§ 302–6.207 What factors should we consider in determining whether quarters are temporary?

In determining whether quarters are ''temporary'', you should consider factors such as reasonable time when the employee's residence at the old official station becomes temporary and no longer suitable for permanent residence (*e.g.,* household goods have been shipped and are unavailable to the employee and their immediate family), the duration of the lease, movement of household goods into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

PART 302–17—TAXES ON RELOCATION EXPENSES

■ 4. The authority for part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5724b; 5 U.S.C 5738; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p.586.

§ 302–17.21 [Amended]

■ 5. Amend § 302–17.21(d) by removing ''actual expense or lump sum method'' in the second sentence and adding in its place ''lodgings-plus, actual expense, or lump sum method''.

[FR Doc. 2023–10695 Filed 5–22–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 230517–0132; RTID 0648–XR127]

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Smalltail Shark as Threatened or Endangered Under the Endangered Species Act

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

ACTION: 90-Day petition finding, request for information, and initiation of status review.

SUMMARY: We (NMFS) announce a positive 90-day finding on a petition to list the smalltail shark (*Carcharhinus porosus*) as threatened or endangered under the Endangered Species Act (ESA). The petitioner also requests that we designate critical habitat. We find that the petition and information readily available in our files present substantial scientific or commercial information indicating that listing the smalltail shark as threatened or endangered may be warranted. Therefore, we are commencing a review of the status of the smalltail shark to determine whether listing under the ESA is warranted. To support a comprehensive status review, we are soliciting scientific and commercial data regarding this species.

DATES: Scientific and commercial data pertinent to the petitioned action must be received by July 24, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0031 by the following method:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0031 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 end 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* 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).

Interested persons may obtain a copy of the petition online at the NMFS website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/petitions-awaiting-90-day-findings.*

FOR FURTHER INFORMATION CONTACT: Joe Heublein, NMFS Southeast Region, 727–209–5962 or Adam Brame, NMFS Southeast Region, 727–209–5958.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2022, we received a petition from the Center for Biological Diversity to list the smalltail shark (*Carcharhinus porosus*) as an endangered or threatened species under the ESA, and to designate critical habitat concurrent with the listing. The petition also requests that, if we determine the smalltail shark warrants listing as a threatened species, we promulgate a protective regulation under section 4(d) of the ESA, and requests that we promulgate a regulation under section 4(e) of the ESA for species similar in appearance to the smalltail shark. The petitioner asserts that fishery overexploitation for meat, fins, oil, and other byproducts, in addition to climate change, habitat degradation, pollution, inadequacy of regulatory mechanisms, and life history characteristics, is driving this species towards extinction. Copies of this petition are available from us (see **ADDRESSES**, above).

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned during which we conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination must address a species, which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, ''the Services'') policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within

the foreseeable future throughout all or a significant portion of its range (ESA Sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms to address identified threats; or any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(h)(1)(i)) define ''substantial scientific or commercial information'' in the context of reviewing a petition to list, delist, or reclassify a species as credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered substantial information.

Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.,* the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. *See* 50 CFR 424.14(d).

If the petitioner provides supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received. *See* 50 CFR 424.14(g).

We may also consider information readily available at the time the determination is made. *See* 50 CFR 424.14(h)(1)(ii). We are not required to consider any supporting materials cited by the petitioner if the petitioner does not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.,* publications, maps, reports, or letters from authorities). *See* 50 CFR 424.14(c)(6).

The substantial scientific or commercial information standard must be applied in light of any prior reviews or findings we have made on the listing status of the species that is the subject of the petition. Where we have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on our own initiative), we will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action—such as a final listing determination, 90-day not-substantial finding, or 12-month not-warranted finding—a petitioned action will generally not be considered to present substantial scientific and commercial information indicating that the action may be warranted unless the petition provides new information or analysis not previously considered. *See* 50 CFR 424.14(h)(1)(iii).

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review would conclude it supports the petitioners' assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone necessitates a negative 90-day finding if a reasonable person conducting an impartial scientific review would conclude that the unknown information itself suggests the species may be at risk of extinction presently or within the foreseeable future.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, in light of the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species is at risk of extinction such that listing, delisting, or reclassification may be warranted; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial

information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by such organizations or made under other Federal or state statutes may be informative, but such classification alone will not alone provide sufficient basis for a positive 90-day finding under the ESA. For example, as explained by NatureServe, its assessments of a species' conservation status do not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act because NatureServe assessments have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide (*https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories*). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Smalltail Shark Species Description

Smalltail sharks (*C. porosus*) are members of the ground shark family (*Carcharhinidae*). These relatively small sharks—reaching a maximum length of about 5 ft (1.5 m, Compagno 1984)—are generally found in estuaries and nearshore waters of the western Atlantic Ocean from Brazil to the northern Gulf of Mexico, though they are generally absent throughout the Caribbean Islands (Compagno 1984). They tend to associate with the bottom and are generally found over mud substrates (Compagno 1984). Smalltail sharks have large eyes, a long, pointed snout and lack an interdorsal ridge. Uniquely, the origin of their second dorsal fin is found above the midpoint of the anal fin. Their coloration is gray on the dorsal surface and white on the ventral.

Smalltail sharks are opportunistic predators and feed on bony fishes and invertebrates in shallow waters to depths of 275 ft (84 m). The smalltail shark is a relatively slow-growing viviparous shark with reproduction occurring year-round and a maximum litter size of nine embryos (Lessa et al. 1999). Both male and female smalltail sharks mature at approximately six years of age and maximum age has been documented as 12 years (Lessa and Santana 1998).

Analysis of the Petition

We first evaluated the information presented in the petition. We find that the petitioners presented the information required in 50 CFR 424.14(c) and sufficient information under 424.14(d) to allow us to review the petition. The petition contains information on the smalltail shark, including the species description, distribution, habitat, population status and trends, and factors contributing to the species' status. Further, the petitioner asserts that the smalltail shark is impacted by overexploitation, climate change, habitat degradation, pollution, and its life history characteristics and clearly stated the petitioned action requested of listing the smalltail shark as threatened or endangered. Finally, the petition included a discussion of the smalltail shark's taxonomy, and we conclude that the petitioned organism is a ''species'' eligible for further consideration of listing.

Population Status and Trends

The petition separates discussion of abundance and population trends into two regions: Western Central Atlantic (*i.e.,* United States Gulf of Mexico, Southern Gulf of Mexico, and Caribbean) and Brazil (*i.e.,* Northern Brazil, and Eastern and Southern Brazil). Overall, the petitioner states the global smalltail shark population has declined by more than 80 percent over three generations (27 years).

Based on information readily available in our files, observations of the smalltail shark are rare in U.S. waters and appear restricted to sporadic interactions with fisheries in the Gulf of Mexico. Smalltail shark landing records were identified in U.S. fisheries reports from the Gulf of Mexico from 1984 to 2015, with records present in 14 years during this time period (NOAA Fisheries Southeast Fisheries Science Center, unpublished data). The petitioner references trend data involving other shark species and environmental modeling that estimates a reduction in catch probabilities of smalltail shark in the United States Gulf of Mexico. Information presented in the petition and available in our files do not indicate a clear trend in smalltail shark abundance in the United States Gulf of Mexico.

The petitioner notes a reduction in smalltail shark abundance and landings in the Southern Gulf of Mexico based in part on limited landings and anecdotal data. In the Caribbean (the Central and South American coasts), the smalltail shark has been documented as a significant proportion of shark catch in some countries with varying abundance and trend data (Pollum et al. 2020). Overall, information presented in the petition and available in our files do not indicate a clear trend in abundance of smalltail sharks in the Western Central Atlantic Ocean.

Available commercial fishing catch and landings data indicate that Brazil is the core of the smalltail shark distribution. Pollum et al. (2020) summarized information from multiple fisheries in Northern Brazil in the 1980s and 1990s where smalltail shark was the most commonly caught elasmobranch. Pollum et al. (2020) also noted that smalltail shark comprised up to 70% of catch weight in artisanal gillnet fisheries in Northern Brazil in the 1980s. The petitioner provides multiple lines of evidence, including catch rates, demographic modelling, and landings, suggesting a significant population decline (85–90% decline over 27 years) in this region. Furthermore, no recent recovery has been observed as ongoing fishing mortality is estimated to exceed population growth rates (Feitosa et al. 2020; Santana et al. 2020). In Eastern and Southern Brazil, the petitioner notes that the smalltail shark was common in the 1970s and 1980s and observations and catch records have become increasingly rare or absent since that time. The petitioner notes range reduction and localized extinction of the smalltail shark throughout Brazil.

Information presented in the petition and available in our files suggests a potential significant population decline and range contraction of the smalltail shark in Brazilian waters. Thus, the petition provides credible information that the species' current population status and trends may warrant the petitioned action.

Information on Impacts and Threats to the Species

Next, we evaluated whether the petition, viewed in context of information readily available in our files, credibly suggests that one or more of the factors listed in ESA section 4(a)(1) may pose a risk of extinction for the smalltail shark. The petition states

that smalltail shark is threatened or endangered because of four of the five factors in section 4(a)(1): present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting its continued existence. In the following sections, we summarize the information presented in the petition and in our files to determine whether the petitioned action may be warranted.

The Present or Threatened Destruction, Modification, or Curtailment of the Smalltail Shark's Habitat or Range

The petitioner includes a description of general threats to marine biodiversity and elasmobranchs (*e.g.,* coastal development, agricultural and urban runoff) in Brazil, the Caribbean, and the U.S. Gulf of Mexico. The petition includes a description of the specific threat of contaminant exposure for smalltail sharks. Harmful levels of contaminants were documented in smalltail shark tissue from Trinidad and Tobago and Brazil (Mohammed and Mohammed 2017; Wosnick et al. 2021). The petition, however, did not provide any evidence of a decline in the species due to threats to habitat or contaminant exposure. Overall, the petition fails to present substantial scientific or commercial information indicating that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the smalltail shark, nor do we have such information readily available in our files.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition states overutilization for fishing as the primary cause of the smalltail shark decline. The petition primarily includes discussion of the impacts of direct harvest of smalltail shark in Brazil for fin and meat trade, but does not specifically discuss overutilization of smalltail sharks in fisheries outside of Brazil. Impacts of fishing on the smalltail shark are summarized above in the *Population Status and Trends* section, and this information suggests a major population decline in Brazil due to fishing mortality. Therefore, we find that the petition presents substantial scientific information indicating that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the smalltail shark.

Inadequacy of Existing Regulatory Mechanisms for Smalltail Shark Protection

The petition includes discussion of smalltail shark fisheries regulations by country. In the United States, harvest of smalltail sharks is prohibited in state- and Federally-managed fisheries. Mexico and Colombia do not have specific prohibitions or fisheries regulations pertaining to smalltail sharks. As summarized above in the *Population Status and Trends* section, population abundance and trends of the smalltail shark in the Western Central Atlantic is inconclusive, and thus the adequacy of existing regulations in these counties is unknown.

Information suggests a major decline of the smalltail shark population in Brazil, and the petition states overutilization for fishing as the primary cause of the smalltail shark decline. The petition notes that fisheries regulations in Brazil are insufficient to protect smalltail shark. The petition states that the legal framework protecting smalltail sharks and other elasmobranchs in Brazil is insufficient and that obsolete and the country has not had a nationally standardized fisheries data collection system since 2007. While smalltail shark was listed on the Brazilian Ordinance of the Ministry of Environment no. 445—which restricted the harvest and trade of species listed on Brazil's Red List of Endangered and Threatened Species—it was suspended in 2015, half of 2016, 2017, and half of 2018. These details indicate that both inadequate regulations and low compliance and enforcement in Brazilian fisheries are failing to protect the species from fishing mortality. Therefore, we find that the petition presents substantial scientific and commercial information indicating that the inadequacy of existing regulatory mechanisms is a threat to the smalltail shark.

Other Natural or Manmade Factors Affecting Its Continued Existence

The majority of threats from climate change described in the petition are not specific to the smalltail shark or their habitat in the marine and estuarine waters of the Western Central Atlantic and Brazil. The petition fails to present credible new information or otherwise offer substantial scientific or commercial information indicating that other natural or manmade factors are a threat to the smalltail shark.

Petition Finding

After reviewing the petition, the literature cited in the petition, and other information readily available in our files, we find that there is substantial scientific and commercial information indicating that listing the smalltail shark, *C. porosus,* as a threatened or endangered species may be warranted. Therefore, in accordance with section 4(b)(3)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.14(h)(2)), we will commence a status review of this species. During the status review, we will determine whether *C. porosus* is in danger of extinction (endangered) or likely to become so in the foreseeable future (threatened) throughout all or a significant portion of its range. As the petition did not request that we consider listing any specific DPSs, we will first assess the status of the taxonomic species, and then based on that assessment, consider whether additional analysis of potential DPSs is warranted and appropriate. As required by section 4(b)(3)(B) of the ESA, within 12 months of the receipt of the petition (October 31, 2022), we will make a finding as to whether listing the smalltail shark (or any DPSs) as an endangered or threatened species is warranted. If listing is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule. If applicable, the request to promulgate regulations under section 4(d) and section 4(e) of the ESA would be considered in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and appropriate action would be taken (50 CFR 424.14(j)).

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting comments and information from interested parties on the status of the smalltail shark. Specifically, we are soliciting information in the following areas:

(1) Historical and current abundance and population trends of *C. porosus* throughout its range;

(2) Historical and current distribution and population structure of *C. porosus;*

(3) Information on *C. porosus* site fidelity, population connectivity, and movements within and between populations (including estimates of genetic diversity across and within populations);

(4) Historical and current condition of *C. porosus* habitat;

(5) Information on *C. porosus* life history and reproductive parameters;

(6) Data on *C. porosus* diet and prey;

(7) Information and data on common *C. porosus* disease(s) and/or contaminant exposure;

(8) Historical and current data on *C. porosus* catch, bycatch, and retention in industrial, commercial, artisanal, and recreational fisheries throughout its range;

(9) Past, current, and potential threats, including any current or planned activities that may adversely impact *C. porosus* over the short-term or long-term;

(10) Data on trade of *C. porosus* products; and

(11) Management, regulatory, or conservation programs for *C. porosus,* including mitigation measures related to any known or potential threats to the species throughout its range.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please send any comments in accordance with the instructions provided in the **ADDRESSES** section above. We will base our findings on a review of the best available scientific and commercial data, including relevant information received during the public comment period.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

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

Dated: May 17, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–10891 Filed 5–22–23; 8:45 am]

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