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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180104009-8201-01]

RIN 0648-BH49

Extension of Emergency Measures To Address Overfishing of Atlantic Shortfin Mako Shark

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: This rule extends the measures in an emergency interim final rule for the North Atlantic shortfin mako shark fishery published on March 2, 2018. This extension is necessary to maintain measures that address overfishing of shortfin mako sharks while long-term measures are developed and to meet requirements of a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The rule is expected to reduce fishing mortality to address overfishing, consistent with ICCAT Recommendation 17-08, by continuing to reduce landings and increase live releases in the recreational and commercial HMS fisheries, but is not expected to result in significant economic impacts.

DATES: The end of the effective period for the amendments to 50 CFR 635.20, 635.21, 635.24, and 635.71, as published on March 2, 2018 (83 FR 8946), is extended from August 29, 2018, to March 3, 2019.

ADDRESSES: Copies of the Environmental Assessment (EA) and other supporting documents

for the emergency action are available from the Highly Migratory Species (HMS) Management Division Website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis at (978) 281-9273 or Guy DuBeck or Lauren Latchford at (301) 427-8503.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2018, NMFS implemented an interim final rule using emergency authority under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c), to implement measures in HMS recreational and commercial fisheries to address overfishing consistent with ICCAT Recommendation 17-08 (83 FR 8946). The interim final rule noted that the measures may be extended for up to an additional 186 days if needed while longer-term measures were developed through an FMP amendment. This temporary rule extends the emergency interim final measures for North Atlantic shortfin mako sharks (*Isurus oxyrinchus*) without change. The interim final rule provided detailed information on the background, purpose, need, and justification for implementing these emergency management measures, and that information is not repeated here.

Section 305(c) of the Magnuson-Stevens Act allows for the extension of an emergency regulation or interim measure, which is otherwise effective for up to 180 days, for up to another 186 days, provided that the public has had an opportunity to comment on the emergency regulation. NMFS accepted public comment on the initial emergency measures in the interim final rule through May 7, 2018; comments and responses are summarized below. This extension does not alter the emergency measures already in place. NMFS is not accepting additional public comment on this extension.

NMFS has determined that all the necessary criteria for extending the emergency measures have been met and, therefore, NMFS is extending these emergency measures through March 3, 2019. NMFS has proposed long-term management measures for the North Atlantic shortfin mako shark stock through Draft Amendment 11 to the 2006 Consolidated HMS Fishery Management Plan (FMP), 83 FR 35590 (July 27, 2018), which are expected to replace these emergency measures before the expiration date.

Extended Emergency Management Measures

NMFS is extending the original emergency regulations without change. The management measures in the emergency rule that are being extended 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; and
- 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).

Comments and Responses

Public comments were accepted on the original interim final rule through May 7, 2018,

and one public hearing was held in conjunction with the HMS Advisory Panel meeting in Silver Spring, MD, on March 7, 2018. During the comment period, NMFS received a total of 65 individual written comments on the interim final rule from fishermen, states, and other interested parties and the members of the public. NMFS also received comments related to the emergency interim final rule during the four public scoping meetings associated with Draft Amendment 11 to the 2006 Consolidated HMS FMP. We also included the following comments on Draft Amendment 11 that were relevant to the emergency measures or to our decision to extend them. All written comments can be found at <http://www.regulations.gov/>.

Comment 1: NMFS received many comments expressing general support for the emergency conservation and management measures, citing the importance of sharks, including shortfin mako sharks, to the health of ocean ecosystems.

Response: NMFS agrees that sharks are important predators in ocean ecosystems, and notes that there are statutory obligations to conserve and manage shark populations, prevent overfishing, and achieve long-term sustainability. NMFS has determined that the emergency measures extended in this rule will address overfishing and sustainability of the North Atlantic shortfin mako shark stock as required by law.

Comment 2: NMFS received several comments suggesting that management measures for shortfin mako sharks should be more restrictive than those implemented in the emergency rule, including prohibiting all retention of shortfin mako sharks, or other more restrictive measures.

Response: NMFS disagrees that more restrictive measures are required at this time. The emergency measures are consistent with those recommended in ICCAT Recommendation 17-08 (with one alteration with respect to the recommended minimum size limit as explained in

response to Comment 9), based upon the analyses in the EA (see **ADDRESSES**). The selected measures are expected to reduce U.S. shortfin mako shark catch consistent with the ICCAT recommendation (72-79 percent), while still permitting fishermen to retain shortfin mako sharks under limited circumstances. Given the species' North Atlantic-wide range and that United States catches constitute only approximately 11 percent of total North Atlantic shortfin mako shark catch, the United States cannot unilaterally end overfishing and rebuild the stock through domestic regulations alone, even if there were to be a total prohibition on possession (which has not been recommended by ICCAT). Ending overfishing and rebuilding the stock can only be accomplished through international coordination with nations that harvest the majority of shortfin mako sharks. ICCAT intends to evaluate the effectiveness of these measures in the coming months, update the stock assessment with the most recent data, establish a rebuilding plan, and develop additional measures if necessary. Other types of management measures are not being considered as part of this emergency interim final rule, which addresses overfishing consistent with the ICCAT recommendation.

Comment 3: Several commenters argued that U.S. management of shortfin mako sharks should not be bound to ICCAT recommendations, and measures could be more, or less, restrictive than those recommended by ICCAT.

Response: As a party to ICCAT, the United States is obligated under the Atlantic Tunas Convention Act (ATCA) to carry out binding recommendations of the Commission. Under ATCA, the Secretary is required to promulgate regulations as may be necessary and appropriate to carry out such recommendations. A range of reasonable alternatives were evaluated in the EA analyzing the impacts of the measures in the emergency rule (see **ADDRESSES**), and the preferred alternatives in the emergency rule were determined by NMFS to be consistent with all

statutory requirements. NMFS will continue to work constructively within the ICCAT process to effectively conserve shortfin mako sharks throughout their range and balance the needs of U.S. fisheries.

Comment 4: Many fishermen, recreational and commercial, expressed frustration that their opportunities to land shortfin mako sharks were being restricted by ICCAT, and stated their belief that other countries' fisheries were to blame for the problem, not U.S. fisheries. Some challenged the science behind the stock assessment determinations and argued that the stock is not as depleted as estimated by ICCAT. Most commenters felt that shortfin mako sharks have been sustainably managed in U.S. waters, and responsible U.S. fishermen should not be penalized for poor management outside the United States.

Response: NMFS acknowledges that U.S. fisheries represent a comparatively small amount (approximately 11 percent annually) of total North Atlantic shortfin mako shark harvest, with other countries' fleets representing the majority of catch. NMFS also has an obligation to prevent overfishing and rebuild overfished fish stocks under the Magnuson-Stevens Act. For stocks with a broad geographic range, like North Atlantic mako sharks, however, the United States alone cannot undertake measures that effectively end overfishing and rebuild the stocks, especially where the United States is a small proportion of the overall catch. In such situations, the United States must work cooperatively with other parties to devise and enforce effective measures. Here, ICCAT, with the United States' input, determined that rather than completely prohibit any retention of shortfin mako sharks, it would implement measures that reduce shortfin mako mortality by increasing live releases in ICCAT commercial and recreational fisheries but that allowed limited retention under certain circumstances. These circumstances recognize parties, such as the United States, that have measures in place that effectively limit mako shark

landings and interactions, such as minimum size restrictions or electronic monitoring. Some ICCAT parties will not meet these circumstances allowing retention and will effectively face a complete prohibition absent additional regulatory action. Furthermore, because the stock is overfished with overfishing occurring and previous stock assessments had not assessed it as such, each party to ICCAT that fishes on the stock must take some measure of responsibility for the stock's condition and contribute to ending overfishing immediately to avoid further stock decline and additional restrictions in the future. The next steps in the recommendation include provisions for considering longer rebuilding period timeframes given the biology of the stock and developing a rebuilding plan in 2018. As conservation and management development progresses, NMFS will continue to emphasize the responsible practices of U.S. fishermen and advocate for accountability and equitable regulatory measures with other nations through the ICCAT process. NMFS will also continue to ensure that management decisions developed through ICCAT are based on the best available scientific information by providing accurate data and supporting international stock assessments.

Comment 5: Some commenters opposed the commercial measure that fishermen using pelagic longline gear may only retain shortfin mako sharks that are dead at haulback because the commenters felt the measure is unenforceable.

Response: ICCAT Recommendation 17-08 conditioned limited allowable retention of mako sharks on several circumstances, one of which is the use of electronic monitoring to confirm the status of the shark when caught. NMFS determined that this measure is enforceable due to the presence of video electronic monitoring equipment on all pelagic longline vessels. Video collected from these fishing trips can be used to determine if landed shortfin mako sharks were dead when they were initially brought alongside the vessel. NMFS will review the video

collected using the same process as for monitoring bluefin tuna catches implemented in Amendment 7 to the 2006 Atlantic Consolidated HMS FMP (79 FR 71510). As described in the HMS 2017 SAFE Report, videos from fishing sets will be randomly sampled in proportion to a vessel's fishing effort, with approximately 10 percent of sets randomly reviewed for compliance. Thus, this preferred commercial measure is enforceable.

Comment 6: Some commenters stated that recreational fisheries do not have a big impact on shortfin mako shark mortality compared to commercial fisheries, and therefore should not be subject to such restrictive management measures. Therefore, several of these commenters expressed support for the No Action alternative.

Response: According to the analyses in the EA (see **ADDRESSES**), the percentages of commercial and recreational catches of shortfin mako sharks in U.S. waters in recent years are evenly split. Therefore, U.S. recreational fisheries have a significant role to play in reducing fishing mortality on shortfin mako sharks, and must be included in management of this overfished stock. The No Action alternative would not adequately address overfishing or be consistent with U.S. obligations to ICCAT and other legal requirements.

Comment 7: Many recreational fishermen commented that the increased minimum size limit, from 54 to 83 inches fork length, is excessive and will eliminate the shortfin mako shark recreational fishery given how rarely fish greater than 83 inches fork length are caught. Most of these commenters argued for smaller increases in the minimum size limit and/or alternative management measures (shorter seasons, 1-3 shark per year limits per vessel with a tag system or lottery, slot limits, male-only retention, etc.).

Response: The minimum size limit increase to 83 inches fork length was designed to significantly reduce shortfin mako shark recreational mortality consistent with the ICCAT

recommendation. Based on the analyses in the EA (see **ADDRESSES**), less than 20 percent of the shortfin mako sharks landed in recent years were above the 83-inch fork length threshold. NMFS acknowledges that the reduction in landings as a result of this measure could be significant, and minor negative socioeconomic impacts are expected according to the EA. However, this reduction is required to address overfishing and be responsive to U.S. obligations to ICCAT. While some of the alternative measures suggested by recreational fishermen could reduce shortfin mako shark mortality while balancing the needs of the fishery, such measures were beyond the scope of this emergency rule to consider. Some of these alternative management approaches were considered as part of Amendment 11 and may be considered by ICCAT in the future.

Comment 8: Several recreational fishermen raised concerns about the safety at sea associated with trying to measure the length of large, potentially active, shortfin mako sharks to determine if the shark is large enough to be retained.

Response: Shark fishing, especially for shortfin mako sharks, is an inherently dangerous activity that requires experience, skill, and appropriate gear to be safe. Such safety concerns were one of the reasons NMFS chose to implement a single 83-inch minimum size limit for both sexes so that these large, active fish would not have to be excessively handled boatside to determine whether it was a male or female. As with other large, active HMS, it can be difficult to accurately measure the fish without injury to fishermen or the fish. Therefore, NMFS recommends that fishermen err on the side of caution and only retain shortfin mako sharks that are obviously longer than 83 inches fork length when viewed alongside the vessel.

Comment 9: Several recreational fishermen commented that NMFS should be implementing ICCAT Recommendation 17-08 as stated, and not be more restrictive than the

recommendation. Specifically, commenters stated that NMFS should implement the Recommendation 17-08 minimum size limits of at least 71 inches fork length for males and at least 83 inches fork length for females (analyzed in Alternative 2 of the EA, see **ADDRESSES**), instead of a single 83-inch fork length minimum size limit for both sexes.

Response: The 2017 ICCAT stock assessment for shortfin mako estimated that catches need to be reduced by 72-79 percent to end overfishing. Based on the analysis for Alternative 2 in the EA (see **ADDRESSES**), the smaller minimum size limit for males would not sufficiently reduce recreational catch to those levels (estimated recreational landings reduction = 49 percent). Thus, NMFS implemented a single minimum size limit at 83 inches fork length that would apply to both sexes to achieve the necessary catch reductions (estimated recreational landings reduction = 83 percent). This single minimum size limit also addressed the safety concerns raised by some fishermen (see response to Comment 8).

Classification

The Assistant Administrator for Fisheries has determined that the emergency measures extended by this temporary rule are necessary to address overfishing of the North Atlantic shortfin mako shark fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. These emergency measures were undertaken to address overfishing, and if they expire before longer term measures are adopted, overfishing may occur during the lapse in regulation, contrary to the public interest in effective management of the stock and compliance with domestic and international legal obligations. As described more fully in the interim final emergency rule (March 2, 2018; 83 FR 8946), the

reasons justifying promulgation of the rule on an emergency basis make a delay in effectiveness contrary to the public interest. The measures implemented for the shortfin mako shark fishery are needed to address overfishing of the stock.

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.

Dated: August 17, 2018.

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National Marine Fisheries Service.

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