Draft Environmental Assessment,
Regulatory Impact Review,

and

Initial Regulatory Flexibility Analysis

for a Proposed Rule to

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

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

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ABSTRACT

Proposed Action:	Implement the 2011 International Commission for the Conservation for Atlantic Tunas (ICCAT) Recommendation on Silky Sharks.
Type of statement:	Draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA)
Lead Agency:	National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries

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

TABLE OF CONTENTS

ABSTRACT 2

TABLE OF CONTENTS 3

1.0 PURPOSE AND NEED FOR ACTION 5

1.1 REGULATORY AUTHORITIES 5
1.2 PURPOSE AND NEED FOR ACTION 5

2.0 SUMMARY OF THE ALTERNATIVES 7

ALTERNATIVE 1: NO ACTION 7
ALTERNATIVE 2: IMPLEMENT THE ICCAT RECOMMENDATION 11-08 IN THE COMMERCIAL PELAGIC LONGLINE FISHERY FOR TUNA AND TUNA-LIKE SPECIES 7
ALTERNATIVE 3 (*PREFERRED ALTERNATIVE*): IMPLEMENT THE ICCAT RECOMMENDATION 11-08 AND ADDITIONAL PROHIBITIONS AGAINST THE STORING, SELLING, OR PURCHASING OF SILKY SHARKS IN THE COMMERCIAL PELAGIC LONGLINE FISHERY FOR TUNA AND TUNA-LIKE SPECIES 8

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT 9

3.1 STATUS OF THE STOCKS 9
3.2 FISHERY PARTICIPANTS, GEAR TYPES, AND AFFECTED AREA 10
3.3 HABITAT 10
3.4 PROTECTED SPECIES UNDER THE ENDANGERED SPECIES ACT (ESA) AND MARINE MAMMAL PROTECTION ACT (MMPA) 11

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES 13

4.1 ALTERNATIVE 1: NO ACTION. 13
4.2 ALTERNATIVE 2: IMPLEMENT THE ICCAT RECOMMENDATION 11-08 BY PROHIBITING PELAGIC LONGLINE VESSEL OPERATORS FROM RETAINING, TRANSSHIPPING, OR LANDING SILKY SHARKS IN THE COMMERCIAL ATLANTIC HMS PELAGIC LONGLINE FISHERY FOR TUNA AND TUNA-LIKE SPECIES 14
4.3 ALTERNATIVE 3: IMPLEMENT THE ICCAT RECOMMENDATION 11-08 AND ADDITIONAL PROHIBITIONS AGAINST STORING, SELLING, AND PURCHASING SILKY SHARKS IN THE COMMERCIAL PELAGIC LONGLINE FISHERY FOR TUNA AND TUNA-LIKE SPECIES – PREFERRED ALTERNATIVE 15
4.4 IMPACTS ON ESSENTIAL FISH HABITAT 16
4.5 IMPACTS ON PROTECTED SPECIES 17
4.6 ENVIRONMENTAL JUSTICE CONCERNS 18
4.7 COASTAL ZONE MANAGEMENT ACT (CZMA) CONCERNS 18
4.8 CUMULATIVE IMPACTS 18
4.9 COMPARISON OF ALTERNATIVES 20

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACT 21

5.1 MITIGATING MEASURES 21
5.2 UNAVOIDABLE ADVERSE IMPACTS 21
5.3 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES 21

6.0 ECONOMIC EVALUATION 22

6.1 NUMBER OF VESSELS AND PERMIT HOLDERS 22
6.2 GROSS REVENUES OF COMMERCIAL FISHERMEN 22
6.3 OPERATING COSTS OF COMMERCIAL FISHERMEN 23
6.4 EXPECTED ECONOMIC IMPACTS OF THE ALTERNATIVES 24
6.4.1 NO ACTION ALTERNATIVE 24
6.4.2 ALTERNATIVE 2: IMPLEMENT THE ICCAT SHARK RECOMMENDATION IN THE COMMERCIAL PELAGIC LONGLINE FISHERY FOR TUNA AND TUNA-LIKE SPECIES 25
6.4.3 ALTERNATIVE 3: IMPLEMENT THE ICCAT SHARK RECOMMENDATION AND ADDITIONAL PROHIBITIONS IN THE

COMMERCIAL PELAGIC LONGLINE FISHERY FOR TUNA AND TUNA-LIKE SPECIES 25

7.0 REGULATORY IMPACT REVIEW 26

7.1 DESCRIPTION OF THE MANAGEMENT OBJECTIVES 26
7.2 DESCRIPTION OF THE FISHERY 26
7.3 STATEMENT OF THE PROBLEM 26
7.4 DESCRIPTION OF EACH ALTERNATIVE 26
7.5 ECONOMIC ANALYSIS OF EXPECTED EFFECTS OF EACH ALTERNATIVE RELATIVE TO THE BASELINE 27
7.6 CONCLUSION 27

8.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS 29

8.1 DESCRIPTION OF THE REASONS WHY ACTION IS BEING CONSIDERED 29
8.2 STATEMENT OF THE OBJECTIVES OF, AND LEGAL BASIS FOR, THE PROPOSED RULE 29
8.3 DESCRIPTION AND ESTIMATE OF THE NUMBER OF SMALL ENTITIES TO WHICH THE PROPOSED RULE WILL APPLY 29
8.4 DESCRIPTION OF THE PROJECTED REPORTING, RECORD-KEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING AN ESTIMATE OF THE CLASSES OF SMALL ENTITIES WHICH WILL BE SUBJECT TO THE REQUIREMENTS OF THE REPORT OR RECORD 29
8.5 IDENTIFICATION OF ALL RELEVANT FEDERAL RULES WHICH MAY DUPLICATE, OVERLAP, OR CONFLICT WITH THE PROPOSED RULE 29
8.6 DESCRIPTION OF ANY SIGNIFICANT ALTERNATIVES TO THE PROPOSED RULE THAT ACCOMPLISH THE STATED OBJECTIVES OF APPLICABLE STATUTES AND THAT MINIMIZE ANY SIGNIFICANT ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL ENTITIES 29

9.0 COMMUNITY PROFILES 32

10.0 OTHER CONSIDERATIONS 33

10.1 MAGNUSON-STEVENS ACT AND ATLANTIC TUNAS CONVENTION ACT 33
10.2 PAPERWORK REDUCTION ACT 33
10.3 E. O. 13132 33

11.0 LIST OF PREPARERS AND PERSONS/AGENCIES CONSULTED 34

12.0 REFERENCES 35

FINDING OF NO SIGNIFICANT IMPACT 36

1.0 PURPOSE AND NEED FOR ACTION

1.1 Regulatory Authorities

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

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

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

1.2 Purpose and Need for Action

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

action. The corresponding purpose of the action is to implement Recommendation 11-08 in a manner that meets our obligations under ICCAT and ATCA consistent with our management authority for HMS fisheries under the MSA and the 2006 HMS FMP.

In this EA, we consider options for changing the Atlantic HMS regulations at 50 CFR 635, consistent with the ICCAT recommendation and the HMS FMP. The two alternatives described in Section 2.0 would affect only commercial vessels with pelagic longline gear onboard that fish for tunas and tuna-like species. Harvesting silky sharks is already prohibited in the recreational fishery. While silky sharks could be caught on handgear, bottom longline, or gillnet gear, these gears target sharks and are not used in association with ICCAT fisheries; therefore, actions to prohibit the retention of silky sharks from these gears would not meet the foregoing purpose and need and are not considered further.

2.0 SUMMARY OF THE ALTERNATIVES

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

Alternative 1: No Action

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

Commercial Fishery

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

Recreational Fishery

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

Alternative 2: Implement the ICCAT Recommendation 11-08 in the commercial pelagic longline fishery for tuna and tuna-like species

This alternative would implement ICCAT Recommendation 11-08, which prohibits retaining on board, transshipping, or landing any part or whole carcass of silky shark caught in association with ICCAT-managed fisheries. Under this alternative, commercial vessels with pelagic longline gear on board could not retain or possess silky sharks. The corresponding regulation would be limited in scope to the recommendation under this alternative.

Alternative 3 (*Preferred Alternative*): Implement the ICCAT Recommendation 11-08 and additional prohibitions against the storing, selling, or purchasing of silky sharks in the commercial pelagic longline fishery for tuna and tuna-like species

This alternative would:

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

This alternative is the same as alternative 2, except for the addition of prohibitions on the storing, selling and purchasing any part or whole carcass of a silky shark. Under the proposed action, a pelagic longline vessel operator would not be allowed to store or sell silky shark products and a dealer could not buy silky sharks from a pelagic longline vessel owner or operator. We are considering including these additional prohibitions in the corresponding regulation to increase domestic enforcement abilities. These prohibitions would provide consistency with current regulations for oceanic whitetip and hammerhead (except for *Sphyrna tiburo*) sharks in the commercial pelagic longline fishery for tuna and tuna-like species and would simplify compliance, for fishermen and for dealers, as well as enforcement.

3.0 DESCRIPTION OF AFFECTED ENVIRONMENT

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

Silky sharks are managed in the U.S. Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. They are managed as a Large Coastal Shark species. Currently, directed and incidental shark permit holders using pelagic longline gear are authorized to retain these species of silky sharks as part of the non-sandbar LCS complex. The non-sandbar LCS quota is 677.8 mt dw (Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw). Retention limits for vessels operating outside the shark research fishery is 33 non-sandbar LCS/vessel/trip for directed permit holders and 3 non-sandbar LCS/vessel/trip for incidental permit holders. All sharks, including silky sharks, must be landed with all fins naturally attached by all HMS fishery participants in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. In the recreational fisheries, silky sharks are considered a prohibited species and must be released.

On August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries by vessels in the commercial HMS pelagic longline fishery and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652). In addition, a dealer issued a permit under this part may not purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board. The language of ICCAT Recommendation 11-08 for silky sharks does not include language that prohibits storing, selling and purchasing any part of the shark species. In order to simplify domestic enforcement, we are proposing the inclusion of those additional prohibitions in the rule consistent with the similar shark regulations finalized last year regarding oceanic whitetip and most hammerhead sharks.

3.1 Status of the Stocks

Silky sharks were last assessed as part of the large coastal shark complex, which was last assessed during the Southeast Data, Assessment, and Review (SEDAR) 11 process, dated June 5 to 9, 2006. The peer reviewers of the assessment felt that the assessment did a poor job at representing the status of the Large Coastal Shark complex because of the potential for conflicting and/or

mismatching information from the various species in the catch and abundance index data. Therefore, the peer reviewers were uncertain of what the results of the assessment represented, and felt that the assessment should not be used for management of the complex. Based on these results, we determined that the assessment on the complex as a whole was inappropriate to use for management. Silky sharks are part of the complex, and therefore, the stock status of silky sharks is unknown.

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

3.2 Fishery Participants, Gear Types, and Affected Area

Only HMS fishery participants that fish for tuna and tuna-like species commercially with pelagic longline gear are affected by this rulemaking. Please see Section 4.1 for a discussion of the present level of incidental catch, retention and release of silky sharks in this fishery. We are incorporating by reference the 2011 SAFE Report for Atlantic Highly Migratory Species (National Marine Fisheries Service 2011), which describes these affected environments and provides a view of the current condition of these fisheries, the current landings of large coastal and pelagic sharks caught with pelagic longline, the marine ecosystems in the fishery management unit, the social and economic condition of the fishing interests, and fishing communities.

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

3.3 Habitat

The area in which this action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the National Marine Fisheries Service. Generally, the target species of the Atlantic HMS fisheries are associated with hydrographic structures of the water column, e.g., convergence zones or boundary areas between different currents. Because of the magnitude of water column structures and the processes that create them, there is little effect on habitat that can be detected from the HMS fishing activities.

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

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

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

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

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

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

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

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

Please refer to Sections 3.8 and 3.9.9 of the 2006 Consolidated HMS FMP for additional information on potential interactions of Atlantic HMS fisheries with protected species and marine mammals. Sections 3.9.9.1 and 3.9.9.2 specify the 22 cetacean species of concern that occur off the Atlantic and Gulf coasts, including six endangered whale species. The 2004 BiOp acknowledged that because Northern right, fin, humpback, blue, sei, and sperm whales occur in the action area, there is a possibility of interaction with the longline fishery, but the available evidence indicated interactions are exceedingly rare. As such, the 2004 BiOp concluded the chances of a fin, humpack, Northern right, blue, sei, or sperm whale being adversely affected by the Atlantic pelagic longline fishery in the foreseeable future are discountable. The proposed action will not result in effects to listed marine mammals beyond those considered in the 2004 BiOp; none of the four triggers for reinitiation of consultation set forth in that opinion are met, and therefore further ESA Section 7 consultation is not necessary.

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES

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

4.1 Alternative 1: No Action.

This alternative would maintain the status quo and would not implement the 2011 ICCAT silky shark recommendation. Under this alternative, vessel operators fishing with pelagic longline gear would continue to be able to retain, transship, land, store, and sell silky sharks subject to existing regulations.

Ecological Impacts

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

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

Economic and Social Impacts

Pelagic longline vessels fishing for tuna and tuna-like species catch silky sharks infrequently and only incidentally to the target species. As of October 2011, the HMS pelagic longline fleet consists of 242 vessels (i.e., in possession of a tuna longline permit). According to HMS logbook data, pelagic longline vessels landed an average of 2,537 lb of silky sharks annually from 2006 through 2009. These silky sharks were reported landed by an average of seven pelagic longline vessels. Using the median real dollar, ex-vessel price per pound of $0.75 for silky shark meat and $11.11 for shark fins, these landings are equivalent to an average of $3,392 ($1,489 for fins and $1,903 for meat) in annual gross revenues. This equates to approximately $485/vessel/year in revenues from silky sharks. However, each vessel is also predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna).

Therefore, $485 in revenues from silky shark sales are minor (<1 percent) compared to each vessel's overall revenue.

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

Conclusion

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

4.2 Alternative 2: Implement the ICCAT Recommendation 11-08 by prohibiting pelagic longline vessel operators from retaining, transshipping, or landing silky sharks in the commercial Atlantic HMS pelagic longline fishery for tuna and tuna-like species

Ecological Impacts

Alternative 2 would prohibit by domestic regulation pelagic longline vessel operators from retaining, transshipping, or landing silky sharks. As described above, an analysis of the 2006 through 2010 HMS logbook data, which covers the HMS pelagic longline fishery, indicates that on average a total of 60 silky sharks (four percent of those caught) are kept per year and an additional 1,417 are discarded dead or alive. Under this alternative, all silky sharks caught would have to be released by pelagic longline fishermen and approximately 29 percent of them would be released alive. Of the 60 silky sharks that are currently retained, we expect 17 (29 percent) of them to be released alive. We do not expect the actual number caught (1,477 per year on average) to change as a result of this action because fishermen do not target nor retain large numbers of silky sharks now. A reduction of mortality for silky sharks would have minor beneficial impacts due to the species' low productivity and high susceptibility according to the 2010 ecological risk assessment.

Economic and Social Impacts

Under this alternative, Atlantic HMS commercial permit holders with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. As described above, commercial pelagic longline fishermen would no longer be able to land this species and could potentially lose annual revenues of $3,392 for all vessels or $485 per vessel. However, each vessel is also predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, a $485 loss in revenues from silky shark sales is very little (<1 percent) compared to each vessel's

overall revenue. We believe that commercial fishermen would not alter fishing practices for tuna and tuna-like species as a result of this alternative because silky shark landings constitute a small portion of pelagic longline landings and revenues.

Conclusion

As described in Chapter 1, we must implement ICCAT recommendations through regulations as necessary and appropriate. ICCAT Recommendation 11-08 prohibits retaining, transshipping, or landing of silky sharks caught in association with fisheries managed by ICCAT. Silky sharks are caught incidentally to tuna and tuna-like species in the HMS commercial pelagic longline fishery. Alternative 2 would prohibit the retention of this species in the HMS pelagic longline fishery consistent with the 2011 ICCAT Recommendation 11-08. Under Alternative 2, we expect an additional 17 silky sharks to be released alive. Additionally, we expect those pelagic longline vessels that landed silky sharks to lose approximately $3,392 per year across all vessels or $485 per vessel per year as a result of this action. Therefore, alternative 2 is likely to have minor, beneficial ecological impacts due to the reduction of mortality of this species, and would have only minor, adverse socioeconomic impacts to pelagic longline fishermen. Alternative 2 is limited in scope to 2011 ICCAT Recommendation 11-08 and establishes fewer prohibitions than Alternative 3 described below. Thus, for purposes of enforcement, Alternative 2 could be less effective than Alternative 3.

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

Ecological Impacts

Similarly to Alternative 2, Alternative 3 would prohibit by regulation pelagic longline vessel operators from retaining, transshipping, or landing silky sharks. Additionally, Alternative 3 would prohibit pelagic longline vessel operators from storing, selling or purchasing any part or whole carcass of silky sharks. It would further prohibit permitted dealers from purchasing silky sharks from fishing vessels with pelagic longline gear and from other permitted vessel owners who are off-loading or have on board tuna, swordfish or billfish. In addition to the beneficial ecological impacts described under Alternative 2, we anticipate that Alternative 3 would have additional ecological benefits by reducing mortality and improving domestic enforcement capabilities as explained below.

Economic and Social Impacts

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

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

Conclusion

As described in Chapter 1, we must implement ICCAT recommendations through regulations as may be necessary and appropriate. ICCAT Recommendation 11-08 prohibits the retention, transshipping, or landing of silky sharks caught in association with fisheries managed by ICCAT. Silky sharks are caught incidentally to tuna and tuna-like species in the HMS commercial pelagic longline fishery. Alternative 3 would prohibit pelagic longline vessel operators from retaining, transshipping, or landing silky sharks consistent with the 2011 ICCAT Recommendations 11-08. Under Alternative 3, we expect an additional 17 silky sharks to be released alive. Additionally, we expect those pelagic longline vessels that landed silky sharks to lose approximately $3,392 per year across all vessels (7 vessels) or $485 per vessel per year as a result of this action. Moreover, the additional prohibitions under this alternative would enhance domestic enforcement abilities. Therefore, we prefer alternative 3 because it is consistent with ATCA and the Magnuson-Stevens Act, and compared to the other alternatives, prohibiting the retention of silky sharks in the HMS commercial pelagic longline fishery is likely to have minor, beneficial ecological impacts due to the reduction of mortality of this species. This alternative would have minor adverse socioeconomic impacts to pelagic longline fishermen and dealers. We prefer Alternative 3 because it would increase domestic enforcement capabilities, provide greater clarity to regulated fishing vessels and dealers and result in a greater conservation benefit to the species without causing adverse socioeconomic impacts beyond those that would result from Alternative 2.

4.4 Impacts on Essential Fish Habitat

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action

authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. In the Consolidated HMS FMP, we concluded that there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified on the habitat of fisheries. As none of the alternatives would alter fishing gears or practices, we anticipate that none of the alternatives, including the preferred alternative, would have any adverse impacts to EFH, and the conclusion for the Consolidated HMS FMP is still applicable, so further consultation is not necessary.

4.5 Impacts on Protected Species

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

On May 19, 2009 (74 FR 23349), we published a final rule intended to reduce marine mammal takes by pelagic longline vessels in the Atlantic. For further information on HMS fishery interactions and protected species, including non-ESA listed marine mammals, see Section 3.9.9 of the Consolidated HMS FMP.

Consistent with the 2011 ICCAT Recommendation for silky sharks, preferred Alternative 3 would prohibit pelagic longline vessel operators from retaining, transshipping, or landing silky sharks. We do not expect the measures in this proposed action to alter current fishing practices or increase fishing effort. There would no additional effects to protected species beyond those expected

from the status quo; i.e. no action alternative. Thus, the proposed action in this Draft EA/RIR/IRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates. For these reasons we have determined that the proposed action will have no effects on listed species beyond those evaluated in the 2004 BiOp and Section 7 consultation for this action is not necessary.

4.6 Environmental Justice Concerns

Executive Order (E.O.) 12898 requires that Federal agencies address environmental justice in the decision-making process. In particular, the environmental effects of Federal actions should not have a disproportionate adverse effect on minority and low-income communities. We do not expect the proposed action to have any effects on human health. Nor do we expect it to have any disproportionate social or economic effects on minority and low-income communities. We expect only slightly adverse social or economic impacts due to the fact that silky sharks constitute only a small portion of catch in the commercial pelagic longline fishery for tuna and tuna-like species. In addition, we do not expect pelagic longline fishermen to alter or modify their fishing practices as a result of the prohibitions.

4.7 Coastal Zone Management Act (CZMA) Concerns

We have determined that these proposed regulations are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters will be sent to those states requesting their concurrence.

4.8 Cumulative Impacts

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

Cumulative Ecological Impacts

Preferred Alternative 3 would implement ICCAT Recommendation 11-08 and impact pelagic longline vessels, which target tuna and tuna-like species in the ICCAT Convention area. Specifically,

pelagic longline vessels would no longer be authorized to retain, transship, or land silky sharks. The additional prohibitions of alternative 3, a prohibition against storing or selling silky sharks, would enhance the enforcement capabilities. We expect that this alternative would result in minor, beneficial cumulative ecological impacts because it would likely reduce fishing mortality for a species of shark (i.e. silky sharks) that the 2010 ecological risk assessment has shown to have low productivity and high susceptibility to fishing.

Silky sharks are not targeted by pelagic longline vessels and logbook data indicate they are caught incidentally to tuna and tuna-like species on approximately 12 percent of pelagic longline trips between 2006 and 2010. We have addressed other pelagic longline-related actions through amendments to the 2006 Consolidated HMS FMP and various rules regarding other species. For example, on August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries by vessels in the commercial HMS pelagic longline fishery and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652). We are currently considering potential options for future actions that could affect pelagic longline fishermen and the species they catch. For example, in mid-2012, we expect to propose measures in Amendment 5 to the 2006 Consolidated HMS FMP that are designed to maintain rebuilding of sandbar sharks, end overfishing and rebuild dusky, scalloped hammerhead, and Atlantic blacknose sharks, and address the unknown overfished/overfishing status of Gulf of Mexico blacknose sharks. Some of these measures could impact pelagic longline fishermen as they can catch some of those species of sharks. We are also considering potential measures for Amendment 7 to the 2006 Consolidated HMS FMP, which addresses potential management measures for Atlantic HMS and in particular, Atlantic bluefin tuna. Some of the measures in Amendment 7 could impact pelagic longline fishermen as they catch Atlantic bluefin tuna. We do not expect that these potential future measures would alter the cumulative ecological impacts of this current action.

Cumulative Social and Economic Impacts

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

4.9 Comparison of Alternatives

Table 4.1 compares the environmental impacts of the three alternatives.

Table 4.1 **Comparison of the impacts of analyzed alternatives**

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

Alternative	Ecological	Protected Resources	Socioeconomic
A1 *No Action. Do not implement the ICCAT shark recommendation*	⊙-	○	○
A2 *Implement ICCAT shark recommendation in the commercial pelagic longline fishery for tuna and tuna-like species*	⊙+	○	⊙-
A3 *Implement ICCAT shark recommendation and additional prohibitions in the commercial pelagic longline fishery for tuna and tuna-like species – Preferred Alternative*	⊙+	○	⊙-

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACT

5.1 Mitigating Measures

Under the preferred alternative in the proposed action, we would implement the 2011 ICCAT Recommendation 11-08 in accordance with the 2006 Consolidated HMS FMP, ATCA and the Magnuson-Stevens Act. The proposed action would prohibit pelagic longline vessel operators and owners from retaining, transshipping, landing, selling, or storing silky sharks. This action could result in direct, minor, adverse socioeconomic impacts to fishery participants if these species would now have to be released when caught. Impacts to the commercial pelagic longline fishermen would be minor as these species are not commonly caught as bycatch when fishing for tuna and tuna-like species. Therefore, we have not identified any measures to mitigate these minor adverse effects.

5.2 Unavoidable Adverse Impacts

Although the preferred alternative would result in the prohibition of silky sharks for certain sectors of the HMS fisheries, it is consistent with ICCAT Recommendation 11-08, the Consolidated HMS FMP, ATCA, and the Magnuson-Stevens Act. We do not expect fishermen to change current fishing practices or increase fishing effort due to the prohibition of this species. The action would not modify fishing behavior or gear type. Thus, there are no unavoidable adverse impacts to ecological resources and protected resources, but the minor adverse socioeconomic impacts cannot be avoided.

5.3 Irreversible and Irretrievable Commitment of Resources

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

6.0 ECONOMIC EVALUATION

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

6.1 Number of Vessels and Permit Holders

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

Table 6.1 Number of Tuna Longline (pelagic longline) and Shark Dealer Permits, 2006-2010.

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

6.2 Gross Revenues of Commercial Fishermen

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

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

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

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

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

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

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

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

HMS logbook data indicate that on average, 2,671 lb of silky sharks were commercially landed each year from 2006 through 2009. Applying the species-specific weighted median price to each of these species yields an annual revenue for silky sharks of approximately $3,392 ($1,489 for fins and $1,903 for meat). Fin weight was calculated by taking 5 percent of the total annual average weight of silky sharks, and the annual fin revenue for the time series was approximately $1,489 (117 lb * $11.11).

6.3 Operating Costs of Commercial Fishermen

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

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

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

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

*Cost per light stick.

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

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

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

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

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

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

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

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

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

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

6.4 Expected Economic Impacts of the Alternatives

6.4.1 No Action Alternative

Alternative 1 would maintain the status quo and allow retention of silky sharks by pelagic longline vessels, which target tuna and tuna-like species in the U.S. portion of the ICCAT Convention Area. Under the no action alternative, fishery participants would experience positive economic

impacts, consistent with their present activities because they would continue to be able to target and/or land silky sharks. Assuming revenues in the pelagic longline fishery remain consistent with past (2006-2010) levels, the participants who harvest silky sharks could experience total economic benefits of $3,392 per year. This includes revenue from silky shark fins ($1,489) and shark meat ($1,903). These revenues are not per vessel; rather, they represent revenues for the entire pelagic longline fishery and were distributed amongst participants harvesting silky sharks. Between 2006 through 2010, on average, seven vessels/year landed silky sharks equating to per vessel revenues of $485/vessel/year. However, each vessel is also predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, $485 in revenues from silky shark sales is very little (<1 percent) compared to each vessel's overall revenue. We predict that each trip has an upfront cost of approximately $6,969.

6.4.2 Alternative 2: Implement the ICCAT shark recommendation in the commercial pelagic longline fishery for tuna and tuna-like species

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

6.4.3 Alternative 3: Implement the ICCAT shark recommendation and additional prohibitions in the commercial pelagic longline fishery for tuna and tuna-like species

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

7.0 REGULATORY IMPACT REVIEW

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

7.1 Description of the Management Objectives

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

7.2 Description of the Fishery

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

7.3 Statement of the Problem

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

7.4 Description of Each Alternative

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

Table 7.1 Net Economic Benefits and Costs of Alternatives

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

Alternatives	Net Economic Benefits	Net Economic Costs
		from silky sharks.
Alternative 3: Prohibit retention and additional prohibitions of silky sharks in the commercial pelagic longline fishery targeting tuna and tuna-like species	In the long term, if all countries are consistent with the ICCAT Recommendation and the overall reduced mortality of silky sharks leads to a population increase, there may be future commercial fishing opportunities for these species.	Commercial landings of silky sharks along with tuna and tuna-like species are a rare occurrence in the commercial fishery. Therefore, economic loss associated with this alternative is anticipated to be minor. From reporting landings, there would be an estimated reduction of $3,392 in gross revenues (fleet-wide) annually from silky sharks. From reporting landings, there would be an estimated reduction of $3,392 in gross revenues (fleet-wide) annually from silky sharks.

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

We do not foresee that the national net benefits and costs would change significantly in the short- or long-term as a result of implementation of the preferred alternative. Alternative 3, which would prohibit pelagic longline vessel operators and owners from retaining, transshipping, landing, storing, and selling silky sharks, would reduce the total number of sharks landed and available for commercial sale. However, this is only a minor reduction in total shark landings. This preferred action could result in minor, adverse economic impacts to the commercial pelagic longline fishery. Alternative 3 would also provide enhanced enforcement capabilities. Because silky sharks are encountered in relatively small numbers in U.S. commercial pelagic longline fishery that targets tuna and tuna-like species, we do not expect the overall economic impact of the preferred alternative, Alternative 3, to have a significant adverse economic impact over the short- or long-term.

7.6 Conclusion

Under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: 1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights, and obligation of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The proposed action described in this draft EA/RIR/IRFA does not meet the above criteria. For example, the economic impacts as reflected in this proposed rule are under the $100 million threshold. This action raises no novel or legal policy issues as it implements an ICCAT recommendation according to international and domestic law and

policy, is consistent with past regulatory action taken by NMFS to conserve other oceanic shark species, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the proposed action described in this document has been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 7.1.

8.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

8.1 Description of the Reasons Why Action is Being Considered

See Chapter 1 for a description of the reasons why this action is being considered.

8.2 Statement of the Objectives of, and Legal Basis for, the Proposed Rule

See Chapter 1 for a statement of the objectives and legal basis for the proposed rule.

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

This proposed action would apply to all participants in the Atlantic HMS commercial fisheries that have pelagic longline gear onboard and permitted shark dealers, all of which are considered small entities. As of October 2011, 242 pelagic longline vessels held a Tuna Longline permit and are reasonably expected to use pelagic longline gear. These permitted vessels are all commercial vessels.

8.4 Description of the Projected Reporting, Record-Keeping, and other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirements of the Report or Record

The proposed action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

8.5 Identification of all Relevant Federal Rules which may Duplicate, Overlap, or Conflict with the Proposed Rule

This proposed rule must be consistent with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. We strive to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. We do not believe that the proposed alternative would conflict with any relevant regulations, Federal or otherwise. Once the proposed rule is finalized and made effective, fishermen participating in the affected fisheries (i.e., pelagic longline fishermen) must comply with the final rule. We have reviewed our regulations applicable to the HMS pelagic longline fishery for tuna and tune-like species and determined that the proposed rule will not duplicate or overlap with those regulations.

8.6 Description of any Significant Alternatives to the Proposed Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which

accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of this document. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and,
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and ESA, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. We do not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ATCA. Thus, there are no alternatives considered under the third category. As described below, we analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

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

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

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

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

9.0 COMMUNITY PROFILES

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

Profiles for HMS fishing communities were included in Chapter 9 of the 2006 Consolidated HMS FMP and updated in Chapter 6 of the 2011 SAFE Report. These HMS communities are analyzed for social impacts in this action due to the importance of pelagic longline fishing to the community: Gloucester, MA; New Bedford, MA; Barnegat Light and Brielle/Point Pleasant, NJ; Hatteras, NC; Wanchese, NC; and Venice and Dulac, LA.

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

10.0 OTHER CONSIDERATIONS

10.1 Magnuson-Stevens Act and Atlantic Tunas Convention Act

We have determined that this proposed action is consistent with the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment. Section 971d(c)(1)(C) of ATCA provides that regulations promulgated under the Act, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Act. We have also determined that the proposed rule is consistent with the 2006 HMS FMP. The bases for these determinations are set forth below.

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

This proposed action does not discriminate against fishermen in any state (NS 4) nor does it alter the efficiency in utilizing the resource (NS 5). With regard to NS 6, the proposed action takes into account any variations that may occur in the fishery and the fishery resources. Additionally, we considered the costs and benefits of these management measures economically and socially under National Standards 7 and 8 in Sections 4, 5, and 6 of this document. The proposed action would prohibit the retention of silky sharks in the commercial HMS pelagic longline fishery for tuna and tuna-like species, and would not increase fishing effort for Atlantic sharks; therefore, impacts to bycatch species and protected species are similar to those previously analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP (NS 9). Finally, the proposed action would not require fishermen to fish in an unsafe manner (NS 10).

10.2 Paperwork Reduction Act

The proposed quota specifications and effort controls contain no new collection-of-information requirements subject to the Paperwork Reduction Act.

10.3 E. O. 13132

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

11.0 LIST OF PREPARERS AND PERSONS/AGENCIES CONSULTED

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

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Discussions relevant to the formulation of the preferred alternatives/proposed action and the analyses for this draft EA/RIR/IRFA involved input from several of our components and constituent groups, including: the National Marine Fisheries Service Southeast Fisheries Science Center, the National Marine Fisheries Service Office for Law Enforcement, the National Marine Fisheries Service Office of Science and Technology, and the members of the HMS AP (which includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils). We also have received numerous comments from individual fishermen and interested parties.

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FINDING OF NO SIGNIFICANT IMPACT

Draft Finding of No Significant Impact (FONSI) for implementation of 2011 ICCAT Recommendation 11-08 on Silky Sharks

National Marine Fisheries Service

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries has prepared the attached *Draft Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Analysis to Implement for a Proposed Rule to Implement the 2011 International Commission for Conservation of Atlantic Tuna Recommendation on Silky Sharks* and incorporates it into this Draft FONSI by reference. In the EA, we consider the impacts of implementing ICCAT Recommendation 11-08 regarding silky sharks as well as information contained in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). This EA was developed as an integrated document that includes a Regulatory Impact Review and Initial Regulatory Flexibility Analysis. The National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

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

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

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

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

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

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

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

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

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

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

Consistent with the 2011 ICCAT Recommendation 11-08 for silky sharks, the preferred alternative would prohibit retaining, transshipping, landing, storing, selling or purchasing of this species in the HMS commercial pelagic longline fishery for tuna and tuna-like species. We do not expect the measures in this proposed action to alter current fishing practices or increase fishing effort, and therefore the measures should not have adverse impacts on protected species or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2004 BiOp. Thus, the proposed action in this Draft EA/RIR/IRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or

substantially alter current fishing practices or bycatch mortality rates. We have thus determined that the proposed action will not cause any effect to listed species beyond effects considered in the 2004 BiOp. Further ESA Section 7 consultation is therefore not necessary.

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

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

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

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

When considering the prohibition of silky sharks on pelagic longline vessels, this action could have an overall impact to pelagic longline fishermen of $3,392 per year across the entire fleet. However, we do not expect commercial pelagic longline fishermen to alter commercial fishing practices for tuna and tuna-like species since silky sharks constitute a small portion of the total pelagic longline landings and revenues. Therefore, while the proposed action is likely to result in minor adverse economic impacts, we do not anticipate that this action would have any significant socioeconomic impacts on pelagic longline fishermen.

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

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

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

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

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

unknown risks?

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

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

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

Pelagic longline vessels do not target silky sharks, which are caught incidentally to tuna and tuna-like species. However, pelagic longline vessels are the primary source of silky shark fishing mortality. We have addressed other pelagic longline-related actions through amendments to the 2006 Consolidated HMS FMP and various rules regarding other species. For example, on August 29, 2011, we implemented two similar 2010 ICCAT recommendations that banned retaining on board, transshipping, landing, storing, and selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries by vessels in the commercial HMS pelagic longline fishery and recreational fisheries for tunas, swordfish, and billfish (76 FR 53652). We are currently considering potential options for future actions that could affect pelagic longline fishermen and the species they catch. For example, in mid-2012, we expect to propose measures in Amendment 5 to the 2006 Consolidated HMS FMP that are designed to maintain rebuilding of sandbar sharks, end overfishing and rebuild dusky, scalloped hammerhead, and Atlantic blacknose sharks, and address the unknown overfished/overfishing status of Gulf of Mexico blacknose sharks. Some of these measures could impact pelagic longline fishermen as they can catch some of those species of sharks. We are also considering potential measures for Amendment 7 to the 2006 Consolidated HMS FMP, which addresses potential management measures for Atlantic HMS and in particular, Atlantic bluefin tuna. Some of the measures in Amendment 7 could impact pelagic longline fishermen as they catch Atlantic bluefin tuna.

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

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

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

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

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

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

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

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

No, we have preliminarily determined that the proposed action is consistent with the MSA and other applicable Federal law as well as the 2006 HMS FMP. We have likewise preliminarily determined the action would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. We will send letters to the relevant states asking for their concurrence when the proposed rule is filed with the Federal

Register. This action would not result in any new impacts on State regulations, regulations outside the Exclusive Economic Zone (EEZ), or laws applicable to the EEZ.

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

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

DETERMINATION

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

DRAFT _____ _____

Emily Menashes Date

Acting Director, Office of Sustainable Fisheries