



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 231228-0317]

RIN 0648-BK54

Atlantic Highly Migratory Species; Prohibiting Retention of Oceanic Whitetip

Sharks in U.S. Atlantic Waters and Hammerhead Sharks in the U.S. Caribbean Sea

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

ACTION: Final rule.

SUMMARY: In this final rule, NMFS is prohibiting the retention and possession of oceanic whitetip sharks (*Carcharhinus longimanus*) in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, and hammerhead sharks (great (*Sphyrna mokarran*), smooth (*S. zygaena*), and scalloped (*S. lewini*) hammerhead sharks) in U.S. waters of the Caribbean Sea. This action is responsive to two Biological Opinions (BiOps) for Atlantic Highly Migratory Species (HMS): one for the pelagic longline (PLL) fishery and one for the non-PLL fisheries. The BiOps strongly encouraged the inclusion of the scalloped hammerhead shark Central and Southwest Atlantic Distinct Population Segment (DPS) and the oceanic whitetip shark on the list of prohibited sharks for recreational and/or commercial HMS fisheries. These prohibitions apply to all HMS permitted fishermen.

DATES: This final rule is effective [*insert date 30 days after date of publication in the Federal Register*].

ADDRESSES: Additional information related to this final rule, including electronic copies of the supporting documents are available from the HMS Management Division

website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>, on <https://www.regulations.gov> (enter “NOAA-NMFS-2023-0025” in the Search box), or by contacting Ann Williamson at ann.williamson@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Ann Williamson,

ann.williamson@noaa.gov, Becky Curtis, becky.curtis@noaa.gov, or Karyl Brewster-Geisz, karyl.brewster-geisz@noaa.gov, at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

Atlantic shark fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635.

Background information about the need to prohibit the retention and possession of oceanic whitetip sharks in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, and hammerhead sharks (great, smooth, and scalloped hammerhead sharks) in U.S. waters of the Caribbean Sea was provided in the preamble to the proposed rule (88 FR 17171, March 22, 2023) and is not repeated here. The comment period for the proposed rule closed on May 22, 2023. NMFS received 93 written comments as well as oral comments during the public hearing held by webinar on April 25, 2023. The comments received, and the responses to those comments, are summarized in the **Response to Comments** section. After considering public comments on the proposed rule, NMFS is finalizing the rule as proposed. As described, no changes are made from the proposed rule.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), which analyze the

anticipated environmental, social, and economic impacts of several alternatives considered for this final rule. The full list of alternatives and their analyses are provided in the final EA/RIR/FRFA and are not repeated here. A summary of the FRFA is provided below. A copy of the final EA/RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**).

As described in the proposed rule, NMFS issued two BiOps in May 2020: the “Biological Opinion on the Operation of the HMS Fisheries excluding Pelagic Longline” and the “Biological Opinion on the Operation of the HMS Pelagic Longline Fishery,” prepared under section 7(a)(2) of the Endangered Species Act (ESA). These BiOps concluded consultation on the HMS PLL and non-PLL fisheries, as managed under the 2006 Consolidated HMS FMP and its amendments. The BiOps included conservation recommendations for oceanic whitetip shark and the scalloped hammerhead shark Central and Southwest Atlantic DPS that strongly encouraged the inclusion of these federally protected species on the HMS list of prohibited shark species for recreational and/or commercial HMS fisheries.

In order to reduce the mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks, which are both listed as threatened under the ESA, and implement two conservation recommendations from the May 2020 BiOps, this final rule will add oceanic whitetip shark to the prohibited shark species group, remove oceanic whitetip shark from the list of pelagic indicator species, and prohibit the possession and retention of great, smooth, and scalloped hammerhead sharks in the U.S. Caribbean region. This final rule applies to all HMS permitted fishermen.

Under this final rule, oceanic whitetip sharks are added to the prohibited shark species group using the criteria in 50 CFR 635.34(c). Retention, possession, landing, sale, and purchase of oceanic whitetip sharks or parts of oceanic whitetip sharks are prohibited

in all commercial and recreational HMS fisheries in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. Oceanic whitetip sharks are also removed from the list of pelagic indicator species (Table 2 to Appendix A to Part 635). Sharks in the prohibited shark species group cannot be possessed or landed and therefore, their presence on board a vessel cannot be considered a useful indicator of a pelagic longline vessel.

Additionally, under this final rule, the possession and retention of hammerhead sharks in the large coastal shark (LCS) complex (*i.e.*, great, smooth, and scalloped hammerhead sharks) is prohibited in all HMS fisheries in the U.S. Caribbean region, as “Caribbean” is defined at 50 CFR 622.2. Retention of hammerhead sharks is currently not allowed for commercial vessels in the PLL fishery. This final rule prohibits retention and possession of LCS hammerhead sharks for all HMS commercial and recreational permit holders in the U.S. Caribbean region, including in those instances where it was previously authorized (*i.e.*, recreational permit holders with a shark endorsement when tunas, swordfish, and/or billfish are not retained). Due to the difficulty in differentiating between the various species of LCS hammerhead sharks, this final rule applies to all LCS hammerhead sharks to mitigate the potential for continued mortality of scalloped hammerhead sharks from fishermen either bringing hammerhead sharks on board to identify the species (increasing the likelihood of post-release mortality) or unintentionally retaining a scalloped hammerhead shark due to misidentification.

Response to Comments

Written comments can be found at www.regulations.gov; type “NOAA-NMFS-2023-0025” in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Below, NMFS summarizes and responds to the comments made on the proposed rule during the comment period.

Comment 1: NMFS received many comments in support of the proposed measures for oceanic whitetip sharks (preferred Alternative A2 in the EA for this action). Commenters stated that they supported these measures because oceanic whitetip sharks are listed as threatened under the ESA and endangered on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species. Some commenters supported adding oceanic whitetip sharks to the prohibited shark species group to address overfishing concerns and promote population recovery of an apex predator that is critical for marine ecosystem health.

Response: NMFS agrees that these measures will reduce mortality of oceanic whitetip sharks and promote the conservation and recovery of this threatened species.

Regarding the IUCN Red List status of oceanic whitetip sharks, NMFS scientists participate in species assessments for the Red List, but NMFS does not base management actions on IUCN designations. The IUCN uses different criteria. NMFS adheres to ESA-applicable criteria for determining whether a species is threatened or endangered. NMFS determines whether stocks are overfished or overfishing is occurring pursuant to the Magnuson-Stevens Act.

Comment 2: Several commenters supported the proposed measures for LCS hammerhead sharks (preferred Alternative B4 in the EA for this action). However, many of those commenters stated that the prohibition on possession and retention of LCS hammerhead sharks should be extended to all Federal waters of the northwest Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. One commenter specifically stated that all hammerhead sharks should be added to the prohibited shark species group. Reasons that commenters provided for expanding the proposed measures include: great and smooth hammerhead sharks have an unknown stock status in the Atlantic Ocean but evidence suggests that populations are in decline; scalloped hammerhead sharks are overfished with overfishing occurring; scalloped hammerhead sharks from the Central and

Southwest DPS likely cross into the Northwest Atlantic and Gulf of Mexico where they could be legally possessed and retained; fishing vessels from outside U.S. waters of the Caribbean Sea could possess and retain hammerhead sharks as long as they are landed outside of the U.S. Caribbean Exclusive Economic Zone; hammerhead sharks are threatened by global fishing pressure and are listed as critically endangered (scalloped and great hammerhead sharks) or vulnerable (smooth hammerhead shark) by the IUCN on its Red List; and hammerhead sharks are particularly susceptible to post-release mortality as bycatch in commercial fisheries and through targeted catch-and-release fishing in the recreational fishery.

Response: NMFS disagrees that the retention and possession of LCS hammerhead sharks should be prohibited in all Federal waters of the northwest Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Only the Central and Southwest Atlantic DPS of scalloped hammerhead sharks is listed as threatened under the ESA, and prohibiting the retention and possession of LCS hammerhead sharks outside U.S. waters of the Caribbean would unnecessarily limit retention of hammerhead sharks that are still authorized for commercial and recreational HMS fisheries in U.S. waters of the Atlantic Ocean and Gulf of Mexico.

In Federal waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, only scalloped hammerhead sharks have a determination of overfished with overfishing occurring, based on a stock assessment that was determined to be the best scientific information available by NMFS. The stock statuses for great and smooth hammerhead sharks are unknown. However, all hammerhead shark species (great, smooth, and scalloped) are currently being assessed through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process (SEDAR 77). SEDAR is the process by which most domestic Atlantic shark stocks are assessed. While SEDAR 77 has not yet been finalized, initial analyses indicate that great hammerhead sharks are

likely overfished but not experiencing overfishing, smooth hammerhead sharks are likely not experiencing overfishing, and scalloped hammerhead sharks are likely not overfished and not experiencing overfishing. Once the assessment is complete (expected in 2024), NMFS will consider management measures for these species, as appropriate.

Regarding the IUCN Red List status of great, smooth, and scalloped hammerhead sharks, NMFS does not base management actions on IUCN designations, as previously stated.

Regarding concern about retention of the Central and Southwest DPS of scalloped hammerhead sharks in the Northwest Atlantic and Gulf of Mexico, encountering scalloped hammerhead sharks from the Central and Southwest DPS in these areas would be extremely unlikely, as they are outside of the DPS boundary. In 2014, NMFS conducted a status review report in response to a petition to list the scalloped hammerhead shark under the ESA (Miller et. al 2014). During that analysis, NMFS determined that the Central and Southwest Atlantic DPS of scalloped hammerhead sharks have genetic differences that indicate they are isolated from other Atlantic subpopulations. Additionally, general tagging studies and genetic analyses suggest that scalloped hammerhead sharks do not travel over open ocean but make limited migrations along coastlines, continental margins, and submarine features. There was no observed mixing of the Central and Southwest Atlantic DPS with the Northwest Atlantic and Gulf of Mexico population.

Under the final measures, the possession and retention of LCS hammerhead sharks would be prohibited in all HMS fisheries in the U.S. Caribbean region. Fishermen that possess and retain hammerhead sharks in U.S. waters of the Caribbean Sea would be in violation of the regulations, even if they land the sharks outside of the U.S. Caribbean region.

Regarding concern about hammerhead shark sensitivity to post-release mortality, there are limited direct estimates of total discard mortality for hammerhead sharks. However, evidence suggests that hammerhead sharks are vulnerable to the effects of capture in commercial and recreational fisheries. According to preliminary data from the SEDAR 77 hammerhead shark stock assessment, the assumed total discard mortality rate (defined as the immediate plus delayed discard-mortality rate resulting from the fishing event) for great hammerhead sharks is 41.9 percent in commercial bottom longline (BLL) fisheries and 20 percent in recreational fisheries; for smooth hammerhead sharks is 41.5 percent in commercial gillnet fisheries; and for scalloped hammerheads is 87.5 percent in commercial purse seine fisheries.

NMFS believes that prohibiting the possession and retention of all LCS hammerhead sharks in the U.S. Caribbean region will reduce the likelihood of post-release mortality because fishermen will not need to bring them on board for species identification. Because fishermen would be unable to target LCS hammerhead sharks, fishermen would be prohibited from bringing them onboard the vessel and must release them in the water, in a manner that maximizes survival, thereby reducing post-release mortality. While the management measures are not expected to substantially alter current fishing practices or bycatch mortality rates, because LCS hammerhead sharks cannot be targeted, lower rates of bycatch would reduce the rate of mortality.

Regarding the prohibited shark species group, NMFS does not agree that all hammerhead sharks should be added to the prohibited shark species group. NMFS may add a species to the prohibited shark species group if the species is determined to meet at least two of the four criteria at 50 CFR 635.34(c): 1) biological information indicates that the stock warrants protection; 2) information indicates that the species is rarely encountered or observed caught in HMS fisheries; 3) information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations

for species other than HMS; and 4) the species is difficult to distinguish from other prohibited species.

Regarding the first and fourth criteria, the scalloped hammerhead shark Central and Southwest Atlantic DPS is listed as a threatened species under the ESA, and distinguishing hammerhead sharks from each other is quite difficult even for the most seasoned fishermen. However, at this time, NMFS has decided not to add scalloped hammerhead sharks to the prohibited shark species group since only two scalloped hammerhead DPSs are designated as “threatened” under the ESA; only one DPS occurs in U.S. waters; and adding the sharks to the group would unnecessarily limit retention of hammerhead sharks that are still authorized for commercial and recreational HMS fisheries in U.S. waters of the Atlantic Ocean and Gulf of Mexico. Additionally, the second and third criteria are not met by scalloped hammerhead sharks. This species is encountered and observed caught in HMS fisheries. From 2017 through 2021, there was an annual average of 16,170 pounds dressed weight (lb dw) of scalloped hammerhead sharks landed in the commercial sector in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. Moreover, this species is also encountered and observed as bycatch in fishing operations for species other than HMS, for example, in the Atlantic and Gulf of Mexico gillnet fishery.

Great hammerhead sharks and smooth hammerhead sharks meet only one of the four criteria at 50 CFR 635.34(c), which would not warrant addition to the prohibited shark species group at this time. Regarding the fourth criterion, distinguishing hammerhead sharks from each other is quite difficult even for the most seasoned fishermen. However, the first, second, or third criteria are not met by great or smooth hammerhead sharks. These species are not listed as endangered or threatened under the ESA, and, initial analyses from an ongoing stock assessment (SEDAR 77, not yet final) indicate that great hammerhead sharks are likely overfished but not experiencing

overfishing, and smooth hammerhead sharks are likely not experiencing overfishing. Additionally, they are encountered and observed caught in HMS fisheries. From 2017 through 2021, there was an average of 321,653 lb dw of hammerhead sharks landed in the commercial sector in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. Moreover, these species are encountered and observed as bycatch in fishing operations for species other than HMS, for example, in the Atlantic and Gulf of Mexico gillnet fishery.

Comment 3: One commenter stated that NMFS should specify and implement additional catch monitoring and reporting measures to collect accurate and precise oceanic whitetip shark and hammerhead shark catch and bycatch information. Suggested measures include improving recreational catch data, enhancing commercial monitoring, and creating a public reporting portal for recreational and commercial fisheries.

Response: NMFS does not agree with adopting additional catch monitoring and reporting requirements in this action, as the purpose of this action is to reduce the mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks. However, NMFS may consider additional or revised reporting requirements in future rulemakings. For example, NMFS recently announced an advanced notice of proposed rulemaking (ANPR) to modify or expand reporting requirements for HMS (88 FR 30699, May 12, 2023). The comment period on the ANPR ended on August 18, 2023. NMFS is currently reviewing the comments received and determining next steps.

Comment 4: One commenter suggested that NMFS should require full-chain traceability for all catches of oceanic whitetip sharks and hammerhead sharks through the Seafood Import Monitoring Program (SIMP) and the Food and Drug Administration traceability rules, in order to close a loophole for any illegal catch of oceanic whitetip sharks and hammerhead sharks.

Response: This comment is beyond the scope of this rulemaking. The purpose of this action is to reduce the mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks. NMFS notes that sharks are subject to SIMP's data reporting requirements at the time of entry for imported fish or fish products and recordkeeping requirements for fish and fish products entered into U.S. commerce. *See* 50 CFR 300.324. For more information on SIMP, please refer to the website: <https://www.fisheries.noaa.gov/international/seafood-import-monitoring-program>.

Comment 5: One commenter stated that NMFS should improve coordination across NMFS divisions and other agencies to improve the effectiveness of various national and international safeguards for oceanic whitetip sharks and hammerhead sharks.

Response: NMFS agrees that coordination is crucial for the effective management of HMS fisheries, including those for oceanic whitetip and hammerhead sharks. NMFS works closely with our partners, including the U.S. Department of State and other Federal partners, to promote global shark conservation and management.

Comment 6: One commenter urged NMFS to take several additional measures to address non-lethal and lethal take from bycatch in commercial fisheries and intentional targeting by recreational catch-and-release fishing. Specifically, they stated that the proposed measures would not address fishing-related mortality as a result of bycatch and post-release mortality in catch-and-release fishing. Because hammerhead sharks are especially prone to stress, injury, and death after release, allowing the intentional take of the Central and Southwest Atlantic DPS of scalloped hammerhead sharks (as a result of post-release mortality in catch-and-release fishing) is not consistent with NMFS' obligations under the ESA.

Response: NMFS does not agree that additional measures to address take are necessary. HMS fisheries, including recreational catch-and-release fishing, are consistent with the Reasonable and Prudent Measures and Terms and Conditions specified in the 2020 BiOps. Additionally, measures being finalized with this rule are in furtherance of conservation recommendations related to scalloped hammerhead DPSs. If determinations for this species under the ESA were to change, NMFS would reconsider appropriate management measures at that time.

Recreational and commercial interactions with hammerhead sharks in the U.S. Caribbean region, and the risk of post-release mortality of the Central and Southwest Atlantic DPS of scalloped hammerhead sharks, are relatively low. According to recreational catch data, the last reported encounter with a hammerhead shark in the U.S. Caribbean region was in 2016, and before that, it was in 2012. This suggests that interactions between recreational anglers and hammerhead sharks in the Caribbean is rare. Additionally, according to commercial catch data, scalloped hammerhead sharks account for little to none of the landings in the U.S. Caribbean region. Because the Central and Southwest Atlantic DPS of scalloped hammerhead sharks is only found in U.S. waters of the Caribbean Sea, commercial and recreational interactions with hammerhead sharks are relatively low in this region, and the commercial and recreational possession and retention of hammerhead sharks is now prohibited through this action, NMFS considers the risk of recreational post-release mortality of hammerhead sharks to be minimal. Even if the species is caught in the U.S. Caribbean and not reported, NMFS would also expect the risk of recreational post-release mortality to be minimal given the handgears used in the region, which are generally associated with a low risk of mortality. As stated above, preliminary data from the SEDAR 77 hammerhead shark stock assessment assume total discard mortality rate (defined as the immediate plus delayed

discard-mortality rate resulting from the fishing event) for hammerhead sharks is 20 percent in recreational fisheries.

Comment 7: One commenter stated that a prohibition on the retention and possession of all hammerhead sharks in the Atlantic Ocean would bring Federal regulations into alignment with Regional Fishery Management Organizations (RFMOs), specifically the International Commission for the Conservation of Atlantic Tunas, the Inter-American Tropical Tuna Commission, Western Central Pacific Fisheries Commission, and Indian Ocean Tuna Commission.

Response: Current HMS regulations, as amended by this rule, are consistent with RFMO measures. Notably, in 2011, NMFS implemented ICCAT Recommendation 10-08 that prohibited the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family Sphyrnidae (except bonnethead sharks) caught in association with fisheries managed by ICCAT. The Inter-American Tropical Tuna Commission, Western Central Pacific Fisheries Commission, and Indian Ocean Tuna Commission address conservation and management in the Pacific Ocean and Indian Ocean, not the Atlantic Ocean.

Comment 8: One commenter stated that prohibiting the retention of hammerhead sharks in the Atlantic Ocean prior to the completion of a stock assessment would be premature and in conflict with the Magnuson-Stevens Act.

Response: Consistent with relevant conservation recommendations from two BiOps, the final measures for hammerhead sharks are limited to the U.S. Caribbean region, and do not apply in other Federal waters of the Atlantic Ocean, including the Gulf of Mexico. Although only the Central and Southwest Atlantic DPS of scalloped hammerhead sharks is threatened under the ESA, the final measures apply to great and smooth hammerhead sharks in the U.S. Caribbean region due to the difficulty in differentiating between the various species of hammerhead sharks. As previously stated,

all hammerhead shark species are being assessed through SEDAR 77. Once that stock assessment is completed, NMFS will consider management measures for these species, if appropriate.

Comment 9: One commenter asked why the proposed measures are limited to Federal waters of the Atlantic Ocean and not the Pacific Ocean.

Response: The BiOps that provided conservation recommendations for oceanic whitetip shark and the scalloped hammerhead shark Central and Southwest Atlantic DPS were for the HMS PLL and non-PLL fisheries. These fisheries operate in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, and subject to management under the 2006 Consolidated HMS FMP and its amendments. Shark species found in U.S. waters of the Pacific Ocean are subject to management under different FMPs.

Comment 10: NMFS received several comments requesting a prohibition on all shark fishing given the important role sharks play in marine ecosystem health.

Response: This comment is beyond the scope of this rulemaking. The purpose of this action is to reduce the mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks, which are both listed as threatened under the ESA. This action does not change the regulations and management measures currently in place that govern commercial shark fishing in Federal waters of the northwest Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

Comment 11: NMFS received numerous comments regarding concern for sharks in general. Additionally, some commenters urged NMFS to identify breeding grounds and nursery habitats for all Atlantic sharks to inform effective management measures and stress the importance of safe handling and release protocols.

Response: All of these comments are beyond the scope of this rulemaking. The purpose of this action is to reduce the mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks, which are both listed as

threatened under the ESA. Information about the issues raised in these public comments can be found in the 2006 Consolidated HMS FMP and its amendments and the annual Stock Assessment and Fishery Evaluation Report (see **ADDRESSES**).

Classification

NMFS is issuing this rule pursuant to section 304(g) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

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

A FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires agencies to state the need for, and objective of, the final action. This action is needed to be responsive to two 2020 BiOps under section 7(a)(2) of the ESA which addressed the Atlantic HMS PLL and non-PLL fisheries, as managed under the 2006 Consolidated HMS FMP and its amendments. The BiOps strongly encouraged the inclusion of these federally protected species on the HMS list of prohibited shark species for HMS recreational and/or commercial HMS fisheries. This action is consistent with the management goals and objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, the 2020 BiOps, and other applicable law.

The objective of this action is to reduce mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks, both listed as

threatened under the ESA. This action would promote the conservation and recovery of these threatened species.

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made in the rule as a result of the comments. NMFS received 93 written comments on the proposed rule and Draft EA during the public comment period. A summary of those comments and the agency's responses are described above. None of the comments received referred to the IRFA or the economic impacts of the rule.

Section 604(a)(3) of the RFA requires the agency to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made in the rule as a result of such comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule. Additionally, none of the public comments received referred to the economic impacts of the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$14 million.

NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective

sector's standard of \$11 million and \$14 million. Regarding those entities that would be directly affected by the final measures, the average revenue for the entire Atlantic shark commercial fishery from 2017 through 2021 is \$2,579,228, which is well below the NMFS small business size standard for commercial fishing businesses of \$11 million.

The final rule would apply to the 206 Shark Directed permit holders, 241 Shark Incidental permit holders, 76 HMS Commercial Caribbean Small Boat permit holders, 4,175 HMS Charter/Headboat permit holders, 23,607 HMS Angling permit holders, and 603 Atlantic Tunas General category and Swordfish General Commercial permit holders. The HMS Charter/Headboat permit holders have 2,994 shark endorsements and 1,873 commercial sale endorsements; the HMS Angling permit holders have 12,978 shark endorsements; and the Atlantic Tunas General category and Swordfish General Commercial permit holders have 388 shark endorsements. In the U.S. Caribbean specifically, this rule would apply to 27 Commercial Caribbean Small Boat permit holders, 49 HMS Charter/Headboat permit holders, 12 Swordfish General Commercial permit holders, and 93 Atlantic Tunas General category permit holders. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions, nor would there be disproportionate economic impacts between large and small entities.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

Section 604(a)(6) of the RFA requires agencies to describe the steps the agency has taken to minimize the 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 why each one

of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

As described below, NMFS analyzed several different alternatives in this final rulemaking, and provides rationales for identifying the preferred alternatives to achieve the desired objectives. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

Alternative A1, the No Action alternative, would continue to allow commercial permit holders issued a Shark Directed or Incidental limited access permit (LAP) using authorized gear (excluding PLL gear) and/or HMS Charter/Headboat permit with a commercial sale endorsement the opportunity to land and sell oceanic whitetip sharks when tuna or tuna-like species are not retained, possessed, on board, or offloaded from, the vessel on the same trip. Vessels fishing recreationally would continue to have the ability to retain oceanic whitetip sharks when tuna or tuna-like species are not possessed on the same recreational trip. This alternative would not result in any additional economic impacts for HMS permit holders, and would have neutral economic impacts on the small entities participating in the fishery.

Alternative A2, the preferred alternative, will add oceanic whitetip sharks to the prohibited shark species group using the criteria in § 635.34(c) to prohibit the commercial and recreational retention of oceanic whitetip sharks in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative is consistent with the relevant conservation recommendations from both of the 2020 BiOps. From 2017 through 2021, there have been few instances of oceanic whitetip sharks being retained in HMS commercial or recreational shark fisheries in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators. However, oceanic whitetip sharks are rarely a target species and are worth less than other more

valuable target species. Overall, this alternative would have minor adverse social and economic impacts on the small entities participating in the fishery.

Under Alternative B1, the No Action alternative, retention of scalloped hammerhead sharks on vessels targeting tunas, swordfish, and/or billfish with PLL gear on board would continue to be prohibited. Commercial permit holders issued a Shark Directed or Incidental LAP and/or HMS Charter/Headboat permit with a commercial sale endorsement using other authorized gear that do not target tuna and tuna-like species (*e.g.*, BLL, gillnet, rod and reel, handline, and bandit gear) would still be authorized to fish for, and land scalloped hammerhead sharks subject to existing commercial regulations. This alternative would not result in any change fishing effort, and would have neutral economic impacts on the small entities participating in the fishery.

Under Alternative B2, NMFS would prohibit the commercial and recreational retention of scalloped hammerhead sharks for shark commercial and recreational permit holders fishing within the U.S. Caribbean region. This alternative would be consistent with the relevant conservation recommendations from both the 2020 BiOps. Between 2017 and 2021, there were no reported commercial landings of scalloped hammerhead sharks in the U.S. Caribbean region and, therefore, it is unlikely revenue would be lost from prohibiting retention of this species. There could be some minor costs associated with discarding or avoiding scalloped hammerhead sharks within that region. Also, this alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators. This alternative would have neutral to minor adverse economic impacts on the small entities participating in the fishery.

Under Alternative B3, NMFS would prohibit the commercial and recreational retention of scalloped hammerhead sharks for commercial and recreational permit holders fishing within U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative would be consistent with the relevant conservation

recommendations from both of the 2020 BiOps. On average, from 2017 through 2021, scalloped hammerhead sharks contributed \$10,753 of revenue in the Atlantic and Gulf of Mexico shark fisheries combined. This equates to less than one percent of the total revenue from all shark fisheries. There could be some minor costs associated with discarding or avoiding scalloped hammerhead sharks. Additionally, this alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators and therefore, this alternative would have minor adverse economic impacts on the small entities participating in the fishery.

Under Alternative B4, the preferred alternative, NMFS will prohibit the commercial and recreational retention of all LCS hammerhead sharks for commercial and recreational permit holders fishing within the U.S. Caribbean region. This alternative is consistent with the relevant conservation recommendations from both of the 2020 BiOps. Between 2017 and 2021, there were no reported commercial landings of hammerhead sharks in the U.S. Caribbean region and therefore it is unlikely revenue would be lost from prohibiting these species. There could be some minor costs associated with discarding or avoiding hammerhead sharks within that region. Also, this alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators targeting hammerhead sharks. Thus, this alternative would have minor adverse economic impacts on the small entities participating in the Caribbean fisheries. However, NMFS prefers Alternative B4 at this time, because it will implement the relevant conservation recommendations from the 2020 BiOps, while not limiting fishing opportunities for hammerhead sharks in the Gulf of Mexico and Atlantic Ocean.

Under Alternative B5, NMFS would prohibit the commercial and recreational retention of all LCS hammerhead sharks for commercial and recreational permit holders fishing within U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative would be consistent with the relevant conservation

recommendations from both the 2020 BiOps. On average, from 2017 through 2021, LCS hammerhead sharks contributed \$42,794 of revenue in the Atlantic and Gulf of Mexico shark fisheries combined. This equates to less than 2 percent of the total revenue from all shark fisheries. There could be some minor costs associated with discarding or avoiding hammerhead sharks. Additionally, this alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators and therefore, this alternative would have minor adverse economic impacts on the small entities participating in the fishery.

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 webpage that also serves as small entity compliance guide (the guide) was prepared. This final rule and the guide are available on the HMS Management Division website at <https://www.fisheries.noaa.gov/action/retention-prohibition-oceanic-whitetip-sharks-us-atlantic-waters-and-hammerhead-sharks-us> or by contacting Ann Williamson at ann.williamson@noaa.gov or 301-427-8503.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

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

Dated: December 28, 2023.

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 § 635.22, revise paragraphs (a)(2) and (c)(2), and add paragraph (c)(9) to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(a) * * *

(2) Vessels issued an Atlantic Tunas General category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued an HMS Angling category permit under § 635.4(c), or vessels issued an HMS Charter/Headboat permit under § 635.4(b) may not retain, possess, or land scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess or land swordfish, tuna, or billfish if scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

* * * * *

(c) * * *

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2) and (4): Atlantic blacktip, Gulf of Mexico blacktip, bull, great hammerhead, scalloped hammerhead, smooth hammerhead,

lemon, nurse, spinner, tiger, blue, common thresher, porbeagle, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of Mexico blacknose, and bonnethead.

* * * * *

(9) No person who has been issued or should have been issued a permit under § 635.4 of this part may retain, possess, or land scalloped, smooth, or great hammerhead sharks in or from the Caribbean, as defined at § 622.2 of this chapter.

* * * * *

3. In § In 635.24, revise paragraphs (a)(4)(iv) and (a)(9), and add paragraph (a)(11) to read as follows:

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

* * * * *

(a) * * *

(4) * * *

(iv) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell any blacktip, bull, lemon, nurse, spinner, tiger, Atlantic sharpnose, bonnethead, finetooth, and smoothhound shark, subject to the HMS Commercial Caribbean Small Boat permit shark retention limit. A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may not retain, possess, land, or sell any hammerhead, blacknose, silky, sandbar, blue, thresher, shortfin mako, or prohibited shark, including parts or pieces of these sharks. The shark retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from zero to three sharks per vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in

paragraph (a)(8) of this section. The default shark retention limit for the HMS

Commercial Caribbean Small Boat permit is three sharks per vessel per trip.

* * * * *

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

(11) No person who has been issued or should have been issued a permit under § 635.4 of this part may retain, possess, or land scalloped, smooth, or great hammerhead sharks in or from the Caribbean, as defined at § 622.2 of this chapter.

* * * * *

4. In Table 1 of Appendix A to Part 635, remove the term “Oceanic whitetip, *Carcharhinus longimanus*” under heading C and add the term “Oceanic whitetip, *Carcharhinus longimanus*” under heading D in alphabetical order.

The addition reads as follows:

Appendix A to Part 635 – Species Tables

Table 1 of Appendix A to Part 635 – Oceanic Sharks

* * * * *

D. Prohibited Sharks
* * * * *
Oceanic whitetip, <i>Carcharhinus longimanus</i>
* * * * *

* * * * *

Appendix A to Part 635 [Amended]

5. In Table 2 of Appendix A to Part 635, remove the entry for “Oceanic whitetip shark, *Carcharhinus longimanus*.”

[FR Doc. 2023-28900 Filed: 1/2/2024 8:45 am; Publication Date: 1/3/2024]