DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229, 600, and 635

[Docket No. 080519678–8685–01]

RIN 0648–AW65

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 3

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

ACTION: Proposed rule; availability of a Fishery Management Plan (FMP) amendment; request for comments; public hearings.

SUMMARY: NMFS announces the availability of the draft Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). Amendment 3 examines different management alternatives available to rebuild blacknose sharks consistent with the 2007 small coastal shark (SCS) stock assessment, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law. Amendment 3 also examines management alternatives to end overfishing of blacknose sharks and shortfin mako sharks, consistent with the Magnuson-Stevens Act, and also proposes adding smooth dogfish under NMFS management. The proposed rule to implement Amendment 3 would, among other things, establish a quota for blacknose sharks and non-blacknose SCS, prohibit the use of gillnet gear to catch sharks from South Carolina south, prohibit the retention of blacknose sharks in recreational fisheries, take action at the international level to end overfishing of shortfin mako through participation in appropriate international fisheries organizations, such as International Commission for the Conservation of Atlantic Tunas (ICCAT), promote the live release of shortfin mako sharks, add smooth dogfish under NMFS management, establish a commercial quota for smooth dogfish, require smooth dogfish fishermen to obtain the appropriate Federal permit, and establish a mechanism for specifying Annual Catch Limits (ACLs) and Accountability Measures (AMs) for Atlantic sharks. These changes could affect all fishermen, commercial and recreational, who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Comments on this proposed rule, draft Amendment 3 and draft Environmental Impact Statement (DEIS) and related analyses must be received no later than 5 p.m. on September 22, 2009. NMFS will hold nine public hearings on this proposed rule and draft Amendment 3 in August and September 2009. For specific dates and times *see* the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public hearings will be held in New Hampshire, New Jersey, Maryland, North Carolina, South Carolina, Florida, Alabama, and Louisiana. For specific locations *see* the **SUPPLEMENTARY INFORMATION** of this document.

Written comments on the proposed rule and draft Amendment 3 may be submitted to Karyl Brewster-Geisz, Highly Migratory Species Management Division:

- *Mail:* 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope Shark Amendment 3 comments.
- *Fax:* 301–713–1917.
- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Instructions: All comments received are a part of the public record and will generally be posted to Portal *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may 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, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft Amendment 3 to the Consolidated HMS FMP, including the DEIS, the latest shark stock assessments, and other documents relevant to this rule are available from the Highly Migratory Species Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms* or by contacting LeAnn Southward Hogan at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or LeAnn Southward Hogan at 301–713–2347 or fax 301–713–1917 or Jackie Wilson at 240–338–3936 or fax 404–806–9188.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. In 1999, NMFS revised the 1993 FMP and included swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP was amended in 2003, and in 2006, NMFS consolidated the Atlantic tunas, swordfish, and shark FMP and its amendments and the Atlantic billfish FMP and its amendments in the 2006 Consolidated Atlantic HMS FMP. This amendment amends the 2006 Consolidated HMS FMP. The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

On May 7, 2008, NMFS announced its determination that blacknose sharks are overfished with overfishing occurring while Atlantic sharpnose sharks, bonnethead sharks, and finetooth sharks are not overfished and do not have overfishing occurring (73 FR 25665). These determinations were based on the results of the 2007 SCS stock assessment, which was conducted in a manner similar to the Southeast Data Assessment and Review (SEDAR) process that is used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils. NMFS has found that this 2007 SCS stock assessment is the best available science regarding the status of SCS. The status determination criteria that are used to determine the status of Atlantic HMS are fully described in Chapter 3 of the 1999 FMP and are not repeated here.

NMFS has also determined that blue shark stocks are not overfished and overfishing is not occurring and that shortfin mako shark stocks are not overfished, are approaching an overfished condition, and have overfishing occurring. These determinations are based on international stock assessments conducted by the ICCAT's Standing Committee for Research and Science (SCRS). While these assessments are international, the status determination criteria are the same as those used for SCS and all Atlantic sharks. NMFS has determined the ICCAT stock assessment to be the best available science for managing shortfin mako and blue sharks.

Under the Magnuson-Stevens Act, NMFS is required to establish a rebuilding plan for blacknose sharks and to end overfishing for blacknose and shortfin mako sharks. NMFS announced its intent to conduct an environmental impact statement (EIS) on May 7, 2008 (73 FR 25665), and held

five scoping meetings in 2008 (73 FR 37932, July 2, 2008; 73 FR 53407, September 13, 2008). During scoping, NMFS also consulted with the HMS Advisory Panel in October 2008 (73 FR 53407, September 13, 2008), the five Regional Fishery Management Councils on the east coast, and the Atlantic States and Gulf States Marine Fisheries Commissions. NMFS also presented information at a bycatch reduction workshop that was held by the Gulf and South Atlantic Fisheries Foundation. In February 2009, NMFS presented the Predraft of Amendment 3 to the HMS Advisory Panel (73 FR 67135, November 13, 2008).

Based in part on the comments received during scoping and from the HMS Advisory Panel on the Predraft, NMFS proposes a number of management measures within Amendment 3. Consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable laws, the objectives for this proposed rule are to: (1) Implement a rebuilding plan for blacknose sharks; (2) end overfishing for blacknose and shortfin mako sharks; (3) provide an opportunity for the sustainable harvest of finetooth, bonnethead, Atlantic sharpnose sharks and other sharks, as appropriate; (4) prevent overfishing of Atlantic sharks; and (5) consider management measures for smooth dogfish sharks in Federal waters, as appropriate.

In addition to the proposed management alternatives, NMFS proposes to take additional administrative actions to clarify regulations and update various scientific and other names. These administrative actions are described in the section entitled ''Administrative Actions.'' NMFS also discusses ACLs and AMs for the Atlantic shark fisheries to include a mechanism for specifying ACLs and AMs for Atlantic sharks.

NMFS prepared a DEIS for the draft Amendment 3 that discusses the impact on the environment as a result of this rule and the proposed management measures. A copy of the DEIS/draft Amendment 3 is available from NMFS (*see* **ADDRESSES**). The Environmental Protection Agency is expected to publish the notice of availability for this DEIS on or about the same date that this proposed rule publishes.

ACLs and AMs

The Magnuson-Stevens Conservation Act as amended and reauthorized in 2007 included a mandate in Section 303(a)(15) for each FMP to include a mechanism for specifying ACLs at a level to prevent overfishing and to include AMs to ensure ACLs would not be exceeded. On January 16, 2009, NMFS published the final National Standard 1 Guidelines (NSG1) which, among other things, provided procedures and guidance for implementing the ACL and AM requirements of the Magnuson-Stevens Act (74 FR 3178). Per NSG1, ACLs and AMs apply ''unless otherwise provided for under an international agreement in which the United States participates.'' While SCS, LCS, and pelagic sharks are predominately managed through domestic management measures, in recent years ICCAT has adopted a number of recommendations regarding sharks (*e.g.,* ICCAT recommendations 2004–10, 2005–05, 2007–06, and 2008–07). The Atlantic Tunas Convention Act (ATCA) authorizes Secretary of Commerce to promulgate regulations, as may be necessary and appropriate, to implement binding ICCAT recommendations. Some shark species or complexes (*e.g.,* SCS) will likely be managed solely through domestic actions taken under the Magnuson-Stevens Act. ACLs and AMs will apply to those species. Other shark species (*e.g.,* shortfin mako sharks) will be managed via a mix of domestic actions taken under the Magnuson-Stevens Act and international actions taken pursuant to international fishery agreements or through other appropriate international organizations. The method for managing specific species will likely change overtime as Regional Fishery Management Organizations, including ICCAT if appropriate, begin to manage sharks internationally. While the proposed rule provides a mechanism for setting ACLs and AMs for the pelagic shark complex, which includes shortfin mako, it is not possible for the U.S. to end overfishing of the species without international cooperation since the relative U.S. contribution to fishing mortality is minor compared to cumulative fishing mortality related to foreign fishing outside the U.S. EEZ.

According to NSG1, Section 303(a)(15) mandates that a mechanism for specifying ACLs at a level to prevent overfishing and AMs to ensure ACLs would not be exceeded be included in FMPs. The process for establishing ACLs and AMs for Atlantic sharks is outlined below. NMFS has determined that the overfishing limit (OFL) is greater than or equal to the allowable biological catch (ABC) limit, which is greater than or equal to the ACL. As such, NMFS is establishing for all Atlantic sharks the following guidelines to use when establishing ACLs and AMs. NMFS considers the OFL to be the annual amount of catch that corresponds to the estimate of maximum fishing mortality threshold (MFMT) applied to the stock abundance. The ABC would be established to account for uncertainty in the assessment. Ideally, the actual ABC would be established as part of stock assessment reports, results, and/or conclusions. However, because the SCS assessment predates the ACL final rule and until new stock assessments for HMS incorporate the new ACL and AM guidance, for sharks, NMFS is determining that the ABC is lower than the OFL to account for scientific uncertainty, and the ABC is equal to the ACL.

In general, the ACL is equivalent to the total allowable catch (TAC) for all the fisheries that interact with a given shark species. The TAC, or ACL, is provided as part of the stock assessment report, result, and/or conclusion. If the OFL can be estimated and the ABC is not available, then the ACL should be less than the OFL to account for scientific uncertainty. For overfished shark stocks, the ACL is equal to the stock assessment projection that shows rebuilding with a 70-percent chance of success. NMFS uses the 70 percent probability for rebuilding for sharks given their life history traits, such as late age of maturity and low fecundity compared to other fish stocks. This ACL is lower than the OFL. Additionally, NMFS may establish ''sector ACLs,'' which would include landings and discards, and ''commercial landings components of the sector ACL,'' which would be the commercial landings quota for specific shark fisheries.

For sharks, the quotas are generally established for the commercial fishery, not the recreational fishery. NMFS has not established quotas for the recreational shark fishery due to the difficulty in estimating recreational catches in real time, but may consider doing so in the future. While the shark recreational fishery does not have a formal quota, catches within the recreational shark fishery are considered when stock assessments are conducted and taken into account when NMFS establishes the OFL, ABC, ACL, and TAC. NMFS also takes the recreational catches, along with discards from the commercial sector, into account when establishing the commercial quota or ''commercial landings components of the sector ACL.'' Because sector ACLs are being used, sector AMs will also be used. This proposed rule changes the quotas for SCS and establishes a commercial quota for smooth dogfish. It does not change the quotas that were

previously established for LCS and pelagic sharks.

The NSG1 also requires NMFS to establish AMs. NMFS already has established AMs along with measures analogous to allowable catch targets (ACTs) in commercial Atlantic shark fisheries. Specifically, overharvests of the commercial shark quotas are deducted from the next fishing year's quota. In addition, underharvests for shark species that are not overfished or are not experiencing overfishing are added to the base quota the following year and capped at 50 percent of the base quota. There is no carryover of underharvests for shark species that are unknown, overfished, or experiencing overfishing. In addition, NMFS closes the quota for each shark species/complex by filing a notice in the **Federal Register** when 80 percent of a given quota is filled. The closure goes into effect five days from the date of filing. Eighty percent of the shark quota is, therefore, the annual catch target (ACT). The measures in this proposed rule and in draft Amendment 3 do not change these AMs.

Blacknose Shark Rebuilding Plan

Under National Standard (NS) 1 of the Magnuson-Stevens Act and implementing regulations (50 CFR 600.310), NMFS is required to ''prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.'' In order to accomplish this, NMFS must determine the maximum sustainable yield (MSY) and specify status determination criteria to allow a determination of the status of the stock. In cases where the fishery is overfished, NMFS must take action to rebuild the stock (by specifying rebuilding targets). NMFS must take action with ACLs and AMs to prevent overfishing for stocks currently overfishing by 2010, and for all other stocks beginning 2011 onward. NMFS outlined the status determination criteria and a set of rebuilding targets in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and maintained those criteria and targets in the 2006 Consolidated HMS FMP. This amendment does not change these criteria or targets.

As described in the NSG1, if a stock is overfished, NMFS is required to ''prepare an FMP, FMP amendment, or proposed regulations * * * to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e)(4) of the Magnuson-Stevens Act'' (50 CFR 600.310(j)(2)(ii)). A rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of the fishing mortality rates in the rebuilding plan. The time frame to rebuild the stock or stock complex must be as short as possible taking into account a number of factors including: The status and biology of the stock or stock complex; interactions between the stock or stock complex and other components of the marine ecosystem; the needs of the fishing communities; recommendations by international organizations in which the United States participates; and management measures under an international agreement in which the United States participates. The time frame for rebuilding may not exceed ten (10) years unless a longer time is otherwise dictated by the biology of the species, other environmental conditions, or management measures established under an international agreement in which the U.S. participates.

The lower limit of the specified time frame for rebuilding is determined by the status and biology of the stock and is defined as ''* * * the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality'' (50 CFR 600.310(j)(3)(i)(A)). The NS 1 guidelines specify two strategies for determining the rebuilding time frame depending on the lower limit of the specified time frame for rebuilding. The first strategy (50 CFR 600.310(j)(3)(i)(C)) states that: ''If T_{min} [minimum time for rebuilding a stock] for the stock or stock complex is 10 years or less, then the maximum time allowable for rebuilding (T_{max}) that stock to its B_{MSY} is 10 years.'' The second strategy (50 CFR 600.310(j)(3)(i)(D)) specifies that if T_{min} for the stock or stock complex exceeds 10 years, then the maximum time allowable for rebuilding a stock or stock complex to its B_{MSY} is T_{min} plus the length of time associated with one generation time for that stock or stock complex. ''Generation time'' is the average length of time between when an individual is born and the birth of its offspring.

The latest 2007 stock assessment of SCS in the U.S. Atlantic and Gulf of Mexico is a peer-reviewed assessment and was conducted in a SEDAR-like process. The 2007 assessment includes catch estimates through 2005, biological data, and a number of fishery-independent and fishery-dependent catch rate series. The stock assessment considered several rebuilding scenarios for blacknose sharks and found that, under a no fishing scenario, the stock would take 11 years to rebuild. Adding a generation time (8 years), as described under NS1 for species that require more than 10 years to rebuild even if fishing mortality was eliminated entirely, the target year for rebuilding the stock was estimated to be 2027 (8 years mean generation time + 11 years to rebuild if fishing mortality eliminated = 19 years including 2009). Thus, the stock assessment found that the shortest time possible for the stock to be rebuilt based on the biology of blacknose sharks is 2027 with a 70-percent probability of success if a TAC of 19,200 blacknose sharks per year were implemented across all fisheries that interact with blacknose sharks. As described above and in the DEIS, NMFS uses a 70-percent probability of rebuilding to ensure that the intended results of a management action are actually realized given the life history traits of sharks.

According to the latest blacknose shark stock assessment, an average of 86,381 blacknose sharks were killed each year between 1999–2005 in different fisheries either as targeted catch or as bycatch. In order to attain the blacknose shark TAC of 19,200, NMFS needs to reduce the number of blacknose sharks killed each year across all fisheries by at least 78 percent. The stock assessment indicates that approximately 45 percent of blacknose sharks are killed as bycatch in the Gulf of Mexico and Atlantic shrimp trawl fisheries, and the rest of the mortality occurs within the HMS Atlantic commercial and recreational shark fisheries. NMFS will continue to work and coordinate with the Gulf of Mexico and South Atlantic Fishery Management Councils to create management measures to meet bycatch reduction measures to reduce mortality of blacknose sharks in the shrimp trawl fisheries, as appropriate. NMFS will also work to reduce the mortality of blacknose sharks in Atlantic shark fisheries through the implementation of management measures, as analyzed in draft Amendment 3.

Currently, average commercial annual landings of blacknose sharks within the Atlantic shark fisheries are 27,484 blacknose sharks, and average annual commercial dead discards are 5,007 blacknose sharks. A 78-percent reduction in commercial blacknose landings (6,046 blacknose sharks per year) and discards (1,102 blacknose sharks per year) in the Atlantic shark fisheries equates to a total mortality of 7,148 blacknose sharks per year in the commercial fishery (6,046 + 1,102 = 7,148). Assuming an average commercial blacknose weight across all commercial gears (including shrimp trawl) of 6.3 lb dw, these 7,148 blacknose sharks is equivalent to 45,032

lb dw (7,148 blacknose sharks x 6.3 lb dw = 45,032 lb dw)(34 mt dw). In addition, on average, 54 blacknose sharks are taken each year under the exempted fishing program. Given the average weight of the blacknose sharks taken under the exempted fishing program is 3.3 lb dw, this equals approximately 178.2 lb dw of blacknose sharks landed under the exempted fishing program each year. Thus, no more than 44,853.8 lb dw (45,032 lb dw—178.2 lb dw = 44,853.8 lb dw)(20.3 mt dw) or 7,094 blacknose sharks (7,148 blacknose sharks—54 blacknose sharks taken in the EFP program = 7,094 blacknose sharks) can be landed by the commercial fishery. As such, the commercial sector ACL for blacknose sharks is equal to 44,853.8 lb dw.

In addition, on average, the recreational fishery landed 10,408 blacknose sharks per year. A 78-percent reduction in recreational landings would result in 2,290 blacknose sharks per year. This results in an overall annual allowance of 9,438 blacknose sharks in all HMS fisheries.

The Proposed Management Measures

The following is a summary of the alternatives analyzed in the DEIS for Amendment 3. Additional analyses and descriptions are provided in the DEIS.

A. SCS Commercial Quotas

NMFS is considering several alternatives for SCS relating to commercial quotas and species complexes. The alternatives for the Atlantic shark fishery range from maintaining the status quo to restructuring the SCS complex and prohibiting the retention of blacknose sharks. Specifically, the alternatives considered are: alternative A1—no action; alternative A2—establish a non-blacknose SCS quota of 392.5 mt dw and a blacknose commercial quota of 13.5 mt dw; alternative A3—establish a non-blacknose SCS quota of 42.7 mt dw, a blacknose commercial quota of 16.6 mt dw, and allow all current authorized gears for sharks; alternative A4—establish a non-blacknose SCS quota of 56.9 mt dw, a blacknose commercial quota of 14.9 mt dw, and remove shark gillnet gear as an authorized gear for sharks; and alternative A5—close the entire SCS fishery. Alternative A4 is the preferred alternative.

Alternative A4, the preferred alternative, would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota. The quota of the non-blacknose SCS would be 56.9 mt dw (125,487 lb dw), which is a 76-percent reduction from the average landings of finetooth, Atlantic sharpnose, and bonnethead sharks from 2004 through 2007. Under this alternative, NMFS would establish a blacknose shark-specific quota of 14.9 mt dw (32,753 lb dw), which is the amount of blacknose sharks that would be harvested while the quota for non-blacknose SCS is harvested assuming similar catch rates and number of trips as from 2004–2007. Under this alternative, fishermen with an incidental shark limited access permit would not be allowed to retain any blacknose sharks. In addition, this alternative assumes that gillnet gear would not be allowed to harvest sharks from South Carolina south (*see* the alternatives in section B below) and that fishermen would fish for SCS, including blacknose sharks, in a directed fashion until either the non-blacknose SCS or blacknose shark quota reached 80 percent. At that time, both the non-blacknose SCS and the blacknose shark fisheries would close, all SCS would be discarded, and fishermen would target other species and continue to catch SCS as bycatch. Assuming the fishery operates in this fashion, NMFS estimates that total mortality for blacknose sharks would be 37,763 lb dw, which is below the commercial landings component of 44,853.8 lb dw for commercially caught blacknose sharks within the Atlantic shark fisheries.

Alternative A4 is anticipated to have positive ecological impacts for blacknose, Atlantic sharpnose, bonnethead, and finetooth sharks as it would reduce landings by 76 percent for blacknose sharks and 76 percent for non-blacknose SCS based on current landings. In addition, it would reduce discards by 81 percent for blacknose sharks and 2 to 3 percent for non-blacknose SCS based on current discards if gillnets are prohibited in the Atlantic, Gulf of Mexico, and Caribbean under either alternative B2 or B3 (described below). Cumulatively, this would reduce mortality of blacknose sharks by at least 78 percent and would meet the rebuilding plan for blacknose sharks. Discards of blacknose and non-blacknose SCS predominately occur on BLL gear, therefore, removing gillnet gear is not expected to affect discards of either blacknose sharks or non-blacknose SCS. NMFS assumes that if retention of sharks is prohibited with gillnet gear, directed gillnet fishing for sharks would cease; however, fishermen would continue to use gillnet gear to target other species and discard any sharks that were caught. In addition, alternative A4 would reduce landings of large coastal sharks (LCS), predominately blacktip sharks, which are also caught in gillnet gear. If gillnets are prohibited in the Atlantic, Gulf of Mexico, and Caribbean Sea under alternative A4 and either alternative B2 or B3, NMFS estimates that LCS landings could decrease by 101,409 to 104,132 lb dw compared to current average landings of 3,170,155 lb dw from 2004–2007. Dead discards could decrease by 50,797 and 52,979 lb dw compared to average annual discards of 359,129 lb dw according to Amendment 2 to the 2006 Consolidated HMS FMP. These LCS reductions could be greater given management measures that were implemented under Amendment 2 to the 2006 Consolidated HMS FMP, which reduced quotas and trip limits in the directed LCS fishery starting in July 2008. Therefore, NMFS anticipates that this alternative would also have positive ecological impacts on LCS.

Under this alternative, total annual gross revenues from landings of non-blacknose SCS are anticipated to be $159,368. This is a 76-percent reduction in annual gross revenues from the gross revenues expected under alternative A1 ($661,513). Since directed permit holders land approximately 97 percent of the non-blacknose SCS, NMFS anticipates that directed permit holders would lose more in annual gross revenues compared to incidental permit holders. Under this alternative, total annual gross revenues from non-blacknose SCS for directed shark permit holders would be $153,841, which is a loss of $487,165 in annual gross revenues or a 76-percent reduction in annual gross revenues from the gross revenues expected under alternative A1 ($641,006). Incidental permit holders land approximately 3 percent of the non-blacknose SCS. Total annual gross revenues from non-blacknose SCS for incidental shark permit holders would be $4,922, which is a loss of $15,585 in annual gross revenues or a 76-percent reduction in annual gross revenues from the gross revenues expected under alternative A1 ($20,507).

The blacknose shark quota would also be reduced by 76 percent based on average landings from 2004–2007. Total annual gross revenues for the blacknose shark landings for the directed fishery could decrease from $172,197 under alternative A1 to $41,269 under preferred alternative A4. This is a loss of $130,928 or a 76-percent reduction in total annual gross revenues from blacknose sharks for directed shark fishermen. Because incidental fishermen would not be able to retain blacknose sharks, they would lose an estimated $12,054 in annual gross revenues from blacknose shark landings.

This alternative would also prohibit the use of gillnets to land sharks as explained under alternatives B2 and B3. Under alternative A4 and either B2 or B3, lost annual gross revenues for all vessels landing non-blacknose SCS using gillnet gear would be between $275,008 and $287,427. This is a reduction of 42 to 43 percent in the annual gross revenues for the entire non-blacknose SCS fishery compared to alternative A1 ($661,513). Total lost annual gross revenues for directed shark permit holders using gillnet gear to land non-blacknose SCS would be between $268,580 and $275,832, which is a reduction of 42 to 45 percent from the annual gross revenues for directed permits holders under alternative A1 ($641,006).

The five to seven gillnet vessels that primarily target non-blacknose SCS may experience higher losses. Total lost annual gross revenues for incidental shark permit holders using gillnet gear to land non-blacknose SCS under alternative A4 and either B2 or B3 would be between $6,429 and $11,595, which is a reduction of 43 to 68 percent from alternative A1 ($20,507).

In addition, LCS are also landed with gillnet gear. As such, alternative A4 in combination with alternatives B2 and B3 would also impact LCS fishermen using gillnet gear. Under alternative A4 and either B2 or B3, lost annual gross revenues for all vessels landing LCS using gillnet gear would be between $106,479 and $109,339. This is a reduction of three percent in the annual gross revenues for the entire LCS fishery compared to alternative A1 ($3,328,663).

NMFS prefers alternative A4 at this time because by reducing overall effort in the SCS fishery, NMFS would reduce the level of blacknose shark discards such that, assuming all the mortality from other fisheries is also reduced appropriately, the total blacknose shark mortality would stay below the TAC needed to rebuild the stock. Under alternative A4, blacknose shark landings would decrease by 76 percent and discards would decrease by 81 percent. Landings for non-blacknose SCS would also decrease by 76 percent and discards could decrease by 2–3 percent. In addition, alternative A4 in combination with either alternative B2 or B3 could decrease landings of LCS by only three percent, but could decrease discards of LCS by up to 15 percent. These reductions in landings of all SCS would result in a 76-percent reduction in gross revenues from SCS landings overall; however, such a reduction is needed to lower the overall mortality on blacknose sharks. While gillnet fishermen would be impacted the most and would have estimated annual gross revenue losses between $377,928 and $365,067, alternative A4 would allow for a higher non-blacknose SCS than blacknose shark quota (56.9 mt dw) compared to alternative A3 (42.7 mt dw) because associated gillnet effort is anticipated to decline more under alternative A4 leaving a larger quota available for the rest of the SCS fishery. This higher quota would benefit the larger SCS fishery, while the prohibition on the use of gillnets would affect a small number of directed gillnet fishermen.

Under alternative A1, the no action alternative, NMFS would maintain the current SCS complex and annual quota for the complex of 454 metric ton (mt) dressed weight (dw). Under this alternative, there would be neutral social and economic impacts to directed and incidental fishermen in the short-term as the gross revenues from SCS landings, including blacknose shark landings, would be the same as the status quo. These measures would also have neutral ecological impacts for finetooth, Atlantic sharpnose, and bonnethead sharks within the SCS complex, which have all been determined to not be overfished with no overfishing occurring. However, this alternative would have negative ecological impacts on blacknose sharks, which have been determined to be overfished with overfishing occurring, as there would be no reduction in current blacknose landings. Without reductions in current blacknose shark mortality, NMFS would not be able to achieve the TAC of 19,200 blacknose sharks per year recommended by the 2007 blacknose shark stock assessment. Without achieving such a reduction in mortality, blacknose sharks would not be able to rebuild within their specified rebuilding timeframe and landings and associated revenues would likely decline in the long-term as the blacknose shark stock continues to decline.

Alternative A2 would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota and a separate non-blacknose SCS quota, which would be comprised of finetooth, Atlantic sharpnose, and bonnethead sharks. The non-blacknose SCS quota would be the current SCS quota (454 mt dw) minus average annual landings of blacknose sharks (136,595 lb dw or 61.5 mt dw per year). This would result in an non-blacknose SCS quota of 392.5 mt dw per year (454 mt dw − 61.5 mt dw = 392.5 mt dw). The blacknose shark quota would be a 78-percent reduction in current landings or 13.5 mt dw (29,762 lb dw per year) (61.5 mt dw × 78 percent = 48 mt dw; 61.5 mt dw − 48 mt dw = 13.5 mt dw per year). This is equivalent to approximately 2,834 blacknose sharks per year assuming an average commercial shark fishery weight (excluding bycatch and recreational landings) of blacknose = 10.5 lb dw.

Alternative A2 would have neutral ecological impacts on finetooth, Atlantic sharpnose, and bonnethead sharks as it would most likely not result in reduced landings of any of these species since the overall SCS quota would only be reduced by the average annual blacknose shark landings. However, although this alternative could reduce landings of blacknose sharks by 78 percent, because discards would continue as fishermen directed on non-blacknose SCS, overall mortality for blacknose sharks would still be above the commercial sector ACL of 44,853.8 lb dw per year (7,094 blacknose sharks per year), even if the retention of blacknose sharks was prohibited. This would have negative ecological impacts for blacknose sharks as it would not allow them to rebuild within their allotted rebuilding time.

NMFS anticipates that non-blacknose SCS landings would not decrease as the non-blacknose SCS quota would only be reduced by the average blacknose shark landings. Total gross revenues for non-blacknose SCS landings are anticipated to be the same for alternative A2 as under alternative A1 ($661,513). As such, social and economic impacts on directed and incidental shark fishermen for the non-blacknose SCS quota would be neutral under alternative A2 in the short term. However, the blacknose shark quota would be a 78-percent reduction based on average landings from 2004–2007. Total gross revenues for the blacknose shark landings for the entire fishery would decrease from $172,197 under alternative A1 to $37,500 under this alternative. Because directed permit holders are responsible for the majority of blacknose shark landings, it is anticipated that directed permit holders would experience the largest economic impacts under this alternative.

NMFS does not prefer alternative A2. Specifically, under this alternative, discards of blacknose sharks would continue as fishermen directed on SCS other than blacknose shark. This would result in a higher overall mortality for blacknose sharks than what would be allowed under the rebuilding plan. In the long term, a decrease in revenues may be expected as the blacknose shark stock continues to decline resulting in reduced landings.

Alternative A3 is similar to alternative A4 in that it would remove blacknose sharks from the SCS quota and create a blacknose shark quota and a separate non-blacknose SCS quota equal to 42.7 mt dw (94,115 lb dw), which would be comprised of finetooth, Atlantic sharpnose, and bonnethead sharks. The non-blacknose SCS quota equates to an 82-percent reduction from the average current landings of finetooth, Atlantic sharpnose, and bonnethead sharks from 2004 through 2007. The blacknose shark quota would be 16.6 mt dw (36,526 lb dw), which is the amount of blacknose sharks that would be harvested while the non-blacknose SCS quota is harvested assuming fishermen continue to direct on non-blacknose SCS. Under this alternative, as with alternative A4, incidental fishermen would not be allowed to retain any blacknose sharks. Also, this alternative, as with alternative A4, assumes that directed fishermen would fish for non-blacknose SCS in a directed fashion until the non-blacknose SCS quota reached 80 percent. At that time, the entire SCS fishery, including blacknose sharks, would close, and all SCS would be discarded. The main difference between this alternative and alternative A4 is that this alternative assumes the gillnet fishery continues as it does now (alternative B1 as described below). Under this alternative, NMFS estimates that total mortality for blacknose sharks would be 43,601 lb dw, which is below the commercial sector ACL of 44,853.8 lb dw.

Alternative A3 is anticipated to have positive ecological impacts for blacknose, Atlantic sharpnose, bonnethead, and finetooth sharks as it would reduce landings by 73 percent for blacknose sharks and 82 percent for non-blacknose SCS based on current landings. In addition, it would reduce discards by 74 percent for blacknose sharks but could increase discards by up to 62 percent for non-blacknose SCS based on current discards.

Under alternative A3, total annual gross revenues for non-blacknose SCS for the entire fishery are anticipated to be $119,526. This is an 82-percent reduction in gross revenues from the gross revenues expected under alternative A1 ($661,513). Since directed permit holders land approximately 97 percent of the non-blacknose SCS landings as explained in alternative A1, NMFS anticipates that directed permit holders would lose more in gross revenues from non-blacknose SCS landings compared to incidental permit holders. Total gross revenues for directed shark permit holders of non-blacknose SCS under alternative A3 would be $115,821, which is a loss of $525,185 in gross revenues or an 82-percent reduction in gross revenues from the gross revenues expected under alternative A1 ($641,006). Total gross revenues for incidental shark permit holders of non-blacknose SCS under alternative A3 would be $3,705, which is a loss of $16,802 in gross revenues and an 82-percent reduction in gross revenues from the gross revenues expected under alternative A1 ($20,507).

Under alternative A3, total annual gross revenues for the blacknose shark landings for the directed fishery would decrease from $172,197 under the alternative A1 to $46,023, which is a loss of $126,174, or 73 percent. Because incidental fishermen would not be able to retain blacknose sharks, they would lose an estimated $12,054 in gross revenues from blacknose shark landings. Given alternative A3 has a larger reduction in quota of non-blacknose SCS and would affect more directed and incidental permit holders compared to alternative A4, NMFS is not preferring alternative A3 at this time.

Alternative A5 would close the entire SCS commercial shark fishery, prohibiting the landing of any SCS, including blacknose sharks. This alternative would have positive ecological impacts for all SCS species as it would prohibit landings of finetooth, Atlantic sharpnose, bonnethead, and blacknose sharks. On average, landings of finetooth, Atlantic sharpnose, bonnethead, and blacknose sharks were 120,000 lb dw, 363,303 lb dw, 37,562 lb dw, and 136,595 lb dw, respectively. However, since shark fishermen would presumably continue to fish for LCS using BLL gear, discards of SCS could continue on BLL gear. Additionally, fishermen using gillnet gear in other fisheries would continue to use gillnets. As such, discards of SCS on gillnet gear would also continue.

This alternative could also have positive ecological impacts for LCS. Since gillnets are the primary gear used to target SCS, except for strikenets, which are used to target blacktip sharks, presumably all directed shark gillnet fishing, with the exception of fishing with strikenets, would stop under alternative A5. If all directed shark gillnet fishing stopped under alternative A5, NMFS estimates that landings of LCS could decrease by approximately 102,171 lb dw (3 percent) compared to current average landings of 3,170,155 lb dw from 2004–2007; however, this decrease may be slightly less if blacktip sharks continue to be harvested with directed strikenet gear. Alternative A5 could also decrease LCS dead discards by 52,979 lb dw or 15 percent compared to average annual discards of 359,129 lb dw from 2003–2005.

Under alternative A5, NMFS estimates there would be a loss of average annual gross revenues of $661,513 for non-blacknose SCS and $172,197 from blacknose shark landings for a total loss of $833,710 in annual gross revenues from SCS landings. Directed permit holders would lose $641,006 in average annual gross revenues from non-blacknose SCS landings and $160,143 in average annual gross revenues from blacknose shark landings for a total of $801,149 in average annual gross revenues. Incidental permit holders would lose $20,507 in average annual gross revenues from non-blacknose SCS landings and $12,054 in average annual gross revenues from blacknose shark landings for a total of $32,561 in average annual gross revenues under alternative A5. This alternative could also result in a decrease in average annual gross revenues of LCS of $107,280.

While this alternative could reduce blacknose mortality below the commercial sector ACL of 44,853.8 lb dw, it would also completely eliminate the fishery for all other SCS species. This would severely curtail data collection of all SCS that could be used for future stock assessments and would have larger economic impacts on directed and incidental fishermen than any of the other alternatives. Thus, NMFS does not prefer this alternative at this time.

B. Commercial Gear Restrictions

NMFS considered several alternatives for commercial gear restrictions ranging from no action to closing the gillnet fishery. Specifically, NMFS considered alternative B1—no action, maintain current gear regulations; alternative B2—close the gillnet fishery and remove gillnet gear from authorized gear type for commercial shark fishing; and alternative B3—close the gillnet fishery to commercial shark fishing from South Carolina south, including the Gulf of Mexico and Caribbean. Alternative B3 is the preferred alternative.

Under alternative B3, NMFS would close the gillnet fishery to commercial shark fishing from South Carolina south, including the Gulf of Mexico and Caribbean Sea. This alternative would eliminate the predominant gear type used to harvest blacknose sharks in the South Atlantic region and would help rebuild the blacknose shark stock by reducing gillnet mortality throughout their habitat range. Blacknose sharks are commonly found from North Carolina to Brazil, including the Gulf of Mexico and Caribbean Sea. This alternative would

also help mitigate impacts of managing the smooth dogfish fishery (*see* alternatives F2 and F3), which uses gillnet gear predominately from North Carolina north. This alternative is expected to have a positive ecological impact for the overfished blacknose shark population and for the SCS fishery as a whole by reducing landings from the primary gear used to target SCS. This prohibition is expected to decrease the total landings per year of directed and incidental shark permit holders for all SCS from 659,459 lb dw per year to 158,240 lb dw per year. This is a 76 percent reduction. Blacknose sharks are not reported as landed with gillnets north of South Carolina and NMFS does not expect prohibiting gillnets from South Carolina south to change this. The directed blacknose shark landings are anticipated to be reduced from 127,033 lb dw per year to 55,858 lb dw per year, or a 44 percent reduction in landings. The incidental blacknose shark landings would drop from 9,562 lb dw per year to 9,262 lb dw per year, or a 3 percent reduction in landings. Under this alternative, NMFS assumes that all directed shark gillnet effort would cease. However, it is estimated that blacknose sharks would still be caught and discarded incidentally by fishermen targeting other species (*i.e.,* Spanish mackerel) using gillnet gear. NMFS estimates that 158.6 blacknose sharks per year (2,284 lb dw per year) would be discarded in these fisheries.

The ecological impacts of alternative B3 on the LCS and smooth dogfish fishery are expected to be minimal since most smooth dogfish landings occur from North Carolina north and the majority of LCS landings occur with BLL gear. With the prohibition of gillnets from South Carolina south, total landings per year of LCS are anticipated to decrease by 101,409 lb dw per year (3 percent of the fishery).

This alternative could have positive ecological impacts on protected species. From 2004–2007, a total of 14 loggerhead and leatherback sea turtles (2 discarded dead) were caught in gillnets. Also, interaction with north Atlantic right whales and dolphin species could occur in shark gillnet fishing areas. In 2006, a right whale was found dead in Florida and available evidence suggests that the entanglement and injuries of the whale by gillnet gear eventually led to the death of the animal. It is unknown if the gillnet gear was from the shark fishery, but the removal of gillnets as an authorized gear type for sharks would reduce interactions with protected species. Some protected shark species that are impacted by gillnets are the sand tiger, sandbar, angel, and dusky sharks. All of these protected species populations would benefit from the elimination of gillnet gear.

This alternative would have a negative social and economic impact on Federally permitted directed and incidental fishermen. The gillnet fishery from South Carolina south accounts for 44 percent of the total landings of SCS by fishermen with directed permits, and 26 percent of SCS landings by fishermen with incidental permits. On average, from South Carolina south, directed shark permit holders land 283,462 lb dw ($358,261) of SCS with gillnet gear. Thus, under this alternative, directed shark fishermen could lose approximately $358,261 of their current $807,792 in annual gross revenues. Similarly, on average, incidental shark permit holders land 5,381 lb dw ($6,807) of SCS with gillnet gear from South Carolina south. This alternative would cause $6,807 in lost SCS annual gross revenues for incidental shark fishermen. Combined, directed and incidental shark fishermen would lose $365,068 from their current annual gross revenues of $833,634.

This alternative would have minor social and economic impacts on the LCS fishery. The directed shark permit holders are estimated to lose 101,132 lb dw per year of LCS landings under alternative B3. This alternative could equate to $106,189 in lost LCS revenues for directed shark fishermen. On average, incidental shark permit holders are estimated to lose 2,761 lb dw of LCS landings. This alternative could equate to $290 in lost LCS revenues for incidental shark permit holders. This represents a 3 percent reduction in LCS annual gross revenues for the total LCS fishery.

This alternative is not expected to have social and economic impacts on the smooth dogfish fishery. This species is primarily caught commercially in gillnet gear from North Carolina north. As such, NMFS does not expect the prohibition of gillnet gear in areas south of North Carolina to impact smooth dogfish fishermen.

The preferred alternative, B3, reduces fishing effort on blacknose sharks by removing gillnet gear from the areas where blacknose sharks interact with gillnet gear. This is anticipated to reduce blacknose shark landings by 71,475 lb dw per year. This alternative also allows gillnet gear in the areas where the majority of the smooth dogfish are landed. By allowing gillnet gear in North Carolina and north, NMFS is mitigating impacts on the smooth dogfish fishery while reducing mortality on blacknose sharks. The removal of gillnet gear from South Carolina south could also have positive ecological impacts to non-blacknose SCS by reducing their landings by an estimated 217,368 lb dw. However, this alternative could also have significant social and economic impacts by affecting approximately 37 directed and 6 incidental SCS and LCS permit holders. It will also reduce SCS and LCS revenues for directed permit holders by $464,450 and SCS and LCS revenues for incidental permit holders by $7,097. This alternative is also anticipated to have positive ecological impacts on protected resources. Given the need to reduce blacknose shark mortality to rebuild the stock, the fact that gillnet gear is the predominate gear used in the Atlantic shark fisheries to harvest blacknose sharks, the fact that this would have minimal impact on smooth dogfish fishermen, and the continuing bycatch concerns regarding this gear, particularly of protected species, NMFS is preferring alternative B3 at this time.

Under alternative B1, the no action alternative, NMFS would maintain BLL, rod and reel, bandit, and gillnet gear as authorized gears in the Atlantic shark fishery and would maintain all the other gear requirements such as corrodible hooks for BLL fishermen and net checks for gillnet fishermen. Since there would be no change to the gear restrictions under alternative B1, the ecological impacts for Atlantic sharpnose, bonnethead, and finetooth sharks would be neutral as these species were not determined to be overfished and overfishing is not occurring. Additionally, any current ecological impacts on LCS and protected resources would continue. However, this no action alternative could have negative ecological impacts on blacknose sharks because NMFS would not be able to achieve the commercial sector ACL of 44,853.8 lb dw per year (7,094 blacknose sharks per year).

No negative social or economic impacts would be anticipated under alternative B1. Currently, directed and incidental SCS fishermen retain a total annual gross revenues of $833,634, while the directed and incidental LCS fishermen have a larger annual gross revenues at $3,328,663. While this alternative would have the fewest socio-economic impacts compared to alternatives B2 and B3, it would not aid in achieving the reduction needed to rebuild blacknose sharks, consistent with the Magnuson-Stevens Act.

Under alternative B2, NMFS would remove gillnet gear as an authorized gear type for commercial shark fishing, which would close the shark gillnet fishery. Shark LAP holders could

continue to use other commercially-authorized gears such as BLL, rod and reel, handline, or bandit gear. This alternative would have positive ecological impacts for SCS, LCS, and smooth dogfish as it would reduce commercial landings and decrease bycatch rates of both target and non-target species, including protected resources. Since gillnets are the dominant gear type used to target SCS, this restriction would have a large impact on the total landings per year. The directed shark permit holders have, on average, total landings of all SCS of 639,015 lb dw per year with all gear types. Of these, 289,546 lb dw are made with gillnet gear. If gillnets were prohibited, the average total landings could drop 45 percent to 349,469 lb dw per year (639,015—289,546 = 349,469 lb dw per year). Shark landings by incidental permit holders would decline 5 percent from 20,443 lb dw per year to 19,497 lb dw per year. Given that commercial blacknose landings in gillnets were 71,827 lb dw per year of the total 136,595 lb dw landings, removing gillnets from the shark commercial landings would help achieve the 78-percent reduction needed to rebuild blacknose sharks. Removing gillnet gear could reduce blacknose shark landings by an estimated 53 percent.

As described above under alternative B3, with the removal of gillnet gear, NMFS assumes that all directed shark gillnet fishing effort would cease. However, blacknose sharks would still be caught and discarded by fishermen targeting other species (*i.e.,* mackerel) and using gillnet gear. NMFS estimates that 158.6 blacknose sharks or 2,248 lb dw per year would be discarded incidentally by these other fisheries.

While LCS are also caught in gillnet gear, as described in alternative B3, the ecological impacts would be minimal for the LCS fishery since bottom longlines are the primary gear type used in the LCS fishery. However, this alternative could have a significant impact on the smooth dogfish fishery because gillnets are the primary gear type used in this fishery. This species is not currently managed under a Federal fishery management plan, and a stock assessment has not been conducted for this species. If alternative F2, adding smooth dogfish under NMFS management, is implemented in conjunction with this alternative, then Federal permit holders would not be allowed to land smooth dogfish sharks using gillnet gear. Prohibiting this gear would result in reduced smooth dogfish landings. The ecological impacts of this are unknown since a stock assessment has not been conducted for this species.

This alternative could have a significant negative social and economic impact, and would have a considerable impact on the total landings per year of SCS. On average, directed shark permit holders landed 289,546 lb dw of SCS with gillnet gear. Alternative B2 would equate to approximately $365,955 in lost total SCS annual gross revenues for directed shark fishermen. On average, incidental shark permit holders landed 9,465 lb dw of SCS with gillnet gear per year. This alternative would equate to approximately $11,973 in lost SCS revenues for incidental shark fishermen. Overall, this represents a 45-percent reduction in SCS revenues for directed shark fishermen and a 46-percent reduction in SCS revenues for incidental shark fishermen compared to alternative B1. This alternative would have minimal negative social and economic impacts on the LCS fishery as most LCS are landed with BLL gear.

Gillnets are also the primary gear type used to catch smooth dogfish. As such, removal of this gear type in alternative B2 in combination with adding smooth dogfish under NMFS management (alternative F2) could have large impacts on the smooth dogfish fishery. Because the smooth dogfish fishery is not Federally managed and there are no permitting or reporting requirements, NMFS cannot estimate the specific impact of closing this fishery. Using vessel trip report (VTR) data (primarily a northeast reporting system), an average of 213 vessels reported smooth dogfish landings per year between 2004 and 2007. Within the Coastal Fisheries Logbooks data (primarily a southeast reporting system), an average of 10 vessels reported smooth dogfish landings per year between 2004 and 2007. As such, NMFS estimates approximately 223 vessels catch and land smooth dogfish. However, as fishermen are currently not required to have a permit to retain smooth dogfish, this could be an underestimate. The landings data indicate that total landings from 1998–2007 averaged 950,859 lb dw per year, which equates to total annual gross revenues of approximately $357,286. This total annual gross revenue, which could be an underestimate, would be lost if NMFS prefers both alternative B2 and alternative F2.

Given the potential large negative social and economic impacts of alternative B2 to the SCS and LCS fisheries, and given the potentially large impacts to the smooth dogfish fishery, NMFS does not prefer this alternative at this time.

C. Pelagic Shark Commercial Effort Controls

NMFS also considered several alternatives to end overfishing of shortfin mako sharks ranging from no action to a minimum size to establishing a species-specific quota. Specifically, the alternatives considered are: alternative C1—no action, keep shortfin mako sharks in the pelagic shark species complex and maintain the quota; alternative C2—remove shortfin mako sharks from pelagic shark species quota and establish a shortfin mako quota; alternative C3—remove shortfin mako sharks from pelagic shark species quota and place this species on the prohibited shark species list; alternative C4 —establish a commercial size limit for shortfin mako sharks; alternative C5—take action at the international level to end overfishing of shortfin mako sharks; and alternative C6—promote the release of shortfin mako sharks brought to fishing vessels alive. Alternative C4 includes two sub-alternatives: alternative C4a—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 108 inches FL (274 cm FL) and alternative C4b—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 73 inches FL (185.4 cm FL). Alternatives C5 and C6 are the preferred alternatives.

Under alternative C5, which is one of the preferred alternatives, NMFS would take action under Section 304(i) of the Magnuson-Stevens Act. Section 304(i) provides for the Secretary to take immediate action to end overfishing at the international level and to develop both domestic and international recommendations for conservation and management. ICCAT assumes three shortfin mako shark stocks for assessment purposes: northern and southern Atlantic stocks, separated at 5° N latitude, and a Mediterranean stock. Based on the 2008 SCRS stock assessment on the North Atlantic shortfin mako stock, NMFS determined domestically that the North Atlantic stock of shortfin mako sharks is experiencing overfishing and approaching an overfished status.

Most shortfin mako shark landings are attributable to the recreational fishery. Recreational catches peaked in 1985 at about 80,000 fish, and ranged from less than 1,400 fish to over 31,000 fish in the remaining years. Shortfin mako sharks are also caught incidentally in the PLL fishery; fishermen generally do not target shortfin mako sharks in the

United States where shortfin mako sharks are caught incidentally in tuna and swordfish fisheries. Shortfin mako shark commercial landings have not exceeded 11,000 fish according to available estimates. Pelagic longline discards of shortfin mako sharks are generally negligible since the meat of this species is highly valued. Total commercial and recreational catches ranged from about 5,600 fish in 1998 to almost 80,000 fish in 1985, when recreational catches peaked.

U.S. commercial harvest of Atlantic shortfin mako sharks has historically been less than ten percent of the recorded total international landings, based on ICCAT data from 1997 through 2007. Because of the small U.S. contribution to Atlantic shortfin mako shark mortality, domestic reductions on shortfin mako shark mortality would not end overfishing of the entire North Atlantic stock. For instance, there are domestic regulations in place for shortfin mako sharks, such as a commercial quota, incidental shark trip limits, a fins-attached requirement, and recreational size and bag limits. However, implementing additional regulations in the United States only would not end overfishing of shortfin mako sharks. Therefore, NMFS believes that ending overfishing and preventing an overfished status would be better accomplished through the procedures set forth in Section 304(i) of the Magnuson-Stevens Act. The United States would continue to manage its relative impact on shortfin mako domestically by maintaining existing quota and promoting live release in concert with Alternative C6, while taking immediate action at the international level to end overfishing. It would develop international recommendations and present them to international fisheries organizations, such as ICCAT, where other countries that have large takes of shortfin mako sharks could participate in shortfin mako shark mortality reductions. These recommendations would also be provided to Congress to raise its awareness of the need for international action. In the short term, this alternative would not result in any negative economic or social impacts on commercial fishermen as it would not restrict the retention of shortfin mako sharks, nor alter the pelagic shark quota. While this alternative would have neutral ecological impacts for shortfin mako sharks in the short term, any management recommendations to reduce mortality of shortfin mako sharks could have positive ecological impacts on shortfin mako sharks in the long term. The long term socioeconomic impacts cannot be estimated without knowing the potential management recommendations. NMFS expects in the long term that alternative C5 would render larger benefits to the species because other nations would help reduce overall mortality of the species.

Under Alternative C6, the second preferred alternative in this section, NMFS would promote the live release of shortfin mako sharks in the commercial shark fishery. This alternative could have slight positive or neutral ecological benefits for shortfin mako sharks because 69 percent are brought to the vessel alive and could be released. This action does not restrict commercial harvest and landing of shortfin mako sharks that are alive at haulback, and therefore, would have no adverse social or economic impacts. If promoting live release is successful, it could reduce landings and dead discards of shortfin mako. Because this alternative could have positive ecological impacts with minimal social and economic impacts, NMFS is preferring this alternative at this time.

Alternative C1 is the no action alternative and would maintain the existing regulations for shortfin mako sharks. The current commercial quota for common thresher, oceanic whitetip, and shortfin mako sharks is 488 mt dw. This alternative would likely maintain fishing mortality of shortfin mako sharks at current levels, and therefore, could have negative ecological impacts based on the 2008 ICCAT stock assessment. From 2004 to 2007, the average annual commercial shortfin mako shark landings were 72.5 mt dw. However, the existing 488 mt dw commercial quota for shortfin mako, common thresher, and oceanic whitetip sharks has not been reached to date and could allow landings of shortfin mako to increase.

Alternative C1 would likely not result in any adverse economic or social impacts as the no action alternative would not substantially modify or alter commercial fishing practices for shortfin mako sharks or other shark species. Based on the average landings from 2004—2007 and an ex-vessel price per pound of $1.59, shortfin mako shark landings are worth approximately $254,135 in annual gross revenues. However, as stated above, landings could increase. If the landings of shortfin mako sharks continue at current levels or increase, this could lead to further overfishing, negative ecological impacts, and potentially to the stock being overfished. Therefore, NMFS does not prefer alternative C1 at this time.

Alternative C2 would remove shortfin mako sharks from the pelagic shark species quota, and would establish a species-specific quota for shortfin mako sharks based on U.S. landings. Currently, the annual quota for common thresher, oceanic whitetip, and shortfin mako is 488 mt dw. Based on the average commercial landings of shortfin mako sharks from 2004–2007, the species-specific quota for shortfin mako sharks would be 72.5 mt dw. The common thresher and oceanic whitetip sharks would be allocated a quota of 415.5 mt dw after removal of the shortfin mako quota of 72.5 mt dw (488 mt dw − 72.5 mt dw = 415.5 mt dw). Removing shortfin mako sharks from this group of pelagic sharks would allow them to be managed separately and would give NMFS the ability to track shortfin mako landings more efficiently and would cap overall shortfin mako landings at the current landings level. The 2008 ICCAT stock assessment did not recommend a TAC. Therefore, it is difficult to determine if setting a species-specific quota for shortfin mako sharks at the level of current U.S. commercial landings would have positive ecological benefits for the stock. However, setting a quota of 72.5 mt dw would maintain fishing mortality at current levels and prevent commercial landings from increasing, which may provide more ecological benefits than maintaining the quota at 488 mt dw for common thresher, oceanic whitetip, and shortfin mako sharks. Because there are no current stock assessments for oceanic whitetip or common thresher, it is difficult to determine the ecological impacts of setting a quota of 415.5 mt dw for these two species. Current average commercial landings from 2004 to 2007 for common thresher and oceanic whitetip combined, were 17.5 mt dw. It is not expected that the level of fishing effort or mortality would increase under this alternative and, therefore, alternative C2 would likely have neutral ecological impacts for common thresher and oceanic whitetip sharks.

Alternative C2 would have neutral or slightly negative socioeconomic impacts. On average, 72.5 mt dw of shortfin mako sharks was commercially landed between 2004 and 2007. Based on an ex-vessel price per pound of $1.59, this is equivalent to $254,135 in annual gross revenues. While fishermen would be able to maintain current fishing effort under this alternative, any increase in effort would be restricted by the species-specific quota of 72.5 mt dw. Thus, if the quota is reduced to 72.5 mt dw, which equals $254,135 in average

annual gross revenues, this could potentially result in a loss of average annual gross revenues of $1,456,458 for commercial fishermen if the entire 488 mt dw pelagic shark quota were landed as shortfin mako sharks. However, it is unlikely that 488 mt dw of shortfin mako would be landed as shortfin mako is an incidental catch in the PLL fishery. Therefore, this alternative could result in neutral or slightly negative socioeconomic impacts for commercial fishermen. NMFS does not prefer this alternative at this time because the United States contributes a small portion of the overall shortfin mako mortality in the North Atlantic, the 2008 stock assessment did not recommend a TAC for this species, and ICCAT has not set a species-specific quota for shortfin mako sharks.

Alternative C3 would add shortfin mako sharks to the prohibited species list. Adding shortfin mako sharks to the prohibited species list would make it illegal to retain and land shortfin mako sharks commercially or recreationally. Shark species can be added to the prohibited species list if two of the following four criteria are met: (1) There is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries; (3) the species is not commonly encountered or observed caught as bycatch in fishing operations; or (4) the species is difficult to distinguish from other prohibited species (*i.e.,* look-alike issue). Shortfin mako could meet criteria (1) and (4). NMFS determined that shortfin mako sharks were experiencing overfishing based on the 2008 ICCAT stock assessment. In addition, shortfin mako sharks look similar to other sharks on the prohibited species list (*i.e.,* white and longfin mako sharks). This alternative would likely have neutral or slightly positive ecological impacts for this stock. Average commercial landings of shortfin mako sharks from 2004 to 2007 were 72.5 mt dw, and were well below the 488 mt dw quota as they are primarily caught as incidental catch in the PLL fishery, and there is no directed commercial fishery for this species. In addition, the United States does not contribute a significant proportion of Atlantic-wide fishing mortality of shortfin mako sharks. According to observer reports from 1992–2006, 68.9 percent of shortfin mako sharks are brought to the vessel alive and 30.1 percent come to the vessel dead. Also, of the shortfin mako sharks that are caught, 61 percent are kept, 22 percent are discarded alive, and 10 percent are discarded dead. Although prohibiting the retention of shortfin mako sharks may have more positive ecological impacts for this stock than alternative C2, this alternative could also result in a slight increase of dead discards.

Alternative C3 would have negative economic impacts for commercial fishermen because, even though it is not a species that is targeted by commercial fishermen, when it is caught, it is often kept due to its high value and suitability for consumption relative to other shark species. Based on an ex-vessel price of $1.59 per lb, PLL fishermen make approximately $254,135 in annual gross revenues from shortfin mako sharks. If shortfin mako sharks were added to the prohibited species list, fishermen would no longer be able to land shortfin mako sharks and would therefore lose the associated shortfin mako shark revenue. This alternative could also lead to increased operation time if commercial fishermen have to release and discard all shortfin makos that are caught on PLL gear. In addition, if the commercial PLL fleet expands in the future, placing shortfin mako sharks on the prohibited species list could result in a loss of future revenues for the commercial PLL fishery. Although prohibiting the retention of shortfin mako sharks may have more positive ecological impacts for this stock than alternative C2, this alternative could also result in increased dead discards. Therefore, NMFS does not prefer alternative C3 at this time.

Alternative C4 would establish a commercial size limit for shortfin mako sharks. Currently, there is no commercial size limit for shortfin mako sharks; therefore, establishing a size limit would result in varying degrees of ecological and economic impacts. The DEIS examines two size limits for shortfin mako sharks, one based on the size of sexual maturity of females (alternative C4a—108 inches FL or 274 cm FL) and one based on the size of sexual maturity of males (alternative C4b—73 inches FL or 185.4 cm FL). Because shortfin mako sharks are dressed at sea by the commercial fleet, a minimum FL measurement would be ineffective in enforcing a size limit. Therefore, an interdorsal length (IDL) measurement (the straight line measurement from the base of the trailing edge of the first dorsal fin to the base of the leading edge of the second dorsal fin) would be utilized.

NMFS analyzed both the PLL observer program (POP) data and the HMS logbook data to determine the percentage of shortfin mako sharks that are currently landed that would be released alive or dead if commercial size limits in alternatives C4a and C4b were implemented. The full analysis can be found in the DEIS. Because the commercial fishery harvests so many sharks above either size limit and so few sharks below the minimum size limits, NMFS believes that the size limits considered under these two sub-alternative would have minimal increases in the number of sharks released alive. NMFS also assumes that not all shortfin mako sharks that are kept are alive when reaching the vessel. Thus, imposing a size could lead to an increase in dead discards. It is important to note that because the shortfin mako sharks that would have been dead discards under alternative C4 would have been traditionally kept, no additional shortfin mako shark mortality would be associated with the increase in dead discards.

Alternatives C4a and C4b would both result in minor positive ecological impacts to the shortfin mako stock, as more shortfin mako sharks would be released alive than under the alternative C1. The positive impacts are less for C4b than for C4a because there are fewer shortfin mako sharks released alive under alternative C4a. Also, retention of immature female sharks would still be allowed in alternative C4b because the size limit would be set at the size at which 50 percent of all male shortfin mako sharks reach sexual maturity, which is lower than the size at which 50 percent of all female shortfin mako sharks reach sexual maturity. Alternative C4a would result in the live release of 84 more shortfin mako sharks per year than alternative C4b, and retention of immature females would be minimized because the size limit would equal the size at which 50 percent of all females reach sexual maturity.

Alternatives C4a and C4b would both have minimal economic impacts, because only a small percentage of commercial landings would be affected by the size restrictions. Under alternative C4a, NMFS estimates that the annual gross revenues lost from the sale of meat and fins of shortfin mako sharks would be $4,513. Under alternative C4b, NMFS estimates that the annual gross revenue loss to be approximately $75. Given the relatively small number of additional live releases of shortfin mako sharks under either alternative C4a or C4b, NMFS does not prefer either alternative at this time.

D. SCS Recreational Effort Controls

NMFS considered several alternatives regarding the SCS recreational fishery. Specifically, the alternatives considered

are: alternative D1—no action, maintain current recreational retention limit for SCS; alternative D2—modify the minimum recreational size (currently 54 inches FL or 137 cm FL) for blacknose sharks based on their biology and/or introduce a slot limit where smaller or larger individuals can be landed; alternative D3—increase the retention limit for Atlantic sharpnose sharks based on current catches; and alternative D4—prohibit retention of blacknose sharks in the recreational shark fisheries. Alternative D4 is the preferred alternative.

Under alternative D4, NMFS would prohibit the retention of blacknose sharks in the recreational shark fishery. Recreational fishermen would likely still catch blacknose sharks as they are fishing for other species, however, they would not be permitted to retain blacknose sharks and would have to release them. This alternative could have positive ecological impacts for the stock to the extent that recreational landings of blacknose sharks in Federal waters are reduced. Current regulations (alternative D1) prohibit landing any blacknose sharks that are under 54 inches FL (137 cm FL). Few, if any blacknose sharks reach that minimum size. As such, few blacknose sharks should be landed under the current regulations by Federally permitted anglers. To the extent that individual States mirror Federal regulations, blacknose shark recreational landings could also be reduced in State waters.

Given that current State recreational catch rates are approximately 6,958 blacknose sharks per year and total (Federal and State) blacknose shark recreational landings are approximately 10,360 blacknose per year, NMFS assumes that blacknose shark landings would be reduced by at least 3,403 blacknose sharks per year under alternative D4. However, in order to achieve the TAC, blacknose shark recreational landings would need to be reduced by 78 percent or to 2,280 blacknose sharks per year (*see* alternative D1). Thus, cooperation by individual States to prohibit the retention of blacknose sharks in State waters and the ASMFC would be essential to achieving the mortality reduction required to achieve the TAC recommended by the latest stock assessment to rebuild the blacknose shark stock.

Alternative D4 could have negative social and economic impacts on recreational fishermen, including tournaments and charter/headboats, if the prohibition of blacknose sharks resulted in fewer charters. However, since blacknose sharks are not one of the primary species targeted by recreational anglers in tournaments or on charters, NMFS does not anticipate large negative social and economic impacts from this preferred alternative in tournaments or in the charter/headboat sector.

The preferred alternative would reduce the number of blacknose sharks recreationally landed in Federal waters and would help to achieve the overall TAC of 19,200 blacknose sharks killed per year. The other alternatives to no action and modifying the minimum size limit (*see* below) would not achieve the reduction in mortality of blacknose sharks and reach the TAC recommendation. Also, increasing the retention limit of Atlantic sharpnose sharks could cause overfishing to occur under alternative D3. Thus, NMFS believes, at this time, that alternative D4, the preferred alternative, would be the best method to improve the status of the SCS species and rebuild blacknose sharks.

Under alternative D1, the no action alternative, NMFS would maintain the existing recreational retention limits for SCS. Recreational anglers are currently allowed one shark of any species per vessel per trip with a minimum size of 54 inches FL (137 cm FL). In addition, anglers are allowed one bonnethead shark and one Atlantic sharpnose shark per person per trip with no minimum size. Since there would be no change to the retention or size limits under alternative D1, the ecological impacts associated with this alternative would be neutral for Atlantic sharpnose, bonnethead, finetooth sharks, and many other species of shark as all species were not determined to be overfished and overfishing is not occurring. This alternative could have negative ecological impacts on blacknose sharks as blacknose sharks were determined to be overfished with overfishing occurring. Without reductions in current blacknose shark recreational landings, NMFS would not be able to achieve the TAC of 19,200 blacknose sharks per year recommended by the 2007 blacknose shark stock assessment. However, blacknose sharks rarely, if ever, reach 54 inches FL as a maximum size. As such, under current regulations, most blacknose sharks should not be landed in Federal waters. NMFS does not expect this alternative to have any negative social or economic impacts in the short-term. Since this alternative would not reduce blacknose shark recreational landings, NMFS does not prefer this alternative at this time.

Alternative D2 would modify the minimum recreational size for blacknose sharks based on their biology. The current minimum size is based on the size at which 50 percent of female sandbar sharks reach sexual maturity. A minimum size for blacknose sharks that corresponds to the size at which 50 percent of the female blacknose sharks reach sexual maturity is 3 ft FL (91.4 cm FL). Alternative D2 would lower the current minimum size for blacknose sharks and could lead to increased landings of blacknose sharks compared to the status quo. According to data from the Marine Recreational Fishing Statistics Survey (MRFSS), the average length of blacknose sharks landed by recreational anglers is less than 3 ft FL (91.4 cm FL). As such, this alternative would restrict landings to sexually mature fish and, thus, could have some ecological benefit if the average length of blacknose sharks landed increases as a result. However, this alternative could increase landings of blacknose sharks, contrary to the TAC recommended by the 2007 SCS stock assessment. Since decreasing the minimum size for blacknose sharks would likely result in increased landings of blacknose sharks, NMFS does not prefer this alternative at this time.

Alternative D3 would increase the retention limit for Atlantic sharpnose sharks based on their current catches and stock status. Based on the 2007 stock assessment for Atlantic sharpnose, the biomass for Atlantic sharpnose sharks is falling towards the maximum sustainable yield (B_{MSY}) threshold. While the stock is not currently overfished or experiencing overfishing, the latest stock assessment suggests that increasing fishing efforts, such as increasing the retention limit of Atlantic sharpnose sharks, could result in an overfished status and/or cause overfishing to occur in the future. Any increase in the retention limit for Atlantic sharpnose sharks would provide positive social and economic impacts, especially if this resulted in more charter trips for charter/headboats. However, since increasing the retention limit for Atlantic sharpnose sharks could result in increased fishing effort and result in negative ecological impacts for the stock, NMFS does not prefer this alternative at this time.

E. Pelagic Shark Recreational Effort Controls

NMFS considered similar alternatives for recreational pelagic shark measures to end overfishing of shortfin mako as were considered for commercial pelagic shark management measures. Specifically, the alternatives considered for pelagic sharks in the recreational fishery are: Alternative E1—no action, maintain the current recreational

measures for shortfin mako sharks; alternative E2—increase the recreational minimum size limit of shortfin mako sharks; alternative E3—take action at the international level to end overfishing of shortfin mako sharks; alternative E4—promote the release of shortfin mako sharks brought to fishing vessels alive; and alternative E5—prohibit landing of shortfin mako sharks in the recreational fishery (catch and release only). Alternative E2 has two sub-alternatives: alternative E2a—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 108 in FL and alternative E2b—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 73 inches FL. Alternatives E3 and E4 are the preferred alternatives.

Under alternative E3, NMFS would take immediate action at the international level to develop binding management measures with other nation to end overfishing of shortfin mako sharks. As discussed under alternative C5, above, the recreational fishery contributes to most of the U.S. landings, and the United States contributes only a minor portion of the mortality for North Atlantic shortfin mako sharks. Therefore, NMFS believes that ending overfishing and preventing an overfished status would best be accomplished through international management measures established at international organizations such as ICCAT. While this alternative would have neutral ecological, social, and economic impacts for shortfin mako sharks in the short term, any management recommendations adopted at the international level to help protect shortfin mako sharks could have positive ecological impacts on shortfin mako sharks in the long term.

Under alternative E4, NMFS would promote the live release of shortfin mako sharks in the recreational shark fishery. This alternative would not result in any changes in the current recreational regulations regarding shortfin mako sharks. Recreational shark fishermen would still be able to retain one authorized shark species greater than 54 inches FL per vessel per trip, and one Atlantic sharpnose and one bonnethead shark per person per trip. While this alternative is expected to have neutral ecological impacts to the shortfin mako shark stock in the short term, NMFS would encourage the catch and release of live shortfin mako sharks. This alternative is also expected to have neutral social and economic impacts. If any management recommendations are adopted at the international level to help protect shortfin mako sharks under the preferred alternative E3, NMFS would implement those recommendations, which, in combination with alternative E4, could have positive ecological impacts on shortfin mako sharks in the long term.

Under alternative E1, the no action alternative, NMFS would maintain the current recreational shark fishing regulations that pertain to shortfin mako sharks established in the 2006 Consolidated HMS FMP. The current bag limit for HMS Angling and HMS Charter/Headboat permit holders is one authorized shark species greater than 54 inches FL (137 cm FL) per vessel per trip, and one Atlantic sharpnose and one bonnethead shark per person per trip. Alternative E1 would likely not result in any adverse economic or social impacts as the No Action alternative would not substantially modify or alter recreational fishing practices for shortfin mako sharks or other shark species. Alternative E1 would also not aid in ending overfishing. As such, NMFS does not prefer this alternative at this time.

Alternative E2 would increase the current recreational size limit for shortfin mako sharks. Currently, the recreational size limit for shortfin mako sharks is 54 inches FL (137 cm FL); therefore, increasing this size limit could result in varying degrees of ecological and economic impacts. NMFS analyzed two size limits for shortfin mako sharks, one based on the size of sexual maturity of females (alternative E2a—108 inches FL or 274 cm FL) and one based on the size of sexual maturity of males (alternative E2b—73 inches FL or 185.4 cm FL).

According to the LPS tournament data, 1.4 percent of shortfin mako sharks landed were below the current 54 inches FL minimum size, 100 percent were below the 108 inches FL size limit in alternative E2a, and 51 percent were below the 73 inches FL size limit in alternative E2b.

Based on non-tournament landings of shortfin mako sharks, 4 percent were below the current 54 inches FL minimum size, 98 percent were under the 108 inches FL minimum size in alternative E2a, and 81 percent were under the 73 inches minimum size under alternative E2b. Positive ecological impacts are estimated for both alternatives E2a and E2b, as both alternatives could lead to a large proportion of the recreationally caught shortfin mako sharks being released alive (99.5 and 81 percent, respectively). Alternative E2a would release 65 percent more shortfin mako sharks alive than alternative E2b (3,664 to 2,220 sharks, respectively). Alternative E2a would also have the most severe economic impacts, as almost all of the shortfin mako sharks reported landed (99.5 percent) were smaller than the 108 inches FL (274.3 cm FL) size limit and, therefore, would have to be released. This alternative would basically create a catch and release fishery for shortfin mako sharks. The impacts of alternative E2b would be less severe than alternative E2a, but would result in a 60 percent overall reduction in recreational shortfin mako shark landings. Under alternative E2b, the economic impacts would be greater on the non-tournament recreational mako shark fishery, as 81 percent of those landings would fall below the 73 inches FL size limit. According to LPS data, 41 percent of shortfin mako sharks caught are kept; therefore, the size limits considered in alternatives E2 could have a substantial economic impact on the recreational fishery. Given this and the need for international cooperation in ending overfishing of shortfin mako sharks, NMFS is not preferring either alternative E2a or E2b at this time.

Alternative E5 would prohibit the landings of shortfin mako sharks in the recreational fishery by placing shortfin mako sharks on the prohibited species list. Placing shortfin mako sharks on the prohibited species list would make the recreational fishery a catch and release fishery for this species. As described above under alternative C3, shark species can only be added to the prohibited species list if they meet two of four specific criteria. Shortfin mako sharks meet two of those criteria. According to recreational landings data, on average 3,682 shortfin mako sharks were landed from 2004 to 2007. Because of the number of shortfin mako sharks taken in the recreational fishery is small relative to the number of shortfin mako sharks taken by other countries, placing this species on the prohibited species list is likely to have neutral or slightly positive ecological impacts. In the United States, shortfin mako sharks are an important fishing tournament species. In 2007, there were 42 shark tournaments throughout the U.S. Atlantic Coast, including the Gulf of Mexico and the Caribbean. Therefore, adding this species to the prohibited species list could lead to negative socioeconomic impacts for recreational fishermen, including those who participate in recreational shark tournaments, who would no longer be able to retain this species during recreational fishing or tournaments.

Given this and the need for international cooperation in ending overfishing of shortfin mako sharks, NMFS is not preferring alternative E5 at this time.

F. The Addition of Smooth Dogfish Under NMFS Management

NMFS currently manages four shark management units (small coastal sharks, pelagic sharks, large coastal sharks, and prohibited species). There are additional species of sharks that fall outside of the current management units but remain under Secretarial authority should the Secretary determine the species is in need of conservation and management. One of these species, smooth dogfish, is not currently managed at the Federal level. The Magnuson-Stevens Act tasks the Secretary of Commerce with regulating oceanic shark species within the U.S. EEZ. NMFS has determined that smooth dogfish is an oceanic shark species. The lack of previous management measures for this species complicates new regulations due to a lack of data regarding landings, fishing effort, or participants in the fishery. Due to increasing concerns regarding the lack of management of smooth dogfish along with the addition of smooth dogfish to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Coastal Shark FMP, NMFS is considering several alternatives regarding smooth dogfish. In addition, any management measures implemented for smooth dogfish would also apply to Florida smoothhounds (*Mustelus norrisi*). Emerging molecular and morphological research has determined that Florida smoothhounds have been misclassified as a separate species from smooth dogfish (Jones, pers. comm.). Because of this taxonomic correction, Florida smoothhounds would be considered smooth dogfish and would fall under all smooth dogfish management measures, such as permit requirements and quotas. Specifically, the alternatives considered for smooth dogfish are: Alternative F1—no action, do not add smooth dogfish under NMFS management; alternative F2—add smooth dogfish under NMFS management and develop management measures, such as a Federal permit requirement and establishment of a commercial quota; and alternative F3—add smooth dogfish under NMFS management and mirror management measures implemented in the ASMFC Interstate Coastal Shark FMP. Alternative F2 is the preferred alternative. Under alternative F2, there are also several sub-alternatives: alternative F2a1—establish a smooth dogfish quota that is equal to the average annual landings from 1998–2007 (950,859 lb dw); alternative F2a2 -establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 (1,270,137 lb dw); alternative F2a3—establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 plus one standard deviation (1,423,727 lb dw); alternative F2b1—establish a separate smooth dogfish set-aside quota for the exempted fishing program (6 mt ww); and alternative F2b2—establish a smooth dogfish set-aside quota for the exempted fishing program and add it to the current 60 mt ww set-aside quota for the exempted fishing program (66 mt ww). Alternatives F2 and sub-alternatives F2a3 and F2b1 are the preferred alternatives.

Smooth dogfish are currently not managed by NMFS and stock data is sparse. From 1999 through 2003, NMFS included smooth dogfish under NMFS management in order to prevent finning; no other management measures were implemented. Given this lack of management, there is a lack of stock status information, participant information, and effort data. This lack of data complicates the ecological impact analysis of the alternatives for smooth dogfish. Alternatives F2 and F3 would both establish Federal management measures and alternative F2 would begin, through dealer reports and a Federal permit requirement, data collection of smooth dogfish catch and effort data.

Alternative F2, the preferred alternative, would implement Federal management of smooth dogfish and establish a permit requirement for commercial and recreational retention of smooth dogfish in Federal waters. Commercial fishermen would be required to obtain a new open-access commercial smooth dogfish permit in order to retain smooth dogfish in Federal waters. Recreational fishermen would be required to obtain an existing Federal HMS recreational fishing permit in order to retain smooth dogfish in Federal waters, and Federal shark dealers would be required to obtain an existing Federal shark permit in order to purchase smooth dogfish from Federally-permitted commercial shark fishermen. This alternative would also require that all fins be naturally attached, and that Federally permitted dealers report landings of smooth dogfish as is required for other shark species. This alternative would also provide NMFS the ability to select vessels to carry an observer. These management measures would focus on characterizing the fishery and are not intended to actively change catch levels or rates. This alternative would not, at this time, create any new requirement for fishermen to report landings. Rather, NMFS would collect landings information through Federal dealers. Over time, NMFS may implement logbook or other reporting for smooth dogfish fishermen, as needed. NMFS would not do this, however, until the universe of fishermen is known and until NMFS can determine the appropriate mechanism of reporting without duplicating current reporting requirements. Despite the lack of management, many fishermen in the mid-Atlantic region have been reporting their landings. Some of these fishermen have Federal permits for other species and are required to report all landings, including smooth dogfish, due to the regulations in those other fisheries. Other fishermen do not have Federal permits and report smooth dogfish landings voluntarily. These landings and the number of vessels reporting these landings have remained fairly constant since the late 1990s. Similarly, at this time, this alternative would not require fishermen to attend the protected species release, disentanglement, and identification workshops. As NMFS gathers information about the fishery and the fishermen, NMFS may require fishermen attend these workshops as is required in other HMS longline and gillnet fisheries if appropriate. Accordingly, NMFS does not expect alternative F2 to have significant positive or negative ecological impacts, except that commercial fishermen would have to purchase an open access smooth dogfish commercial fishing permit, dealers would be required to report smooth dogfish on HMS dealer reports or through the Standard Atlantic Fisheries Information System (SAFIS), and recreational fishermen would need to purchase the appropriate HMS Angling or Charter/Headboat permit. In the future, data that comes from the measures in this alternative could support effort restrictions if the stock is deemed to be overfished and/or have overfishing occurring. If a Federal permitting system creates enough of an inconvenience as to reduce the number of participants in the fishery, reduced effort would likely result in positive ecological impacts.

Gillnets are the primary gear type in the smooth dogfish fishery and if the fishery is brought under Federal management, fishermen using gillnets to target smooth dogfish would continue to be required to comply with Federal marine mammal take reduction programs mandated in the Marine

Mammal Protection Act at 50 CFR 229.32. Positive ecological impacts are expected from this compliance due to a decreased risk of marine mammal interactions with smooth dogfish gillnets. Fishermen would also be required to attach their gillnet to their vessel and perform net checks at least every two hours (the net can be detached from the vessel during net checks).

As described above, on January 16, 2009, NMFS published NSG1 for implementing the annual catch limit (ACL) and accountability measures (AM) requirements of the Magnuson-Stevens Act (74 FR 3178). As such, if NMFS adds smooth dogfish under NMFS management, NMFS must also establish an ACL and AMs for the fishery. The five sub-alternatives under alternative F2 address this issue by examining possible overall quota levels and set-aside quota levels for the smooth dogfish fishery. NMFS will use the process as outlined above to establish ACLs and AMs for the smooth dogfish fishery. Each sub-alternative aims for minimal disruption with the current level of utilization and is not expected to have any additional ecological impacts beyond those for Alternative F2.

While data regarding stock status and participants in the fishery is sparse, a number of sources exist that summarize any reports of smooth dogfish catches. These sources, particularly the Atlantic Cooperative Catch Statistical Program (ACCSP) for commercial catches and the Marine Recreational Fishing Statistics Survey (MRFSS) for recreational catches, offer insight into the current state of the fishery. A third source, NMFS Office of Science and Technology's (S&T) Annual Commercial Landings Statistics, available on the S&T Web page, is also available, however, this system only contains non-confidential landings data and does not report any confidential data. For this reason, ACCSP data was used instead of S&T data for analysis, and NMFS has determined that these are the best available data at this time. Based on ACCSP data, in the commercial fishery, an average of 1,321,695 lb whole weight (ww) of smooth dogfish were retained per year. Of this whole weight, 950,860 lbs of dressed weight (dw) fish and 47,543 lb of fins would be available for sale (using a conversion of 1.39 for ww to dw, and 5 percent of dw for shark fins). Using the median ex-vessel price of these products between 2004 and 2007 ($0.29 for smooth dogfish flesh and $2.02 for smooth dogfish fins), the fishery averaged $371,786 in value per year. Utilizing VTR and Coastal Logbook data between 2004 and 2007, NMFS estimates that approximately 223 commercial vessels would likely require a smooth dogfish permit.

In the recreational fishery, based on MRFSS data from 2004 to 2007, an average of 58,161 smooth dogfish were retained per year out of a total annual average of 177,456,965 for all finfish in the Atlantic and Gulf of Mexico. NMFS has determined that the MRFSS data are the best available data on the recreational smooth dogfish fishery at this time. Implementing Federal management of smooth dogfish through alternative F2 would focus on characterizing the fishery, and would not actively change catch levels or rates. Therefore, alternative F2 would likely not have significant positive or negative social or economic impacts. Based on MRFSS data from 2004 to 2007, an average of 58,161 smooth dogfish were retained per year in the recreational fishery. This number is likely the upper limit of participants in the Federal recreational fishery of the species, and is likely lower since multiple individual fish are expected to have been caught by one fisherman. Furthermore, based on the life history of the species and the fact the most recreational fisherman are shore-based, the vast majority of smooth dogfish caught recreationally are in coastal, State waters and would not require a Federal HMS Angling category permit. Of those that fish in Federal waters, the nominal fee of $16.00 for a recreational HMS Angling category permit is not expected to create an impediment to entering or remaining in the fishery.

Based upon mandates in the Magnuson-Stevens Act to manage sharks and the desire to fully characterize the fishery, NMFS prefers the alternative to add smooth dogfish under NMFS management and implement a Federal permit requirement. NMFS also prefers a quota equal to the maximum annual landings plus one standard deviation between the years 1998 and 2007. This quota would allow the fishery to operate as it has under the status quo. The set-aside quota of 6 mt ww, alternative F2b1, would allow for continued research on the species as well as some limited collection for public display. Ecological and socioeconomic impacts are expected to be minimal since no restrictions would be placed on the fishery beyond a Federal permit. Fees associated with the permit would be minimal and are not expected to create any impediment to entering or remaining in the fishery.

The alternative F1, no action, would not likely have any ecological impacts beyond the status quo. Inherent in the no action alternative, however, is a continued lack of data regarding numbers of participants in the fishery, and catch and effort information that could be used to determine stock status for smooth dogfish. If current fishing effort is putting too much pressure on the stock, negative ecological impacts could persist but continue to go undocumented. Alternative F1 would likely not have any new social or economic impacts beyond the status quo, as no action would be taken. Any potential impacts, however, would be either neutral or negative. If, in the absence of catch and effort data, the stock is undergoing excessive fishing pressure, future stock declines would likely have negative social and economic impacts. Alternatively, if the stock is, in actuality, underutilized, missed harvest potential could result.

Alternative F3 would also implement Federal management of the species, however, NMFS management measures would mirror and/or complement, to the extent practicable, ASMFC measures. NMFS is cognizant of differences in mandates and missions between itself and ASMFC. Current ASMFC regulations in the Interstate Fishery Management Plan for Atlantic Coastal Sharks include smooth dogfish commercial measures. There are no minimum size limits and no commercial possession limits in the fishery, but recreational fishermen are limited to a maximum of two smooth dogfish per day (one Federally-permitted shark species or smooth dogfish plus one additional Atlantic sharpnose, one additional bonnethead, and one additional smooth dogfish). Smooth dogfish must have tails and fins naturally attached through offloading, and gillnet gear must be checked at least every two hours to minimize protected species impacts.

ASMFC is currently amending the management measures for smooth dogfish. Specifically, ASMFC is considering an exception for smooth dogfish to allow at-sea processing (*i.e.,* removal of shark fins while still onboard a fishing vessel), removal of recreational retention limits for smooth dogfish, and removal of the two hour net-check requirement for shark gillnets. The at-sea processing would require a 5 percent fin-to-carcass ratio and allow for the removal of fins. As such, it is difficult to assess the specific impacts of this alternative. It is reasonable, though, to assume that any ecological impacts will either be neutral or positive. At this time, NMFS is not preferring alternative F3 for several reasons. First, ASMFC is considering removing the fins attached

requirement for smooth dogfish. NMFS recently implemented the fins attached regulation for all Atlantic sharks for enforcement and species identification reasons and would not want to open a loophole that would hinder enforcement. Additionally, both the House of Representatives and the Senate are reviewing bills that, if approved and signed by the President, would apply the fins attached requirement to all sharks in Federal waters. Second, ASMFC has not established a quota for the smooth dogfish fishery. As noted above, NMFS is required to establish ACLs and AMs under the Magnuson-Stevens Act. Third, ASMFC has not established a permitting requirement. NMFS believes that permitting is the first step to gaining information about the fishery. Thus, NMFS is not preferring to mirror the ASMFC regulations at this time. Nonetheless, if NMFS implements alternative F2, NMFS would continue to work with ASMFC to ensure Federal and State regulations are consistent to the extent practicable.

Administrative Actions to 50 CFR Part 229

NMFS also regulates the Southeastern U.S. Atlantic shark gillnet fishery under Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations at 50 CFR part 229. The ALWTRP regulations allow shark gillnet fishing, under certain circumstances, in the Southeast U.S. Restricted Area, Other Southeast Gillnet Waters Area, and the Southeast U.S. Monitoring Area. Certain provisions of this rule would entirely eliminate the shark gillnet fishery in South Carolina and south. Therefore, to avoid regulatory conflicts, NMFS proposes to remove exemptions for shark gillnet fishing at 50 CFR 229.2, 229.3 and 229.32 that would otherwise be prohibited by these proposed changes.

1. *Section 229.2.* NMFS is deleting the definition of ''spotter plane'', which only pertains to the Southeastern U.S. Atlantic shark gillnet fishery.

2. *Section 229.3(l).* NMFS is removing exemptions for shark gillnet fishing, which applies to regulated waters south of South Carolina.

3. *Section 229.32(a), (b), (f), (g), and (h).* NMFS is updating the ALWTRP regulations to reflect parts of this action which would prohibit the use of gillnet gear to harvest sharks from South Carolina and south.

Administrative Actions to 50 CFR Part 635

In addition to the alternatives analyzed in the DEIS and described above, NMFS is also proposing some administrative actions to clarify, correct, and update the existing regulations. None of these administrative actions are expected to have any economic, social, or ecological impacts.

1. *Section 635.5(b).* Since implementation of Amendment 2 to the 2006 Consolidated HMS FMP, NMFS has received several questions about the changes to dealer reports for shark fin and meat information. As such, NMFS proposes clarifications to its intent.

2. *Section 635.20(e).* The regulations regarding the recreational retention limit for sharks need to be clarified. As such, NMFS is proposing modified language to clarify that only one shark per vessel per trip can be taken along with one bonnethead and one Atlantic sharpnose shark per person per trip.

3. *Section 635.21(d).* In Amendment 2 to the Consolidated HMS FMP, NMFS implemented several closures per the request of the South Atlantic Fishery Management Council (SAFMC). The name of one of those areas did not match the name that the SAFMC finalized. As such, NMFS is proposing to rename ''South Carolina A'' as ''Northern South Carolina.''

4. *Section 635.27(b).* In Amendment 2 to the Consolidated HMS FMP, NMFS stated that it would review the allocation of exempted fishing permits for research on dusky sharks on a case by case basis. The regulations did not match this intent. NMFS is proposing new language to match this intent.

5. *Section 635.30(c).* For numerous years, NMFS has required that sharks be maintained intact (*i.e.,* not filleted or otherwise processed) while onboard a vessel. Additional language is needed to clarify that sharks that are processed as bait may not be possessed aboard a vessel issued a Federal commercial shark permit even if the shark was landed before being processed. Additionally, clarification is needed on what the word ''intact'' means in regarding to possession of sharks at sea. As such, NMFS is proposing removing the word ''intact'' and describing it instead.

6. *Section 635.32(e).* NMFS is updating a reference from the previous Billfish and Tunas, Swordfish, and Shark FMPs to the current 2006 Consolidated HMS FMP.

7. *Section 635.69(a)(3).* Additional language is needed to clarify the regulations regarding Vessel Monitoring System (VMS) requirements for holders of a shark Limited Access Permit (LAP). As such, NMFS is proposing to specify the right whale calving season as from November 15—April 15.

8. *Table 1 of Appendix A.* In addition to adding smooth dogfish to this list of managed species, NMFS is also updating the species names to match the most recent scientific naming determinations.

Request for Comments

NMFS is requesting comments on any of the alternatives or analyses described in this proposed rule and in the draft Amendment 3. NMFS is also requesting comments on specific items related to those alternatives to clarify certain sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, NMFS requests comments on:

1. *Landings information used to calculate the commercial quota for the smooth dogfish fishery.* NMFS is proposing to establish the quota at one standard deviation above the maximum landings. Will this be high enough to encompass all current landings?

2. *Landings information used to calculate the smooth dogfish quota for EFPs, SRPs, and display permits.* NMFS is proposing to establish the quota for EFPs, SRPs, and display permits for smooth dogfish at 6 mt ww (4.3 mt dw). Will this be high enough to encompass all current scientific and display landings? Is there specific research that NMFS should review when establishing the EFP, SRP, and display permit quota?

3. *The data used to identify and describe essential fish habitat for smooth dogfish.* By adding smooth dogfish under NMFS management, NMFS is required to identify and describe essential fish habitat. The data and resulting identification and description are described in Chapter 11 of the DEIS. Are there additional data available that NMFS should consider?

4. *The number of vessels participating in the smooth dogfish fishery.* In reviewing the available data, NMFS estimates that approximately 223 vessels have reported landing smooth dogfish in recent years. Are there additional vessels that would not be included in the data NMFS used?

5. *The boundary for the use of gillnets.* NMFS is proposing that fishing for or possessing sharks when gillnet gear is on board be prohibited from South Carolina south including the Gulf of Mexico and Caribbean Sea. NMFS believes that north of this border represents an area where most blacknose sharks are no longer caught in gillnet gear and most smooth dogfish begin to be caught in gillnet gear. Additionally, the ALWTRP already prohibits or greatly restricts fishing with gillnet for sharks with webbing of 5 inches or greater in the Southeast U.S.

Restricted Area waters from Florida up to the South Carolina-North Carolina border, from November 15 through April 15. Therefore, we propose to establish the closure's northern boundary at the South Carolina-North Carolina border. Is the boundary appropriate? Does the proposal match blacknose and smooth dogfish catches?

6. *The VMS requirement for shark gillnet vessels.* In Amendment 1 to the Atlantic Tunas, Swordfish, and Shark FMP, NMFS implemented a requirement that stated that any gillnet vessel with a shark limited access permit, regardless of its location, needed to have a VMS unit installed and operating during right whale calving season. This requirement was put in place to protect right whales, specifically right whales calving off the east coast of Florida between November and March of each year. By maintaining this requirement, fishermen who keep their shark permits and use gillnet gear to fish for other species would still be required to maintain an operating VMS unit on their vessel. This requirement could still provide NMFS with information to help protect right whales and may provide additional information that may be used to end overfishing of blacknose sharks. However, if NMFS maintains this requirement, it might also require smooth dogfish fishermen who do not have VMS currently to obtain and operate a working VMS unit. Are there other reasons why the VMS requirement should remain in place? Are there reasons why the VMS requirement should be removed? Should smooth dogfish fishermen be required to comply with this requirement?

7. *The requirement to tend gillnet gear for smooth dogfish fishermen.* The current regulations require that gillnet gear, including sink net gear, remain attached to the vessel. The regulations also state that net checks be conducted at least once every two hours in order to release protected species and/or prohibited sharks. At this time, NMFS is proposing that this requirement apply to smooth dogfish fishermen as well. NMFS has heard, however, that most smooth dogfish fishermen leave their gear untended. What would be the consequences of requiring smooth dogfish gillnet gear be tended?

8. *Size and retention limits for recreational smooth dogfish fishermen.* Under the proposed regulations, recreational fishermen fishing for and landing smooth dogfish would not be restricted by a size or retention limit. This is different than what is required for most sharks (one shark per vessel per trip with a minimum size of 54 inches FL) and is different than what is required for Atlantic sharpnose and bonnethead (one shark per person per trip with no minimum size). If NMFS were to establish a size and/or retention limit for smooth dogfish, what would an appropriate size and/or retention limit be?

9. *Allowing smooth dogfish to be retained in trawl gear.* Under the proposed regulations, fishermen that possess a Federal Atlantic commercial shark permit would not be allowed to retain any smooth dogfish caught in trawl gear as trawl gear is not an authorized gear type for any Atlantic shark. However, NMFS is aware that some smooth dogfish landings in trawl gear have been reported in the Northeast region. In addition, NMFS has authorized an allowance for swordfish to be retained in squid trawls under § 635.24(b)(2). Should NMFS create an allowance for smooth dogfish to be retained when caught with trawl gear? If so, what should that allowance be and how should it work?

Comments may be submitted via writing, e-mail, fax, or phone (*see* **ADDRESSES**). Comments may also be submitted at a public hearing (*see* Public Hearings and Special Accommodations below). All comments must be submitted no later than 5 p.m. on September 22, 2009.

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold nine public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule and the draft Amendment 3. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to LeAnn Southward Hogan at (301) 713–2347 at least 7 days prior to the hearing date. NMFS has requested time to present this proposed rule and the draft Amendment 3 to the five Atlantic Regional Fishery Management Councils and the Atlantic and Gulf States Marine Fisheries Commissions at their meetings during the public comment period. Please see their meeting notices for dates, times, and locations.

Date	Time	Hearing location	Hearing address
8/11/09	5–8 p.m.	Thomas B. Norton Library	221 West 19th Avenue, Gulf Shore, AL 36542.
8/17/09	5–8 p.m.	Manteo Town Hall	407 Budleigh Road, Manteo, NC 27954.
8/20/09	5–8 p.m.	Lower Cape Library	2600 Bayshore Road, Villas, NJ 08251.
8/31/09	3–6 p.m.	Gulf Beaches Public Library	200 Municipal Drive, Madeira Beach, FL 33708.
9/1/09	5–8 p.m.	Fort Pierce Library	101 Melody Lane, Fort Pierce, FL 34950.
9/9/09	2:30–5 p.m.	HMS Advisory Panel Meeting	Crowne Plaza, 8777 Georgia Avenue, Silver Spring, MD 20910.
9/16/09	6–9 p.m.	Charleston Main Library	68 Callhoun Street, Charleston, SC 29401.
9/22/09	6–9 p.m.	Belle Chasse Auditorium	8398 Highway 23, Belle Chasse, LA 70037.
9/22/09	5–8 p.m.	Portsmouth Public Library	175 Parrott Avenue, Portsmouth, NH 03801.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in

which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* At this time, NMFS has preliminarily determined that the proposed rule and related draft Amendment 3 to the Consolidated HMS FMP are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable law.

Executive Order 12866

This rule has been determined to be not significant under EO 12866.

Executive Order 13132

This rule does not have federalism implications sufficient to warrant preparation of a federalism assessment under EO 13132.

Paperwork Reduction Act

This proposed rule would require fishermen fishing for smooth dogfish to obtain a smooth dogfish permit. If finalized, this requirement would be considered a collection-of-information requirement and would be subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Because NMFS is unsure of the number of fishermen to which this requirement would apply and the extent of duplication, if any, in such a requirement, NMFS has not yet submitted this collection-of-information to OMB for approval. During the public comment period, NMFS hopes to hear from fishermen regarding this proposed requirement. If NMFS finalizes this permitting requirement, NMFS would submit an application for the collection-of-information requirement to OMB for approval and would delay implementation of that portion of the rule pending approval.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Karyl Brewster-Geisz at the **ADDRESSES** above.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (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 IRFA follows. The full IRFA is contained in Amendment 3. Copies of Amendment 3 are available from NMFS (*see* **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to rebuild blacknose sharks, end overfishing of blacknose and shortfin mako sharks, and add smooth dogfish under NMFS management.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) Implement a rebuilding plan for blacknose sharks to ensure that fishing mortality levels for blacknose sharks are maintained at or below levels that would result in a 70 percent probability of rebuilding in the time frame recommended by the assessment; (2) end overfishing for blacknose and shortfin mako sharks; (3) provide an opportunity for the sustainable harvest of finetooth, bonnethead, and Atlantic sharpnose sharks and other sharks, as appropriate; (4) prevent overfishing of Atlantic sharks; (5) consider smooth dogfish management measures for smooth dogfish sharks in Federal waters, as appropriate; and (6) develop an appropriate mechanism for specifying ACLs to prevent and end overfishing within the constraints of existing data and annually set ACLs and apply AMs to ensure that ACLs are not exceeded.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The proposed rule would apply to the 502 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders on March 18, 2009. Of these permit holders, 223 have directed shark permits and 279 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. NMFS estimates that between 2004 and 2007, approximately 85 vessels with directed shark permits and 31 vessels with incidental shark permits landed SCS. The recreational measures proposed would also impact HMS Angling category and HMS Charter/Headboat category permit holders. In general, the HMS Charter/Headboat category permit holders can be regarded as small businesses, while HMS Angling category permits are typically obtained by individuals who are not considered small entities for purposes of the RFA. In 2008, 4,837 vessels obtained HMS Charter/Headboat category permits.

Finally, the preferred alternatives to add smooth dogfish under NMFS management and develop management measures, such as a Federal permit requirement, would impact an additional group of small entities. The number of entities impacted by this preferred alternative cannot be precisely measured at this time, since there is currently no Federal permit requirement for smooth dogfish fishing. Utilizing VTR and Coastal Logbook data, an estimate of the number of participants in the commercial smooth dogfish fishery can be calculated. Within the VTR data, a primarily Northeast U.S. reporting system, an average of 213 vessels reported smooth dogfish landings per year between 2004 and 2007. Within the Coastal Logbooks data, a primarily Southeast U.S. reporting system, an average of 10 vessels reported smooth dogfish landings per year between 2004 and 2007. From these data, an estimated 223 commercial vessels would require a smooth dogfish permit.

To estimate the number of recreational participants in the smooth dogfish fishery, NMFS examined MRFSS data. Based on MRFSS data from 2004 to 2007, an average of 58,161 smooth dogfish were retained per year by private anglers and CHBs in the recreational fishery. This number is the upper limit of participants in the Federal recreational fishery of the species, and is likely much lower since multiple individual fish are expected to have been caught by one fisherman. Furthermore, based on the life history of the species and the fact the most recreational fisherman are shore-based, the vast majority of smooth dogfish caught recreationally are in coastal, State waters and would not require a Federal HMS angling permit.

Under section 603(b)(4), Agencies are required to describe any new reporting, record-keeping and other compliance requirements. The proposed commercial and recreational measures for SCS and pelagic sharks would not introduce any new reporting and record-keeping requirements. However, alternative F2 would implement Federal management of smooth dogfish and establish a permit for commercial and recreational retention of smooth dogfish in Federal waters.

The proposed Federal permit requirement for smooth dogfish would allow NMFS to collect data regarding participants in the fishery and landings through Federal shark dealer reports. The Federal dogfish permit requirement would require a similar permit application to the other current HMS permits. The information collected on the application would include vessel information and owner identification and contact information. A modest fee to process the application and annual renewal would also likely be required. The cost would likely be similar to the current fee associated with the Atlantic Tunas General Category and Atlantic HMS Angling permits, which both cost $16 in 2009 to obtain. Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, 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. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Amendment 3. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)–(4)) lists four general categories of significant alternatives that would 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 for small entities.

In order to meet the objectives of this proposed rule, consistent with Magunson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. 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. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed have been grouped into three major categories. These categories include commercial measures, recreational measures, and smooth dogfish. Under commercial measures, alternatives for SCS commercial quotas, gear restrictions, and pelagic shark effort controls were considered and analyzed. The SCS commercial quota alternatives include: (A1) Maintain the existing SCS quota; (A2) establish a new SCS quota of 392.5 mt dw and a blacknose commercial quota of 13.5 mt dw; (A3) establish a new SCS quota of 42.7 mt dw and a blacknose commercial quota of 16.6 mt dw; allow all current authorized gears for sharks; (A4) establish a new SCS quota of 56.9 mt dw and a blacknose commercial quota of 14.9 mt dw; remove shark gillnet gear as an authorized gear for sharks; and (A5) close the SCS fishery. The commercial gear restrictions alternatives include: (B1) Maintain current authorized gears for commercial shark fishing; (B2) close shark gillnet fishery; remove gillnet gear as an authorized gear type for commercial shark fishing; and (B3) close the gillnet fishery to commercial shark fishing from South Carolina south, including the Gulf of Mexico and the Caribbean Sea. The pelagic shark effort controls alternatives include: (C1) Keep shortfin mako sharks in the pelagic shark species complex and do not change the quota; (C2) remove shortfin mako sharks from pelagic shark species quota and establish a shortfin mako quota; (C3) remove shortfin mako sharks from pelagic shark species complex and place this species on the prohibited shark species list; (C4a) establish a minimum size limit for shortfin mako sharks that is based on the size at which 50 percent of female shortfin mako sharks reach the sexual maturity or 32 inches interdorsal length (IDL); (C4b) establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach the sexual maturity or 22 inches IDL; (C5) take action at the international level to end overfishing of shortfin mako sharks; and (C6) promote the release of shortfin mako sharks brought to fishing vessels alive.

Under recreational measures, NMFS considered alternatives for both SCS and pelagic sharks. The recreational measures considered for SCS include: (D1) Maintain the current recreational retention and size limit for SCS; (D2) modify the minimum recreational size for blacknose sharks based on their biology, (D3) increase the retention limit for Atlantic sharpnose sharks based on current catches; and (D4) prohibit retention of blacknose sharks in recreational fisheries. The recreational measures considered for pelagic sharks include: (E1) Maintain the current recreational measures for shortfin mako sharks; (E2a) establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 108 in FL; (E2b) establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 73 inches FL; (E3) take action at the international level to end overfishing of shortfin mako

sharks; (E4) promote the release of shortfin mako sharks brought to fishing vessels alive; and (E5) prohibit retention of shortfin mako sharks in recreational fisheries (catch and release only).

Finally, NMFS also considered alternatives for managing smooth dogfish. These alternatives include: (F1) Do not add smooth dogfish under NMFS management, (F2) add smooth dogfish under NMFS management and establish a Federal permit requirement, and (F3) add smooth dogfish under NMFS management and mirror management measures implemented in the ASMFC Interstate Shark FMP. NMFS considered several alternatives for adding smooth dogfish under NMFS management. These alternatives include: (F2 a1) Establish a smooth dogfish quota that is equal to the average annual landings from 1998–2007 (950,859 lb dw); (F2 a2) establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 (1,270,137 lb dw); (F2 a3) establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 plus one standard deviation (1,423,727 lb dw); (F2 b1) establish a separate smooth dogfish set-aside quota for the exempted fishing program of 6 mt ww; and (F2 b2) establish a smooth dogfish set-aside quota for the exempted fishing program and add it to the current 60 mt ww set aside quota for the exempted fishing program.

The potential impacts these alternatives may have on small entities have been analyzed and are discussed in the following sections. The preferred alternatives include: A4, B3, C5, C6, D4, E3, E4, F2, and preferred sub-alternatives F2 a3 and F2 b1. The potential impacts these alternatives may have on small entities have been analyzed and are discussed above and in Amendment 3. A summary of the analyses follows. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

A. Commercial Measures

1. SCS Commercial Quota

Under the No Action alternative, A1, there would be no additional economic impacts to directed and incidental shark permit holders as the average annual gross revenues from SCS landings, including blacknose shark landings, would be the same as the status quo. The average annual gross revenues from 2004 through 2007 from all SCS meat and fins was $833,634.

Based on data from 2004 to 2007 for directed and incidental shark permit holders that landed non-blacknose SCS, the average directed shark permit holder earned $9,427 in average annual gross revenues, and the average incidental permit holder earned $707 in average annual gross revenues from non-blacknose SCS landings. For those shark permit holders that actually landed blacknose shark during that same time period, the average directed shark permit holder earned $3,640 in average annual gross revenues, and the average incidental shark permit holder earned $1,722 in average annual gross revenues from blacknose shark landings. These revenues are not expected to be impacted by alternative A1. However, since alternative A1 would not reduce blacknose shark mortality to the level needed to rebuild blacknose sharks (or 44,853.8 lb dw), NMFS does not prefer this alternative at this time.

Under alternative A2, NMFS would create a blacknose shark-specific quota and a separate ''non-blacknose SCS'' quota, which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks. NMFS anticipates that non-blacknose SCS landings should not decrease as the non-blacknose SCS quota would only be reduced by the average blacknose shark landings. Therefore, the 68 directed and 29 incidental shark permit holders that had non-blacknose SCS landings would not be affected by the new non-blacknose SCS quota. However, the blacknose shark quota would be a 78-percent reduction based on average landings from 2004–2007.

Average annual gross revenues for the blacknose shark landings for the entire fishery would decrease from $172,197 under the No Action alternative down to $37,500 under alternative A2, which is a 78-percent reduction in average annual gross revenues for blacknose sharks. Thus, the 44 directed and 7 incidental shark permit holders that had blacknose shark landings would be affected by the new blacknose shark quota. As directed permit holders landed the majority of blacknose shark under the No Action alternative, it is anticipated that directed permit holders would experience the largest impacts under alterative A2. The decrease in average annual gross revenues for directed and incidental permit holders would depend on the specific trip limit associated with the blacknose quota established under A2. However, because discards would continue as fishermen directed on non-blacknose SCS, regardless of the retention limits, overall mortality for blacknose sharks would still be above the commercial allowance of 44,853.8 lb dw/year (7,094 blacknose sharks/year), even if the retention of blacknose sharks was prohibited. Therefore, NMFS does not prefer this alternative at this time.

Under alternative A3, NMFS would create a blacknose shark-specific quota and a separate ''non-blacknose SCS'' quota equal to 42.7 mt dw (94,115 lb dw), which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks. NMFS determined that by reducing the overall SCS fishery, NMFS would reduce the level of blacknose shark discards such that the total blacknose shark mortality would stay below the commercial allowance. NMFS would establish a blacknose-specific quota of 16.6 mt dw (36,526 lb dw), which is the amount of blacknose sharks that would be harvested while the non-blacknose SCS quota is harvested; however, incidental shark permit holders would not be allowed to retain any blacknose sharks under alternative A3.

While trip limits would not change for non-blacknose SCS for directed and incidental shark permit holders (*i.e.,* no trip limit for directed fishermen and a 16 non-blacknose SCS/pelagic sharks combined trip limit for incidental fishermen), given the reduction in the non-blacknose SCS quota, NMFS anticipates that the 68 directed and 29 incidental shark permit holders that had non-blacknose SCS landings would be affected by the new non-blacknose SCS quota. Average annual gross revenues for non-blacknose SCS landings for the entire fishery are anticipated to be $119,526. This is an 82-percent reduction in average annual gross revenues compared to average annual gross revenues expected under the No Action alternative, A1. Since directed shark permit holders land approximately 97 percent of the non-blacknose SCS landings as explained in alternative A1, NMFS anticipates that directed shark permit holders would lose more in average annual gross revenues from non-blacknose SCS landings compared to incidental shark permit holders under alternative A3. Average annual gross revenues for directed shark permit holders of non-blacknose SCS under alternative A3 would be $115,821, which is a loss of $525,185 in average annual gross revenues or an 82-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the directed shark permit holders that land non-blacknose SCS, this is an anticipated loss of $7,723

in average annual gross revenues from non-blacknose SCS landings per permit holder. Incidental shark permit holders land approximately 3 percent of the non-blacknose SCS. Average annual gross revenues for incidental shark permit holders of non-blacknose SCS under alternative A3 would be $3,705, which is a loss of $16,802 in average annual gross revenues or also an 82-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the incidental shark permit holders that land non-blacknose SCS, this is an anticipated loss of $579 in average annual gross revenues from non-blacknose SCS landings per permit holder.

The blacknose shark quota would be a 73-percent reduction based on average landings from 2004–2007. In addition, in order to keep the total mortality of blacknose sharks below the commercial allowance for the HMS Atlantic shark fishery, incidental shark permit holders would not be allowed to retain blacknose sharks under alternative A3. Thus, the 44 directed and 7 incidental shark permit holders that had blacknose shark landings would be affected by the new blacknose shark quota. Since incidental shark permit holders would not be able to retain blacknose sharks, the total blacknose shark quota would be available only to directed shark permit holders. Average annual gross revenues for the blacknose shark landings for the directed fishery would decrease from $172,197 under the No Action alternative down to $46,023 under alternative A3, which is a loss of $126,174 or a 73-percent reduction in average annual gross revenues for blacknose sharks for directed shark permit holders.

Spread amongst the directed shark permit holders that land blacknose sharks, there would be an anticipated loss of $2,868 in average annual gross revenues from blacknose landings per permit holder. However, since incidental shark permit holders would not be able to retain blacknose sharks, they would lose an estimated $12,054 in average annual gross revenues from blacknose shark landings. Spread amongst the incidental shark permit holders that land blacknose sharks, there would be an anticipated loss of $1,722 in average annual gross revenues from blacknose landings per permit holder.

Given the large reduction in the non-blacknose SCS quota under alternative A3, which would affect more directed and incidental permit holders compared to the smaller reduction in the non-blacknose SCS quota under alternative A4, NMFS does not prefer alternative A3 at this time.

Under alternative A4, the preferred alternative, NMFS would create a blacknose shark-specific quota and a separate ''non-blacknose SCS'' quota equal to 56.9 mt dw (125,487 lb dw), which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks. NMFS determined that by reducing the overall SCS fishery, NMFS could reduce the level of blacknose shark discards such that the total blacknose shark mortality would stay below the commercial allowance. NMFS would establish a blacknose-specific quota of 14.9 mt dw (32,753 lb dw), which is the amount of blacknose sharks that would be landed while the non-blacknose SCS quota is taken; however, incidental shark permit holders would not be allowed to retain any blacknose sharks under alternative A4. In addition, this alternative assumes that gillnet gear would not be used to harvest sharks as explained under alternatives B2 and B3.

While trip limits would not change for non-blacknose SCS for directed and incidental shark permit holders (*i.e.,* no trip limit for directed fishermen and a 16 non-blacknose SCS/pelagic sharks combined trip limit for incidental fishermen), given the reduction in the non-blacknose SCS quota, NMFS anticipates that the 41 directed and 22 incidental shark permit holders that did not use gillnet gear to land non-blacknose SCS would be affected by the new non-blacknose SCS quota. Average annual gross revenues for non-blacknose SCS landings for the entire fishery are anticipated to be $159,368. This is a 76-percent reduction in average annual gross revenues compared to the average annual gross revenues expected under the No Action alternative, A1. Since directed shark permit holders land approximately 97 percent of the non-blacknose SCS landings as explained in alternative A1, NMFS anticipates that directed shark permit holders would lose more in average annual gross revenues from non-blacknose SCS landings compared to incidental shark permit holders under alternative A4. Average annual gross revenues for directed shark permit holders of non-blacknose SCS under alternative A4 would be $153,841, which is a loss of $487,165 in average annual gross revenues or a 76-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the directed shark permit holders that did not use gillnet gear to land non-blacknose SCS, there could be an anticipated loss of $11,882 in average annual gross revenues from non-blacknose SCS landings per permit holder. Incidental shark permit holders land approximately 3 percent of the non-blacknose SCS landings as explained in alternative A1. Average annual gross revenues for incidental shark permit holders of non-blacknose SCS under alternative A4 would be $4,922, which is a loss of $15,585 in average annual gross revenues or a 76-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the incidental shark permit holders that did not use gillnet gear to land non-blacknose SCS, there could be an anticipated loss of $708 in average annual gross revenues from non-blacknose SCS landings per permit holder.

The blacknose shark quota would also be a 76-percent reduction based on average landings from 2004–2007. In addition, in order to keep the total mortality of blacknose sharks below the commercial allowance for the Atlantic shark fishery, incidental shark permit holders would not be allowed to retain blacknose sharks under alternative A4. Thus, the 15 directed and 5 incidental shark permit holders that did not use gillnet gear to land blacknose sharks would be affected by the new blacknose shark quota. Since incidental shark permit holders would not be able to retain blacknose sharks, the total blacknose shark quota would be available only to directed shark permit holders.

Average annual gross revenues for the blacknose shark landings for the directed fishery would decrease from $172,197 under the No Action alternative down to $41,269 under alternative A4, which is a loss of $130,928 or a 76-percent reduction in average annual gross revenues from blacknose sharks for directed shark permit holders. Spread amongst the directed shark permit holders that did not use gillnet gear to land blacknose sharks, there could be an anticipated loss of $8,729 in average annual gross revenues from blacknose landings per permit holder. However, since incidental shark permit holders would not be able to retain blacknose sharks, they would lose an estimated $12,054 in average annual gross revenues from blacknose shark landings. Spread amongst the incidental shark permit holders that did not use gillnet gear to land blacknose sharks, there could be an anticipated loss of $2,411 in average annual gross revenues from blacknose landings per permit holder.

NMFS prefers alternative A4 at this time because by reducing effort in the overall SCS fishery, NMFS could reduce the level of blacknose shark discards such that the total blacknose shark mortality would stay below the commercial allowance needed to rebuild the stock. While gillnet fishermen would be affected the most by alternative A4 in combination with alternative B2 or B3, with estimated gross revenue losses between $377,928 and $365,067 from lost non-blacknose SCS and blacknose landings, alternative A4 would allow for a higher non-blacknose SCS quota (56.9 mt dw) compared to alternative A3 (42.7 mt dw). This higher quota would benefit the larger SCS fishery, while the prohibition of gillnet gear would affect a small number of directed shark permit holders that use gillnet gear. Therefore, NMFS prefers alternative A4 at this time.

Alternative A5 would close the entire SCS commercial shark fishery, prohibiting the landing of any SCS, including blacknose sharks. Thus, this alternative would eliminate landings of all SCS, including finetooth, Atlantic sharpnose, bonnethead, and blacknose sharks. This would have negative economic impacts on the average 85 directed shark permit holders, and the average 31 incidental shark permit holders that had SCS landings during 2004–2007. This would result in a loss of average annual gross revenues of $661,513 for non-blacknose SCS and $172,197 from blacknose shark landings for a total loss of $833,710 in average annual gross revenues from SCS landings. Directed shark permit holders would lose $641,006 in average annual gross revenues from non-blacknose SCS landings and $160,143 in average annual gross revenues from blacknose shark landings for a total of $801,149 in average annual gross revenues. Spread among the 85 directed shark permit holders that land SCS, this could result in a loss in average annual gross revenues of $9,426 per permit holder.

Incidental shark permit holders would lose $20,507 in average annual gross revenues from non-blacknose SCS landings and $12,054 in average annual gross revenues from blacknose shark landings for a total of $32,561 in average annual gross revenues under alternative A5. Spread among the 31 incidental shark permit holders that land SCS, this could result in a loss in average annual gross revenues of $1,050 per permit holder.

In addition, as gillnet gear is the primary gear used to target SCS, it is assumed that directed shark gillnet fishing would end, except for fishermen that use gillnet gear to strikenet for blacktip sharks. Approximately 11 directed shark permit holders use gillnet gear to land LCS. This would result in a decrease in LCS landings of 102,171 lb dw and a decrease in average annual gross revenues of $107,280. Spread among the 11 directed shark permit holders that land LCS with gillnet gear, this alternative would result in a loss in average annual gross revenues of $9,753 per permit holder.

While this alternative could reduce blacknose mortality below the commercial allowance of 44,853.8 lb dw, it would also completely eliminate the fishery for all SCS. Of the alternatives analyzed, alternative A5 would result in the most significant economic impacts to small entities. In addition, this alternative would severely curtail data collection on all SCS that could be used for future stock assessments. Thus, NMFS does not prefer this alternative at this time.

2. Commercial Gear Restrictions

Under alternative B1, the No Action alternative, NMFS would maintain the current gear restrictions for rod and reel, gillnet, and BLL gear. Therefore, the economic impacts of alternative B1 would be the same as the status quo, and no negative economic impacts would be anticipated under alternative B1. On average from 2004–2007, the directed and incidental shark permit holders earned average annual gross revenues from SCS landings of $833,634, while the directed and incidental permit holders that landed LCS earned larger gross revenues of $3,328,663. The smooth dogfish fishery is smaller than the other fisheries and only has average annual gross revenues of $371,786 for State and Federally permitted fishermen reporting to the ACCSP. Based on this alternative, the average annual gross revenues of these fisheries would remain the same as the status quo. The average number of directed and incidental shark permit holders that reported SCS landings in the Coastal Fisheries logbook from 2004–2007 were 116 (85 directed and 31 incidental shark permit holders), and the LCS fishery had an annual average of 162 permit holders (129 directed and 33 incidental shark permit holders) reporting LCS landings in the Coastal Fisheries logbook from 2004–2007. The number of permit holders would not be impacted by the No Action alternative.

Under alternative B2, NMFS would remove gillnet gear as an authorized gear type for commercial shark fishing. This alternative would have significant negative economic impacts by potentially affecting 30 directed and 7 incidental shark permit holders. On average, directed shark permit holders landed 289,546 lb dw of SCS with gillnet gear. This is equivalent to $365,955 in lost average annual gross revenues from SCS landings for directed shark permit holders. Based on average ex-vessel prices per pound from 2004–2007, directed shark permit holders made $807,792 in average annual gross revenues from SCS landings. On average, incidental shark permit holders landed 9,465 lb dw of SCS with gillnet gear. This is equivalent to $11,973 in lost average annual gross revenues from SCS landings for incidental shark fishermen due to the prohibition of gillnet gear. Based on average ex-vessel prices per pound from 2004–2007, incidental shark permit holders made $25,843 from SCS landings under the status quo. This represents a 45 percent reduction in SCS revenues for directed shark permit holders and a 46 percent reduction in SCS revenues for incidental shark permit holders compared to the No Action alternative, alternative B1.

This alternative would have a minimal negative economic impact on the LCS fishery. Only 11 directed and 5 incidental shark permit holders out of the 162 total shark permit holders would be affected. On average, directed shark permit holders landed 102,171 lb dw of LCS with gillnet gear. This is equivalent to $107,280 in lost average annual gross revenues from LCS landings (3 percent reduction). On average, incidental shark permit holders landed 1,961 lb dw of LCS with gillnet gear. This is equivalent to $2,059 in lost average annual gross revenues from LCS landings for incidental shark permit holders due to the prohibition of gillnet gear. In total ($109,339), this is approximately 3 percent of the gross revenues for the entire LCS fishery under the status quo (*i.e.,* $3,328,663).

Gillnets are also the primary gear type used to catch smooth dogfish. Within the VTR data, a primarily Northeast U.S. reporting system, an average of 213 vessels reported smooth dogfish landings per year between 2004 and 2007. Within the Coastal Fisheries Logbooks data, a primarily Southeast U.S. reporting system, an average of 10 vessels reported smooth dogfish landings per year between 2004 and 2007. From these data, an estimate of 223 vessels would require a smooth dogfish permit; however, as fishermen are currently not required to have a permit to retain smooth dogfish, this could be an underestimate of the number of fishermen that would require a Federal commercial permit for smooth dogfish in the future. The average total

annual landings from 1998–2007 was 950,859 lb dw (by State and Federally permitted fishermen reporting to the ACCSP, however, since fishermen do not have to currently report smooth dogfish landings, this could be an underestimate of total landings, and thus, an underestimate of average annual gross revenues for this fishery). Based on average ex-vessel prices per pound from 2004–2007, average annual gross revenues for the entire smooth dogfish fishery totaled $371,786 from smooth dogfish landings. Based on the preferred alternative F2, which would require fishermen who fish for smooth dogfish in Federal waters to obtain a Federal smooth dogfish permit, then under alternative B2, those fishermen would not be able to use gillnet gear to land smooth dogfish. This would have a negative economic impact on fishermen who previously used gillnet gear in Federal waters to land smooth dogfish. However, as fishermen do not have to have a Federal permit currently to land smooth dogfish, NMFS is uncertain of the universe of fishermen who might be affected by alternatives B2 and F2 at this time. However, given the potential large negative economic impacts of this alternative to the SCS, LCS, and smooth dogfish fisheries, NMFS does not prefer this alternative at this time.

Under alternative B3, the preferred alternative, NMFS would close the commercial gillnet fishery from South Carolina south, including the Gulf of Mexico and the Caribbean Sea. This would have a negative economic impact on Federally permitted directed and incidental shark permit holders. In the SCS fishery, this alternative would affect an average of 27 directed and 5 incidental shark permit holders out of the average 116 total shark permit holders that landed SCS from 2004–2007. The SCS gillnet fishery from South Carolina south accounts for 44 percent of the total directed shark permit holder landings, and 26 percent of landings in the incidental fishery. On average, directed shark permit holders landed 283,462 lb dw ($358,261) of SCS with the gillnet gear from South Carolina south. Thus, directed shark permit holders would lose $358,261 in average annual gross revenues from SCS landings from the gillnet prohibition under alternative B3. Based on average ex-vessel prices from 2004–2007, directed shark permit holders made $807,792 in average annual gross revenues from SCS landings. On average, incidental shark permit holders landed 5,381 lb dw ($6,807) of SCS with gillnet gear from South Carolina south. Thus, incidental shark permit holders would lose $6,807 in average annual gross revenues from non-blacknose SCS landings under alternative B3. The directed and incidental shark permit holders would lose average annual gross revenues of $365,068 from their current gross revenues of $833,634.

This alternative would have minor economic impacts on the LCS fishery. It would only affect 12 directed and incidental shark permit holders. The directed shark permit holders would lose $106,189 in average annual gross revenues from lost LCS landings in gillnet gear from South Carolina south under alternative B3. Incidental shark permit holders would lose $290 from lost LCS landings in gillnet gear from South Carolina south. In total ($106,479), this is only 3 percent of the average annual gross revenues (*i.e.,* $3,328,663) from LCS landings compared to the LCS fishery under the status quo.

Alternative B3, in combination with the preferred alternative F2, would not affect the social and economics impacts of the smooth dogfish fishery. Smooth dogfish are primarily caught from North Carolina north. The average total landings/year is 950,859 lb dw/year (by State and Federally permitted fishermen reporting to the ACCSP, however, since fishermen do not have to currently report smooth dogfish landings, this could be an underestimate of total landings, and thus, an underestimate of average annual gross revenues for this fishery), which translates into average annual gross revenues of $371,786 lb dw/year from smooth dogfish landings. Given smooth dogfish are not typically landed with gillnet gear from South Carolina south, NMFS anticipates that this alternative, in combination with the preferred alternative F2, would not cause any loss in average annual gross revenues from smooth dogfish landings. Since this alternative would assist NMFS in reaching commercial allowance for blacknose sharks for the commercial shark fishery, and has minimal economic impacts to LCS and smooth dogfish shark fishermen, NMFS prefers this alternative at this time.

3. Pelagic Shark Effort Controls

The No Action alternative, C1, would not modify or alter commercial fishing practices for shortfin mako sharks or other shark species. There would be no additional economic impacts to directed and incidental fishermen as the average annual gross revenues from shortfin mako sharks or other shark species would be the same as the status quo. On average, 72.5 mt dw of shortfin mako sharks were commercially landed between 2004 and 2007, which is equivalent to $350,039 in annual revenues. On average between 2004 and 2007, approximately 90 vessels had shortfin mako shark landings. Directed shark permit holders made up 39 of these vessels. However, since shortfin mako is typically incidentally caught, the average landings value per vessel was estimated by dividing annual revenues amongst all the vessels that have landed shortfin mako. Therefore, the vessels that landed shortfin mako generated an average of $3,889 in gross revenues per year from shortfin mako sharks.

Alternative C2 would implement a species-specific quota for shortfin mako at the level of the average annual commercial landings for this species. This alternative is expected to have neutral or slightly negative economic impacts. On average, 72.5 mt dw (159,834 lb dw) of shortfin mako sharks were commercially landed between 2004 and 2007, which is equivalent to $350,039 in average annual gross revenues. Spread amongst the vessels that landed shortfin mako sharks, the average vessel earned $3,889 in annual gross revenues from shortfin mako sharks. While fishermen would be able to maintain current fishing effort under this alternative, any increase in effort would be restricted by the species-specific quota of 72.5 mt dw. Under the No Action alternative, commercial fishermen currently have a 488 mt dw quota, which could potentially be filled entirely by shortfin mako landings. This could result in maximum annual gross revenues equal to $2,356,106. Thus, there is the potential loss of the option to fish up to the maximum level under this alternative. This difference is $2,006,067 in annual revenues from shortfin mako sharks. Spread amongst the 90 vessels that, on average, have landed shortfin mako sharks from 2004 to 2007, that difference would be $22,289 annually per vessel. However, given shortfin mako sharks are incidentally caught in the PLL fishery, it is unlikely that the entire pelagic shark quota would be entirely filled with shortfin mako landings. NMFS does not prefer this alternative at this time because the United States contributes a small portion of shortfin mako mortality due the lack of a directed fishery compared to shortfin mako mortality resulting from the fishing of foreign vessels outside of the U.S. EEZ. In addition, this alternative does not minimize the potential economic impacts on small entities.

Alternative C3 would remove shortfin mako sharks from the pelagic shark species complex and add them to the

prohibited species list. This alternative is not expected to have negative economic impacts for commercial fishermen because it is not a species that is targeted by commercial fishermen. Shortfin mako sharks are predominately caught incidentally in the PLL fishery and, on average, the commercial landings for shortfin mako sharks, from 2004 to 2007 were 72.5 mt dw with an estimated gross ex-vessel value of $350,039. However, since shortfin makos would be placed on the prohibited species list under alternative C3, there could be an estimated reduction in average annual gross revenues of $350,039 to the commercial fishermen. Based on the average number of vessels that have landed shortfin mako from 2004 to 2007, the revenue reductions would be approximately $3,889 per vessel annually. In addition, this alternative could lead to increased operation time if commercial fishermen have to release and discard all shortfin makos that are caught on the PLL gear. In addition, if the commercial PLL fleet expands in the future, placing shortfin mako sharks on the prohibited species list could result in a loss of future revenues for the commercial PLL fishery. Thus, NMFS does not prefer this alternative at this time.

Alternative C4a would establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 32 inches IDL. The summed dressed weight of all shortfin mako sharks kept under the 32 inches IDL size limit made up 1.4 percent of total dressed weight landings of shortfin mako sharks based on POP data. NMFS estimated this would reduce shortfin mako harvests by 2,061.1 lb dw. The economic impacts of this restriction would be an average annual gross revenues loss of $4,513 for this fishery. Spread amongst the 90 vessels that have landed shortfin mako sharks from 2004 to 2007, the per vessel losses would be approximately $50 annually.

Alternative C4b would establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 22 inches IDL. The summed dressed weight of all kept shortfin mako sharks under the 22 inches IDL size limit made up 0.02 percent of dressed weight landings of shortfin mako based on POP data. NMFS estimated this would reduce shortfin mako harvests by 34.3 lb dw. The economic impacts of this restriction would be an average annual gross revenues loss of $75 for this fishery.

Alternatives C4a and C4b would have minimal economic impacts because only a small percentage of commercial landings would be affected by the size restrictions. Of the two alternatives, the negative economic impact of C4a would be greater, as commercial landings by weight are 2,026.8 lb dw greater than in alternative C4b. Despite these minimum economic impacts, since the size limits would not reduce fishing mortality of shortfin mako sharks in the commercial sector, NMFS does not prefer these alternatives at this time.

Under alternative C5, the preferred alternative, NMFS would take action at the international level to end overfishing of shortfin mako sharks. In the short term, this alternative would not result in any negative economic impacts on commercial fishermen as it would not restrict commercial harvest of shortfin mako sharks, nor alter the pelagic shark quota. Therefore, the social and economic impacts of alternative C5 would be the same as described in the No Action alternative C1. However, this alternative could have negative economic impacts in the long term if directed management measures were adopted at an appropriate international forum that would require the reduction of landings domestically for shortfin mako sharks. Recommended reductions in landings, if implemented by multiple nations, would ultimately end overfishing of shortfin mako. Therefore, NMFS prefers alternative C5 at this time.

Alternative C6, the preferred alternative, would promote the release of shortfin mako sharks brought to fishing vessels alive. This alternative would likely not result in any negative economic impacts on commercial fishermen as it does not restrict commercial harvest of shortfin mako sharks that are alive at haulback, and quotas and retention limits would remain as described in the No Action alternative C1. However, as this alternative could result in the reduction of fishing mortality of shortfin mako sharks by encouraging fishermen to release shortfin mako sharks brought to the fishing vessel alive, NMFS prefers this alternative at this time.

B. Recreational Measures

1. Small Coastal Sharks

Under alternative D1, the No Action alternative, NMFS would maintain the current recreational management measures, including the current retention limits and size limits for SCS. Therefore, the economic impacts of alternative D1 would be the same as the status quo, and no negative economic impacts would be anticipated under alternative D1. However, as this alternative would not help rebuild blacknose sharks, NMFS does not prefer this alternative at this time.

Alternative D2 would modify the minimum recreational size for blacknose sharks based on the biology of blacknose sharks. This would lower the current size limit from 54 inches FL to 36 inches FL, the size at which 50 percent of the female blacknose sharks reach sexual maturity. This could increase the landings of recreationally harvested blacknose sharks and, therefore, have positive economic impacts for small business entities supporting recreational fishermen. The potential for increased landings associated with the lower size limit could marginally increase demand for charter/headboat services and for products and service provided by shoreside businesses that support recreational fishermen. Since this alternative could result in the increase of blacknose shark recreational landings, and NMFS needs to reduce the number of blacknose shark landings in order to rebuild the stock, NMFS does not prefer this alternative at this time.

Alternative D3 would increase the retention limit for Atlantic sharpnose sharks based on their current catches and stock status. Any increase in the retention limit for Atlantic sharpnose sharks would provide positive economic impacts for recreational fishermen, especially if this resulted in more charter trips for charter/headboats. However, since the latest stock assessment suggests that increased fishing efforts could result in an overfished status and/or cause overfishing to occur in the future (NMFS, 2007), NMFS does not prefer this alternative at this time.

Under alternative D4, the preferred alternative, NMFS would prohibit the retention of blacknose sharks in the recreational fishery. While recreational fishermen would likely still catch blacknose sharks when fishing for other fish, they would not be permitted to retain blacknose sharks and would have to release them. This could have negative economic impacts on recreational fishermen, including tournaments and charter/headboats if the prohibition of blacknose sharks resulted in fewer charters and reduced tournament participation. However, since blacknose sharks are not one of the primary species targeted by recreational anglers, in tournaments, or on charters, NMFS does not anticipate large negative economic impacts from this alternative on tournaments or charter/headboat businesses. Therefore,

NMFS prefers this alternative at this time since it meets the objectives of this rule of reducing overfishing of blacknose sharks while also minimizing economic impacts on small entities.

2. Pelagic Sharks

Maintaining the current recreational measures for shortfin mako sharks under alternative E1 would likely not result in any adverse economic impacts on small entities since the No Action alternative would not modify or alter recreational fishing practices for shortfin mako sharks or other shark species. However, this alternative would not meet the objective of this rule in reducing overfishing of shortfin mako sharks, thus, NMFS does not prefer this alternative at this time.

Alternative E2a would set a minimum size limit for shortfin mako sharks of 108 inches FL in the recreational fishery. This would have the most severe economic impacts of all the alternatives considered, as almost all of the reported shortfin mako sharks landed (99.5 percent) were smaller than the proposed 108 inch FL size limit and would have to be released. This alternative would basically create a catch-and-release fishery for shortfin mako sharks. The impacts of alternative E2b would be less severe than alternative E2a, as it would set a minimum size limit for shortfin mako sharks of 73 inches FL in the recreational fishery. This would result in a 60.3 percent overall reduction in recreational shortfin mako shark landings. Under this alternative, economic impacts would be greater on the non-tournament recreational mako shark fishery, as 81 percent of those landings would fall below the 73 inch FL size limit. The percentage of recreational landings during tournaments that would be released under alternative E2b would be less than the non-tournament recreational landings (51.7 percent to 81 percent, respectively). According to LPS data, 41 percent of shortfin mako sharks caught are kept; therefore, size limits in alternatives E2 may have a substantial economic impact on the recreational fishery. Thus, NMFS does not prefer E2a or E2b at this time.

Under alternative E3, NMFS would take action at the international level to end overfishing of shortfin mako sharks. This alternative would not result in any changes in the current recreational regulations regarding bag or size limits for shortfin mako sharks. Therefore, this alternative would likely not result in any negative economic impacts for recreational fishermen and the small businesses that support those recreational fishing activities in the short term as compared to the No Action alternative, E1. In addition, this alternative could help end overfishing of shortfin mako sharks in the long term through an international plan to conserve shortfin mako sharks. Therefore, NMFS prefers this alternative at this time.

Under alternative E4, NMFS would promote the live release of shortfin mako sharks in the recreational shark fishery, but this alternative would not result in any changes in the current recreational regulations regarding bag or size limits for shortfin mako sharks. Therefore, this alternative would likely not result in any economic impacts compared to the No Action alternative, alternative E1. However, it would encourage the live release of shortfin mako sharks, and could help reduce fishing pressure on this species. Therefore, NMFS prefers this alternative at this time.

Under alternative E5, NMFS would remove shortfin mako sharks from the authorized species list and add them to the prohibited species list. Placing shortfin mako sharks on the prohibited species list would make the recreational fishery for shortfin mako sharks a catch-and-release fishery. Although a small number of shortfin mako sharks were landed in the recreational fishery from 2004 to 2007, it is also an important fishing tournament species. Fishing tournaments are an important component of HMS recreational fisheries. In 2008, there were 42 shark tournaments throughout the U.S. Atlantic Coast, including the Gulf of Mexico and the Caribbean Sea. Therefore, adding this species to the prohibited species list could lead to negative economic impacts for tournament operators since they may have to modify their tournament rules and could face reduced demand for participation, and thus reduce revenues from entry fees. A recreational catch-and-release fishery for shortfin mako may also reduce demand for CHB trips that target shortfin mako sharks. In addition, since the United States only contributes to a small portion of the overall mortality for shortfin mako sharks, prohibiting them in the recreational fishery would not end overfishing for this species. Given these reasons and the economic impacts of this alternative are estimated to be higher than that of the preferred alternatives, NMFS does not prefer this alternative at this time.

C. Smooth Dogfish

Under alternative F1, the no action alternative, NMFS estimates that there would not be any economic impacts to small entities beyond the status quo. This alternative would have the lowest costs alternative to small entities. However, applying the No Action alternative would not meet the objectives of this rule since it would preclude gathering fishery participant information. Therefore, NMFS does not prefer this alternative at this time.

Implementing Federal management of smooth dogfish through alternative F2 would focus on characterizing the fishery and stock status, but would not actively change catch levels or rates. Therefore, this alternative would likely have minor economic impacts on small entities. Business entities that fish commercially for smooth dogfish would have to purchase an open access smooth dogfish commercial fishing permit, and dealers would have to report smooth dogfish landings. The costs to small entities would include the costs of obtaining the permit, the time involved in completing the permit form, and the administrative costs associated with reporting landings. In addition, recreational anglers that would want to retain smooth dogfish in Federal waters would need to purchase an HMS Angling category permit. While this alternative results in more costs to small entities than alternative F1, it helps meet the objectives of this rule of gathering more information on participation in this fishery, and therefore is preferred at this time.

Sub-alternatives F2 a1, which would establish a smooth dogfish quota that is equal to the average annual landings from 1998–2007, and F2 a2, which would establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007, could potentially have negative social and economic impacts on fishermen if the associated quotas reflect a significantly underreported fishery. If the actual landings are higher than these two quotas, fishermen would be prevented from fishing at status quo levels, and thus experience negative economic impacts. Thus, NMFS does not prefer these two sub-alternatives at this time.

Sub-alternative F2 a3, which would establish a smooth dogfish quota above the maximum annual landing between 1998–2007, is anticipated to have neutral economic impacts. Establishing a quota of maximum historical annual landings plus one standard deviation between the years 1998 and 2007 would allow a buffer for potential unreported landings during that time. This would allow the fishery to continue in the future without having to be shut down prematurely, which may not be warranted given smooth dogfish sharks

have not been assessed. Thus, NMFS prefers sub-alternative F2 a3 at this time.

There are no negative economic impacts anticipated with sub-alternative F2 b1. There is no charge associated with fishermen and researchers obtaining an EFP, SRP, display permit, or LOA for research or the collection for public display. In addition, NMFS would establish a smooth dogfish set aside that would accommodate current and future research activities. Thus, NMFS does not anticipate any negative social and economic impacts associated with sub-alternative F2 b1, and NMFS prefers sub-alternative F2 b1 at this time.

As with sub-alternative F2 b1, there are no negative economic impacts anticipated with sub-alternative F2 b2. There is no charge associated with fishermen and researchers obtaining an EFP, SRP, display permit, or LOA for research or for the collection for public display. In addition, NMFS would establish a smooth dogfish set-aside that would accommodate current and future research activities. Thus, NMFS does not anticipate any negative social and economic impacts associated with sub-alternative Fb1.

Alternative F3, which would implement management measures for smooth dogfish that complement the ASMFC plan, would likely have neutral to slightly positive economic impacts. Most of the ASMFC regulations would not change the smooth dogfish fishery, and would therefore, would have neutral impacts on fishermen. In addition, the ASMFC's consideration of removing the two net-hour check provision and allowing fishermen to process smooth dogfish while at sea would allow fishermen to conduct the fishery as they have in the past, and therefore, result in neutral or slightly positive economic impacts. However, since NMFS considers the requirements for gillnet checks and maintaining shark fins naturally attached through offloading necessary conservation tools for protected resources and to prevent shark finning, NMFS does not prefer this alternative at this time.

List of Subjects

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 600

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

50 CFR Part 635

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

Dated: July 17, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter II (part 229) and Chapter VI (parts 600 and 635) are proposed to be amended as follows:

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

§ 229.2 [Amended]

2. In § 229.2, the definition of ''Spotter plane'' is removed.

3. In § 229.3, paragraphs (k) and (l) are revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in § 229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), (f)(2)(iii), (f)(2)(iv), and (g)(2), or for (g)(2) unless the gear is stowed as specified in § 229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (*i.e.* gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in § 229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the restrictions specified in § 229.32(f)(2)(v).

* * * * *

4. In § 229.32:

A. Paragraphs (a)(1) last sentence of the introductory text, (b)(2)(ii)(A)(*6*), (b)(2)(iii) heading, (f)(2)(ii)(A), (f)(2)(ii)(B), and (g)(3) are revised.

B. Paragraph (b)(2)(i) is removed and reserved.

C. Remove paragraphs (f)(2)(iii) and (vi) and redesignate paragraphs (f)(2)(iv) and (v) as paragraphs (f)(2)(iii) and (iv), respectively.

D. Remove paragraphs (g)(2) and (4) and redesignate paragraph (g)(3) as paragraph (g)(2).

E. Remove paragraphs (b)(2)(iii)(A) heading and (h)(2).

The revisions read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) * * * The gear types affected by this plan include gillnets, (*e.g.,* anchored, drift, gillnet, sink and stab net) as defined in § 229.2, and trap/pots.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) * * *

(*6*) Gillnet gear in the Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a yellow marking.

* * * * *

(iii) *Requirements for all specified areas—Surface buoy markings.* * * *

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) Except as provided under paragraph (f)(2)(iv) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(iii) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

* * * * *

(g) * * *

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00′ N. lat. from November 15 through April 15 and south of 29°00′ N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

* * * * *

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

6. In § 600.1204, paragraphs (g) through (l) are revised to read as follows:

§ 600.1204 Shark finning; possession at sea and landing of shark fins.

* * * * *

(g) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the ''weighout slips'' specified in § 635.5(a)(2) of this chapter.

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

(i) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall engage in shark finning.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall possess on board shark fins without the fins being naturally attached to the corresponding carcass(es), although sharks may be dressed at sea.

(k) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall land shark fins without the fins being naturally attached to the corresponding carcass(es).

(l) A dealer may not purchase, from an owner or operator of a fishing vessel issued an Atlantic commercial shark permit who lands shark in an Atlantic coastal port, fins that were not naturally attached to the corresponding carcass at the time of landing or whose wet weight exceeds 5 percent of the dressed weight of the corresponding carcass(es).

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

7. The authority citation for 50 CFR part 635 continues to read as follows:

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

8. In § 635.1, paragraph (a) is revised to read as follows:

§ 635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Consolidated Highly Migratory Species Fishery Management Plan and its amendments. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, under the authority of the Magnuson-Stevens Act.

* * * * *

9. In § 635.2, the definitions of ''Federal Atlantic commercial shark permit,'' and ''Non-blacknose SCS,'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Federal Atlantic Commercial Shark Permit means any of the following commercial permits: the shark directed limited access permit, the incidental shark limited access permit, and the smooth dogfish permit issued pursuant to § 635.4.

* * * * *

Non-blacknose SCS means one of the species, or part thereof, listed in paragraph (A) of table 1 in appendix A to this part other than the blacknose shark (*Carcharhinus acronotus*).

* * * * *

10. In § 635.4, paragraphs (e) and (g)(2) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(e) *Shark vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of three types of commercial shark permits: shark directed limited access permit, shark incidental limited access permit, or a smooth dogfish permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(2) The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) Persons issued or required to be issued a Federal commercial shark directed or shark incidental limited access permit may harvest, consistent with the other regulations in this part, any species in Table 1 of Appendix A of this part except for the dogfish sharks listed in the other complex. A directed or incidental shark limited access permit may be issued to a vessel that also holds a smooth dogfish permit.

(4) Persons issued or required to be issued a Federal commercial smooth dogfish permit may harvest, consistent with the other regulations in this part, only the dogfish sharks listed in the other complex. A smooth dogfish permit may be issued to a vessel that also holds either a directed or incidental shark limited access permit.

(5) A commercial permit for sharks is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or fishes exclusively within State waters.

* * * * *

(g) * * *

(2) *Shark.* A first receiver, as defined in § 635.2, of Atlantic sharks, including dogfish sharks listed in the other complex, must possess a valid dealer permit.

* * * * *

11. In § 635.5:

A. Paragraph (a)(4) is removed.

B. Paragraph (a)(5) is redesignated as paragraph (a)(4).

C. Paragraph (b)(1)(i) is revised.

The revision reads as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section. All reports must be species-specific and must include information about all HMS landed regardless of

where harvested or whether the vessel is Federally permitted under § 635.4. For sharks, each report must specify both the total fin weight and the total dressed weight of the carcass(es) separately from each other. In cases where different dealers handle the fins and the shark meat, either the report required in this section or the weighout slip required in paragraph (a)(2) of this section must indicate which dealer handled which portion of the shark. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any permit applications.

* * * * *

12. In § 635.20, paragraph (e) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(e) *Sharks.* All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins naturally attached. All sharks, except Atlantic sharpnose, bonnethead, smooth dogfish, and Florida dogfish, landed under the recreational retention limits specified at § 635.22(c) must be at least 54 inches (137 cm) FL.

* * * * *

13. In § 635.21, paragraphs (d)(1)(iii)(B) and (e)(3) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(B) *Northern South Carolina.* Bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

* * * * *

(e) * * *

(3) *Sharks.* (i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) No person may fish for or possess sharks with gillnet gear onboard south of 33°52′ N. Lat. (the northern border of South Carolina), including in the Gulf of Mexico and Caribbean Sea.

(iv) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title.

(vi) While fishing for sharks with a gillnet, the gillnet must remain attached to at least one vessel at one end, except during net checks. Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Smalltooth sawfish should not be removed from the water while being removed from the net.

* * * * *

14. In § 635.22, paragraphs (a) and (c) are revised to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic Ocean including the Gulf of Mexico and Caribbean Sea, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in State waters.

* * * * *

(c) *Sharks.* (1) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e): any of the non-ridgeback sharks listed under heading A.2 of Table 1 in Appendix A of this part, tiger (*Galeocerdo cuvier*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*Carcharhinus longimanus*), porbeagle (*Lamna nasus*), shortfin mako (*Isurus oxyricnchus*), Atlantic sharpnose (*Rhizoprionodon terraenovae*), finetooth (*C. isodon*), and bonnethead (*Sphyrna tiburo*).

(2) In addition to the sharks listed under paragraph (c)(1) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip; regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel.

(3) In addition to the sharks listed under paragraphs (c)(1) and (c)(2) of this section, smooth and Florida dogfish sharks may be retained.

(4) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained regardless of where harvested. Sharks not listed in paragraphs (c)(1), (2), and (3) of this section may not be retained.

(5) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a commercial shark vessel permit under § 635.4. If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a commercial shark vessel permit under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

15. In § 635.24, paragraphs (a)(4), (a)(5), and (a)(6) are revised and paragraph (a)(7) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(4)(i) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28.

(ii) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land SCS, including blacknose sharks, if the SCS fishery is open per §§ 635.27 and 635.28.

(iii) A person who owns or operates a vessel that has been issued an incidental LAP for sharks may retain, possess, or land no more than 16 non-blacknose SCS and pelagic sharks, combined, per trip, if the respective fishery is open per §§ 635.27 and 635.28. Such a person may not retain, possess, or land blacknose sharks.

(5) Only persons who own or operate a vessel that has been issued a Federal commercial smooth dogfish permit may retain, possess, and land smooth or florida dogfish sharks if the respective fishery is open per §§ 635.27 and 635.28.

(6) A person who owns or operates a vessel that has been issued a commercial shark permit may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(7) A person who owns or operates a vessel that has been issued a commercial shark permit, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

* * * * *

16. In § 635.27, paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(iii) through (vii), and (b)(2) are revised and paragraph (b)(1)(viii) is added to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vii) of this section apply to all sharks harvested from the management units, regardless of where harvested. Sharks taken and landed from State waters, even by fishermen without Federal shark permits, must be counted against the fishery quota. Commercial quotas are specified for each of the complexes or species of sandbar sharks, non-sandbar LCS, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle sharks, and other sharks. Any sharks landed as unclassified will be counted against the appropriate complex's or species' quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* The fishing season for sandbar sharks, non-sandbar LCS, all small coastal sharks, all pelagic sharks, and other sharks will begin on January 1 and end on December 31.

* * * * *

(iii) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the adjusted base quota is 87.9 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(viii) of this section. This quota is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(iv) *Non-sandbar LCS.* The total base quota for non-sandbar LCS is 677.8 mt dw. This base quota is split between the two regions and the shark research fishery as follows: Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the total adjusted base quota is 615.8 mt dw. This adjusted base quota is split between the regions and the shark research fishery as follows: Gulf of Mexico = 390.5 mt dw; Atlantic = 187.8 mt dw; and Shark Research Fishery = 37.5 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(viii) of this section.

(v) *Small coastal sharks.* The base annual commercial quota for non-blacknose small coastal sharks is 56.9 mt dw, unless adjusted pursuant to paragraph (b)(1)(viii) of this section. The base annual commercial quota for blacknose sharks is 14.9 mt dw, unless adjusted pursuant to paragraph (b)(1)(viii) of this section.

(vi) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488 mt dw for pelagic sharks other than blue sharks or porbeagle sharks, unless adjusted pursuant to paragraph (b)(1)(viii) of this section.

(vii) *Other sharks.* The base annual commercial quota for other sharks is 645.8 mt dw, unless adjusted pursuant to paragraph (b)(1)(viii) of this section.

(viii) *Annual adjustments.* NMFS will publish in the **Federal Register** any annual adjustments to the base annual commercial quotas or the 2008 through 2012 adjusted base quotas. The base annual quota and the adjusted base annual quota will not be available, and the fishery will not open, until such adjustments are published and effective in the **Federal Register**.

(A) *Overharvests.* If the available quota for sandbar sharks, non-blacknose SCS, blacknose sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle sharks, and other sharks is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the annual quota in a particular region or in the research fishery for non-sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

(B) *Underharvests.* If an annual quota for sandbar sharks, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle, or other sharks is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock (*e.g.,* sandbar shark, porbeagle shark, pelagic shark, or blue shark) or specific species within a quota group (*e.g.,* non-sandbar LCS or non-blacknose SCS) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base

annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012). If the stock is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012) by an equivalent amount of the underharvest up to 50 percent above the base annual quota. For the non-sandbar LCS fishery, underharvests are not transferable between regions and/or the research fishery.

(2) *Public display and non-specific research quota.* The base annual quota for persons who collect non-sandbar LCS, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw). The base annual quota for persons who collect smooth or Florida dogfish sharks under a display permit or EFP is 6 mt ww (4.3 mt dw). The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1 mt dw) and under an EFP is 1.4 mt ww (1 mt dw). No persons may collect dusky sharks under a display permit. Collection of dusky sharks for research under EFPs and/or SRPs may be considered on a case by case basis and any associated mortality would be deducted from the shark research and display quota. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against these quotas.

* * * * *

17. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks.* (1) If quota is available as specified by a publication in the **Federal Register**, the commercial fisheries for sandbar shark, non-sandbar LCS, non-blacknose SCS, blacknose shark, porbeagle sharks, blue sharks, pelagic sharks other than blue or porbeagle sharks, and other sharks will remain open as specified at § 635.27(b)(1).

(2) When NMFS calculates that the fishing season landings for sandbar shark, non-sandbar LCS, blue sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle sharks, or other sharks has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for public inspection with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non-sandbar LCS, region is closed, even across fishing years.

(3) When NMFS calculates that the fishing season landings for either blacknose sharks or non-blacknose SCS has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for public inspection with the Office of the Federal Register a notice of closure for the entire SCS fishery, including the blacknose shark fishery, that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for non-blacknose SCS and blacknose sharks is closed, even across fishing years.

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and an NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group and/or region from a vessel issued a commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, a shark dealer, issued a permit pursuant to § 635.4 may purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had an NMFS-approved observer on board during the trip sharks were collected.

* * * * *

18. In § 635.30, paragraph (c) is revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) *Shark.* (1) In addition to the regulations issued at part 600, subpart N, of this chapter, a person who owns or operates a vessel issued a commercial shark permit under § 635.4 must maintain all the shark fins including the tail on the shark carcass until the shark has been offloaded from the vessel.

While sharks are on board and when sharks are being offloaded, persons issued a commercial shark permit under § 635.4 are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid commercial shark permit may remove the head and viscera of the shark while on board the vessel. At any time when on the vessel, sharks must not have the backbone removed and must not be halved, quartered, filleted, or otherwise reduced. All fins, including the tail, must remain naturally attached to the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded.

(3) A person who owns or operates a vessel that has been issued a commercial shark permit and who lands sharks in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time. Once landed and offloaded, sharks that have been halved, quartered, filleted, cut up, or reduced in any manner may not be brought back on board a vessel that has been or should have been issued a Federal commercial shark permit.

(4) Persons aboard a vessel that does not have a commercial shark permit must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins naturally attached. The shark may be bled and the viscera may be removed.

* * * * *

19. In § 635.32, paragraph (e)(3) is revised to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(e) * * *

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the 2006 Consolidated HMS FMP and its amendments, as well as ICCAT recommendations.

* * * * *

20. In § 635.69, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 635.69 Vessel Monitoring Systems.

(a) * * *

(2) Whenever a vessel issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00′ N. lat. and 36°30′ N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board from November 15—April 15.

* * * * *

21. In Appendix A to Part 635, Table 1 of Appendix A to Part 635 is revised to read as follows:

Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Oceanic Sharks

A. *Large coastal sharks:*
1. *Ridgeback sharks:*
Sandbar, *Carcharhinus plumbeus*
Silky, *Carcharhinus falciformis*
Tiger, *Galeocerdo cuvier*
2. *Non-ridgeback sharks:*
Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
B. *Small coastal sharks:*
Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*
C. *Pelagic sharks:*
Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*
D. *Other sharks:*
Smooth dogfish, *Mustelus canis*
Florida dogfish, *Mustelus norrisi*
E. *Prohibited sharks:*
Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

* * * * *

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