

conspicuous location on the device: "This device may not interfere with TV reception or Federal Government radar."

* * * * *

11. Section 95.1101 is revised to read as follows:

§ 95.1101 Scope.

This part sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz and 1427–1429.5 MHz frequency bands.

12. Section 95.1103(c) is revised to read as follows:

§ 95.1103 Definitions.

* * * * *

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz frequency bands.

13. Section 95.1115(a)(2) and (d)(1) are revised to read as follows:

§ 95.1115 General technical requirements.

(a) * * *

(2) In the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

* * * * *

(d) *Channel use.* (1) In the 1395–1400 MHz and 1427–1429.5 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

* * * * *

14. Section 95.1121, is revised to read as follows:

§ 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1427–1429.5 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1429.5 MHz bands. The locations of government systems in these bands are

specified in footnotes US351 and US352 of § 2.106 of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 635, 648, and 660

[Docket No. 010612153–2015–02; I.D. 041901A]

RIN 0648–AP21

Fisheries Off West Coast States and in the Western Pacific; Atlantic Highly Migratory Species; Fisheries of the Northeastern United States; Implementation of the Shark Finning Prohibition Act

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the provisions of the Shark Finning Prohibition Act (Act). This final rule prohibits any person under U.S. jurisdiction from engaging in shark finning, possessing shark fins harvested on board a U.S. fishing vessel without corresponding shark carcasses, or landing shark fins harvested without corresponding carcasses. Finning is the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea. This final rule is issued in accordance with the requirement of the Act that the Secretary of Commerce (Secretary) issue regulations to implement the Act. This final rule does not alter or modify shark finning regulations already in place in the Atlantic for Federal permit holders.

DATES: Effective March 13, 2002.

ADDRESSES: Copies of the environmental assessment (EA) and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213; fax 562–980–4047.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, at 562–980–4040; or Charles Karnella, Administrator, Pacific Island Area Office, NMFS, at 808–973–2935; or

Karyl Brewster-Geisz, NMFS headquarters, at 301–713–2347.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** website at <http://www.access.gpo.gov/su-docs/aces/aces140.html>

Background

The proposed rule published for this action (66 FR 34401, June 28, 2001) provided substantial background information on the issue of shark finning. A summary of that information is provided here. The Act was passed by Congress and signed by the President in December 2000 out of concern for the status of shark populations and the effects of fishing mortality associated with finning on shark populations. The Act amends the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Act prohibits any person subject to U.S. jurisdiction from (1) engaging in shark finning, (2) possessing shark fins aboard a U.S. fishing vessel without the corresponding carcass, or (3) landing shark fins without a corresponding carcass.

The strong international market for shark fins has increased the potential for fishing shark stocks at unsustainable levels. Uncontrolled shark finning may lead to unsustainable shark harvests, as well as to the waste of usable (but often relatively lower value) shark meat. The intent of the Act is to end the practice of shark finning and support domestic and international conservation of shark stocks.

Provisions of the Final Rule

To implement the Act, this final rule prohibits: (1) Any person from engaging in shark finning aboard a U.S. fishing vessel; (2) any person from possessing shark fins on board a U.S. fishing vessel without the corresponding shark carcasses; (3) any person from landing from a U.S. fishing vessel shark fins without the corresponding carcasses; (4) any person on a foreign fishing vessel from engaging in shark finning in the U.S. exclusive economic zone (EEZ), from landing shark fins without the corresponding carcass into a U.S. port, and from transshipping shark fins in the U.S. EEZ; and (5) the sale or purchase of shark fins taken in violation of the above prohibitions. In addition, this final rule requires that all shark fins and carcasses be landed and weighed at the same time, once a landing of shark fins and/or shark carcasses has begun. This rule does not affect the reporting

requirements currently in place for fisheries that take sharks or for any U.S. vessels that fish solely in state waters and that have not been issued a Federal Atlantic shark or dogfish permit.

This final rule establishes a rebuttable presumption that any shark fins possessed on board a U.S. fishing vessel, or landed from any fishing vessel, were taken, held, or landed in violation of these regulations if the total wet weight of the shark fins exceeds 5 percent of the total dressed weight of shark carcasses landed or found on board the vessel. It would be the responsibility of the person conducting the activity to rebut the presumption by providing evidence that the fins were not taken, held or landed in violation of these regulations. NMFS has used wet weight to apply the 5-percent limit for shark fins landed in the Atlantic, Gulf, and Caribbean, where the fins are generally wet when landed. In the proposed rule for this action, NMFS specifically requested comments regarding how the weight of shark fins should be determined for purposes of this final rule. Public comments generally favored the use of wet weight, and this approach is maintained in the final rule for consistency with the approach used in the Atlantic shark fisheries.

The prohibition of landing shark fins without corresponding carcasses extends to any vessel (including a cargo or shipping vessel) that obtained those fins from another vessel at sea. Any such at-sea transfer of shark fins effectively would make the receiving vessel a "fishing vessel," as the receiving vessel is acting "in support of fishing." Thus, the receiving vessel is prohibited from landing shark fins without corresponding carcasses under this final rule.

Applicability in State Waters

NMFS requested public comment on whether the prohibitions in the Act should be applied to activities in state waters and the possession or landing of fins from sharks harvested from state waters. After reviewing the language of the Act and its legislative history, together with the public comments on this issue, NMFS concludes that the final rule should not operate to alter or diminish the jurisdiction or authority of any state within its boundaries. Therefore, this final rule does not apply to activities by persons on vessels fishing only in state waters. However, consistent with existing regulations at 50 CFR 635.4(a)(10) and 648.4(b), any person aboard a vessel issued an Atlantic shark or spiny dogfish permit shall be, as a condition of such permit, subject to the requirements of this

subpart during the period of validity of the permit, without regard to whether the fins were taken from sharks harvested within or outside the U.S. EEZ. Persons aboard such federally permitted vessels that fish within the waters of a state that has more restrictive regulations pertaining to shark finning must abide by any of the state's regulations that are more restrictive. Because Pacific states, by and large, already prohibit finning, NMFS decided not to enact similar provisions in the Pacific.

Effects of Final Action

This final rule will directly affect (1) owners, operators, and crew of U.S. fishing vessels that engage in finning, and in landing and selling those fins; (2) owners and employees of U.S. firms that buy and sell shark fins harvested in and beyond the U.S. EEZ (which could include U.S. fishing vessels and foreign vessels that obtain fins without carcasses from foreign vessels at sea) or that sell sharks harvested by vessels that have been issued a Federal Atlantic shark or spiny dogfish permit; and (3) owners, operators, and crew of foreign fishing vessels that would otherwise land shark fins without carcasses in U.S. ports. Shark finning has been prohibited in the Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea since 1993, and finning of spiny dogfish in this region was prohibited in 2000. Further, finning is effectively prohibited under state regulations on the West Coast and in the north Pacific, as well as in a number of Atlantic states and Hawaii. Therefore, there will be minimal impacts in these areas.

Most, if not all, of the impacts will likely affect businesses in the western Pacific. This final rule is expected to have moderate impacts on fishermen and businesses in Guam and American Samoa, where shark fin landings have been made by U.S. and foreign vessels and substantial sales and trade in shark fins have been conducted for many years. In Guam and American Samoa, domestic landings of shark fins have been very low; however, foreign longline vessels have landed shark fins there in the past. Under this final rule, sales of those fins would be prohibited unless the corresponding carcasses were also landed. As there is no market for carcasses, it is likely that shark fin landings will cease or drop to very low levels. This would affect vessel sales as well as the earnings of crew on foreign fishing vessels because the revenue from fin sales often accrues directly to crew members. If that income is reduced, there could be less spending by crew members in port calls in American

Samoa and Guam. It is estimated that shark finning accounts for between \$1.8 million and \$2.5 million of economic activity in the western Pacific (not including the values formerly attributable to finning by domestic vessels in Hawaii until 2000, when finning was prohibited).

This final rule may indirectly affect U.S. retailers and consumers of shark fins, but the extent of impact cannot be determined with available data. It is likely that shark fins, which would no longer be available in large quantities from domestic landings, would continue to be available through air, ocean, or surface freight shipments. It is also possible that the price of shark fins would rise due to lower domestic supply. If a market for shark carcasses could be developed, the effects of the landings prohibition on fins without carcasses could be alleviated somewhat. Because NMFS' interpretation of the Act is that it targets fishing vessels and was not meant to interfere with international trade, NMFS has drafted this final rule not to directly affect the owners and employees of businesses that are engaged in regular domestic and international cargo shipments of, and trade in, shark fins, or the owners and employees of businesses that provide supplies and services to foreign fishing vessels that may (but do not necessarily) engage in shark finning and associated sales.

This final rule does not establish any new reporting or recordkeeping requirements. Reporting requirements currently in place are believed to be sufficient for monitoring and enforcing these regulations. However, these regulations may be amended if information or conditions demonstrate that additional reporting or recordkeeping requirements are necessary to achieve the purposes of the Act. NMFS will work with the regional fishery management councils (councils), interstate marine fisheries commissions, and states to determine whether changes are needed to ensure adequate records for monitoring the fisheries and enforcing the prohibitions. If any changes are needed in reporting and recordkeeping requirements, they may be made nationally or in separate regions.

Alternative Construction of the Statute

NMFS considered applying broader interpretations of the Act that would likely have had much greater impacts on foreign fishermen. One alternative that NMFS considered would have prohibited foreign fishing vessels from possessing shark fins without carcasses while in U.S. ports. This could have

resulted in a substantial reduction in the use of those ports by foreign longline vessels that have shark fins on board without corresponding carcasses. It is estimated that this port activity generates between \$40 and \$60 million per year in sales by Hawaiian businesses.

NMFS considered a second alternative that would have prohibited the possession of shark fins without corresponding carcasses by all foreign fishing vessels whenever they are in the U.S. EEZ, even if not engaged in fishing. This could have forced some vessels fishing throughout the Pacific to adjust their navigation routes at high expense. It would have also constituted an infringement on the right of freedom of navigation under customary international law. This construction appears to go beyond the intent of the Act.

A third alternative would have extended the landing prohibition to all vessels, including non-fishing cargo vessels, whether or not such vessels are operating in support of fishing activity. Under this alternative, there would have been greater impacts on shippers, retailers, and consumers. U.S. Customs Service data indicate that documented imports and exports of shark fins into and out of the U.S. were valued at \$3 million and \$5 million, respectively, in 1999. Under this alternative, these shipments would likely be eliminated and shark fins could only enter the U.S. via air or land freight.

NMFS also considered a fourth alternative that would not have promulgated these regulations but would have used fishery management plans prepared by councils (and by the Secretary with respect to Atlantic Ocean, Gulf of Mexico, and Caribbean shark fishery management) under the Magnuson-Stevens Act to implement the Act. However, actions by the Councils would require an extended amount of time that would not meet the statutory time constraints of the Act.

Comments and Responses

A summary of the substantive comments on the proposed rule and responses to those comments follow.

Application of the Act in State Waters

Comment 1: Several commenters indicated that not applying the prohibitions of the Act in state waters is inconsistent with the Act and should not be incorporated in the final rule. Finning is a national concern, and the failure of states and councils to prohibit finning is what led to the need for the Act. The term "at sea" was meant broadly by Congress and Congress could

have specifically excluded state waters if that was the intent. Therefore, the prohibitions should be applied in state waters, or at least in state waters where there are no state regulations prohibiting finning. It was suggested that non-application in state waters would result in unnecessary enforcement difficulties. One state had no objection to application of the regulations in state waters as long as states could adopt more stringent regulations. Another state agreed with NMFS' proposed approach under which the regulations would not apply in state waters.

Response: The language and legislative history of the Act indicate that the regulations should not apply in state waters. The prohibitions contained in the Act were enacted as an amendment to the Magnuson-Stevens Act. The Magnuson-Stevens Act grants authority to the Secretary and the eight fishery management councils to regulate fisheries in ocean areas seaward of state waters, while providing that such authority shall not be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries (16 U.S.C. 1856(a)). Neither the language nor the legislative history of the Act reveals an intent by Congress to extend Federal fishery management authority to regulate state shark fisheries, or the finning of sharks taken in such state fisheries. Hence, NMFS understands the prohibitions contained in the Act to apply to the finning, possession, and landing of sharks harvested seaward of state waters. The comprehensive prohibition of shark finning would require either corresponding state regulation or a specific exception to the Magnuson-Stevens Act under 16 U.S.C. 1856(b) allowing for Federal regulation of sharks harvested within the boundaries of a state. While most states already have prohibitions on shark finning in state waters, NMFS intends to work with regional fishery management councils, interstate marine fisheries commissions, and states to promote consistency in management throughout state and Federal waters.

Application of the Regulations to Foreign Vessels

Comment 2: The Act does not provide authority to prohibit foreign vessels from possessing shark fins from sharks caught on the high seas. The Act (as an amendment of the Magnuson-Stevens Act) is limited to regulating the possession or offloading of fish harvested in the U.S. EEZ. The only reasonable interpretation of the Act, therefore, is that the new law does not regulate shark fins caught by foreign

vessels on the high seas. The Act does not authorize prohibiting shark finning by foreign fishing vessels on the high seas and therefore, the Act cannot prohibit the landing of shark fins without the corresponding carcasses if they were taken on the high seas.

Response: Foreign vessels, when they are engaged in fishing or fishing related activities in the U.S. EEZ, in state waters, or in U.S. ports, are subject to U.S. jurisdiction under customary international law. These vessels are subject to the Magnuson-Stevens Act, the Nicholson Act and other applicable law with respect to any fishing activity (defined in the Magnuson-Stevens Act to include any operations in support of the catching, taking or harvesting of fish) within the U.S. EEZ, or activities, including landing of fish or fish parts, conducted in U.S. ports in the 50 states and the U.S. Virgin Islands for vessels greater than 50 feet in length, as regulated by the Nicholson Act (see 46 U.S.C. Appx. sec. 251). Accordingly, the Act requires NMFS to prohibit both finning (as a fishing activity) and landing of shark fins without the corresponding carcasses by foreign vessels, when these activities occur in U.S. waters or U.S. ports. However, the Act does not confer jurisdiction to prohibit shark finning by foreign vessels on the high seas. Absent specific evidence to the contrary, NMFS must presume that any shark fins in the possession of a foreign vessel passing through the U.S. EEZ were harvested either on the high seas or in a foreign jurisdiction. The possession of such shark fins by foreign vessels in U.S. waters does not, of itself, constitute fishing or other activity subject to U.S. regulatory jurisdiction. Therefore, NMFS interprets the Act as not imposing the prohibition regarding possession of shark fins without corresponding carcasses against foreign vessels, except when those vessels are offloading shark fins in a U.S. port.

Comment 3: Sections 600.1022(b) and 600.1023(f) should be revised to clearly be limited to U.S. fishing vessels.

Response: Section 600.1022(b) has been revised to clearly indicate that the 5 percent threshold of the rebuttable presumption as it applies to possession of shark on board a vessel is applicable only to U.S. vessels, while the 5 percent threshold of the rebuttable presumption as it applies to landings is applicable to all vessels landing shark fins in a U.S. port or transshipping shark fins in waters under U.S. jurisdiction. No change was made in § 600.1023(f) (see response to comment 5).

Comment 4: There should be a clearer statement that foreign fishing vessels

that call at U.S. ports are exempt from application of the possession prohibition. There should not be any restriction on foreign vessels' freedom to transit the U.S. EEZ or enter a port in Hawaii based on possession of shark fins without corresponding carcasses on board the vessel. Section 600.1023(b) does not address the right of a foreign vessel to have possession of shark fins without carcasses in ports under U.S. jurisdiction. This would allow a state to prohibit such possession, and § 600.1020 further suggests this possibility. Prohibiting foreign vessels from possessing shark fins in U.S. ports could have serious adverse consequences on the economy of some ports because it would make it very difficult for Japanese fishing vessels to visit such ports.

Response: This final rule prohibits persons aboard U.S. or foreign fishing vessels from landing shark fins without corresponding carcasses. This final rule does not prohibit foreign vessels that possess shark fins without corresponding carcasses from transiting the U.S. EEZ or state waters, or from entering a U.S. port.

Comment 5: Foreign fishing vessels should be exempt from inspection under § 600.1023(f).

Response: Under customary international law, foreign vessels in U.S. ports are subject to inspection in accordance with the jurisdiction of port states to enforce their laws. Consequently, a foreign fishing vessel may be inspected when in a U.S. port.

States' Authority Over Foreign Vessels in U.S. Ports

Comment 6: Two commenters indicated that, as written, the proposed application of the prohibitions to foreign fishing vessels would occur even in state waters, while domestic vessels would not be subject to prohibitions in state waters. This distinction is troubling, especially in the context of trade disputes concerning environmental laws. At the least, NMFS should explain the basis for applying the Act differently for foreign and domestic fishing vessels.

Response: The comment refers to language in the preamble to the proposed rule that discusses the likely effects of the proposed prohibitions on persons aboard U.S. fishing vessels and foreign fishing vessels, respectively. The language in question discusses the effect of the proposed landing prohibition on persons aboard foreign fishing vessels that would be prohibited from landing shark fins without corresponding carcasses "in or inside" the U.S. EEZ. However, the landing prohibition under

the final rule applies equally to foreign and domestic fishing vessels. Nor is there any disparate treatment of foreign vessels with respect to the prohibition against shark finning in waters seaward of the inner boundary of the U.S. EEZ.

Comment 7: If retained, § 600.1020 should be revised to limit states to regulating the taking of sharks in state waters and the rules should expressly authorize foreign vessels to possess shark fins without corresponding carcasses in U.S. ports.

Response: As discussed previously, the Act does not provide NMFS with authority or jurisdiction over state waters. Persons conducting activities regulated by this final rule must abide by any more restrictive state regulations as applied to sharks harvested in state waters or landed in a state. Foreign fishing vessels, while subject to the landing prohibition, may possess shark fins without corresponding carcasses as they transit the U.S. EEZ and state waters, and when they are in U.S. ports. Since such possession of shark fins by foreign vessels is not prohibited, no express authorization is required.

Application of the Rules in a Foreign Trade Zone

Comment 8: One commenter asked if the prohibitions against landing fins without carcasses by foreign fishing vessels would apply in the foreign trade zone in Hawaii; another commenter recommended that the landings prohibition be applied to foreign fishing vessels in a foreign trade zone.

Response: The final rule clarifies that foreign fishing vessels are prohibited from landing fins without corresponding carcasses in a foreign trade zone, whether in Hawaii or elsewhere. The Foreign Trade Zone Act, which establishes foreign trade zones, exempts imports from U.S. customs duties. The Free Trade Zone Act does not exempt fishing activity, including landing of shark fins, by persons or entities under U.S. jurisdiction.

Definition and Application of Terms

Comment 9: The terms, "dressed weight," "wet fins," and "corresponding carcass" should be defined. The use of wet weight is supported but it was noted that there are species differences in the ratio of fin weight to carcass weight. NMFS should consider requiring that fins be packed in ice to prevent drying. A definition of "wet" was suggested.

Response: The term "Corresponding Carcass" is self explanatory, and the term "dressed weight" is defined for the Atlantic at 50 CFR part 635. NMFS has retained the use of wet weight in the

final rule and will use dressed weight in the application of the rebuttable presumption at § 600.1022(b). Therefore, no changes are made in this final rule. NMFS notes that enforcement and prosecution of violations will not be contingent solely on the use of the rebuttable presumption. NOAA will consider all evidence available in each instance, including the number and weight of fins, the number and weight of shark carcasses, the condition of the carcasses (e.g., dressed or not dressed), and the amount or weight of other shark products when determining whether a violation likely occurred and whether to prosecute. More specific definitions of the terms as proposed will not necessarily increase NMFS' ability to enforce the regulations in a reasonable manner or help the public comply with the regulations. As recommended by the commenter, NMFS considered whether to require special packing of fins or keeping fins attached or specially identified with specific carcasses as a way of enforcing the finning definitions. Based on experience in the Atlantic, NMFS concluded that it has not been demonstrated that such restrictions are necessary or appropriate at this time. As more experience is gained in implementing the regulations in the Pacific, NMFS will consider the need for additional measures or new definitions to ensure that the Act is carried out effectively.

International Cooperation

Comment 10: The Act is unscientific and irrational, and efforts to enforce the Act may be counterproductive. The Act disregards established international rules concerning conservation and management of marine resources. Management must be based on objective and justifiable grounds, and an across-the-board prohibition on finning lacks objective and reasonable grounds. The Act will dampen Food and Agricultural Organization (FAO) efforts to conserve and manage sharks, which the U.S. has agreed is necessary under the International Plan of Action for Shark Conservation (IPOA) and the U.S. National Plan of Action (NPOA). Shark finning controls should not be taken up in isolation but should be part of a complete management strategy.

Response: The Act is U.S. law, reflecting the intent of Congress, and expressly provides that its terms must be implemented by domestic rulemaking. In enacting this law, Congress emphasized the need for international cooperation to conserve and manage sharks and their utilization in a reasonable and effective manner. In fact, the Act is fully consistent with the

objectives in paragraph 22 of the IPOA, namely encouraging the full use of dead sharks and minimizing the waste and discards from shark catches.

Comment 11: The Secretary should move forward with implementation of the international provisions of the Act.

Response: The Secretary is working with the Department of State to develop a strategy for complying with the international provisions of the Act.

Atlantic Fishery Regulations

Comment 12: Section 635.30(c)(1) should be revised to apply only to shark fins harvested by a vessel pursuant to a commercial vessel permit for sharks. This would make clear that this section would not apply to foreign fishing vessels transiting the EEZ or entering a U.S. port.

Response: Section 635.30(c)(1) has been clarified to apply only to shark fins harvested by fishermen that hold a Federal Atlantic commercial shark limited access permit.

Consideration and Evaluation of Alternatives and Negative Impacts

Comment 13: There is insufficient evaluation of possible effects of the measures; there should be a full evaluation along with consultations with FAO, other international organizations, and other nations.

Response: Both an EA and a combined RIR and initial regulatory flexibility analysis were prepared for the proposed rule, and a range of alternatives and their impacts have been considered. The proposed rule published for this action was widely available to, and open to comment by, U.S. interests, foreign nations, and international organizations. NMFS considered the comments it received on the proposed rule in drafting this final rule and its associated analytical documents.

This final rule affects foreign vessels' activities only while they are under U.S. jurisdiction and does not purport to control their activities on the high seas or in other nations' waters. Therefore, NMFS does not believe that consultations with other nations or international organizations on this action are necessary. However, in coordination with the Department of State, NMFS will continue to work with other nations to develop and implement international agreements for the conservation and management of sharks.

Comment 14: A legislative ban on shark finning could seriously impact port calls by foreign vessels and result in job and revenue loss in Hawaii. There will be a negative impact on people in

small communities including Guam and American Samoa.

Response: Based on the RIR/FRFA for this final rule, NMFS does not believe that the ban on shark finning will result in significant job or revenue loss in Hawaii. Foreign fishing vessels do not land shark fins in Hawaii at this time. Further, this final rule does not prohibit foreign vessels from making port calls even if they have shark fins on board without corresponding carcasses. Therefore, this final rule is not expected to result in a reduction of port calls or associated adverse impacts on jobs and revenue in Hawaii. NMFS recognizes, as discussed above and in the supporting documents, that there may be adverse impacts in Guam and American Samoa. However, NMFS is obligated to promulgate regulations to implement the Act and has attempted to structure the regulations to have the least possible social and economic impacts on communities in American Samoa and Guam.

Comment 15: Pelagic shark populations are stable (especially blue sharks) and prohibition of finning is not necessary for conservation.

Response: Not enough research has been done and too few stock assessments have been prepared to demonstrate that pelagic shark populations are stable. In fact, the absence of good information on shark abundance was one of the principal concerns behind the FAO IPOA. This final rule should help reduce uncontrolled and unmonitored shark fishing mortality.

Comment 16: Prohibiting finning will lead to less data for stock monitoring and management because fishermen will not cooperate in collecting data under a regulation which does not have a scientific base.

Response: The regulations are not expected to result in a decrease in data needed for shark stock assessments or conservation and management. NMFS is working with regional fishery management councils, interstate marine fisheries commissions, and states to address data needs for these purposes. In addition, NMFS is working with the Department of State to develop and implement an international strategy for shark conservation.

Comment 17: An option before the U.S. could be to abolish the Act or adopt the status quo.

Response: NMFS cannot abolish the Act. NMFS is obligated to promulgate regulations to carry out the Act unless the Congress directs NMFS to do otherwise.

Reporting Requirements

Comment 18: NMFS should change logbooks to require additional catch and effort information by species; it is not clear how NMFS can enforce the regulations (especially the 5 percent weight ratio) without additional data reporting. The absence of data reporting requirements contradicts section 7 of the Act, which mandates a number of data collection and research priorities.

Response: NMFS has considered the need for data collection or reporting requirements and believes that it is premature to conclude that new requirements are necessary. Existing Federal fishery management plan and state reporting requirements generate much of the fishery information needed for shark conservation and management. Improvements in these reporting systems are expected as NMFS gains experience under these and other regulations. NMFS notes that a special effort to review reporting requirements will be undertaken in the Pacific. The EA for this action includes a comparison of current Atlantic and Pacific reporting requirements.

Other Comments

Comment 19: Two commenters objected to the statement that shark finning is a wasteful act that goes against sportsmanship when no clear definition of wastefulness is given; stated that finning makes effective use of unnecessary incidental catch; and indicated that there is no reason to prohibit finning if the species involved is healthy. Finning is neither wasteful nor unsportsmanlike. Retaining only the fins, especially of species whose meat is unpalatable, does not inherently make the practice wasteful. There are many cases in which only parts of fish are used.

Response: As stated in the Act, the United States has decided, through Congress, that shark finning is wasteful and should not be permitted by persons or vessels subject to U.S. jurisdiction. However, NMFS recognizes that other nations may feel differently and together with the Department of State, will work with other nations on developing and implementing international agreements that meet mutually acceptable objectives.

Comment 20: Notwithstanding that unilateral action on shark finning is a terrible precedent, it is recognized that NMFS needs to comply with the legislation and NMFS has made a good effort to implement it in a practical and reasonable manner, especially with respect to allowing foreign fishing vessels to possess fins without carcasses

while transiting and allowing cargo vessels to carry out regular shipping activities.

Response: NMFS is implementing the Act in a manner that minimizes adverse economic impacts while meeting the objectives of the Act.

Comment 21: The regulations should be implemented as quickly as possible and the 30-day "cooling off" period should be waived. NMFS should strictly enforce the prohibitions and should develop measures to combat illegal landings and transfer of illegally taken fins and to prevent "highgrading." Fins should have to either remain on the carcass or somehow be identifiable with the carcass (this will help in species identification as well). The fisherman should have the burden of proof to show that fins on board or landed relate to carcasses in the proper ratio.

Response: There is no legal basis available with respect to this rule to waive the 30-day delay in effectiveness required by the Administrative Procedure Act. NMFS intends to enforce the regulations. In prosecuting enforcement actions, NMFS carries the burden of proving violations of this rule. In proving violations of the prohibitions against possession or landing shark fins without the corresponding shark carcasses, this burden may be satisfied as a threshold matter using a rebuttable presumption based on evidence that the total weight of the fins exceeds 5 percent of the dressed weight of the carcasses. The person conducting the alleged illegal activity can rebut that presumption by providing evidence that the fins were not taken, held or landed in violation of these regulations.

Comment 22: All recreationally and commercially caught sharks that are endangered, protected, undersized or not a desirable species to market or eat should be properly handled and released alive, in the water.

Response: While NMFS agrees that every effort should be made to release unwanted sharks alive, the Act did not address the manner in which sharks should be handled or released. This is a matter to be evaluated through the fishery management process.

Changes From the Proposed Rule
The following changes have been made from the proposed rule:

Section 600.1019, has been clarified to better define shark finning.

In § 600.1022, paragraph (b) has been revised to indicate that the 5-percent possession limit of fins to shark carcasses applies only to U.S. vessels. (See also the response to Comment 3.)

In § 600.1023, paragraph (i) has been revised and new paragraphs (j) and (k) added to clarify prohibited acts for

vessels with a Federal Atlantic commercial shark limited access permit.

In § 635.30, paragraph (c)(1) has been revised to clarify that it applies only to shark fins harvested by fishermen that hold Federal Atlantic commercial shark limited access permits. (See also the response to Comment 12.)

In § 635.30, paragraphs (c)(1) and (c)(3) have been clarified to show that all carcasses and fins must be landed at the first point of landing.

There have been additional editorial changes made from the proposed rule to correct references and for clarity and consistency.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. It will not 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. NMFS has also determined that this final rule will not 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 the Executive Order.

NMFS prepared an FRFA that describes the impact this final rule is expected to have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The need for and objectives of this rule are described in the Summary and Background sections of this preamble.

The principal affected entities are: (a) Western Pacific U.S. longline and purse seine fishing vessel operators and crew, and the businesses that buy and resell shark fins (without corresponding carcasses) from these vessels; (b) businesses that buy and export shark fins from crews of foreign longline vessels delivering those fins in western Pacific ports; and (c) businesses that sell goods and services to foreign vessel crew members who receive the revenue from the sale of shark fins in U.S. ports. The western Pacific is the region mainly impacted because this is the only region where shark finning by U.S. interests and delivery of fins by foreign vessels have not previously been regulated under Federal or state law. The principal effects of this action are to

terminate finning by U.S. fishing vessels in the western Pacific, and to terminate landings of shark fins without corresponding carcasses into U.S. ports by U.S. and foreign fishing vessels in the western Pacific. Persons and businesses in that area may be seriously affected by the elimination of their principal source of shark fins.

NMFS does not know how dominant a role shark fin trade plays in the economic activity of the affected businesses. It is estimated that there are four to six active trading businesses in American Samoa and Guam. If trade in shark fins is their only trade, these businesses may be forced to cease activity and/or find alternate lines of trade. They may also seek ways to find more valuable uses of sharks (e.g., shark meat, cartilage, skins) such that more carcasses would be retained with the fins and greater values could be derived from the shark catches in the longline fishery. However, any such transition is likely to take some time and the businesses would suffer losses until that time. Based on studies of shark fin landings and crew income, it is estimated that the loss could be between \$422,000–653,000 annually. It is acknowledged that there could be reductions in the availability of shark fins for soup and other products in the U.S. under this final rule. However, the supply impacts will be moderated if suppliers are able to use other means to ship shark fins into the United States.

NMFS considered four alternatives to this action other than the status quo or no action. These alternatives are discussed in the Alternative Construction of the Statute section of this preamble, which explains why these alternatives were not adopted. While NMFS received no comments regarding the IRFA, NMFS' response to comments 4, 8, 13, and 14 address economic aspects of this final rule.

This rule applies only to vessels harvesting sharks seaward of the inner boundary of the U.S. EEZ, and to federally permitted vessels in the Atlantic shark and spiny dogfish fisheries, and therefore, it does not conflict with any state laws governing fishing activities in state waters. NMFS does not intend by this regulation to supercede any state law or regulation with respect to shark finning and landing or possession of shark fins by state registered vessels, even with respect to more restrictive state laws or regulations pertaining to such activities occurring seaward of the state's boundary. NMFS intends to work with those states that do not already prohibit the landing of shark fins without the corresponding shark carcasses to enact

appropriate laws and to issue appropriate regulations so that the objectives of the Act are fully achieved.

NMFS completed an informal consultation on September 6, 2001, with regard to the effects of this proposed rule on endangered and threatened species under NMFS' jurisdiction. It was found that the action is not likely to adversely affect listed species under NMFS' jurisdiction.

List of Subjects

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: February 1, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 600, 635, 648 and 660 are amended as follows:

1. The authority citation for parts 600, 635, 648, and 660 continues to read as follows:

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

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

2. Subpart M is added to read as follows:

Subpart M—Shark Finning

sec.

600.1019 Purpose and scope.

600.1020 Relation to other laws.

600.1021 Definitions.

600.1022 Prohibitions.

600.1023 Shark finning; possession at sea and landing of shark fins.

Subpart M—Shark Finning

§ 600.1019 Purpose and scope.

The regulations in this subpart govern "shark finning" (the removal of shark fins and discarding of the carcass), the possession of shark fins, and the landing into U.S. ports of shark fins without

corresponding carcasses under the authority of the Magnuson-Stevens Act. They implement the Shark Finning Prohibition Act of 2000.

§ 600.1020 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in §§ 600.514 and 600.705 and in paragraphs (b) and (c) of this section.

(b) Regulations pertaining to shark conservation and management for certain shark fisheries are also set forth in this subpart and in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of this chapter governing those fisheries.

(c) Nothing in this regulation supercedes more restrictive state laws or regulations regarding shark finning in state waters.

(d) A person who owns or operates a vessel that has been issued an Atlantic Federal commercial shark limited access permit or a spiny dogfish permit is subject to the reporting and recordkeeping requirements found at parts 635 and 648 of this chapter, respectively.

§ 600.1021 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Land or landing means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shoreside location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Shark finning means taking a shark, removing a fin or fins (whether or not including the tail), and returning the remainder of the shark to the sea.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1022 Prohibitions.

(a) In addition to the prohibitions in §§ 600.505 and 600.725, it is unlawful for any person to do, or attempt to do, any of the following:

(1) Engage in shark finning, as provided in § 600.1023(a) and (i).

(2) Possess shark fins without the corresponding carcasses while on board a U.S. fishing vessel, as provided in § 600.1023(b) and (j).

(3) Land shark fins without the corresponding carcasses, as provided in § 600.1023(c) and (k).

(4) Fail to have all shark fins and carcasses from a U.S. or foreign fishing vessel landed at one time and weighed at the time of the landing, as provided in § 600.1023(d).

(5) Possess, purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section, as provided in § 600.1023(e) and (l).

(6) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to and/or inspection or copying of any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses, as provided in § 600.1023(f).

(7) Fail to have shark fins and carcasses recorded as specified in § 635.30(c)(3) of this chapter.

(8) Fail to have all shark carcasses and fins landed and weighed at the same time if landed in an Atlantic coastal port, and to have all weights recorded on the weighout slips specified in § 635.5(a)(2) of this chapter.

(9) Fail to maintain a shark intact through landing as specified in §§ 600.1023(h) and 635.30(c)(4) of this chapter.

(b)(1) For purposes of this section, it is a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of this section if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

(2) For purposes of this section, it is a rebuttable presumption that shark fins possessed by a U.S. fishing vessel were taken and held in violation of this section if the total weight of the shark fins on board, or landed, exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

§ 600.1023 Shark finning; possession at sea and landing of shark fins.

(a)(1) No person aboard a U.S. fishing vessel shall engage in shark finning in waters seaward of the inner boundary of the U.S. EEZ.

(2) No person aboard a foreign fishing vessel shall engage in shark finning in waters shoreward of the outer boundary of the U.S. EEZ.

(b) No person aboard a U.S. fishing vessel shall possess on board shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(2), except that sharks may be dressed at sea.

(c) No person aboard a U.S. or foreign fishing vessel (including any cargo vessel that received shark fins from a fishing vessel at sea) shall land shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ without corresponding shark carcasses, as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(1).

(d) Except as provided in paragraphs (g) and (h) of this section, a person who operates a U.S. or foreign fishing vessel and who lands shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ shall land all fins and corresponding carcasses from the vessel at the same point of landing and shall have all fins and carcasses weighed at that time.

(e) A person may not purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section.

(f) Upon request, a person who owns or operates a vessel or a dealer shall allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to, and/or inspection or copying of, any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses.

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

(h) A person who owns or operates a vessel that has not been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c)(4) of this chapter.

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

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(2), except that sharks may be dressed at sea.

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

(l) A dealer may not purchase from an owner or operator of a fishing vessel issued a Federal Atlantic commercial shark limited access permit who lands shark in an Atlantic coastal port fins whose wet weight exceeds 5 percent of the dressed weight of the carcasses.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. In § 635.30, paragraphs (c)(1) through (c)(3) are revised to read as follows:

§ 635.30 Possession at sea and landing.

(c) *Shark.* (1) Notwithstanding the regulations issued at part 600 (subpart M) of this chapter, no person who owns or operates a vessel issued a Federal Atlantic commercial shark limited access permit shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the dressed weight of the shark carcasses. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. While shark fins are on board and when shark fins are being offloaded, persons issued a Federal Atlantic commercial shark limited access permit are subject to the regulations at part 600, subpart M, of this chapter.

(2) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit may not fillet a shark at sea. A person may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, wet shark fins may not exceed 5 percent of the dressed weight of the carcasses, in accordance with the regulations at part 600, subpart M, of this chapter.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart M, of this chapter. Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the dressed weight of the carcasses.

4. In § 635.31, paragraphs (c)(3) and (c)(5) are revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

(c) * * *

(3) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart M, of this chapter and in § 635.30(c).

* * * * *

(5) A dealer issued a permit under this part may not purchase from an owner or operator of a fishing vessel shark fins that were not harvested in accordance with the regulations found at part 600, subpart M, of this chapter and in § 635.30(c).

* * * * *

5. In § 635.71, paragraphs (d)(6) and (d)(7) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c)(4).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3) and § 600.1023 (e) and (l) of this chapter.

* * * * *

PART 648—FISHERIES OF THE NORTHEAST ATLANTIC OCEAN

6. In § 648.14, paragraph (aa)(4) is revised and paragraphs (aa)(5) and (6) are removed and reserved as follows:

§ 648.14 Prohibitions.

* * * * *

(aa) * * *

(4) Violate any of the provisions prohibiting finning in §§ 600.1022 and 600.1023 that are applicable to the dogfish fishery.

* * * * *

7. In § 648.235, paragraph (c) is added as follows:

§ 648.235 Possession and landing restrictions.

* * * * *

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart M, of this chapter.

* * * * *

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

8. In § 660.1, paragraph (c) is added as follows:

§ 660.1 Purpose and scope.

* * * * *

(c) Regulations governing the harvest, possession, landing, purchase, and sale

of shark fins are found at part 600, subpart M, of this chapter.

[FR Doc. 02-3113 Filed 2-8-02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 020402F]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 6, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT:

Andrew Smoker, 907-586-7228.

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

The 2002 red king crab bycatch limit for the RKCSS is 20,924 animals as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2002 red king crab bycatch limit specified for the RKCSS will be caught. Consequently, NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: February 6, 2002.

Bruce Moorehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-3269 Filed 2-6-02; 3:29 pm]

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