

**FINAL REGULATORY FLEXIBILITY ANALYSIS**

**and**

**REGULATORY IMPACT REVIEW**

**for**

**FINAL RULE**

**TO IMPLEMENT THE**

**SHARK FINNING PROHIBITION ACT**

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service

November 2001

**Final Rule to** Implement the Shark Finning Prohibition Act

**Actions:** Apply the Prohibitions of Shark Finning and of the Possession and Landing of Shark Fins without Corresponding Shark Carcasses by Persons under U.S. Jurisdiction

**Type of statement:** Final Regulatory Flexibility Analysis and Final Regulatory Impact Review

**Lead Agency:** National Marine Fisheries Service (NMFS)

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**Abstract:** In 2000, the Congress enacted and the President signed the Shark Finning Prohibition Act. Section 3 of this Act amended the Magnuson-Stevens Fishery Conservation and Management Act to prohibit any person subject to U.S. jurisdiction from (a) engaging in finning (finning is the practice of removing the fins from a shark and discarding the remainder of the shark) at sea; (b) possessing fins aboard a fishing vessel without the corresponding carcass; and (c) landing shark fins without a corresponding carcass. Section 4 of the Act stipulates that regulations to implement the Act be promulgated by the National Marine Fisheries Service. The final rule applies the prohibitions specified in the Act to U.S. and foreign fishing vessels and associated businesses that engage in finning or in the buying and selling of fins or providing goods and services to vessels engaged in finning. Sharks harvested from state waters by vessels that do not hold an Atlantic Federal commercial shark or spiny dogfish permit are not affected by the final rule.



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## **1.0 PURPOSE AND NEED FOR ACTION**

On December 21, 2000, President Clinton signed into law the “Shark Finning Prohibition Act” (Act)(Public Law 106-557). Section 3 of this Act amended the Magnuson-Stevens Fishery Conservation and Management Act to prohibit any person under United States (U.S.) jurisdiction from (i) engaging in the finning of sharks; (ii) possessing shark fins aboard a fishing vessel without the corresponding carcass; and (iii) landing shark fins without the corresponding carcass. Section 9 defines finning as the practice of taking a shark, removing the fin or fins (whether or not including the tail) from a shark, and returning the remainder of the shark to the sea. Section 4 of the Act requires the National Marine Fisheries Service (NMFS) to promulgate regulations to implement these prohibitions.

This Final Regulatory Flexibility Analysis (FRFA) and Regulatory Impact Review (RIR) have been prepared to assess the economic impacts that are expected to result from the imposition of the prohibitions of the Act under the alternative implementation approaches considered. This document is intended to provide the necessary economic analysis of the impacts of the final action to implement the Act and of alternative actions that were considered. Additional information regarding the purpose and need for the final regulations, the impacts of the final regulations can be found in the Environmental Assessment (EA) prepared in conjunction with this FRFA and RIR.

## **2.0 ALTERNATIVES INCLUDING THE FINAL ACTION**

This section briefly summarizes the alternatives that were considered. For a more detailed description of the alternatives considered, please see the corresponding EA.

### **2.1. No Action - Status Quo- Rejected**

Under this alternative, current federal and state restrictions of shark finning and possession and landing of shark fins would remain in place, but the prohibitions under the Act would not be applied to any new parties.

### **2.2. Final Action: Alternative A - Implement the prohibitions of the Act to domestic and foreign vessels, and vessel operators and to associated businesses**

A summary of the application of the final action is shown in Table 1 below. Consistent with the prohibitions in the Act, the final regulations would specify that:

1. Persons on U.S. fishing vessels may not engage in shark finning in waters in or beyond the U.S. exclusive economic zone (U.S. EEZ). A person may remove and retain fins from a shark harvested seaward of the inner boundary of the U.S. EEZ on a vessel, but the corresponding carcass must also be retained on board the vessel.

2. Persons on U.S. fishing vessels may not possess on board their vessels shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding shark carcass.
3. Persons on U.S. fishing vessels may not land, for sale or for any other purpose, shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding carcass.
4. Foreign fishing vessel operators may not engage in finning in the U.S. EEZ and may not land, for sale or any other purpose, shark fins without the corresponding carcasses into a U.S. port. In this context, a vessel that has obtained shark fins from a foreign fishing vessel at sea is considered “in support of fishing” and therefore is defined as a foreign fishing vessel. This is to deal with a situation that historically has arisen in the western Pacific, where foreign cargo vessels occasionally landed shark fins obtained from foreign fishing vessels at sea. This activity would be prohibited under the final action.
5. Once a landing has begun, all shark fins harvested from waters seaward of the inner boundary of the U.S. EEZ and other shark products (carcasses, fillets, other parts) harvested from waters seaward of the inner boundary of the U.S. EEZ would have to be landed and weighed at the same time.
6. It would be a rebuttable presumption that any shark fins harvested seaward of the inner boundary of the U.S. EEZ and landed from any U.S. or foreign fishing vessel, or found on board a U.S. fishing vessel, were taken, held, or landed in violation of these regulations if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of dressed shark carcasses landed or found on board the vessel.

The final action would not apply to sharks harvested from state waters unless they were harvested by vessels that hold an Atlantic Federal commercial shark or spiny dogfish permit. The prohibitions contained in the Act were enacted as an amendment to the Magnuson-Stevens Fishery Conservation and Management Act. The latter Act grants authority to the Secretary and the eight fishery management councils to regulate fisheries in ocean areas seaward of state territorial waters, while providing in section 306(a) that such authority shall not be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. Neither the language nor the legislative history of the Shark Finning Prohibition Act reveal 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. Thus, while the prohibitions contained in the Act are construed to apply to the finning, possession and landing of sharks harvested seaward of state territorial waters, for sharks harvested within the boundaries of state territorial jurisdiction, the comprehensive prohibition of shark finning would require either corresponding state regulation or a specific exception allowing for federal regulation of state shark fisheries in accordance with section 306(b) of the Magnuson Stevens Act.

NMFS notes that some states have more restrictive provisions dealing with shark fishing and finning than the prohibitions and requirements that would be imposed by this action with respect to sharks and their fins harvested seaward of the inner boundary of the U.S. EEZ. This action



would not have any effect on state regulations applicable to sharks and their fins harvested from state waters or on state regulations that are more restrictive regarding shark finning activities by their vessels with respect to fishing in or beyond the U.S. EEZ. Moreover, this action would not affect any of the regulations implementing the Fishery Management Plan for Atlantic tunas, swordfish, or sharks (Atlantic HMS FMP) or the Atlantic Spiny Dogfish Fishery Management Plan.

**Table 1. Application of the Act under Alternative A**

<b>Vessel Type</b>	<b>Finning Prohibited</b>	<b>Possession of Fins Without Corresponding Carcass Prohibited</b>	<b>Landing of Fins Without Corresponding Carcass Prohibited</b>
<b>Domestic Fishing Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	Yes Seaward of the inner boundary of the U.S. EEZ	Yes All ports
<b>All other Domestic Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	No	No
<b>Foreign Fishing Vessels</b>	Yes In U.S. EEZ	No	Yes In U.S. EEZ or U.S. port
<b>All Other Foreign Vessels</b>	No	No	No

**2.3. Alternative B - Limited application of the prohibitions of the Act - Rejected**

Under this alternative, the prohibitions of the Act would be applied in a more limited manner as shown in Table 2. As in the Alternative A, a vessel (whether foreign or domestic) that has obtained shark fins from a fishing vessel at sea is considered “in support of fishing”. Such a vessel would be determined to be engaged in fishing activity; therefore, it is a "fishing vessel" and would be included in this alternative. The restrictions in Alternative B would not apply to sharks harvested in state waters.

**Table 2. Limited Application of the Act under Alternative B**

<b>Vessel Type</b>	<b>Finning Prohibited</b>	<b>Possession of Fins Without Corresponding Carcass Prohibited</b>	<b>Landing of Fins Without Corresponding Carcass Prohibited</b>
<b>Domestic Fishing Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	Yes Seaward of the inner boundary of the U.S. EEZ	Yes All ports
<b>All other Domestic Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	No	No
<b>Foreign Fishing Vessels</b>	No	No	No
<b>All Other Foreign Vessels</b>	No	No	No

**2.4. Alternative C - Broader application of the prohibitions of the Act - Rejected**

Under this alternative, the prohibitions of the Act would be applied more broadly as described in Table 3. For this alternative, all foreign vessels would be prohibited from finning in the U.S. EEZ. Foreign fishing vessels would be prohibited from possessing or landing fins without corresponding carcasses in the U.S. EEZ or any U.S. port. Foreign non-fishing vessels could possess fins without the corresponding carcasses in the U.S. EEZ for the purpose of transiting to another port and could land fins. This is to allow international trade shipments that could include shark fins or other shark products without corresponding carcasses. Under Alternative C, no domestic vessels, both fishing and non-fishing, can engage in finning or possess fins without corresponding carcasses seaward of the inner boundary of the U.S. EEZ or land fins without corresponding carcasses in any port. The restrictions in this alternative would not apply to sharks harvested from state waters.

**Table 3. Broader application of the Act under Alternative C**

<b>Vessel Type</b>	<b>Finning Prohibited</b>	<b>Possession of Fins Without Corresponding Carcass Prohibited</b>	<b>Landing of Fins Without Corresponding Carcass Prohibited</b>
<b>Domestic Fishing Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	Yes Seaward of the inner boundary of the U.S. EEZ	Yes All ports
<b>All Other Domestic Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	Yes Seaward of the inner boundary of the U.S. EEZ	Yes All ports
<b>Foreign Fishing Vessels</b>	Yes In U.S. EEZ	Yes In U.S. EEZ or U.S. port	Yes In U.S. EEZ or U.S. port
<b>All Other Foreign Vessels</b>	Yes In U.S. EEZ	No	No

**2.5. Alternative D - Broadest application of the prohibitions of the Act - Rejected**

This alternative is presented in Table 4. The restrictions in Alternative D would not apply to sharks harvested from state waters.

**Table 4. Broadest application of the Act under Alternative D**

<b>Vessel Type</b>	<b>Finning Prohibited</b>	<b>Possession of Fins Without Corresponding Carcass</b>	<b>Landing of Fins Without Corresponding Carcass</b>
<b>Domestic Fishing Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	Yes Seaward of the inner boundary of the U.S. EEZ	Yes All ports
<b>All Other Domestic Vessels</b>	Yes Seaward of the inner boundary of the U.S. EEZ	Yes Seaward of the inner boundary of the U.S. EEZ	Yes All ports
<b>Foreign Fishing Vessels</b>	Yes In U.S. EEZ	Yes In U.S. EEZ or U.S. port	Yes In U.S. EEZ or U.S. port
<b>All Other Foreign Vessels</b>	Yes In U.S. EEZ	Yes in U.S. EEZ or U.S. port	Yes In U.S. EEZ or U.S. port



### **3.0 SHARK FISHERIES AND ASSOCIATED INDUSTRIES AFFECTED**

Information on shark fisheries, status of the stocks, and affected industries is provided in section 4 of the accompanying EA and is not repeated here.

### **4.0 IMPACTS OF FINAL ACTION AND THE ALTERNATIVES CONSIDERED**

This section provides an assessment of the impacts of the alternatives presented in this document. The factors assessed are based on the requirements for an RIR to comply with Executive Order 12866 (E.O. 12866) and provide an analysis of the economic benefits and costs of each alternative to the fishery and the Nation as a whole; and for an FRFA to comply with the Regulatory Flexibility Act and provide an analysis of the economic impacts of each alternative on small entities. For more information on the expected impacts of the alternatives, please see the accompanying EA.

#### **4.1. Current Management of Shark Fisheries**

##### **4.1.1. Atlantic Ocean, Gulf of Mexico and Caribbean Sea**

Seventy-three species of sharks are known to inhabit the waters along the U.S. Atlantic coast, in the Gulf of Mexico and in the Caribbean Sea. Seventy-two species are managed under the HMS FMP pursuant to Secretarial authority. Spiny dogfish also occur along the U.S. coast, however, management for this species is under a fishery management plan prepared jointly by the New England and Mid-Atlantic Fishery Management Councils.

In 1999, NMFS implemented limited access for the Atlantic commercial shark fishery. NMFS has since issued 287 directed permits to target sharks and 585 incidental permits to land shark caught during fishing operations for other species (NMFS, 2001). Although the management unit is split into several species groups, any fisherman with a commercial federal permit can land any species of shark (except prohibited species), within the appropriate retention limits. Current federal commercial regulations for Atlantic sharks include a ban on finning for anyone with a federal shark permit regardless of where the shark is caught. Current federal recreational regulations for Atlantic sharks include a requirement that all landed sharks must have heads, tails, and fins attached, a ban on finning, and a no sale provision. The Spiny Dogfish FMP has also implemented a prohibition on finning.

The finning prohibitions in these plans are not effective for fishermen who do not hold an Atlantic federal shark or Spiny dogfish permit or for those fishermen who fish solely in state waters. Currently, 8 (Delaware, Florida, Louisiana, Maryland, New York, North Carolina, South Carolina, and Virginia) out of 19 Atlantic coastal states expressly prohibit shark finning. Because NMFS does not maintain records of fishermen that fish exclusively in state waters and do not have federal permits, NMFS cannot estimate the number of fishermen who currently fish in the state waters of states that do not prohibit finning. Also, NMFS cannot estimate the number of sharks that are finned by these fishermen. However, NMFS believes that most, if not all, directed

shark or spiny dogfish fishermen (those that target sharks for a substantial portion of their gross revenues) hold either an Atlantic shark permit or a spiny dogfish permit. NMFS believes that most of the fishermen who do not hold one of these permits would be those fishermen that catch sharks incidentally to other fishing operations. While the number of fishermen in this situation could be relatively large, given the large number of state fisheries and the susceptibility of sharks to many types of fishing gears, given the fact that the states that report landing most number of the sharks expressly prohibit shark finning, NMFS does not believe the number fishermen who currently fin sharks is large. However, NMFS does not have the information available to provide quantitative estimates of the number of fishermen potentially in this situation.

#### **4.1.2. West Coast**

There are no federal regulations currently limiting finning by vessels in or beyond the U.S. EEZ or in state waters off the West Coast or by vessels landing into the West Coast. However, all three West Coast states prohibit waste or destruction of food fish, such as sharks. California specifically prohibits the landing or possession of any shark fin or shark tail or portion thereof that has been removed from the carcass. Washington indirectly prohibits finning by a provision under which “it is unlawful to take, fish for, possess or transport for any purpose food fish, shellfish, or parts thereof, in or from any waters or land over which the state has jurisdiction.” Oregon indirectly prohibits finning by requiring that fish landings receipts must include the pounds of each species received, with pounds to be determined by taking the actual round weights of the fish unless a conversion from dressed weight has been established in state regulations. No conversion for shark fins has been established in those regulations, and therefore shark fins cannot be landed independent of the carcass.

#### **4.1.3. North Pacific**

Shark catches are limited by an incidental catch allowance in the Gulf of Alaska groundfish fishery to 5 percent of the combined quotas of all other groundfish. The North Pacific Council has been asked by the State of Alaska to take action to prohibit commercial fishing for sharks and skates in federal waters. This would match State action to prohibit such fishing, though it would allow an experimental commercial fishery in the future under controlled circumstances. This action is tentatively scheduled for mid-to-late 2001.

#### **4.1.4. Western Pacific**

There are no federal regulations prohibiting the finning of sharks in the western Pacific, and finning was quite common in the Hawaii-based longline fishery until 2000, when the State of Hawaii enacted a law on shark finning (Hawaii Revised Statute 1947). This law, which took effect on June 22, 2000, stated in part, “No person shall knowingly harvest shark fins from the territorial waters of the State, or land shark fins in the State, unless the fins were taken from a shark landed whole in the State”. Some longline operators have raised a question as to whether the State has authority to impose regulations on vessels fishing and shark finning in federal waters; however, the Magnuson Stevens Fishery Conservation and Management Act provides

that States have the authority to manage fishing by State-registered vessels in the U.S. EEZ in the absence of conflict with any federal regulations.

Currently, neither the Territory of Guam, Territory of American Samoa, nor the Commonwealth of the Northern Mariana Islands has passed laws or promulgated regulations that govern shark finning.

#### **4.1.5. International Management**

There are no international treaties, programs or arrangements that specifically restrict shark finning. The Department of State and NMFS are cooperating in development of a strategy to seek international action to conserve sharks and control shark finning.

#### **4.2. Baseline Conditions**

Section IV.A. of the accompanying EA provides information about the status of shark stocks taken in U.S. fisheries and potentially subject to finning. Section IV.B. of the EA provides information about the species with special protection needs that are occasionally taken in shark fisheries and that have been the subject of consultations under the ESA. Section IV.C. of the EA provides information about the fisheries that take sharks and that might be affected by the selected action, and section IV.D. provides information about international trade in shark fins.

The United States will continue to carry out actions to achieve long-term conservation of shark populations that are affected by U.S. fisheries. Actions through fishery management plans under the Magnuson-Stevens Act will promote sustainable use of these shark populations to the extent this can be achieved by unilateral U.S. actions. However, in view of the widespread distribution of most shark species, unilateral action is not likely to be sufficient to ensure long-term conservation. Therefore, the United States also will pursue cooperation through international arrangements to achieve effective conservation of shark stocks throughout their range. This will include efforts to obtain and analyze additional data to assess the condition of shark stocks and determine management needs. It is not known if shark stocks will be healthy or not in coming years in the absence of this action. However, the abundance of sharks and availability to U.S. fishing vessels will not likely change significantly even if this action is not taken. That is because other efforts are being taken to maintain shark stocks in areas used by U.S. vessels.

Many of the species given special protection under U.S. laws are indeed at low populations and will likely continue to stay at low levels in the immediate future whether or not this action is taken.

Most of the fisheries in the Atlantic, Gulf of Mexico and Caribbean, on the West Coast, and in the north Pacific will continue to be carried out as they have been for the foreseeable future in the absence of this action. The U.S. fisheries in the central and western Pacific will be somewhat reduced from levels of the early 1990s for two reasons. First, the restrictions imposed on the longline fishery out of Hawaii in 2000 and 2001 to protect sea turtles will force a change in the

primary mode of operation, moving effort away from swordfish targeting and into tuna targeting. This would result in a substantial drop in the catch of swordfish but could result in a substantial increase in tuna catches. Whether there would be a net decrease in revenue to the fleet is not known, although the fishing industry has indicated it will be devastated. There also may be a shift of vessels from Hawaii to other areas. Second, the action by the State of Hawaii to prohibit finning by its vessels led to a sharp drop (though not total termination) in the landings of fins into Honolulu, and this decline in revenue is not yet fully reflected in landings and income information for the fishery. It is expected that landings and sales of fins would continue to decline in the absence of this action. In another western Pacific area, there has been a recent increase in the level of longline fishing in American Samoa, but information to document the extent of shark finning and sales that has occurred and would continue in the absence of this action is lacking. Records indicate that only 510 sharks were caught by fishermen in American Samoa in 1999, and the total weight of landings of sharks in 1998 was only 24,000 pounds, but this may not be indicative of the shark catches and finning that would occur if no action were taken. It is expected that the recent past level of foreign landings and sales of shark fins, and the business activity associated with those sales, would continue in American Samoa if no action were taken. Similarly, it is expected that the recent level of landings and sales of shark fins by foreign vessels in Guam would continue in the absence of this action.

No changes in international trade in shark fins are expected in the absence of the selected action.

### **4.3. Assessment of Impacts**

#### **4.3.1. Description of the Entities Affected**

U.S. and foreign interests potentially impacted by the alternatives discussed in this document cover several hundred U.S. fishing vessels that take sharks and land in U.S. ports; up to a thousand foreign fishing vessels using U.S. ports only for goods and services (including shore leave for crews) without offloading fish and including vessels landing shark fins, tuna and other products in U.S. ports; and an unknown (but probably less than 100) number of businesses that engage in shark fin trade in U.S. ports or provide goods and services to U.S. and foreign vessels in U.S. ports. These interests are described in section 4 of the EA.

#### **4.3.2. Impacts of Final Action and other Alternatives considered**

The alternatives that NMFS considered for application of the prohibitions in the Act were described in section 2.0 and are summarized in Table 5.





**Table 5. Alternatives analyzed and considered other than status quo**

<b>ALTERNATIVE</b>				
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	<b>Final Application of Prohibitions</b>	<b>Limited Application of Prohibitions</b>	<b>Broader Application of Prohibitions</b>	<b>Broadest Application of Prohibitions</b>
<b>Domestic Fishing Vessels</b>	- No finning in seaward of the inner boundary of the U.S. EEZ; - No possession of fins without corresponding carcass in seaward of the inner boundary of the U.S. EEZ; - No landing of fins without corresponding carcass in all ports	- No finning in seaward of the inner boundary of the U.S. EEZ; - No possession of fins without corresponding carcass in seaward of the inner boundary of the U.S. EEZ; - No landing of fins without corresponding carcass in all ports	- No finning in seaward of the inner boundary of the U.S. EEZ; - No possession of fins without corresponding carcass in seaward of the inner boundary of the U.S. EEZ; - No landing of fins without corresponding carcass in all ports	- No finning in seaward of the inner boundary of the U.S. EEZ; - No possession of fins without corresponding carcass in seaward of the inner boundary of the U.S. EEZ; - No landing of fins without corresponding carcass in all ports
<b>Other Domestic Vessels</b>	- No finning seaward of the inner boundary of the U.S. EEZ;	- No finning seaward of the inner boundary of the U.S. EEZ;	- No finning seaward of the inner boundary of the U.S. EEZ; - No possession of fins without corresponding carcass seaward of the inner boundary of the U.S. EEZ; - No landing of fins without corresponding carcass in all ports	- No finning seaward of the inner boundary of the U.S. EEZ; - No possession of fins without corresponding carcass seaward of the inner boundary of the U.S. EEZ; - No landing of fins without corresponding carcass in all ports
<b>Foreign Fishing Vessels</b>	-No finning in U.S. EEZ; -No landing of fins without corresponding carcass in U.S. EEZ or U.S. port	No changes	-No finning in U.S. EEZ; - No possession of fins without corresponding carcass in U.S. EEZ or U.S. port; -No landing of fins without corresponding carcass in U.S. EEZ or U.S. port	- No finning in U.S. EEZ; - No possession of fins without corresponding carcass in U.S. EEZ or U.S. port; - No landing of fins without corresponding carcass in U.S. EEZ or U.S. port

<b>Table 5. Alternatives analyzed and considered other than status quo</b>				
<b>ALTERNATIVE</b>				
	<b>A</b> <b>Final Application of Prohibitions</b>	<b>B</b> <b>Limited Application of Prohibitions</b>	<b>C</b> <b>Broader Application of Prohibitions</b>	<b>D</b> <b>Broadest Application of Prohibitions</b>
<b>Other Foreign Vessels</b>	No changes	No changes	- No finning in U.S. EEZ.	- No finning in U.S. EEZ; - No possession of fins without corresponding carcass in U.S. EEZ or U.S. port; - No landing of fins without corresponding carcass in U.S. EEZ or U.S. port

#### **4.3.2.1. Economic Impacts**

Section V. of the accompanying EA provides substantial background information about the potential and expected impacts of the action and the alternatives. The following is a summary of those impacts.

##### **4.3.2.1.1. Atlantic, Gulf of Mexico, and Caribbean Sea**

The final action (Alternative A) would not have substantial impacts on federal Atlantic commercial shark limited access permit holders, federally-permitted spiny dogfish fishermen, or recreational fishermen who fish in federal waters in this region because the prohibition on finning is already in force.

All shark fishermen that hold Atlantic Federal commercial shark limited access permits or Atlantic Federal spiny dogfish permits are already prohibited from finning. Thus, they would not be impacted by the final action. Similarly, the dealers that purchase shark fins from them would also not be impacted.

The final action would likely have negligible impacts on foreign vessels because no foreign fishing vessels are authorized to fish for or land sharks under the Atlantic HMS or Spiny Dogfish FMPs and few foreign fishing vessels enter U.S. Atlantic ports for port calls. For those few foreign fishing vessels that enter U.S. Atlantic ports, the final action does not prohibit possession of shark fins without the corresponding carcasses, thus requiring no changes in vessel operations.



NMFS does not anticipate any impacts of the final action on state or local government agencies in the Atlantic, Gulf of Mexico, or Caribbean areas.

Alternatives B (limited application) and C (broader application) would have the same impacts as the final action.

If Alternative D (broadest application) were adopted, there could be some impacts on businesses that engage in international trade in shark fins. Several million dollars of fins are shipped into or out of the U.S. each year. However, this industry is not well documented and the magnitude of the impacts by region cannot be estimated with any certainty. There could be a shift in the manner (from ships to other means) by which shark fins would be shipped to or from the U.S.

#### **4.3.2.1.2. West Coast**

Under Alternatives A, B, and C, there will be little or no impact on fishers operating out of the West Coast. Shark finning by these fishers has been prohibited in the past and the final action would not substantially differ from or add to those prohibitions. Likewise, there will be no impacts on shoreside businesses that support shark fishers; nor will businesses that engage in international trade in shark products (including fins) be affected in this region. There is no information to suggest that fishers from this area are catching sharks off the West Coast and landing fins in other areas.

If Alternative D (broadest application) were adopted, there could be some impacts on businesses that engage in international trade in shark fins. However, this industry is not well documented and the magnitude of the impacts cannot be estimated with any certainty. There could be a shift in the manner by which shark fins would be shipped to or from the U.S.

#### **4.3.2.1.3. North Pacific**

Under Alternatives A, B, and C, there will be little or no impact on fishers operating in the North Pacific region. While shark finning by these fishers has not been prohibited in the past, there has been very little shark fishing. Further, under Alaska regulations (and possibly soon federal regulations), shark fishing will be even more tightly controlled. To the extent that shark fishing occurs, shark finning will be prohibited by the final action, but since such finning does not now occur, the final action does not have adverse impacts on existing businesses. Likewise, there will be no impacts on shoreside businesses that support shark fishers; nor will businesses that engage in international trade in shark products (including fins) be affected in this region. There is no information to suggest that fishers from this area are catching sharks off Alaska and landing fins in other areas.

If Alternative D (broadest application) were adopted there could be some impacts on businesses that engage in international trade in shark fins. However, this industry is not well documented and the magnitude of the impacts cannot be estimated with any certainty. There could be a shift in the manner by which shark fins would be shipped to or from the U.S. There are no

documented shark fin shipments into or out of Alaska.

#### **4.3.2.1.4. Western Pacific**

Based on historical data, the actual effect on U.S. fleets is likely to be minor, although the final management measures could potentially affect all domestic pelagic fishing fleets identified for this region (see the EA).

Hawaii-based vessel operators would not be expected to experience a major impact as a result of this action. They are already subject to a state law prohibiting the landing of shark fins which have been separated from their accompanying carcass, and, while the landings of fins have not entirely ceased, they have dropped substantially from the levels prior to passage of the State law and would be expected to drop further with additional enforcement and experience. There is no information to suggest that fishers from this area are catching sharks off Hawaii and landing fins in other areas. U.S. and foreign fishing vessels that are based in American Samoa and Guam and have historically landed shark fins (without corresponding carcasses) will be impacted to the extent that these landings cannot be either maintained by landings of shark fins with corresponding carcasses or replaced by landings of other products in an economically profitable way. Purse seiners historically landed significant amounts of shark fins in American Samoa; however, this fleet instituted a voluntary ban on shark finning in 1999 and thus will be unaffected by these measures.

The final action will have more impacts on foreign fishing vessels. The final rule, which does not apply to sharks harvested in state waters, would prohibit foreign fishing vessels from finning in any portion of the U.S. EEZ or from landing shark fins without corresponding carcasses into any U.S. port. Since foreign fishing vessels are currently not authorized to fish in the U.S. EEZ, and all are prohibited from landing any fish in all ports of the 50 United States under the Nicholson Act, in practical terms this aspect of this measure would only affect the landing of shark fins in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Restrictions on this activity could indirectly affect domestic businesses if it results in a reduction in port calls by these foreign fishing vessels; however, it is anticipated that no reductions will occur as the landing of shark fins is not an important part of these port calls. Nevertheless, there will likely be some reduction in personal spending by foreign crew members during port calls. It is estimated that, during 1998, crew members on foreign fishing vessels calling at American Samoa (roughly 111 vessels) each received between \$464 and \$696 annually in shark fin “bonus” money (between \$422,000 and \$653,000 for all crew combined) (McCoy and Ishihara 1999). How much of this bonus money was derived from sales made in American Samoa is unclear, and it is unknown what portion (if any) was actually spent in American Samoa during port calls and shore leave. The total value of shark fin landings (undocumented but maybe several hundred thousand dollars per year) is a very small proportion of the total value of landings of tuna and tuna-like species (several hundred million dollars per year) in American Samoa.

Under the limited application of the prohibitions in the Act (Alternative B), these foreign fishing vessels would not be prohibited from landing shark fins in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, and direct impacts would be limited to those domestic pelagic fishing vessels identified in the EA.

Under the broader application of the Act (Alternative C), foreign fishing vessels would also be prohibited from possessing and landing shark fins while in U.S. EEZ waters and any U.S. port. This restriction could indirectly affect domestic businesses if they result in a reduction in port calls by foreign vessels in American Samoa, Guam, and Commonwealth of the Northern Mariana Islands as this in turn would reduce sales to vessels and crew.

The impacts of Alternative D (the broadest application) would be the most severe. Under this alternative, all U.S. domestic vessels would be prohibited from finning, possessing, or landing shark fins without corresponding carcasses (except fins from sharks legally harvested in state waters). Foreign vessels would be prohibited from finning, possessing, or landing shark fins without corresponding carcasses, in all portions of the U.S. EEZ and all U.S. ports. This would have direct impacts on domestic wholesalers, retailers, and consumers, of shark fin products as it would likely lead to a reduction in available shark fins, or an increase in the price of shark fins which would only be able to enter the U.S. by air or by land (through Mexico or Canada). In Hawaii, it would discourage port calls made by Japanese longliners for supplies and crew rest that are estimated to number 360 or so per year. These vessels would likely shift their activity to foreign ports where this restriction would not apply, such as Majuro in the Republic of the Marshall Islands and Callao, Peru. Over the years this has proven to be a resilient fishing fleet, adapting operational patterns to changes in the fishery, and there is no reason to believe that such adaptations could not also be made in this instance. While some port calls by Japanese longliners in Hawaii could still be expected to take place (e.g., in situations involving emergency ship repairs or in medical emergencies), significant reductions in port calls could result under this alternative. A 75-percent reduction in the number of port calls would result in losses to direct contributions to the Hawaii economy of from \$11 million to \$16 million from spending by those vessels.

The impacts of Alternative D on the Japanese longline vessels that utilize Guam for transshipment of sashimi-grade tuna by air to Japan are not clear. The prohibition on possession of shark fins without the corresponding carcass in a U.S. port would impact both the crew and vessel owners directly. For example, the elimination of potential crew income from shark fin sales for any vessel calling at Guam could put pressure on owners to increase crew salaries. Again, these vessels might seek alternative foreign ports for goods and services. In addition to the commercial considerations involved, the Japanese fleet might be expected to receive support from the government of Japan. With respect to Taiwanese vessels that land in Guam, should the decision by Taiwanese longline vessel owners be to avoid Guam entirely, the loss in the direct contribution to the economy there from longliners would be in the range of \$6 million to \$11 million. A large secondary effect is the potential impact on Guam's tourist-based economy. These impacts include the loss of air freight revenue from exported tuna that contributes to the financial viability of air service to and from Guam, and support of businesses directly involved in providing fresh fish landed as incidental catch from the longliners to local markets including hotels.

In American Samoa, if alternative D were adopted, it is possible that the Taiwanese longline fleet delivering albacore to canneries there could also adjust its operational practices to partially or totally avoid that U.S. port. It is estimated that direct shore expenditures by this fleet range from \$6 million to \$26 million. The impact of this alternative could be to shift all or a portion of that



expenditure elsewhere. Options include transshipping the target catch at sea or in other non-U.S. ports to carriers for delivery to American Samoa. As with the Taiwanese fleet operating from Guam, other operational and financial factors will also help determine the degree to which vessels avoid American Samoa. One further possibility is the landing of shark fins in neighboring Samoa (formerly known as “Western Samoa”) prior to arrival in American Samoa.

Another impact of alternative D would be to make it extremely difficult for foreign fishing vessels to comply with the prohibitions against possession in the U.S. EEZ and still maintain the current fishing patterns and practices that contribute to financial viability. More than 1,000 foreign longline vessels fish in the central and western Pacific and they often transit through the U.S. EEZ when en route to or from the high seas or to other exclusive economic zones where they hold fishing licenses. In addition to the large number of foreign longliners that are active, the international purse seine fleet also operates in these areas on occasion, with their activities taking them as far east as 155°W. longitude during El Nino years. In the normal course of fishing operations, these vessels would have to avoid the U.S. EEZ around the Pacific remote island areas such as Howland and Baker Islands, Jarvis Island, and, to a lesser extent, Kingman Reef and Palmyra Island. There are more than 120 purse seiners from Taiwan, Korea, Japan, Spain, and several Pacific Island countries presently active that might fish in proximity to these areas. These vessels are thought to engage in at least some shark finning, although the degree to which this occurs is unknown. Also affected would be domestic non-fishing (cargo) ships which would be prohibited from possessing or landing shark fins without carcasses in U.S. waters and ports. This would have direct impacts on domestic wholesalers, retailers, and consumers of shark fin products if it leads to a reduction in available shark fins, or an increase in the price of shark fins. This approach would extend further the negative impacts on shark fin traders and exports in American Samoa and Guam, and the practical result would be to eliminate most of the trade in shark fins in these ports. The estimated impact of the cessation of trade in all three areas would be elimination of about \$2 million to \$3 million in direct economic contributions to the U.S. economies concerned. Finally, the broadest application of the landings and possession prohibitions would be to restrict international shipments of shark fins, whether landed legally or not, into or out of U.S. ports. Whether this would greatly affect the volume of trade is not known, though there would likely be some reduction. However, shipments could still move on alternate means of transportation such as trucks and aircraft. This would likely increase the costs of shipments but might not be a serious impediment to trade. Not enough is known about the costs of alternative means of shipment to be definitive on this issue.

## **5.0 REGULATORY IMPACT REVIEW**

### **5.1. Identification and Analysis of the Problem**

For a description of the problem, please see Section 1.0 of this document or the accompanying EA. For more complete descriptions of the fisheries, please see the NMFS Atlantic HMS FMP; the New England Fishery Management Council and mid-Atlantic Fishery Management Council jointly prepared Spiny Dogfish FMP; the Western Pacific Fishery Management Council’s Pelagics FMP; the NMFS Final Environmental Impact Statement on the management of the western

Pacific pelagic fisheries; the Pacific Fishery Management Council's working draft FMP for highly migratory species fisheries off the West Coast; and the NMFS National Plan of Action for Shark Conservation.

## **5.2. Description of the Management Objectives**

For a description of the objectives of the final management measures, please see Section 1.0 of this document or the EA.

## **5.3. Possible Economic Benefits of the Final Management Measures**

Under the final alternative and any of the alternatives that impose some or more stringent controls, there are few clear economic benefits in the short-term. The values of landed shark fins in the U.S.-flag affiliated islands in the western Pacific, as shown in the EA, would be foregone, though foreign vessels would likely find alternate non-U.S. ports in which to land their fins. Over a longer time period, these alternatives could help ensure that shark stocks are not overfished as they might eliminate the U.S. market for shark fins. In terms of the recreational fisheries, any of these alternatives could have some benefits by maintaining the populations of sharks at levels that would support healthy recreational shark fisheries provided they are controlled to ensure that overfishing does not occur.

Under the status quo, fishing would continue to be controlled under current regulations. In the Atlantic, Gulf of Mexico, and the Caribbean Sea, and off the West Coast, Alaska, and Hawaii, finning and the landing of fins would be strictly controlled. In other western Pacific areas, U.S. fishermen could continue to engage in finning, to possess and land shark fins without carcasses, and to engage in trade of shark fins whether or not shark carcasses were involved in the transactions. Foreign fishermen could continue to land shark fins into U.S. ports in the U.S.-flag associated islands in this area. This means that under this alternative, the values associated with shark finning in the western Pacific would be maintained. The economic benefits associated with spending by U.S. and foreign crew from the sales of shark fins in U.S. ports would be maintained.

## **5.4. Possible Economic Costs of the Final Management Measures**

The potential economic costs are presented in section 4.3.2. These include loss of revenue to U.S. and foreign vessels and crew that would likely have derived from the landing and sale of shark fins; the loss of revenue from sales to vessels that landed shark fins; and the loss of revenue from sales of goods and services to vessel crew using revenue from the sale of fins. Most if not all the losses are likely to be suffered in the western Pacific region and principally by foreign vessels and/or crew because few U.S. vessels engage in shark finning, even in the western Pacific.

The cost associated with fishery monitoring and enforcement is expected to increase slightly in the Atlantic, Gulf of Mexico, and the Caribbean Sea, and off the West Coast, Alaska, and Hawaii where finning and the landing of fins are strictly controlled. In western Pacific U.S.-flag associated islands, where finning and the landing of fins have not been regulated, the cost for

enforcing the final action could be significant. Since the prohibition on landing of shark fins without the corresponding carcass applies only to sharks taken in and beyond the U.S. EEZ, enforcement of this prohibition will require determination whether shark fins landed without carcasses in ports in these areas by any U.S. fishing vessel were from sharks that were harvested in state waters or in or beyond the U.S. EEZ. This will take time and effort. Enforcement agents and NOAA General Counsel will use all available information to determine whether there is cause for a prosecution in specific cases.

## **5.5. Conclusions**

Based on analyses of the selected action and the alternatives, NMFS has concluded that this action is not likely to result in a rule that may: 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; create a 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. Therefore, NMFS has determined that this action is not significant under E.O. 12866. The final alternative is not expected to have a significantly adverse effect on the fisheries that take sharks because in most cases they are either not reliant on finning for their profitability or they are not targeting sharks, and, thus, are not dependent to a significant degree on the revenue from shark fins.

## **6.0 FINAL REGULATORY FLEXIBILITY ANALYSIS**

### **6.1. Description of the reasons why action is being considered**

Section 1.0 of this document or of the accompanying EA describes the reasons for the final action.

### **6.2. The objectives and legal basis for the final rule**

Section 1.0 of this document or of the accompanying EA describes the objectives and legal basis for the final action.

### **6.3. A description and an estimate of the number of small entities to which the final rule will apply**

NMFS considers all U.S. fishing vessels that take sharks to be small entities except for the tuna purse seine vessels that have fishing permits under the South Pacific Tuna Treaty. These vessels are large and cost several million dollars. As finalized, the management measures would apply to all U.S. vessels that fish in or beyond the U.S. EEZ or that hold an Atlantic Federal commercial shark or spiny dogfish permit and that fish in a manner resulting in the catch of sharks. This

amounts to several thousand commercial and recreational fishing vessels. However, relatively few of these (probably not much more than 100) engage in shark finning and thus relatively few would be affected by the final action. Foreign fishing vessels that have landed shark fins in U.S.-flag affiliated islands in the western Pacific also would be affected. There may be several hundred such vessels. Other small entities such as dealers and processors (the number is not known but is likely to be fewer than 100) may be affected as a result of the final action as they would be reluctant to buy shark fins without knowing that carcasses have been landed with the fins. A few dealers who have been active in buying shark fins from foreign fishing vessels in U.S.-flag affiliated islands in the western Pacific will have to cease such activity and could be seriously harmed by the final rule. The fishery interests are described in section 4 of the accompanying EA.

#### **6.4. A description of the projected reporting, recordkeeping, and other compliance requirements of the final rule**

The final rule would not change the reporting requirements currently in place for the affected fishermen and/or dealers. These requirements currently include weighout slips in the Atlantic, fish landings receipts on the West Coast and Alaska, and logbook and port monitoring in the western Pacific. A description of all the reporting and recordkeeping requirements for shark fishermen and dealers is contained in the accompanying EA. NMFS will work with the fishery management councils, interstate marine fishery commissions, and the affected industries to determine whether any changes in reporting or recordkeeping are necessary in the future to ensure that the requirements of the Act are achieved.

No special compliance measures are required except that all fins and carcasses must be landed and weighed at the same time. That is, when a landing begins, all fins and carcasses must be landed at the same point and time. This is to ensure that there is an ability to relate fin landings to total shark landings and enforce the prohibition of landing fins without carcasses.

#### **6.5. Identification of all relevant federal rules which may duplicate, overlap, or conflict with the final rule**

NMFS has determined that the final regulations do not conflict with any relevant regulations, federal or otherwise. Current management measures are described in section 4.1 and in the EA.

#### **6.6. A description of the steps the agency has taken to minimize any significant economic impacts on small entities**

One of the requirements of the Regulatory Flexibility Act is to describe steps the Agency has taken to minimize the economic impacts of the action on small entities, list the alternatives considered by the Agency, and explain why other alternatives were rejected. NMFS analyzed four alternatives as described in section 2 of this document and in the EA. NMFS also considered a few other alternatives, such as status quo and allowing individual states and the regional fishery management councils to implement the provisions of this act (see section 2 of the EA).

In general, NMFS does not consider the alternatives other than the final alternative to be viable, given the requirements of the Act as described in Sections I and II of the EA, and in the Shark Finning Prohibition Act itself. For instance, under status quo, although this alternative would cause little economic disruption, the act of finning and landing of fins could continue. On the other hand, a broader application of the prohibitions could have very serious impacts on legitimate international trade. NMFS feels that the Act was not intended to generate such severe impacts. The final alternative will have some negative impacts on fishing firms and some associated businesses that deal in shark fins, but shark fins probably do not constitute the principal source of income for these firms and businesses. NMFS believes that the final alternative will achieve the objectives of the Act with the least burden possible.

The Regulatory Flexibility Act also requires Agencies to consider the following in terms of minimizing the economic impacts on small entities:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities.
2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities.
3. The use of performance rather than design standards.
4. An exemption from coverage of the rule for small entities.

Elements one, two, and four assume that there are both small and large entities in the industry. In the case of this rule, NMFS considers all potentially affected interests to be small entities (with the possible exception of certain owner(s)) of the purse seine vessels with South Pacific Tuna Treaty permits. Thus, elements one, two and four are not meaningful approaches. With respect to element three, the Act is very direct; it prohibits finning and does not allow performance standards.

**6.7. A summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis and a statement of any changes made in the rule as a result of such comments**

NMFS received 23 sets of comments on the proposed rule during the public comment period. Only two comments addressed economic impacts of the proposed action and alternatives relevant to the RIR/IRFA. One commenter indicated that there was insufficient consideration of alternatives and of adverse economic impacts. Both an environmental assessment and a combined regulatory impact review and regulatory flexibility analysis were prepared for the proposed rule, and a range of alternatives and their impacts have been considered. It was clearly acknowledged that there could be adverse impacts on some businesses from application of the prohibitions as proposed. NMFS considered the comments it received on the proposed rule during the public comment period when the final rule was prepared. Another commenter indicated that there would be adverse impacts on businesses in Hawaii and on communities in American Samoa and Guam. The RIR/IRFA acknowledged that there could be such impacts and the accompanying EA provides more detail on the types and potential magnitude of impacts that could result from the

action. Accordingly, no changes were made in the rule as a result of any economic impact comments. A summary of the comments and responses to those comments can be found in the final rule.

## **7.0 PREPARERS**

This document was prepared by a team from NMFS and NOAA, including representatives of the Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1); Southwest Region Office and Pacific Islands Area Office; and NOAA General Counsel.

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## **8.0 RELEVANT DOCUMENTS AND REFERENCES**

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