

other administrative proceeding before they may file suit in court.

#### H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This final rule would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

##### I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

##### J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

##### K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

##### L. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by; revising the introductory paragraph of S7.1.1.5 and removing S7.1.1.5(d).

The revision reads as follows:

##### § 571.208 Standard No. 208; Occupant crash protection.

\* \* \* \* \*

S7.1.1.5 Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).

\* \* \* \* \*

Issued on: August 22, 2011.

**David L. Strickland,**  
Administrator.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 635

[Docket No. 110120049-1485-02]

RIN 0648-BA69

##### Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS hereby implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 10-07 and 10-08, which prohibit the retention, transshipping, landing, storing, or

selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries. This rule affects the commercial HMS pelagic longline (PLL) fishery and recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective September 28, 2011.

**ADDRESSES:** Supporting documents, including the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA), are available from Peter Cooper, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East West Highway, Silver Spring, MD 20832. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>.

**FOR FURTHER INFORMATION CONTACT:** Peter Cooper, Michael Clark, or Karyl Brewster-Geisz by phone: 301-427-8503 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The U.S. Atlantic tuna and tuna-like species fisheries are managed under the dual authority of the Magnuson-Stevens Act, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate such regulations as necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, that implemented the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). This FMP consolidated management of all Atlantic HMS (*i.e.*, sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

ICCAT is responsible for the conservation of tuna and tuna-like

species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT Web site at <http://www.iccat.int/en/>.

Two shark measures adopted at the 17th Annual Meeting of ICCAT in November of 2010 are the subject of this rulemaking. Recommendation 10–07, “Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the ICCAT Convention Area,” prohibits the retention, transshipping, landing, storing, or selling of oceanic whitetip sharks (*Carcharhinus longimanus*). The recommendation cites the fact that oceanic whitetip sharks are one of five species with the highest degree of ecological risk based on an ICCAT risk assessment, their high at-vessel survival rates and ease of identification, and the high proportion of juvenile fish that are caught as justification for adopting the recommendation.

Recommendation 10–08 “Hammerhead Sharks (Family *Sphyrnidae*) Caught in Association with Fisheries Managed by ICCAT,” prohibits the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family *Sphyrnidae*, except for bonnethead sharks (*Sphyrna tiburo*), taken in the Convention area in association with ICCAT fisheries. The recommendation cites sustainability concerns for scalloped and smooth hammerhead sharks, difficulty in identifying the three species (scalloped, smooth, and great) without bringing them onboard, and issues with ICCAT Contracting Parties’ obligations to report Task I and Task II data as reasons for adopting the recommendation.

On April 29, 2011, NMFS published a proposed rule (76 FR 23935) that considered changes to the HMS regulations at 50 CFR part 635 to carry out the ICCAT recommendations. Specifically, NMFS proposed regulatory changes that would affect HMS vessels that catch sharks in association with tuna and tuna-like species, including commercial vessels that deploy PLL gear and recreational vessels (*i.e.*, vessels issued HMS General category permits that are participating in registered HMS tournaments, vessels issued HMS Angling permits, and vessels issued HMS Charter/Headboat permits) that are fishing for and retain swordfish, tuna or billfish. NMFS did not propose to prohibit retention in all HMS recreational fisheries because there is a recreational fishery targeting sharks that is not associated with ICCAT fisheries. NMFS did not propose to prohibit the

retention of oceanic whitetip and hammerhead sharks from bottom longline, gillnet, or commercial handgear because, while these gears target sharks, they are not used in association with ICCAT fisheries.

NMFS prepared a final Environmental Assessment (EA), Regulatory Impact Review (RIR), and a Final Regulatory Flexibility Analysis (FRFA), which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this final rule. The complete list of alternatives and related analyses is provided in the final EA/RIR/FRFA and in the proposed rule, and is not repeated here. A copy of the final EA/RIR/FRFA prepared for this rulemaking is available from NMFS (see ADDRESSES).

In this final action, NMFS will prohibit the retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks on Atlantic HMS commercially-permitted vessels that have PLL gear on board, and by recreational fishermen fishing with a General Category permit participating in an HMS tournament or those fishing under an HMS Angling or Charter/Headboat permit when tuna or tuna-like species are also retained. An analysis of the 2005 through 2009 HMS logbook data covering the HMS PLL fishery indicates that, on average, a total of 50 oceanic whitetip sharks and 181 hammerhead sharks were kept per year by fishermen using PLL gear. Prohibiting retention is estimated to result in an additional 39 oceanic whitetip and 100 hammerhead sharks released alive annually, and an annual cost of \$9,155 to the PLL fleet. Prohibiting retention may also have positive effects on the scalloped hammerhead stock, which was determined to be overfished with overfishing occurring by NMFS on April 28, 2011 (76 FR 23794). Recreational survey data showed that retention of an oceanic whitetip or hammerhead shark along with a tuna, billfish, or swordfish is a rare event; therefore, recreational ecologic and economic impacts of this action are estimated to be minor.

#### Comments and Responses

NMFS received more than 22,000 written public comments on the proposed rule. Most of these comments came from two separate campaigns. There were about 20 distinct written comments on the proposed rule. Other oral comments were collected from participants at three public hearings (Manteo, NC; Fort Pierce, FL; and Silver Spring, MD). Below, NMFS summarizes and responds to all comments made specifically on the proposed rule.

*Comment 1:* Retention of oceanic whitetip and hammerhead sharks should be prohibited in all HMS fisheries (commercial and recreational), and these species should be added to the prohibited species list.

*Response:* The main objective of this rulemaking is to implement ICCAT recommendations 10–07 and 10–08. These recommendations prohibit the retention of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. The United States is obligated to implement these recommendations, through regulations, consistent with the Atlantic Tunas Convention Act. Expanding the prohibition to all non-ICCAT managed HMS fisheries (commercial and recreational) is not consistent with the recommendations.

*Comment 2:* NMFS should not create regulatory discards of dead sharks for one gear type, especially when these sharks could be landed by fishermen using other types of gear. Allowing retention of oceanic whitetip and hammerhead sharks in other fisheries will prevent the ability to enforce this rule on a market level.

*Response:* The ICCAT recommendations implemented in this rulemaking specifically address retention in fisheries for tuna and tuna-like species. Management of these species in the ICCAT convention area is the primary goal of ICCAT. Thus, consistent with those recommendations, this rule prohibits retention of oceanic whitetip and hammerhead sharks in the PLL fishery and on recreational (HMS Angling and Charter headboat permit holders) vessels that possess tuna, swordfish, or billfish. Participants targeting tuna and tuna-like species are the affected universe for the recommendations.

Regulatory discards may occur by prohibiting landings of these sharks in association with ICCAT fisheries, and may result in minor, negative economic impacts. However, there may be minor, beneficial ecological impacts from fishermen having to release these sharks through the increased number of sharks that are released alive as a result of the prohibition. Survival rates vary between oceanic whitetip and hammerhead sharks, and can be affected by a variety of factors. Based on logbook data and observed survival rates, it is estimated that an additional 39 oceanic whitetip and 101 hammerhead sharks would be released alive per year by prohibiting retention of these species in ICCAT fisheries. Relative negative economic impacts of having to discard sharks (alive or dead) are anticipated; however, anecdotal evidence indicates that PLL

vessels targeting swordfish or tunas typically do not choose to use ice and limited hold space to keep sharks. Furthermore, a higher price can often be attained for tunas and swordfish, making them the better use of that limited space. Logbook data indicate that under existing regulations, between 2005 and 2009, 87 percent of hammerheads and 75 percent of oceanic whitetips caught on PLL were discarded. However, the specific reason for discarding these sharks is unclear. Depending on the type of commercial shark permit (incidental or directed), it is possible that vessel operators are required to discard hammerhead sharks because an incidental permit limits a vessel to 3 large coastal sharks per trip and a directed permit allows up to 33 large coastal sharks per trip. In the case of oceanic whitetip sharks, an incidental permit holder can possess up to 16 small coastal and pelagic sharks per trip and a directed permit holder can keep an unlimited amount of oceanic whitetips per trip (no retention limit). Given the small number of oceanic whitetip and hammerhead sharks retained by the PLL fleet annually (50 and 181, respectively), it is also possible these species are discarded because the fishermen would prefer to fill their hold with more profitable species.

In terms of enforcing the new regulations, commercial vessels with PLL gear onboard would not be authorized to possess oceanic whitetip or hammerhead sharks. Vessel operators would be responsible for complying with all relevant HMS regulations and, if found to be in violation of these regulations, could face enforcement action, including the imposition of penalties. Dealers would still be able to purchase oceanic whitetip and hammerhead sharks from commercial permit holders that are using authorized gears other than PLL. Dealers are currently, and would continue to be, responsible for ensuring that they are purchasing oceanic whitetip and hammerhead sharks or shark products from vessels that are authorized to land them.

*Comment 3:* ICCAT should conduct a stock assessment for the shark species that are subject to these recommendations.

*Response:* The Standing Committee on Research and Statistics (SCRS) at ICCAT is responsible for conducting all ICCAT stock assessments and biological reviews for species included in the convention area, and is authorized to study species other than tunas and tuna-like species as under Article IV of the ICCAT Convention. The ICCAT plenary determines the schedule for stock

assessments conducted by ICCAT. ICCAT has not conducted stock assessments of hammerhead and oceanic whitetip sharks.

NMFS recently made the determination that scalloped hammerhead sharks are overfished and experiencing overfishing (76 FR 23794) based on a stock assessment published in the North American Journal of Fisheries Management (Hayes *et al.*, 2009). Based on this stock status determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations to end overfishing and rebuild the scalloped hammerhead shark stock as mandated under the Magnuson-Stevens Act. Implementation of the ICCAT hammerhead recommendation could help to reduce mortality of scalloped hammerhead and contribute to the rebuilding of this species.

There have been no formal NMFS or peer-reviewed stock assessments for Atlantic oceanic whitetip sharks that have been determined to be appropriate for management action under the Magnuson-Stevens Act. Given the declining abundance of oceanic whitetip sharks globally and the unknown status of the stock, the implementation of the ICCAT oceanic whitetip recommendation could benefit the status of this stock by reducing mortality in the Atlantic Ocean.

*Comment 4:* The ICCAT recommendation for oceanic whitetip sharks states that it applies to “any fishery,” therefore NMFS has an obligation to prohibit retention of this species in all U.S. Atlantic fisheries.

*Response:* NMFS has interpreted this recommendation as applying only to oceanic whitetip sharks caught in association with ICCAT fisheries. Therefore, the ICCAT recommendation to prohibit the retention of oceanic whitetip sharks will be applied only to U.S. ICCAT fisheries, which are considered to be fisheries that target tuna and tuna-like species. Other Contracting Parties to ICCAT have also expressed concern about the adopted wording of the recommendation and how a broader interpretation could lead to conflicts of competence with respect to other regional fisheries management organizations and arrangement in the Atlantic Ocean.

*Comment 5:* Recreational vessels should not be allowed to keep hammerhead sharks.

*Response:* Hammerhead sharks are managed domestically by the NMFS Atlantic Highly Migratory Species Management Division within the large coastal shark (LCS) complex. As such,

they can be landed by any recreational permit holder using authorized gear subject to bag limits and minimum size restrictions. Currently, the LCS bag limits for recreational permit holders are one LCS, greater than 54” fork length, per vessel, per trip. In order to remain in compliance with ICCAT shark recommendations, NMFS is prohibiting the retention of hammerhead sharks in association with tuna and tuna-like species. Therefore, recreational vessels that retain tuna, swordfish, or billfish will not be able to retain hammerhead sharks on the same trip. Recreational fishermen will still be able to retain hammerhead sharks when fishing outside of ICCAT managed fisheries.

NMFS recently made the determination that scalloped hammerhead sharks are overfished and experiencing overfishing (76 FR 23794). Based on this determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations to end overfishing and rebuild the scalloped hammerhead shark stock as mandated under the Magnuson-Stevens Act. Additional measures that may affect recreational vessels landing hammerhead sharks might be considered in that rulemaking.

*Comment 6:* I support the status quo because the other alternatives require some fishermen to throw back a dead fish that can still be retained by others.

*Response:* Logbook data indicate that under existing regulations, between 2005 and 2009, 87 percent of hammerhead sharks and 75 percent of oceanic whitetip sharks caught on PLL gear were discarded. Of the hammerhead sharks discarded on an annual basis over that time series, an average of 780 were released alive and were 350 discarded dead. For oceanic whitetip sharks discarded over the time series, an average of 133 were released alive and 14 were discarded dead on an annual basis. Implementation of this final rule ensures compliance with ICCAT recommendations 10–07 and 10–08. NMFS does not have estimates of at-vessel mortality of oceanic whitetip and hammerhead sharks by recreational vessels, but believes that it is low. Because of this, and because of the fact that landing an oceanic whitetip or hammerhead shark along with a tuna, swordfish, and/or billfish in recreational fisheries is a rare-event occurrence, increases in discards due to prohibiting the recreational retention of oceanic whitetip and hammerhead sharks in ICCAT fisheries are anticipated to be minimal.

*Comment 7:* One commenter opposed using ICCAT as a vehicle for

management of all sharks, especially large coastal sharks, until there is firm progress from other countries actively participating in pelagic shark conservation.

*Response:* ATCA requires NMFS to implement recommendations adopted at ICCAT regardless of progress from other countries actively participating in pelagic shark conservation. Contracting Parties are required to implement all measures adopted by the commission in their waters. Issues concerning Contracting Parties' non-compliance with ICCAT recommendations are addressed in the compliance committee.

*Comment 8:* Does NMFS have any data to prove that all "kept" sharks were alive when boated and subsequently killed for retention? If 197 oceanic whitetips are expected to be caught and the observed rate of live releases is 77 percent, then the remaining 23 percent calculates to 45 sharks (basically, the average number of retained per year). It would be less wasteful for NMFS to require the retention of dead oceanic whitetip sharks. NMFS states that approximately 55 percent of the hammerhead catch is alive when brought to the boat. Of the estimated 1,311 sharks caught annually, approximately 590 will be released dead. What benefit will that be to the stock?

*Response:* NMFS does not have data to prove that all individual kept sharks are alive when boated. On observed trips, a fisheries observer collects data on individual fish, including whether the fish are dead or alive when they are brought on the vessel and their disposition (e.g., landed, discarded alive, discarded dead). On trips without an observer onboard, the primary source of information on species disposition is the logbook completed by the vessel operator. The logbook does not indicate whether the fish are alive or dead when they are brought on the vessel. According to observer data, approximately 55 percent and 77 percent of oceanic whitetip and hammerheads, respectively, are alive when they reach the vessel. Requiring vessel operators to retain oceanic whitetip and hammerhead sharks would not comply with Recommendations 10-07 and 10-08, which prohibit retention of these species.

To clarify, the numbers in the comment apply survival rates that are based on observed trips to logbook data. Based solely on logbook data, which provide the number of sharks landed, discarded dead and released alive, the Agency estimates that by prohibiting the retention of these species on vessels with PLL gear onboard, 172 oceanic

whitetip sharks and 961 hammerhead sharks would likely be released alive. Twenty-five oceanic whitetip and 350 hammerheads would likely be released dead.

*Comment 9:* Without a method for dealers to verify what kind of gear a vessel is using and if tunas, swordfish, or billfish were simultaneously aboard the vessel, they will have difficulty adhering to the restriction for purchase. NMFS should delete the restriction on purchase until they have a clear way for shark buyers to verify this information or until NMFS makes it illegal for any fishermen, no matter what gear, to possess and sell these species.

*Response:* Federally-permitted HMS dealers are prohibited from buying product that was harvested illegally. The issues raised in the comment would likely apply to hammerhead sharks as other gears (BLL and gillnet) are the primary gears for targeting these fish. Oceanic whitetip are caught almost exclusively on PLL gear as bycatch by vessels targeting swordfish and tunas. At the point of landing, dealers would be responsible for determining whether the vessel was authorized to harvest oceanic whitetip which would depend, in part, on the type of gear onboard the vessel. If a vessel has a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks on board, then it has PLL gear as defined by the regulations and therefore may not retain, possess or land an oceanic whitetip or hammerhead shark. If the vessel is not considered to have PLL gear onboard, then it is authorized to possess oceanic whitetip and hammerhead sharks. In addition, pelagic longline vessels fishing in areas closed to BLL gear may not possess demersal species in a quantity that exceeds 5 percent of the total weight of all indicator species (demersal and pelagic) on board the vessel (§ 635.21(c)(1)). Prohibiting retention of hammerhead and oceanic whitetip sharks in all fisheries would go beyond the scope of the ICCAT recommendation; therefore, dealers, who are first receivers of oceanic whitetip and/or hammerhead sharks, will have to determine if the vessel selling the shark has PLL gear onboard in order to comply with the regulations.

*Comment 10:* NMFS should go beyond ICCAT and prohibit retention in all HMS recreational fisheries. We further recommend that you prohibit retention of these species, especially scalloped hammerhead sharks (*Sphyrna lewini*), not only on vessels with pelagic longline gear on board, but on those with bottom longline, gillnet, and

handgear as well. More proactive measures are justified by recent science showing severe declines in scalloped hammerhead populations in particular. In a recent notice published in the **Federal Register**, NMFS declared scalloped hammerhead sharks overfished with overfishing occurring, based in part on estimates that the stock is only 17 percent of virgin stock size.

*Response:* At this time, NMFS is implementing the Recommendations as adopted at the 2010 ICCAT meeting. These Recommendations apply specifically to prohibiting retention of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. NMFS recently made the determination that scalloped hammerhead sharks are overfished and experiencing overfishing. Based on this stock status determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations within 2 years to end overfishing and rebuild the scalloped hammerhead shark stock as mandated under the Magnuson-Stevens Act. Implementation of the ICCAT hammerhead shark recommendation could help to reduce mortality of scalloped hammerhead and contribute to the rebuilding of this species; however, additional measures may be required in the forthcoming FMP amendment.

*Comment 11:* NMFS should go with the status quo alternative. Recreational fishermen should be able to keep hammerheads, which would allow people who do not live in coastal areas a once-in-a-lifetime experience to get the fish mounted.

*Response:* NMFS is required to implement ICCAT recommendations 10-07 and 10-08, which would prohibit retention of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. Recreational anglers (HMS Angling and Charter Headboat permit holders) would still be allowed to fish for and land one oceanic whitetip or hammerhead shark greater than 54" fork length per vessel per trip consistent with existing regulations, but provided that the vessel does not also possess a swordfish, billfish, or tuna.

*Comment 12:* I interpret the stock assessment as saying that hammerhead sharks are rebuilding. They have a 58 percent chance of rebuilding in 10 years if we do nothing. Recent declines in landings have provided an opportunity for populations of scalloped hammerhead sharks to rebuild.

*Response:* In October 2009, Hayes *et al.* (2009) published in the North American Journal of Fisheries

Management a stock assessment of the Atlantic population of scalloped hammerhead sharks in U.S. waters. Based on this paper, in 2005 the population was estimated to be at 45 percent of the biomass that would produce the maximum sustainable yield (MSY), and fishing mortality was estimated to be 129 percent of fishing mortality associated with MSY. The stock is estimated to be depleted by approximately 83 percent of virgin stock size (*i.e.*, the current population is only 17 percent of the virgin stock size). In addition, it was estimated that a total allowable catch (TAC) of 2,853 scalloped hammerhead sharks per year (or 69 percent of 2005 catch) would allow a 70 percent probability of rebuilding within 10 years. NMFS has reviewed this paper and concluded that: the assessment is complete; the assessment is an improvement over a 2008 aggregated species assessment for hammerhead sharks; and the assessment is appropriate for U.S. management decisions (76 FR 23794).

#### Changes From the Proposed Rule

In response to comments expressing concerns about enforcement challenges presented by the rule as proposed, NMFS added the words “possess” and “or” to paragraphs 635.21(c)(1)(ii), 635.22(a)(2) and 635.71(d)(18) to clarify the text, consistent with the ICCAT recommendations and domestic regulations, and improve enforceability both dockside and at-sea. In addition, there was a minor, clarifying changes to the regulatory text in paragraph 635.21(c)(1)(ii) to clarify that any one of the activities listed is prohibited. In 635.24, NMFS clarified application of the prohibition to both oceanic whitetip and hammerhead sharks through the addition of an introductory provision. NMFS also clarified that the gear operation and deployment restrictions in 635.21 limit retention in 635.24. The preferred alternatives from the proposed rule to prohibit the retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks on Atlantic HMS commercially-permitted vessels that have PLL gear on board, and by recreational fishermen fishing with a General Category permit participating in a HMS tournament or those fishing under an HMS Angling or Charter/Headboat permit when tuna or tuna-like species are also retained, remained the same in the final rule.

#### Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the

Magnuson-Stevens Act, the Atlantic Tunas Convention Act, and other applicable law.

NMFS prepared an environmental assessment for this rule that analyzes the impact on the environment as a result of this rule. In this action, NMFS is prohibiting retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks in the Atlantic PLL, HMS Angling and HMS Charter/Headboat fisheries for tuna and tuna-like species consistent with ICCAT Recommendations 10–07 and 10–08. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared, as required by section 604 of the RFA (RFA). The FRFA describes the economic impact this rulemaking would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 604(a)(1) of the RFA, the purpose of this rulemaking, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is to implement ICCAT recommendations 10–07 and 10–08 pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act. This rulemaking will implement the ICCAT shark recommendations in the Atlantic HMS fisheries that target tuna and tuna-like species because NMFS considers these fisheries to be the ICCAT-managed fisheries. The regulatory changes would affect HMS vessels that catch sharks in association with tuna and tuna-like species, including commercial vessels that deploy PLL gear, General Category tuna vessels participating in registered HMS tournaments, and HMS Angling/Charter Headboat vessels fishing for billfish, swordfish, and tunas. This action is necessary to implement ICCAT recommendations pursuant to ATCA. In compliance with the ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as necessary and appropriate.

Section 604(a)(2) of the RFA requires agencies to summarize significant issues raised by the public in response to the IRFA, the agency's assessment of such

issues, and a statement of any changes made as a result of the comments.

NMFS received numerous comments on the proposed rule (76 FR 23935, April 29, 2011) during the comment period. A summary of these comments and NMFS' responses are included in Chapter 13 of the EA/RIR/FRFA and are included above. Although NMFS did not receive comment specifically on the IRFA, public comments were received in regards to the increase in regulatory discards by prohibiting the retention of oceanic whitetip and hammerhead sharks in the commercial PLL fishery. This rule would lead to an estimated annual increase in oceanic whitetip and hammerhead sharks discards of 50 and 181 sharks, respectively, by converting average annual landings into regulatory discards. NMFS estimates that vessels that landed oceanic whitetip and hammerhead sharks from 2005–2009 would incur annual economic losses of \$109 and \$314, respectively from having to discard these sharks. Logbook data indicate that under existing regulations, between 2005 and 2009, 87 percent of hammerhead sharks and 75 percent of oceanic whitetip sharks caught on PLL were discarded. NMFS does not know the rationale behind these discards, but assumes that vessel operators are choosing to discard these fish either because of existing retention limits or economic reasons. Participants using PLL gear typically target tuna and swordfish, which are both higher valued species than sharks. Retaining sharks on vessels with limited hold space may affect product quality of other higher-valued species. Also, vessels may be limited by current large coastal and pelagic shark retention limits, depending on what type of commercial shark permit they hold (directed or incidental), which may also be the cause of these discards. Therefore, no changes were made in the rule resulting from public comments in response to the IRFA.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. In accordance with the Small Business Administration (SBA) size standards, NMFS used the following thresholds to determine if an entity regulated under this action would be considered a small entity: average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. Using these thresholds, NMFS determined that all HMS permit holders are small entities. Specifically,

this action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that target tuna and tuna-like species. As of October 2010, 248 vessels held a Tuna Longline permit and can be reasonably assumed to use PLL gear, 24,479 held an Atlantic HMS Angling permit, and 4,174 vessels held an Atlantic HMS Charter/Headboat permit. From 2005–2009, on average, 12 PLL landed oceanic whitetip sharks vessels per year and 25 PLL vessels landed hammerhead sharks vessels per year. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats. Vessels holding these permits could be affected by this action.

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

Under section 604(a)(6), agencies are required to describe any alternatives to the final rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the Environmental Assessment for the final action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, 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 were no alternatives discussed that fall under the first, second, 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 preferred alternatives to achieve the desired objective.

NMFS has prepared this FRFA to analyze the impacts on small entities of the alternatives for implementing ICCAT shark recommendations for all domestic fishing categories that target tuna and tuna-like species. The FRFA assessed the impacts of the various alternatives on the vessels that participate in the Atlantic HMS commercial and recreational fisheries that target tuna and tuna-like species, all of which are considered small entities. Three alternatives were considered and analyzed and include (A1) no action; (A2) implementing the ICCAT shark recommendations in the commercial PLL fishery for tuna and tuna-like species; and (A3) implementing the ICCAT shark recommendations in the HMS Angling and Charter/Headboat fisheries for tuna and tuna-like species.

Under the No Action Alternative, A1, there would be no additional economic impacts to HMS vessels fishing for tuna and tuna-like species. Commercial vessels that fish for tuna and tuna-like species that are also currently authorized to land oceanic whitetip and hammerhead sharks would be able to continue that practice. Total gross average annual revenues from oceanic whitetip and hammerhead shark meat and fins from all vessels that fished for tuna or tuna-like species from 2005 through 2009 was approximately \$9,155 per year across all vessels (37 vessels) or \$247 per vessel per year. Vessels fishing recreationally for tuna or tuna-like species would continue to have the ability to retain an oceanic whitetip or hammerhead shark along with a tuna or tuna-like species on the same recreational trip under the No Action Alternative.

Under Alternative A2, a preferred alternative, ICCAT shark recommendations would be applied to PLL vessels fishing commercially for tuna and tuna-like species. This alternative would prohibit retention of oceanic whitetip and hammerhead sharks by PLL vessels. On average, from 2005 through 2009, 12 vessels/year kept oceanic whitetip sharks, and less than 2 percent of the total PLL trips kept oceanic whitetip sharks. An average of 1,462 lb of oceanic whitetip sharks were landed annually by these 12 pelagic longline vessels on average from 2005 through 2009. From 2005 through 2009, on average, 25 vessels/year kept hammerhead sharks, and less than 2 percent of the total PLL trips kept hammerhead sharks. On average, 9,493 lb in total were landed from 25 PLL vessels per year from 2005 through

2009. Gross average annual revenues from oceanic whitetip and hammerhead shark meat and fins from the 25 PLL vessels that fished for tuna or tuna-like species and kept oceanic whitetip or hammerhead sharks from 2005 through 2009 were approximately \$9,155 per year across all vessels (37 vessels) or \$247 per vessel per year. NMFS prefers Alternative 2 at this time, because it would implement ICCAT shark recommendations and would have minor adverse socioeconomic impacts on the PLL fishery.

Under Alternative A3, a preferred alternative, ICCAT shark recommendations would be applied to vessels holding a General Category permit when fishing in an HMS tournament or holding either an HMS Angling or Charter/Headboat permit fishing either recreationally or commercially for tuna and tuna-like species. This alternative would prohibit retention of oceanic whitetip and hammerhead sharks along with tuna and tuna-like species by vessels fishing recreationally and by Charter/Headboat permit holders fishing commercially. Although there are no instances of oceanic whitetip or hammerhead sharks retained along with tuna or tuna-like species in the LPS or MRFS data from 2005 through 2009, this alternative could limit fishing opportunities and lead to fewer fishing trips. Charter/Headboats could experience a decrease in trips as much of their business is based on providing recreational anglers the opportunity to catch hammerhead and oceanic whitetip sharks. However, because none of the surveyed Charter/Headboat trips landed oceanic whitetip and hammerhead sharks along with tuna or tuna-like species, NMFS anticipates the impacts to Charter/Headboats to be minor. NMFS prefers this alternative at this time, because it would implement ICCAT shark recommendations and would have minor, adverse socioeconomic impacts on the HMS Angling and Charter/Headboat fisheries.

The status quo alternative, Alternative A1, was not chosen even though it would have no additional economic impacts to HMS vessels fishing for tuna and tuna-like species, because it would not implement ICCAT Recommendations 10–07 and 10–08, which is the purpose of this rule. Alternatives A2 and A3 were selected, because they will implement the ICCAT recommendations and are anticipated to have minor, adverse economic impacts.

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

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,

Reporting and recordkeeping requirements, Treaties.

Dated: August 19, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

■ 2. In § 635.21, paragraph (c)(1) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

\* \* \* \* \*

(c) \* \* \*

(1) If a vessel issued or required to be issued a permit under this part:

(i) Is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks.

\* \* \* \* \*

■ 3. In § 635.22, paragraph (a) is revised to read as follows:

§ 635.22 Recreational retention limits.

(a) General—(1) 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.

(2) Vessels issued an HMS General Category permit under § 635.4(d) that are participating in a HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) may not retain, possess or land oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess or land swordfish, tuna, or billfish if oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

\* \* \* \* \*

■ 4. In § 635.24, the introductory paragraph is revised, and a new paragraph (a)(9) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28, and the gear operation and deployment restrictions in § 635.21.

(a) \* \* \* —

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have PLL gear on board.

\* \* \* \* \*

■ 5. In § 635.31, paragraph (c)(6) is added to read as follows:

§ 635.31 Restrictions on sale and purchase.

\* \* \* \* \*

(c) \* \* \*

(6) A dealer issued a permit under this part may not purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

\* \* \* \* \*

■ 6. In § 635.71, paragraph (d)(19) is added to read as follows:

§ 635.71 Prohibitions.

\* \* \* \* \*

(d) \* \* \*

(19) Retain, possess, transship, land, store, sell or purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks as specified in § 635.21(c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

\* \* \* \* \*

[FR Doc. 2011-21732 Filed 8-26-11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522-0640-02]

RIN 0648-XA659

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2011 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2011, through 1200 hrs, A.l.t., October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA is 6,811 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has