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May 11, 2022

Mr. Guy DuBeck
Branch Chief (Acting)
Ms. Carrie Soltanoff
Office of Sustainable Fisheries
Highly Migratory Species Management Division
National Marine Fisheries Service
1315 East-West Highway
13th Floor
Silver Spring, MD 20910

Submitted electronically via the Federal eRulemaking Portal:
https://www.regulations.gov/search?filter=NOAA-NMFS-2022-0015

Re: Shortfin Mako Shark Retention Limit; NOAA-NMFS-2022-0015

Dear Mr. DuBeck and Ms. Soltanoff:

On behalf of the Animal Welfare Institute (AWI) and its more than 45,000 members and constituents I am submitting comments on the proposed rule regarding the Shortfin Mako Shark Retention Limit (FR 2022-07659) as published on April 11, 2022.

Background

A number of international bodies, including the IUCN Shark Specialist Group, the General Fisheries Commission for the Mediterranean (GFMC) and the Standing Committee on Research and Statistics (SCRS) for the International Commission for the Conservation of Atlantic Tunas (ICCAT) have issued recommendations that mako landings be prohibited. On December 13, 2017, NMFS determined that the North Atlantic shortfin mako shark stock is overfished, and that overfishing was ongoing.[1] In 2018, the IUCN updated the listing of the Shortfin Mako (*Isurus oxyrinchus*) from the Vulnerable (V) to Endangered (EN) classification, signaling a higher risk of extinction, based on information not available during previous assessments.[2]

[1] NMFS (2018) Final Amendment 11 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Sustainable Fisheries, Highly Migratory Species Management Division, Silver Spring, MD. Public Document. pp. 265.
[2] Rigby, C.L. et al. (2019) Isurus oxyrinchus. The IUCN Red List of Threatened Species 2019: e.T39341A2903170. http://dx.doi.org/10.2305/IUCN.UK.2019-1.RLTS.T39341A2903170.en Last accessed on May 9, 2022.

As with other sharks of the family Lamnidae, shortfin makos are less resilient than other species in situations of high mortality rates given their longevity, late maturity and extremely low fertility and productivity rates.[3] As a result, the species faces one of the highest risks of overexploitation of sharks caught by Atlantic pelagic longline fleets.[4]

As noted by Dulvy et al. regarding IUCN Red Listed sharks, "the killing and landing of chondrichthyans listed as CR or EN (collectively referred to as endangered) should be strictly prohibited wherever possible."[5] Further, ICCAT's SCRS has issued a very clear recommendation with regard to the shortfin mako, stating that, "[g]iven the vulnerable biological characteristics of this stock and the pessimistic findings of the projections, to accelerate the rate of recovery and to increase the probability of success the Group recommends that the Commission adopt a non-retention policy as it has already done with other shark species."[6] Both the North and South Atlantic stocks are under pressure. As SCRS has indicated, "[g]iven that fishery development in the South Atlantic predictably follows that in the North and that the biological characteristics of the stock are similar, there is a significant risk that the South Atlantic stock could follow a similar history to that of the North. If the stock declines it will, like the North stock, require a long time for rebuilding even after significant catch reductions."[7]

In light of the above, AWI supports the proposal in Alternative 3 to place shortfin mako on the list of prohibited sharks[8] in order to prohibit any catch or retention of shortfin mako sharks in commercial and recreational Highly Migratory Species (HMS) fisheries. As NMFS itself noted, this approach will help to ensure consistency in HMS regulations, thus ensuring more effective implementation and enforcement of these regulations. This option will strengthen protections for shortfin mako, and as stated by NMFS, will do so without having substantial economic impacts on commercial and for-hire fisheries and HMS tournaments in either the short and long term.[9]

We further encourage NMFS to respond to the January 25, 2021 petition from Defenders of Wildlife and list the shortfin mako as a threatened or endangered species under the Endangered Species Act (ESA),

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[3] Barreto, R., de Farias, W., Andrade, H., Santana, F. and Lessa, R. (2016) Age, Growth and Spatial Distribution of the Life Stages of the Shortfin Mako, Isurus oxyrinchus (Rafinesque, 1810) Caught in the Western and Central Atlantic. PLoS ONE 11(4): e0153062. https://doi.org/10.1371/journal.pone.0153062

[4] Cortés, E., Domingo, A., Miller, P., Forselledo, R., Mas, F., Arocha, F., et al. (2015). Expanded ecological risk assessment of pelagic sharks caught in Atlantic pelagic longline fisheries. Collect. Vol. Sci. Pap. ICCAT 71, 2637–2688.

[5] Dulvy, N., Pacoureau, N., Rigby, C. et al. (2021) Overfishing drives over one-third of all sharks and rays toward a global extinction crisis. Current Biology Volume 31, issue 21.

[6] ICCAT (2020) Report of the 2019 Shortfin Mako Shark Stock Assessment Update Meeting (Madrid, Spain 20-24 May 2019) SCRS/2019/008 Collect. Vol. Sci. Pap. ICCAT, 76(10): 1-77 (2020).

[7] ICCAT and as referenced by NOAA Fisheries best scientific information available (BSIA) framework for Atlantic Highly Migratory Species (HMS) stock assessments and stock status determinations https://media.fisheries.noaa.gov/2022-05/Final%20Regional%20BSIA%20Framework%20for%20Atlantic%20HMS_FINAL.pdf Accessed on May 9,2022.

[8] Table 1 of Appendix A to 50 CFR Part 635.

[9] Under the section on Alternative 3, NMFS indicated that the overall economic impacts associated with reductions in revenue for the commercial and for-hire fisheries and HMS tournaments would be "similar to those described under Alternative 2 and are not expected to be substantial" and that this alternative "would have minor economic costs on small entities in the short- and long-term". NOAA-NMFS-2022-0015-0001.

which would be consistent with best scientific advice. As mentioned above, IUCN has determined that the species is endangered given that the global population trend has experienced a median reduction of 46.6% with the highest probability of a reduction of 50– 79% over three generation lengths (72–75 years).[10] While overfishing is the leading threat to the species, shortfin mako are also subject to other pressures such as climate change, modification of key habitat and inadequate management and regulatory mechanisms, the cumulative impacts of which, as outlined in Defenders' petition, warrant an ESA listing.[11]

With regard to other elements of the proposed rule, AWI does not support the preferred Alternative 2 as it is currently drafted, as it will allow for a far-too flexible approach to retentions. As indicated by NOAA in a letter to Coastal Zone Managers on April 8, 2022 "[l]imited retention of shortfin mako sharks may be allowed in 2023 and future years…"[12] on a case by case basis, per ICCAT Recommendation 21-09. Alternative 2 could therefore effectively result in only a single year retention ban, which is insufficient to recover the affected stock. **AWI maintains that NMFS should institute an indefinite retention limit of zero for all shortfin mako fisheries until such time that the Atlantic shortfin mako population is rebuilt.**

We note that despite having made the determination in 2017 that the North Atlantic shortfin mako shark is overfished, and subject to ongoing overfishing, NMFS has not yet developed a rebuilding plan as required by the MSA; Magnuson-Stevens mandates that when a fishery is determined to be in an overfished condition, NMFS must include conservation and management measures in its fisheries management plan that will prevent or end overfishing *and* rebuild the fishery, stock or species.[13]

National Standard (NS) 2 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) mandates that fishery conservation and management measures shall be based upon the best science available (BSIA).[14] AWI notes that in addition to its recommended non-retention policy, the SCRS has indicated that even with a zero Total Allowable Catch (TAC), the stock will continue to decline until 2035 before any biomass increases can occur.[15] **It is therefore incumbent upon NMFS to set a zero-retention limit based on ensuring recovery of the stock, consistent with its obligations under the MSA.** Our recommendation is that the rebuilding of the stock should reflect a timeframe of at least two mean generation times (i.e. through 2070).[16]

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[10] Rigby (2019).
[11] Defenders of Wildlife (2021) Petition to List the Shortfin Mako Shark (Isurus oxyrinchus) as Endangered or Threatened Under the Endangered Species Act. Submitted to the U.S. Secretary of Commerce acting through the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service. January 25, 2021. https://defenders.org/sites/default/files/inline-files/Petition%20to%20List%20the%20Shortfin%20Mako%20Shark%20%28Isurus%20oxyrinchus%29%20as%20Endangered%20or%20Threatened%20under%20the%20ESA_Sybmitted%20by%20Defenders%20of%20Wildlife%20%28Jan.%2025%2C%202021%29.pdf Last accessed on May 9, 2022.
[12] Letter from Director, Office of Sustainable Fisheries National Marine Fisheries Service Kelly Denit to Coastal Zone Program Managers. April 8, 2022. Re: Federal Consistency Determination for a Proposed Rule to Modify the Retention Limit of Shortfin Mako Sharks - RIN 0648-BL17.
[13] 16 U.S.C. §§1853(a)(10); 1854(e). We note that this letter pre-dates the Federal Register publication of the Shortfin Mako Shark Retention Limit Proposed Rule on April 11, 2022.
[14] 16 U.S.C. § 1851(a)(2).
[15] ICCAT (2020).
[16] This would be consistent with SCRS advice.

Fishery monitoring is essential to generate the data needed to (1) ensure a level of robustness necessary for scientific stock assessments and (2) ensure compliance with fishery regulations aimed at achieving conservation and management goals.[17] AWI therefore disagrees with NMFS's decision to not implement the ICCAT requirement that electronic monitoring be onboard vessels engaged in the HMS bottom longline and gillnet fisheries. While these vessels might have minimal interactions with shortfin mako, monitoring of all fisheries will yield a greater degree of certainty in the stock data, and allow for the development of improved strategies to manage impacts and ensure compliance with management measures not only for shortfin makos but other threatened or endangered species. **AWI calls on NMFS to extend electronic monitoring requirements to all HMS fisheries for sharks.**

In summation, AWI strongly urges NMFS to:

- institute an indefinite retention limit of zero for all shortfin mako fisheries until such time that the Atlantic shortfin mako population is rebuilt;
- place shortfin mako on the list of prohibited sharks;
- respond to the January 25, 2021 Defenders of Wildlife petition and list the shortfin mako as a threatened or endangered species under ESA; and
- require electronic monitoring for all HMS shark fisheries

We hope that the United States will commit to the recovery and conservation of this species by amending the Proposed Rule Shortfin Mako Shark Retention Limit to include the recommendations made above. Shortfin mako shark stocks in the Atlantic are being driven down due to fishing pressure, and without strengthened conservation and management efforts, the species will continue to decline toward extinction. The U.S. has the opportunity to play a leading role in international shark conservation efforts by setting an example for other countries through the issuance of a strong Shortfin Mako Shark Retention Limit Rule.

Thank you for your consideration of our comments, and please contact me if you have any questions.

Sincerely,

Georgia Hancock, Esq.
Of Counsel and Acting co-Director, Marine Program

[17] Fujita, R., C. Cusack, R. Karasik, and H. Takade-Heumacher (2018). Designing and Implementing Electronic Monitoring Systems for Fisheries: A Supplement to the Catch Share Design Manual. Environmental Defense Fund, San Francisco. 63 pp.