

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 50 Spiny Dogfish and Coastal Sharks

CONCISE SUMMARY:

A 2017 assessment found the North Atlantic shortfin mako shark stock to be overfished and experiencing overfishing. In response, NOAA Fisheries implemented measures which aim to achieve at least a 75% reduction in US shortfin mako shark landings. Currently, North Atlantic shortfin mako sharks are not included in the definition of ‘Coastal Sharks’ in the Department’s Chapter 50 regulations. As a result, the regulations are silent on the retention of this species. This rule adds North Atlantic shortfin mako sharks to the list of species included under ‘Coastal Sharks’. Given Chapter 50 prohibits the take of species defined as ‘Coastal Sharks’, this rule prohibits the taking of North Atlantic shortfin mako sharks in Maine’s territorial waters.

ADOPTED RULE NUMBER:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

EFFECTIVE DATE:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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Please approve bottom portion of this form and assign appropriate MFASIS number.

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DEPARTMENT OF MARINE RESOURCES

Chapter 50 Spiny Dogfish and Coastal Sharks

50.01 Definitions

1. "Coastal Sharks" means for the purpose of these regulations ~~any~~ the following species of shark caught in Maine's territorial waters: sand tiger, bigeye, whale, basking, white, dusky, bignose, Galapagos, night, reef, narrowtooth, Caribbean sharpnose, smalltail, silky, Atlantic angel, longfin mako, bigeye thresher, sharpnose sevengill, bluntnose sixgill, sandbar, ~~and bigeye sixgill sharks, and~~ North Atlantic shortfin mako sharks.
2. "Finning" means the act of taking a spiny dogfish, porbeagle or other coastal shark, removing the fins, and returning the remainder of the spiny dogfish, porbeagle or other coastal shark to the sea.
3. "Spiny dogfish" means the genus and species *Squalus acanthias*.
4. "Porbeagle shark" means the genus and species *Lamna nasus*,

50.02 Harvest, Possession and Landing Restrictions

A. Spiny Dogfish

When the annual Atlantic Marine Fisheries Commission quota for spiny dogfish is reached it shall be unlawful to fish for, take, have in possession or land spiny dogfish, taken from Maine territorial waters. Persons shall be informed by public notice in a newspaper with statewide circulation when the annual quota for spiny dogfish taken from Maine territorial waters has been reached. This is in accordance with the annual quota established by the Atlantic States Marine Fisheries Commission.

(1) Exception

- (a) This rule shall not apply to vessels or individuals who harvest or possess dogfish for research or biomedical use, provided such vessels or individuals have a permit from the Commissioner of Marine Resources.
- (b) Any person may fish for, take, possess, or transport one dogfish per day provided that the dogfish is for personal use only.

(2) Spiny Dogfish Trip Limit

Effective September 8, 2014, it is unlawful to harvest, land or possess more than 5,000 pounds of spiny dogfish per calendar day or 24-hour period when the Maine territorial waters are not closed to the taking of dogfish in accordance with Chapter 50.02(A).

B. Porbeagle shark

- (1) The commercial harvest of porbeagle sharks is prohibited in Maine's territorial waters.
- (2) When the quota for porbeagle shark is reached in federal waters it shall be unlawful to fish for, take, have in possession or land porbeagle shark in Maine. Persons shall be informed by public notice in a newspaper with statewide circulation when the annual quota for porbeagle shark taken from federal waters has been reached. This is in accordance with the Interstate Fisheries Management Plan for Atlantic Coastal Sharks established by the Atlantic States Marine Fisheries Commission.

C. Coastal Sharks

The take of Coastal Sharks, as defined in Chapter 50.01(1), is prohibited in Maine's territorial waters.

50.03 Spiny Dogfish Endorsement for Dealers, License for Harvesters, Reporting Requirements and Quota

A. Harvester License and Dealer Endorsement

- (1) Commercial harvesters must obtain a Commercial Pelagic and Anadromous Fishing License in order to participate in this fishery.
- (2) Wholesale license-holders must obtain a dogfish buying endorsement before April 15th in order to participate in this fishery.

B. Reporting: See Chapter 8. Future license or endorsements will be dependent upon reporting compliance.

C. Quota: Fishing for spiny dogfish is subject to the annual quota specified by the ASMFC and NMFS Spiny Dogfish specifications. The annual quota is established annually by May 1st for the fishing year.

50.04 Shark, Dealers

A. Dealer permit requirement

Maine Wholesale license-holders who purchase Coastal sharks or porbeagle shark must obtain a federal dealer permit.

50.10 Finning Prohibited

Finning is prohibited in Maine territorial waters. Vessels that land spiny dogfish, porbeagle or coastal sharks must have the head, fins and tails attached naturally to the carcass through landing. The porbeagle, coastal shark or dogfish may be bled.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 50 Spiny Dogfish and Coastal Sharks

STATUTORY AUTHORITY: 12 M.R.S.A. §6171

DATE AND PLACE OF PUBLIC HEARING(S): none

COMMENT DEADLINE: July 3, 2020

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

The regulation is intended to add North Atlantic shortfin mako sharks to the definition of 'Coastal Sharks' in Chapter 50. As a result, the taking of North Atlantic shortfin mako sharks will be prohibited in Maine's territorial waters.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

This rule will prohibit the taking of North Atlantic shortfin mako sharks in Maine's territorial waters.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]: The Department considered National Marine Fisheries Service's Amendment 11 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan as well as action by the Atlantic States Marine Fisheries Commission to change recreational measures for Atlantic shortfin mako sharks in state waters.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Basis Statement

A 2017 assessment found the North Atlantic shortfin mako shark stock to be overfished and experiencing overfishing. In response, NOAA Fisheries implemented measures which aim to achieve at least a 75% reduction in US shortfin mako shark landings. Currently, North Atlantic shortfin mako sharks are not included in the definition of ‘Coastal Sharks’ in the Department’s Chapter 50 regulations. As a result, the regulations are silent on the retention of this species. This rule adds North Atlantic shortfin mako sharks to the list of species included under ‘Coastal Sharks’. Given Chapter 50 prohibits the take of species defined as ‘Coastal Sharks’, this rule prohibits the taking of North Atlantic shortfin mako sharks in Maine’s territorial waters.

Summary of Comments

Notice of this proposed rulemaking appeared on June 3, 2020 in the five major daily newspapers as published by the Secretary of State. On June 3, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. A public hearing was not held. The comment period closed July 3, 2020.

Written Comments Received:

Shawn Tibbetts, submitted via email, June 4, 2020

I'm concerned about any proposed rule limiting retention of spiny dog fish. The population of dogs in the gulf of Maine is tragic. There thick. It's asinine to assume the massive amounts of dog dogs on the fishing grounds aren't affecting groundfishing stocks. Most days there so thick half the fish we catch on rod and reel are chewed on with multiple dogs following all the way to the boat. It's impossible to find schools of fish that aren't overrun by dogs. If any change should be made to there retention it should be unlimited possession by Maine based boats. Perhaps as a alternative lobster bait or fertilizer? As for all other sharks. Rulemaking should be left to nmfs and Maine should echo those decisions.

Bob Humphrey, submitted via email, June 4, 2020

My purpose in writing is to provide comment on the above referenced proposal. I oppose redefining shortfin mako sharks as coastal sharks and prohibiting their take in Maine’s territorial waters on the following grounds:

Consistency - NOAA/NMFS defines shortfin mako sharks as “Pelagic Sharks” and groups other species under separate categories: Large Coastal Sharks, Small Coastal Sharks and Smoothhound Sharks, based on certain life history characteristics. Removing mako sharks from their current category and shifting them into another would be inappropriate, and inconsistent with multiple international, federal and state management plans, regulations and definitions.

Confusion - Currently, vessels with the appropriate HMS permit may legally catch and retain shortfin mako sharks caught in federal waters that meet or exceed minimum length limits. Prohibiting their take in Maine’s territorial waters could create some confusion and enforcement issues regarding the landing of any legally-caught fish.

Conservation - NOAA Fisheries currently manages highly migratory species, including mako sharks, in compliance and coordination with the International Commission for the Conservation of Atlantic Tunas (ICCAT). Under Amendment 11 and based on the most recent stock assessment conducted by ICCAT's Standing Committee on Research and Statistics (SCRS), NOAA implemented management measures to address overfishing and rebuild the overfished North Atlantic shortfin mako shark stock, which became effective on March 3, 2019. At their subsequent Regular Commission Meeting in November, 2019, ICCAT's cooperating countries voted to continue with current shark management measures for one year. A recent article published by NOAA Fisheries acknowledged, "... fishery managers must make tradeoffs between achieving conservation objectives and satisfying angler demands when designing policy." And they need to "... better understand what policies might work to rebuild the fishery while minimizing adverse impacts to anglers." At a time when recreational fishing and Maine's charter/headboat industry have experienced significant negative impacts, it would seem imprudent to place further restrictions upon them, particularly considering that the scientific agencies responsible for managing these fisheries have deemed current levels of effort acceptable.

Unfairness - In many ways, especially with regard to fisheries, Maine sits at the end of the road and Maine anglers are too often resigned with what's left after everyone else has taken their share. Examples include groundfish, striped bass and other highly migratory species like bluefin tuna.

In 2018, the National Marine Fisheries Service Highly Migratory Species Program (HMS) began requiring recreational shark anglers to use circle hooks when fishing south of 41° 43' N latitude (Cape Cod), a measure intended to reduce catch and release mortality on dusky sharks. The HMS Recreational Compliance Guide stated that this is "the northern extent of the dusky shark's U.S. Atlantic range..." Yet in 2019, this requirement was expanded to the entire Atlantic coast, requiring a costly replacement of hooks by those who, in all likelihood, will never see a dusky shark.

The HMS program also increased minimum length limits on mako sharks from 54 to 71 inches to reduce mortality on that species; and later to 83 for females, again to reduce mortality. While the species does occur in Maine, it is uncommon. Far greater mortality occurs in waters south of Cape Cod, where the monster shark tournaments of Long Island and New Jersey target makos. Even that is a pittance compared to incidental catch mortality from the offshore commercial longline fishery. Yet the recreational anglers and commercial charter boat operators of Maine must again bear an unequal share of the burden.

Given the current state of the resource and the fishery, I believe changing the status of mako sharks and regulations associated with their take is unwarranted and inconsistent with numerous other efforts to manage and regulate the species and recreational fisheries.

Jeff Fazekas, submitted via email, June 4, 2020

I'd like to add a comment as a Maine resident and fishermen. I do not approve of word games to bend the law. If there is no law to protect such highly migratory species as a mako shark, and

you deem that necessary? Lobby for such a law! DO NOT bend the rules and lie about the nature of the species to shoehorn it into existing law. NO on your proposal please.

Paul Savoy, submitted via email, June 5, 2020

I got the email about the proposed rule change re: including the mako shark as "coastal sharks" to prevent their being taken. I wanted to say how much I support that change. We desperately need to protect sharks. It's rare these days to see something come through the legislature that so obviously makes sense, and that I can so fully agree with. please pass that up the chain. Thanks! Keep up the good work! :-)

Ben Garfield, received via mail, June 10, 2020

I fully agree to place the shortfin mako under "Chapter 50" rules to prohibit the harvest of shortfin makos in Maine's territorial waters. I have personally seen the overfishing of the makos over the past 25 years, and the average size in constant decline.

Barry Gibson, submitted via email, June 11, 2020

The Proposed Rule re Chapter 50 Spiny Dogfish and Coastal Sharks, which would now include the shortfin mako and thus prohibit the taking of this species in Maine state waters, is remarkably unnecessary and an example of administrative overreach.

The ICCAT-recommended minimum sizes for male/female makos, along with the circle hook mandate, in federal waters has led to the successful reduction in shortfin mako mortality that has met the international target. There is absolutely no reason why Maine should prohibit the taking of makos in state waters simply because the administration ".believes it is not a major activity in Maine state waters," as stated in writing on 6/10/20 by a DMR official. The DMR would not likely prohibit a sustainable *commercial harvesting* activity simply because it was "believed to be minor," but seems eager to prohibit a largely recreational activity.

Maine would be far better served to simply adopt the NOAA/ASMFC-mandated higher m/f minimum sizes and circle hook provision. That would be the most appropriate public policy, and it is our understanding that most or all the other ASMFC states have, or will be, implementing these measures in their territorial waters. As with striped bass regulations, it would seem to make sense that shortfin mako regulations be consistent state-to-state.

Finally, we would point out that the U.S. has been the only ICCAT signatory that has aggressively reduced shortfin mako mortality to meet the target. The overfishing problem remains with other ICCAT countries that appear to be reluctant to implement meaningful measures.

Kyle Schaefer, submitted via email, June 15, 2020

My purpose in writing is to provide comment on the above referenced proposal. I oppose redefining shortfin mako sharks as coastal sharks and prohibiting their take in Maine's territorial waters.

Department's Response to Comments:**Current Status and Existing Regulations for Atlantic Shortfin Mako Sharks**

Several commenters touched upon existing protections for Atlantic shortfin mako sharks as well as their status. A 2017 ICCAT stock assessment found that Atlantic shortfin mako sharks are overfished and that overfishing is occurring. The Assessment also concluded that a 72-79% reduction in catch would need to be achieved to prevent further population declines. In response, NOAA implemented Amendment 11 to the Consolidate Atlantic Highly Migratory Species Fishery Management Plan in 2019. The Amendment allows the commercial retention of shortfin mako sharks caught with longline or gillnet gear only if the shark is dead at haulback. For the recreational fishery, the minimum size limit was increased from 54 inches fork length (FL) to 71 inches FL for male shortfin mako sharks and to 83 inches FL for female shortfin mako sharks. Subsequently, the Atlantic States Marine Fisheries Commission voted to mirror the recreational regulations in Amendment 11 in state waters.

Impacts to Anglers

Some commenters expressed concern that this regulation will unnecessarily restrict Maine anglers from being able to participate in the Atlantic shortfin mako shark fisheries. DMR acknowledges that a prohibition on the take of Atlantic shortfin mako sharks in state waters is more conservative than the regulations in federal waters; however, the adoption of this regulation does not prevent an angler from continuing to participate in the federal Atlantic shortfin mako shark fishery. Further, the regulation does not prohibit shark fishing in state waters; it just prohibits the retention of Atlantic shortfin mako sharks should one be caught in state waters. To this end, ME DMR reviewed data to see if Atlantic shortfin mako sharks are currently being retained from state waters. A query of MRIP catch estimates found that no Atlantic shortfin mako sharks have been caught by recreational anglers in Maine state waters in the last 10 years; a query of dealer data showed that no Atlantic shortfin mako sharks have been landed by the commercial or charter boat sectors since 2014. As a result, it is not believed that this rule will prohibit an activity that is currently occurring in Maine state waters.

Confusion Regarding Varying Regulations

One commenter expressed concern that a prohibition on the take of Atlantic shortfin mako sharks in state waters will cause confusion given the species can be taken in federal waters. DMR acknowledges that the proposed regulation for state waters is more conservative than the federal regulation which allows some retention of Atlantic shortfin mako sharks; however, DMR also notes that, besides spiny dogfish and porbeagle shark, the retention of coastal sharks in Maine state waters is prohibited. As a result, including Atlantic shortfin mako sharks in the list of prohibited shark species in state waters is consistent with existing structure of shark regulations in Maine.

Impacts on Spiny Dogfish

One commenter expressed concern that this regulation will limit the retention of spiny dogfish. While regulations for spiny dogfish are included in Chapter 50, this regulatory change only applies to Atlantic shortfin mako sharks and, as a result, there are no proposed changes to the retention of spiny dogfish in Maine waters.

Pelagic vs. Coastal Sharks

One commenter expressed concern about switching the classification of Atlantic shortfin mako sharks from “pelagic” to “coastal”. All of Maine DMR’s regulations pertaining to the catch and harvest of sharks are included in Chapter 50 which is entitled “Spiny Dogfish and Coastal Sharks”; there is not a separate regulatory chapter entitled “Pelagic Sharks”. DMR’s consideration of including Atlantic shortfin mako shark regulations in Chapter 50 does not change the scientific description of this species, nor does it change NOAA’s classification of Atlantic shortfin mako sharks as “pelagic”.

Inequitable Burden on Maine Fishermen

One commenter felt that this regulation placed an undue burden on Maine fishermen given Maine is at the end of the species range. DMR agrees that Maine’s catch is not a major contributor to the fishing mortality of Atlantic shortfin mako sharks and that Maine sits at the northern end of the species range. Prior to this regulatory change, DMR’s regulations were silent on the retention of Atlantic shortfin mako sharks. Given NOAA’s action to implement restrictions through Amendment 11 and the Atlantic State Marine Fisheries Commission decision to mirror these recreational measures in state waters, DMR felt it important to address the take of Atlantic shortfin mako sharks in Maine state waters. DMR did consider mirroring the regulations in Amendment 11; however, a review of Chapter 50 showed that, with the exception of spiny dogfish and porbeagle shark, the take of the vast majority of shark species in Maine is prohibited. Given this and the poor condition of the stock, DMR decided to include Atlantic shortfin mako sharks in the list of sharks for which take is prohibited. As mentioned above, we do not have data to suggest that this will restrict an ongoing activity in state waters, this regulation does not prohibit shark fishing in state waters and take in federal waters is still permitted per Amendment 11 regulations.

Conservation of the Species

Some commenters supported additional protections for Atlantic shortfin mako sharks while others commented that the measure is overly restrictive and not needed. DMR acknowledges that the harvest of Atlantic shortfin mako sharks by Maine residents is a very small portion of fishing mortality for this species, whose range spans many states and countries. DMR also acknowledges that the species is overfished and overfishing is occurring, and significant management measures have been implemented by NOAA to improve the status of the stock.