Environmental Assessment,
Regulatory Impact Review,

and

Final Regulatory Flexibility Analysis

for a Rule to

Implement the 2011 International Commission for the Conservation of Atlantic Tunas Recommendation on Silky Sharks

United States Department of Commerce
National Oceanic and Atmospheric Administration
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Office of Sustainable Fisheries
Highly Migratory Species Management Division

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ABSTRACT

Action: Implement the 2011 International Commission for the Conservation for Atlantic Tunas (ICCAT) Recommendation on Silky Sharks.

Type of statement: Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA)

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Abstract: This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action implements Recommendation 11-08 adopted at the 2011 annual meeting of ICCAT. Recommendation 11-08 requires fishing vessels operating in ICCAT-managed fisheries to release all silky sharks whether dead or alive, and prohibits retaining on board, transshipping, or landing any part or whole carcass of silky shark (*Carcharhinus falciformis*). This action also prohibits the storing, selling or purchasing of silky sharks. This measure is consistent with the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP).

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1.0 PURPOSE AND NEED FOR ACTION

1.1 Regulatory Authorities

The National Marine Fisheries Service ("we"), on behalf of the Secretary, is responsible for managing Atlantic highly migratory species (HMS), including the federal Atlantic shark, tuna, and swordfish fisheries under the authority of the Magnuson-Stevens Act, Section 304(g). Under the Magnuson-Stevens Act, we must, consistent with the National Standards, manage fisheries to maintain optimum yield (OY) on a continuing basis while preventing overfishing. Since 1993, we have implemented several fishery management plans (FMPs), FMP amendments, and numerous regulations relating to the Atlantic HMS fisheries under the authority of the Magnuson-Stevens Act. Currently, the Atlantic HMS fisheries are managed under the 2006 Consolidated Atlantic HMS FMP (Consolidated HMS FMP), its amendments, and its implementing regulations at 50 CFR part 635.

Atlantic tunas and tuna-like species are managed under the dual authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA). ATCA requires us to promulgate regulations, as may be necessary and appropriate, to carry out the recommendations from the International Commission for the Conservation of Atlantic Tunas (ICCAT). 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. ICCAT resolutions are non-binding and express the will of the Commission. All ICCAT recommendations and resolutions are available on the ICCAT website at http://www.iccat.int/en/.

The management measures considered for this action affecting Atlantic HMS fisheries targeting tuna and tuna-like species and associated with ICCAT are taken under the dual authority of ATCA and the Magnuson-Stevens Act. In addition to the Magnuson-Stevens Act, any management measures must also be consistent with other applicable laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA). We have prepared this document, in part, to comply with our responsibilities under NEPA, as implemented by the regulations published by the Council on Environmental Quality, 50 C.F.R. Parts 1501-1508 (CEQ Regulations), and NOAA Administrative Order 216-6 (NAO 216-6).

1.2 Purpose and Need for Action

At the 22nd Regular Meeting, ICCAT adopted Recommendation 11-08 (Recommendation by ICCAT on the Conservation of Silky Sharks Caught in association with ICCAT Fisheries), which requires fishing vessels operating in ICCAT-managed fisheries to release all silky sharks whether dead or alive, and prohibits retaining on board, transshipping, or landing any part or whole carcass of silky shark (*Carcharhinus falciformis*). The recommendation cites the fact that silky sharks are ranked as the species with the highest degree of vulnerability in ICCAT's 2010 ecological risk assessment for Atlantic sharks. As a Contracting Party to the Convention, the United States is obligated to initiate rulemaking in order to fulfill obligations. This requirement is further set forth in ATCA, the domestic legislation implementing ICCAT. ICCAT and ATCA thus establish the need for us to take regulatory action. The corresponding purpose of the action is to implement

Recommendation 11-08 in a manner that meets our obligations under ICCAT and ATCA consistent with our management authority for HMS fisheries under the Magnuson-Stevens Act and the Consolidated HMS FMP.

In this EA, we consider options for changing the Atlantic HMS regulations at 50 CFR 635, consistent with the ICCAT recommendation and the Consolidated HMS FMP. The alternatives described in Section 2.0 would affect primarily commercial vessels with pelagic longline gear onboard that fish for tunas and tuna-like species. During the preparation of the final rule and in response to public comments about the scope of the proposed rule, NMFS determined that, to make the action consistent with the August 29, 2011 action that implemented similar ICCAT Recommendations regarding certain hammerhead sharks and oceanic whitetip sharks (76 FR 53652), and to align the rule with the regulated community's understanding of its application, the regulatory language associated with this action needed to specify that the prohibition on retention also applies to the small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel. This measure is necessary to ensure consistency across implementation of ICCAT recommendations and to enhance compliance and enforcement. These vessels, however, generally do not target or land silky sharks when they have tunas or tuna-like species on board. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, specific reference to this permit combination in the "ICCAT fisheries" subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

Harvesting silky sharks is already prohibited in the recreational fishery. While silky sharks could be caught on handgear, bottom longline, or gillnet gear, these gears target sharks and are not used in association with ICCAT fisheries; therefore, actions to prohibit the retention of silky sharks from these gears would not meet the stated purpose and are not considered further.

2.0 SUMMARY OF THE ALTERNATIVES

This section provides a summary of the alternatives we considered to meet the obligations of the National Environmental Policy Act (NEPA), the Magnuson-Stevens Act, and ATCA while implementing Recommendation 11-08 in the portion of the ICCAT Convention Area that includes the U.S. Exclusive Economic Zone (EEZ). NEPA calls for us to evaluate a range of reasonable alternatives as well as a No Action alternative. We identified two reasonable action alternatives that would meet the stated purpose and need for this action. The No Action alternative would not allow us to meet our obligations under ICCAT and, therefore, we do not consider this a reasonable alternative. The No Action alternative is included to establish a baseline against which the action alternatives can be compared and evaluated.

Note: The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the "ICCAT fisheries" subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

Alternative 1: No Action

This alternative would maintain the status quo and would not implement ICCAT Recommendation 11-08. Under this alternative, commercial pelagic longline vessels as well as vessels issued both an HMS Charter/Headboat permit and a commercial shark permit that are fishing for tuna and tuna-like species (such as yellowfin and albacore tunas or swordfish) could continue to retain and possess silky sharks subject to existing regulations. A summary of some of the existing regulations for silky sharks is provided below. Additional details can be found at 50 CFR Part 635, which are hereby incorporated by reference.

Commercial Fishery

- Shark Directed or Shark Incidental permit required
- Quota (base): 488 metric tons (mt) dressed weight (dw) (combined for shortfin mako, oceanic whitetip, and common thresher sharks)
- Retention Limits: 33 non-sandbar large coastal sharks (LCS) per vessel per trip for directed (shark) permit holders, 3 non-sandbar LCS per vessel per trip for incidental permit holders.
- Authorized Gear: Bottom Longline, Pelagic Longline, Rod and Reel, Gillnet, Handline, and Bandit Gear
- Season: Variable. Typically opens on/around January 1 every year and closes 5 days after filing with the Federal Register that 80 percent of the quota has been harvested, or on December 31, whichever occurs first.

Recreational Fishery

- Silky sharks are considered a prohibited species and must be released.

Alternative 2: Implement ICCAT Recommendation 11-08 by prohibiting vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks

This alternative would implement ICCAT Recommendation 11-08, which prohibits retaining on board, transshipping, or landing any part or whole carcass of silky shark caught in association with ICCAT-managed fisheries. Under this alternative, vessels in the commercial ICCAT fisheries (i.e., pelagic longline vessels and vessels issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel) could not retain or possess silky sharks. The corresponding regulation would be limited in scope to the recommendation under this alternative.

Alternative 3 (*Preferred Alternative*): Implement ICCAT Recommendation 11-08 by prohibiting vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks

This alternative would:

- Implement the provisions of ICCAT Recommendation 11-08, which prohibits retaining on board, transshipping, or landing any part or whole carcass of silky shark caught in association with ICCAT-managed fisheries.
- Prohibit the storing, selling or purchasing any part or whole carcass of silky shark caught in association with ICCAT-managed fisheries.

This alternative is the same as Alternative 2, except for the addition of prohibitions on the storing, selling and purchasing any part or whole carcass of a silky shark. Under Alternative 3, an operator of a pelagic longline vessel or a vessel issued both an HMS Charter/Headboat permit and a commercial shark permit (when tuna, swordfish or billfish are on board the vessel) would not be allowed to store or sell silky shark products and a dealer could not buy silky sharks from these vessel owners or operators. We would include these additional prohibitions in the corresponding regulation to facilitate domestic compliance and enforcement. These prohibitions would provide consistency with current regulations for oceanic whitetip and hammerhead (except for *Sphyrna tiburo*) sharks in the commercial pelagic longline fishery for tuna and tuna-like species and would facilitate compliance, for fishermen and for dealers, as well as enforcement.

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

This section includes a brief summary of the status of the stocks, fishery participants and gear types, and affected area including habitat and protected species. For a complete description of the biology and status of HMS and the Atlantic commercial fishery, including operations, catches, and discards, please see the 2011 HMS Stock Assessment and Fishery Evaluation (SAFE) Report (NMFS, 2011). Also, for information on interactions and concerns with protected species and the Atlantic pelagic longline fishery, please see the *2004 Final Supplemental Environmental Impact Statement (FSEIS) for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery* (NMFS, 2004) and the June 2004 Biological Opinion for the Atlantic Pelagic Longline Fishery. The action area is the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

Silky sharks are managed in the U.S. Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. They are managed as a Large Coastal Shark species. Currently, directed and incidental shark permit holders using pelagic longline gear are authorized to retain these species of silky sharks as part of the non-sandbar LCS complex. The non-sandbar LCS quota is 677.8 mt dw (Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw). Note that NMFS is currently considering changes to the shark management units in Amendment 5 to the Consolidated HMS FMP in light of several recent stock assessments, but those changes would not be expected to affect this action. The retention limit for vessels operating outside the shark research fishery is 33 non-sandbar LCS/vessel/trip for directed permit holders and 3 non-sandbar LCS/vessel/trip for incidental permit holders. All sharks, including silky sharks, must be landed with all fins naturally attached by all HMS fishery participants in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. In the recreational fisheries, silky sharks are a prohibited species and must be released.

On August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries by vessels in the commercial ICCAT fisheries and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652). In addition, a dealer issued a permit under the regulations implementing those recommendations 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 an 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. Recommendation 11-08 for silky sharks does not include language that prohibits storing, selling and purchasing any part of the shark species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention.

3.1 Status of the Stocks

Silky sharks were last assessed as part of the large coastal shark complex, which was last assessed during the Southeast Data, Assessment, and Review (SEDAR) 11 process, dated June 5-9, 2006. The peer reviewers of the assessment felt that the assessment did a poor job at representing the status of the Large Coastal Shark complex because of the potential for conflicting and/or mismatching information from the various species in the catch and abundance index data. Therefore, the peer reviewers were uncertain of what the results of the assessment represented and felt that the assessment should not be used for management of the complex. Based on these results, we determined that the assessment on the complex as a whole was inappropriate to use for management. Silky sharks are part of the complex, and therefore, the stock status of silky sharks is unknown.

Silky sharks were included in the 2010 ecological risk assessment conducted by the ICCAT Standing Committee on Research and Statistics (SCRS). In the risk assessment, silky sharks were ranked as the Atlantic shark species with the highest degree of vulnerability to fishing. Given the low productivity and high susceptibility of silky sharks as noted in the ecological risk assessment, the implementation of the ICCAT silky shark recommendation could benefit the status of this stock by reducing mortality in the Atlantic Ocean.

3.2 Fishery Participants, Gear Types, and Affected Area

This rulemaking would affect primarily HMS fishery participants that fish for tuna and tuna-like species commercially with pelagic longline gear. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. Please see Section 4.1 for a discussion of the present level of incidental catch, retention and release of silky sharks in this fishery. We are incorporating by reference the 2011 SAFE Report for Atlantic Highly Migratory Species (NMFS, 2011), which describes these affected environments and provides a view of the current condition of these fisheries, the current landings of large coastal and pelagic sharks caught with pelagic longline, the marine ecosystems in the fishery management unit, the social and economic condition of the fishing interests, and fishing communities.

The pelagic longline fishery is described in Chapter 4 of the 2011 SAFE Report which includes a summary of the current management, recent catch and landings, protected species interactions, and international issues. The numbers of commercial permits for this fishery are described in Section 8.1. Landings of HMS by species, including silky sharks can be found in Section 4.10. Information on the economic status of commercial HMS fisheries including ex-vessel prices, revenues, operating costs, fish processing and wholesale sectors and international trade can be found in Chapter 5 of the 2011 SAFE Report. The 2011 SAFE Report can be accessed at the Atlantic HMS website, http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/SAFEreports.htm.

3.3 Habitat

The area in which this action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery

Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the National Marine Fisheries Service. Generally, the target species of the Atlantic HMS fisheries are associated with hydrographic structures of the water column, e.g., convergence zones or boundary areas between different currents. Because of the magnitude of water column structures and the processes that create them, there is little effect on habitat that can be detected from the HMS fishing activities.

3.4 Protected Species under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)

The ESA is the primary Federal legislation governing interactions between fisheries and species whose continued existence is threatened or endangered. Through a consultative process, the ESA allows Federal agencies to evaluate proposed actions in light of the impacts they could have on these ESA-listed species. In the case of marine fisheries, the National Marine Fisheries Service Office of Sustainable Fisheries consults with the Office of Protected Resources under Section 7 of the ESA to determine what effects major fishery management actions will have on threatened or endangered marine species and what actions can be taken to reduce or eliminate negative impacts. Under the Section 7 consultation process for management of HMS fisheries, the Office of Protected Resources issues a Biological Opinion (BiOp), which evaluates the expected effects of the proposed action, determines whether it is likely to jeopardize any listed species or result in the adverse modification or destruction of critical habitat designated for such species, includes an Incidental Take Statement (ITS) exempting the take of species incidental to the proposed action as long as specified terms and conditions are met to minimize the effects of such take, and, in the event of a jeopardy determination, establishes a Reasonable and Prudent Alternative (RPA); i.e. an alternative means of carrying out the proposed action while avoiding jeopardy. The gear type considered in this rulemaking is primarily commercial pelagic longline gear. In June 2004, the Office of Protected Resources issued a BiOp that concluded that the Atlantic pelagic longline fishery as proposed was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley or olive ridley sea turtles but was likely to jeopardize the continued existence of leatherback sea turtles. We have implemented the RPA and related actions specified in the BiOp (*e.g.*, hook type, bait type, mandatory workshops). According to an August 9, 2007 memorandum regarding reinitiation of the ESA Section 7 consultation process for the U.S. Atlantic pelagic longline fishery, the Office of Protected Resources determined that the basis and assumptions of the 2004 BiOp remain valid, and that the expected effects on the species, and the ITS, including its Terms and Conditions, are still appropriate and do not need to be revised. We do not anticipate that this action would result in any adverse impacts on endangered or threatened species listed under the ESA in any way not previously addressed in the 2004 BiOp and existing regulations. See Section 4.5 for further discussion of consultations and BiOps issued for HMS Fisheries.

The MMPA is one of the principal Federal statutes that guides marine mammal species protection and conservation policy. Under MMPA requirements, we produce an annual List of Fisheries that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The List of Fisheries includes three classifications:

- Category I fisheries are those with frequent serious injury or mortality to marine mammals (e.g., pelagic longline);

- Category II fisheries are those with occasional serious injury or mortality (e.g., shark gillnet); and

- Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals (e.g., rod and reel, purse seine, harpoon).

Fishermen participating in Category I or II fisheries are required to be registered under the MMPA and, if selected, to accommodate an observer aboard their vessels. Vessel owners or operators, or fishermen, in Category I, II, or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to the National Marine Fisheries Service.

The pelagic longline fishery is listed as a Category I fishery. As mentioned above, longline gear is known to present potential dangers to listed sea turtles, and the activity of the fishery is regulated by the terms of the BiOp dated June 1, 2004. On May 19, 2009 (74 FR 23349), we published a final rule intended to reduce marine mammal takes by pelagic longline vessels in the Atlantic.

Please refer to Sections 3.8 and 3.9.9 of the Consolidated HMS FMP for additional information on potential interactions of Atlantic HMS fisheries with protected species and marine mammals. Sections 3.9.9.1 and 3.9.9.2 specify the 22 cetacean species of concern that occur off the Atlantic and Gulf coasts, including six endangered whale species. The 2004 BiOp acknowledged that because Northern right, fin, humpback, blue, sei, and sperm whales occur in the action area, there is a possibility of interaction with the longline fishery, but the available evidence indicated interactions are exceedingly rare. As such, the 2004 BiOp concluded the chances of a fin, humpback, Northern right, blue, sei, or sperm whale being adversely affected by the Atlantic pelagic longline fishery in the foreseeable future are discountable. The action would not result in effects to listed marine mammals beyond those considered in the 2004 BiOp; none of the four triggers for reinitiation of consultation set forth in that opinion are met, and therefore further ESA Section 7 consultation is not necessary.

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES

The impacts of alternatives described in Section 2 are discussed separately in the following subsections by issue and in the context of the relevant Magnuson-Stevens Act National Standards and the objectives of the Consolidated HMS FMP. The economic impacts of each alternative are briefly summarized in the following sections, and are described more fully in Sections 6, 7 (RIR), and 8 (FRFA).

The data used for these analyses include HMS logbook data from 2006 through 2010 and NMFS pelagic longline observer program (POP) data from 2006 through 2010. Complete, finalized data from 2011 were not available at the time the draft EA/RIR/IRFA was prepared.

Data for 2011 became available after the public comment period had closed. NMFS has reviewed the newly available data and 2011 logbook and economic information to see if there were any major changes from previous years that would require us to re-run our analyses and re-open the public comment period. The information for 2011 shows that a similar number of silky sharks were landed in 2011 and 2010 (12 and 17, respectively). Price information for fins was the same as previous years (2006 through 2010), and price information for meat was slightly higher in 2011 than previous years but not enough to make a difference in our conclusions due to the low number of fish landed. Thus, although we have some new data, we did not re-run all the analyses that support the rulemaking because our review shows that none of this information would alter our conclusions.

4.1 Alternative 1: No Action.

This alternative would maintain the status quo and would not implement the 2011 ICCAT silky shark recommendation. Under this alternative, vessels in the commercial ICCAT fisheries (pelagic longline vessels and vessels issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel) would continue to be able to retain, transship, land, store, and sell silky sharks subject to existing regulations.

Ecological Impacts

Alternative 1 would continue to allow vessel operators to retain, transship, land, store, and/or sell silky sharks caught in the Atlantic HMS pelagic longline fishery for tuna and tuna-like species. This alternative would not implement ICCAT Recommendation 11-08. An analysis of the 2006-2010 HMS logbook data, indicates that, on average, a total of 60 silky sharks are kept per year. An additional 1,417 silky sharks per year were caught (on average) and subsequently discarded (676 released alive and 742 discarded dead). Under this alternative, silky sharks could continue to be harvested by pelagic longline fishermen. According to the NMFS pelagic longline observer program (POP) data from 2006 through 2010, 54.3 percent of silky sharks caught were alive when brought to the vessel. Thus, under this alternative, each year approximately 1,477 silky sharks could be caught and, of those caught, 742 sharks would be discarded dead.

Maintaining fishing mortality at the same levels through the no action alternative may result in minor, adverse ecological impacts for silky shark stocks due to the species' low productivity and high susceptibility as described in the 2010 ICCAT ecological risk assessment.

Economic and Social Impacts

Pelagic longline vessels fishing for tuna and tuna-like species catch silky sharks infrequently and only incidentally to the target species. As of October 2011, the HMS pelagic longline fleet consists of 242 vessels (i.e., in possession of a tuna longline permit). According to HMS logbook data, pelagic longline vessels landed an average of 2,537 lb of silky sharks annually from 2006 through 2009 (logbook data for 2010 did not include weight information and so is not included in this estimate). These silky sharks were reported landed by an average of seven pelagic longline vessels. Using the median real dollar, ex-vessel price per pound of $0.75 for silky shark meat and $11.11 for shark fins, these landings are equivalent to an average of $3,392 ($1,489 for fins and $1,903 for meat) in annual gross revenues. This equates to approximately $485/vessel/year in revenues from silky sharks. However, each vessel is also predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, $485 in revenues from silky shark sales are minor (<1 percent) compared to each vessel's overall revenue. Only a very small number of vessels are issued both an HMS Charter/Headboat permit and a commercial shark permit, and instances of silky shark catch while fishing for tuna and tuna-like species is rare.

Minor, beneficial economic impacts are expected as a result of this alternative because similar income levels may continue to be realized in the commercial fishery, maintaining existing fishing opportunities and income levels. This alternative would not affect current fishing operations, because this alternative would maintain the status quo.

Conclusion

Because of the high vulnerability of silky sharks and given its unknown status, Alternative 1 could result in minor, adverse ecological impacts. Alternative 1 would also maintain existing minor revenues for commercial participants; therefore, Alternative 1 could result in minor, beneficial economic and social impacts. Alternative 1 would not implement ICCAT Recommendation 11-08 and, therefore, is inconsistent with our obligations to promulgate regulations, as necessary and appropriate, to implement ICCAT recommendations. Because of this inconsistency, Alternative 1 is not a preferred alternative.

4.2 Alternative 2: Implement the ICCAT Recommendation 11-08 by prohibiting vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks

Ecological Impacts

Alternative 2 would prohibit by domestic regulation pelagic longline vessels in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a

commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the "ICCAT fisheries" subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

As described above, an analysis of the 2006 through 2010 HMS logbook data, which covers the HMS pelagic longline fishery, indicates that on average a total of 60 silky sharks (4 percent of those caught) are kept per year and 1,417 silky sharks (96 percent) are discarded dead or alive. Under this alternative, all silky sharks caught would have to be released by pelagic longline fishermen and approximately 29 percent of them would be released alive. Of the 60 silky sharks that are currently retained, we expect 17 (29 percent) of them to be released alive, with the other 43 dead. We do not expect the actual number caught (1,477 per year on average) to change as a result of this action because fishermen do not target or retain large numbers of silky sharks now. The number of silky sharks discarded dead would increase slightly (from 742 to 785) since fishermen would no longer be able to retain any dead silky sharks. A reduction of mortality for silky sharks would have minor beneficial impacts due to the species' low productivity and high susceptibility according to the 2010 ecological risk assessment.

Economic and Social Impacts

Under this alternative, Atlantic HMS commercial fishing vessels with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the "ICCAT fisheries" subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

As described above, commercial pelagic longline fishermen would no longer be able to land this species and could potentially lose annual revenues of $3,392 for all vessels or $485 per vessel. However, each vessel is also predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, a $485 loss in revenues from silky shark sales is very little (<1 percent) compared to each vessel's overall revenue. Commercial fishermen are not expected to alter fishing practices for tuna and tuna-like species as a result of this alternative because silky shark landings constitute a small portion of pelagic longline landings and revenues.

Conclusion

As described in Chapter 1, we must implement ICCAT recommendations through regulations as necessary and appropriate. ICCAT Recommendation 11-08 prohibits retaining, transshipping, or

landing of silky sharks caught in association with fisheries managed by ICCAT. Silky sharks are caught incidentally to tuna and tuna-like species in the HMS commercial pelagic longline fishery. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Alternative 2 would prohibit the retention of this species in the ICCAT fisheries, primarily the pelagic longline fishery, consistent with the 2011 ICCAT Recommendation 11-08. Under Alternative 2, we expect an additional 17 silky sharks to be released alive. Additionally, we expect those pelagic longline vessels that landed silky sharks to lose approximately $3,392 per year across all vessels or $485 per vessel per year as a result of this action. Therefore, Alternative 2 is likely to have minor, beneficial ecological impacts due to the reduction of mortality of this species, and would have only minor, adverse socioeconomic impacts to pelagic longline fishermen. Alternative 2 is limited in scope to 2011 ICCAT Recommendation 11-08 and establishes fewer prohibitions than Alternative 3 described below. Thus, for purposes of enforcement, Alternative 2 could be less effective than Alternative 3.

4.3 Alternative 3: Implement ICCAT Recommendation 11-08 and additional prohibitions against storing, selling, and purchasing silky sharks in the commercial ICCAT fisheries for tuna and tuna-like species – Preferred Alternative

Ecological Impacts

Similarly to Alternative 2, Alternative 3 would prohibit by regulation pelagic longline vessels in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks. Additionally, Alternative 3 would prohibit operators of pelagic longline vessels and the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit from storing, selling or purchasing any part or whole carcass of silky sharks. It would further prohibit permitted dealers from purchasing silky sharks from fishing vessels with pelagic longline gear and from other permitted vessel owners who are off-loading or have on board tuna, swordfish or billfish.

In addition to the beneficial ecological impacts described under Alternative 2, we anticipate that Alternative 3 would have additional ecological benefits by reducing mortality and facilitating domestic enforcement as explained below.

Economic and Social Impacts

Alternative 3 would prohibit the storing, selling, and purchasing of silky sharks in addition to prohibiting the retaining, transshipping, and landing of silky sharks. Alternative 3 would provide consistency with current regulations for oceanic whitetip and hammerhead (except for *Sphyrna tiburo*) sharks in the commercial ICCAT fisheries for tuna and tuna-like species and would facilitate compliance, for fishermen and for dealers, as well as enforcement. Additionally, under this alternative, primarily Atlantic HMS commercial permit holders with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. The measureable economic and social impacts of Alternative 3 are similar to those of Alternative 2. However, under Alternative 3, a vessel operator of a vessel in the commercial

ICCAT fisheries would not be allowed to store or sell silky shark products and a dealer could not buy silky sharks from that vessel owner or operator. Adding additional prohibitions beyond those called for under Alternative 2 would be consistent with the approach we have taken for oceanic whitetip sharks and scalloped, smooth and great hammerhead sharks in the commercial ICCAT fisheries for tuna and tuna-like species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make them easier to remember and thus, would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention. Although there would be some minor adverse socioeconomic impacts under Alternative 3 due to a slight loss of revenue by pelagic longline vessel operators similar to that of Alternative 2, Alternative 3 would provide minor beneficial socioeconomic impacts by providing a rule that is consistent with the current regulations and easier with which to comply and enforce.

Conclusion

As described in Chapter 1, we must implement ICCAT recommendations through regulations as may be necessary and appropriate. ICCAT Recommendation 11-08 prohibits the retention, transshipping, or landing of silky sharks caught in association with fisheries managed by ICCAT. Silky sharks are caught incidentally to tuna and tuna-like species in the HMS commercial pelagic longline fishery.

Alternative 3 would prohibit vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks consistent with the 2011 ICCAT Recommendations 11-08. Under Alternative 3, we expect an additional 17 silky sharks to be released alive. Additionally, we expect those pelagic longline vessels that landed silky sharks to lose approximately $3,392 per year across all vessels (7 vessels) or $485 per vessel per year as a result of this action. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the “ICCAT fisheries” subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action. Moreover, the additional prohibitions under this alternative would facilitate domestic enforcement. Therefore, we prefer Alternative 3 because it is consistent with ATCA and the Magnuson-Stevens Act, and compared to the other alternatives, prohibiting the retention of silky sharks in the commercial ICCAT fisheries, primarily the pelagic longline fishery, is likely to have minor, beneficial ecological impacts due to the reduction of mortality of this species. This alternative would have minor adverse socioeconomic impacts to pelagic longline fishermen and dealers. We prefer Alternative 3 because it would facilitate domestic enforcement, provide greater clarity to regulated fishing vessels and dealers and result in a greater conservation benefit to the species without causing adverse socioeconomic impacts beyond those that would result from Alternative 2.

4.4 Impacts on Essential Fish Habitat

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. In the Consolidated HMS FMP, we concluded that there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified on the habitat of fisheries. As none of the alternatives would alter fishing gears or practices, we anticipate that none of the alternatives, including the preferred alternative, would have any adverse impacts to EFH, and the conclusion for the Consolidated HMS FMP is still applicable, so further consultation is not necessary.

4.5 Impacts on Protected Species

A Biological Opinion (BiOp), issued on June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under our jurisdiction. As mandated by this BiOp, we implemented the required reasonable and prudent alternatives (RPAs). Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the reasonable and prudent measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, we published a final rule (69 FR 40734) and a final Supplemental Environmental Impact Statement implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard (NMFS, 2004). We are implementing the other RPMs in compliance with the 2004 BiOp, and will undertake additional rulemaking and non-regulatory actions, as required, to implement any other management measures to maintain consistency under the 2004 BiOp. According to an August 9, 2007, memorandum regarding reinitiation of the Endangered Species Act Section 7 consultation process for the U.S. Atlantic pelagic longline fishery, we determined that the basis and assumptions of the 2004 BiOp remain valid for all of the alternatives, and that the expected effects on the species, the Terms and Conditions, and the Incidental Take Statement (ITS), are still appropriate and do not need to be revised. We continue to monitor and assess data concerning sea turtle interactions with the HMS pelagic longline fishery to determine whether the ongoing fishery remains consistent with the ITS and the requirements of the RPAs. We do not believe that any of the alternatives would result in any adverse impacts on endangered or threatened species listed under the ESA in any way not previously addressed in the 2004 BiOp and existing regulations.

On May 19, 2009 (74 FR 23349), we published a final rule intended to reduce marine mammal takes by pelagic longline vessels in the Atlantic. For further information on HMS fishery

interactions and protected species, including non-ESA listed marine mammals, see Section 3.9.9 of the Consolidated HMS FMP.

Consistent with the 2011 ICCAT Recommendation for silky sharks, Alternative 2 and preferred Alternative 3 would prohibit pelagic longline vessel operators from retaining, transshipping, or landing silky sharks. We do not expect these alternatives would alter current fishing practices or increase fishing effort. There would no additional effects to protected species beyond those expected from the status quo (i.e., Alternative 1, the no action alternative). Thus, the preferred alternative would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates. For these reasons we have determined that the action would have no effects on listed species beyond those evaluated in the 2004 BiOp; none of the four triggers for reinitiation of consultation set forth in that opinion are met, and therefore further ESA Section 7 consultation is not necessary.

4.6 Environmental Justice Concerns

Executive Order (E.O.) 12898 requires that Federal agencies address environmental justice in the decision-making process. In particular, the environmental effects of Federal actions should not have a disproportionate adverse effect on minority and low-income communities. We do not expect the action to have any effects on human health. Nor do we expect it to have any disproportionate social or economic effects on minority and low-income communities. We expect only slightly adverse social or economic impacts due to the fact that silky sharks constitute only a small portion of catch in the commercial pelagic longline fishery for tuna and tuna-like species. In addition, we do not expect pelagic longline fishermen to alter or modify their fishing practices as a result of the prohibitions. Although it may also affect a small number of vessels (five) vessels issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel, these vessels generally do not target or land silky sharks when they have tunas or tuna-like species on board.

4.7 Coastal Zone Management Act (CZMA) Concerns

We have determined that these regulations are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. This determination was submitted for review by the responsible state agencies on June 26, 2012, under section 307 of the CZMA. Under 15 C.F.R. § 930.41, states and/or U.S. territories have 60 days to respond after the receipt of the consistency determination and supporting materials. States and U.S. territories can request an extension of up to 15 days. If a response is not received within those time limits, NMFS can presume concurrence (15 C.F.R. § 930.41(a)).

The following states have concurred with the consistency determination: New Hampshire, Rhode Island, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana. The remaining states and U.S. territories did not respond; therefore, we presume their concurrence.

4.8 Cumulative Impacts

Cumulative impacts are the impacts on the environment that result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR § 1508.7). A cumulative impact includes the total effect on a natural resource, ecosystem, or human community due to past, present, and reasonably foreseeable future activities or actions of federal, non–federal, public, and private entities. Cumulative impacts may also include the effects of natural processes and events, depending on the specific resource in question. Cumulative impacts include the total of all impacts to a particular resource that have occurred, are occurring, and would likely occur as a result of any action or influence, including the direct and reasonably foreseeable indirect impacts of a federal activity. The goal of this section is to describe the cumulative ecological, economic and social impacts of past, present and reasonably foreseeable future actions with regard to the management measures presented in this document.

Cumulative Ecological Impacts

Under Alternative 1 (the status quo), commercial pelagic longline vessels and certain charter vessels fishing for tuna and tuna-like species (such as yellowfin and albacore tunas or swordfish) could continue to retain and possess silky sharks subject to existing regulations, potentially resulting in minor, adverse ecological impacts for silky shark stocks due to the species' low productivity and high susceptibility as described in the 2010 ICCAT ecological risk assessment. Alternative 2 and preferred Alternative 3 would implement ICCAT Recommendation 11-08 and impact pelagic longline vessels and certain charter vessels, which target tuna and tuna-like species in the ICCAT Convention Area. Specifically, pelagic longline vessels would no longer be authorized to retain, transship, or land silky sharks. The additional prohibitions of Alternative 3, a prohibition against storing or selling silky sharks, would facilitate enforcement. We expect that this alternative would result in minor, beneficial cumulative ecological impacts because it would likely reduce fishing mortality for a species of shark (i.e. silky sharks) that the 2010 ecological risk assessment has shown to have low productivity and high susceptibility to fishing.

Silky sharks are not targeted by pelagic longline vessels and charter vessels, and logbook data indicate they are caught incidentally to tuna and tuna-like species on approximately 12 percent of pelagic longline trips between 2006 and 2010. Silky sharks are a prohibited species in the recreational fisheries and must be released. We have addressed other ICCAT fishery-related actions through amendments to the Consolidated HMS FMP and various rules regarding other species. For example, on August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with commercial ICCAT fisheries and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652). We are currently considering potential options for future actions that could affect fishermen with pelagic longline vessels or vessels issued both HMS Charter/Headboat and commercial shark permits, and the species they catch. For example, in September 2012, we will propose measures in Amendment 5 to the Consolidated HMS FMP that are designed to maintain rebuilding of sandbar sharks, end overfishing and rebuild dusky, scalloped

hammerhead, and Atlantic blacknose sharks, and address the unknown overfished/overfishing status of Gulf of Mexico blacknose sharks. Some of these measures could impact pelagic longline and HMS Charter/Headboat fishermen as they can catch some of those species of sharks. We are also considering potential measures for Amendment 7 to the Consolidated HMS FMP, which addresses potential management measures for Atlantic HMS and in particular, Atlantic bluefin tuna. Some of the measures in Amendment 7 could impact pelagic longline and HMS Charter/Headboat fishermen as they catch Atlantic bluefin tuna. We do not expect that these potential future measures would alter the cumulative ecological impacts of this current action.

Cumulative Social and Economic Impacts

We expect the preferred alternative to result in minor adverse social and economic impacts because it would prohibit commercial vessels with pelagic longline gear onboard from being able to receive revenues as a result of landing silky sharks, but it would also facilitate enforcement. This species is typically not targeted by pelagic longline vessels. Between 2006 through 2010, an average of less than one percent of pelagic longline trips kept silky sharks (on average of seven vessels/year kept silky sharks). A decrease in revenue of approximately $3,392/year may be distributed across the universe of vessels that had received economic benefits from landing these sharks in the past. These pelagic longline vessels also interact with other pelagic species, including yellowfin and albacore tunas or swordfish that vessels could still land in order to offset some of the economic impacts of the preferred alternative. Because these vessels catch and interact with other species besides silky sharks, they have been affected by past regulations regarding pelagic longline gear and will likely be affected by both Amendments 5 and 7. However, because these vessels retain so few silky sharks and are unlikely to switch to silky sharks in the future, we do not expect that these potential future measures would alter the cumulative social or economic impacts of this current action.

The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the “ICCAT fisheries” subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

4.9 Comparison of Alternatives

Table 4.1 compares the environmental impacts of the three alternatives.

Table 4.1 Comparison of the impacts of analyzed alternatives

○ Neutral Impacts
⊙+ Minor Beneficial Impacts
⊘+ Moderate Beneficial Impacts
●+ Significant Beneficial Impacts
⊙- Minor Adverse Impacts
⊘- Moderate Adverse Impacts
●- Significant Adverse Impacts

Alternative	Ecological	Protected Resources	Socioeconomic
A1 *No Action. Do not implement the ICCAT shark recommendation*	⊙-	○	⊙+
A2 *Implement ICCAT Recommendation 11-08 by prohibiting vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks*	⊙+	○	⊙-
A3 ***Implement ICCAT Recommendation 11-08 and additional prohibitions against the storing, selling, or purchasing of silky sharks in the commercial ICCAT fisheries for tuna and tuna-like species – Preferred Alternative***	⊙+	○	⊙-

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACT

5.1 Mitigating Measures

Under the preferred alternative, we would implement the 2011 ICCAT Recommendation 11-08 in accordance with the Consolidated HMS FMP, ATCA and the Magnuson-Stevens Act. The preferred alternative would prohibit pelagic longline vessel operators and owners from retaining, transshipping, landing, selling, or storing silky sharks. This action could result in direct, minor, adverse socioeconomic impacts to fishery participants because these species would now have to be released when caught. Impacts to the commercial pelagic longline fishermen would be minor as these species are not commonly caught as bycatch when fishing for tuna and tuna-like species. Therefore, we have not identified any measures to mitigate these minor adverse effects.

5.2 Unavoidable Adverse Impacts

Although the preferred alternative would result in the prohibition of silky sharks for certain sectors of the HMS fisheries, it is consistent with ICCAT Recommendation 11-08, the Consolidated HMS FMP, ATCA, and the Magnuson-Stevens Act. We do not expect fishermen to change current fishing practices or increase fishing effort due to the prohibition of this species. Nor do we expect this action would modify fishing behavior or gear type. Thus, there are no unavoidable adverse impacts to ecological resources and protected resources, but the minor adverse socioeconomic impacts cannot be avoided.

5.3 Irreversible and Irretrievable Commitment of Resources

No irreversible or irretrievable commitments of resources are expected from this action.

6.0 ECONOMIC EVALUATION

Note that all dollars are reported in nominal dollars, consistent with methods used in the Consolidated HMS FMP.

6.1 Number of Vessels and Permit Holders

This section describes the number of vessel and dealer permit holders that may be affected by this rulemaking, Table 6.1. The number of tuna longline permit holders is used to estimate the universe of pelagic longline vessels that would be impacted. These permits have been limited access since 1999. The number of Shark Dealer permits are also provided; these permits are not limited access. All permit holders are considered small entities for purposes of Executive Order 12866.

Table 6.1 Number of Tuna Longline (pelagic longline) and Shark Dealer Permits, 2007-2011. Source: NMFS, 2011.

Type of Permit	2007	2008	2009	2010	2011
Tuna Longline	218	241	259	248	242
Shark Dealer	206	128	106	108	117

6.2 Gross Revenues of Commercial Fishermen

We calculated annual gross revenues by combining current federal tuna longline permit holders and swordfish permit holders with their reported landings from logbooks and HMS dealer reports averaged from 2006 to 2010. These landings were multiplied by ex-vessel prices for tuna and swordfish meat obtained from dealer reporting to determine annual gross revenues. Table 6.2 provides data on the prices tuna and swordfish fishermen received at the dock. The average values from HMS dealer reports were used to construct the table.

Table 6.2 Estimates of the Total Ex-vessel Annual Revenues of Atlantic HMS Commercial Tuna and Swordfish Fisheries. Source: NMFS, 2011.

Species	2006	2007	2008	2009	2010
Tuna (bigeye, bluefin, yellowfin, skipjack, and albacore)	$18,748,783	$21,979,444	$18,938,039	$20,395,941	$22,859,518
Swordfish	$10,629,193	$14,648,583	$12,394,682	$12,979,866	$13,996,189

Note: Average ex-vessel prices may have some weighting errors

Shark meat prices for silky sharks were calculated from HMS dealer data to determine the price per pound for the species. The weighted median for silky shark meat from 2006-2010 was $0.75 per lb (Table 6.3). Species-specific shark fin prices are not recorded in the dealer data, therefore; the

shark fin price per pound for silky sharks was calculated according to the species group, large coastal sharks. The mean weighted average over this time series was $11.11 per lb (Table 6.3).

Table 6.3 Weighted median price of silky shark products from 2006-2010 according to Atlantic HMS dealer reports. Source: SEFSC PDC and NEFSC CFDBS.

Shark Product	Weighted Median Price
Silky Shark Meat	$0.75
Shark Fin	$11.11

HMS logbook data indicate that on average, 2,671 lb of silky sharks were commercially landed each year from 2006 through 2009 (because logbook data for 2010 did not include weight information, it is not included in this estimate). Applying the species-specific weighted median price to each of these species yields an annual revenue for silky sharks of approximately $3,392 ($1,489 for fins and $1,903 for meat). Fin weight was calculated by taking 5 percent of the total annual average weight of silky sharks, and the annual fin revenue for the time series was approximately $1,489 (117 lb * $11.11).

6.3 Operating Costs of Commercial Fishermen

We collect operating cost information from commercial permit holders via logbook reporting. Each year, we select 20 percent of active Atlantic HMS commercial permit holders to report economic information along with their Atlantic HMS logbook or Coastal Fisheries logbook submissions. In addition, we also receive voluntary submissions of the trip expense and payment section of the logbook form from non-selected vessels.

The primary expenses associated with operating Atlantic HMS permitted commercial vessel include labor, fuel, bait, ice, groceries, other gear, and light sticks on swordfish trips. The following data is from the Atlantic HMS logbook submissions. We collected unit costs on some of the primary variable inputs associated with trips. The unit costs for fuel, bait, and light sticks are reported in Table 6.4. Fuel costs increased approximately 89 percent from 2005 to 2008 while the cost per pound for bait has remained fairly constant. This spike in fuel costs ended in 2009 when fuel costs decreased by 45 percent in one year. The unit cost per light sticks used in the pelagic longline fishery has actually declined from 2005 to 2009.

Table 6.4 Median Unit Costs for Fuel, Bait, and Light Sticks 2005 - 2009. Source: Atlantic HMS logbooks

Input Unit Costs	2005	2006	2007	2008	2009
Fuel	$1.90	$2.20	$2.29	$3.59	$1.98
Bait	$0.85	$0.85	$0.85	$0.85	$0.85
Light Sticks*	$0.50	$0.50	$0.40	$0.37	$0.37

*Cost per light stick.

Table 6.5 provides the median total cost per trip for the major variable inputs associated with Atlantic HMS trips. Fuel costs are one of the largest variable expenses and the total costs of fuel

decreased substantially per trip in 2009 in line with the decline in the unit cost of fuel.

Table 6.5 Median Input Costs for HMS Trips 2005 - 2009. Source: Atlantic HMS logbooks

Input Costs	2005	2006	2007	2008	2009
Fuel	$2,341	$1,728	$2,144	$3,031	$2,303
Bait	$920	$750	$858	$1,080	$1,320
Light Sticks	$500	$500	$520	$444	$446
Ice Costs	$480	$400	$540	$520	$600
Grocery Expenses	$610	$470	$600	$600	$800
Other Trip Costs	$1,250	$920	$1,236	$1,293	$1,500

Labor costs are also an important component of operating costs for HMS commercial vessels. Table 6.6 lists the amount of crew on a typical trip. The median number of crew members has been consistently three from 2005 to 2009. Most crew and captains are paid based on a lay system.

According to Atlantic HMS logbook reports, owners are typically paid 50 percent of revenues. Captains receive a 20 percent share and crew in 2009 received 22.5 percent on average. These shares are typically paid out after costs are netted from gross revenues. Median total shared costs per trip have ranged from $4,500 to $5,000 from 2005 to 2009.

Table 6.6 Median Labor Inputs and Costs for HMS Trips 2005 - 2009. Source: Atlantic HMS logbooks

Labor	2005	2006	2007	2008	2009
Number of Crew	3	3	3	3	3
Owner Share	50%	50%	50%	50%	50%
Captain Share	20%	20%	20%	20%	20%
Crew Share	11%	12%	15%	15%	22.5%
Total Shared Costs	$4,550	$4,500	$4,500	$5,000	$4,689

In 2009, median reported total trip sales were $9,731. In 2008, median reported total trip sales were $10,970. In 2007, the median reported total trip sales were $12,064. After adjusting for operating costs, median net earnings per trip in 2008 was $3,214. Median net earnings per trip increased to $4,340 in 2009.

A preliminary review of 2010 Atlantic HMS logbook operating cost data indicates that no significant changes have occurred in input costs. In 2010, input unit costs remained relatively stable and within the 2005 to 2009 range. Fuel costs trended upward in 2010, reversing the sudden 2009 decrease in fuel prices, but remained within the 2005 to 2009 range. Input costs in 2010 were comparable to 2009 and so were labor inputs. Final 2010 and 2011 operating cost information for HMS commercial permit holders will be available when the 2012 SAFE Report is published.

Operating costs for the Atlantic HMS commercial fleet vary considerably from vessel to vessel. Unit input costs, vessel size, target species, geographic location, and other factors impact operating costs.

6.4 Expected Economic Impacts of the Alternatives

6.4.1 No Action Alternative

Alternative 1 would maintain the status quo and allow retention of silky sharks by pelagic longline and vessels issued both an HMS Charter/Headboat and commercial shark permit, which target tuna and tuna-like species in the U.S. portion of the ICCAT Convention Area. Under the no action alternative, fishery participants would experience positive economic impacts, consistent with their present activities because they would continue to be able to target and/or land silky sharks. Assuming revenues in the pelagic longline fishery remain consistent with past (2006-2010) levels, the participants who harvest silky sharks could experience total economic benefits of $3,392 per year. This includes revenue from silky shark fins ($1,489) and shark meat ($1,903). These revenues are not per vessel; rather, they represent revenues for the entire pelagic longline fishery and were distributed amongst participants harvesting silky sharks. Between 2006 through 2010, on average, seven vessels/year landed silky sharks equating to per vessel revenues of $485/vessel/year. However, each vessel is also predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, $485 in revenues from silky shark sales is very little (<1 percent) compared to each vessel's overall revenue. We predict that each trip has an upfront cost of approximately $6,969.

6.4.2 Alternative 2: Implement ICCAT Recommendation 11-08 by prohibiting vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks

Under Alternative 2, primarily Atlantic HMS commercial permit holders with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. As described above, the pelagic longline fishery has landed silky sharks worth approximately $3,392 per year for all vessels or $485 per vessel per year. Under this alternative, those revenues would be lost. However, we do not expect these vessels to experience significant impacts due to the low proportion of silky sharks that are caught relative to the total pelagic longline vessel revenues ($96,525 from swordfish and $94,461 from tuna per vessel). Therefore, a loss of $485 is very little compared to each vessel's overall revenue.

6.4.3 Alternative 3: Implement ICCAT Recommendation 11-08 by prohibiting vessel operators in the commercial ICCAT fisheries from retaining, transshipping, or landing silky sharks

Alternative 3 would have the same expected economic impacts as Alternative 2. Moreover, the additional prohibitions under Alternative 3 would facilitate enforcement. Under Alternative 3, primarily Atlantic HMS commercial permit holders with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. Therefore, we do not anticipate that this alternative would have significant socioeconomic impacts on pelagic longline or charter fishermen.

7.0 REGULATORY IMPACT REVIEW

This section assesses the economic impacts of the alternatives presented in this document. The RIR is conducted to comply with Executive Order (E.O.) 12866 and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. Certain elements required in an RIR are also required as part of an EA. Thus, this section should be considered only part of the RIR, the rest of the RIR can be found throughout this document.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> *In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits should be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

E.O. 12866 further requires Office of Management and Budget review of proposed regulations that are considered to be "significant." A significant regulatory action is one that is likely to:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments of communities;
- Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in this Executive Order.

7.1 Description of the Management Objectives

Please see Chapter 1 for a description of the objectives of this rulemaking.

7.2 Description of the Fishery

Please see Chapter 3 for a description of fishery and environment that could be affected by this rulemaking.

7.3 Statement of the Problem

Please see Chapter 1 for a description of the problem and need for this rulemaking.

7.4 Description of Each Alternative

Please see Chapter 2 for a summary of each alternative and Chapter 4 for a complete description of each alternative and its expected ecological, social, and economic impacts. Table 7.1 shows the net economic benefits and costs of each of the analyzed alternatives.

Table 7.1 Net Economic Benefits and Costs of Alternatives

Alternatives	Net Economic Benefits	Net Economic Costs
Alternative 1: No Action	This alternative would maintain current economic activity associated with silky sharks in the short-term.	In the long-term, there could be economic costs associated with continued fishing of silky sharks if the population declines. Such a population decline could reduce associated revenues from landings
Alternative 2: Prohibit retention of silky sharks in the commercial ICCAT fisheries	In the long-term, if all countries are consistent with the ICCAT Recommendation and the overall reduced mortality of silky sharks leads to a population increase, there may be future commercial fishing opportunities for these species.	Commercial landings of silky sharks along with tuna and tuna-like species are a rare occurrence in the commercial pelagic longline fishery. Therefore, economic loss associated with this alternative is anticipated to be minor. From reporting landings, there would be an estimated reduction of $3,392 in gross revenues (fleet-wide) annually from silky sharks.
Alternative 3: Prohibit retention and additional prohibitions of silky sharks in the commercial ICCAT fisheries	In the long-term, if all countries are consistent with the ICCAT Recommendation and the overall reduced mortality of silky sharks leads to a population increase, there may be future commercial fishing opportunities for these species.	Commercial landings of silky sharks along with tuna and tuna-like species are a rare occurrence in the pelagic longline commercial fishery. Therefore, economic loss associated with this alternative is anticipated to be minor. From reporting landings, there would be an estimated reduction of $3,392 in gross revenues (fleet-wide) annually from silky sharks. From reporting landings, there would be an estimated reduction of $3,392 in gross revenues (fleet-wide) annually from silky sharks.

7.5 Economic Analysis of Expected Effects of Each Alternative Relative to the Baseline

We do not foresee that the national net benefits and costs would change significantly in the short- or long-term as a result of implementation of the preferred alternative. Alternative 3, which would prohibit primarily pelagic longline vessel operators and owners from retaining, transshipping, landing, storing, and selling silky sharks, would reduce the total number of sharks landed and available for commercial sale. However, this is only a minor reduction in total shark landings. This preferred action could result in minor, adverse economic impacts to the commercial pelagic longline fishery. Alternative 3 would also facilitate enforcement. Because silky sharks are encountered in relatively small numbers in U.S. commercial pelagic longline fishery that targets tuna and tuna-like species, we do not expect the overall economic impact of the preferred alternative, Alternative 3, to have a significant adverse economic impact over the short- or long-term. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the “ICCAT fisheries” subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

7.6 Conclusion

Under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: 1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The action described in this Final EA/RIR/FRFA does not meet the above criteria. For example, the economic impacts as reflected in this final rule are under the $100 million threshold. This action raises no novel or legal policy issues as it implements an ICCAT recommendation according to international and domestic law and policy, is consistent with past regulatory action taken by NMFS to conserve other oceanic shark species, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the action described in this document has been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 7.1.

8.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

The Final Regulatory Flexibility Analysis (FRFA) is conducted to comply with the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) (RFA). The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimize any significant effects on small entities. Certain data and analysis required in a FRFA are also included in other chapters of this EA. Therefore, the FRFA incorporates the economic impacts identified in the EA by reference as supporting data for this analysis.

8.1 Statement of the Need for and Objectives of this Final Rule

Atlantic tunas and tuna-like species are managed under the dual authority of the Magnuson-Stevens Act and ATCA. Under the Magnuson-Stevens Act, we must, consistent with the National Standards, manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. Under ATCA, we are authorized to promulgate regulations, as may be necessary and appropriate, to implement the recommendations from ICCAT. ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties unless they object per the treaty; the United States is a Contracting Party. Recommendation 11-08 prohibits retaining on board, transshipping, or landing any part or whole carcass of silky shark (*Carcharhinus falciformis*) by fishing vessels operating in ICCAT-managed fisheries.

Adding prohibitions beyond those called for under Recommendation 11-08 would make this action consistent with the approach we have taken for oceanic whitetip sharks and scalloped, smooth and great hammerhead sharks in the commercial pelagic longline fishery for tuna and tuna-like species. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention. Therefore, this action is intended to implement Recommendation 11-08 in a manner that meets our obligations under ICCAT and ATCA consistent with our management authority for HMS fisheries under the Magnuson-Stevens Act and the Consolidated HMS FMP.

8.2 A Summary of the Significant Issues Raised By the Public Comments in Response to the Initial Regulatory Flexibility Analysis, 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

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.

There were no direct public comments raising significant issues in response to the Initial Regulatory Flexibility Analysis (IRFA). However, three public comments were received regarding the potential for increased regulatory discards by prohibiting the retention of silky sharks in the commercial pelagic longline fishery.

We calculated that this action would lead to a total estimated annual increase in silky shark discards of 60 sharks, by converting average annual landings into regulatory discards. NMFS estimated in the IRFA that vessels that land silky sharks would incur annual collective economic losses of $3,392 ($1,489 for fins and $1,903 for meat) from having to discard these sharks. Logbook data indicate that under existing regulations, between 2006 and 2010, 96 percent of silky sharks caught on pelagic longline gear 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 pelagic longline gear typically target tuna and swordfish, which are both higher valued species than sharks. Due to the high urea content of sharks, retaining sharks on vessels with limited hold space may affect the 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. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the "ICCAT fisheries" subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

One commenter questioned the silky shark fin price per pound and annual estimate of silky shark landings in the analysis for the proposed rule. See Comment 8 and the corresponding response in Section 12.

No changes were made in the rule resulting from public comments in response to the IRFA.

8.3 Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

Section 604(a)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has defined a

"small" fishing entity as one with average annual receipts of less than $4.0 million; a small charter/party boat entity is one with average annual receipts of less than $6.5 million; a small wholesale dealer as one with 100 or fewer employees; and a small seafood processor as one with 500 or fewer employees. This action would apply to all participants in the Atlantic HMS commercial fisheries that have pelagic longline gear onboard, permitted shark dealers, and the small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel. These vessels and dealers are all considered small fishing entities under the SBA definition. However, Charter/Headboat vessels generally do not target or land silky sharks when they have tunas or tuna-like species on board. As of October 2011, 242 pelagic longline vessels held an Atlantic Tunas Longline permit. Including the vessels issued both HMS Charter/Headboat permits and commercial shark permits in the prohibition against silky shark retention does not affect this number because those vessels do not use longline gear.

8.4 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 will be Subject to the Requirements of the Report or Record

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.

8.5 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

Under section 604(a)(5) of the RFA, agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of this document. 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 final rule, consistent with Magnuson-Stevens Act, we

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, second, and fourth categories described above. We do 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 and ATCA. Thus, there are no alternatives considered under the third category. As described below, we analyzed several different alternatives in this rulemaking and provide rationale for identifying the preferred alternative to achieve the desired objective.

We prepared a FRFA to analyze the impacts on small entities of the alternatives for implementing the ICCAT Recommendation 11-08 for all domestic fishing categories that target tuna and tuna-like species. Specifically, the FRFA assesses the impacts of the various alternatives on pelagic longline vessels, which are the only vessels that participate in the Atlantic HMS commercial fishery that target tuna and tuna-like species, all of which are considered small entities. We considered and analyzed three alternatives including Alternative 1 (no action); Alternative 2 (implementing ICCAT Recommendation 11-08 in the commercial ICCAT fisheries); and Alternative 3 (implementing ICCAT Recommendation 11-08 and additional prohibitions against storing, selling, and purchasing of silky sharks in the commercial ICCAT fisheries).

Under the No Action Alternative, Alternative 1, there would be no economic impacts to HMS pelagic longline vessels fishing for tuna and tuna-like species. Under this alternative, commercial pelagic longline vessels that fish for tuna and tuna-like species that are also currently authorized to land silky sharks would be able to continue that practice. Commercial pelagic longline fishermen would continue to land silky sharks and could potentially earn $485 per vessel. Additionally, each vessel is predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, revenues from silky shark sales are minor (<1 percent) compared to each vessel's overall revenue.

Under Alternative 2, pelagic longline vessel operators and owners could not retain, transship, or land silky sharks, consistent with ICCAT Recommendation 11-08. Thus, on average, each vessel would lose approximately $485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas ($190,986 total revenues).

Under Alternative 3, pelagic longline vessel owners and operators could not retain, transship, land, sell, or store silky sharks, consistent with ICCAT Recommendation 11-08 and other domestic regulations. This alternative is essentially the same as Alternative 2 but would facilitate enforcement. Thus, on average, each vessel would lose approximately $485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas ($190,986 total revenues). We prefer Alternative 3 because it would implement ICCAT Recommendation 11-08, would likely have minor ecological benefits, would have minor socioeconomic impacts on the pelagic longline fishery, and would facilitate enforcement. Additionally, Alternative 3 would be unlikely to change fishing practices or effort.

9.0 COMMUNITY PROFILES

Section 102(2)(a) of the National Environmental Policy Act (NEPA) requires Federal agencies to consider the interactions of natural and human environments by using "a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences . . . in planning and decision-making." Federal agencies should address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. The Magnuson-Stevens Act also requires, among other matters, consideration of social impacts. Consideration of the social impacts associated with fishery management measures is a growing concern as fisheries experience variable participation and/or declines in stocks.

Profiles for HMS fishing communities were included in Chapter 9 of the Consolidated HMS FMP and updated in Chapter 6 of the 2011 SAFE Report. These HMS communities are analyzed for social impacts in this action due to the importance of pelagic longline fishing to the community: Gloucester, MA; New Bedford, MA; Barnegat Light and Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; and Venice and Dulac, LA.

The impacts of the action are expected to be minor in all of these communities. The action to implement the 2011 ICCAT Recommendation on the prohibition of silky sharks in the commercial ICCAT fisheries, primarily the pelagic longline fishery, is not expected to decrease commercial fishing opportunities, because silky sharks are rarely retained by pelagic longline vessels.

10.0 OTHER CONSIDERATIONS

10.1 Magnuson-Stevens Act and Atlantic Tunas Convention Act

We have determined that this action is consistent with the Magnuson-Stevens Act, ATCA, and other applicable law. We have also determined that this action is consistent with the Consolidated HMS FMP. The bases for these determinations are set forth below.

With regard to the Magnuson-Stevens Act National Standards (NS) (see 50 C.F.R. Part 600, Subpart D for National Standard Guidelines), this action does not change pre-existing mechanisms for establishing annual catch limits and accountability measures to prevent overfishing in the Atlantic shark fisheries, consistent with NS 1. This action should support efforts to address overfishing by reducing fishing mortality for silky sharks. Because the action is based on the results of the 2011 ICCAT Recommendation and the data used for the analysis in this document is based on fishery logbook and observer data from 2006 through 2010, it is based on the best scientific information available (NS 2), including self-reported, observer, and stock assessment data, which provide for the management of the affected species throughout its range (NS 3).

This action does not discriminate against fishermen in any state (NS 4) nor does it alter the efficiency in utilizing the resource (NS 5). With regard to NS 6, the action takes into account any variations that may occur in the fishery and the fishery resources. Additionally, we considered the costs and benefits of these management measures economically and socially under National Standards 7 and 8 in Sections 4, 5, and 6 of this document. The action would prohibit the retention of silky sharks primarily in the commercial HMS pelagic longline fishery for tuna and tuna-like species, and would not increase fishing effort for Atlantic sharks; therefore, impacts to bycatch species and protected species are similar to those previously analyzed in Amendment 2 and Amendment 3 to the Consolidated HMS FMP (NS 9). Finally, the action would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

This action contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

10.3 E. O. 13132

This action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

11.0 LIST OF PREPARERS AND PERSONS/AGENCIES CONSULTED

This EA/RIR/FRFA was prepared by Peter Cooper, Sarah deFlesco, Sarah McLaughlin, Karyl Brewster-Geisz, and Margo Schulze-Haugen from the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division for a complete copy of current regulations for the Atlantic HMS commercial and recreational fisheries.

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Discussions relevant to the formulation of the preferred alternatives and the analyses for this EA/RIR/FRFA involved input from several NMFS and NOAA components and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Office of Science and Technology, NMFS Northeast Regional Office, NOAA General Counsel for Fisheries, NOAA General Counsel for Enforcement, NOAA Office of Law Enforcement, and the members of the HMS AP (which includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils). NMFS also has received comments from individual fishermen and interested parties.

12.0 PUBLIC COMMENT AND AGENCY RESPONSES

We received five written comments on the proposed rule. No one attended the public hearing we held via conference call on July 9, 2012. Below, we summarize and respond to all comments made specifically on the proposed rule.

Comment 1: Given concerns about the vulnerability of silky sharks, retention of silky 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 Recommendation 11-08. This recommendation requires the release of silky sharks caught in association with ICCAT fisheries. The United States is obligated to implement these recommendations, through regulations, consistent with ATCA. Expanding the prohibition to all non-ICCAT managed commercial HMS fisheries is not consistent with the recommendation. U.S. shark fisheries are managed under the authority of the Magnuson-Stevens Act.

In 2010, ICCAT's SCRS conducted an ecological risk assessment on a number of pelagic sharks, including silky sharks, to assess their vulnerability to pelagic longline gear in the Atlantic Ocean (Cortés et al., 2010). An ecological risk assessment is not meant to replace a formal stock assessment as it does not estimate the status of a stock, but it can help identify whether certain stocks are vulnerable to overfishing (Cortés et al., 2010). The ecological risk assessment showed that pelagic sharks such as silky sharks are particularly vulnerable to pelagic longline fisheries, mostly as a result of their limited productivity and susceptibility to capture on pelagic longline gear, and silky sharks were shown to one of the most vulnerable (Cortés et al., 2010). However, a formal stock assessment has not been conducted on silky sharks to indicate if the stock is overfished and/or experiencing overfishing.

An "overfished" and/or "overfishing occurring" status does not automatically put a shark species on the prohibited list. Some level of fishing may be allowable under an applicable rebuilding plan, depending on the stock status. NMFS has a process for placing a shark species on the prohibited species list. Per the regulations at regulations at §635.34(c), NMFS *may* add sharks to the prohibited list if they meet at least two of the four following criteria: (1) there is sufficient biological information to indicate the stock warrants protections, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list, (2) the species is rarely encountered or observed caught in HMS fisheries, (3) the species is not commonly encountered or observed caught as bycatch in fishing operations, or (4) the species is difficult to distinguish from other prohibited species (*i.e.*, look-alike issue).

In reviewing these criteria, NMFS acknowledges that the ecological risk assessment did find silky sharks to have limited productivity, which is a factor to be considered in the first criterion. However, the species is encountered in pelagic longline fisheries and other shark fisheries, thus not meeting the second and third criteria. Finally, while silky sharks are similar to dusky, sandbar, bignose, and night sharks and are prohibited in recreational shark fisheries due to concerns with

misidentification, there are distinguishable characteristics between silky sharks and these other species (Schulze-Haugen et al., 2003) that commercial pelagic longline and directed shark fishermen, who encounter these species regularly, are expected to know, therefore not fully meeting the intent of the fourth criterion. Meeting two or more of the criteria does not automatically result in listing a shark species as prohibited. NMFS also reviews the balance of information regarding all criteria, current management measures, and available scientific information when determining whether to prohibit a species. The purpose of this action is to implement the ICCAT recommendation, the scope of which covers vessels in ICCAT-managed (i.e., tuna and tuna-like) fisheries. As discussed in the response to Comment 2, NMFS manages the U.S. directed shark fisheries through a variety of existing management measures. Thus, NMFS is following the recommendation as adopted, prohibiting the retention of silky sharks caught in association with ICCAT fisheries. Under existing domestic regulations implementing the Magnuson-Stevens Act, full prohibition of silky shark retention in all fisheries is not warranted at this time.

Comment 2: The proposed rule fails to satisfy the federal government's ICCAT obligations by continuing to allow silky sharks to be retained in fisheries other than the pelagic longline fishery, which are clearly included in the scope of ICCAT recommendations. Whether or not a fishery is targeting sharks is irrelevant. NMFS must consider all HMS fisheries that are allowed to retain tuna or tuna-like species to be ICCAT fisheries and must therefore prohibit retention of silky sharks in all of them. If the true intent is to ensure a reduction in silky shark mortality and to ensure that ICCAT measures are enforced, then these prohibitions should apply to all HMS fisheries.

In the process of making the point above, one commenter incorrectly quoted the text of ICCAT Recommendation 11-08 as "prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of silky sharks taken in the Convention Area in association with ICCAT fisheries."

Response: The relevant ICCAT recommendation was limited in scope to silky sharks caught in association with ICCAT-managed fisheries. Therefore, the requirement to release all silky sharks will be applied only to U.S. fisheries that target tuna and tuna-like species. This action would affect primarily commercial vessels with pelagic longline gear onboard that fish for tunas and tuna-like species. During the preparation of the final rule, NMFS determined that, to make the action consistent with the August 29, 2011 action that implemented similar ICCAT Recommendations regarding certain hammerhead sharks and oceanic whitetip sharks (76 FR 53652), this action also should apply to the small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel. This measure is necessary to ensure consistency across implementation of ICCAT recommendations and to enhance compliance and enforcement. These vessels, however, generally do not target or land silky sharks when they have tunas or tuna-like species on board. Harvesting silky sharks is already prohibited in the recreational fishery. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the "ICCAT fisheries" subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

U.S. commercial shark fisheries using gear other than pelagic longline currently are managed through a variety of measures, including quotas and subquotas, seasons, retention limits, gear restrictions, and time/area closures. Although silky sharks could be caught on handgear, bottom longline, or gillnet gear, these gears directly target sharks and are not used in association with ICCAT fisheries. Additionally, while it is possible to catch tuna and tuna-like species using handgear, bottom longline, and gillnet gear, this rarely occurs when these gear types are used to target sharks. For example, data from observed bottom longline and gillnet trips show bycatch of two sailfish, no swordfish, and no managed tunas in 2010 (NMFS, 2011) and three bigeye tuna and one skipjack tuna in 2011 (Gulak, 2012; Hale et al., 2012).

Because there are three separate ICCAT shark recommendations with similar language, NMFS would like to clarify the differences in the text to reduce potential confusion. Under Recommendation 10-07, ICCAT parties are required to "prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks in any fishery." Under Recommendation 10-08, ICCAT parties are required to "prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family *Sphyrnidae* (except for *Sphyrna tiburo*) taken in the Convention Area in association with ICCAT fisheries." The language in these two recommendations differs from that in Recommendation 11-08, under which ICCAT parties "shall require fishing vessels flying their flag and operating in ICCAT managed fisheries to release all silky sharks whether dead or alive, and prohibit retaining on board, transshipping, or landing any part or whole carcass of silky shark." Recommendation 11-08 for silky sharks does not include language that prohibits storing, selling and purchasing any part of the shark species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention.

Comment 3: NMFS' proposal to prohibit retention of silky sharks only when tuna or tuna-like species are also retained is flawed and may increase dead discards. A fisherman may catch and keep a silky shark, thus killing the shark. If the fisherman then catches a tuna or tuna-like species that he would prefer to keep, the fisherman will dump the shark overboard dead. The discard mortality would be significantly higher than if the shark had been released immediately after being captured.

Response: The action NMFS is taking is to prohibit the retention of silky sharks on Atlantic HMS commercially-permitted vessels in the commercial ICCAT fisheries, primarily affecting those that have pelagic longline gear on board. Under this action, in the scenario the commenter describes, a pelagic longline vessel would be required to release the silky shark regardless of what other species may be caught on the same trip because of the pelagic longline gear onboard. A vessel issued both an HMS Charter/Headboat permit and a commercial shark permit would not be able to retain both a tuna and a silky shark. This is a very small number of vessels, however, and very few such situations are

expected to arise.

An analysis of the 2006-2010 HMS logbook data indicates that, on average, a total of 60 silky sharks are kept per year. An additional 1,417 silky sharks per year were caught (on average) and subsequently discarded (676 released alive and 742 discarded dead). NMFS does not expect the actual number caught (1,477 per year on average) to change as a result of this action because fishermen participating in the pelagic longline fishery do not target or retain large numbers of silky sharks now and charter vessels typically do not target or land silky sharks when they have tunas or tuna-like species on board. NMFS estimates that, of the 60 silky sharks that are currently retained, 17 (29 percent) would be released alive as a result of this rulemaking. The number of silky sharks discarded dead would increase slightly (from 742 to 785) since pelagic longline vessels would no longer be able to retain any silky sharks, and one or two silky sharks might have to be released by vessels with the specified HMS Charter/Headboat and commercial shark permit combination. In addition, current regulations require that when HMS are released, they be released in a manner that will ensure maximum probability of survival, without removing the fish from the water. This is consistent with the provision of Recommendation 11-08 to promptly release silky sharks unharmed.

Comment 4: One commenter questioned NMFS' data on shark mortality, indicating it is antiquated, obsolete, and inaccurate, and stated that ICCAT is too lax and negligent in protection of species.

Response: The information NMFS used for the environmental and economic analyses for this action includes both pelagic longline observer program (POP) data and HMS logbook data from 2006 through 2010. Complete, finalized data from 2011 were not available at the time the draft EA/RIR/IRFA. NMFS conducted an analysis of the newly available 2011 data during the public comment period for this action and determined that, in general, the inclusion of the 2011 data would not substantially alter any of the data presented in the draft EA/RIR/IRFA, or result in any changes to the overall conclusions or preferred alternatives of the draft document.

NMFS has undertaken management measures for all Atlantic HMS species fully consistent with its legal obligations under the Magnuson-Stevens Act, ATCA, and other relevant statutes.

Comment 5: 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. Further, seeking shark recommendations at ICCAT circumvents U.S. domestic fisheries law, including the National Standards of the Magnuson-Stevens Act, and is contrary to the Food and Agriculture Organization of the United Nations (FAO) International Plan of Action, which "encourages the full use of dead sharks."

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. As described under Comment 1 above, NMFS does not

manage the U.S. directed shark fishery for LCS or other shark species under ICCAT/ATCA.

The Shark Conservation Act of 2010 includes a provision that urges international fishery management organizations to which the United States is a member to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark and discarding the carcass of the shark at sea.

For example, in the case of shortfin mako, where the United States' contribution to the overall fishing mortality is small relative to other ICCAT Parties, developing effective multilateral shark management measures can be an effective tool for ending overfishing of the entire shortfin mako stock. This approach is also consistent with National Standard 3 that states that to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The main objective of the FAO IPOA for the Conservation and Management of Sharks (IPOA) is to ensure the conservation and management of sharks and their long-term sustainable use. It calls on members to "strive to cooperate through regional and subregional fisheries organizations or arrangements, and other forms of cooperation, with a view to ensuring the sustainability of shark stocks, including, where appropriate, the development of subregional or regional shark plans." The IPOA calls on nations to implement a National Plan of Action that among other things should aim to ensure that shark catches from directed and non-directed fisheries are sustainable as well as identify and provide special attention in particular to vulnerable or threatened shark stocks. The IPOA provision regarding the "full use of dead sharks" referenced by the commenter is also an attribute that the FAO IPOA recommends for inclusion in a nation's national plan of action. In 2001, the United States developed and implemented the U.S. National Plan of Action for the Conservation and Management of Sharks in consultation with stakeholders. While it may be appropriate to require full utilization of certain species, the Ecological Risk Assessment highlighted that silky sharks are vulnerable due to limited productivity and susceptible to capture in pelagic longline fisheries such that ICCAT adopted a ban on retention. NMFS acknowledges that while this ban on retention may lead to some dead discards, the release of additional live silky sharks is expected to assist with sustainability of the resource.

Comment 6: Neither NMFS nor ICCAT has conducted a domestic "species-specific" stock assessment for silky sharks. The justification for Recommendation 11-08 was based on an ecological risk assessment. NMFS needs to conduct a full benchmark stock assessment for silky sharks as soon as possible.

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

While NMFS usually conducts shark stock assessments through the SEDAR process, some

pelagic sharks have been assessed by ICCAT's SCRS and because the United States is only one of numerous ICCAT Parties that catch silky sharks, it would be appropriate for ICCAT's SCRS to assess the status of the entire Atlantic silky shark stock so that the assessment can take into account all sources of mortality. While there have been no formal or peer-reviewed stock assessments for silky sharks, the SCRS ecological risk assessment is a valid basis for management decisions in situations where there is no formal assessment and is appropriate for management action under the Magnuson-Stevens Act.

Comment 7: This action would result in more regulatory discards, especially if any southern zones currently closed to pelagic longline gear are reopened. Silky sharks are found in the southern ranges around the Gulf Stream and in the Gulf of Mexico.

Response: Please see the response to Comment 3 above. NMFS is not currently proposing or considering re-opening any southern zones to pelagic longline gear. While the comment is largely speculative, we note that any potential, future action to reopen an area or areas currently closed to HMS-permitted vessels with pelagic longline gear on board would include an analysis of the impacts of such proposed action on HMS and other species, including silky sharks, and the public would have opportunity to comment on any such proposal.

Comment 8: One commenter indicated that adult silky shark fins are worth approximately $20-25 per pound ex-vessel, substantially higher than the $11.11 value in the proposed rule analysis. The commenter also is concerned that the estimate of annual landings is low given the number of active pelagic longline vessels.

Response: The economic data and landings information used in the analysis for this action is as reported to NMFS via HMS logbooks during the 2006 through 2010 period. Reported economic data indicate that prices were $11.11, not $20-25 as the commenter stated. As landings information is tallied from HMS logbooks from all active fishing vessels, the estimate in this rule is the best available information.

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FINDING OF NO SIGNIFICANT IMPACT

Implementation of 2011 ICCAT Recommendation 11-08 on Silky Sharks

National Marine Fisheries Service

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for the Atlantic HMS fisheries for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This EA considers the impacts of implementing ICCAT Recommendation 11-08 (Recommendation by ICCAT on the Conservation of Silky Sharks Caught in association with ICCAT Fisheries) as well as information contained in the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). The EA was developed as an integrated document that includes a Regulatory Impact Review and Final Regulatory Flexibility Analysis. The National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of an action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

We do not expect the action to jeopardize the sustainability of tuna and tuna-like species because this action deals with one species of shark that is caught incidentally to the target species. Fishing patterns and behavior are not expected to change as a result of this action.

2) Can the action reasonably be expected to jeopardize the sustainability of any non-target species?

We do not expect the action to jeopardize the sustainability of any non-target finfish species or shark species. ICCAT adopted Recommendation 11-08 to reduce fishing mortality of silky sharks caught in association with ICCAT-managed fisheries. This action is expected to have minor, beneficial ecological impacts for silky sharks because primarily pelagic longline vessels would be prohibited from retaining this species that is caught incidentally to other target species. This rulemaking would not result in changes in fishery effort or practices; therefore, there would be no changes in impacts to non-target and bycatch species.

3) Can the action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?

We do not expect this action to change fishing patterns or have impacts on EFH, or to allow substantial damage to ocean and coastal habitats and/or EFH. The primary fishing gears used to harvest tuna and tuna-like species (e.g., pelagic longline gear and handgear) are pelagic in nature and have little impact on bottom substrate. Further, the action would not result in a change to fishing effort or the use of fishing gear and would thus have no effect on EFH.

4) Can the action be reasonably expected to have a substantial adverse impact on public health or safety?

We do not expect this action to have substantial adverse impacts on public health and safety. Fishing activity or behavior would not change as a result of the prohibition of retention of silky sharks. Although fishing can be a dangerous profession, we encourage fishermen to be responsible in safety matters while at sea. Nothing in this action would increase the risks already inherent in the fishing profession.

5) Can the action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

NMFS issued a BiOp on the Atlantic pelagic longline fishery on June 1, 2004, which found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the reasonable and prudent measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, we published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. We are implementing the other RPMs in compliance with the 2004 BiOp. According to an August 9, 2007, memorandum regarding reinitiation of the Endangered Species Act Section 7 consultation process for the U.S. Atlantic pelagic longline fishery, we determined that the basis and assumptions of the 2004 BiOp remain valid, and that the expected effects on the species, the Terms and Conditions, and the Incidental Take Statement (ITS), are still appropriate and do not need to be revised. We will continue to assess and evaluate data related to the incidental take of listed sea turtles and undertake additional rulemaking and non-regulatory actions, as required, to implement any additional management measures that are required to remain consistent with the 2004 BiOp.

Consistent with the 2011 ICCAT Recommendation 11-08 for silky sharks, the preferred alternative would prohibit retaining, transshipping, landing, storing, selling or purchasing of this species in the HMS commercial ICCAT fisheries for tuna and tuna-like species, primarily the pelagic longline fishery. We do not expect the measures in this action to alter current fishing practices or increase fishing effort, and therefore the measures should not have adverse impacts on protected

species or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2004 BiOp. Thus, the action would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates. We have thus determined that the action would not cause any effect to listed species beyond effects considered in the 2004 BiOp. Further ESA Section 7 consultation is therefore not necessary.

6) Can the action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

We do not expect the action to have a substantial impact on biodiversity and ecosystem function within the affected area, because the action is not expected to change fishing practices, and/or interactions with non-target and endangered or threatened species. The action would not affect unique geographic areas. In addition, this action is not expected to introduce or spread non-indigenous species.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

No. There are no significant natural or physical environmental effects associated with the action. Thus, there are no significant social or economic impacts interrelated with natural or physical environmental effects.

When considering the prohibition of silky sharks on commercial ICCAT fisheries vessels, this action could have an overall impact to pelagic longline fishermen of $3,392 per year across the entire fleet. However, we do not expect commercial pelagic longline fishermen to alter commercial fishing practices for tuna and tuna-like species since silky sharks constitute a small portion of the total pelagic longline landings and revenues. The final action also would affect the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the “ICCAT fisheries” subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action. Therefore, while the action is likely to result in minor adverse economic impacts, we do not anticipate that this action would have any significant socioeconomic impacts on fishermen.

8) Are the effects on the quality of the human environment likely to be highly controversial?

We do not expect the effects of this action on the human environment to be highly controversial, because current shark management measures and controls have been in place for several years and this fishery is a highly regulated fishery. There is no substantial dispute over the size, nature and effects of the action; nor have we identified any potential for substantial degradation of any element of the human environment.

9) Can the action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

No. The action area does not include the unique areas listed. Thus, the action would not result in substantial impacts to the listed areas.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

No. Effects on the human environment would be similar to those in similar annual actions since 1999, and we considered these effects in the Consolidated HMS FMP. This action is necessary to implement ICCAT Recommendation 11-08 pursuant to ATCA. In compliance with ATCA, we are required to implement domestic regulations consistent with recommendations adopted by ICCAT as necessary and appropriate. On August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with commercial ICCAT fisheries and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652).

11) Is the action related to other actions with individually insignificant, but cumulatively significant impacts?

There are no significant cumulative impacts associated with this action in combination with other recent actions or foreseeable future actions. The final rule implements the 2011 ICCAT Recommendation 11-08, which prohibits the retention, transshipping, or landing of silky sharks. The final rule also prohibits the storing, selling, or purchasing of silky sharks in order to facilitate enforcement.

Pelagic longline vessels do not target silky sharks, which are caught incidentally to tuna and tuna-like species. However, pelagic longline vessels are the primary source of silky shark fishing mortality. We have addressed other pelagic longline-related actions through amendments to the Consolidated HMS FMP and various rules regarding other species. For example, on August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries by vessels in the commercial ICCAT fisheries and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652). We are currently considering potential options for future actions that could affect fishermen with pelagic longline vessels or vessels issued both HMS Charter/Headboat and commercial shark permits, and the species they catch. For example, in September 2012, we will propose measures in Amendment 5 to the Consolidated HMS FMP that are designed to maintain rebuilding of sandbar sharks, end overfishing and rebuild dusky, scalloped hammerhead, and Atlantic blacknose sharks, and address the unknown overfished/ overfishing status

of Gulf of Mexico blacknose sharks. Some of these measures could impact pelagic longline and HMS Charter/Headboat fishermen as they can catch some of those species of sharks. We are also considering potential measures for Amendment 7 to the Consolidated HMS FMP, which addresses potential management measures for Atlantic HMS and in particular, Atlantic bluefin tuna. Some of the measures in Amendment 7 could impact pelagic longline and HMS Charter/Headboat fishermen as they catch Atlantic bluefin tuna.

We do not expect that the incremental impacts of this action when added to the environmental impacts of potential future measures and those of past actions would result in significant cumulative impacts.

12) Is the action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

No, this action would not adversely affect any of the listed locations because there are none in the action area.

13) Can the action reasonably be expected to result in the introduction or spread of a nonindigenous species?

Because the action does not involve ballast water exchange or movement of vessels between water bodies, we do not expect the action to result in the introduction or spread of any non-indigenous species.

14) Is the action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

No, the action is not likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. This action is necessary to implement an ICCAT recommendation pursuant to ATCA and is consistent with the objectives of the Consolidated HMS FMP. In compliance with ATCA, we are required to implement ICCAT recommendations through regulations as may be necessary and appropriate. The HMS regulations at 50 CFR 635 lay out the approach and boundaries for the action, thus the decisions involved are limited and unlikely to involve principles which would affect future actions. As noted, this action is similar to those taken to implement ICCAT recommendations to conserve hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with commercial ICCAT fisheries and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652).

15) Can the action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

No, we preliminarily determined that the action is consistent with the Magnuson-Stevens Act and other applicable Federal law as well as the Consolidated HMS FMP. We likewise preliminarily determined the action would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. We sent letters to the relevant states asking for their concurrence when the proposed rule was filed with the Federal Register in June 2012. The following states have concurred with the consistency determination: New Hampshire, Rhode Island, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana. The remaining states and U.S. territories did not respond; therefore, consistency is inferred. This action would not result in any new impacts on state regulations, regulations outside the Exclusive Economic Zone (EEZ), or laws applicable to the EEZ.

16) Can the action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

We do not expect the action to result in cumulative adverse effects that could have a substantial effect on target species or non-target species because we believe that commercial fishermen would not alter current fishing practices or increase fishing effort for tuna and tuna-like species as a result of the action.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for the rule to implement ICCAT Recommendation 11-08, it is hereby determined that this action would not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

Emily H. Menashes

Emily H. Menashes
Deputy Director, Office of Sustainable Fisheries

9/13/2012
Date