

Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 2, 2022.

K.C. Becker,

Regional Administrator, Region 8.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 220405-0084]

RIN 0648-BL17

#### Atlantic Highly Migratory Species; Shortfin Mako Shark Retention Limit

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing to implement a flexible shortfin mako shark retention limit with a default limit of zero in commercial and recreational Atlantic highly migratory species (HMS) fisheries. NMFS proposes to leave the default limit of zero in place unless and until changed. Changes to the retention limit could only be made based on regulatory criteria and only if consistent with an allowable retention determination made by the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to Recommendation 21-09. This action is necessary to implement the binding recommendation of ICCAT adopted in 2021, as authorized under the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received by May 11, 2022. NMFS will hold a public hearing via conference call and webinar for this proposed rule on April 27, 2022, from 2 p.m. to 5 p.m. EDT. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Electronic copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

You may submit comments on this document, identified by NOAA-NMFS-2022-0015, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2022-0015" in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

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

#### FOR FURTHER INFORMATION CONTACT:

Carrie Soltanoff ([carrie.soltanoff@noaa.gov](mailto:carrie.soltanoff@noaa.gov)) or Guy DuBeck ([guy.dubeck@noaa.gov](mailto:guy.dubeck@noaa.gov)) at 301-427-8503.

**SUPPLEMENTARY INFORMATION:** North Atlantic shortfin mako sharks are managed primarily under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as well as under ATCA (16 U.S.C. 971 *et seq.*) because they are primarily caught in fisheries for tuna and tuna-like species. Like other Atlantic highly migratory species, North Atlantic shortfin mako sharks are managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments, implemented by regulations at 50 CFR part 635.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which analyze the anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. A brief summary of the alternatives considered and the background of this proposed rule are provided below. Additional information regarding this rule and overall Atlantic shark management can be found in the draft EA/RIR/IRFA, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

#### Recent ICCAT Shortfin Mako Shark Stock Assessments and Recommendations

The North Atlantic shortfin mako shark (*Isurus oxyrinchus*) is a highly migratory species that ranges across the entire North Atlantic Ocean and is caught by vessels from numerous countries. The stock is predominantly caught in association with fisheries that primarily target tunas and tuna-like species. While these sharks have been a valued component of U.S. recreational and commercial fisheries, U.S. catch represents only a small portion of the species' total catch in the North Atlantic by all reporting countries. International measures are, therefore, critical to effective conservation and management of the species.

In 2017, ICCAT's scientific body, the Standing Committee on Research and Statistics (SCRS), conducted a benchmark stock assessment for North Atlantic shortfin mako sharks. ICCAT accepted the assessment and adopted new management measures for the stock in ICCAT fisheries (Recommendation 17-08). These measures largely focused on maximizing live releases of North Atlantic shortfin mako sharks, allowing retention only in certain limited circumstances, increasing minimum size limits, and improving data collection. Further details are available in Amendment 11 to the 2006 Consolidated HMS FMP (Amendment 11; 84 FR 5358, February 21, 2019). Following the SCRS assessment, NMFS applied domestic stock status determination criteria in 2017 and determined the stock to be overfished and experiencing overfishing.

In 2019, the SCRS completed a North Atlantic shortfin mako shark stock assessment update and provided additional rebuilding information that reflected rebuilding timeframes of two mean generation times (through 2070). Following the update, ICCAT adopted Recommendation 19-06, which maintained the shortfin mako shark management measures in Recommendation 17-08 and called for the development of additional measures in order to establish a rebuilding plan with a high probability of avoiding overfishing and rebuilding the stock to biomass at maximum sustainable yield (B<sub>MSY</sub>) within a timeframe that takes into account the biology of the stock.

Given that Recommendation 19-06 called for the development of additional measures in order to establish a rebuilding plan, ICCAT at the November

2021 annual meeting adopted additional management measures for North Atlantic shortfin mako sharks in Recommendation 21–09. This recommendation prohibits retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022 and 2023. Limited retention of shortfin mako sharks may be allowed in 2023 and future years if ICCAT determines that fishing mortality is at a low enough level North Atlantic-wide to allow retention consistent with the conservation objectives of the recommendation. The recommendation aims to limit total North Atlantic-wide shortfin mako shark fishing mortality to no more than 250 metric tons (mt), which, the recommendation states, is consistent with the conservation objectives and the 2019 SCRS Kobe matrix, meaning that, at that level of fishing mortality, it is expected that overfishing would not be occurring (fishing mortality rate ( $F$ ) <  $F_{MSY}$ ) and the stock would not be overfished (spawning stock fecundity ( $SSF$ ) >  $SSF_{MSY}$ ). The SCRS will calculate the annual retention possibility each year based on reported dead discards; live releases; and, where allowed, earlier retention of shortfin mako sharks (with the SCRS providing estimates for any data gaps), and subtracting the amount of that fishing mortality from 250 mt. If applicable, the SCRS will also calculate eligible parties' individual retention allowances each year, based on the overall retention allowance and average annual catches from 2013 through 2016. The recommendation also calls on the SCRS and Panel 4 to test and confirm the appropriateness of the approach for allowing retention. The process and possible retention for 2023 will be discussed at an ICCAT Panel 4 intersessional meeting and at the annual meeting, both in November 2022.

Recommendation 21–09 also includes minimum standards for safe handling and release procedures and enhanced reporting and compliance requirements, which are consistent with existing HMS regulations and do not require additional rulemaking for U.S. implementation. The recommendation calls on the SCRS to continue to prioritize research such as identifying mating, pupping and nursery grounds, and other high concentration areas of North Atlantic shortfin mako sharks, options for spatial-temporal measures, and mitigation measures. By 2024, the SCRS will advise ICCAT on whether size restrictions are effective tools to meet required mortality reductions. Future North Atlantic shortfin mako

shark stock assessments are called for in 2024, 2029, and 2034.

#### **Recent U.S. Shortfin Mako Shark Management**

Following the adoption of ICCAT Recommendation 17–08 and NMFS' determination that the North Atlantic shortfin mako shark stock is overfished with overfishing occurring, NMFS took action to implement the binding ICCAT recommendation to immediately address overfishing and begin to rebuild the shortfin mako shark stock. NMFS first published an emergency rule in 2018 (83 FR 8946, March 2, 2018; measures extended through March 2019, 83 FR 42452, August 22, 2018) followed by Amendment 11, with a final rule issued in 2019 (84 FR 5358, February 21, 2019), to reduce fishing mortality of shortfin mako sharks in HMS commercial and recreational fisheries. These rules allowed retention only in certain limited circumstances, increased minimum size limits for retention in the recreational fisheries, and improved data collection. In commercial fisheries, Amendment 11 allowed retention of shortfin mako sharks with pelagic longline gear only if the shark is dead at haulback and there is a functional electronic monitoring system on board the vessel, consistent with the ICCAT requirement. Amendment 11 also allowed retention of shortfin mako sharks caught with bottom longline or gillnet gear by persons issued a Directed or Incidental shark limited access permit (LAP) if the shark is dead at haulback, without an electronic monitoring requirement, given the small number of shortfin mako sharks that are caught in those fisheries and NMFS' determination that additional monitoring was not necessary. In recreational fisheries, Amendment 11 implemented an increase in the minimum size limit for the retention of shortfin mako sharks from 54 inches fork length (FL) (137 cm FL) to 71 inches FL (180 cm FL) for male shortfin mako sharks and 83 inches FL (210 cm FL) for female shortfin mako sharks. Amendment 11 also expanded the requirement for the use of circle hooks to all recreational shark fisheries in order to reduce post-release mortality of shortfin mako sharks (the use of circle hooks was already required in recreational shark fisheries south of Chatham, MA, and for all pelagic longline and bottom longline vessels).

At the time of the 2017 shortfin mako shark stock assessment and adoption of Recommendation 17–08, U.S. catches represented approximately 14 percent, on average, of total North Atlantic shortfin mako catch. The measures in

the emergency rule and Amendment 11 were successful at reducing overall U.S. shortfin mako shark catch by 90 percent from 2013–2017 average levels, to approximately 3 percent of total North Atlantic shortfin mako shark catch in 2020.

#### **Proposed Measures**

In order to meet domestic management objectives, implement Recommendation 21–09, and acknowledge the possibility of future retention, NMFS is proposing to implement a flexible shortfin mako shark retention limit with a default limit of zero in commercial and recreational HMS fisheries. Consistent with current ICCAT provisions, the retention limit would be established as zero until Atlantic-wide catch levels are below 250 mt, a level that has a high probability of ending overfishing and starting to rebuild the stock. ICCAT determined that this measure was needed to bring catch levels down to or below that amount by all ICCAT parties, and thus was an important measure contributing to conservation and management of the stock. The shortfin mako shark retention limit per trip of zero would be in place unless and until changed after consideration of regulatory criteria and consistent with any ICCAT retention allowances pursuant to Recommendation 21–09. The retention limit per trip would apply to commercial vessels issued a Directed or Incidental shark LAP using pelagic longline, bottom longline, or gillnet gear, and to recreational HMS permit holders (those who hold HMS Angling or Charter/Headboat permits, and Atlantic Tunas General category and Swordfish General Commercial permits when participating in a registered HMS tournament). Under the default limit of zero and existing prohibitions for other gear types (see §§ 635.21(a)(4) and 635.24(a)(4)(i) and (iii)), all commercial and recreational fishermen would be required to release all shortfin mako sharks, whether dead or alive at haulback.

During the fishing year, based on consideration of the inseason trip limit adjustment criteria (§ 635.24(a)(8)) and to the extent any future retention is allowable as determined by ICCAT consistent with Recommendation 21–09, NMFS could increase the shortfin mako shark retention limit from the default, or subsequently decrease the retention limit, for the commercial fishery, the recreational fishery, or both. If a retention limit greater than zero is implemented for the commercial fishery, the current commercial shortfin mako shark restrictions would apply,

including allowing retention of shortfin mako sharks caught using only gillnet, bottom longline, or pelagic longline gear on properly-permitted vessels, if the sharks are dead at haulback, and requiring vessels with pelagic longline gear to have a functional electronic monitoring system to retain shortfin mako sharks. Similarly, if a retention limit greater than zero is implemented for the recreational fishery, the current recreational shortfin mako shark restrictions would apply, including minimum size limits of 71 inches FL (180 cm FL) for male and 83 inches FL (210 cm FL) for female shortfin mako sharks. For vessels that hold both a commercial shark permit and a permit with a shark endorsement, the current requirements at §§ 635.22(c)(7) and 635.24(a)(4)(iii) would apply. Vessels that hold such combinations of permits are prohibited from selling shortfin mako sharks, are required to follow the recreational limits, and cannot sell any sharks if retaining shortfin mako sharks. While no upper retention limit is being set in this action, any increase in retention limit would need to be consistent with ICCAT recommendations and could only be implemented after considering the regulatory criteria.

The flexible retention limit as proposed would apply in the HMS bottom longline and gillnet fisheries for sharks, although those fisheries are not considered to be ICCAT fisheries, which are defined as fisheries for tuna or tuna-like species under the current ICCAT Convention. This approach is consistent with the approach taken in Amendment 11, where NMFS determined it was appropriate to implement parallel management measures in the non-ICCAT shark fisheries given that the stock remained overfished with overfishing occurring. This approach would ensure consistency in HMS regulations, which will provide clarity for both the regulated community and for enforcement purposes and thus ensure more effective implementation. NMFS did not, however, implement the ICCAT requirement that electronic monitoring be onboard in these fisheries, because bottom longline and gillnet fisheries have minimal interactions with this species, and electronic monitoring was unnecessary to track such interactions effectively. Under this rule, after considering the measures implemented under Amendment 11 that considered the requirements of the Magnuson-Stevens Act, the status of shortfin mako sharks, and the need for consistency, NMFS is proposing to apply a flexible retention

limit with a default of zero to these gears.

Under this proposed rule, research and sampling of shortfin mako sharks would continue to be allowed under exempted fishing permits (EFPs) and scientific research permits (SRPs) (see §§ 635.27(b)(4) and 635.32). Collection of shortfin mako sharks under display permits would not be allowed, and collection of shortfin mako sharks for research under EFPs and/or SRPs would be considered on a case-by-case basis. Collection of shortfin mako sharks under EFPs and/or SRPs could include sampling or limited retention where needed for scientific research. Only non-lethal sampling would be permitted on shortfin mako sharks that are alive at haulback. NMFS intends to limit any EFPs and/or SRPs to closely monitored studies and to limit the number of such permits and the number of sharks that may be sampled and/or retained. In recent years (2018–2021), NMFS has issued eight EFPs and related permits per year on average that include shortfin mako sharks, and zero to one shortfin mako sharks were retained per year under those permits. When retention is otherwise prohibited, any retention pursuant to an EFP and/or SRP would be accounted for under the applicable shark research and display quota. If retention is otherwise permitted consistent with ICCAT recommendations, NMFS would count any retention under EFPs and/or SRPs against the applicable ICCAT retention allowance. Research on shortfin mako sharks is critical to gathering scientific information about the stock and to help ensure that stock assessments have sufficient data. Permitted collection of shortfin mako sharks for scientific research would be consistent with the biological sampling and research needs described in Recommendation 21–09 and other relevant ICCAT recommendations, as well as research needs identified by the SCRS, including to provide data for future shortfin mako shark stock assessments. For example, Recommendations 21–09 and 13–10 provide for collection of biological samples of shortfin mako and other sharks that are dead at haulback during commercial fishing operations by scientific observers or individuals duly permitted by the ICCAT party. If NMFS receives EFP or SRP applications that are outside the scope described in this action, NMFS would provide notice to the public and solicit comments through the annual EFP notice of intent.

NMFS is also proposing a minor modification to the pelagic longline gear restrictions at § 635.21(c)(1)(iv) to

further clarify the shortfin mako shark live release requirements.

In addition to the proposed measures, in the EA for this action, NMFS analyzed a no action alternative that would maintain the current commercial and recreational shortfin mako shark regulations as implemented under Amendment 11, and an alternative to place shortfin mako sharks on the prohibited sharks list in the HMS regulations (see §§ 635.24(a)(5), 635.34(c), and Table 1, section D, in appendix A to 50 CFR part 635). The EA for this action describes the impacts of those two alternatives and the preferred alternative proposed here.

### Request for Comments

NMFS is requesting comments on this proposed rule which may be submitted via [www.regulations.gov](http://www.regulations.gov) or at a public conference call/webinar. NMFS solicits comments on this action by May 11, 2022 (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a public hearing via conference call and webinar for this proposed action. Information on the conference call and webinar will be posted at: <https://www.fisheries.noaa.gov/action/proposed-changes-atlantic-shortfin-mako-shark-retention-limits>. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Soltanoff at [carrie.soltanoff@noaa.gov](mailto:carrie.soltanoff@noaa.gov) or 301–427–8503, at least 7 days prior to the meeting.

The public is reminded that NMFS expects participants at a public webinar to conduct themselves appropriately. At the beginning of the webinar, the moderator will explain how the webinar will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the conference call and webinars so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the webinar.

### Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, 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.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained 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**).

Section 603(b)(1) requires agencies to describe the reasons why the action is being considered. In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, ATCA, and other applicable law, to analyze the impacts of the alternatives for implementing the ICCAT-recommended limit on retention of North Atlantic shortfin mako sharks.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. In compliance with section 603(b)(2) of the RFA, the objective of this proposed rulemaking is to implement ICCAT recommendation consistent with ATCA and achieve domestic management objectives under the Magnuson-Stevens Act.

Section 603(b)(3) of the RFA requires agencies to provide 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 Small Business Administration (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 \$8.0 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 \$8 million. Regarding those entities that would be directly affected by the proposed measures, the average

annual revenue per active pelagic longline vessel is estimated to be \$202,000, based on approximately 90 active vessels that produced an estimated \$18.2 million in revenue in 2020, well below the NMFS small business size standard for commercial fishing businesses of \$11 million. No single pelagic longline vessel has exceeded \$11 million in revenue in recent years. Other non-longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels and, thus, would also be considered small entities.

The proposed rule would apply to the 213 Shark Directed LAP holders, 256 Shark Incidental LAP holders, and 4,055 HMS Charter/Headboat permit holders, based on 2021 data. Of those HMS Charter/Headboat permit holders, 3,021 obtained shark endorsements. In 2018 and 2019, 800 HMS for-hire trips targeting shortfin mako sharks were taken per year on average (7 percent on average of total HMS for-hire trips), from Maine to Virginia as captured in Large Pelagics Survey data. These trips were taken by, on average, 10 percent of HMS for-hire charter/headboat vessels. On average, there were 44 Atlantic HMS tournaments that targeted pelagic sharks (primarily shortfin mako sharks) in 2018 through 2021. There were approximately 1,555 directed shortfin mako shark trips in registered HMS tournaments on average in 2018 through 2021. On average, 26 federally-permitted dealers per year purchased shortfin mako sharks in 2018 through 2020. NMFS has determined that the preferred alternative would not likely directly affect any small organizations or small government jurisdictions defined under RFA, nor would there be disproportionate economic impacts between large and small entities.

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy

Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives to assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule, or any part thereof, for small entities.

NMFS examined each of these categories of alternatives. Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed several different alternatives in this proposed rulemaking, and provides rationales for identifying the preferred alternative to achieve the desired objectives.

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

Alternative 1, the no action alternative, would not implement any new management measures in the commercial or for-hire shark fisheries to decrease mortality of shortfin mako sharks. In recent years, about 49,000 pounds dressed weight (dw) (22,000 kilograms dw) of shortfin mako sharks have been landed commercially on average from 2018 through 2020 and the commercial revenues from shortfin mako sharks have averaged

approximately \$96,000 per year. The number of pounds of shortfin mako shark landed, revenue, and number of pelagic longline vessels that landed shortfin mako sharks was lower in 2020 compared to 2018 and 2019 (average landings in 2018 and 2019 were 55,700 pounds dw (25,000 kilograms dw), average revenue was approximately \$109,600 per year, and average number of pelagic longline vessels landing shortfin mako sharks was 53). Almost all of the shortfin mako shark commercial landings, based on dealer reports, were made by pelagic longline vessels. An average of 49 pelagic longline vessels landed shortfin mako sharks from 2018 through 2020. Therefore, the average annual revenue from shortfin mako shark landings per pelagic longline vessel is approximately \$1,960 per year (\$96,000/49) under the current regulations. For-hire shark fishing operations by HMS Charter/Headboat permit holders as well as HMS tournament operations would also remain the same. This alternative would result in no additional economic impacts on small entities associated with these fisheries in the short- or long-term.

Alternative 2, the preferred alternative, would implement a flexible shortfin mako shark retention limit with a default limit of zero. The limit of zero would be in place unless and until changed after considering inseason trip limit adjustment criteria (§ 635.24(a)(8)) and when consistent with ICCAT retention allowances pursuant to Recommendation 21–09. This would apply to commercial vessels issued a Directed or Incidental shark LAP and to HMS Charter/Headboat permit holders. Under a retention limit of zero, HMS for-hire fishermen and commercial vessels would be required to release all shortfin mako sharks that are alive at haulback and discard all shortfin mako sharks that are dead at haulback. In recent years, about 49,000 pounds dw (22,000 kilograms dw) of shortfin mako sharks have been landed commercially on average from 2018 through 2020, and the commercial revenues from shortfin mako sharks have averaged approximately \$96,000 fishery-wide per year. Almost all of the shortfin mako shark commercial landings, based on dealer reports, were made by pelagic longline vessels. An average of 49 pelagic longline vessels landed shortfin mako sharks from 2018 through 2020. Therefore, the average loss in annual revenue from shortfin mako shark landings per pelagic longline vessel that landed shortfin mako sharks would be approximately \$1,960 per year (\$96,000/

49). However, the overall economic impacts associated with these reductions in revenue are not expected to be substantial, as shortfin mako sharks comprise less than one percent of total HMS ex-vessel revenues on average. Additionally, the magnitude of shortfin mako landings by other commercial gear types (bottom longline and gillnet) is very small. This alternative would have minor economic costs on small entities in those commercial fisheries compared to the no action alternative because these measures would reduce the number of shortfin mako sharks landed and sold by these fishing vessels. Shortfin mako sharks are rarely a target species, however, and generate much less revenue overall than other more valuable target species. In for-hire fisheries and tournaments, retention would be prohibited, and fishermen would only be authorized to catch and release shortfin mako sharks. A retention limit of zero for shortfin mako sharks is likely to be a disincentive to fishing by some portion of the for-hire shark fishery, particularly those individuals that would otherwise have planned to target and retain shortfin mako sharks. Charter/headboat operators may experience some decline in demand if shortfin mako sharks may not be retained, resulting in minor adverse economic impacts. For Atlantic HMS tournaments, the 1,555 directed shortfin mako shark trips, on average, that take place in HMS tournaments would likely no longer take place, resulting in a loss of approximately \$1.1 million in expenditures, out of an estimated \$85.6 million in total HMS tournament expenditures by participating teams. Overall, this alternative would have minor economic costs on small entities in the short-term compared to the no action alternative.

During the fishing year, based on the inseason trip limit adjustment criteria (§ 635.24(a)(8)), and to the extent consistent with any future retention allowance that is determined by ICCAT pursuant to Recommendation 21–09, NMFS could increase the shortfin mako shark retention limit for the commercial fishery, the recreational fishery, or both, as appropriate. If the retention limit for the commercial and recreational fisheries is greater than zero, the current shortfin mako shark regulatory requirements, described under Alternative 1, would apply. This would result in no additional economic impacts on small entities associated with this fishery in the long-term compared to the no action alternative.

Alternative 3 would place shortfin mako on the prohibited sharks list to

prohibit any catch or retention of shortfin mako sharks in commercial and recreational HMS fisheries. See Table 1, section D, in appendix A to 50 CFR part 635 (prohibited sharks list), § 635.24(a)(5) (related vessel restrictions), and § 635.34(c) (criteria for adding species to, or removing species from, the prohibited shark species group). The overall economic impacts associated with reductions in revenue for the commercial and for-hire fisheries and HMS tournaments would be similar to those described under Alternative 2 and are not expected to be substantial, as shortfin mako sharks comprise less than one percent of total HMS ex-vessel revenues on average. This alternative would have minor economic costs on small entities in commercial fisheries because no shortfin mako sharks would be landed and sold by these fishing vessels under these measures. Shortfin mako sharks are rarely a target species, however, and generate less revenue overall than other more valuable target species. In for-hire fisheries and tournaments, retention would be prohibited, and fishermen would only be authorized to catch and release shortfin mako sharks. A prohibition on the retention of shortfin mako sharks is likely to be a disincentive for some portion of the for-hire shark fishery, particularly those individuals that would otherwise have planned to target and retain shortfin mako sharks. Charter/headboat operators may experience some decline in demand, resulting in adverse economic impacts. For Atlantic HMS tournaments, the 1,555 directed shortfin mako shark trips, on average, that take place in HMS tournaments would likely no longer take place, resulting in a loss of approximately \$1.1 million in expenditures, out of an estimated \$85.6 million in total HMS tournament expenditures by participating teams. Overall, Alternative 3 would have minor economic costs on small entities in the short- and long-term.

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

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

Dated: April 5, 2022.

**Carrie Robinson,**

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

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

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

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

### § 635.20 Size limits.

\* \* \* \* \*

(e) \* \* \*

(6) For shortfin mako sharks landed when the recreational retention limit specified at § 635.22(c)(8) is greater than zero, males must be at least 71 inches (180 cm) fork length, and females must be at least 83 inches (210 cm) fork length.

\* \* \* \* \*

■ 3. In § 635.21, revise paragraph (c)(1)(iv) to read as follows:

### § 635.21 Gear operation and deployment restrictions.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iv) Has pelagic longline gear on board, persons aboard that vessel are required to promptly release in a manner that causes the least harm any shortfin mako shark that is alive at the time of haulback, consistent with the requirements specified at paragraphs (a)(1) and (c)(6)(i) of this section. When the commercial retention limit specified at § 635.24(a)(4)(v) is greater than zero, any shortfin mako shark that is dead at the time of haulback may be retained provided the electronic monitoring system is installed and functioning in compliance with the requirements at § 635.9.

\* \* \* \* \*

■ 4. In § 635.22, revise paragraph (c)(2) and add paragraph (c)(8) to read as follows:

### § 635.22 Recreational retention limits.

\* \* \* \* \*

(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, oceanic whitetip, porbeagle, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of Mexico blacknose, and bonnethead.

\* \* \* \* \*

(8) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks per vessel per trip will apply. During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in § 635.24(a)(8). Any retention within the trip limit is subject to the size limits described in § 635.20(e)(6).

\* \* \* \* \*

■ 5. In § 635.24:

■ a. Add a heading for paragraph (a)(4);

■ b. Revise paragraphs (a)(4)(i) and (iii);

■ c. Add paragraph (a)(4)(v);

■ d. Revise paragraphs (a)(8)(v) and (vi); and

■ e. Add paragraph (a)(8)(vii).

The additions and revisions read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(4) *Additional retention limits for*

*sharks.* (i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(5), and (g)(6) and 635.22(c)(7).

\* \* \* \* \*

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may only be retained under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions at § 635.21(c)(1), (d)(5), and (g)(6). If the vessel has also been issued a permit with a shark endorsement and retains a

shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per § 635.22(c)(7).

\* \* \* \* \*

(v) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks will apply. During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

\* \* \* \* \*

(8) \* \* \*

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge;

(vi) Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota; and/or

(vii) Any shark retention allowance set by ICCAT, the amount of remaining allowance, and the expected or reported catch rates of the relevant shark species, based on dealer and other harvest reports.

\* \* \* \* \*

■ 6. In § 635.27, revise paragraph (b)(4)(i) and add paragraph (b)(4)(v) to read as follows:

### § 635.27 Quotas.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) The base annual quota for persons who collect LCS other than sandbar, SCS, pelagic sharks other than shortfin mako, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw).

\* \* \* \* \*

(v) No persons may collect shortfin mako sharks under a display permit. Collection of shortfin mako sharks for research under EFPs and/or scientific research permits (SRPs) may be considered on a case-by-case basis and any associated mortality would be deducted from the shark research and display quota if shortfin mako shark retention is otherwise prohibited or counted against U.S. allowable retention levels established at ICCAT when retention is allowed.

\* \* \* \* \*

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