 2014, there are 206 directed shark and 258 incidental shark permit holders. Logbook records indicate that there are usually about 18 Atlantic shark directed permit holders that use gillnet gear in any year. However, the universe of directed permit holders using gillnet gear can change from year to year and could include anyone who holds an Atlantic shark directed permit.

Alternative D2, the preferred alternative, would change the gillnet VMS requirements and would require federal directed shark permit holders with gillnet gear on board to use VMS only in the vicinity of the Southeast U.S. Monitoring Area, pursuant to ALWTRP requirements, and would have short and long-term direct minor beneficial socioeconomic impacts. Atlantic shark gillnet fishermen fishing in the vicinity of the Southeast U.S. Monitoring Area would still incur the installation costs of the VMS, but data transmission would be limited to those times when the vessel is in this area. Furthermore, shark gillnet fishermen outside of this area that do not fish in the vicinity of the Southeast U.S. Monitoring Area would not need to install a VMS unit or, if they already have one, maintain the VMS unit or

replace a malfunctioning one. Thus, the socioeconomic impacts from this alternative, while still adverse, are of a lesser degree than those under Alternative D1, the No Action alternative. This alternative would likely result in neutral short and long-term indirect socioeconomic impacts because supporting businesses, including dealers and bait, tackle, and ice suppliers, would not be impacted. While the retention of sharks in federal waters requires one of two limited access commercial shark permits, these permits do not specify gear type, including gillnets. For this reason, NMFS does not know the exact number of shark gillnet fishermen that would be affected by this alternative. As of October 11, 2014, there are 206 directed shark and 258 incidental shark permit holders. Logbook records indicate that there are usually about 18 Atlantic shark directed permit holders that use gillnet gear in any year. However, the universe of directed permit holders using gillnet gear can change from year to year and could include anyone who holds an Atlantic shark directed permit. Because this alternative is more in line with the requirements of the ALWTRP, and because it would reduce socioeconomic impacts while still maintaining beneficial ecological impacts for protected whale species, NMFS prefers this alternative.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0372. Public reporting burden will be reduced under the modified VMS requirements under this final rule. The burden estimate burden will be reduced by this rule, but the changes will be requested as part of the 2016 extension, at which time the estimate of the burden change will be more accurate.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the HMS Management Division (see ADDRESSES) and the guide (*i.e.*, permit holder letter) will be sent to

all holders of permits for the Atlantic shark and smoothhound shark commercial fisheries. The guide and this final rule will be available upon request.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 12, 2015.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.2, add definitions for "Atlantic States," "Drift gillnet," "Sink gillnet," and "Smoothhound shark(s)" in alphabetical order to read as follows:

**§ 635.2 Definitions.**

\* \* \* \* \*

*Atlantic States*, consistent with section 803 of Public law 103-206 (16 U.S.C. 5102), refers to Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, and the Potomac River Fisheries Commission, for purposes of applying the Shark Conservation Act exception at 50 CFR 635.30(c)(5).

\* \* \* \* \*

*Drift gillnet* means a gillnet that is floating unattached to the ocean bottom and not anchored, secured, or weighted to the ocean bottom.

\* \* \* \* \*

*Sink gillnet* means a gillnet that is designed to be or is fished on or near the ocean bottom in the lower third of the water column by means of a weight line or enough weights and/or anchors that the bottom of the gillnet sinks to, on, or near the ocean bottom.

\* \* \* \* \*

*Smoothhound shark(s)* means one of the species, or part thereof, listed in section E of Table 1 in Appendix A to this part.

\* \* \* \* \*

■ 3. In § 635.4, add paragraph (e)(4) and revise paragraph (m)(2) to read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(e) \* \* \*

(4) Owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in section E of Table 1 of Appendix A to this part with an intention to sell them must obtain a Federal commercial smoothhound permit. In addition to other permits issued pursuant to this section or other authorities, a Federal commercial smoothhound permit may be issued to a vessel alone or to a vessel that also holds either a Federal Atlantic commercial shark directed or incidental limited access permit.

\* \* \* \* \*

(m) \* \* \*

(2) *Shark and swordfish permits.* A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited

access permits that have been transferred according to the procedures in paragraph (l) of this section.

\* \* \* \* \*

■ 4. Revise § 635.7 to read as follows:

**§ 635.7 At-sea observer coverage.**

(a) *Applicability.* NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark, or swordfish permit issued under § 635.4 or § 635.32. When selected, vessels are required to take observers on a mandatory basis. Vessels permitted in the HMS Charter/Headboat and Angling categories may be requested to take observers on a voluntary basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, by email, by phone, or in person when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips.* If selected to carry an observer, it is the responsibility of the vessel owner to arrange for and facilitate observer placement. The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address or by phone at a number designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once a selected vessel notifies NMFS or its designee, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS, or their designated observer service provider, will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with safety regulations in § 600.725 and § 600.746 of this chapter and—

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

(6) Notify the observer in a timely fashion of when fishing operations are to begin and end.

(f) *Vessel responsibilities.* An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

■ 5. In § 635.19, revise paragraph (d) to read as follows:

**§ 635.19 Authorized gears.**

\* \* \* \* \*

(d) *Sharks.* No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks may be retained incidentally while fishing with trawl gear subject to the restrictions specified in § 635.24(a)(7). No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2 of this chapter, by any gear other than with rod and reel, handline or bandit gear. No person issued an HMS Angling permit or an HMS Charter/Headboat permit under § 635.4 may possess a shark if the shark was taken from its

management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

\* \* \* \* \*

■ 6. In § 635.20, add paragraph (e)(5) to read as follows:

**§ 635.20 Size limits.**

\* \* \* \* \*

(e) \* \* \*

(5) There is no size limit for smoothhound sharks taken under the recreational retention limits specified at § 635.22(c)(6).

\* \* \* \* \*

■ 7. In § 635.21, revise the section heading, and paragraphs (g)(2) and (3) to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(g) \* \* \*

(2) While fishing with a drift gillnet, a vessel issued or required to be issued a Federal Atlantic commercial shark limited access permit and/or a Federal commercial smoothhound permit must conduct net checks at least every 2 hours to look for and remove any sea turtles, marine mammals, Atlantic sturgeon, or smalltooth sawfish, and the drift gillnet must remain attached to at least one vessel at one end, except during net checks. Smalltooth sawfish must not be removed from the water while being removed from the net.

(3) While fishing with a sink gillnet, vessels issued or required to be issued a Federal Atlantic commercial shark limited access permit and/or a Federal commercial smoothhound permit must limit the soak time of the sink gillnet gear to no more than 24 hours, measured from the time the sink gillnet first enters the water to the time it is completely removed from the water. Smalltooth sawfish must not be removed from the water while being removed from the net.

\* \* \* \* \*

■ 8. In § 635.22, add paragraph (c)(6) to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(c) \* \* \*

(6) The smoothhound sharks listed in Section E of Table 1 of Appendix A to this part may be retained and are subject

only to the size limits described in § 635.20(e)(5).

\* \* \* \* \*

■ 9. In § 635.24, add paragraph (a)(7) to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

\* \* \* \* \*

(a) \* \* \*

(7) A person who owns or operates a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open in accordance with §§ 635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a Federal commercial smoothhound permit and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board and/or offloaded from the vessel. A vessel is in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total catch on board or offloaded from the vessel.

\* \* \* \* \*

■ 10. In § 635.27, add paragraphs (b)(1)(i)(E), (b)(1)(ii)(F), and (b)(4)(iv) to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(E) *Atlantic smoothhound sharks.* The base annual commercial quota for Atlantic smoothhound sharks is 1,201.7 mt dw.

(ii) \* \* \*

(F) *Gulf of Mexico smoothhound sharks.* The base annual commercial quota for Gulf of Mexico smoothhound sharks is 336.4 mt dw.

\* \* \* \* \*

(4) \* \* \*

(iv) The base annual quota for persons who collect smoothhound sharks under a display permit or EFP is 6 mt ww (4.3 mt dw).

\* \* \* \* \*

■ 11. In § 635.30, revise paragraphs (c)(1) through (3), and add paragraph (c)(5) to read as follows:

**§ 635.30 Possession at sea and landing.**

\* \* \* \* \*

(c) *Shark.* (1) In addition to the regulations issued at part 600, subpart N, of this chapter, a person who owns or operates a vessel issued a Federal

Atlantic commercial shark permit under § 635.4 must maintain all the shark fins including the tail naturally attached to the shark carcass until the shark has been offloaded from the vessel, except for under the conditions specified in paragraph (c)(5) of this section. While sharks are on board and when sharks are being offloaded, persons issued a Federal Atlantic commercial shark permit under § 635.4 are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark permit may remove the head and viscera of the shark while on board the vessel. At any time when on the vessel, sharks must not have the backbone removed and must not be halved, quartered, filleted, or otherwise reduced. All fins, including the tail, must remain naturally attached to the shark through offloading, except under the conditions specified in paragraph (c)(5) of this section. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded, except under the conditions specified in paragraph (c)(5) of this section.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands sharks in an Atlantic coastal port, including ports in the Gulf of Mexico and Caribbean Sea, must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with part 600, subpart N, of this chapter.

Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time, except under the conditions specified in paragraph (c)(5) of this section. Once landed and offloaded, sharks that have been halved, quartered, filleted, cut up, or reduced in any manner may not be brought back on board a vessel that has been or should have been issued a Federal Atlantic commercial shark permit.

\* \* \* \* \*

(5) A person who owns or operates a vessel that has been issued a Federal commercial smoothhound permit may remove the fins and tail of a smooth dogfish shark prior to offloading if the conditions in paragraphs (c)(5)(i) through (iv) of this section have been met. If the conditions in paragraphs (c)(5)(i) through (iv) of this section have

not been met, all fins, including the tail, must remain naturally attached to the smooth dogfish through offloading from the vessel:

(i) The smooth dogfish was caught within waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of an Atlantic State from which the territorial sea is measured, from Maine south through Florida to the Atlantic and Gulf of Mexico shark regional boundary defined in § 635.27(b)(1).

(ii) The vessel has been issued both a Federal commercial smoothhound permit and a valid State commercial fishing permit that allows for fishing for smooth dogfish.

(iii) Smooth dogfish make up at least 25 percent of the catch on board at the time of landing.

(iv) Total weight of the smooth dogfish fins landed or found on board a vessel cannot exceed 12 percent of the total dressed weight of smooth dogfish

carcasses on board or landed from the fishing vessel.

\* \* \* \* \*

■ 12. In § 635.69, revise paragraph (a)(3) to read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) \* \* \*

(3) Pursuant to Atlantic large whale take reduction plan requirements at 50 CFR 229.32(h), whenever a vessel issued a directed shark LAP has a gillnet(s) on board.

\* \* \* \* \*

■ 13. In § 635.71, revise paragraphs (d)(6) and (7), and add paragraph (d)(18) to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c). Fail to maintain naturally attached shark fins through offloading as specified in § 635.30(c), except for under the conditions specified in § 635.30(c)(5).

(7) Sell or purchase smooth dogfish fins that are disproportionate to the weight of smooth dogfish carcasses, as specified in § 635.30(c)(5).

\* \* \* \* \*

(18) Retain or possess on board a vessel in the trawl fishery smoothhound sharks in an amount that exceeds 25 percent, by weight, of the total fish on board or offloaded from the vessel, as specified at § 635.24(a)(7).

\* \* \* \* \*

■ 14. In Appendix A to Part 635, add Section E to Table 1 to read as follows:

**Appendix A to Part 635—Species Tables**

Table 1 of Appendix A to Part 635—Oceanic Sharks

\* \* \* \* \*

**E. Smoothhound Sharks**

Smooth dogfish, *Mustelus canis*  
Florida smoothhound, *Mustelus norrisi*  
Gulf smoothhound, *Mustelus sinuatus*  
*sinuatus* *Mustelus species*

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