

developers could be included as third parties in these consultations. The total costs of these five actions together are estimated to be \$1,900 to \$2,100 annually, including Federal costs.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Austin Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013-09895 Filed 5-1-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 111014628-3329-01]

RIN 0648-BB54

Magnuson-Stevens Act Provisions; Implementation of the Shark Conservation Act of 2010

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement the provisions of the Shark Conservation Act of 2010 (SCA) and prohibit any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. NMFS proposes this action to amend existing regulations and make them consistent with the SCA.

DATES: Written comments must be received by June 17, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0092, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit

comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2012-0092 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Submit written comments to Kim Marshall, National Marine Fisheries Service, NOAA; 1315 East-West Highway, Silver Spring, MD 20910.

- **Fax:** 301-713-1193; **Attn:** Kim Marshall.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available on the Federal e-Rulemaking Portal www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kim Marshall, 301-427-8556.

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Shark Finning Prohibition Act (Pub. L. 106-557) (SFPA). Among other things, the SFPA amended section 307 of the Magnuson-Stevens Act to prohibit removing any of the fins of a shark (including the tail) and returning the remainder of the shark to the sea. In addition, the SFPA prohibited any person from having custody, control, or possession of shark fins aboard a fishing vessel without the corresponding carcass, and prohibited any person from landing shark fins without the corresponding carcass. NMFS published a final rule to implement the SFPA on February 11, 2002 (67 FR 6194).

In 2010, the President signed into law the Shark Conservation Act of 2010 (Pub. L. 111–348, Jan. 4, 2011) (SCA). The SCA amended two existing acts, the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), 16 U.S.C. 1826d *et seq.*, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA), 16 U.S.C. 1801 *et seq.*, to improve the conservation of sharks.

In particular, the SCA amended the Magnuson-Stevens Act to prohibit any person from: (1) Removing any of the fins of a shark (including the tail) at sea; (2) having custody, control, or possession of a fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass; (3) transferring a fin from one vessel to another vessel at sea, or receiving a fin in such transfer, unless the fin is naturally attached to the corresponding carcass; or (4) landing a fin that is not naturally attached to the corresponding carcass, or landing a shark carcass without its fins naturally attached. For the purpose of the SCA and these regulations, “naturally attached,” with respect to a shark fin, means to be attached to the corresponding shark carcass through some portion of uncut skin.

This proposed action would amend NMFS’ regulations to implement these provisions of the SCA. Specifically, the proposed rule would amend regulations at 50 CFR Part 600, Subpart N to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. NMFS notes that it interprets the prohibitions in that section as applying to sharks, not skates and rays, and solicits public comment on whether clarification is needed in the regulatory text on this or any other issues (see **ADDRESSES**).

NMFS also proposes here to adopt language from section 103(b) of the SCA regarding individuals engaged in commercial fishing for smooth dogfish. While this proposed rule adopts the statutory text, NMFS intends to further develop those provisions in a subsequent rulemaking. This rule would also combine the existing sections §§ 600.1203 and 600.1204 into one section. The text in all sections would be amended to implement the provisions of the SCA.

The MSA authorizes the Secretary to regulate fisheries seaward of the inner boundary of the EEZ, which is defined as a line coterminous with the seaward

boundary of each U.S. coastal state. 16 U.S.C. 1802(11). Thus, the SCA provisions apply to any person subject to the jurisdiction of the U.S., including persons on board U.S. and foreign vessels, engaging in activities prohibited under the statute for sharks harvested seaward of the inner boundary of the EEZ. Federal regulations pertaining to the conservation and management of specific shark fisheries are set forth in Parts 635, 648 and 660 of Title 50 of the Code of Federal Regulations. For Atlantic highly migratory species fisheries, as a condition of its federal permit, a vessel’s fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements). This rule amends 50 CFR part 600, subpart N, and does not supersede or amend any other federal regulation or requirement related to the conservation and management of sharks.

The SCA also amended the Moratorium Protection Act, which provides for identification and certification of nations to address illegal, unreported, or unregulated fishing; bycatch of protected living marine resources; and, as amended by the SCA, shark catches. 16 U.S.C. 1826h–1826k. With regard to sharks, the Moratorium Protection Act provides for identification of a nation if its fishing vessels have been engaged during the preceding calendar year in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program for sharks that is comparable to the United States, taking into account different conditions. 16 U.S.C. 1826k(a)(2). NMFS published a final rule that amends the Moratorium Protection Act regulations consistent with the SCA on January 16, 2013 (78 FR 3338).

Relationship of Regulations With Current State Rules

Several states and territories have enacted or are considering enacting statutes that address shark fins. Each statute differs in its precise details, but generally most contain a prohibition on possession, landing or sale of, or other activities involving, shark fins. Depending on how they are interpreted and implemented, these statutes have the potential to undermine significantly conservation and management of federal shark fisheries.

Under the Magnuson-Stevens Act, the United States claims sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the U.S. exclusive economic zone (EEZ) and also claims exclusive fishery management authority for specified resources beyond the EEZ. 16 U.S.C. 1811. To conserve and manage fishery resources and promote domestic commercial and recreational fishing under sound conservation and management principles, the Magnuson-Stevens Act authorizes NMFS and Fishery Management Councils to develop and implement federal fishery management plans, which must be consistent with ten national standards and other mandatory provisions set forth in the statute. 16 U.S.C. 1801, 1851(a) and 1853(a). The Magnuson-Stevens Act defines “conservation and management” as including measures “which are designed to assure that . . . a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis.” 16 U.S.C. 1802(5). National Standard 1 requires that conservation and management measures under a fishery management plan, plan amendment or implementing regulations “prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.” 16 U.S.C. 1851(a)(1). Obtaining optimum yield, which includes providing the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, is a fundamental principle under the Magnuson-Stevens Act. State prohibitions on possession, landing, transfer, or sale of sharks or shark fins lawfully harvested seaward of state boundaries constrain the ability of federal fishery participants to make use of those sharks for commercial and other purposes.

Neither the SFPA nor the SCA suggest that Congress intended to amend the Magnuson-Stevens Act to prohibit the possession or sale of shark fins. Rather, Congress chose to prohibit discarding shark carcasses at sea, and required that fins be naturally attached to the carcass of the corresponding shark. The SCA therefore reflects a balance between addressing the wasteful practice of shark finning and preserving opportunities to land and sell sharks harvested consistent with the Magnuson-Stevens Act. Although state shark fin laws are also intended to conserve sharks, they may not unduly

interfere with the conservation and management of federal fisheries.

The Magnuson-Stevens Act preempts state regulation of fisheries in waters outside the boundaries of a state, except according to the narrow opportunities for state regulation specified at 16 U.S.C. 1856(a)(3). Within the U.S. EEZ, a State may regulate a fishing vessel only where: (1) The fishing vessel is registered under the laws of that State, and there is no federal fishery management plan or regulations for the fishery, or the State's laws and regulations are consistent with the applicable federal plan and regulations; or (2) the applicable federal plan delegates management of the fishery to the State, and the State's laws and regulations are consistent with that plan (16 U.S.C. 1856(a)(3)(A–B)). “State” means each of the several States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States (16 U.S.C. 1802(41)).

State or territorial shark fin laws are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations. If state or territorial laws are construed or interpreted so they are consistent with federal law, fishery management plans and regulations, those laws are not preempted. For example, if a state law prohibiting the possession, landing, or sale of shark fins is interpreted not to apply to sharks legally harvested in federal waters, the law would not be preempted. On the other hand, a state law that interferes with accomplishing the purposes and objectives of the Magnuson-Stevens Act would be preempted. As described above, promoting commercial fishing under sound conservation and management principles is a key purpose of the Act. If sharks are lawfully caught in federal waters, state laws that prohibit the possession and landing of those sharks with fins naturally attached or that prohibit the sale, transfer or possession of fins from those sharks unduly interfere with achievement of Magnuson-Stevens Act purposes and objectives.

The Magnuson-Stevens Act generally does not preempt a state's laws applicable to its fisheries in state waters and states that, “Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.” 16 U.S.C. 1856(a)(1). Regulations issued in 2002 at 50 CFR 600.1201(c) provide

that: “Nothing in this regulation supersedes more restrictive state laws or regulations regarding shark finning in state waters.” The intent of this provision was to affirm that the regulations would not infringe on a state's jurisdiction or authority. It was not intended to imply that states may interfere with or impede accomplishment of fishery management objectives for federally-managed commercial and recreational fisheries. NMFS' view regarding state and federal authority has not changed since 2002, but the agency believes that section 600.1201(c) could be clarified. Thus, this proposed rule would revise section 600.1201(c) to state that the subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the other provisions of the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are included at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS proposes this action to implement the SCA. This proposed action would revise existing regulations that implement the SFPA, which banned “shark finning” (the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea). The proposed rule would amend regulations to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. The SCA applies to any person subject to the jurisdiction of the U.S., including persons on board U.S. and foreign vessels, who engages in activities

prohibited under the statute for sharks harvested seaward of the inner boundary of the EEZ. For Atlantic highly migratory species fisheries, as a condition of its federal permit, a vessel's fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements).

This rule is expected to directly affect commercial and for-hire fishing vessels that land sharks harvested seaward of the inner boundary of the U.S. EEZ or possess permits which allow them to land sharks harvested seaward of the inner boundary of the U.S. EEZ. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

Sharks are harvested in several commercial fisheries that occur in the U.S. EEZ, including the spiny dogfish fishery in the northeast United States, the Atlantic HMS fishery in the northeast and southeast United States, the west coast HMS and groundfish fisheries, and the Hawaii and American Samoa-based pelagic longline fisheries, which allow retention of incidentally caught sharks. In addition, groundfish vessels in the Gulf of Alaska and Bering Sea and Aleutian Islands can retain sharks, although there are no directed shark fisheries and the vast majority of incidentally caught sharks are discarded.

In 2011, 2,743 vessels were issued federal spiny dogfish permits, but only 326 of these vessels actually landed spiny dogfish. The total ex-vessel value of commercially landed spiny dogfish in calendar year 2011 was about \$4.646 million. Thus, average ex-vessel revenue per vessel from spiny dogfish was approximately \$14,250 in calendar year 2011. Based on these figures, all spiny dogfish vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

As of October 2011, NMFS had issued 217 directed shark permits and 262 incidental shark permits in the Atlantic

highly migratory species fishery. In 2011, the ex-vessel revenues for all sharks landed in the Atlantic highly migratory species fishery totaled \$3,067,116. Thus, the average ex-vessel revenue per permitted vessel was approximately \$6,400 in 2011. Based on these figures, all Atlantic highly migratory species shark vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Most sharks on the west coast are caught in the drift gillnet component of the HMS fishery and the northwest groundfish fishery. In 2011, 243 commercial vessels had shark landings on the west coast and total ex-vessel revenue for west coast shark landings was \$349,634. Thus, in 2011, average ex-vessel revenue per vessel from shark landings was approximately \$1,450. Average total ex-vessel revenue per vessel was about \$107,000 in 2011. The maximum total ex-vessel revenue for a single vessel that commercially harvested sharks on the west coast was approximately \$1.48 million in 2011. Based on these figures, all west coast commercial fishing vessels that land sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Entry into the Hawaii-based pelagic longline fishery is limited, with a maximum of 164 vessels allowed. As of March 2012, 132 vessels held Hawaii longline limited entry permits (out of 164 total permits). NMFS estimates the 2010 ex-vessel revenue of pelagic fish landed by Hawaii-based longline vessels to be about \$70 million, or approximately \$427,000 per vessel. In addition, in 2010, 267,000 pounds of sharks were landed by Hawaii-based longline vessels, and the average price for these sharks was \$0.50 per pound in 2010. Thus, ex-vessel revenue from shark landings was \$135,000 and average revenue per vessel was approximately \$1,020. Thus, shark landings represent a very small portion of the ex-vessel revenue for the Hawaii-based longline vessels. In 2009, 50 vessels obtained American Samoa longline limited entry permits, and 26 of those vessels actively fished. These vessels' operations are economically smaller than those based in Hawaii. Based on these figures, all Hawaii and American Samoa-based pelagic longline vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

As of 2009, approximately 867 vessels operated in the Bering Sea/Aleutian Islands (BSAI) or Gulf of Alaska (GOA)

groundfish fisheries, with some vessels operating in both. Approximately 97% of shark catch in Alaska groundfish fisheries is discarded. The other 3 percent is retained and largely processed into fishmeal. Both large and small fishing entities operate in the BSAI groundfish fisheries. In 2008, 215 small groundfish entities operated in the BSAI, with estimated average 2008 gross revenues from all sources of about \$1.53 million. Most of these (204) are catcher vessels, with estimated average gross revenues of \$1.49 million. About half of the catcher-vessels (103) are trawlers with average gross revenues of about \$1.71 million, 46 are hook-and-line vessels with average gross revenues of about \$0.58 million, and 62 are pot vessels with average gross revenues of about \$1.70 million. There were 11 small catcher-processors, seven of which were hook-and-line vessels with average gross revenues of about \$2.65 million. These figures may overstate the number of small entities since it considers individual vessel gross revenues, but does not capture affiliations among vessels. The key fleets harvesting shark are the Pollock trawlers and the hook-and-line vessels fishing for Pacific cod. All of the Pollock trawlers are believed to be large entities, either because the vessels themselves gross more than \$4 million or because they are members of American Fisheries Act cooperatives that gross more than that. The BSAI hook-and-line vessels targeting Pacific cod are predominately large vessels, though two are considered small.

In 2008, 702 small groundfish entities operated in the GOA groundfish fisheries, with average revenues from all sources of about \$0.60 million. Almost all of these vessels (697) are catcher vessels with average revenues of about \$0.60 million. A majority of the catcher-vessels (520) use hook-and-line gear and have average revenues of about \$0.49 million, while 73 are trawlers with average revenues of about \$1.27 million, and 142 are pot vessels with average revenues of \$0.85 million. There were five catcher-processors, mostly hook-and-line vessels, with average gross revenues of about \$1.52 million. These figures may overstate the number of small entities since it considers individual vessel gross revenues, but does not capture affiliations among vessels. Halibut hook-and-line vessels took a significant proportion of the shark catch. There were an estimated 270 small sablefish hook-and-line vessels with an estimated average gross revenue from all sources of \$0.77 million, an estimated 128 Pacific cod

hook-and-line vessels with an average gross of \$0.59 million, an estimated 21 small pelagic pollock trawlers with average gross revenues of about \$1.02 million, five non-pelagic trawlers targeting arrowtooth flounder with average gross revenues of about \$0.58 million, and five non-pelagic trawlers targeting shallow water flatfish with average gross revenues of about \$0.65 million.

Owners of charter boats or headboats (*i.e.*, for-hire vessels) that are used to fish for, take, retain, or possess Atlantic tunas, sharks, swordfish, or billfish must obtain an Atlantic HMS Charter/Headboat permit. As of October 2011, NMFS had issued 4,194 Atlantic HMS Charter/Headboat permits. No information is currently available regarding the number of for-hire vessels that specifically land sharks in the Atlantic, Gulf of Mexico, or Caribbean Sea. However, in 2010, average annual gross revenue for headboats and charter vessels in the Northeast were approximately \$214,000 and \$27,650, respectively. In the South Atlantic, average annual gross revenue for headboats and charter vessels in 2009 were approximately \$187,500 and \$106,000, respectively. In the Gulf of Mexico, average annual gross revenue for headboats and charter vessels were about \$230,000 and \$45,500, respectively. According to these studies, no individual for-hire vessel had annual gross revenues exceeding \$7 million. Thus, all for-hire vessels that may be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Party and charter boats target sharks on the west coast as well. In 2011, about 620,256 west coast recreational trips (days) by party and charter boats retained about 16 metric tons of sharks. Similarly, an estimate of about 778,798 recreational trips (days) by west coast private or rental boats retained about 48 metric tons of sharks in 2011. In 2011, only 13 for-hire vessels were known to land sharks in California that were harvested from the EEZ. In 2000, the average annual gross revenue for a large or medium size charter vessel on the west coast was approximately \$401,000, while the maximum annual gross revenue for one of these vessels was \$7 million. In 2007, the average annual gross revenue for a charter vessel in Washington and Oregon was approximately \$70,600. Based on these figures, all for-hire vessels that land sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small entities. Based on these figures, all charter boats, headboats, and that land

sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

NMFS does not have information on types of small entities other than those discussed above. However, other types of small entities may exist. In addition, NMFS has little information on the number of transshipment vessels that would be affected by this rule. However, it is likely that the number of vessels would be small.

The SCA and this proposed rule would not allow fins to be removed from sharks at sea. Shark fins from for-hire vessels generally are not removed from the carcass and not sold in commerce, so for-hire vessels are not expected to experience any economic effects as a result of this proposed rule.

In many commercial fisheries across the country, such as Atlantic HMS and Northeast spiny dogfish, SCA provisions are consistent with current federal regulations. Further, directed fishing for sharks is prohibited and incidentally harvested sharks are largely processed as fishmeal in the BSAI and GOA groundfish fisheries. As a result, commercial vessels in these fisheries are not expected to experience any economic effects as a result of this proposed rule.

The implementation of state shark fin laws in Washington, Oregon, California, Hawaii, and American Samoa, raises concerns about potential negative economic effects on some entities in West Coast, Western Pacific and other fisheries. State or territorial shark fin laws are preempted under the Supremacy Clause of the U.S. Constitution if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations. The clarification provided in this proposed rule may have positive economic effects on these fisheries. Therefore, the effect of this proposed rule on the commercial vessels in these fisheries is expected to be non-existent or potentially positive.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

One alternative, the status quo, was considered for the proposed action. This alternative would maintain the current regulations under the SFPA. Under this alternative, any person may remove and retain on the vessel fins (including the tail) from a shark harvested seaward of the inner boundary of the U.S. EEZ; however, the corresponding carcass

must also be retained on board the vessel. It would be a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of the regulations if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel. This alternative was rejected because it would not comply with the requirements of the SCA. No other alternatives meet the statutory requirements, and so none were considered.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: April 26, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 1. The authority citation for part 600 continues to read as follows:

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

- 2. Subpart N is revised to read as follows:

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

Sec.

- 600.1200 Purpose and scope.
- 600.1201 Relation to other laws.
- 600.1202 Definitions.
- 600.1203 Prohibitions.

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

§ 600.1200 Purpose and scope.

The regulations in this subpart implement the Shark Conservation Act of 2010.

§ 600.1201 Relation to other laws.

(a) Regulations pertaining to conservation and management (including record keeping and reporting) for certain shark fisheries are also set forth in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), 660 (for

fisheries off West Coast states), and 665 (for fisheries in the western Pacific) of this chapter.

(b)(1) This subpart does not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) in that area of the 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 a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.

(2) *State*, for the purpose of paragraph (b)(1) of this section, means 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, or the Potomac River Fisheries Commission.

(c) This subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

(d) State and territorial statutes that address shark fins are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the Shark Conservation Act of 2010, regulations under this part, and applicable federal fishery management plans and regulations.

§ 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Fin means any of the fins of a shark (including the tail) or a portion thereof.

Land or landing means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shore side location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Naturally attached, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1203 Prohibitions.

(a) It is unlawful for any person to do, or attempt to do, any of the following:

(1) Remove a fin at sea.

(2) To have custody, control, or possession of a fin, aboard a fishing vessel, unless the fin is naturally attached.

(3) Transfer a fin from one vessel to another vessel at sea unless the fin is naturally attached.

(4) Receive a fin in a transfer from one vessel to another vessel at sea unless the fin is naturally attached.

(5) Land a fin unless the fin is naturally attached.

(6) Land a shark carcass without all of its fins naturally attached.

(7) Possess, purchase, offer to sell, or sell fins or shark carcasses taken, transferred, landed, or possessed in violation of this section.

(8) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator, or by the Director of the Office of Sustainable Fisheries in the case of the Atlantic Highly Migratory Species, access to or inspection or copying of any records pertaining to the landing, sale, transfer, purchase, or other disposition of fins or shark carcasses.

(b) For purposes of this section, it is a rebuttable presumption that:

(1) If a fin is found aboard a vessel, other than a fishing vessel, without being naturally attached, such fin was transferred in violation of this section.

(2) If, after landing, the total weight of fins landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of this section.

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BILLING CODE 3510-22-P