



# Federal Register

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**Tuesday,  
June 1, 2010**

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**Part II**

## **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Parts 600 and 635  
Atlantic Highly Migratory Species; Atlantic  
Shark Management Measures; Amendment  
3; Final Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 635**

[Docket No. 080519678-0217-02]

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:** Final rule.

**SUMMARY:** NMFS publishes this final rule implementing the Final Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). As it developed Amendment 3, NMFS examined a full range of management alternatives available to rebuild blacknose sharks and end overfishing of blacknose and shortfin mako sharks, consistent with recent stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law, and evaluated options for managing smooth dogfish as a highly migratory species under the HMS FMP. This final rule implements the final conservation and management measures in Amendment 3 for blacknose sharks, shortfin mako sharks, and smooth dogfish. In order to reduce confusion with spiny dogfish regulations, this final rule places both smooth dogfish and Florida smoothhound into the "smoothhound shark complex." This final rule also announces the opening date and 2010 annual quotas for small coastal sharks (SCS). 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:** The SCS fishery opens on June 1, 2010.

This final rule is effective on July 1, 2010, except for the amendments to §§ 635.27(b)(1)(i) through (v) and 635.28(b) which will be effective on June 1, 2010.

However, §§ 635.4(e)(4), 635.20(e)(4), 635.22(c)(6), 635.24(a)(7), 635.27(b)(1)(vi), 635.27(b)(2)(iv), and section E of Table 1 of Appendix A, contain information collection requirements which are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). A document will

be published in the **Federal Register** announcing the effective date of those provisions when they are approved.

**ADDRESSES:** Copies of the final Amendment 3 to the Consolidated HMS FMP, including the Final Environmental Impact Statement (FEIS), 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 or Karyl Brewster-Geisz at 301-713-2347. Hard copies may also be requested by writing to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or faxing to (301) 713-1917.

NMFS has not yet submitted an application to OMB for approval of the collection-of-information regarding the smoothhound shark permit. The implementation of this specific requirement is delayed pending approval by OMB. Once submitted, written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements may be submitted to Karyl Brewster-Geisz (*see above*) and by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov) or fax to (202) 395-7285.

**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 have been managed by the Secretary pursuant to the HMS FMP for Atlantic sharks prepared under the authority of the Magnuson-Stevens Act Sections 302(a)(3) and 304(g) in 1993 (1993 FMP). NMFS revised the 1993 FMP to include swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). After amending the 1999 FMP in 2003, NMFS consolidated the Atlantic tunas, swordfish, and shark FMP and its amendments with the Atlantic billfish FMP and its amendments creating the 2006 Consolidated Atlantic HMS FMP. Amendments 1 and 2 amended the 2006 Consolidated HMS FMP in 2009 and 2008, respectively. Amendment 3 further amends the 2006 Consolidated HMS FMP. The 2006 Consolidated HMS FMP and its amendments are implemented by regulations codified 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 are not experiencing overfishing (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 fully incorporated in the 2006 Consolidated HMS FMP, are summarized in other documents such as Amendment 3, and are not repeated here.

NMFS has also determined that blue sharks are not overfished and overfishing is not occurring. With respect to shortfin mako sharks, however, NMFS has determined that the species while not overfished, is approaching an overfished condition, and is subject to overfishing. These determinations are based on international stock assessments conducted by the International Commission for the Conservation of Atlantic Tuna's (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 shark species that are managed under the 2006 Consolidated HMS FMP and its amendments. 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, when managing HMS on behalf of the Secretary, is required to take action to end overfishing, to rebuild an overfished fishery, and, if a fishery is approaching an overfished condition, take action to prevent overfishing from occurring. Since NMFS determined that the blacknose shark fishery was overfished, it was responsible for developing conservation and management measures to end overfishing and rebuild the fishery. Similarly, upon learning that the shortfin mako fishery was approaching an overfished condition, NMFS had a duty, taking into account the international nature of the fishery, to take appropriate action at the domestic or international level, to prevent overfishing of the shortfin mako sharks. NMFS announced its intent to develop

amendments to the 2006 Consolidated HMS FMP and prepare a corresponding 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).

In addition to potential measures to address overfished stocks and to end overfishing, during the scoping process, NMFS identified the need to add smooth dogfish into the management unit to provide for conservation and management of the species. Smooth dogfish was previously included as an HMS in a fishery management unit (FMU) that included deepwater and other sharks in order to prevent finning. These species were removed from the FMU in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks since they were protected from finning under the Shark Finning Prohibition Act (67 FR 6124, February 11, 2002). As described below, based on comments and other reasons, NMFS has determined that conservation and management of smooth dogfish under the Magnuson-Stevens Act are warranted for several reasons including the need to collect data regarding the fishery, fishing effort, and life history of the species.

Based in part on the comments received during scoping and from the HMS Advisory Panel on the Predraft, NMFS evaluated a full range of alternative management measures for blacknose sharks, SCS, shortfin mako sharks, and smooth dogfish within Amendment 3 (74 FR 36706 and 74 FR 36892). The details of what NMFS proposed and the alternatives considered are described in the proposed rule and DEIS, which included Draft Amendment 3. Those documents are incorporated by reference and their description of management and conservation measures considered at the DEIS and proposed rule stage are not repeated here. In the proposed rule, NMFS announced nine public hearings from New Hampshire to Louisiana, and set a deadline for the public comment period, which was to

end on September 22, 2009. On August 10, 2009, the comment period was extended to September 25, 2009 (74 FR 39914), to accommodate two public hearings scheduled on September 22, 2009, and the New England Fishery Management Council meeting that was scheduled from September 22 through 24, 2009. The draft Amendment 3 was presented to the South Atlantic (74 FR 44352), Mid-Atlantic (74 FR 34556), Gulf of Mexico (74 FR 36669), Caribbean (74 FR 40168), and New England (74 FR 45821) Fishery Management Councils. The draft Amendment 3 was also presented to ASMFC in August 2009. NMFS received a number of oral and written comments on the proposed rule. The significant comments and NMFS' responses are summarized below under the section labeled "Response to Comments."

NMFS prepared an FEIS that discussed the direct, indirect and cumulative impacts on the quality of the human environment as a result of the preferred management measures identified for Amendment 3. The FEIS, including the final actions identified for Amendment 3, was made available in March 2010 (75 FR 13275, March 19, 2010). On May 18, 2010, the Assistant Administrator for NOAA signed a Record of Decision adopting Final Amendment 3 to the 2006 Consolidated HMS FMP. Final Amendment 3 was comprised of the preferred alternatives identified by NMFS in the FEIS. A copy of the FEIS, including final Amendment 3, is available from NMFS (*see ADDRESSES*). As described in the FEIS and the responses to comments below, and based in part on the public comments, NMFS made a number of changes to the preferred alternatives between the DEIS and FEIS.

Corresponding changes were made, where appropriate, to Draft Amendment 3 and the Proposed Rule resulting in Final Amendment 3 and this final rule. The specific changes are described below in the section titled "Changes from the Proposed Rule." In brief, the final management measures implemented in this rule are: implement a non-blacknose SCS annual quota of 221.6 mt dw; implement a blacknose shark annual quota of 19.9 mt dw; take action at the international level to end overfishing of shortfin mako sharks; promote in the domestic fishery the release of shortfin mako sharks brought to commercial and recreational fishing vessels alive; add smooth dogfish to the HMS management unit; establish a smooth dogfish annual quota of 715.5 mt dw; require that smooth dogfish fins remain attached to the carcass through

offloading; require commercial and recreational fishermen to obtain a permit authorizing landings of smooth dogfish caught in or transported through Federal waters; and make several administrative changes clarifying, correcting, and updating the regulations, as described in the proposed rule. Amendment 3 also finalized a mechanism for determining annual catch limits (ACLs) and establishing accountability measures (AMs) for the Atlantic shark fisheries managed in the 2006 Consolidated HMS FMP and its amendments.

In this rule, NMFS is placing both smooth dogfish and the Florida smoothhound into the 'smoothhound complex.' NMFS intends this name change to minimize any confusion with spiny dogfish regulations. Both smooth dogfish and the Florida smoothhound, which, as described in Amendment 3, are likely the same species, are found in the smoothhound family (*Triakidae*) and are the only members of the smoothhound family that are found on the Atlantic coast (there are other smoothhound sharks found in the Pacific Ocean). Spiny dogfish, which have been managed by the Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC) since the early 1990s, is often referred to as 'dogfish' and is found in the dogfish family (*Squalidae*). Thus, referring to 'smoothhound' in the regulations and requiring a smoothhound permit, rather than a smooth dogfish permit, should help in the long term to eliminate any confusion that might be caused by having two 'dogfish' species and permits. NMFS expects some confusion in the short term as fishermen adjust to the use of a new term in the regulations. However, because common names of fish are often different in different regions (*e.g.*, striped bass and rockfish), NMFS does not expect this confusion to last long.

The effectiveness of all the smoothhound management measures in Final Amendment 3 and associated implementing regulations included in the final rule will be delayed until the start of the 2012 fishing season for smooth dogfish (approximately April 1, 2012), pending approval for the data collection requirement under the PRA by OMB. NMFS is delaying implementation of those measures to provide time for affected fishermen to change business practices, particularly as it relates to keeping the fins attached to the carcass through offloading, and to provide time for implementing a permit requirement. NMFS is also delaying implementation to provide additional time to complete a smooth dogfish

biological opinion under Section 7 of the Endangered Species Act (ESA). NMFS will announce in a separate notice how to obtain a permit and any other relevant details regarding implementation of these or other smoothhound measures.

During the comment period for the proposed rule, NMFS received many questions regarding the impetus for managing smooth dogfish. Over the course of this rulemaking process, a number of stakeholders have indicated, either in conjunction with or independent of this rulemaking, that management of smooth dogfish is necessary. These include environmental organizations that have specifically requested management action, the Atlantic States Marine Fisheries Commission (ASMFC) that included smooth dogfish in its management unit when finalizing its Interstate FMP for Coastal Sharks, and the Mid-Atlantic Fishery Management Council (MAFMC) that specifically requested management authority to manage the smooth dogfish fishery. Also, based on existing data, it is apparent that the smooth dogfish fishery is substantial, and requires sound science-based conservation and management to provide for the long-term sustainable yield of the stock. The smooth dogfish fishery has significant annual landings when compared with other shark fisheries and has a large directed component. Previous experiences with shark fisheries and shark biology have indicated that sharks in general are vulnerable to stock collapse in the face of unrestricted fishing. Thus, adding the species to the FMU now to begin collecting data is appropriate. Additionally, the vast majority of the smooth dogfish catch occurs with gillnets. Some gillnet fisheries in the Atlantic are defined as Category I fisheries under the Marine Mammal Protection Act (MMPA), meaning the annual mortality and serious injury of one or more marine mammal stocks in a given fishery is greater than or equal to 50 percent of the Potential Biological Removal (PBR) level. While all fisheries need to comply with the requirements of the MMPA regardless of their management status, it is more efficient and predictable to ensure the affected fishermen are engaged in the process if their fishery is consistently managed in accordance with uniform conservation and management measures developed and implemented through an FMP in accordance with the procedures in the Magnuson-Stevens Act. Lastly, the smooth dogfish market could overlap with that of spiny dogfish, which is a

species that is Federally-managed with a significant directed fishery. Spiny dogfish required restrictive management measures in the late 1990s and early 2000s to deal with domestic overfishing. While domestically spiny dogfish stocks appear to be healthy, other stocks are overfished internationally. Because of the possible overlap in markets, NMFS is concerned that smooth dogfish products can be used as a substitute for spiny dogfish products. If there is market overlap, then declines in spiny dogfish stocks (as have been seen internationally) and restrictive management measures (including domestic management) could push, or might have already pushed, effort into the smooth dogfish fishery. Until initial management measures are in place to collect data concerning location, effort, and the status of the stock, NMFS will not be able to determine whether further or different conservation and management measures through future FMP amendments and/or regulatory changes are necessary due to the influence of the foregoing and other relevant factors. For the foregoing reasons, NMFS has determined that the smoothhound fishery is in need of conservation and management, and that the species is suitable for management as a highly migratory species by the Secretary in accordance with his authority over Atlantic HMS set forth in Sections 302(a)(3) and 304(g) of the Magnuson-Stevens Act.

#### Response to Comments

A number of individuals and groups provided comments on the proposed rule during the comment period in writing or at public hearings. All written comments can be found at <http://www.regulations.gov>. The comments received resulted in numerous changes, as described below in the Changes from the Proposed Rule section. Significant comments are summarized below by major topic together with NMFS' responses. There are eight major issues: SCS commercial quotas, commercial gear restrictions, commercial pelagic shark effort controls, recreational measures for SCS, recreational measures for pelagic sharks, smooth dogfish, general comments, and economic comments. The first major issue, SCS commercial quotas, has the following sub-issues: science/stock assessment, shrimp trawls and working with the Regional Fishery Management Councils, and quota alternatives. The comments are numbered consecutively, starting with 1, at the beginning of each major issue.

#### A. SCS Commercial Quotas

##### 1. Science/Stock Assessment

*Comment 1:* NMFS received comments regarding the average weights used for blacknose sharks. Commenters noted that the blacknose shark stock must be healthy, since blacknose sharks of various sizes are being landed across all fisheries. In addition, the Gulf of Mexico Fishery Management Council (GMFMC) commented that the average size of blacknose shark landed in the recreational fishery weighed only 1.5 lb dressed weight (dw), which corresponds to a fish less than two feet long, and therefore it appears that this data is incorrect. The recreational catches included only landed sharks. However, released blacknose sharks make up a substantial proportion of the total recreational catches, in some years exceeding landings. In other stock assessments, a release mortality percentage is applied to the releases reported in Marine Recreational Fishing Statistics Survey (MRFSS) to account for recreational dead discards. Leaving recreational dead discards out may result in erroneous assessment results.

*Response:* NMFS recognizes that blacknose sharks of various sizes are caught in the SCS fishery, and that the average weight for recreationally-caught blacknose sharks, which is the best available data from MRFSS, may be underestimated. However, only recreational landings and discard data were used in the stock assessments; average weights in the recreational fishery were not used in the 2007 SCS and blacknose shark assessments. In order to estimate recreational landings and dead discards for the stock assessment, NMFS used data from three recreational surveys (MRFSS, the NMFS Headboat Survey, and the Texas Parks and Wildlife Department Recreational Fishing Survey). NMFS also used MRFSS to estimate blacknose shark average weights, and NMFS realizes that an average weight for recreationally-caught blacknose sharks of less than 2 lb dw reflects a small juvenile shark, but this average weight of blacknose sharks is the best available data from MRFSS. Recent data from the Southeast Fisheries Science Center (SEFSC) has shown that the average size of blacknose sharks caught in gillnets is 18.7 lb dw, as opposed to the 14.4 lb dw that was used in the Draft Environmental Impact Statement (DEIS) analysis. Based on this updated average weight, NMFS has modified the average weight of blacknose sharks across all commercial gear types to 6.4 lbs, as opposed to 5.4 lbs used in the DEIS. Consistent with 40 CFR 1503.4(2) and (3), NMFS responded

to this comment in the DEIS, improved its analysis of blacknose mortality rates, and developed, identified, and evaluated a new A6, which would set the SCS quota at 221.6 mt dw and the blacknose quota at 19.9 mt dw. The preferred alternative in the DEIS was A4.

*Comment 2:* Several commenters had questions on where the research for the stock assessments occur, who does the assessments and research, what data goes into the assessments, and whether the assessments considered the Atlantic Large Whale Take Reduction Plan regulations.

*Response:* The 2007 Southeast Data, Assessment, and Review (SEDAR) SCS stock assessment was organized around three workshops. All workshops are open to the public to ensure the assessment process is transparent. The first is a Data Workshop, during which fisheries monitoring, life history data, catch data and indices of abundance from both fishery independent and fishery dependent sources are reviewed and compiled. The report of the Data Workshop provides all sources of data and research that was conducted and included in the stock assessment. The data reviewed at this workshop includes fishery dependent data (e.g., fishermen, dealer and observer reports), fishery independent data (e.g., scientific surveys), and scientific data regarding the biology of the species. Participants of the Data Workshop reviewed over 20 individual catch indices along with other data regarding catches and biological information. Current and historical regulations such as the Atlantic Large Whale Take Reduction Plan regulations and the Atlantic HMS regulations are summarized for consideration by the participants in the stock assessment. The scientists realize that management can affect fisheries monitoring, and data collection and work to account for these impacts when finalizing the data to be used in the assessment models. The explanation of the process for conducting the stock assessment is provided in Chapter 3 of the FEIS.

*Comment 3:* Fishermen are not fishing for sharks, including blacknose sharks, anymore since it is not profitable. NMFS could be misinterpreting this decline in effort as population declines. Shark catches are just incidental catches and occur only in the Tortugas.

*Response:* NMFS recognizes that effort has decreased in the shark fisheries in terms of the number of boats and in the number of sets, but notes that there are several fishermen in the Atlantic, GOM and Caribbean who still fish for sharks in both directed and

incidental manners. In order to account for this decreased effort, NMFS uses a weighted average of effort and landings when conducting data analysis. This provides a better understanding of the catch-per-unit effort of the active vessels in the fishery. Furthermore, the SEDAR stock assessment process uses fishery-independent data in the analysis. This type of data is generally immune to, and helps correct for, changes in fishing effort.

*Comment 4:* NMFS received several comments stating that the SEDAR 13 2007 SCS stock assessment is not the "best available science." Commenters noted concerns over certain data issues, the use of trawl data before and after TEDs were required, modeling assumptions, and management choices described in the stock assessment. One commenter stated that while he has advocated closing the shark gillnet fishery, he is concerned that NMFS is using suspect data to justify what would otherwise be a good outcome. Other commenters noted that shark stock assessments for various species tend to move the species assessed from overfished to healthy and then from healthy to overfished frequently. Many commenters felt that NMFS should wait for the new stock assessment and should not implement new quotas or other regulatory changes for blacknose sharks based on the 2007 assessment.

*Response:* NMFS used the best available science and a rigorous SEDAR stock assessment process to make the determination that blacknose sharks are overfished with overfishing occurring. The independent review panel determined that the data used in the SCS stock assessment were considered the best available at the time. They also determined that appropriate standard assessment methods based on general production models and on age-structured modeling were used to derive management benchmarks given the data available. Therefore, NMFS believes that the 2007 SCS stock assessment represents the best available science and is not considering delaying implementation of management measures until the next stock assessment is completed. Under Section 304(e) of the Magnuson-Stevens Act, as implemented by the NS1 Guidelines, if a stock is overfished, NMFS is required to "take remedial action by preparing an FMP, FMP amendment, or proposed regulation \* \* \* to rebuild the stock or stock complex to the MSY level within an appropriate time frame" (50 CFR 600.310(e)(3)(ii)).

Additionally, "in cases where a stock or stock complex is overfished, [the] action must specify a time period for

rebuilding the stock or stock complex that satisfies the requirements of section 304(e)(4)(A) of the Magnuson-Stevens Act." Therefore, consistent with the results of the 2007 SCS stock assessment results, the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, and the NS1 Guidelines, NMFS is implementing final management measures to end overfishing and rebuild blacknose sharks, while providing an opportunity for the sustainable harvest of the other sharks in the SCS complex. The discussion of the SEDAR stock assessment process is included in Chapter 3 of the FEIS. NMFS believes that the assessment remains the best scientific data available at this time and the agency is required by National Standard 2 to utilize this information.

*Comment 5:* The stock assessment should not have combined the two blacknose shark stocks found in the Gulf of Mexico region and the Atlantic coast region. The problem arises with the differences caused by a lack of migration movement between regions and the annual breeding cycle of the Gulf of Mexico stock coupled with the biennial breeding cycle of the Atlantic stock of mature female blacknose sharks. NMFS scientists should model them as two separate stocks and not one. Additionally, because of differences in life history parameters, blacknose sharks in the western North Atlantic should be managed separately from those in the Gulf of Mexico.

*Response:* In the 2007 SCS stock assessment, the assessment scientists considered the issue and determined that blacknose sharks should be assessed as one stock. The scientists noted that there was conflicting genetic data regarding the existence of two separate stocks, and the potential differences in the reproductive cycle for South Atlantic and Gulf of Mexico populations. As a result, the assessment used an average reproductive cycle of 1.5 years (the average between reproductive cycles of one year in the Gulf of Mexico and two years in the South Atlantic region). Also, reproductive scenarios were conducted during the stock assessment to determine the effect of different reproductive cycles on the stock status. Under both reproductive scenarios, the overall stock status of blacknose sharks did not change. Thus, the reviewers and assessment scientists agreed that the base case scenario of a 1.5-year reproductive cycle was appropriate for the assessment. Because it was determined that blacknose sharks are one stock, NMFS plans on implementing regulations to rebuild the blacknose shark stock for the South

Atlantic and Gulf of Mexico together. The discussion of the SEDAR stock assessment process is included in Chapter 3 of the FEIS and adequately addressed this issue. NMFS believes that the assessment remains the best scientific data available at this time and the agency is required by National Standard 2 to utilize this information. NMFS has determined that the existing analysis is adequate. As such, changes were not made in the FEIS or the final rule in response to this comment.

*Comment 6:* Commenters had questions on why the SCS stock assessment only included data up to 2005 and on the catch rate data from the trawl survey over the last 30 years.

*Response:* The data used in the 2007 SCS stock assessment includes data up to 2005, which was the most current year of data available at the time the SEDAR Data Workshop was held in February of 2007. Full descriptions of the data used in the 2007 blacknose stock assessment to estimate blacknose bycatch in the GOM are in SEDAR13–DW–31 and SEDAR13–DW–32. Both papers are available on the SEDAR Web site at [http://www.sefsc.noaa.gov/sedar/Sedar\\_Documents.jsp?WorkshopNum=13&FolderType=Data](http://www.sefsc.noaa.gov/sedar/Sedar_Documents.jsp?WorkshopNum=13&FolderType=Data). As outlined in the Final SEDAR 13 SCS Report, the blacknose shark bycatch in the South Atlantic was calculated as a proportion of the Gulf of Mexico bycatch. As for the data from the Southeast Area Monitoring and Assessment Program (SEAMAP), six “time series” were used to estimate blacknose shark bycatch in the shrimp trawl fisheries. These were the fall time series Fall Groundfish (FG) 1972–1986, First Fall (FF) 1987, Fall SEAMAP (FS) 1988–2006; and the summer time series Summer SEAMAP (SS) 1987–2006, Early SEAMAP (ES) 1982–1986, and Texas Closure (TC) 1981. The SEAMAP surveys did not utilize TEDs. However, shrimp trawl observer data from 1972–2005 also were used to estimate blacknose bycatch in the shrimp trawl fisheries and shrimp trawl effort data for the Gulf of Mexico and the South Atlantic from 1972–2005 were also used in the SEDAR 13 assessment. The discussion of the SEDAR stock assessment process is included in Chapter 3 of the FEIS. It discloses the data sources that existed at the time of the stock assessment. NMFS believes that the assessment and the data upon which it relied remains the best scientific data available at this time. The agency is required by National Standard 2 to utilize this information. NMFS has determined that the existing data and analysis are adequate. Therefore, no changes were made in the

FEIS or final rule in response to this comment.

*Comment 7:* Will the next blacknose shark assessment be a benchmark or update? The protocol of the shrimp observer program seems to be reporting just shark groups, not species specific reporting. NMFS should follow up on this through the observer program.

*Response:* Since the 2007 stock assessment, NMFS and industry scientists have been developing different models for analyzing the shrimp trawl data. Because the new models, which currently have not been peer reviewed, would be a change in methodology from the 2007 stock assessment, the next blacknose shark assessment will be a benchmark assessment. The Data Workshop for this assessment, which will also assess sandbar and dusky sharks, will take place in summer 2010. NMFS is currently working with the shrimp observer program to increase species specific shark data reporting.

*Comment 8:* NMFS received comments regarding the survival of blacknose sharks that stated that blacknose sharks are alive at the boat and will survive if released. NMFS also received comments that disputed the reduction of blacknose catches.

*Response:* A review of the data from the 2005–2008 Shark Gillnet Observer Database, which reported the number of sharks caught in the gillnet fishery during observed trips, detailed the disposition of the sharks caught in gillnets. From this data, the number of sharks that were landed and kept, landed alive and released, and landed dead and discarded was determined. Based on this data, NMFS has changed the mortality rate for discards to 80 percent instead of 100 percent that was used in the DEIS. Although catch rates may remain unchanged, a stock may show signs of stress through changes in average size towards smaller individuals, or to increasingly larger numbers of younger individuals in the stock. While there has not been a reduction in blacknose shark commercial landings, based on the most current stock assessment, the blacknose shark stock has been determined to be overfished, with overfishing occurring. For this reason, NMFS has decided to implement management measures to rebuild this overfished stock and to end overfishing. Based on this comment, NMFS modified the FEIS by adjusting the mortality rates based on observer coverage and made conforming changes in the Final Amendment 3 and this final rule.

2. *Shrimp Trawls and Working With the Regional Fishery Management Councils*

*Comment 9:* NMFS received many comments regarding the blacknose shark mortality related to the Gulf of Mexico shrimp trawl fisheries. The State of Louisiana agrees that the majority of the reported blacknose shark mortality comes as bycatch from the Gulf of Mexico shrimp trawl fishery, but notes that the effort in this fishery has been reduced from 2005 due to hurricanes Katrina and Rita and fuel prices. The GMFMC and others also commented that the Gulf of Mexico shrimp trawl bycatch portion of blacknose shark mortality (45 percent) seems high. Specifically, these commenters note that shrimp fishing effort in 2005 in areas where red snapper are abundant was reduced by 50 to 60 percent from 2001–2003 periods and was reduced by approximately 65 percent in 2006. It was further reduced in 2007 and 2008 by approximately 75 percent. The number of vessels participating in the offshore shrimp fishery is expected to continue declining until at least 2012, and has been further reduced by the impacts of hurricanes Katrina and Rita. With time/area closures, the shrimp trawl effort is unlikely to rebuild to its prior historical levels. As a result, basing blacknose shark mortality rates by gear type using the years 1999–2005 may produce anomalous results that are not representative of long term trends. Those estimates should be recalculated using more recent years or a longer time series of years. All of these comments stated that NMFS should update their mortality figures utilizing current offshore Gulf of Mexico shrimp trawl effort data.

*Response:* NMFS would like to thank the State of Louisiana and the GMFMC for their comments. NMFS is working with the GMFMC, and agrees that blacknose shark mortalities have dropped significantly due to decreased effort in the shrimp trawl fishery in the Gulf of Mexico. NMFS also recognizes that the impacts from hurricanes, and other events, in recent years may have affected effort or landings data. Effort in the Gulf of Mexico shrimp fishery has decreased 64 percent from the average effort across the entire Gulf of Mexico in 1999–2005 compared to effort in 2008 (James Nance, NMFS SEFSC pers. comm.). Although an analysis of the spatial/temporal distribution of this reduction relative to the distribution of blacknose shark bycatch has not been conducted, a starting assumption could be that this equates to a commensurate 64 percent reduction in bycatch.

Modeling efforts are ongoing that incorporate a TED effect in the bycatch estimation model. Preliminary analyses utilizing the new modeling technique indicate that bycatch may have been reduced by approximately 50 percent in 1999–2005. When bycatch reductions from the effort reduction of 64 percent are combined with an approximately 50-percent bycatch reduction anticipated from the TED effect, a preliminary estimate of the overall reduction is approximately 82 percent from 1999–2005 levels. Full results will be provided once the study is complete. The uncertainty is not fully defined in these preliminary bycatch estimates, and there may be spatio-temporal differences in bycatch trends. More data and further analyses are required to determine any uncertainty in the estimates and to re-evaluate the status of the blacknose shark stock. The next assessment is scheduled for 2010, and NMFS will re-visit shrimp bycatch and shrimp trawl effort at that time. Since the modeling data, analyses and conclusions are preliminary and have not been peer reviewed, they were not available for use in the FEIS or in this final rule. NMFS believes that the 2007 SCS assessment and the data upon which it relied with respect to bycatch in the shrimp trawl fisheries remains the best scientific data available at this time. The agency is required by National Standard 2 to utilize this information. NMFS has determined that the existing data and analysis are adequate. Therefore, no changes were made in the FEIS or this final rule in response to this comment.

*Comment 10:* NMFS received comments regarding the Georgia Bulldog trawl video and the ability of blacknose sharks to go through TEDs. Several commenters expressed skepticism that blacknose sharks could fit through the four inch bar spacing of a TED. Other commenters asked about the species of shark in the video and whether they went through the TED.

*Response:* The SEFSC's video footage of TEDs in shrimp trawls shows sharks and protected resources (e.g., sea turtles) being excluded from shrimp trawls using TEDs with less than 4-inch bar spacing. The video footage was taken from a shrimp trawler, the R/V Georgia Bulldog, off the coast of Georgia, within 10 miles of shore, in water depths less than 40 feet. The footage shows that some small sharks (blacknose, bonnethead, and Atlantic sharpnose), as well as various other finfish, can pass through the TEDs and into the codend of the trawl; NMFS has not conducted any analysis on the bycatch at this time (e.g., bycatch was not identified to

species, length measurements were not taken). The video is not appropriate for detailed analysis of the TED impact on catch and bycatch, but rather serves as a starting point because it shows that sharks do make it through this bycatch reduction device technology. The discussion and analysis of SCS bycatch in the shrimp trawl fisheries used in the 2007 SCS stock assessment remains the best scientific data available at this time. The agency is required by National Standard 2 to utilize this information. NMFS has determined that the existing data and analysis are adequate. Therefore, no changes were made in the FEIS or this final rule in response to this comment.

*Comment 11:* NMFS received numerous comments regarding the bycatch of blacknose sharks in shrimp trawl fisheries. Commenters suggested that NMFS should study potential ways to reduce bycatch of blacknose sharks and other species in trawl fisheries, including gear modifications, gear restrictions, or time-area closures and implement measures to reduce this bycatch. In addition, NMFS received comments that NMFS should work together with Regional Fishery Management Councils to reduce the bycatch of blacknose sharks in the shrimp trawl fisheries and to ensure ACLs and AMs are set for fisheries that catch blacknose sharks in order to limit the significant mortality in the shrimp fisheries.

*Response:* NMFS is working with the Gulf of Mexico and South Atlantic Fishery Management Councils to establish bycatch reduction methods, as appropriate, to reduce blacknose shark mortality in the shrimp trawl fisheries. In addition, NMFS SEFSC has been working with industry scientists to re-evaluate the shrimp bycatch models used in the 2007 SCS stock assessments. In particular, they have been evaluating the effect of TEDs on SCS bycatch in shrimp trawls. NMFS continues to monitor and evaluate bycatch in HMS fisheries through the pelagic longline (PLL), bottom longline (BLL), and gillnet observer programs, and evaluation of management measures such as closed area trip limits, and gear modifications. Because the Gulf of Mexico and South Atlantic Fishery Management Councils manage the shrimp trawl fisheries, NMFS is only implementing measures in this amendment to reduce the landings and discards in Atlantic shark fisheries. Regulatory changes to the shrimp trawl fisheries in the South Atlantic and Gulf of Mexico regions would be done through the Council process in those regions. This amendment includes a mechanism to

specify ACLs for stock complexes, including the SCS complex, and certain specific shark species as well as identify AMs, consistent with the Magnuson-Stevens Act requirements to establish a mechanism for specifying ACLs and AMs at a level that will prevent overfishing. The regulations necessary to adjust ACLs as needed and to apply AMs are currently in place. The DEIS explained NMFS' approach to reducing bycatch by working with the Regional Fisheries Management Councils responsible for those fisheries. In addition, NMFS has committed to ongoing monitoring and future evaluation of this issue. That discussion is included in Chapter 1 of the FEIS.

*Comment 12:* Some commenters noted that the shrimp industry has mandated TEDs and other bycatch reduction devices, and ask if there are other shrimp trawl bycatch reduction measures that can be implemented.

*Response:* NMFS agrees that the mandating of TEDs and other bycatch reduction devices have aided in the reduction of blacknose shark catches and other protected resources. Currently, NMFS is working with the GMFMC, South Atlantic Fishermen Management Council (SAFMC), and the shrimp industry to look at other ways to decrease the shark bycatch in the shrimp fishery. For the reasons stated in response to comment 11, NMFS did make changes in the FEIS based on this comment.

### 3. Quota Alternatives

*Comment 13:* NMFS should implement alternative A1, which calls for no action to the SCS commercial quota. This alternative is appropriate given the concerns on the science for blacknose and the range of alternatives. The Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations eliminate gillnet fishing for 5 months a year (November to April), which should be positive for blacknose sharks. When the fishery opens in April and May, the blacknose sharks are within State waters, therefore, NMFS should not change anything and stay with the 5 month ALWTRP closure.

*Response:* The results of the 2007 SCS stock assessment determined that, despite the ALWTRP, blacknose sharks are overfished and overfishing is occurring. The assessment recommended a blacknose shark specific TAC and a corresponding rebuilding timeframe. One objective of this rulemaking is 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 timeframe



recommended by the assessment. Under the Magnuson-Stevens Act, as implemented by the NS1 Guidelines, if a stock is overfished, NMFS, in addition to taking action to propose and implement measures to end overfishing, is required to “take remedial action by preparing an FMP, FMP amendment, or proposed regulation \* \* \* to rebuild the stock or stock complex to the MSY level within an appropriate time frame” (50 CFR 600.310(e)(3)(ii)). NMFS chose not to select the status quo alternative as the preferred alternative because it does not end overfishing or implement a rebuilding plan for overfished stocks as required by the Magnuson-Stevens Act and NS1 Guidelines. Based on further analysis of new data and public comment, NMFS selected an SCS quota alternative in the FEIS that was different from the preferred SCS quota alternative in the DEIS. Specifically, NMFS selected alternative A6 in the FEIS which has a non-blacknose SCS quota of 221.6 mt dw and a blacknose shark quota of 19.9 mt dw because it implements quotas necessary to rebuild and end overfishing of blacknose sharks. The final action also allows the gillnet fishery to continue, thus mitigating some of the economic impacts that are expected and necessary in order to reduce fishing mortality as prescribed by the recent stock assessment. Thus, the final SCS quota and commercial gear alternatives strike a balance between positive ecological impacts that must be achieved to rebuild and end overfishing of blacknose sharks while minimizing the negative economic impacts that would occur as a result of these measures.

*Comment 14:* NMFS received a number of comments indicating that gillnet fishermen can adapt their fishing techniques and gear to avoid catching blacknose sharks. Specific comments included: Did NMFS consider that fishermen can adapt and select on certain species?; gillnet fishermen can adapt to avoid catching blacknose sharks similar to how they reduced turtle and marine mammal bycatch; strikenet gear is a clean gear and can be modified to avoid blacknose sharks; it is possible to design gillnet gear to eliminate blacknose shark catches; and NMFS should set aside Amendment 3 or go with status quo until more gear research can be conducted.

*Response:* Due to this comment, NMFS reviewed the 2005–2008 Shark Gillnet Observer Data. Based on this analysis, NMFS agrees that fishermen may be able to adapt and specifically target some species while avoiding others. The percentage of blacknose sharks in the catch from gillnet trips

that were targeting other species were: 2.6 Percent from 5 trips that targeted blacktip sharks, 1.4 percent from 17 trips that targeted Atlantic sharpnose sharks, 8.3 percent from 6 trips that targeted bonnethead sharks, and 3.9 percent from 118 unspecified shark trips. NMFS used this information to re-analyze the SCS quota and commercial gear alternatives. Based on this analysis and public comment, NMFS selected alternative A6, which is a new alternative and would have a non-blacknose SCS quota of 221.6 mt dw and a blacknose shark quota of 19.9 mt dw. In addition, NMFS chose not to prohibit gillnet gear as an authorized gear type and selected the commercial gear alternative to B1, the No Action alternative. If in subsequent analysis the data shows that shark fishermen have been able to avoid catching blacknose sharks, NMFS will re-evaluate the landings data, and increase the quota for non-blacknose SCS, blacknose sharks, or both. However, if a re-evaluation of the data shows that fishermen have not been able to minimize blacknose shark mortalities, then NMFS reserves the right to decrease either, or both, quotas. In response to this comment, NMFS modified the FEIS to include the identification and selection of preferred alternatives that would establish blacknose and non-blacknose SCS quotas and continue to allow the use of gillnets as authorized gear for harvesting all Atlantic sharks. The changes to the final rule are discussed in more detail below.

*Comment 15:* NMFS received numerous comments on the proposed non-blacknose SCS quota. Several commenters were concerned that the non-blacknose SCS quota was too low particularly since these species stocks are healthy and are a viable alternative for fishermen. The low quota could result in high regulatory discards. The State of North Carolina noted that if NMFS reduced the non-blacknose SCS quota, North Carolina fishermen will be disproportionately impacted by this regulation by removing fair and equitable distribution of SCS quota and implementing measures contrary to measures in State waters. The State of South Carolina noted that the proposed quota of 56.9 mt dw for small coastal sharks will result in a 76 percent reduction in the landings of finetooth, Atlantic sharpnose and bonnethead sharks in the shark fishery. As such, this reduction in the quota for these three species would seem unwarranted at this time. Additionally, this proposed reduction will have significant repercussions among South Carolina’s

permitted commercial fisherman who landed 10 mt dw of these three species in 2008 or nearly 17 percent of the proposed quota for the Atlantic, Gulf of Mexico and Caribbean fisheries, combined. In addition, the small quota is likely to be reached and the fishery closed before South Carolina fishermen have an opportunity to land their traditional catch. For these reasons, NMFS should implement alternative A2 in combination with the gillnet prohibition, alternative B3.

*Response:* NMFS recognizes that the status of non-blacknose SCS is not overfished and not experiencing overfishing. In the DEIS, the preferred alternative, A4, would have set the commercial quota for non-blacknose SCS sharks at 56.9 mt dw, and the blacknose shark quota at 14.9 mt dw. Due to recent data updates, analysis, and public comments, NMFS has changed the preferred alternative from A4 in the DEIS to A6 in the FEIS, which would set the commercial quota for non-blacknose SCS at 221.6 mt dw and the blacknose shark quota at 19.9 mt dw. The final non-blacknose SCS quota sets the commercial quota equal to the average non-blacknose sharks SCS landings from 2004 through 2008 and therefore would not have economic impacts beyond the status quo. By looking at the recent Gillnet Observer Data from 2005–2008, NMFS agrees that it appears that commercial shark fishermen can target non-blacknose sharks and avoid catching blacknose sharks. If subsequent reviews of the management measures implemented under alternative A6 indicate that commercial shark fishermen are able to minimize their catch of blacknose sharks, NMFS could increase the non-blacknose SCS quota to allow for greater access to these species. Also, any underharvest of the non-blacknose SCS quota from the previous year could be added to the quota the following year, because all of the shark species in this complex (Atlantic sharpnose, finetooth and bonnethead) are not overfished and overfishing is not occurring. NMFS recognizes that there may be a high mortality rate for the blacknose sharks released from the various gears used in the SCS fishery. NMFS is attempting to limit the discard mortalities of blacknose sharks in the SCS fishery associated with the proposed SCS quota, by allowing the commercial shark fishermen to retain the number of sharks equal to the average landings of blacknose sharks from all gears based on the 2004–2008 Coastal Fisheries Logbook and Shark Gillnet Observer Data. In response to this comment,



NMFS made the foregoing changes to the FEIS and this final rule including the selection of an alternative to establish a non-blacknose SCS quota at 221.6 mt dw and allow continued use of gillnet as authorized gear for harvesting SCS. Changes to the final rule are discussed in more detail below.

*Comment 16:* NMFS received several comments specific to the quota levels for blacknose sharks. Comments suggest that NMFS should prohibit the retention of blacknose sharks by placing the species on the prohibited list. Other commenters suggested that the blacknose shark quota needs to be high enough to allow for the retention of incidental catch. The State of Georgia supports the quotas in alternative A4 with gillnet closure in alternative B3 as it will significantly reduce the impacts of regulatory discards of blacknose sharks, which would occur if the quota for blacknose sharks is reached before the non-blacknose SCS quota.

*Response:* NMFS agrees that the blacknose shark quota needs to be large enough for fishermen to keep blacknose sharks that are caught incidentally. As detailed in Chapter 4 and Appendix A, NMFS has changed the preferred alternative from A4 in the DEIS to A6 in the FEIS. Under alternative A6, the non-blacknose SCS (221.6 mt dw) and blacknose shark (19.9 mt dw) quotas would allow for incidental catch of blacknose sharks. Also, under alternative A6, both the blacknose and the non-blacknose fisheries would close when either the quota was reached or the catch was projected to reach 80 percent of the quota. This offers an incentive to avoid blacknose sharks and target non-blacknose SCS to ensure that the non-blacknose SCS fishery does not close with quota still available. NMFS considered closing the entire SCS fishery (alternative A5) however, the stock assessment did not warrant such action. Under the rebuilding plan, a limited number of blacknose sharks can be retained while still meeting rebuilding goals. Furthermore, once a species is placed on the prohibited list, fishery-dependent data on the species will cease to be reported and cannot be used in future stock assessments or management measure determinations. In response to this comment, NMFS made the foregoing changes to the FEIS and this final rule including the selection of an alternative to establish a blacknose SCS quota at 19.9 mt dw and allow continued use of gillnet as authorized gear for harvesting SCS. The DEIS already included an alternative to close the SCS fishery that would have prohibited the retention of blacknose sharks. Therefore, an additional

alternative to list blacknose as a prohibited species was not added to the FEIS. Changes to the final rule as a result of this comment are discussed in more detail below.

*Comment 17:* NMFS received several comments regarding the overlap of the SCS gillnet fishery with other gillnet fisheries in the southeast region. Comments included: The NMFS proposal will force effort into other fisheries (e.g., kingfish fishery) and this will fracture those other fisheries; NMFS needs to know the number of blacknose shark catches in the mackerel fishery and how that relates to the 22-percent mortality of blacknose shark by gillnets; if NMFS is taking the bulk of effort away, why not let mackerel fishermen keep blacknose sharks; NMFS should eliminate blacknose sharks landings and allow mackerel fishermen to land other SCS; and NMFS should collect data on discards in the mackerel fishery.

*Response:* NMFS recognizes that fishermen will adapt in different ways to new regulations placed on a fishery, which may include increasing their effort in other fisheries. NMFS plans to continue to collect the best available data from several sources including data on landings, discards, and bycatch. As this new data becomes available, regulation changes could be made that would provide fishermen access to resources that are ecologically and economically viable. Based on the most recent data, which indicates that gillnet fishermen may be able to avoid certain species, NMFS changed its preferred alternative from B3 in the DEIS, which would have eliminated gillnet gear as an authorized gear from South Carolina south, to B1 in the FEIS, the No Action alternative, which retains gillnet as an authorized gear in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Also, under the selected alternative, A6, incidental catches of blacknose sharks will continue to be allowed. In response to this comment, NMFS made changes to the FEIS including the development of a preferred alternative that establishes a blacknose quota at 19.9 mt dw and a non-blacknose SCS quota at 221.6 mt dw. The DEIS already considered an alternative to close the entire SCS fishery which would essentially prohibit retention of blacknose. Therefore, an additional alternative to list blacknose as a prohibited species was not added to the FEIS. The discussion of displacing effort from the shark fishery into other gillnet fisheries was included in the FEIS. NMFS made changes in preferred alternative from the DEIS to the FEIS based on this and similar comments and made conforming

changes to this final rule. The changes to the final rule are discussed below.

*Comment 18:* NMFS needs to move blacktip sharks to the SCS quota and increase the quota for all SCS.

*Response:* NMFS is moving towards species-specific management, including species-specific quota. However, for some species NMFS has only limited data, which requires management to be based on species within a complex of species. The 2007 SCS stock assessment assessed the SCS complex as a whole as well as each species individually, and recommended using species-specific results rather than the aggregated SCS complex results. The assessment recommended a blacknose shark-specific TAC and a corresponding rebuilding timeframe. Therefore, based on these results, NMFS has removed blacknose sharks from the SCS quota and set a separate commercial quota for this species. A species-specific quota enables NMFS to closely monitor blacknose shark landings and fishing effort according to the rebuilding plan. Blacktip sharks are currently managed in the non-sandbar LCS complex implemented in Amendment 2 to the Consolidated HMS FMP. Blacktip sharks are more commonly caught with gear targeting LCS (i.e., BLL gear) rather than gear used to target SCS (i.e., gillnet gear). In addition, the blacktip shark stock assessment recommended that blacktip shark landings should not change or increase from historical catch levels. Placing blacktip sharks within the non-blacknose SCS quota could drastically reduce the blacktip shark regional quota since the non-blacknose SCS shark quota is being reduced in the preferred alternative from 454 mt dw (status quo) to 221.6 mt dw (alternative A6 in the FEIS). Therefore, at this time, NMFS is not placing blacktip sharks within the SCS complex. NMFS has determined that the comment proposes an action that does not meet the purpose and need set forth in the DEIS and FEIS and therefore did not include it as an additional alternative for evaluation in the FEIS.

*Comment 19:* NMFS stated that they want to help the U.S. fleet catch the entire tuna and swordfish quotas, so why is NMFS against SCS fisherman landing the SCS quota as appears to be the case in preferred alternative A4?

*Response:* In the DEIS, the preferred alternative A4, would have set the non-blacknose quota at 56.9 mt dw and the blacknose shark species-specific quota at 14.9 mt dw. Recent data, and the analysis of that data, has led NMFS to change the preferred alternative from A4 in the DEIS to A6 in the FEIS. With alternative A6, the preferred alternative

in the FEIS, selected, the non-blacknose SCS quota will be set at 221.6 mt dw, which is the average landings of non-blacknose SCS from 2004 through 2008. The blacknose shark species-specific quota will be set at 19.9 mt dw. These regulations are being implemented because the status of the blacknose shark stock has been determined to be overfished, with overfishing occurring. Also, any underharvest of the non-blacknose SCS quota could be added to the following year's fishing quota, since the stock status of finetooth, Atlantic sharpnose, and bonnethead sharks have all been determined to be healthy. Also, under alternative A6, both the blacknose and the non-blacknose fisheries would close when either the quota was reached or the catch was projected to reach 80 percent of the quota. This offers an incentive to avoid blacknose sharks and target non-blacknose SCS to ensure that the non-blacknose SCS fishery does not close with quota still available. These measures maximize the opportunity to harvest the healthy non-blacknose SCS while rebuilding and preventing overfishing on the blacknose shark stock. This comment did not target any specific section or issue analyzed in the DEIS and a specific change in the FEIS was not made. As mentioned, however, the preferred alternative for non-blacknose SCS quota in the DEIS has been adjusted in the preferred alternative in the FEIS to address this general concern. Conforming changes were made in this final rule. These changes are discussed below.

*Comment 20:* NMFS should save the SCS fishery. NMFS took the 4,000 lb LCS trip limit away and are now taking away blacknose sharks. Are there any proposals for buyouts for SCS fishermen?

*Response:* Currently, there are no proposals to buyout SCS fishermen. Buyouts can occur via one of the three mechanisms, including: Through an industry fee, via appropriations from the United States Congress, and/or through funds provided from any State or other public sources or private or non-profit organizations. A buyout plan is not proposed in this amendment because the Agency is unable to implement a buyout as a management option. Buyouts must be initiated via one of the aforementioned mechanisms.

*Comment 21:* We believe the reductions in the commercial quota and the elimination of the gillnet gear will have significant, positive effects. Based on estimates taken before 2007, your analyses determined that this fishery was responsible for 45 percent of the mortality on blacknose sharks. The Gulf of Mexico shrimp effort was reduced by

74 percent from the average effort of 2001–2003. Because of this action, the historic 46 percent take by the trawl fishery would have already been reduced to about 12 percent of the total take. This reduction should, in combination with reductions from quota and gear alternatives, drive the estimates of total reductions in take by numbers of blacknose shark to something in excess of 80 percent, a value well above the target of 78 percent.

*Response:* NMFS is working with the GMFMC, and agrees that blacknose shark mortalities in the shrimp trawl fishery have dropped significantly due to decreased effort in the shrimp trawl fishery in the Gulf of Mexico. Based on 2005–2008 Shark Gillnet Observer Data, NMFS believes that gillnet fishermen may be able to effectively target other SCS species while minimizing the mortality of blacknose sharks and protected species. Because of this analysis, NMFS has changed their preferred alternative from B3 in the DEIS, which would have eliminated gillnet gear from South Carolina south, to B1 in the FEIS, the No Action alternative, which would retain gillnets as an authorized commercial gear type for sharks. Based on this same data, and because of reductions in blacknose shark mortalities in the shrimp trawl fishery, NMFS has also changed the preferred quota alternative from A4 in the DEIS to A6 in the FEIS, which would create a non-blacknose SCS quota of 221.6 mt dw and a blacknose shark quota of 19.9 mt dw. Thus, due to updated data, analyses, and public comment, NMFS modified the FEIS quota and gear alternatives and made conforming changes to the final Amendment 3 and this final rule. The changes are discussed below.

*Comment 22:* In the Gulf of Mexico, it might be possible to reduce juvenile mortality of blacknose sharks by adopting for shark bottom longlines, on a seasonal basis, the existing reef fish longline boundary (20 fathoms east of Cape San Blas, Florida, 50 fathoms west of Cape San Blas). If this eliminates too much of the traditional shark fishing grounds to be acceptable, than perhaps the “stressed area” boundary, which varies from 10 to 30 fathoms, could be considered.

*Response:* NMFS considered closing waters inshore of 20 fathoms in the Gulf of Mexico to shark bottom longline gear as a way to reduce fishing pressure on neonate and juvenile blacknose sharks. The majority of the recorded interactions with neonate and juvenile blacknose sharks occur in waters inshore of 20 fathoms. Therefore, by

closing waters inshore of 20 fathoms, NMFS would relieve fishing pressure on neonate and juvenile blacknose sharks. However, closing waters inshore of 20 fathoms could have a large, negative socioeconomic impact on the shark BLL fishery in the Gulf of Mexico, as the majority of BLL sharks sets observed from 1994–2007 occurred inshore of 20 fathoms. Given these potentially large, social and economic negative impacts, and the ability to rebuild blacknose sharks through other alternatives, NMFS did not further analyze this alternative in the FEIS. Similarly, NMFS considered closing the waters inshore of 50 fathoms in the Gulf of Mexico to shark BLL fishing, however, because this closure would cover more area and have larger socioeconomic impacts than a 20 fathom line closure, this alternative was not further analyzed in the FEIS.

## B. Commercial Gear Restrictions

*Comment 1:* NMFS received numerous comments supporting the proposed alternative to ban gillnets in the shark fishery from South Carolina south (alternative B3). The SAFMC and MAFMC both expressed support for the proposal to ban shark gillnet gear. The State of Georgia supports banning gillnet and states that removal of shark gillnet gear is long overdue to reduce incidental take of sea turtles and marine mammals. Other commenters stated that banning gillnet gear would protect blacknose sharks, and reduce bycatch and protected resource interactions.

*Response:* NMFS would like to thank the SAFMC, MAFMC, and the State of Georgia for submitting comments in support of alternative B3. Based on the 2005–2008 Shark Gillnet Observer Program data, and comments from fishermen, NMFS believes that gillnet fishermen may be able to target other SCS species and minimize the mortality of blacknose sharks. For this reason, NMFS believes that banning gillnets as an authorized gear type is unwarranted at this time. NMFS would prefer to allow gillnet fishermen the opportunity to prove that they can target specific species, and avoid others. Therefore, NMFS changed its preferred alternative from B3 in the DEIS, which would have banned gillnets from South Carolina south, to B1 in the FEIS, the No Action alternative, which would retain all currently authorized gears in the shark fishery. The current regulations for gillnet fishermen, which include two-hour net checks and keeping nets attached to the boat, should continue to help reduce the incidental bycatch of other species. The bycatch and discards of blacknose sharks would be reduced by the implementation of a smaller non-

blacknose SCS and blacknose shark quota. The gillnet fishery in the southeast Atlantic Ocean is monitored by vessel monitoring systems (VMS) and has sufficient observer coverage. The VMS and observer coverage has helped protect endangered species like sea turtles and right whales. NMFS believes that allowing gillnet gear as an authorized gear for sharks is consistent with the 2008 Biological Opinion (BiOp) for the Atlantic Shark fishery. The 2008 BiOp was completed for Amendment 2 to the Consolidated HMS FMP which did not prohibit the use of gillnet gear. Therefore the BiOp was based on the continued use of gillnet gear in the Atlantic Shark fishery and concluded that the Atlantic shark fishery is not likely to jeopardize the continued existence of endangered green, leatherback, and Kemp's ridley sea turtles; the endangered smalltooth sawfish; or the threatened loggerhead sea turtle. Furthermore, the BiOp concluded that Amendment 2 was not likely to adversely affect any listed species of marine mammals, invertebrates (*i.e.*, listed species of coral) or other listed species of fishes (*i.e.*, Gulf sturgeon and Atlantic salmon) in the action area. NMFS believes that the significant social and economic impacts on the SCS commercial shark participants from prohibiting gillnet gear are disproportionate to the ecological benefits especially since the No Action alternative in combination with alternative A6 reduces blacknose shark mortality to levels consistent with the rebuilding plan for this species.

*Comment 2:* The gear restriction on the shark gillnets from South Carolina to the Gulf of Mexico and the severe quota reduction of SCS will be detrimental to the critical scientific data that is needed to properly manage this fishery.

*Response:* NMFS agrees that prohibiting shark gillnet gear would affect the scientific data that is used to manage the SCS fishery. Based on this and other public comments, as well as additional data analysis using updated blacknose shark weight data, NMFS changed its preferred alternative from B3 in the DEIS, which would have banned gillnets from South Carolina south, to B1 in the FEIS, the No Action alternative, which retains the current authorized gear types. NMFS feels that the scientific data collected from programs like the Shark Gillnet Observer Program provide an invaluable source of fishery dependent information that can augment fisheries independent data collected by NMFS scientists and help to inform fishery management decisions.

*Comment 3:* Contrary to popular beliefs, gillnet gear is the most selective way of fishing. Gillnet fishermen catch on average a 14.4 lb dw sexually mature blacknose shark that have spawned at least once. The 2008 BiOp stated that shark gillnet fishermen do not catch as many protected species as bottom longline fishermen. The Federal observer data has shown that 97.3 percent of our catch consists of sharks and 98.1 percent of the sharks caught were the targeted species. This gear is not having as big an impact on the stock because they are not catching juveniles. NMFS should consider a gillnet endorsement, not a preferred alternative that would close the fishery. In addition, the State of South Carolina commented that, although the retention of sharks taken by gillnets is already prohibited in their State waters, NMFS should be aware that South Carolina has licensed and permitted commercial fisherman who have historically fished for sharks with gillnets in Federal waters. These fishermen will certainly be impacted and possibly displaced from this fishery through adoption of this proposed action.

*Response:* In response to this and similar comments NMFS made the following changes between the DEIS and FEIS. In the DEIS, NMFS preferred alternative B3, which would have prohibited gillnets from South Carolina south, but due to recent data and new data analysis and public input, NMFS changed its preferred alternative in the FEIS to B1, the No Action alternative, which would retain gillnets as an authorized gear in the shark fishery. Based on recent data from the SEFSC, NMFS changed the average weight for blacknose sharks caught in gillnets from 14.4 lbs to 18.7 lbs in the FEIS. Also, NMFS re-analyzed the data from the 2005–2008 gillnet observer data. Those analyses showed that gillnet fishermen may be able to target other SCS species, and minimize the mortality of blacknose sharks. NMFS used this information to re-analyze the SCS quota alternatives in the FEIS. This resulted in NMFS changing the preferred alternative from B3 in the DEIS, which would have eliminated gillnet as an authorized gear in the shark fishery from South Carolina south, to B1 in the FEIS, the No Action alternative, which will retain all currently authorized gears for SCS, including gillnets. In addition, NMFS is still working with the GMFMC to determine the impacts that TEDs have on excluding blacknose sharks from the shrimp trawl nets. NMFS believes that the new preferred alternatives would

not displace the South Carolina gillnet fishermen in Federal waters.

*Comment 4:* There are large areas and times when gillnet fishermen are not allowed to fish. There is already a large gillnet closure area due to State water closures and the ALWTRP regulations. NMFS should work with the few shark gillnet fishermen left to address issues in the few areas where gillnets are being used now. There are not many shark gillnet fishermen left in the industry, and everyone is a seasoned fisherman with over 20 years of experience.

*Response:* NMFS agrees that gillnet gear is prohibited in many places, such as the State waters of Florida and Georgia and Southeast Right Whale Calving Area. Also, NMFS agrees that there are not many gillnet fishermen who target sharks. There are still gillnet fishermen that catch sharks while targeting other species and some of those fishermen could target sharks. NMFS has gathered all of the comments from gillnet fishermen and re-evaluated the data on the average size of blacknose sharks caught in the gillnet fishery in the FEIS. Based on this analysis, NMFS changed the average weight for blacknose sharks caught in gillnets from 14.4 lbs in the DEIS to 18.7 lbs in the FEIS. Also, the data from the 2005–2008 Shark Gillnet Observer Program seems to indicate that gillnet fishermen may be able to target other SCS species, and minimize the mortality of blacknose sharks. NMFS used this information to re-analyze the alternatives regarding quotas in the FEIS. The new preferred alternative in the FEIS, A6, sets a non-blacknose SCS quota of 221.6 mt dw and a blacknose shark quota of 19.9 mt dw. In addition, NMFS changed their preferred alternative from B3 in the DEIS, which would have prohibited gillnets from South Carolina south, to alternative B1, the No Action alternative in the FEIS, which would retain gillnets as an authorized gear in the shark fishery.

*Comment 5:* If a prohibition on gillnet gear is implemented, what is going to stop NMFS from removing all gillnet gear in other fisheries, such as the mackerel fishery, in the future?

*Response:* In the DEIS, NMFS preferred alternative B3, which would have prohibited gillnets from South Carolina south, but due to recent data and new data analysis and public input, NMFS changed its preferred alternative in the FEIS to B1, the No Action alternative, which would retain gillnets as an authorized gear in the shark fishery. In addition, this amendment only deals with management measures in the Atlantic shark fishery and any measures specific to the mackerel

fishery would be implemented through the Regional Fishery Management Council that has authority for this species. This comment does not call for change to any specific section of the DEIS. Therefore, no specific change was made in the FEIS or this final rule in response to this comment.

*Comment 6:* NMFS received several comments on the use of VMS in the gillnet fishery. One commenter asked if gillnet fishermen would be compensated for VMS if gillnet gear is banned. Another commenter noted that gillnet boats should not have to carry VMS since it is an invasion of privacy and a waste of money to the fisherman and NMFS. Additionally, gillnet fishermen already have sufficient observer coverage. Another commenter noted that NMFS must place significant weight on protecting critically endangered right whales from entanglement and should therefore maintain the VMS requirement for all shark gillnet vessels.

*Response:* As described in the comments above, NMFS has identified in the FEIS alternative B1, the No Action Alternative, as the preferred alternative, which would retain gillnets as an authorized gear type for the Atlantic shark fisheries. The requirements for VMS restrictions would continue under the current regulations. VMS is vital to fisheries management, enforcement, and safety. VMS is an important tool used to monitor fishing activities in time/area closures and during the North Atlantic right whale calving season to protect this endangered species. NMFS has several other VMS requirements in place for HMS vessels including BLL vessels in the vicinity of the mid-Atlantic shark closed area and all vessels with PLL gear on board year-round. Removing VMS requirements is beyond the scope of the proposed action and does not further the stated purpose and need. NMFS, therefore, did not include any change in VMS requirements from current regulations in the FEIS or this final rule.

*Comment 7:* The State of South Carolina agrees with the proposed boundary for the prohibition for shark gillnet gear. In 2008, commercial fisherman in South Carolina landed 20,000 lbs ww of smooth dogfish primarily from bottom long lines while 7,384 lbs ww of blacknose sharks were landed, with only 372 lbs ww of these reported from gillnets. Most catches of smooth dogfish in South Carolina occur in the winter when interactions with whales should be less likely.

*Response:* NMFS would like to thank the State of South Carolina for

submitting information on the commercial fishing landings in their State waters. After reviewing the data from the 2005–2008 Shark Gillnet Observer Program, which seems to indicate that gillnet fishermen may be able to target certain species and avoid others, NMFS has decided to change the preferred alternative from B3 in the DEIS, which would have banned gillnets from South Carolina south, to the No Action alternative, B1 in the FEIS, which would continue to allow all of the current authorized commercial fishing gears for sharks, including gillnets. Smooth dogfish would be allowed to be landed with all current authorized gear types. The FEIS carries forward as a reasonable alternative available for selection by the decision maker, the ban on gillnet as an authorized gear in alternative B3. Neither the FEIS or this final rule changed as a result of this comment. However, as noted above, NMFS changed the selected alternative in the FEIS and made conforming changes in Amendment 3 and this final rule as a result of other comments on this issue.

*Comment 8:* NMFS received several comments regarding the overlap of the SCS gillnet fishery with other gillnet fisheries in the southeast region. Comments included: The NMFS proposal will force effort into other gillnet fisheries (e.g., kingfish fishery); NMFS needs to know the number of blacknose shark catches in the mackerel fishery and how that relates to the 22 percent mortality of blacknose shark by gillnets; if NMFS is taking the bulk of gillnet effort away, why not let mackerel fishermen keep blacknose sharks; NMFS should eliminate blacknose shark landings and allow mackerel fishermen to land other SCS; and, NMFS should collect data on discards in the mackerel fishery.

*Response:* NMFS recognizes that fishermen may adapt in different ways to new regulations placed on a fishery, which may include increasing their effort in other fisheries. NMFS continues to collect fishery-dependent and fishery-independent data from all Federally managed fisheries including data on landings, discards, and bycatch. While the measures implemented in this amendment only pertain to the Atlantic shark fisheries, NMFS considers cumulative impacts on other fisheries and fishery participants when choosing preferred alternatives. Based on the most recent data, which indicates that gillnet fishermen may be able to target certain species with gillnet and avoid others, NMFS changed the preferred alternative from B3 in the DEIS, which would have eliminated gillnet gear as an

authorized gear, to alternative B1 in the FEIS, the No Action alternative, which retains gillnet gear as an authorized gear in the Atlantic shark fishery. Also, under the new preferred alternative in the FEIS, A6, incidental catches of blacknose sharks will continue to be allowed. NMFS made changes in the preferred alternative from the DEIS to the FEIS based on this and similar comments and made conforming changes in the Final Amendment 3 and this final rule.

### C. Commercial Pelagic Shark Effort Controls

*Comment 1:* NMFS should prefer the No Action alternative C1. Shortfin mako sharks are underutilized and NMFS should not propose any measures.

*Response:* Based upon the 2008 ICCAT stock assessment for shortfin mako sharks, NMFS has determined that the North Atlantic population is experiencing overfishing. Under the Magnuson-Stevens Act, if NMFS determines that a fishery is overfished or approaching an overfished condition due to excessive international fishing pressure and there are no management measures to end such overfishing in an international agreement to which the United States is a party, it must take action at the international level to end overfishing (16 U.S.C. §§ 1854, 1854 note). The ICCAT stock assessment did not provide a recommended TAC or mortality reductions to prevent overfishing of shortfin mako sharks, making it difficult to set a quota or other limit to prevent overfishing. Because there are currently no ICCAT measures to end overfishing of shortfin mako sharks and U.S. shortfin mako shark landings have comprised approximately nine percent of international landings from 1997 through 2008, domestic reductions of shortfin mako shark mortality alone would not end overfishing of the entire North Atlantic stock. Therefore, NMFS believes that ending overfishing and preventing an overfished status would be better accomplished through international efforts.

*Comment 2:* NMFS received many comments regarding the minimum size alternatives for shortfin mako sharks (alternative C4). These comments included: In order to reduce the risk of overfishing of the shortfin mako, the Environmental Protection Agency (EPA) recommends including a measurable alternative, such as alternative C4a, along with preferred alternatives C5 and C6; there should be a minimum size limit restriction of 73 inch fork length (FL) (185.4 cm FL) for the commercial harvest of shortfin mako with a

retention limit of 3 fish per trip; the size limits for shortfin mako shark should be changed to 108 inches FL (274.3 cm FL) in the commercial fishery; there should be a 72 inch FL (182.9 cm FL) min size for recreational and commercial fisheries; since it is indicated that the commercial fishery lands so few shortfin mako sharks below the recreational minimum size, implementing that minimum size should have minor economic impact on commercial fishermen, yet would have a positive ecological impact on the shortfin mako stock; and NMFS should not establish a commercial minimum size for shortfin mako sharks as that management measure would present safety at sea issues.

*Response:* NMFS analyzed applying commercial size limits in the shortfin mako fishery according to the size at which 50 percent of males reach sexual maturity (22 in IDL; equivalent to 73 in FL) and the size at which 50 percent of females reach sexual maturity (32 IDL; equivalent to 108 in FL). Using data from pelagic longline (PLL) fishery observers and PLL logbook data, NMFS estimated the average number of additional shortfin mako sharks that would be released alive according to the proposed 22 in IDL and 32 in IDL size limits to be 89 and 5 shortfin mako sharks, respectively. Despite the potentially minimal economic impacts of imposing a commercial size limit for shortfin mako sharks, NMFS concluded that neither of the size limits would dramatically reduce shortfin mako shark mortality in the U.S. commercial fishery and that any mortality reductions would not be enough to end overfishing of this species. NMFS has decided to take action at the international level through international fishery management organizations to establish management measures to end overfishing of shortfin mako sharks. Based on the results of future ICCAT stock assessments of shortfin mako sharks, NMFS may consider and propose additional management measures for shortfin mako sharks as necessary.

*Comment 3:* NMFS received numerous comments in support of, and in opposition to, the preferred alternative to work at the international level to end overfishing of shortfin mako (alternative C5).

*Response:* The United States commercial harvest of Atlantic shortfin mako sharks has historically been incidental in the PLL fishery. NMFS determined that the U.S. contribution to North Atlantic shortfin mako shark fishing mortality is relatively low in comparison to the total fishing mortality on the North Atlantic stock. According

to ICCAT shortfin mako landings estimates, the United States contributed less than 9 percent (3262 mt ww/36,397 mt ww = 8.6 percent) of the total North Atlantic shortfin mako shark fishing landings. As such, NMFS believes that the status of the stock is due to excessive international fishing pressure, and domestic reductions of shortfin mako shark mortality alone would not end overfishing of the entire North Atlantic stock. Therefore, NMFS has decided to take action at the international level through international fishery management organizations, consistent with section 304(i) of the Magnuson-Stevens Act, where countries that have large catches of shortfin mako sharks could participate in the establishment of management measures to end overfishing of shortfin mako sharks.

*Comment 4:* NMFS should take action domestically, such as removing shortfin mako sharks from the pelagic shark species complex and placing it on the prohibited shark species list (alternative C3).

*Response:* The U.S. commercial PLL fishery does not specifically target shortfin mako sharks and their harvest represents a small percentage of the overall fishing mortality for the North Atlantic shortfin mako shark stock. Moving shortfin mako sharks to the prohibited shark species list would increase the number of dead discards from the U.S. PLL fleet, as retention of shortfin mako sharks that come to the vessel dead would be prohibited. Additionally, reducing U.S. shortfin mako shark mortality alone would likely not be enough to end overfishing for this stock. For these reasons NMFS selected the preferred alternatives in the FEIS to work internationally to end overfishing of shortfin mako sharks, and to promote the live release of shortfin mako sharks domestically.

*Comment 5:* NMFS received comments stating that commenters are troubled by NMFS' apparent belief that it need not implement strong measures to end domestic overfishing of shortfin mako because the bulk of the catch occurs at the international level. Section 304 of the Magnuson-Stevens Act does not prevent NMFS from taking immediate action at the domestic level to prevent overfishing by U.S. vessels. Moreover, the Magnuson-Stevens Act section 303 specifies that all fishery management plans, including those applicable to species that are managed under international agreements, have effective ACLs and AMs by 2010 or 2011 unless the agreement specifies a different deadline. Nothing in the Magnuson-Stevens Act requires NMFS

to avoid taking action on the domestic front simply because applying the required measure will not instantaneously or singlehandedly end overfishing. The United States must take a leadership role in ensuring the sustainable, scientific management of international fisheries, both by promoting these measures internationally and implementing them at home.

*Response:* There are several strict measures (e.g., landings quota, fins attached provision) that shortfin mako sharks are managed under domestically, and the United States is considered a leader in shark fishery management. Amendment 3 also includes mechanisms for specifying ACLs and establishing AMs for Atlantic sharks. NMFS believes that taking action at the international level through international fishery management organizations to establish management measures to end overfishing of shortfin mako sharks is the most effective way to end overfishing of shortfin mako sharks in the long term without causing significant economic impacts to domestic fishermen in the short term. Sections 102 and 304(i) of the Magnuson-Stevens Act encourage this approach, particularly for species approaching an overfished condition due to excessive international fishing pressure when there are no management measures to end overfishing under an international agreement to which the United States is a party. The shortfin mako shark is part of the pelagic species complex, which currently has defined criteria for MSY, OY, and status determination. NMFS has implemented measures that limit commercial harvest through quotas and trip limits for incidental permit holders that act as measures equivalent to ACLs and AMs, respectively. The 2008 ICCAT SCRS stock assessment did not recommend a TAC or necessary mortality reductions for shortfin mako sharks. Therefore, it is difficult to determine appropriate catch levels that would help to stop overfishing or be overly restrictive to U.S. fishermen, putting them at a disadvantage compared to international fishermen. NMFS feels that international cooperation is essential at this time in order to determine the level of catch that would stop overfishing on the entire Atlantic stock.

*Comment 6:* NMFS received several comments regarding the proposed alternative to promote the live release of shortfin mako sharks (alternative C6). One commenter stated that about 90 percent of the shortfin mako sharks that are caught on longlines come to the vessel alive and asked how NMFS

would promote the release of shortfin mako sharks. Another commenter questioned the effectiveness of this alternative and questioned the practicability of advising fisheries to release saleable sharks even though they may not be the target of the fisheries that are largely targeting swordfish and tuna. Another commenter stated they did not support alternative C6 because there is no evidence that the alternative will be successful especially given that NMFS recognizes that discards of shortfin mako sharks are rare because their meat is highly valuable. The State of Georgia commented that it is unclear how alternative C6 would impact the meat quality of the shortfin mako kept. Some commenters noted their support for alternative C6. One commenter stated that NMFS should promote the live release of shortfin mako sharks, but should not make it a requirement, and that it is common for the distant water fleet to release live sharks.

*Response:* According to the PLL observer program 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. Live release of shortfin mako sharks would be voluntary under this action and could be promoted using current HMS outreach mediums (*e.g.*, Web site, e-mail listserv, mailings) along with others that have yet to be determined. This would allow NMFS to communicate the current status (overfishing occurring) of the North Atlantic shortfin mako shark stock in the hopes that fishermen will voluntarily reduce commercial fishing mortality to avoid a future change in stock status (overfished) that could lead to more restrictive measures. Because additional outreach efforts would likely be developed over time, NMFS is unable to predict how they will impact shortfin mako shark mortality in the commercial fishery. NMFS is unaware of any price differential between shortfin mako sharks that arrive at the vessel alive or dead, and this action is not expected to impact shortfin mako meat quality or ex-vessel prices.

*Comment 7:* NMFS received multiple comments regarding the shortfin mako stock assessment. Some commenters stated that the United States needs to perform a stock assessment domestically for shortfin mako sharks, separate from the ICCAT assessment. Other commenters asked who conducted the stock assessment and if it was done the same way as other shark stock assessments. One commenter stated that he is concerned with the doubling of the age of maturity and the length of life of the female shortfin mako, while the

male shortfin mako did not seem to change in demographics much at all. Another commenter felt that the data used in the stock assessment is outdated and has been flawed for years now. NMFS does not use real time data such as the 2009 season. The shortfin mako shark population has not changed drastically in the past 8 years.

*Response:* The North Atlantic shortfin mako shark stock assessment is conducted by ICCAT's SCRS on an international level because of the highly migratory nature of the stock between international jurisdictions. The ICCAT stock assessment uses shortfin mako data from all reporting countries. Therefore, some of the data and assessment approaches used in the ICCAT SCRS shortfin mako shark assessment may differ from the data and approaches used in domestic shark assessments, which are conducted through the Southeast Data, Assessment, and Review (SEDAR) process. In either case, NMFS believes that the data and approaches used in these shark stock assessments represent the best available science. Any changes in shortfin mako size at maturity estimates occurred due to new scientific information, which is considered the best available science at this time.

#### **D. Recreational Measures for SCS**

*Comment 1:* NMFS should implement alternative D2 to modify the minimum size limit for recreationally caught blacknose sharks.

*Response:* Alternative D2 would modify the minimum recreational size for blacknose sharks based on their biology from 54 inches FL to 36 inches FL. The new restriction would lower the current minimum size for blacknose sharks and could lead to increased landings of blacknose sharks. In order to achieve the TAC recommended by the 2007 blacknose shark stock assessment, NMFS would need to reduce overall blacknose mortality. Since decreasing the minimum size for blacknose sharks could result in increased landings of blacknose sharks, NMFS did not select this alternative at this time. NMFS carried this alternative forward for full consideration in the FEIS but did not identify it as the preferred alternative or select it as an element of Final Amendment 3.

*Comment 2:* The State of South Carolina and others support the change in the recreational bag limit for Atlantic sharpnose sharks from one per person per day to two per person per day, particularly within the South Atlantic region (alternative D3). The Atlantic sharpnose was listed as not overfished with no overfishing occurring and the

SCS quota has also been consistently under harvested in the South Atlantic region. Increasing retention limits for Atlantic sharpnose could mitigate the economic impacts of SCS quota reductions. NMFS has listed the Atlantic sharpnose as a readily identifiable species, and increasing their recreational bag limit should have no negative impact on sandbar, dusky, or blacknose sharks.

*Response:* NMFS thanks the State of South Carolina for submitting a comment and recreational catch data. Alternative D3 would increase the retention limit for Atlantic sharpnose sharks based on 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 threshold. While the stock is not currently overfished or experiencing overfishing, the latest stock assessment suggests that increasing fishing effort, such as increasing the retention limit of Atlantic sharpnose sharks, could result in an overfished status and/or cause overfishing to occur. Thus, since increasing the retention limit for Atlantic sharpnose could result in increased fishing effort and result in negative ecological impacts for the stock, NMFS did not implement this alternative. While NMFS carried Alternative D3 forward for full consideration as a reasonable alternative in the FEIS, it did not select it as part of Final Amendment 3.

*Comment 3:* NMFS received numerous comments regarding the proposed alternative to prohibit the recreational retention of blacknose sharks (alternative D4). Commenters stated that few recreational fishermen target blacknose and since they rarely reach the 54-inch minimum size, Alternative D4 would likely have no impact. Some commenters were concerned that prohibiting the retention of blacknose sharks in the recreational fishery, while allowing retention in the commercial fishery, equates to an allocation decision giving 100 percent of the quota to one sector. Other commenters stated that there was no reason recreational anglers should be allowed to retain a species that is overfished. The State of South Carolina commented that NMFS should implement alternative D4 because this action will provide additional protection for blacknose sharks in Federal and State waters and help educate the public and fishermen as to the precarious status of the overall blacknose shark population. The State of Georgia does not support alternative

D4 since the current size limits in place under the FMP already afford adequate protection for blacknose sharks. Georgia commented that NMFS should look at the recently enacted management of the coastal States relative to shark species and determine where the problems with recreational retention of blacknose sharks are occurring. Georgia supports alternative D1, which would be consistent with the State regulations to the maximum extent practicable. The State of Florida commented that NMFS should not prohibit the retention of blacknose sharks in the recreational fishery, and should, instead, work on other regulations to end overfishing of blacknose sharks. The State's current shark regulations provide conservation and management measures that permit a reasonable and sustainable annual harvest, while additional Federal restrictions are not warranted for State waters.

*Response:* NMFS agrees that few recreational fishermen target blacknose sharks. Based on public comments and the fact that current recreational size limits afford adequate protection for blacknose sharks, NMFS changed the preferred alternative from alternative D4 in the DEIS, which would have prohibited blacknose sharks, to D1 in the FEIS, the No Action alternative, which maintains the current recreational size and bag limits. NMFS will maintain the existing recreational retention limits for SCS. Recreational anglers are currently allowed one authorized shark per vessel per trip (including SCS). Also, they are allowed 1 bonnethead shark and 1 Atlantic sharpnose shark per person per trip. In addition, there is a recreational minimum size of 54 inches (4.5 ft) FL, which does not apply to Atlantic sharpnose or bonnethead sharks allowed per person per trip. Most blacknose sharks do not reach the current Federal minimum size of 54 inches FL, therefore, it is presumed that most recreational blacknose shark landings currently occur in State waters, where size and retention limits for blacknose sharks may be less restrictive than Federal regulations. In the Atlantic Ocean, under the ASMFC Interstate Coastal Shark FMP there is currently no minimum size limit for blacknose sharks. Because the Federal minimum size limit of 54 inches FL, acts as a de facto retention prohibition, and after evaluating public comments on the DEIS, NMFS decided to change the preferred alternative in the FEIS to alternative D1. However, NMFS asks each State to implement measures consistent with the current Federal 54

inch FL size limit to help reduce recreational mortality in State waters and meet rebuilding targets for blacknose sharks. Depending on the results of the upcoming blacknose shark stock assessment, NMFS may consider prohibiting recreational retention of blacknose sharks in future actions. Thus, at this time, NMFS believes that these current regulations will continue to provide adequate protection for blacknose sharks in the recreational fishery. However, it may be necessary to increase outreach to recreational fishermen on the identification of blacknose sharks so those that are caught can be released in a manner that maximizes survival of this species. It may also be necessary to work with States to ensure consistent regulations and enforcement.

*Comment 4:* If NMFS prohibits the retention of blacknose sharks in the recreational fishery, how will this impact ASMFC member States?

*Response:* If NMFS adds a particular species to the prohibited species list, according to the ASMFC Interstate Coastal Shark FMP, the member States would need to implement management measures that would provide a conservation equivalency for blacknose sharks or States could decide to mirror NMFS regulations. However, in the DEIS, NMFS was not proposing to add blacknose sharks to the prohibited species list. Rather, in the DEIS, NMFS proposed not authorizing recreational possession of blacknose sharks. Thus, under the proposed management measure in the DEIS, ASMFC regulations would not be affected unless ASMFC took action to be consistent with Federal regulations.

*Comment 5:* Recreational fishermen cannot reliably identify blacknose sharks. If the retention of blacknose sharks is prohibited in the recreational fishery, NMFS will need to implement an outreach program to educate recreational anglers.

*Response:* Based on public comments and the fact that current recreational size limits afford adequate protection for blacknose sharks, NMFS changed the preferred alternative from alternative D4 in the DEIS, which would have prohibited blacknose sharks, to D1 in the FEIS, the No Action alternative which maintains the current recreational size and bag limits. Currently, NMFS has recreational shark identification placards that categorize the differences between the recreational sharks. The placards can be attained on the HMS Web site (<http://www.nmfs.noaa.gov/sfa/hms/sharks/>) or by contacting the HMS division at 301-713-2347. In the future, NMFS could

cooperate with States to increase identification of this species in State waters as a larger portion of the recreational catch of blacknose sharks occurs in State waters.

#### **E. Recreational Measures for Pelagic Sharks**

*Comment 1:* NMFS received comments in support of the No Action alternative (alternative E1).

*Response:* Based on the 2008 ICCAT SCRS stock assessment for shortfin mako sharks, NMFS has determined that the North Atlantic population is experiencing overfishing. Under the Magnuson-Stevens Act, if NMFS determines that a fishery is overfished or is approaching an overfished condition due to excessive international fishing pressure and there are no management measures to end such overfishing in an international agreement to which the United States is a party, it must take action at the international level to end overfishing (16 U.S.C. 1854, 1854 note). The ICCAT stock assessment did not recommend a TAC or mortality reductions to prevent overfishing of shortfin mako sharks, making it difficult to set a quota or other limits to prevent overfishing. Because there are currently no ICCAT measures to end overfishing of shortfin mako sharks, and U.S. shortfin mako shark landings have comprised approximately nine percent of international landings from 1997 through 2007, NMFS believes that taking action on an international level to end overfishing of shortfin mako sharks is necessary at this time.

The No Action alternative would allow the recreational harvest of one shortfin mako shark greater than 54 inches FL per vessel per trip. The decision to work on an international level to end overfishing and promote the live release of shortfin mako sharks will not change the current recreational shortfin mako shark size or bag limits.

*Comment 2:* NMFS received several comments regarding the minimum size for recreational shortfin mako fishing (alternative E2). Comments included: Recreational limits for shortfin mako should be one fish per trip of any size; we are requesting a bag limit of two mako sharks and a minimum size of 72 inches FL (182.9 cm FL)—this minimum size should apply to all fishermen, recreational and commercial; NMFS should implement a realistic minimum size like the minimum length requirement of 66 inches (167.6 cm) in the Annual Mako Mania Tournament; and NMFS should adopt alternative E2b, which increases the minimum size for recreational fishers from 54 to 73 inches FL—this coupled with the



preferred alternatives for shortfin mako management, represent an integrated strategy that will immediately reduce shortfin mako harvest while aspiring to make long-term, systemic changes in both international management of and domestic attitudes toward the shortfin mako fishery.

*Response:* Two size limits were analyzed for the recreational shortfin mako shark fishery based on the estimated size of sexual maturity of females (108 inches FL) and the estimated size of sexual maturity of males (73 inches FL). Large Pelagic Survey (LPS) data from 2004 to 2008 was used to estimate the impact of the proposed size limits on recreational shortfin mako shark landings from tournament and non-fishing tournament activities. This analysis found that 99.5 percent of all recreational landings fell under the proposed 108 inch FL size limit, and 60.3 percent of all recreational landings fell under the proposed 73 inch FL size limit. The 73 inch FL size limit would have a greater impact on non-tournament landings, as 81 percent of the non-tournament landings fell under the 73 inch size limit compared to 51.7 percent of the tournament landings. Implementing either of these size limits would reduce a large percentage of shortfin mako shark landings from a fishery that contributes a small percentage of the overall North Atlantic shortfin mako shark landings, would likely not end overfishing on the stock, and could have negative social and economic impacts. Therefore, NMFS believes that ending overfishing and preventing an overfished status would best be accomplished through development of management measures at the international level to be adopted and implemented by the United States and other nations.

*Comment 3:* NMFS received several comments, including from the State of South Carolina, in support of the proposed alternatives E3 and E4. Commenters felt that those measures should assist in overall shortfin mako recovery while not becoming overly burdensome to the U.S. sector of the fishery that is not chiefly responsible for the current stock status. However, NMFS also received several comments that did not support the proposed alternative. These commenters noted that with recreational fishing tournaments actively targeting shortfin mako sharks, offering large prizes for their capture, and placing a high value on retaining them as trophies, it is difficult to see how promoting a voluntary live release measure will have any effect on the species' mortality.

These commenters also note that shortfin mako sharks are highly valued, both as one of the few sharks generally deemed "edible" and as a recognized "trophy" to be weighed and displayed upon capture. Operators of for-hire vessels are unlikely to release a legal-sized mako over the objections of their fares. While a significant proportion of the recreational shark fishery is comprised of anglers who say they practice catch-and-release, exceptions to that general practice are often made when a shortfin mako is brought to boathside.

*Response:* NMFS agrees that working on an international level to reduce overfishing and promoting the live release of shortfin mako sharks is the best course of action to take at this time. Because the United States contributes very little to shortfin mako shark mortality in the North Atlantic, ending overfishing and preventing an overfished status may be better accomplished through international efforts with other countries that have large takes of shortfin mako sharks. NMFS believes that this action is appropriate at this time rather than implementing restrictive management measures unilaterally, which could unilaterally disadvantage U.S. fishermen. Promoting the release of shortfin mako sharks that are brought to the vessel alive, and the NMFS Code of Angling Ethics (64 FR 8067), could result in the reduction of fishing mortality of shortfin mako sharks and thus, have positive ecological impacts for this species. In promoting the live release of shortfin mako sharks, recreational fishermen will have the opportunity to reduce shortfin mako shark mortality with the intent to maintain the stock and avoid an overfished determination, which could lead to new restrictions on the U.S. recreational fishery. Outreach efforts will be developed over time, therefore, NMFS is unable to predict how they will impact shortfin mako shark mortality in the recreational fishery.

*Comment 4:* NMFS should implement alternative E5, prohibit landing shortfin mako sharks in recreational fisheries, or at least prohibit landings in fishing tournaments. NMFS acknowledges that shortfin mako sharks could meet two of the most important of the four criteria that lead to being listed as a prohibited species (*i.e.*, there is sufficient biological information to indicate the stock warrants protection and the fact it resembles other prohibited species). NMFS has rejected this alternative simply because it would have a significant negative effect on commercial fishery revenue (over a

quarter of a million dollars annually) and it would inhibit expansion of the pelagic longline fleet. Further, NMFS speculates that prohibiting retention could result in increased dead discards. This rationale is inadequate.

*Response:* Placing shortfin mako sharks on the prohibited species list would result in a recreational catch and release fishery for this species. NMFS decided not to prohibit landing of shortfin mako sharks in the recreational fishery because, given the small numbers of shortfin mako sharks landed in the recreational fishery in comparison to international landings, prohibiting the possession of U.S. caught shortfin mako sharks is unlikely to end overfishing on the stock, and because of the importance of shortfin mako sharks in recreational fishing tournaments. If shortfin mako are prohibited in the commercial fishery, increases in dead discards mainly apply to the commercial PLL fleet, where over 30 percent of shortfin mako caught are dead at haulback. In the recreational fishery, post-release mortality rates for shortfin mako sharks are generally believed to be low when injuries from hooking and releasing the shark are minimized, therefore, NMFS would not anticipate a significant increase in dead discards with a recreational shortfin mako shark retention prohibition. NMFS believes that the preferred alternatives, to work internationally to end overfishing of shortfin mako sharks and to promote the live release of shortfin mako sharks domestically, are adequate at this time.

*Comment 5:* The EPA notes that the DEIS is unclear regarding the impact of shortfin mako shark landings attributed to the recreational fishery in comparison to landings from the commercial fishery. Alternatives E2a and/or E2b, which are similar to the commercial size limit alternatives, should be preferred, since an increase in size limits could have significantly positive ecological impact upon this species and would lead to a large majority of the recreationally-caught shortfin mako sharks being released alive.

*Response:* In the DEIS, NMFS calculated average annual recreational shortfin mako shark landings from ICCAT estimates from 1981 to 2007. Because there were no ICCAT landings estimates available for the commercial shortfin mako shark fishery from 1981 to 1991, the impact of the recreational fishery on shortfin mako shark mortality may have been inflated. In the FEIS, NMFS compares recreational and commercial ICCAT estimates of shortfin mako shark landings over years where data for both fisheries are available

(1992–2008). This analysis shows that shortfin mako shark landings from the U.S. commercial (109,611 sharks landed) and recreational (110,256 sharks landed) fisheries are similar over that time period. Implementing the size limits proposed in Alternatives E2a or E2b will reduce a large percentage of shortfin mako shark landings from a fishery that contributes a small percentage of the overall North Atlantic shortfin mako shark landings. Therefore, implementing size limits would unnecessarily disadvantage U.S. fishermen in relation to those from other countries who also contribute to shortfin mako shark mortality. NMFS believes that ending overfishing and preventing an overfished status would best be accomplished through development of management measures at the international level to be adopted and implemented by the United States and other nations.

*Comment 6:* NMFS received a comment that asked about the post-release survival for shortfin mako sharks.

*Response:* Scientific studies have not been conducted regarding the post-release survival of North Atlantic shortfin mako sharks caught in U.S. commercial or recreational fisheries, therefore, it is currently unknown for these fisheries. A study by Hight *et al.* 2007, estimated the post-release survival of shortfin mako sharks caught on PLL gear at approximately 80 percent. This research was conducted in the Pacific Ocean off of California using different gear (J hooks) and shorter soak times (~3 hours) than in the U.S. Atlantic PLL fishery. Therefore, it may not be representative of the post-release survival of North Atlantic shortfin mako sharks caught in the U.S. Atlantic PLL fishery. In the recreational fishery it is believed that post-release survival is very high, especially when injuries from hooking and releasing the shark are minimized and fishermen release sharks in a way that maximizes their survival.

*Comment 7:* NMFS says that the U.S. catch proportion is less than 10 percent. Last year, the data was extrapolated and the range was between 4–5 percent. If that is correct, NMFS is overstating the relevancy of the U.S. catch to the entire Atlantic-wide mortality. The United States is not a big player in the shortfin mako shark fishery. Canada and Spain will determine the fate of shortfin mako sharks at ICCAT.

*Response:* The proportion of U.S. shortfin mako shark catch referred to in the DEIS was calculated from estimated commercial shortfin mako shark landings and discards reported to ICCAT from 1997 to 2008, which is

approximately 9 percent of the Atlantic-wide shortfin mako shark landings over that time period (3431 mt ww/39,769 mt ww = 8.6 percent). This indicates that the United States contributes a small proportion to the overall fishing mortality on the North Atlantic shortfin mako shark stock.

*Comment 8:* Several commenters felt that the proposed alternatives would close the shortfin mako recreational fishery.

*Response:* NMFS considered five alternatives for pelagic sharks in the recreational fishery, and only one, adding shortfin mako sharks to the prohibited species list, would prohibit recreational landings of shortfin mako sharks. The preferred alternatives in the FEIS, working on an international level to end overfishing and promoting the live release of shortfin mako sharks, will not prohibit landings of shortfin mako sharks or close the recreational fishery.

#### F. Smooth Dogfish

*Comment 1:* NMFS received several comments in support of the No Action alternative (alternative F1) and mirroring ASMFC smooth dogfish regulations (alternative F3). For example, the State of North Carolina opposed the preferred alternative F2, and supported alternative F1 under the smooth dogfish management measure. The State of Virginia and other commenters support Alternative F1 as their preferred option, but could also support Alternative F3. The State of Virginia believes Addendum I to the ASMFC Coastal Shark FMP is a compromise between the ease of species identification for Law Enforcement and the need by the commercial fishery to completely process smooth dogfish at sea due to their rapid spoilage. The State feels that the current ASMFC management regime for smooth dogfish should allow NMFS to take no action at this time (alternative F1) or to add smooth dogfish under NMFS management and mirror the provisions of the ASMFC Interstate Shark FMP (alternative F3). Similarly, the MAFMC supports the No Action alternative (alternative F1) since the fishery is not a growth fishery and landings have been stable. The MAFMC also commented that if no action (alternative F1) is selected, the Council would support requesting ASMFC to adopt mandatory dealer reporting requirements and establish a quota consistent with alternative F2a3. The MAFMC also noted that if NMFS determines that it will implement Federal management, then as a secondary choice the MAFMC supports alternative F3 for smooth dogfish.

*Response:* Because smooth dogfish is not currently a Federally managed species and fishery data reporting is not required, catch, effort, and participant data are sparse. These smooth dogfish data limitations have led to an unknown stock status and an unknown condition of the fishery. One way to rectify these shortcomings and provide needed conservation and management of smooth dogfish is to bring the species under Federal management. The Magnuson-Stevens Act requires preventing overfishing while achieving optimum yield on a continuing basis. Collection of smooth dogfish fishery data will facilitate stock assessments and effort estimates and addressing overfishing and other mandates under the Magnuson-Stevens Act. NMFS did not prefer the No Action alternative (Alternative F1) because maintaining the status quo would perpetuate the unknown condition of the fishery. Furthermore, because the resource is available along most of the eastern U.S. coast and there is a market for the product, smooth dogfish effort could increase as other fisheries become more constrained.

NMFS chose not to prefer Alternative F3, mirroring the ASMFC smooth dogfish measures, because the ASMFC plan contains some provisions that NMFS cannot implement and does not include others that NMFS must implement. On May 6, 2009, the ASMFC approved a smooth dogfish Addendum to the Atlantic Coastal Sharks FMP for public comment. Included within this Addendum is 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 five-percent fin to carcass ratio, but would allow for the removal of fins at sea. The allowance for the removal of shark fins while still onboard a fishing vessel and the removal of the two hour net-check requirement differs from current Federal regulations for other shark species. NMFS considers the requirements for gillnet checks and maintaining shark fins naturally attached through offloading to be important to minimize impacts on protected resources and to prevent shark finning, respectively. NMFS recently implemented the fins attached regulation for all Atlantic sharks for enforcement and species identification reasons and does not favor creating a potential loophole that could hinder enforcement. In addition,

ASMFC has not established a quota or a permitting requirement for the smooth dogfish fishery. As noted above, NMFS is required to establish ACLs and AMs under the Magnuson-Stevens Act and believes that permitting is the first step to gaining information about the fishery. Thus, NMFS has decided not to mirror the ASMFC regulations at this time. Nonetheless, under alternative F2, NMFS will delay implementation of the management measures until the beginning of the smooth dogfish season in 2012 and, in the interim, continue to work with ASMFC and the MAFMC to ensure Federal and State regulations are consistent to the extent practicable.

Requiring that fins remain naturally attached to the smooth dogfish carcass is important to NMFS for several reasons: To facilitate species identification; to maintain consistency with other shark regulations that require that the fins remain attached while keeping the carcass essentially whole; and to maintain consistency with the United States' international shark conservation and management positions. Identifying all sharks to the correct species is a vital step in vessel and dealer reporting. These reports are used to monitor catch levels in relation to quotas and to advise stock assessments. When ASMFC implemented their regulations allowing the removal of smooth dogfish fins during certain seasons, they only considered the potential overlap in species distribution between sandbar and smooth dogfish. They did not consider the potential overlap with many other species of sharks that NMFS manages including SCS and spiny dogfish and the potential for misidentification with these species. NMFS heard during the proposed rule comment period that participants in the smooth dogfish fishery fully process the fish into "logs" or fillets of meat at sea. Identifying the species of fully-processed carcasses from cuts of meat is very difficult. For this reason, for a number of years before first requiring that fins be attached in 2008, NMFS had prohibited the filleting of sharks at sea and required all sharks be landed as logs. In the 2006 Consolidated HMS FMP, NMFS took a further step of requiring that the second dorsal and anal fin be maintained on the dressed carcass. Furthermore, the ability to identify both carcasses and fins to the species level is critical for enforcing the prohibition on shark finning for all Federally managed Atlantic shark species. The most effective way for fishermen, dealers, and enforcement to properly identify both fins and carcasses

is to require that fins remain naturally attached through offloading. Detached smooth dogfish fins can be difficult for most people to differentiate from other shark fins. Differentiating numerous detached smooth dogfish fins from other shark fins can be inefficient and impractical from an enforcement perspective, particularly in a high volume fishery.

All sharks currently managed by the Secretary of Commerce (Secretary) (large coastal sharks, small coastal sharks, and pelagic sharks) must be landed with fins naturally attached. Deviating from this measure in the smooth dogfish fishery would introduce management inconsistencies and potential enforcement loopholes. The fins naturally-attached regulation is also consistent with the U.S. international position on shark conservation and management. Globally, shark finning is a serious threat to many shark species. The United States has co-sponsored fins-attached proposals and supported an international ban on the practice of shark finning and has recently proposed adding several species to the CITES Appendix II listing to aid in monitoring shark fin trade. An effective method to enhance the enforceability of a finning ban is to require that fins remain naturally attached to the shark carcass through offloading. In addition to this requirement, the United States also encourages maintaining the five percent fin-to-carcass ratio. The five percent fin-to-carcass ratio is a critical tool for dockside enforcement when enforcement officers are unable to monitor an entire offload, and enhances shark conservation efforts by allowing NOAA to utilize dealer landing records to detect potential shark finning violations post-landing for subsequent follow-up investigation. If domestic exemptions to the fins naturally attached regulation were implemented, it could undermine the United States' international position on the fins naturally attached policy and other shark conservation and management measures.

*Comment 2:* Several commenters asked what would happen if NMFS decided not to implement management actions (alternative F1). They asked if it would mean that the ASMFC would be the sole managers of smooth dogfish.

*Response:* Whether NMFS decided to implement management measures or not, ASMFC regulations would not apply in Federal waters. The jurisdiction of ASMFC management plans only includes State waters, and the absence of a Federal management plan would not extend ASMFC's jurisdiction. While smooth dogfish are

not currently managed at the Federal level, there are Federal regulations in place that apply to smooth dogfish fishing in the EEZ, including the Shark Finning Prohibition Act. This Act prohibits landing shark fins without the corresponding carcass and in excess of 5 percent of the carcass weight. If NMFS decides not to implement management measures, these Federal regulations will still apply. This comment did not require any revision in the FEIS.

*Comment 3:* NMFS received comments supporting the proposed alternative (alternative F2), which would implement management measures in the smooth dogfish fishery. Several commenters noted that this alternative would also require issuance of Federal permits, which are essential in remedying the serious deficiencies in data and would lead to better stock assessments. The preferred alternative of Federal management has the added benefit of obtaining dealer reports and providing for Federal fishery observers aboard vessels targeting dogfish. The State of Georgia supported the proposed alternative and noted that as ASMFC has recognized the importance of smooth dogfish, it is only fitting that NMFS should also consider responsible management of this species in Federal waters.

*Response:* NMFS believes that implementing Federal management measures, should the species be brought under NMFS management, would be an important first step in meeting its Magnuson-Stevens Act mandate to prevent overfishing while achieving, on a continuing basis, optimum yield. Achieving this mandate would require the collection of smooth dogfish fishery data to perform stock assessments and effort estimates. Federal permits, dealer reporting, and on board observers would provide valuable participant information and better characterize the nature of the fishery. The ASMFC's action to include smooth dogfish in the coastal shark management plan is further indication of emerging awareness that the species is in need of conservation and management measures. Due to the highly migratory nature of smooth dogfish and its large range, it would provide a positive ecological benefit across their range regardless of political boundaries. The DEIS identified alternative F2 as the preferred alternative and no change was made in the FEIS or this final rule except that the implementation of the measures under the preferred alternative would be delayed until the beginning of the smooth dogfish fishing season in 2012 to allow time for fishery

participants to adjust to the new requirements.

*Comment 4:* NMFS received many comments specific to the 5 percent fin to carcass ratio for smooth dogfish, including that the 5 percent ratio is too low and that the ratio should be closer to 10–12 percent. The MAFMC commented smooth dogfish are unique in their fin to carcass ratio. They have two dorsal fins that are large enough to retain and sell. The carcasses are typically sold with the napes removed, rather than split, which significantly reduces the weight basis of the carcass and increases the fin to carcass ratio. The fins are removed with a straight cut, rather than the crescent cut required for other shark fins, thereby increasing its weight and the fin to carcass ratio. As a result, the fin to carcass ratio for smooth dogfish is typically 9 to 10 percent if the two pectoral fins and two dorsal fins are retained. The tails are not typically retained due to their low value, but if they are retained, the total fin weight increases to 13 to 14 percent.

*Response:* On December 21, 2000, the Shark Finning Prohibition Act (Pub. L. 105–557) (Act) was signed into law. The Act established a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of the Act if the total weight of shark fins landed or found on board exceeded five percent of the total weight of shark carcasses landed or found on board. It was implemented by NMFS through a final rule released in February 11, 2002 (67 FR 6124). Thus, any changes to the five percent ratio would have to be modified by Congressional action. NMFS does not have discretion to selectively implement the five percent fin to carcass ratio in certain shark fisheries. Furthermore, difficulty in abiding by the five percent fin to carcass ratio further supports NMFS' requirement that all smooth dogfish fins remain naturally attached to the carcass through offloading. Keeping the fins naturally attached to the carcass through offloading makes it easier for fishermen to comply with the Shark Finning Prohibition Act. In order to help fishermen document that sharks were landed with their fins attached NMFS modified the dealer reporting forms so that it can be clearly documented that the sharks were landed with fins attached. NMFS did not add an additional alternative to the FEIS or this final rule in response to this comment.

*Comment 5:* The MAFMC encourages NMFS to address Section 307(1)(P) of the Magnuson-Stevens Act as it relates to the smooth dogfish fishery, and

suggests exploring a Letter of Authorization for the fishery addressing the rebuttable presumption clause. The smooth dogfish fishery fully utilizes the carcasses, so there is no conservation purpose served for this species by the five percent limit fin to carcass ratio.

*Response:* Section 307(1)(P) of the Magnuson-Stevens Act states that “[i]t is unlawful (1) for any persons to \* \* \* (P)(i) remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea; (ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or (iii) to land any such fin without the corresponding carcass.” The section continues that “[f]or the purposes of subparagraph (P) there is a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of subparagraph (P) if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board.”

As noted in the previous response, NMFS has no discretion to selectively implement the five percent fin to carcass ratio in certain shark fisheries, therefore, NMFS cannot issue Letters of Authorizations to exempt fishermen from complying with the Magnuson-Stevens Act and statutory requirements of the five percent fin to carcass ratio.

*Comment 6:* NMFS received comments specific to the proposed requirement that smooth dogfish fins remain naturally attached to the carcass (alternative F2) including the requirement that smooth dogfish be landed with their fins naturally attached since allowing an exemption for smooth dogfish will undermine the overall management and protection of sharks. NMFS also received comments opposed to the actions including: The fins attached requirement will end the commercial smooth dogfish fishery and would have no conservation value for smooth dogfish; requiring fins remain naturally attached to the carcass in the summer will reduce the meat quality because fishermen will have to remove the fins in 95 degree heat while on the dock; requiring fins remain naturally attached to the carcass will cause the meat to spoil faster; NMFS stated that their intention was not to change the fishery, but all the proposed requirements, particularly requiring fins remain naturally attached, will change the fishery; NMFS should adopt a rule that mirrors the provisions approved by the ASMFC, which requires that the smooth dogfish fins need not be landed attached, except for the dorsal fin

during the months of July through February; and, the fishery is a 98-percent directed fishery, with little or no by-catch of other shark species. The State of South Carolina recommended that NMFS consider allowing permitted commercial shark fisherman to process and remove fins from smooth dogfish at sea, with the exception of the 1st and 2nd dorsal fins. This would allow these landed sharks to be differentiated from other species, including sandbar sharks. The MAFMC commented that smooth dogfish flesh is uniquely soft and translucent, and is singular among shark species in its tendency to discolor if the fish is not promptly bled, thoroughly rinsed to remove any remaining blood, and iced. This unique attribute of the fish requires at-sea processing. The fins and tails have always been removed and, in some cases, the backs and fins are sold to different customers.

Requiring the fins and tails to remain attached would substantially impede the bleeding and cleaning process that is essential to preventing discoloration and preserving the quality of the fish.

*Response:* The FEIS acknowledges and considers the concerns raised in this comment with respect to potential difficulties resulting from the inability to completely process smooth dogfish at sea. However, requiring that fins remain naturally attached to the carcass facilitates species identification and prevents exceptions to the Federal prohibition on shark finning. The requirement also maintains consistency across all Secretary of Commerce-managed shark species in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and reflects the U.S. international position regarding shark conservation. While the fins naturally attached requirement will apply to Federal smooth dogfish fishing permit holders regardless of fishing location, the intent of the measure would not be to obviate the ASMFC measures, as suggested in one of the comments. The ASMFC and NMFS operate under different mandates, jurisdictions, and contexts (domestic and international). These differences sometimes result in, and can necessitate, different management measures.

NMFS' intention, when implementing smooth dogfish management measures, is to minimize alterations to the fishery. As such, NMFS is delaying the effective date of the management measures under the preferred alternative in the FEIS until the beginning of the fishing season in 2012 to allow fishermen and dealers time to adjust to the new requirements. Smooth dogfish management measures will not be implemented until the 2012 fishing season, and NMFS believes that

the methods and techniques employed in other shark fisheries can be adopted in the interim. However, the practices currently employed in the fishery are sometimes in conflict with NMFS' shark conservation and management position and Congressional mandates such as the Shark Finning Prohibition Act. As noted in several of the comments above, requiring smooth dogfish fins to remain naturally attached to the carcass differs from the current practice in the fishery. As described in the response to a comment above, NMFS deemed that maintaining a fins-attached requirement would be critical for several reasons: (1) To facilitate species identification, (2) to maintain consistency across all Federally managed shark species, and (3) to maintain consistency with the U.S. and NMFS international position with regard to shark conservation and management. A potential NMFS requirement to land smooth dogfish with fins naturally attached would not prohibit at-sea processing methods currently in place in most other Atlantic shark fisheries that maximize meat quality, freshness, and processing efficiencies. It would remain legal to remove the shark's head and viscera for proper bleeding. To reduce dock-side processing needs, all fins could be partially cut at the base and only left attached via a small flap of skin. NMFS did not add an additional alternative to the FEIS or this final rule in response to this comment.

*Comment 7:* NMFS received comments regarding the proposed quota for smooth dogfish (alternative F2a3). Numerous commenters stated that the proposed quota was too high for a species lacking a stock assessment and that has been categorized as near threatened by the International Union for the Conservation of Nature (IUCN). NMFS also received numerous comments stating that the proposed quota is too low such as: In the early 1990s, Virginia alone caught over a million pounds and North Carolina or New Jersey could easily take the proposed quota themselves in the next year or two without increasing effort. The amount of take in the fishery depends on whether the fish are available when the fishermen go out. The quota needs room for growth since there are a lot of fishermen targeting smooth dogfish. Several commenters stated that the data used to determine the quota were flawed since a lot of people are not reporting on the vessel trip reports (VTRs) and that NMFS needs to look at all sources and geographic regions (including the Gulf of Mexico) of mortality including trawl

gear. NMFS also received a comment that NMFS should not set a smooth dogfish quota the first year and should set quota the second year based on landings data. The State of Virginia commented that the absence of a statistically sound time series of landings or any type of analytical stock assessment for smooth dogfish makes this quota alternative impractical. Quota-based management requires some current information on the status (biological) of the stock. The State of Virginia also noted that there are approximately twelve commercial fishermen that land in excess of 500 pounds of smooth dogfish during any one year from 2004 through 2008 in Virginia. For the five year period of 2004 through 2008, Virginia's smooth dogfish harvest totaled 2,316,648 pounds. A total of 1,140,809 pounds were harvested from State waters (49.2 percent) and 1,175,839 pounds from Federal waters (50.8 percent). The State of South Carolina supports Federal management of smooth dogfish and the proposed method of determining the annual commercial and recreational landings, plus the addition of 6 mt ww of smooth dogfish to the present 60 mt ww quota for all sharks collected in exempted fishing programs. The State of Georgia supports the quota limit for the smooth dogfish fishery, since the logic used to calculate the quota appears sound at this time. The MAFMC states that NMFS commercial landings data shows zero smooth dogfish landings from Virginia for 1996, while greater than 500,000 lbs are known to have been purchased by a single Virginia dealer in that year. The MAFMC recommended that the collection of fishery data through mandatory logbook reporting be initiated as soon as possible. The data collection will help develop a stock assessment.

*Response:* The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109-479) added Section 303(a)(15) to the Magnuson-Stevens Act which requires all FMPs for Federally managed fisheries to establish a mechanism for specifying ACLs and to include AMs to ensure that ACL are not exceeded. The mechanism by which this requirement is applied to shark fisheries is detailed in Chapter 1 of the FEIS for Amendment 3, including the necessity to establish an annual commercial quota. Despite sparse smooth dogfish landings reports and the lack of a stock assessment, establishing an ACL to prevent overfishing would be a condition of bringing the species into the HMS FMP

and under Federal management under the Magnuson-Stevens Act.

Inline with the intention to minimize changes to the fishery, NMFS proposed to establish a quota that would allow current exploitation levels of smooth dogfish to continue. Although some changes to the fishery would be necessary, as noted above (*e.g.*, fins naturally attached), the primary goal of the smooth dogfish portion of this amendment is to characterize and collect data on the fishery. This goal necessitates a quota near actual exploitation levels. Due to the lack of reporting requirements in the fishery, NMFS relied on available data to estimate current landing levels. 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. Existing sources, particularly the Atlantic Coastal Cooperative Statistics Program (ACCSP) for commercial catches across all gear types, offer insight into the current State of the fishery. NMFS used ACCSP data to estimate current landing levels and then used this estimate to establish an annual quota. In the DEIS, NMFS proposed a quota equal to the maximum annual landings between 1998 and 2007 plus one standard deviation in the ACCSP data. Setting the quota higher than maximum reported landings was intended to account for what NMFS believes to be significant underreporting due to the lack of smooth dogfish reporting requirements. During the public comment period, however, NMFS received numerous comments, as described above, that the proposed quota does not adequately account for underreporting. Several States provided State data that also indicated the sources NMFS used may be underreporting actual landings. Based on these comments and Southeast Fishery Science Center (SEFSC) advice, NMFS decided to deviate from the preferred alternative in the DEIS and to identify alternative F2a4, the quota equal to the annual maximum landings plus two standard deviations, or 715.5 mt dw (1,577,319 lbs dw), as the preferred alternative in the FEIS. NMFS believes that setting the quota at a level that accounts for current landings does

not threaten smooth dogfish stocks. A review of the reported landings does not indicate any immediate declining trend, and as noted by one of the commenters, the average size of landed smooth dogfish is increasing. Based upon these limited data and observations, there are few indications that the smooth dogfish stock is overfished and in need of an immediate reduction in mortality. In fact, based on the limited data available, smooth dogfish landings appear to have been stable since the mid-1990s. The IUCN status appears to be based upon the fact that smooth dogfish have an unknown stock status. The IUCN description of smooth dogfish notes that there is no stock assessment for the species. Regardless, NMFS does not rely on IUCN statuses when developing management measures, but rather uses peer-reviewed stock assessments and primary literature. Once more data is gathered on this species, NMFS could complete a stock assessment. NMFS would reassess the quota at that time and make any necessary changes.

*Comment 8:* NMFS received several comments relating to the set-aside quota for research on smooth dogfish. One commenter noted that Alternative F2b1 provides for a "set-aside" quota for an exempted fishing program. It is appropriate for NMFS to establish this set-aside, though clearly this set aside should be subtracted from the total quota and not provided as an additional quota. The State of South Carolina believes the quota for smooth dogfish landed in exempted fishing programs is adequate, and notes that they have several public aquaria and three to four researchers in the State who have permits to collect sharks. None of those permit holders have expressed concerns to the State about the proposed quota. The State of Georgia noted that the set aside amount for the exempted fishing program is reasonable.

*Response:* NMFS identified the establishment of a separate smooth dogfish set-aside quota for the exempted fishing program of 6 mt ww as the preferred alternative in the FEIS. The set-aside quota for the exempted fishing permit (EFP) program is an important part of any fishery management plan. The EFP program facilitates research that can be used to inform management measures and provide data for stock assessment. Creating a separate and distinct set-aside quota from the principle quota ensures that research activities do not impede the commercial or recreational fisheries through quota limitations. As noted in the previous response, NMFS' intention when establishing the commercial quota was to set it at a level that would account for

all annual commercial landings. For this reason, it is not prudent to subtract the set-aside quota from the overall commercial quota. Doing so would result in a smaller commercial quota that might not fully account for the current annual commercial landings. In the future, after performing a stock assessment and characterizing the fishery, adjustments could be made to the set-aside quota as well as the commercial quota.

*Comment 9:* Any differences between the NMFS and ASMFC plans will complicate smooth dogfish fishing since fishermen will have a difficult time following the regulations. There must be coordination between ASMFC and NMFS.

*Response:* On January 1, 2010, the ASMFC Coastal Sharks FMP, which includes smooth dogfish measures in Addendum I, was implemented across most of the Atlantic coast States. The ASMFC plan contains several measures that differ from NMFS', as detailed in the response to Comment 1 of this section, resulting in a few inconsistencies between the two plans. NMFS recognizes the importance of consistent regulations between State and Federal waters for both stock health and ease of compliance. While complimentary ASMFC and NMFS plans are not possible at this time, NMFS will continue to work closely with the ASMFC toward similar management measures and will consider any future changes to the ASMFC plan to ensure measures are as consistent as possible between State and Federal waters. As additional data from the fishery becomes available and the fishery becomes more fully characterized, NMFS will have better information to inform collaboration and future management measures. NMFS is aware of and disclosed the potential inconsistencies between the ASMFC Coastal Shark FMP and Federal management of smooth dogfish under the Magnuson-Stevens Act in the FEIS.

*Comment 10:* The State of Virginia noted that having fins attached would significantly change how the fishery is conducted and smooth dogfish fishermen would shift all their effort into State waters. By shifting effort from Federal to State waters, Alternative F2 provokes an unintended consequence of increasing the likelihood of interaction between smooth dogfish gear and several stocks of bottlenose dolphin that spend the majority of the year within State waters.

*Response:* NMFS recognizes that differences in Federal and State smooth dogfish regulations could redistribute effort resulting in a fishery that is no

longer equally divided between State and Federal waters. However, regardless of where fishing activities occur, protected resource interactions are a concern, and care must be taken to avoid or minimize impacts on marine mammals and sea turtles. In Federal waters, smooth dogfish fishermen will be required to abide by both the gillnet and other requirements in 50 CFR part 635 and with the regulations implemented under various Take Reduction Plans (TRPs) in 50 CFR part 229 to minimize adverse impacts on protected resources. Although NMFS does not have jurisdiction over the smooth dogfish fishery in State waters, Section 118 of the Marine Mammal Protection Act (MMPA) tasks NMFS in the development and implementation of TRPs to reduce serious injuries and mortalities of marine mammal populations incidental to commercial fishing activities. These TRPs have numerous requirements to minimize impacts on marine mammal populations and are applicable in both State and Federal waters. The permitting requirement in the preferred alternative should enhance the ability of smooth dogfish fishermen to participate in these TRPs. Numerous TRPs exist, including the Bottlenose Dolphin Take Reduction Plan (BDTRP), which smooth dogfish fishermen will have to abide by if fishing in Virginia State waters. Specific regulations pertinent to the BDTRP can be found at 50 CFR 229.35. Any redistributed effort into Virginia's State waters affecting bottlenose dolphins will be addressed under the BDTRP or other applicable TRP.

In addition, NMFS is currently engaged in formal Section 7 consultation in accordance with the ESA, paragraph 7(a)(2), to determine the potential level of incremental effect that may arise as a result of the preferred management measures for smooth dogfish in the FEIS. NMFS has not yet issued a final BiOp for the smooth dogfish fishery. NMFS will review that BiOp once it is issued and supplement the analysis in this FEIS if the consultation reveals any new or significant effects with respect to the interaction between gillnet fishing for smooth dogfish and protected species that were not considered in the 2008 BiOp for Amendment 2 to the 2006 Consolidated HMS FMP. The FEIS incorporated by reference the 2008 BiOp for Amendment 2 to the 2006 Consolidated HMS FMP. A detailed discussion of the effects of such management relevant to the shark fishery is included in that document. NMFS does not anticipate any

substantial change in impact to protected species since the measures proposed for smooth dogfish management are largely administrative, and thus unlikely to affect the manner and extent of fishing for smooth dogfish or redistribution of effort into other fisheries. NMFS assumes there is a correlation between fishing effort and protected species interactions. Since smooth dogfish management measures would establish a quota and permit requirement, fishing effort for smooth dogfish would be capped or slightly reduced with a corresponding diminishment in the possibility of increased protected resource interactions. In addition, increased observer data in the smooth dogfish fishery as a result of a Federal permit requirement would better characterize protected resources interactions with the smooth dogfish fishery.

*Comment 11:* Florida fishermen catch smooth dogfish in the Tortugas and use them as bait because smooth dogfish are worthless. Gulf of Mexico fishermen catch them while grouper fishing. If you catch 5,000 lbs of grouper, you might have about 50 lbs of smooth dogfish. The common length is 12–24" and they are caught at the top of the continental shelf. NMFS should not include rules made for the mid-Atlantic in the Gulf of Mexico. If smooth dogfish are causing problems in the mid-Atlantic, NMFS should establish separate regulations on them. Fishermen in the Gulf of Mexico cannot fish for anything without catching a few smooth dogfish. There are no smooth dogfish fisheries in the Gulf of Mexico.

*Response:* Smooth dogfish is a widely distributed species, ranging from Massachusetts to South America including the Gulf of Mexico and Caribbean Sea (see Chapter 11 in the FEIS). Despite this wide distribution, the current fishery is concentrated in the Mid-Atlantic region, and no reports of commercial landings in the Gulf of Mexico could be found. Although there are no reported landings of smooth dogfish in the Gulf of Mexico, research trawls by the SEFSC have shown that they are present in the region including in Louisiana waters. Fishermen in the Gulf of Mexico that incidentally catch smooth dogfish, but do not retain the fish or parts of the fish, will not be required to abide by Federal smooth dogfish regulations or need to obtain a smooth dogfish permit.

Under current Atlantic HMS regulations, it is illegal to catch sharks and use them as bait. If smooth dogfish were under Federal management, this requirement would apply to smooth dogfish as well. The known distribution

of smooth dogfish, validated by comments such as this one, necessitates a central, unified management authority of the species. The fact that a market exists for smooth dogfish, and that they are regularly encountered in places other than the Mid-Atlantic, make management measures and data collection in the fishery important. Even though fishermen do not currently land smooth dogfish in the Gulf of Mexico, the presence of both the resource and a market means a fishery could develop in that region, particularly if other more profitable fisheries are reduced or limited. NMFS did not add an alternative in the FEIS or this final rule to separate the smooth dogfish into separate management units or fisheries in response to this comment.

*Comment 12:* Why will recreational fishermen be required to have a smooth dogfish permit? Would the recreational permit for smooth dogfish be the same as the current HMS recreational permit? Most of the smooth dogfish are caught incidentally. No one targets smooth dogfish recreationally. The State of South Carolina notes that few smooth dogfish are landed in their recreational fishery as that species primarily occurs off our coast in the winter months when angler effort is decreased.

*Response:* Efforts to characterize the smooth dogfish fishery must include both commercial and recreational fishermen to adequately estimate effort and catch. As when recreationally fishing for other Atlantic sharks, smooth dogfish recreational fishermen would need to obtain an HMS Angling permit and charter/headboats that take smooth dogfish would need to obtain an HMS Charter/Headboat permit. Those who already hold this permit will not need an additional permit to fish for smooth dogfish recreationally.

*Comment 13:* The State of South Carolina commented that unless future stock assessments indicate that smooth dogfish are overfished the current commercial and recreational size and retention limits seem appropriate.

*Response:* NMFS agrees that at this time there is no justification for imposing a size or retention limit for smooth dogfish in the recreational or commercial fishery. This is inline with the intent to minimize changes to the fishery while collecting data to characterize it. Currently, the fishery does not operate under any type of size or retention limit restrictions. After a stock assessment is completed on the species, changes could be necessary.

*Comment 14:* A few commenters noted that the EFH for smooth dogfish proposed by NMFS looks appropriate. The State of South Carolina agrees that

the occurrence data presented is where dogfish are captured within U.S. waters. However, the State notes that there is a discontinuity between the Gulf of Mexico and the Atlantic coast groups (as presented in Figure 11.1 in the FEIS) that may indicate further investigation of species characteristics and distribution is warranted.

*Response:* Identifying and describing EFH for Federally managed species is a statutory requirement mandated by the Magnuson-Stevens Act. As detailed in Chapter 11 of the FEIS, NMFS used a variety of research survey datasets to identify and describe the EFH around positive smooth dogfish observations. Although NMFS relied on geographically limited datasets, the resulting EFH designation closely matches literature descriptions of smooth dogfish distribution, boosting confidence in the determination. The Northeast Fisheries Science Center (NEFSC) offered suggestions on available research survey datasets. Once incorporated in the analyses used in the FEIS, these datasets contributed to a more robust smooth dogfish designation than that proposed in the DEIS of Amendment 3. The discontinuity in EFH off the Georgia and eastern Florida coasts will require further analysis due to the lack of smooth dogfish data in the area. However, literature on smooth dogfish distribution also note an absence of the species in that area. As noted, NMFS incorporated changes to its identification and description of EFH in the FEIS based on this and similar comments.

*Comment 15:* NMFS stated in Amendment 3 that there is not sufficient information for smooth dogfish EFH. If that is the case, why did NMFS propose EFH?

*Response:* As noted in the previous response, identifying and describing EFH for Federally managed species is a statutory requirement mandated by the Magnuson-Stevens Act. NMFS is confident that the designated smooth dogfish EFH is accurate, particularly after incorporating the datasets suggested by the NEFSC. NMFS will continue to work to ensure that EFH for all HMS species utilizes the best available information. No changes were made in the FEIS based on this comment.

*Comment 16:* NMFS received several comments questioning whether smooth dogfish is an HMS and should be managed by NMFS or a Regional Fishery Management Council, such as the MAFMC. Commenters stated that the Magnuson-Stevens Act defines HMS as an "oceanic shark" and asked if smooth dogfish are oceanic sharks.



Commenters also asked why spiny dogfish are managed by the MAFMC and NEFMC. One commenter stated that NMFS should manage smooth dogfish fisheries since it is the only Atlantic shark species which is subjected to a targeted fishery that has no Federal management measures. That commenter also felt a Federal management component would likely enhance new management efforts by the ASMFC.

*Response:* The Magnuson-Stevens Act is the primary statute that authorizes Federal management of fisheries in the U.S. Exclusive Economic Zone. Regional fishery management councils have authority to manage species and stocks within their geographic jurisdiction as established by the Act. However, the Magnuson-Stevens Act gives the authority to the Secretary to manage stocks or species of highly migratory species that move across more than one of the five Atlantic councils' jurisdictions. Provisions of the Act relevant to Secretarial management of HMS include:

Section 3(21): The term "highly migratory species" means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*). Section 302(3): The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

Section 301(3) (National Standard 3): To the extent practicable, an individual stock of fish should be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

Magnuson-Stevens Act Section 3(21) defines HMS. Unlike some other HMS, sharks mentioned in the definition are not defined by family or species. Rather, the term "oceanic shark" is used. The statute does not further expound upon or define this term. NMFS, therefore, considered two major factors in making its determination with respect to smooth dogfish. First, it considered the life history, habitat, migratory patterns, occurrence and distribution of the species. Second, NMFS considered its interpretation in the context of the various provisions of the Magnuson-Stevens Act applicable to HMS to ensure that its interpretation was logical and consistent with those provisions. Given the broad application of the term in conjunction with the habitat, migratory patterns and geographic distribution of the species, smooth dogfish is fairly characterized as an oceanic shark consistent with the structure and application of the

Magnuson-Stevens Act. A more detailed rationale follows.

NMFS examined section 302(3) and section 301(3) (National Standard 3). Both of these sections relate to management authority based on the distribution of the species. As noted in Chapter 11 of the FEIS, smooth dogfish inhabit the geographical area of all five Atlantic Regional Fishery Management Councils, and across international boundaries to South America and Mexico. Further, smooth dogfish tend to be found inshore during the warmer months. However, thermally stable, deep offshore waters are preferred in the colder months (up to 200m) and Caribbean populations occupy waters deeper than 200m. Data from research surveys show that smooth dogfish are found along the eastern seaboard, in the Gulf of Mexico, and in the Caribbean Sea. Based on these factors, NMFS reasonably concluded that the smooth dogfish is an oceanic shark and, given its range across multiple Atlantic Regional Fishery Management Council Jurisdictions, highly migratory. Moreover, management of smooth dogfish under a single FMP is consistent with the Magnuson-Stevens Act's mandates for the Secretary to manage highly migratory species to the extent practicable as a single management unit. Smooth dogfish is a separate species from spiny dogfish and has separate management concerns. NMFS is making a determination to manage and conserve smooth dogfish on its own merits.

*Comment 17:* Multiple commenters asked who requested Federal smooth dogfish management.

*Response:* NMFS received smooth dogfish management requests from environmental conservation organizations. Furthermore, around the time of scoping for Amendment 3, both the ASMFC and the MAFMC identified that smooth dogfish were in need of conservation and management and began the process of creating management measures. These efforts by the ASMFC and the MAFMC reinforce the emerging realization that the fishery is in need of both State and Federal management.

*Comment 18:* NMFS should work with the small group of fishermen that fish for smooth dogfish to gather info on the fishery rather than proposing new requirements.

*Response:* Although a specialized fishery with perhaps a smaller number of fishermen than other fisheries, the smooth dogfish fishery still includes a large number of participants. Within the Vessel Trip Report (VTR) and Coastal Fisheries Logbook databases, an average of 213 vessels per year reported landing

smooth dogfish between 2004 and 2007. This large number of participants makes collaboration with each of the smooth dogfish participants impracticable. However, under the smooth dogfish preferred alternative, alternative F2, implementation of management measures will be delayed until the beginning of the smooth dogfish fishing season in 2012. This delay will allow NMFS to continue outreach and have discussions with smooth dogfish participants regarding the fins attached regulation and will allow fishery participants time to modify their operation to comply with the regulations that will be implemented in 2012. A discussion of the smooth dogfish fishery is included in the FEIS.

*Comment 19:* NMFS should ensure that smooth dogfish will be available year round. The January 1 opening for smooth dogfish could be good for North Carolina, since it is a winter fishery. It would affect North Carolina fall catch rates if the fishery became quota-limited.

*Response:* In line with the intention to minimize changes to the fishery, NMFS decided to establish a quota that would allow current exploitation levels of smooth dogfish to continue. NMFS believes that the established quota is at a sufficient level to prevent quota limitations if the fishery maintains current landing levels. Because there are no regional or seasonal restrictions included in the preferred alternative, the quota should be available year-round, and no specific region or State will disproportionately benefit from the quota. NMFS plans to open the fishery each year with a **Federal Register** notice that would likely publish near the beginning of each year.

*Comment 20:* One commenter noted that smooth dogfish fishermen fish several nets at once, with short soak times. It would change the fishery if NMFS required the nets to remain attached to the vessel. The State of South Carolina commented that the smooth dogfish gillnet fishery has been practiced for some time in North Carolina and the Mid-Atlantic States. If during this time there have been no or few problems associated with interactions with endangered or protected species, the State sees no reason to increase restrictions or change the way the fishery has historically been conducted. One commenter noted that the two hour net checks probably would not hurt smooth dogfish fishermen since the soak time is short. However, fishermen cannot do net checks with a flashlight looking down into the water because the nets are set deep. Also, net checks will be difficult to enforce.

Another commenter stated that NMFS should extend existing gillnet gear tending requirements to smooth dogfish fishermen, such as requiring that gillnets be checked at least every two hours and that protected and prohibited species are released. Gillnets frequently catch non-target species, including prohibited shark species, marine mammals, and sea turtles. The nature of the gear makes some level of bycatch nearly unavoidable.

*Response:* NMFS agrees that the requirement to keep gillnets attached to the vessel and to perform net checks could alter how the smooth dogfish fishery operates. Smooth dogfish fishermen are already required to and will continue to be required to abide by Federal Take Reduction Plans specific to the gear type and region of fishing activity. These plans include the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, and the Mid-Atlantic Harbor Porpoise Take Reduction Plan that include requirements minimize interactions with protected resources and to ensure those that are incidentally caught are released in a manner that maximizes survival.

NMFS is currently engaged in formal Section 7 consultation in accordance with the ESA, paragraph 7(a)(2), to determine the potential level of incremental effect that may arise as a result of the preferred management measures for smooth dogfish in the FEIS. NMFS has not yet issued a final BiOp for the smooth dogfish fishery. NMFS will review that BiOp once it is issued and supplement the analysis in this FEIS if the consultation reveals any new or significant effects with respect to the interaction between gillnet fishing for smooth dogfish and protected species that were not considered in the 2008 BiOp for Amendment 2 to the 2006 Consolidated HMS FMP. The FEIS incorporates by reference the 2008 BiOp for Amendment 2 to the 2006 Consolidated HMS FMP. A detailed discussion of the effects of such management relevant to the shark fishery is included in that document. NMFS does not anticipate any substantial change in impact to protected species since the measures proposed for smooth dogfish management are largely administrative, and thus unlikely to affect the manner and extent of fishing for smooth dogfish or redistribution of effort into other fisheries. NMFS assumes there is a correlation between fishing effort and protected species interactions. Since smooth dogfish management measures would establish a quota and permit requirement, fishing effort for smooth

dogfish would be capped or slightly reduced with a corresponding diminishment of the possibility of increased protected resource interactions. In addition, increased observer coverage in the smooth dogfish fishery as a result of a Federal permit requirement would better characterize protected resources interactions with the smooth dogfish fishery.

Under the alternative (F2), identified as the preferred alternative in the FEIS and selected by NMFS as part of Amendment 3 in the Record of Decision, the implementation of the management measures would be delayed until the beginning of the smooth dogfish fishing season in 2012 to allow time to consider and evaluate the information and requirements included in the final smooth dogfish BiOp. If the assessment of effects in the BiOp provides new and meaningful information not considered in this FEIS, NMFS will supplement the FEIS, as appropriate, before implementing any management measures proposed in alternative F2. In the interim, NMFS will not impose any management authority or related conservation and management measures on the smooth dogfish fishery, and thus will not cause any effect on protected species related to such management. In other words, the selection of preferred alternative F2 maintains the status quo with respect to the smooth dogfish fishery as it relates to protected species prior to receiving a final BiOp. While NMFS would finalize the rulemaking with measures for blacknose shark and shortfin mako sharks becoming effective 30 days after publication of the final rule in the **Federal Register**, the measures, if any, selected for management of smooth dogfish would be deferred to allow NMFS to develop reasonable and prudent alternatives (RPAs) that could be implemented while avoiding adverse impacts to listed species, as necessary.

*Comment 21:* Trawl fishermen skin smooth dogfish at sea and sell them as steaks.

*Response:* Under Federal management, trawl fishermen will likely not be able to continue skinning smooth dogfish at sea, and will not be able to continue processing the fish into steaks at sea. Smooth dogfish, like all other Federally managed Atlantic shark species, would be required to be landed with fins naturally attached to the carcass under alternative F2, the alternative identified as the preferred alternative in the FEIS and selected by NMFS as part of Amendment 3 in the ROD. Trawl fishermen could continue to skin the shark if they can leave the fins naturally attached to the carcass,

but they will be unable to process the smooth dogfish into steaks at sea. NMFS did not add an alternative in the FEIS or this final rule in response to this comment.

*Comment 22:* NMFS might cause an influx of new fishermen into the fishery with the new open access permits.

*Response:* NMFS acknowledges that there may be some fishermen who will obtain a permit and try to establish a catch history in case the fishery is changed to limited access at some point in the future. There may also be some fishermen in areas that do not currently have a smooth dogfish fishery, such as in the Gulf of Mexico, who may obtain a permit in the hopes of creating a similar fishery in that region. However, NMFS does not believe that the creation of a smooth dogfish open access permit will attract large numbers of new fishermen to the fishery or cause a large increase in fishing effort. The fishery is currently unmanaged in Federal waters and operates with few restrictions. Although NMFS has tried to minimize changes to the fishery, Federal management does introduce new restrictions, including a requirement to keep fins naturally attached to the carcass. If fishermen did not choose to enter the fishery when it was unmanaged, it is unlikely that Federal management would entice them to enter the fishery now. A discussion of the socio-economic impacts of bringing the smooth dogfish fishery under Federal management is included in the FEIS.

*Comment 23:* NMFS should proceed with a stock assessment for smooth dogfish throughout their range. The State of Virginia suggested that pooling resources between ASMFC, NMFS, and MAFMC may expedite the process.

*Response:* A stock assessment is important for any fishery management plan. Knowing the current biomass and how it relates to  $B_{msy}$  or to virgin stock biomass informs quota levels and size and retention limits. NMFS believes that the first step in working toward a stock assessment is collecting data and characterizing the fishery. Once NMFS has sufficient data from the fishery a stock assessment could be done in the future to determine the stock status of this species. These are the goals of the smooth dogfish measures in the preferred alternative for Amendment 3 as explained in the FEIS. NMFS would like to work closely with ASMFC, MAFMC and other interested parties in conducting a stock assessment.

## G. General Comments

*Comment 1:* Is there a mechanism in place for ASMFC to request that the

Secretary implement complementary management measures in the EEZ?

*Response:* The ASMFC can always offer management recommendations to NMFS regarding Federally managed species. Furthermore, NMFS included an alternative in the FEIS to implement smooth dogfish management measures that mirror ASMFC measures. However, after analyzing the smooth dogfish measures in place in the 2009 Interstate Coastal Sharks FMP and Smooth Dogfish Addendum I, NMFS determined that it would likely be unable to implement many of the management measures due to Magnuson-Stevens Act and Shark Fining Prohibition Act requirements.

*Comment 2:* NMFS needs to add deepwater sharks to the list of prohibited shark species. Deepwater sharks are particularly slow growing, which makes them vulnerable to overfishing. Related populations have been severely and rapidly depleted from fisheries in other parts of the world.

*Response:* Implementing Federal management of deepwater sharks by placing them on the prohibited list would not likely have significant ecological benefits since deepwater sharks are not currently targeted in any fishery and are only caught as bycatch. Placing this group on the prohibited list would not prevent bycatch of these species. Additionally, prohibiting the landing of deepwater sharks would limit data gained from incidental catches. If prohibited, these rarely encountered species would have to be released and could not be landed and submitted for subsequent analysis. Establishing management measures for deep water sharks is beyond the scope of Amendment 3 and does not meet the purpose and need described in the DEIS and FEIS. Alternatives for such measures were therefore not considered in the FEIS.

*Comment 3:* Deepwater sharks are not commercially important in the United States for food. NMFS needs to truly understand the fisheries that interact with deepwater sharks and be able to assess the deepwater shark stocks accurately, especially if there is a bycatch that is or could become a secondary market landing and sale.

*Response:* As noted in the previous response, deepwater sharks are rarely encountered and only caught as bycatch. NMFS encourages anyone who catches a deepwater shark to submit the shark to scientists for research.

*Comment 4:* We are concerned about the accuracy of some of the statistics presented on recreational fishery "harvest." For example, NMFS states that the number of porbeagle sharks that

were "harvested" by recreational fishermen across all reporting years was zero. Tournaments regularly target this species and award prizes for landing them. Additionally, NMFS shows that annual harvest of sand tiger sharks was zero for the reporting years except for 2001 when 604 were taken and 2006 when 1,040 were killed. It is hard for us to see how the recreational fishery took over 1,000 sand tiger sharks in a single year, more than a decade after they were listed as a prohibited species. As such, we are concerned about the reliability of the data used by NMFS as a basis for determining impacts on species.

*Response:* Collection of recreational fishery catch and effort data relies on survey methods. Data are collected through a combination of dockside intercepts and telephone surveys. Since it is not possible to sample all of the millions of fishing trips taken, recreational surveys require sampling a representative portion of fishing trips, and then expanding the results. Recreational harvest estimates for species that are rarely landed, as is the case with many shark species, are typically very imprecise using survey methods designed for more commonly caught species. MRFSS estimates of sharks harvested may also be inaccurate due to the fact that the MRFSS does not sample at tournament locations. The NOAA Fisheries Large Pelagics Survey (LPS), which is conducted from Maine through Virginia, typically produces more reliable recreational catch estimates for rare event species such as sharks, tunas, and billfish. However, landings of species such as porbeagle and sand tiger sharks are still rare events even for the LPS, and variances can be quite large for these species even with a specialized survey. Efforts are underway to improve the accuracy and precision of recreational fisheries data, including estimated catches of rare event species, through a new data collection initiative called the Marine Recreational Information Program (MRIP). NMFS believes the data on recreational harvest, particularly for purposes of SCS species addressed under Amendment 3, reflects the best scientific information available at this time. Therefore, recreation harvest data was not changed in the FEIS in response to this comment.

*Comment 5:* Sharks need to be available all year and low quotas lead to regulatory discards. Fishermen do not need a directed shark permit to sell sharks caught in NC waters.

*Response:* In Amendment 2 to the 2006 Consolidated HMS FMP, NMFS implemented a trip limit of 33 non-sandbar LCS with the expectation that

directed shark permit holders would no longer target non-sandbar LCS and that this reduced trip limit would allow the non-sandbar LCS quota to last year-round. However, the 2009 non-sandbar fishery opened on January 23rd and closed on July 1st in the Atlantic and June 6th in the Gulf of Mexico. Because the non-sandbar LCS seasons only lasted half of the year, NMFS is currently looking at data and analyzing management measures that would allow the fishery to remain open for longer periods during the fishing year. Adjusting seasons and quotas for non-SCS species is beyond the scope of Amendment 3 and the FEIS, therefore, NMFS did not propose management alternatives in response to this comment.

Many States do not have species-specific commercial fishing permits, and instead rely on a general commercial fishing permit. Fishermen who fish in State waters must comply with their State's fishing regulations. Fishermen that have a directed or incidental Federal shark commercial permit must abide by Federal regulations and must sell to a Federally permitted dealer when fishing in Federal or State waters.

*Comment 6:* The frequency of shark dealer reporting has always needed to be more frequent than every two weeks. It appears that the NMFS personnel have a hard time monitoring the various shark landings as a result of waiting too long.

*Response:* Frequency of shark dealer reporting requires a balance of data needs and reporting burdens. More frequent reporting could result in a reduction in data lags; however, it would significantly increase the burden of shark dealers. To account for uncertainties such as data lags, the Magnuson-Stevens Act requires AMs in each fishery to ensure that ACLs are not exceeded. In the shark fisheries, NMFS employs an AM whereby the fishery is closed when landings reach, or are expected to reach, 80 percent. This measure has been effective in ensuring that data lags do not result in grossly exceeding the quota. NMFS provides shark landings reports, by complex or species, on a monthly basis to ensure that participants are aware of catches in the shark fishery. NMFS is examining changes to the data management structure and may move toward more real time electronic reporting in the future. However, these types of data management actions are beyond the scope of Amendment 3 and alternatives were therefore not proposed in the FEIS in response to this comment.

*Comment 7:* A Count, Cap and Control system for shark management includes the following: Obtaining sufficient landings and observer data to accurately and precisely monitor catch (landings + discards) in the fishery; conducting species-specific stock and fishery assessments; setting annual catch limits to limit all sources of fishing mortality; and implementing accountability measures to ensure the ACLs are respected. Real-time management of quotas, time-area management measures and bycatch caps should be fully explored in this FMP amendment. If the agency decides not to use in-season AMs, it must fully support this decision with a well-defended rationale as to why in-season AMs are truly impossible, rather than impractical or incrementally more difficult to administer. The agency should take a precautionary approach towards administering the remaining quota designations for the oceanic whitetip and common thresher sharks within the pelagic shark species group. There are currently no stock assessments for either the oceanic whitetip or the common thresher sharks. In the past 10 years, the North Atlantic population of oceanic whitetip sharks has declined by an estimated 70 percent. NMFS should reassess their management of pelagic shark species. It is vital that each pelagic shark species caught by U.S. fishermen have a species-specific stock assessment and a species-specific quota.

*Response:* This amendment specifies how NMFS plans to implement Magnuson-Stevens Act 303(a)(15) requirements for ACLs and AMs. Chapter 1 of the FEIS details the methodology, where the quota is equal to the landings component of the commercial sector ACL. Additionally, AMs already in place in the commercial shark fishery will be maintained. These AMs include restrictions on how to carry over under- and overharvests and closing the fishery when landings reach, or are expected to reach, 80 percent. Changes to how NMFS monitors the landings, introducing time/area closures, or altering bycatch management are not addressed in this amendment as they do not support the purpose and need of this rulemaking. Therefore, management alternatives suggested by this comment were not included in the FEIS.

NMFS has not conducted a stock assessment for oceanic whitetips. Data may be a limiting factor, as there are limited landings data for oceanic whitetip sharks. NMFS will continue to work with international partners and ICCAT towards more species-specific assessments for pelagic sharks. To date,

ICCAT has completed assessments for blue and shortfin mako sharks. There is scant data available on oceanic whitetip landings. Again, management of the pelagic shark complex other than shortfin mako is beyond the scope of Amendment 3 and would not meet the purpose and need set forth in the FEIS. Therefore, additional pelagic shark management measures (other than for shortfin mako) were not included in the FEIS in response to this comment.

*Comment 8:* NMFS received several comments regarding other shark species that require management. Specifically, commenters felt that NMFS should focus on hammerhead and tiger sharks.

*Response:* This amendment, among other things, focuses on NMFS' requirement under the Magnuson-Stevens Act to implement a rebuilding plan and ACLs and AMs in the blacknose shark fishery since this species is overfished and overfishing is occurring based on the 2007 SCS stock assessment results. NMFS continually monitors stocks of all species under its jurisdiction and promptly begins the rulemaking process should one of these stocks be determined to be overfished or have overfishing occurring based on the results of a stock assessment. The LCS complex was assessed in 2006 through the SEDAR process, and this assessment determined that there was not enough information for a tiger shark-specific assessment. For this reason, tiger sharks have an unknown stock status. NMFS is aware of a hammerhead assessment published in a peer reviewed journal and is reviewing that paper to determine its appropriateness for use in making stock status determinations and implementing management measures. Management of hammerhead and tiger sharks is beyond the scope of Amendment 3 and would not meet the purpose and need set forth in the FEIS. Therefore, additional management measures for these species were not included in the FEIS in response to this comment.

*Comment 9:* If NMFS is conducting a stock assessment on sandbar in 2010, NMFS should consider the stock north of Virginia that usually is not included because there is no fishery there. When you shut down the commercial sandbar shark fishery, you said it was because they were overfished but there are places you are not assessing.

*Response:* NMFS uses the best available science and a rigorous SEDAR assessment process for all sharks species. NMFS held a public data workshop for the 2005/2006 LCS stock assessment and requested that participants submit any relevant data or analysis. NMFS included all the

available data that were presented at the data workshop for the LCS stock assessment, including fishery-dependent and fishery-independent data from all regions in the Atlantic, Gulf of Mexico and the Caribbean Sea. Data inputs for the stock assessment are not solely fishery-dependent, therefore, geographical limitations of the fishery do not skew the stock assessment results. Management of sandbar sharks is beyond the scope of Amendment 3 and would not meet the purpose and need set forth in the FEIS. Therefore, additional management measures for these species were not included in the FEIS in response to this comment.

*Comment 10:* Requiring fins be naturally attached does not work for SCS. Some dealers are not renewing their permits because they are afraid of getting in trouble with the requirement. Other dealers do not have room to process fish on the dock.

*Response:* NMFS does not believe that the requirement to land sharks with fins attached is overly burdensome for the following reasons. First, the requirement to land sharks with fins attached would allow fishermen to leave the fins attached by just a small piece of skin so that the shark could be packed efficiently on ice while at sea. Shark fins could then be quickly removed at the dock or at the dealer without having to thaw the shark. Second, sharks may be eviscerated, bled, and the head removed from the carcass at sea. These measures should prevent excessive amounts of waste at the dock, since dressing (except removing the fins) the shark may be performed while at sea. Third, while this requirement would result in some change to the way in which fishermen process sharks at sea, because the fins can be removed quickly once the shark has been landed, NMFS expects that the dealers will not require significantly more room for post-landing processing. Fourth, dealers have the option to accept or decline certain species, and Federal regulations would not eliminate that option. For these reasons NMFS did not propose an alternative for consideration in the FEIS or this final rule as a result of this comment.

*Comment 11:* What is happening regarding the legislation in place to allow flexibility in the Magnuson-Stevens Act and how does that impact Amendment 3?

*Response:* NMFS is aware of the Flexibility in Rebuilding American Fisheries Act of 2009 (HR 1584) sponsored by Rep. Pallone (NJ). The Act would amend the Magnuson-Stevens Act and alter the rebuilding deadlines currently in place for overfished stocks. This legislation, however, has not

passed either house of Congress, and NMFS is unable to speculate on whether or not it will ultimately pass. At this time, the Magnuson-Stevens Act, as it exists after the 2007 reauthorization, is NMFS' guiding legislation for this amendment.

*Comment 12:* Is there a possibility of changing the SCS fishery start date to July 1?

*Response:* The SCS fishing year runs from January to December. The actual fishing season starts when NMFS publishes a notice in the **Federal Register**. NMFS could delay the opening of the SCS fishing season if data indicate that it is appropriate to do so. In the proposed 2010 Shark Season Rule (October 28, 2009, 74 FR 55526), NMFS proposed to delay the opening of the 2010 SCS shark season until after the publication of Amendment 3 to the 2006 Consolidated HMS FMP. Without a delay in the start date, the 2010 SCS fishery would open under the current quota of 454 metric tons (mt) dressed weight (dw) on the effective date of the final rule for the 2010 Atlantic shark specifications. Amendment 3 proposed, among other things, measures to significantly reduce the non-blacknose SCS and blacknose shark quotas in order to rebuild and end overfishing of blacknose sharks and also established a mechanism for implementing ACLs and AMs. A delay would also allow time for the establishment of ACLs before the start of the 2010 fishing season in addition to ensuring the SCS fishery opens under the measures that may be established in Amendment 3. Additional measures to delay the shark season opening are not proposed or considered in the FEIS as they are beyond the scope of Amendment 3 and otherwise provided for under existing regulation.

*Comment 13:* Is NMFS considering catch shares for the shark fishery?

*Response:* A catch share is the allocation of the available fishery quota among participants within the fishery. Limited access privilege programs (LAPPs) are one type of catch share program. These programs may be implemented to address numerous issues, including but not limited to: Ending the race for fish, reducing overcapitalization, and improving efficiency and safety, while still addressing the biological needs of a stock. These programs can be designed to meet the specific needs of a fishery, provided they meet the requirements outlined in the Magnuson-Stevens Act. Catch shares were not considered for the shark fishery in Amendment 3 and this final rule because of the ramifications this type of program would have for the

existing permit structure and the time required for implementing these programs.

To properly design a catch share program that appropriately considers the views and interests of all stakeholders and then implement such a system would have taken NMFS several years, and therefore, catch shares were not considered a reasonable alternative for this action given the mandate in subsection 304(e) of the Magnuson-Stevens Act to rebuild the blacknose stock in the shortest time possible and the additional requirement of paragraph 303(a)(15), as implemented by the National Standard 1 Guidelines, to have a mechanism for specifying ACLs and AMs in place for stocks experiencing overfishing by 2010. However, NMFS is considering revisions to the existing permit structure within HMS fisheries. This could include a catch share program for sharks as well as other HMS as was discussed during the September/October 2008 HMS Advisory Panel. NMFS published an ANPR on June 1, 2009 (74 FR 26174), to initiate broad public participation in considering catch shares for HMS fisheries. NMFS is also planning to discuss the future of the shark fishery, including the possibility of catch shares, at the May 2010 HMS Advisory Panel meeting in Silver Spring, MD (75 FR 19369, April 14, 2010). Establishing a catch share program is beyond the scope of Amendment 3 and this final rule and does not meet the purpose and need set forth in the FEIS. Catch share options, therefore, were not included or considered in the FEIS or this final rule.

*Comment 14:* Blacknose sharks eat newly hatched sea turtles. Your proposal to rebuild blacknose sharks will impact sea turtle populations.

*Response:* NMFS is bound by the Magnuson-Stevens Act requirements to stop overfishing of blacknose sharks, and to rebuild stocks to a non-overfished status. The Office of Sustainable Fisheries works closely with the Office of Protected Resources to ensure actions in the fishery do not jeopardize the continued existence of protected resources.

*Comment 15:* Commercial fishing for all shark species should be done using rod and reel only to reduce bycatch.

*Response:* Although rod and reel often has reduced bycatch of non-target species, this gear is not commonly used in the commercial fishery to target sharks. Gears that are more commonly used in shark fisheries, such as gillnets and longlines, do have some risk of bycatch however there are bycatch mitigation measures in place in the Atlantic shark fishery that reduce

interactions and increase post-release survival of protected resources. Chapter 3 of the FEIS details the numerous measures in place to minimize bycatch in these fisheries. The proposal to restrict commercial shark gear to rod and reel was not included or evaluated in the FEIS or this final rule in response to this comment.

#### H. Economic Comments

*Comment 1:* Fishermen cannot sell sharks anymore. Most sharks used to go to the Midwest where there was a stable market. Those markets needed 6 to 8 months of lead time, but that market is gone now. Dealers will buy some meat (\$0.20/lb) because they can resell it as bait.

*Response:* Permitted commercial shark fishermen are currently allowed under the regulations to sell authorized shark species to permitted dealers. NMFS examined the commercial shark fishing revenues over the past eight years in Chapter 6 of the DEIS and FEIS. Total ex-vessel revenues from small coastal shark meat has fluctuated between approximately \$535,000 and \$823,000 annually over that period with no discernable pattern.

NMFS provided median real ex-vessel prices for shark species groups from 2004–2007 in the DEIS and FEIS. The median ex-vessel price for SCS meat from 2004–2007 was \$0.66 per pound dressed weight. NMFS acknowledges there is significant seasonal and regional variation in dealer prices. The lowest average ex-vessel median average price was for smooth dogfish, \$0.29 per pound dressed weight, which is similar to the price the commenter indicated dealers are paying.

*Comment 2:* Did NMFS look at the monetary figures? If you spread the small SCS quota across all the permit holders, there is not enough quota for everyone.

*Response:* NMFS examined the per vessel impacts of the SCS quotas across all permit holders in Chapter 8 of the DEIS and FEIS. 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 shark permit holder earned \$707 in average annual gross revenues from non-blacknose SCS landings. For those 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.

NMFS acknowledges that the availability of SCS quota proposed in the DEIS would be limited if spread across all permit holders. As described in the responses above, NMFS made changes to the SCS quotas based, in part, on the comments received. The preferred alternative in the FEIS and this final rule for small coastal sharks is now 221.6 mt versus the 56.9 mt preferred under the DEIS. The preferred alternative for blacknose shark quota was raised from 14.9 mt under the DEIS to 19.9 mt in the FEIS and this final rule.

*Comment 3:* Multispecies fishermen need every species they can catch. The economic impacts on these multispecies fishermen were not considered.

*Response:* NMFS examined the cumulative economic impacts of the proposed rule in Chapter 4 of the DEIS and FEIS.

*Comment 4:* The fins attached rule decreased effort on SCS because it is too much work processing the sharks twice in hot weather. Prices are lower for SCS because requiring fins remain attached to the carcass decreased the quality due to increased processing time.

*Response:* NMFS acknowledges that requiring fins remain attached to the carcass could decrease the quality of the product due to increased processing time. However, as described above, NMFS does not believe the requirement is overly burdensome. Additionally, other factors, such as market demand and decreased supplies, might also affect prices. NMFS will examine the impacts that leaving fins on sharks is having on prices for SCS as information becomes available.

*Comment 5:* Shortfin mako sharks are a significant secondary bycatch for the U.S. pelagic longline fishing fleets from Maine to Texas. Like most sharks this is a shared resource with other countries. NMFS is unilaterally proposing to hurt U.S. fishermen first with economic impacts.

*Response:* NMFS acknowledges that shortfin mako shark is often a bycatch species in other fisheries in the United States. The alternatives selected for the commercial shortfin mako shark fishery will not change the current retention limits for U.S. fishermen at this time. NMFS will promote the live release of shortfin mako sharks, but will not make it mandatory for the fishery. NMFS has decided to take action at the international level to end overfishing of shortfin mako sharks through participation in international fisheries organizations such as ICCAT. While these approaches could impact U.S.

fishermen economically before it impacts fishermen in other countries, neither of these measures are expected to have a significant economic impact on U.S. commercial fishermen.

*Comment 6:* The preferred alternative that would eliminate the recreational fishery is, in fact, an allocation decision that gives 100 percent of the blacknose shark TAC to the commercial sector. There are no analyses of the economic benefits to the nation associated with this allocation. Such an economic analysis is required.

*Response:* Blacknose sharks rarely reach a size greater than the current Federal minimum size; therefore, the current 54 inch FL size limit creates a de facto retention prohibition of blacknose sharks in Federal waters. As discussed in the DEIS and FEIS, NMFS determined that prohibiting the retention of blacknose sharks in the recreational fishery under alternative D4 could have some 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 and they rarely reach a size greater than the current Federal minimum size, NMFS estimates limited negative social and economic impacts from alternative D4 on recreational anglers, tournaments, or in the charter/headboat sector.

In the FEIS, alternative D1 was the preferred alternative because the effect is the same as prohibiting the retention of blacknose sharks, thereby contributing to the rebuilding of the species. As described above, NMFS received comments from States describing their own management in State waters. Thus, NMFS chose to prefer and select this alternative rather than the previously preferred alternative, alternative D4.

*Comment 7:* A few commenters, including the State of Virginia, noted that there is no indication that finning has been, is, or is likely to become a problem in the smooth dogfish fishery because of the economics of the fishery. The State of Virginia notes that the smooth dogfish fishery subsists as a high volume and labor intensive endeavor, as a typical whole round weight of 1,000 pounds contains 200 to 250 individual dogfish. In a typical processed catch of smooth dogfish, the dockside value of the fins represents 20 to 30 percent of the price paid to fishermen for their total catch, and fishermen return dockside with meat and fins in separate containers. Delaying

the removal of fins and tail until landing would result in decreased marketability. Smooth dogfish are harder than other species to extract from the net, butcher and clean, with the result that labor costs represent a higher percentage of the total value of the product. Cutting fins at sea is important practically to the fishery in order to maintain proper product freshness. In the absence of processing, there would be a loss of profitability to the industry because of the increased labor with re-handling each carcass.

*Response:* NMFS agrees that processing smooth dogfish is likely a labor intensive operation. While the delay in the removal of fins and tails until landing could reduce the quality and marketability of smooth dogfish, it is unclear whether any decreases in ex-vessel prices would exceed potential cost savings from reduced labor needs at sea associated with finning on the vessel. There would potentially be an increase in operating costs for dealers if they end up processing the fins from the smooth dogfish carcasses.

*Comment 8:* If NMFS set the smooth dogfish quota at 1,423,728 lb dw, we may not reach it very often but there would be years when we do. The pricing is dependent on the international market (years when the price is high, the quota will go fast).

*Response:* The proposed smooth dogfish quota was selected in order to accommodate average fishing levels. The 1,423,728 lb dw quota is equal to the maximum annual landings between 1998–2007 plus one standard deviation. NMFS acknowledges that in rare years, this quota might constrain the fishery. In part to address this issue, NMFS added an additional alternative to the FEIS where the smooth dogfish quota would be set equal to the maximum annual landings from 1998–2007 plus two standard deviations (1,577,319 lb dw). This new preferred alternative, which was selected by NMFS, should accommodate the potential few years were the smooth dogfish quota may exceed 1,423,728 lb dw.

NMFS is also aware that international markets may impact the pricing of domestic smooth dogfish. However, NMFS does not currently have sufficient data on the fishery to model the degree to which high international prices may increase domestic landings of smooth dogfish.

*Comment 9:* There is little or no fin value for smooth dogfish.

*Response:* The median ex-vessel price for smooth dogfish fins was estimated to be \$2.02 per pound between 2004 and 2007. Based on ACCSP data from 1998–2007, in the commercial fishery an

average of 1,321,695 lb ww of smooth dogfish were retained per year. Of this total, NMFS estimates 47,543 lb of fins would be available for sale per year. Using the median ex-vessel price of these products between 2004 and 2007 (\$2.02 for smooth dogfish fins), the fishery averaged \$96,037 in value per year.

#### Changes From the Proposed Rule (74 FR 36892, July 24, 2009)

NMFS has made several administrative changes in the final rule. In addition, responding to comments from the public and others on the proposed rule, NMFS has made several substantive changes in the final rule consistent with changes made between the DEIS and Draft Amendment 3 and the final version of those documents. These changes are outlined below.

1. *Gillnet gear*. In the proposed rule, NMFS proposed to remove the authorization to use gillnet gear south of North Carolina. Due, in part, to public comments, NMFS is maintaining the current authorizations for gillnet gear, in the final rule. As such, all references to removal of gillnet gear have been removed and the current requirements remain. Additionally, as was proposed, NMFS is removing § 635.5(a)(4), which required shark gillnet vessels to contact NOAA Fisheries if a whale is taken. While NMFS proposed to remove this paragraph partly due to the proposed removal of the authorization of gillnet gear, in this final rule NMFS removes this paragraph because it is redundant to a reporting requirement under section 229 under the Marine Mammal Protection Act. NMFS is maintaining the requirement that shark gillnet vessels that take a whale must stop fishing immediately (previously § 635.21(e)(3)(v)).

2. *Smoothhound sharks*. For various reasons, as described in Amendment 3 and above, NMFS is delaying the implementation of the final actions for smooth dogfish until the start of the 2012 fishing season. As a result, many of the sections of the regulations were re-ordered and, in some cases, reworded to ensure that requirements for smooth dogfish were separate paragraphs at the end of each section. Additionally, to reduce confusion with the spiny dogfish regulations and to more accurately describe both smooth dogfish and Florida smoothhound sharks, the final regulations changes the name of the complex containing these two species, and any references to this complex, to "smoothhound sharks" from "other sharks."

3. *Trawl gear*. Additional analyses since the DEIS show that fishermen

using trawl gear interact with and land smooth dogfish incidental to other species. As such, NMFS intends to allow fishermen using trawl gear to land smoothhound sharks incidentally. However, NMFS is still considering the most appropriate way to allow for this activity and will finalize a decision on this issue in a separate action.

4. § 635.22(c). Due, in part, to public comment, NMFS will no longer prohibit the retention of blacknose sharks by recreational fishermen. As a result, blacknose sharks continue to be on the list of species that may be retained by anglers. The current minimum size and bag limits will still apply.

5. § 635.27(b)(1). As a result of public comment and additional analyses, NMFS modified the final quotas and retention limits for non-blacknose SCS, blacknose sharks, and smooth dogfish sharks. These modifications are reflected in this section.

#### Commercial Fishing Season Notification

Pursuant to the measures being implemented in this final rule, the blacknose shark baseline quota is 19.9 mt dw and the non-blacknose SCS baseline quota is 221.6 mt dw. As of March 31, 2010, less than 0.1 mt dw of SCS have been reported to NMFS (105 lb dw of blacknose and 56 lb dw of non-blacknose SCS). Given these low levels of landings, the baseline quotas for 2010 have not been adjusted. Rather, these landings, along with any additional landings that occur before the opening of the fishing season, will be counted against the quota during the 2010 fishing year. As such, the 2010 blacknose shark quota is 19.9 mt dw and the 2010 non-blacknose SCS quota is 221.6 mt dw.

The 2010 Atlantic commercial shark fishing season for non-blacknose SCS and blacknose in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on June 1, 2010.

The non-blacknose SCS and blacknose fisheries will remain open until December 31, 2010, unless NMFS determines that the fishing season landings of non-blacknose SCS or blacknose sharks has reached, or is projected to reach, 80 percent of the available quota. If that occurs, consistent with 50 CFR 635.28(b), NMFS will file for publication with the Office of the Federal Register a notice of closure for both non-blacknose SCS and blacknose sharks 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 a notice in the **Federal Register**, that

additional quota, if any, is available, the blacknose and non-blacknose SCS fisheries will remain closed, even across fishing years, consistent with 50 CFR 635.28(b).

#### Classification

The Assistant Administrator for Fisheries determined that the Amendment 3 to the Consolidated HMS FMP is necessary for the conservation and management of the Atlantic HMS shark fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS prepared an FEIS for this FMP amendment. The FEIS was filed with the Environmental Protection Agency on March 12, 2010. A notice of availability was published on March 19, 2010 (75 FR 13275). In approving the FMP amendment on May 18, 2010, NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (*see ADDRESSES*).

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

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator waives the 30-day delayed effectiveness for this action as several measures in this final action relieve restrictions. The waiver of the 30-day delay would only apply to the opening of the blacknose and non-blacknose SCS fisheries and the associated commercial quotas (sections 635.27(b)(1)(i)-(v) and 635.28(b)). All other measures in this final action would go into effect at least 30 days after publication of the final rule in the **Federal Register**. The smoothhound shark measures in this action will not be effective until the start of the fishing season in the 2012.

The small coastal shark fishery closed on December 31, 2009, and, under normal circumstances, would have opened for the 2010 fishing year upon the effectiveness of the final rule for the 2010 Atlantic shark season specifications (75 FR 250, January 5, 2010). However, due to the anticipation of measures in this final rule, particularly those measures that change the SCS quotas and implement a rebuilding plan for blacknose sharks, NMFS made the decision in the 2010 Atlantic shark season specifications to keep the 2010 SCS fishing season closed until the effective date of this final rule. The current closure of the SCS fisheries is occurring during the time period when SCS fishermen typically fish for SCS species, and therefore, fishermen are experiencing negative economic impacts that will continue until the fishery opens. This final action would



relieve a restriction by allowing SCS fishermen to fish for blacknose sharks and non-blacknose SCS under the new commercial quotas, providing economic benefits to fishermen, dealers and others that rely on SCS products.

#### **Paperwork Reduction Act**

This final rule will require commercial and recreational fishermen fishing for smooth dogfish to obtain a smoothhound permit authorizing landings of smooth dogfish. This requirement is considered a collection-of-information requirement and is subject to review and approval by OMB under the PRA. NMFS has not yet submitted an application for this collection-of-information to OMB for approval. The implementation of this requirement is delayed pending approval. Once the application is submitted, comments regarding the public burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, should be sent to NMFS (*see ADDRESSES*) and by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

#### **Coastal Zone Management Act**

The Coastal Zone Management Act (CZMA) requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of Federally-approved State coastal management programs (CMPs). NMFS has determined that the final and selected alternatives in this final rule and Amendment 3 will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of the coastal States in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved CMPs. In July 2009, NMFS provided all coastal States along the eastern seaboard and the Gulf of Mexico (21 States), including Puerto Rico and the U.S. Virgin Islands with a copy of the proposed rule and draft EIS for Amendment 3 to the Consolidated HMS FMP. Under 15 CFR 930.41, States and/or U.S. territories have 60 days to respond after the receipt of the consistency determination and supporting materials. States can request an extension of up to 15 days. If a response is not received within those time limits, NMFS can presume concurrence (15 CFR 930.41(a)). Seven

States replied within the response time period that the proposed regulations were consistent, to the extent practicable, with the enforceable policies of their CMPs (Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, Mississippi, and Puerto Rico). Another ten States (Maine, New Hampshire, Rhode Island, Massachusetts, New York, Maryland, South Carolina, Alabama, Louisiana, and the U.S. Virgin Islands) did not respond within the response time period, nor did they request an extension in the comment period; therefore, NMFS presumes their concurrence. The State of Florida, the State of Georgia, and the State of North Carolina replied that the proposed rule was not consistent with the enforceable policies of their respective State's coastal zone management program.

#### **A. Response to the State of Florida**

The State of Florida in an October 9, 2009, letter stated that the recreational SCS preferred alternative in the DEIS, Alternative D4, was not consistent with the State's enforceable policies because the State already has in place adequate protection of blacknose sharks in State waters. As described above, based on public comment and because the No Action alternative is effectively the same as a prohibition of blacknose sharks due to the current 54 inch size limit in the recreational fishery, NMFS no longer prefers alternative D4 in the FEIS. The preferred alternative in the FEIS and this final rule is D1, the status quo alternative. The letter from the State of Florida noted that if NMFS changed the preferred alternative to D1, Amendment 3 would be consistent with the State's CMP. Therefore, NMFS considers the actions in the FEIS to be consistent with the State of Florida's CMP.

#### **B. Response to the State of Georgia**

In a September 10, 2009, letter, the State of Georgia stated that Georgia Department of Natural Resources (GDNR) had determined that the provisions in the draft Amendment 3 to the Consolidated HMS FMP (Amendment 3) are conditionally consistent with the Georgia Coastal Management Program (GCMP) to the maximum extent practicable. This determination is conditional upon the preferred alternatives included in the FEIS for Amendment 3. To be consistent with the GCMP, the letter maintains that the preferred alternatives must include: A4 and B3 (reduced blacknose shark quota and a prohibition on gillnets in the southern shark fishery); C5, C6, E3, and E4 (international shortfin mako

shark management measures and encouraging the live release of shortfin mako sharks); D1 (the No Action alternative with respect to the recreational blacknose shark fishery); and F2 (bring smooth dogfish under Federal management). Thus, with the exception of alternatives A4 and B3, all of the final action in the FEIS of Amendment 3 and this final rule are supported by GDNR.

As detailed in Chapters 2 and 4 of the FEIS for Amendment 3, NMFS altered the preferred alternative in the FEIS and this final rule to maintain the current blacknose shark recreational size and retention limits (D1) and to allow gillnet gear in all areas of the Atlantic shark fishery. Based upon public comment, revised SEFSC blacknose shark weight data, observer data, and additional gillnet selectivity analyses, NMFS changed the preferred alternatives in the FEIS to include A6 and B1 rather than A4 and B3. These two preferred alternatives will establish the blacknose shark quota at 19.9 mt dw, maintain a non-blacknose SCS quota at average current landings, and continue to authorize gillnet gear in the southern shark fishery. Due to the change of the commercial gear preferred alternative, the State of Georgia objects to the consistency determination because of the continuing operation of the shark gillnet fishery in Federal waters, which could potentially impact resources shared by adjacent State waters. Additionally, the State of Georgia has concerns regarding the impact of the shark gillnet fishery on threatened and endangered species. The data currently available for the shark gillnet fishery indicate low rates of bycatch and bycatch mortality of protected species and other finfish in this fishery compared to other HMS fisheries (*see* Chapter 3 the FEIS).

While NMFS acknowledges the concern of protected resources interactions with gillnet gear, under the Magnuson-Stevens Fishery Conservation and Management Act's (16 U.S.C. 1801 *et seq.*) National Standards (NS), the Agency must, among other things, implement conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery; base its actions upon the best scientific information available; manage stocks throughout their range to the extent practicable; minimize adverse economic impacts on fishing communities to the extent practicable; and minimize bycatch and bycatch mortality to the extent practicable. 16 U.S.C. 1851(a)(1), (2), (3), (8), and (9). In the preparation of the FEIS, NMFS

performed an analysis on the SCS gillnet fishery using updated average blacknose shark weights from the SEFSC and observer data. This analysis concluded that SCS gillnet fishermen were able to selectively target certain SCS species while avoiding blacknose sharks. Furthermore, when the shark gillnet fishery catches blacknose sharks, they are usually larger, more mature individuals than those caught in other gears. These two findings, in concert, make for less significant ecological benefits of prohibiting gillnets than previously believed. The significant adverse economic and social impacts resulting from a geographical ban on gillnets in the shark fishery outweigh the ecological benefits to blacknose sharks. Therefore, NMFS is not prohibiting the use of gillnet gear at this time. This finding is consistent with NS 2 which requires that management measures be based on the best scientific information available including the BiOp. Based on this information and combined with the Magnuson-Stevens Act legal requirements noted in this paragraph, under the CZMA and NOAA regulations, NMFS is consistent to the maximum extent practicable with Georgia's CMP enforceable policies.

On May 5, 2008, NMFS' Southeast Regional Office of Protected Resources Division completed a BiOp regarding the actions under Amendment 2 to the Consolidated HMS FMP. The BiOp, concluded that the continued authorization of the gillnet fishery was likely to adversely affect, but not likely to jeopardize the continued existence of, green, Kemp's ridley, leatherback, and loggerhead sea turtles and smalltooth sawfish. The opinion also concluded that marine mammals, the Gulf of Maine Atlantic salmon Distinct Population Segment (DPS), shortnose sturgeon, Gulf sturgeon, and right whale critical habitat were not likely to be adversely affected by the action. The Atlantic shark fishery continues to be in compliance with the terms and conditions of the ITS in the 2008 BiOp. The SCS measures in Amendment 3 are expected to reduce fishing effort and reduce the fishery's impact on ESA-listed species in the action area.

Currently, all shark gillnet vessels are required to carry a vessel monitoring system (VMS) and are subject to observer coverage during and outside of the right whale calving season. In addition, more stringent management measures were put in place under a final rule for the Atlantic Large Whale Take Reduction Plan (ALWTRP) (72 FR 34632, June 25, 2007) that prohibits all gillnet fishing from November 15 through April 15 of each year in Federal

waters off Georgia. NMFS will continue to work with existing take reduction teams and relevant Fishery Management Councils to examine methods of reducing bycatch. Thus, NMFS finds that the final regulations implemented in this amendment are consistent with Georgia's CMP to the maximum extent practicable.

At this time, there is not sufficient information to support a closure of the shark gillnet fishery in Federal waters adjacent to Georgia, pursuant to the CZMA. This decision is consistent with NS 2 of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), which requires that management measures be based on the best scientific information available including the BiOp. NMFS has determined that the final actions in Amendment 3 and its implementing rule are consistent to the maximum extent practicable with the enforceable policies of the GCMP.

### C. Response to the State of North Carolina

The State of North Carolina in a September 15, 2009, letter stated that the provisions in Amendment 3 will only be consistent with the State's enforceable policies if NMFS selects alternatives A2 and F1 in the DEIS as the preferred alternatives in the FEIS. The State of North Carolina determined that any alternative other than A2 in the DEIS would disproportionately impact the State by removing fair and equitable distribution of SCS quota. As detailed in Chapter 2 of the FEIS, NMFS has changed the preferred alternative in the FEIS to allow for a restricted blacknose quota, but a higher non-blacknose SCS quota that is equal to the average annual landings of the non-blacknose SCS. The preferred alternative in this FEIS, alternative A6, includes a higher blacknose shark quota (19.9 mt dw) than that favored by the State of North Carolina (13.5 mt dw). The non-blacknose shark SCS quota in alternative A6 (221.6 mt dw) is not as high as that favored by the State of North Carolina (392.5 mt dw) but it is equal to the average annual landings and should not change the distribution of SCS quota.

In the preparation of the FEIS for Amendment 3, NMFS performed an analysis on the SCS gillnet fishery using updated average blacknose shark weights from the SEFSC and observer data. This analysis concluded that SCS gillnet fishermen were able to selectively target certain SCS species while avoiding blacknose sharks. Furthermore, when the shark gillnet fishery catches blacknose sharks, they are usually larger, more mature

individuals than those caught in other gears. These two findings, in concert, make for less significant ecological benefits of prohibiting gillnets than previously believed. The significant negative economic and social impacts resulting from a geographical ban on gillnets in the shark fishery outweigh the ecological benefits to blacknose sharks. For these reasons, NMFS is not prohibiting the use of gillnet gear at this time. This finding is consistent with NS 2 which requires that management measures be based on the best scientific information available including the BiOp. Therefore, NMFS believes the preferred alternative in the FEIS is consistent with the State of North Carolina's CMP policies based on the higher non-blacknose SCS quota.

The State of North Carolina also determined that the smooth dogfish preferred alternative, Alternative F2, was inconsistent with the State's enforceable policies. The State's letter maintained that any alternative other than F1 would be inconsistent because the implementing measures would be contrary to the measures in State waters and ASMFC smooth dogfish measures, particularly in a fishery that primarily occurs in State waters. Based upon a July 6, 2009, memo to the ASMFC, data from North Carolina's Trip Ticket program shows that the smooth dogfish fishery is almost equally divided between State and Federal waters off the North Carolina coast with 46 percent of the catch occurring in Federal waters. NMFS recognizes that some of the smooth dogfish measures included in the FEIS are inconsistent with the ASMFC plan. However, NMFS decided not to mirror the ASMFC smooth dogfish measures because the ASMFC plan contains some provisions that NMFS cannot implement and does not include others that NMFS must implement.

On May 6, 2009, the ASMFC approved a smooth dogfish Addendum to the Atlantic Coastal Sharks FMP for public comment. Included within this Addendum is 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 five-percent fin to carcass ratio but would allow for the removal of fins at sea. The allowance for the removal of shark fins while still on board a fishing vessel and the removal of the two hour net-check requirement is inconsistent with current Federal regulations. NMFS considers the requirement to maintain shark fins

naturally attached through offloading to be necessary for species identification and to prevent shark finning. NMFS recently implemented the fins naturally attached regulation for all Atlantic sharks for enforcement and species identification reasons and would not want to open a loophole that would hinder enforcement. ASMFC has not established a quota for the smooth dogfish fishery and, as noted above, NMFS is required to establish ACLs and AMs under the Magnuson-Stevens Fishery Conservation and Management Act. In addition, ASMFC has not established a permitting requirement. NMFS believes that permitting is the first step to gaining information about the fishery and quantifying the universe of participants. Nonetheless, NMFS will continue to work with ASMFC to ensure Federal and State regulations are consistent to the extent practicable. Based on NMFS' existing legal requirements, NMFS is consistent with NC CMP enforceable policies to the maximum extent practicable.

During the DEIS public comment period, the smooth dogfish fishery participants noted significant concern regarding the fins attached requirement. NMFS believes that requiring that fins remain attached to the carcass is an important component of shark management. However, in order to mitigate potential impacts to the smooth dogfish fishery participants, NMFS is delaying implementation of the management measures in the preferred alternative until the beginning of the fishing season in 2012. The delayed implementation will allow NMFS time to continue outreach efforts with fishery participants and work with ASMFC to ensure that Federal and State regulations are consistent to the extent practicable.

For these reasons, NMFS finds the preferred alternatives in the FEIS, alternatives A6 and F2, to be consistent to the maximum extent practicable with the enforceable policies of the State of North Carolina's CMP.

#### **Biological Opinion for Smooth Dogfish**

The NMFS Southeast Regional Office Protected Resources Division (SERO PRD) has initially determined that management of smooth dogfish may adversely affect ESA-listed species including but not limited to endangered marine mammals such as the blue whale, fin whale, humpback whale, northern right whale, sei whale, and sperm whale; endangered sea turtles such as Hawksbill, Kemp's ridley, and leatherback; threatened sea turtles such as loggerhead and olive ridley; the endangered and threatened green sea

turtle; and the endangered smalltooth sawfish. Based on this determination, NMFS initiated formal Section 7 consultation in accordance with the ESA, paragraph 7(a)(2), and provided SERO PRD with the information required by 50 CFR 402.14(c). As such, NMFS is currently engaged in formal consultation under the ESA with SERO PRD to determine the potential level of incremental effect that may arise as a result of the preferred management measures for smooth dogfish in this final rule. SERO PRD has not yet issued a final BiOp for the smooth dogfish fishery. NMFS will review that BiOp once it is issued and supplement the analysis in the FEIS if the consultation reveals any new or significant effects with respect to the interaction between gillnet fishing for smooth dogfish and protected species that were not considered in the 2008 BiOp for Amendment 2 to the 2006 Consolidated HMS FMP. This final rule incorporates by reference the 2008 BiOp for Amendment 2 to the 2006 Consolidated HMS FMP. A detailed discussion of the effects of such management relevant to the shark fishery is included in that document. NMFS will not take any management action with respect to the smooth dogfish fishery prior to its receipt of a final BiOp. It will maintain the status quo for management of the species prior to completion of formal Section 7 consultation and receipt of a final BiOp.

#### **Summary of the Final Regulatory Flexibility Analysis**

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

#### **A. Statement of the Need for and Objectives of the Final Rule**

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires a succinct statement of the need for and objectives of the rule. Chapter 1 of the FEIS fully describes the need for and objectives of this final rule. In brief, the management goals and objectives of the preferred management measures are to provide for the sustainable management of shark species under authority of the Secretary consistent with the requirements of the Magnuson-Stevens Act and other statutes which may apply to such

management, including the ESA and MMPA. The primary mandate of the Magnuson-Stevens Act is for the Secretary to provide for the conservation and management of Atlantic HMS through development of an FMP for species identified for management and to implement the FMP with necessary regulations. In addition, the Magnuson-Stevens Act directs the Secretary, in managing HMS to prevent overfishing of species while providing for their OY on a continuing basis and to rebuild fish stocks that are considered overfished. The management objectives of the preferred management measures are to amend the 2006 Consolidated HMS FMP to ensure that overfishing of both the blacknose shark and shortfin mako is ended, the blacknose shark stock is rebuilt, and smooth dogfish is brought under the management jurisdiction of the Secretary.

#### **B. A Summary of Significant Issues Raised by the Public Comments in Response to the IRFA**

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received many comments on the proposed rule and draft Amendment 3 during the public comment period. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included above. For general economic comments, *see* section H in "Responses to Comments." NMFS did not receive comments specifically on the IRFA.

#### **C. A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply**

Section 604(a)(3) of the RFA requires a description and estimate of the number of small entities to which the final 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 vessels, 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 preferred management measures 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. A further breakdown of these permit holders is provided in Amendment 3.

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. Table 3.27 of Amendment 3 provides the geographic distribution of these permit holders by State and the overall historic trend in the number of permit holders since 2006. It is unknown what portion of these permit holders actively participate in shark fishing or market shark fishing services for recreational anglers.

Finally, the final action 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 final action 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 charter/headboats (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.

NMFS has determined that the final rule would not likely affect any small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in Amendment 3.

#### **D. A Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Final Rule**

Section 604(a)(4) of the RFA requires a description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. The 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 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.

#### **E. A Description of the Steps Taken To Minimize the Significant Economic Impact on Small Entities**

Section 604(a)(5) of the RFA requires a description of the steps the Agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason

that each one of the other significant alternatives to the rule considered by the Agency which affect small entities was rejected. These impacts are discussed below and in the FEIS for Amendment 3. Additionally, the RFA lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives (5 U.S.C. 603(c)(1)–(4)). These categories of alternatives are: establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; use of performance rather than design standards; and, exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and 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 rulemaking and provides rationale for identifying the final actions 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-related measures. 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; (A5) close the SCS fishery; and (A6) establish a

new SCS quota of 221.6 mt dw and a blacknose commercial quota of 19.9 mt dw. 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 final actions include: A6, B1, C5, C6, D1, E3, E4, F2, and preferred sub-alternatives F2 a4 and F2 b1. The economic impacts that would occur under these actions 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.

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 \$830,918. 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 \$9,765 in average annual gross revenues, and the average incidental shark permit holder earned \$687 in average annual gross revenues from non-blacknose SCS landings. For those permit holders that actually landed blacknose shark during that same time period, the average directed shark

permit holder earned \$3,638 in average annual gross revenues, and the average incidental shark permit holder earned \$1,721 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, NMFS did not select this alternative at this time.

Under the revised alternative A2, NMFS would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota of 12.1 mt dw and a separate “non-blacknose SCS” quota, which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks, of 221.6 mt dw. 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 \$172,110 under the No Action alternative down to \$33,611 under alternative A2, which is an 80-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 alternative 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 7,094 blacknose sharks/year, even if the retention of blacknose sharks was prohibited. Therefore, NMFS did not select this alternative at this time.

Under the revised alternative A3, NMFS would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota of 19.9 mt dw and a separate “non-blacknose SCS” quota of 110.8 mt 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.

While trip limits would not change for non-blacknose SCS for directed and incidental 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 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 \$310,222. This is a 53-percent reduction in average annual gross revenues compared to average annual gross revenues expected under the No Action alternative, A1. 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 average annual gross revenues from non-blacknose SCS landings compared to incidental permit holders under alternative A3. Average annual gross revenues for directed shark permit holders of non-blacknose SCS under alternative A3 would be \$300,916, which is a loss of \$343,200 in average annual gross revenues or a 53-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 \$5,047 in average annual gross revenues from non-blacknose SCS landings per permit holder. Incidental 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 \$9,307, which is a loss of \$10,614 in average annual gross revenues or also a 53 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 \$366 in average annual gross revenues from non-blacknose SCS landings per permit holder.

The blacknose shark quota would be reduced to 19.9 mt dw based on average landings from 2004–2008. 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 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 \$160,062 under the No Action alternative down to \$51,409 under alternative A3, which is a loss of \$108,653 or a 68-percent reduction in average annual gross revenues for blacknose sharks for directed shark fishermen. Spread amongst the directed shark permit holders that land blacknose sharks, there would be an anticipated loss of \$2,469 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 \$8,179 in average annual gross revenues from blacknose shark landings. Spread amongst the incidental permit holders that land blacknose sharks, there would be an anticipated loss of \$1,168 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 A6, NMFS did not select alternative A3 at this time.

Under alternative A4, NMFS would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota and a separate “non-blacknose SCS” quota equal to 55.4 mt 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 15.9 mt dw, which is the amount of blacknose sharks that would be landed while the non-blacknose SCS quota is taken; however, incidental fishermen 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 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 \$155,111. 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 \$150,458, which is a loss of \$493,658 in average annual gross revenues or a 77-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 \$12,040 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 \$4,653, which is a loss of \$15,268 in average annual gross revenues or a 77-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 \$694 in average annual gross revenues from non-

blacknose SCS landings per permit holder.

The blacknose shark quota would also be a 72-percent reduction based on average landings from 2004 through 2008. 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 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 \$160,062 under the No Action alternative down to \$41,075 under alternative A4, which is a loss of \$118,987 or a 74-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 \$7,932 in average annual gross revenues from blacknose landings per vessel. Incidental shark permit holders would lose an estimated \$12,048 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 \$1,791 in average annual gross revenues from blacknose landings per permit holder.

By reducing effort in the overall SCS fishery under Alternative A4, 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. 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 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 \$664,037 for non-blacknose SCS and \$172,110 from blacknose shark landings for a total loss of \$830,918 in average annual gross revenues from SCS landings. Directed shark permit holders would lose \$644,116 in average annual gross revenues from non-blacknose SCS landings and \$160,062 in average annual gross revenues from blacknose shark landings for a total of \$805,990 in average annual gross revenues. Spread among the 85 directed shark permit holders that landed SCS, this could result in a loss in average annual gross revenues of \$9,482 per permit holder.

Incidental shark permit holders would lose \$19,921 in average annual gross revenues from non-blacknose SCS landings and \$12,048 in average annual gross revenues from blacknose shark landings for a total of \$31,969 in average annual gross revenues under alternative A5. Spread among the 31 incidental shark permit holders that landed SCS, this could result in a loss in average annual gross revenues of \$1,031 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 did not select this alternative at this time.

Alternative A6, the final action, combines parts of alternatives A2 and A3 that would establish a blacknose species-specific quota of 19.9 mt dw and a non-blacknose SCS quota of 221.6 mt dw. NMFS designed this alternative to minimize economic impacts on shark fishermen and other participants in the fishery related to SCS quota reductions. Alternative A6 would set the non-

blacknose SCS quota at a level equal to the average annual landings from 2004 through 2008, and the blacknose quota at a level that is a 64 percent reduction of the average landings for that species over the same time period. This proposal comes in response to recently updated SEFSC data used for analysis, and in response to concerns raised by the commercial and scientific communities during the comment period for the DEIS. Under alternative A6 all currently authorized gears for shark fishing would be allowed in the fishery.

Under the non-blacknose SCS quota proposed in alternative A6, those fishermen with the 68 directed shark permits and 29 incidental shark permits that had non-blacknose SCS landings would be expected to fish as they currently do under the No Action alternative, and shark dealers and other entities that deal with shark products would be expected to operate as they do under the No Action alternative. Average annual gross revenues for non-blacknose SCS landings for the entire fishery are anticipated to decline by approximately 6-percent compared to the No Action alternative, to \$620,445, under alternative A6, representing a revenue loss of \$43,593. Average annual gross revenue for blacknose shark landings for the entire fishery is expected to decline to \$55,278, a loss of \$116,832.

Since directed shark permit holders accounted for 97 percent of the landings for non-blacknose SCS, the total revenue for these fishermen would decrease by 6 percent to \$601,832, a loss of \$42,284 from the No Action alternative non-blacknose directed shark permit revenue total of \$644,116. Spread across the 68 directed shark permit holders that reported non-blacknose landings, this would result in a per boat decrease of \$622 ( $\$42,284/68$  directed vessels = \$622). With incidental shark permit holders accounting for 3 percent of the annual revenue from non-blacknose landings based on alternative A6, there would be a decrease in total revenue of \$1,308, or 7 percent, to \$18,613 from the No Action Alternative of \$19,921. This would result in a loss of revenue from non-blacknose SCS per incidental vessel of \$45 ( $\$1,308/29$  incidental vessels = \$45). Therefore, social and economic impacts of the non-blacknose SCS quota on fishermen with directed and incidental shark permit would be slightly negative under alternative A6.

Under the blacknose shark quota 19.9 mt dw, the 44 directed shark permit holders and 7 incidental shark permit holders that had blacknose shark landings would experience direct



negative social impacts, as they would most likely have to fish in other fisheries to make up for lost blacknose landings or leave the fishery altogether. Other entities that deal with blacknose shark products, such as shark dealers, would indirectly experience negative social impacts as they would also have to change their business practices to make up for lost blacknose shark product. In total, average annual gross revenues for the blacknose shark landings for the directed shark permit holders would decrease from \$160,062 under the No Action alternative down to \$51,409 under alternative A6, which is a loss of \$108,653 or a 68-percent reduction in average annual gross revenues for blacknose sharks for directed shark fishermen. Spread amongst the directed shark permit holders that land blacknose sharks, there could be an anticipated loss of \$2,469 in average annual gross revenues from blacknose landings per permit holder (\$108,653/44 directed vessels = \$2,469 per vessel). For incidental shark permit holders the 68-percent reduction in blacknose shark landings would translate into an average annual gross revenue of \$3,869, which would be a loss of income of \$8,179 from the annual average of \$12,048 under the No Action alternative. Spread amongst the 7 incidental shark permit holders, this would result in an annual loss of \$1,168 per permit holder (\$8,179/7 incidental vessels = \$1,168).

Under alternative A6, if either the non-blacknose SCS quota (221.6 mt dw) or blacknose shark quota (19.9 mt dw), reached 80 percent of the available landings, NMFS would close both fisheries for the rest of the season. If a future stock assessment determines that blacknose sharks are continuing to be overfished or that overfishing is still occurring NMFS could make regulatory changes as needed in future management actions. These changes may include, but are not limited to reducing the blacknose shark quota and/or the non-blacknose SCS quota, and implementing daily blacknose catch limits. Alternative A6 would meet the rebuilding requirements of the Magnuson-Stevens Act by addressing the overfished status and overfishing of blacknose sharks by reducing the blacknose shark quota to 19.9 mt dw. While NMFS recognizes that there may be negative social and economic impacts on parts of the fishing community due to the reduced blacknose shark quota, in selecting the quota of 221.6 mt dw for the non-blacknose SCS fishery, NMFS is minimizing those negative

socioeconomic impacts, especially since the bulk of the catch in the SCS fishery comes from shark species that have been determined to not be overfished or undergoing overfishing (*i.e.* finetooth, sharpnose, and bonnethead sharks). Therefore, NMFS is finalizing alternative A6 at this time.

Alternative A6 would result in positive ecological impacts to blacknose sharks by reducing mortality of this species below the commercial allowance of 7,094 blacknose sharks per year that is necessary for this stock to rebuild with a 70 percent probability by 2027 consistent with the rebuilding plan and the objectives of this amendment. Alternative A6 would also reduce effort and mortality in the non-blacknose SCS fishery, to a level that is equal to the average landings for these species for the years 2004 through 2008. Alternative A1 (No Action alternative) does not reduce effort or mortality in the commercial SCS fishery, so does not address the overfished status or overfishing of blacknose sharks. The scenarios under alternative A2 that eliminate gillnets as an authorized gear and those that eliminate retention of blacknose sharks altogether, fail to meet the goal of reducing blacknose shark mortality, due to the high number of discards of blacknose sharks from those gears that would continue to operate in the fishery. For those scenarios under alternative A2 that would continue to allow gillnets to be retained as an authorized gear, the necessary reduction in blacknose sharks is met, but the quota is exceeded. Under alternative A3 the goal of reducing the blacknose shark mortality to necessary levels is obtained, but due to the significant reduction of the non-blacknose SCS quota, there would be a 67 percent increase in discard mortality of non-blacknose SCS. Both alternatives A4 and A5 would achieve the necessary blacknose shark mortality reduction, but the social and economic impacts on the commercial shark permit holders from the reduced quotas would be significant.

Compared to the other alternatives analyzed, alternative A6 would result in the least negative social and economic impacts on the participants of the SCS commercial fishery while still meeting the goal of reducing mortality and rebuilding blacknose sharks. Under alternative A6, the non-blacknose SCS quota of 221.6 mt dw would result in a loss of \$43,592 in average annual revenues for all permit holders. The reduced blacknose quota of 19.9 mt dw would result in a loss of \$116,833 for all permit holders. Under alternative A2, directed and incidental permit holders would lose \$138,499 in average annual

revenue, from the blacknose quota of 12.1 mt dw. Under alternative A3 as in alternative A6, the blacknose quota of 19.9 mt dw would result in an anticipated loss in average annual revenues for directed and incidental permit holders. The non-blacknose quota of 110.8 mt dw, under alternative A3, would result in a loss of average annual revenues to all permit holders of \$275,103. Under alternative A4, the reduction in blacknose quota to 15.9 mt dw would result in an average annual loss of revenues for all permit holders of \$124,853. With the prohibition on gillnets in alternative A4, all permit holders would lose approximately \$287,524 from the reduced non-blacknose SCS quota and many would have to completely change the way they fished, or to leave the fishery entirely. Because alternative A5 would completely close the SCS fishery, those directed and incidental permit holders that land non-blacknose SCS and blacknose sharks would be forced to move into other fisheries and would likely create pressure on other commercial species. While alternative A1, the No Action alternative, would have the least negative social and economic impacts on the SCS commercial fishery participants, this alternative does not reduce mortality of blacknose sharks in order to meet the rebuilding goals of this amendment or stop overfishing of this stock.

Under alternative B1, the final action, NMFS would maintain the current gear restrictions for rod and reel, gillnet, and BLL gear. Between the DEIS and the FEIS, NMFS switched to this alternative as the preferred alternative to minimize the economic impacts to fishermen and other participants in the fishery. 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. NMFS selects this least cost SCS commercial gear restriction 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 currently have to have a Federal permit to land smooth dogfish, NMFS is uncertain 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 did not select this alternative at this time.

Under alternative B3, 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 fishermen. 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 fishermen 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 final action F2, would not affect the economic 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 that 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 significant loss in average annual gross revenues from smooth dogfish landings.

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. The No Action alternative would not allow NMFS to meet statutory requirements to take measures to end overfishing. Thus, No Action was not identified as a preferred alternative.

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 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 gross 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 did

not select 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 did not select 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 revenue 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 did not select these alternatives at this time.

Under alternative C5, the final action, NMFS would take action at the international level through international fishery management organizations to establish management measures 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 near term 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 selects alternative C5 at this time. Note that with respect to all shortfin mako commercial measures, alternatives C5 and C6 would have the lowest short-term economic impacts on fishermen and participants in the fishery.

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 selects this alternative at this time.

Under alternative D1, the final action, 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. Alternative D1 is the least costs alternative and NMFS selects this alternative.

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 did not select 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 did not select this alternative at this time.

Under alternative D4, NMFS would prohibit the retention of blacknose sharks in the recreational fishery. While recreational fishermen could still catch blacknose sharks, 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.

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 did not select 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 did not select alternatives E2a or E2b at this time.

Under alternative E3, the final action, NMFS would take action at the international level to end overfishing of shortfin mako sharks through participation in international fisheries organizations such as ICCAT. 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 selects this alternative at this time.

Under alternative E4, the final action, 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 selects 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 fact that the economic impacts of this alternative are estimated

to be higher than that of the preferred alternatives, NMFS did not select this alternative at this time.

NMFS also considered alternatives regarding the potential inclusion of smooth dogfish under NMFS management. Smooth dogfish are currently not managed by NMFS, and stock data are sparse. Therefore, there is limited stock status information, participant information, and effort data for this fishery.

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 did not select this alternative at this time.

Implementing Federal management of smooth dogfish through alternative F2, the final action, would focus on characterizing the fishery and stock status, but would not actively change catch levels or rates. Alternative F2 would require Federal commercial and recreational fishing permits as well as require fishermen to land smooth dogfish with all of their fins naturally attached. These changes could result in short-term, direct significant adverse socioeconomic impacts on fishermen who are used to processing smooth dogfish at sea. 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 (approximately \$20 based on current permit fees), 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. NMFS would delay the implementation of these requirements until the start of the 2012 fishing season to allow time for fishermen to adjust to the changes and to allow time for the development of a new commercial smooth dogfish permit. Thus, in the short-term, alternative F2 would result in significant, but mitigated to be less than significant

socioeconomic impacts due to the delay in implementation of these requirements. Once fishermen adjust to the new measures, NMFS anticipates that there would be no direct socioeconomic impacts to fishermen in the long-term.

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 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 did not select these two sub-alternatives at this time.

Alternative F2a3, which would establish a smooth dogfish quota above the maximum annual landings between 1998–2007, would have neutral to negative economic impacts. The quota of maximum historical annual landings plus one standard deviation between the years 1998 and 2007 could allow a buffer for potential unreported landings during that time. However, based on public comment, as detailed above, NMFS does not believe that this alternative would adequately account for underreporting.

Alternative F2a4, the final action, would establish a smooth dogfish quota above the maximum annual landings between 1998–2007 and would have neutral economic impacts. The quota of maximum historical annual landings plus two standard deviations between the years 1998 and 2007 would allow a buffer for potential unreported landings during that time. This would allow the fishery to continue at the current rate and level into the future without having to be shut down prematurely. Thus, alternative F2a4 is NMFS' selected alternative.

There are no negative economic impacts anticipated with 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 economic impacts associated with alternative F2 b1, and NMFS selects 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 economic impacts associated with sub-alternative F2 b1.

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 as it currently operates, fishermen would be required to leave the dorsal fin on the smooth dogfish through landing from July through February, which could change how the fishery operates, and therefore, have direct minor, adverse socioeconomic impacts in the short-term. The extent of these impacts will depend on how many smooth dogfish are landed between July and February of each year. Because this requirement began in State waters in January 2010, it could mitigate some of the economic impacts associated with alternative F2 with regard to the requirement of having all fins naturally attached under the Federal plan. Thus, by the start of the fishing season in 2012, fishermen who have been fishing in State waters should have a better idea of how to keep all fins naturally attached.

In the short-term, there are no indirect socioeconomic impacts expected for dealers and fish processors compared to the status quo as the fishery would continue to operate as it has been with the exception of the requirement to leave the dorsal fin on from July through February. However, if the requirement to have the dorsal fin attached during certain times of the year affects how dealers and processors process smooth dogfish, then there could be indirect, minor adverse economic impacts on smooth dogfish dealers until they learn how to process these sharks during July through February. 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 did not select this alternative at this time.

#### **Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group

of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of this final rule and the compliance guide are available upon request from NMFS (see ADDRESSES). Copies of the compliance guide will be sent to all Federal shark limited access permit holders.

#### List of Subjects

##### 50 CFR Part 600

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

##### 50 CFR Part 635

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

Dated: May 18, 2010.

#### Eric C. Schwaab,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

#### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for 50 CFR part 600 continues to read as follows:

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

■ 2. 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 shark fins, from an owner or operator of a fishing vessel issued a Federal Atlantic commercial shark permit who lands shark in an Atlantic coastal port, unless such fins were naturally attached to the corresponding carcass at the time of landing and their combined wet weight is less than 5 percent of the dressed weight of the corresponding carcass(es).

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. 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.*

■ 4. 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 2006 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.

\* \* \* \* \*

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

##### § 635.2 Definitions.

\* \* \* \* \*

*Federal Atlantic Commercial Shark Permit* means any of the commercial shark permits issued pursuant to § 635.4.

\* \* \* \* \*

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

\* \* \* \* \*

*Smoothhound shark* means one of the species, or part thereof, listed in section E of Table 1 in Appendix A to this part.

\* \* \* \* \*

■ 6. 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 the Federal Atlantic commercial shark permits described below. A Federal Atlantic commercial shark permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in § 635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to § 635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in sections A, B, or C of Table 1 of Appendix A with an intention to sell must obtain either a Federal Atlantic commercial shark directed or shark incidental limited access permit. 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) A vessel owner issued or required to be issued a Federal Atlantic commercial shark directed or shark incidental limited access permit may harvest, consistent with the other regulations in this part, any shark species listed in sections A, B, or C of Table 1 of Appendix A.

(4) Vessel owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in section E of Table 1 of Appendix A with an intention to sell must obtain a Federal commercial smoothhound permit. A smoothhound permit may be issued to a vessel that also holds either a directed or incidental shark limited access permit.

\* \* \* \* \*

(g) \* \* \*

(2) *Shark*. A first receiver, as defined in § 635.2, of any Atlantic shark listed in Table 1 of Appendix A of this part must possess a valid dealer permit.

\* \* \* \* \*

■ 7. 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 part of the sharks being landed (e.g., fins or meat) was handled by the dealer submitting the report. 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.

\* \* \* \* \*

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

**§ 635.20 Size limits.**

\* \* \* \* \*

(e) *Sharks*. The following size limits change depending on the species being caught and the retention limit under which they are being caught as specified under § 635.22(c).

(1) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins naturally attached.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 54 inches (137 cm) FL.

(3) There is no size limit for Atlantic sharpnose or bonnethead sharks taken under the recreational retention limits specified at § 635.22(c)(3).

(4) There is no size limit for smoothhound sharks taken under the recreational retention limits specified at § 635.22(c)(6).

\* \* \* \* \*

■ 9. 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 Federal Atlantic 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 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 Federal Atlantic 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) 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. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required under § 229 of this title.

(iv) While fishing with a gillnet for or in possession of any of the large coastal, small coastal, and pelagic sharks listed in section A, B, and/or C of Table 1 of Appendix A of this part, the gillnet must remain attached to at least one vessel at one end, except during net checks.

(v) Vessel operators fishing with gillnet for or in possession of any of the large coastal, small coastal, and pelagic sharks listed in sections A, B, and/or C of Table 1 of Appendix A of this part 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.

\* \* \* \* \*

■ 10. 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) 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 Federal Atlantic commercial shark vessel permit under § 635.4. The retention limit can change depending on the species being caught



and the size limit under which they are being caught as specified under § 635.20(e). 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 Federal Atlantic 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.

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2): 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 oxyrinchus*), Atlantic sharpnose (*Rhizoprionodon terraenovae*), finetooth (*C. isodon*), blacknose (*C. acronotus*), and bonnethead (*Sphyrna tiburo*).

(3) In addition to the sharks listed under paragraph (c)(2) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip, subject to the size limits described in § 635.20(e)(3).

(4) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in section D of Table 1 of Appendix A to this part, may be retained regardless of where harvested.

(5) Sharks listed in Table 1 of Appendix A that are not listed in this section, must be released by persons aboard a vessel that has not been issued a Federal Atlantic commercial shark vessel permit under § 635.4.

(6) The smoothhound sharks listed in Section E of Table 1 of Appendix A to this part may be retained, and are subject only to the size limits described in § 635.20(e)(4).

\* \* \* \* \*

■ 11. 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

blacknose and non-blacknose SCS if the blacknose and non-blacknose SCS fisheries are open per §§ 635.27 and 635.28.

(iii) A person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, or land no more than 16 SCS and pelagic sharks, combined, per trip, if the respective fishery is open per §§ 635.27 and 635.28.

(5) A person who owns or operates a vessel that has been issued a Federal Atlantic 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 section D of Table 1 of Appendix A to this part under prohibited sharks.

(6) A person who owns or operates a vessel that has been issued a Federal Atlantic 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.

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

\* \* \* \* \*

■ 12a. In § 635.27, effective June 1, 2010, paragraphs (b)(1)(i) through (v) are revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) *Sharks.* (1) *Commercial Quotas.*

The commercial quotas for sharks specified in this section apply to all sharks from the management unit harvested by persons fishing commercially, regardless of where harvested. Sharks taken and landed commercially from State waters, even by commercial fishermen without Federal Atlantic commercial shark permits, must be counted against the Federal fishery quota. Commercial quotas are specified for each of the complexes or species listed below. 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 section D of Table 1 of Appendix A to this part,

may be retained except as authorized under § 635.32.

(i) *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.* Except as noted in this paragraph, if the available commercial quota for any shark species or complex, as described in this section, is exceeded in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing year 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 years to a maximum of five years. If the annual quota for non-sandbar LCS is exceeded in either region (*see* section (b)(1)(iii)(B)) or in the research fishery in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing year 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 years 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 year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

(B) *Underharvests.* Except as noted in this paragraph, if an annual quota for any shark species or complex, as described in this section, 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 in either region (*see* paragraph (b)(1)(iii)(B) of this section) 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.

(ii) *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)(i) 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.

(iii) *Non-sandbar LCS*. (A) 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)(i) of this section.

(B) The commercial quotas for non-sandbar LCS are split between two regions: the Gulf of Mexico and the Atlantic. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

(iv) *Small coastal sharks*. The base annual commercial quota for non-blacknose small coastal sharks is 221.6 mt dw, unless adjusted pursuant to paragraph (b)(1)(i) of this section. The base annual commercial quota for blacknose sharks is 19.9 mt dw, unless adjusted pursuant to paragraph (b)(1)(i) of this section.

(v) *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)(i) of this section.

■ 12b. In § 635.27, paragraphs (b)(1)(vi) and (b)(2) are revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi) *Smoothhound sharks*. The base annual commercial quota for smoothhound sharks is 715.5 mt dw, unless adjusted pursuant to paragraph (b)(1)(i) of this section.

(2) *Public display and non-specific research quotas*. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against the following:

(i) 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).

(ii) 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).

(iii) 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.

(iv) The base annual quota for persons who collect smoothhound sharks under a display permit or EFP is 6 mt ww (4.3 mt dw).

\* \* \* \* \*

■ 13. 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 fishery for the shark species or complexes specified in § 635.27(b)(1) will remain open.

(2) When NMFS calculates that the landings for the shark species or complexes, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark complex, 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 or shark complex and, for non-sandbar LCS, region is closed, even across fishing years.

(3) When NMFS calculates that the 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 publication with the Office of the Federal Register a notice of closure for the entire SCS fishery, both the blacknose and non-blacknose fisheries, 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 Federal Atlantic 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 a 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 Federal Atlantic 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 Federal Atlantic 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 a NMFS-approved observer on board during the trip sharks were collected.

\* \* \* \* \*

■ 14. 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 Federal Atlantic commercial shark permit under § 635.4 must maintain all the shark fins including the tail naturally attached to 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 Federal Atlantic 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 Federal Atlantic 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 Federal Atlantic commercial shark permit and who lands sharks in an Atlantic coastal port, including ports in the Gulf of Mexico and Caribbean Sea, 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 Atlantic commercial shark permit.

(4) Persons aboard a vessel that does not have a Federal Atlantic 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.

\* \* \* \* \*

■ 15. 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.

\* \* \* \* \*

■ 16. 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.

\* \* \* \* \*

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

**Appendix A [Amended]**

**TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS**

---

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

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