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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180104009-8201-01]

RIN 0648-BH49

Emergency Measures to Address Overfishing of Atlantic Shortfin Mako Shark

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

ACTION: Interim final rule, emergency action; request for comments.

SUMMARY: NMFS is taking emergency action through this interim final rule, in response to a new stock assessment for North Atlantic shortfin mako sharks to implement measures required by International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 17-08. Based on the results of the stock assessment, on December 13, 2017, NMFS determined the North Atlantic shortfin mako shark stock to be overfished, with overfishing occurring. The emergency management measures will reduce shortfin mako shark landings in commercial and recreational shark fisheries, with retention allowed only in certain limited circumstances. The emergency management measures are expected to meet the United States' obligations in relation to ending overfishing, but are not expected to result in significant economic impacts.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*] through [*insert date 180 days after date of publication in the FEDERAL REGISTER*]. Comments must be received on May 7, 2018. A public hearing will be held at the Highly Migratory Species (HMS) Advisory Panel meeting on March 7, 2018, from 11 a.m. – 12:15 p.m., EST. For specific location and

webinar information, please see the **SUPPLEMENTARY INFORMATION** section of this document and the HMS AP meeting website at: <https://www.fisheries.noaa.gov/event/march-2018-hms-advisory-panel-meeting>.

ADDRESSES: Copies of the Environmental Assessment and other supporting documents for this emergency action are available from the HMS Management Division Website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

Written comments, identified by NOAA-NMFS-2018-0010, may be submitted to the HMS Management Division by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0010, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to NMFS, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Mark the outside of the envelope “Comments on Atlantic Shortfin Mako Emergency Rule.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tobey Curtis at 978-281-9273 or Guy

DuBeck or Lauren Latchford at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The North Atlantic shortfin mako shark (*Isurus oxyrinchus*) is a highly migratory species that ranges across the entire North Atlantic Ocean and is caught by fishermen from numerous countries. These sharks are a small but valued component of U.S. recreational and commercial shark fisheries, which are managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan and its amendments. In recent years, U.S. catch represents only approximately 11 percent of the species' total catch in the North Atlantic by all reporting countries. International measures are, therefore, critical to the species' effective conservation and management.

In August 2017, ICCAT's Standing Committee on Research and Statistics (SCRS) conducted a new benchmark stock assessment on the North Atlantic shortfin mako stock. At its November 2017 annual meeting, ICCAT accepted this stock assessment and determined the stock to be overfished, with overfishing occurring. On December 13, 2017, based on this assessment, NMFS issued a status determination finding the stock to be overfished and experiencing overfishing using domestic criteria. The assessment specifically indicated that biomass (B_{2015}) is substantially less than the biomass at maximum sustainable yield (B_{MSY}) for eight of the nine models used for the assessment ($B_{2015}/B_{MSY} = 0.57-0.85$). In the ninth model, spawning stock fecundity (SSF) was less than SSF_{MSY} ($SSF_{2015}/SSF_{MSY} = 0.95$). Additionally, the assessment indicated that fishing mortality (F_{2015}) was greater than F_{MSY} (1.93-4.38), with a combined 90-percent probability from all models that the population is overfished, with overfishing occurring.

The 2017 assessment estimated that total North Atlantic shortfin mako catches across all ICCAT parties are currently between 3,600 and 4,750 mt per year, and that total catches would have to be at 1,000 mt or below (72-79 percent reductions) to prevent further population declines and that catches of 500 t or less currently are expected to stop overfishing and begin to rebuild the stock. The projections indicate that a total allowable catch of 0 mt would produce a greater than 50 percent probability of rebuilding the stock by the year 2040, which is approximately equal to one mean generation time. Research indicates that post-release survival rates of Atlantic shortfin mako sharks are high (70 percent); however, the assessment could not determine if requiring live releases alone would reduce landings sufficiently to end overfishing and rebuild the stock.

Based on this information, ICCAT adopted new management measures for Atlantic shortfin mako (Recommendation 17-08), which the United States must implement as necessary and appropriate under the Atlantic Tunas Convention Act. These measures largely focus on maximizing live releases of Atlantic shortfin mako sharks, allowing retention only in certain limited circumstances, increasing minimum size limits, and improving data collection in ICCAT fisheries. In November 2018, ICCAT will review the catches from the first six months of 2018 and decide whether these measures should be modified. In 2019, the SCRS will evaluate the effectiveness of these measures in ending overfishing and beginning to rebuild the stock. SCRS will also provide rebuilding information that reflects rebuilding timeframes of at least two mean generation times. Also in 2019, ICCAT will establish a rebuilding plan that will have a high probability of avoiding overfishing and rebuilding the stock to B_{MSY} within a timeframe that takes into account the biology of the stock.

Emergency Management Measures

NMFS is implementing emergency measures in HMS recreational and commercial fisheries consistent with Recommendation 17-08 to address overfishing and to provide meaningful information reflective of the new measures for the six-month reporting requirement in the Recommendation. Management measures in the emergency rule are as follows:

- Commercial fishermen on vessels deploying pelagic longline gear, which are required to have a functional electronic monitoring system on board under current regulations, must release all live shortfin mako sharks with a minimum of harm, while giving due consideration to the safety of crew members. Commercial fishermen using pelagic longline gear can only retain a shortfin mako shark if it is dead at haulback.
- Commercial fishermen using gear other than pelagic longline commercial gear (e.g., bottom longline, gillnet, handgear, etc.) must release all shortfin mako sharks, whether they are dead or alive.
- Recreational fishermen (fishermen with HMS Angling or Charter/Headboat permits, and fishermen with Atlantic Tunas General category and Swordfish General Commercial permits when participating in a registered HMS tournament) must release any shortfin mako sharks smaller than the minimum size of 83 inches (210 cm) fork length (FL). This minimum size is an increase from the current minimum size of 54 inches FL. This measure is more conservative than what was specifically recommended in Recommendation 17-08, which suggested separate minimum size limits for males (180 cm FL) and females (210 cm FL). NMFS is implementing a single minimum size limit of 83 inches (210 cm) FL due to recent analyses conducted by NMFS (but were not available during the ICCAT meeting) that indicate the lower minimum size limit for males would not sufficiently reduce total shortfin mako shark landings to levels that the

stock assessment estimates are required to end overfishing (refer to the EA; see ADDRESSES). Furthermore, confirming the sex of a large and potentially active shortfin mako shark prior to its landing can be challenging for fishermen and may have safety implications. Therefore, a single minimum size limit for the species is simpler to implement and enforce, and is more consistent with the objectives of this action.

NMFS is soliciting public comment on this interim final rule and will take into consideration any comments received and any testimony at the public hearing, as it evaluates whether any modifications to the emergency measures are needed. These emergency measures will be effective until [*insert date 180 days after date of publication in the FEDERAL REGISTER*], with a possible extension of up to an additional 186 days. These measures will be replaced by long-term measures, which will be considered through notice and comment rulemaking for an upcoming fishery management plan amendment, accompanied by an Environmental Impact Statement (EIS). The Notice of Intent to Prepare an Environmental Impact Statement for that fishery management plan amendment will publish in the same issue of the *Federal Register* as this interim final rule.

These emergency measures are expected to reduce shortfin mako landings in the HMS commercial fisheries and the ex-vessel revenues from those landings by approximately 75 percent. Thus, the commercial fisheries could cumulatively experience revenue losses of approximately \$281,000 per year, 97 percent of which would be lost by the pelagic longline fishery. Lost revenues would have greater social and economic impacts on fishing communities with higher shortfin mako shark landings, including Wanchese, NC, Fairhaven/New Bedford, MA, and Barnegat Light, NJ. Shortfin mako sharks are a minor source of economic revenue to the overall HMS commercial fishery, but may be an important source of seasonal revenue to

some individual fishermen. The socioeconomic impacts associated with these reductions in revenue are not expected to be significant overall, however, as shortfin mako sharks comprise less than 1 percent of total ex-vessel revenues in the pelagic longline fishery on average, and an even smaller fraction of total fisheries revenues in the potentially-affected fishing communities. Therefore, socioeconomic impacts on the commercial fishery are expected to be slightly negative.

These emergency measures would also reduce recreational landings of shortfin mako sharks by approximately 83 percent. However, as catch-and-release practices would still be permitted, a significant reduction in recreational fishing or charter/headboat activity is not expected. However, the reduced opportunities to catch and land a shortfin mako shark of legal size may slightly reduce demand and revenues for charters and tournaments that target this species. Approximately five percent of charter vessels and seven percent of headboat vessels in the U.S. Atlantic target pelagic sharks, including shortfin mako, with the majority of these businesses located off the northeast United States. According to NMFS Northeast Fisheries Science Center tournament data, the larger minimum size limit may not significantly limit the ability of tournaments to land shortfin mako sharks, because most of the largest shortfin mako sharks landed at tournaments in recent years have been above the 83 inches FL minimum size limit. However, it is likely that fewer vessels will be able to catch a shortfin mako shark of legal size, within or outside of tournaments. Therefore, the socioeconomic impacts associated with recreational shark fishing effort (fuel, bait, fishing supply expenditures, tournament participation, etc.) are expected to be slightly negative.

Public Hearing

Comments on this interim final rule may be submitted via <http://www.regulations.gov> or mail, and comments may also be submitted at the public hearing. NMFS solicits comments on this interim final rule by May 7, 2018. During the comment period, NMFS will hold one public hearing for this interim final rule.

Table 1. Date, time, and location of the upcoming public hearing.

Venue	Date/time	Meeting locations	Location contact information
Public Hearing	March 7, 2018, 11 a.m. – 12:15 p.m.	Silver Spring, MD	HMS AP Meeting Sheraton Silver Spring 8777 Georgia Avenue Silver Spring , MD 20910

Classification

This emergency interim final rule is promulgated pursuant to section 305(c) of the Magnuson-Stevens Act, and NMFS has determined that it is consistent with that Act and other applicable laws. NMFS policy guidelines for the use of emergency rules (August 21, 1997; 62 FR 44421) specify the following three criteria that define what an emergency situation is: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) if the emergency action is being implemented without prior public comment, the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

This action meets the NMFS guidelines and criteria for emergency rulemaking. The action is needed to address recently discovered circumstances including the 2017 ICCAT stock assessment and Recommendation 17-08 for North Atlantic shortfin mako shark in November and

NMFS's determination that the stock is overfished and overfishing is occurring in December (Criteria 1). The stock assessment conclusions differ significantly and unexpectedly from the most recent previous assessments, which had indicated that the stock was not overfished or experiencing overfishing. The new assessment indicates that dramatic immediate reductions in fishing mortality are needed to end overfishing of this stock, and this action is needed to address this serious conservation problem (Criteria 2). Finally, the immediate benefits to the shortfin mako shark resource and our need to meet obligations under the Magnuson-Stevens Act and Atlantic Tunas Convention Act outweigh the value of the advance notice and public comments provided under the normal rulemaking process (Criteria 3). Without an emergency rule to implement these measures, the reported U.S. catches at the end of the ICCAT six-month reporting period (ending at the end of June 2018) would reflect catches under the existing management practices and thus not reflect whether the new measures were effective to address overfishing. Any resulting action based on such information could disadvantage U.S. fishermen in the long-term.

Pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries finds good cause to waive the otherwise applicable requirements for both notice-and-comment rulemaking and a 30-day delay in effectiveness for this interim final, emergency rule implementing North Atlantic shortfin mako shark management measures. The recent unforeseen circumstances described above, and need for expedient action, make it impracticable to provide prior notice-and-comment opportunity and a 30-day delay. The new stock assessment for Atlantic shortfin mako sharks was completed in August 2017 and accepted in November by ICCAT and December 2017 by NMFS, revealing that the North Atlantic shortfin mako shark stock is overfished, with overfishing occurring. ICCAT developed Recommendation 17-08 at its

annual meeting in November 2017, which the United States must implement as necessary and appropriate under the Atlantic Tunas Convention Act. It would be potentially harmful to the long-term sustainability of the resource to implement these measures through notice-and-comment rulemaking because immediate reductions in fishing mortality are needed to address overfishing and begin to rebuild the stock and data will be re-evaluated as soon as November 2018 to determine whether additional measures are needed. Unless the new measures are in place, they cannot be properly evaluated for effectiveness in the fall and ICCAT will not be able to determine whether additional measures are immediately needed. Additionally, affected fishing vessel owners should not require time to adjust to these regulations, as the regulations do not constitute substantive operational changes, such as changes to equipment that might require time for purchasing and installation, or changes to practices that might require special training. Here, the rule only affects the landing of a particular species, and thus vessel owners should be able to understand and implement the changes immediately. Furthermore, the agency requested voluntary implementation of these measures earlier this year, so fishermen have already been notified of these management changes.

For the reasons outlined, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on the Atlantic shortfin mako shark emergency measures. As noted above, NMFS is soliciting public comment on this interim final rule and will take into consideration any comments received and any testimony at the public hearing, as it evaluates whether any modifications to the emergency measures are needed. In addition, there will be multiple opportunities for public participation and notice-and-comment rulemaking as NMFS develops a long-term fishery management amendment to rebuild North Atlantic shortfin mako sharks.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from OMB review.

This rule is exempt from the otherwise applicable requirement of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 635

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

Dated: February 27, 2018.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the 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 § 635.20 suspend paragraph (e)(2) and add paragraphs (e)(6) and (7) to read as follows:

§ 635.20 Size limits.

* * * * *

(e) * * *

(6) All sharks, except as otherwise specified in this subsection below, landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 54 inches (137 cm) FL.

(7) All North Atlantic shortfin mako sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 83 inches (210 cm) fork length.

* * * * *

3. In § 635.21, add paragraphs (a)(4) and (c)(1)(iv) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(4) Any person issued a commercial shark permit must release all shortfin mako sharks, alive or dead, caught on any gear other than pelagic longline gear.

* * * * *

(c) * * *

(1) * * *

(iv) Has pelagic longline gear on board, persons aboard that vessel are required to release unharmed, to the extent practicable, any shortfin mako shark that is alive at the time of haulback. Any shortfin mako shark that is dead at the time of haulback may be retained provided the electronic monitoring system is installed and functioning in accordance with § 635.9.

* * * * *

4. In § 635.24, suspend paragraphs (a)(4)(i) and (iii), and add paragraphs (a)(4)(v) and (vi) to read as follows:

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

* * * * *

(a) * * *

(4) * * *

(v) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may only be retained by persons using pelagic longline gear, and only if each shark is dead at the time of haulback per § 635.21 (c)(1).

(vi) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may only be retained by persons using pelagic longline gear, and only if each shark is dead at the time of haulback per § 635.21(c)(1).

* * * * *

5. In § 635.71, add paragraphs (d)(27) through (29) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(27) Land a shortfin mako shark that was caught with gear other than pelagic longline as specified at § 635.21(a).

(28) Retain, land, or possess a shortfin mako shark that was caught with pelagic longline gear and was alive at haulback as specified at § 635.21(c)(1).

(29) As specified at § 635.21(c)(1), retain, land, or possess a shortfin mako shark that was caught with pelagic longline gear when the electronic monitoring system was not installed and functioning in accordance with the requirements at § 635.9.

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[FR Doc. 2018-04262 Filed: 3/1/2018 8:45 am; Publication Date: 3/2/2018]