

JUSTIFICATION FOR CHANGE
Atlantic HMS Permit Family of Forms
OMB CONTROL NO. 0648-0327

Request:

The addition of a new shark endorsement to all of the Highly Migratory Species (HMS) permits that authorize recreational fishing for HMS in the federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean will become effective at the beginning of the 2018 fishing season on January 1, 2018. To receive the Shark Endorsement, permit applicants will have to complete a brief Shark Identification and Fishing Regulations Training Course that will involve a short educational video followed by approximately seven question quiz on shark identification, fishing regulations, and safe catch-and-release practices.

The endorsement will be issued through the online HMS Permit Shop. NMFS's Highly Migratory Species (HMS) Management Division is requesting to cover the new application requirements under OMB Control No. 0648-0327, the Atlantic HMS Permit Family of Forms.

Background:

NMFS is publishing a final rule for Amendment 5b to the 2006 Consolidated HMS Fishery Management Plan (FMP). Under the final rule for this action, NMFS will require owners of vessels that recreationally fish for, take, retain, or possess sharks in Federal waters to obtain a Federal shark endorsement as part of their Atlantic HMS fishing permit as of the start of the 2018 HMS fishing season. However, NMFS plans to make the shark endorsement available online at some point in 2017 on an optional basis to help familiarize shark anglers with the existence of the new requirement for 2018. The Federal shark endorsement will be a new checkbox added to the permits that authorize recreational fishing for Atlantic HMS. This would include HMS Angling Category and Charter/Headboat permits, as well as Atlantic Tuna General Category and Swordfish General Commercial permits when participating in a registered HMS fishing tournament. Obtaining the shark endorsement would be included in the annual HMS Angling Category, Charter/Headboat, Atlantic Tunas General Category, and Swordfish General Commercial permit application or annual renewal process and would not result in any additional fees beyond the cost of the permit itself. Unlike changing permit categories (which can only be done within 45 calendar days of the date of issuance of the permit), vessel owners could obtain a shark endorsement, which could be added to or removed from their relevant permit, throughout the year.

A brief online shark identification and fishing regulations training course and quiz, administered during the application or renewal process, will be required in order to obtain the shark endorsement. The online training course and quiz focuses on identification of prohibited species (e.g., dusky sharks), current recreational rules and regulations including a new requirement to use circle hooks when fishing for sharks, and safe handling instructions. The training course will consist of a short video lasting from 90 to 120 seconds, and will be followed by a quiz consisting of approximately seven questions on shark fishing regulations and identification (added to each applicable IC in ROCIS).

The purpose of the training course and quiz is educational only. Permit applicants will not be required to get a minimum number of answers correct within the quiz to receive the shark endorsement, but will be required to complete it. All answers will be followed with a brief explanation of the correct answer for educational purposes. Permit applicant responses will be recorded within a database for review by NMFS staff to facilitate evaluation of the training course, and identify areas where greater outreach is needed to educate and inform HMS permit holders. Additionally, questions may be updated or modified periodically based on changes in the referenced shark fishing regulations (e.g., changes to minimum size or retention limits), or to address current issues of concern in the fishery. NMFS will present the training course and quiz to the Atlantic HMS Advisory Panel in the spring and fall of 2017 to get their feedback with the goal of refining the materials.

The shark endorsement and training course would be administered through the online HMS Permit Shop, which is the venue for issuing open access Atlantic HMS recreational permits. NMFS is requesting that this addition of the shark endorsement to the above listed HMS permits be covered by OMB Control No. 0648-0327 which is up for renewal as of 07/31/2018.

Reporting burden:

The addition of the shark endorsement and training course is not expected to increase the number of respondents as it is an addition to existing permits, and will only slightly increase the burden estimate for OMB Control No. 0648-0327. It is anticipated that the majority of HMS Angling Category and HMS Charter/Headboat permit holders will acquire the shark endorsement, but it is difficult to estimate exactly what percentage will do so. To ensure burden calculations are not underestimated, we assumed all vessels that acquire these two permits will get the shark endorsement. Unlike the permits listed above, the Atlantic Tunas General Category and Swordfish General Commercial permits only authorize recreational fishing when the permitted vessel is participating in registered HMS fishing tournaments, approximately a third of which include award categories for sharks. Not all vessels in these categories are believed to participate in tournaments; however, to avoid underestimating burden calculations, we assumed all vessels that acquire these two permits will get the shark endorsement.

For each permit, the current estimate of burden per response is 30 minutes for initial permit applicants, and 6 minutes for permit renewals. The addition of the shark endorsement and training course is estimated to add 4 minutes to each response that acquires it. Thus, average reporting burden for each permit holder is estimated to increase to 34 and 10 minutes per initial or renewal application, respectively. The total number of respondents is anticipated to remain the same, with the estimated burden hours increasing by 2,491 hours to a total revised estimate of 10,798 hours for the entire collection.

Public Comments Received and Responses:

A proposed rule was published in the Federal Register on October 18, 2016 (81 FR 71672; RIN 0648-BD22) that solicited public comment regarding the revision of this information collection by adding the shark endorsement and shark identification and fishing regulation quiz to HMS permits that authorize recreational fishing for sharks. NMFS received 45 comments that addressed the shark endorsement and the associated training course and quiz. These comments are summarized below along with the responses that were provided in the FEIS.

Comment 28: NMFS received numerous comments in support of the shark endorsement (Alternative A2) including from the South Atlantic Fishery Management Council (SAFMC), and the States of North Carolina, South Carolina, and Texas. NMFS received comments expressing concerns and recommendations regarding the shark identification and training quiz. The State of Mississippi commented that shark species misidentification is not a problem in Mississippi waters. One comment stated that a test to obtain a permit was unheard of in salt and freshwater fishing and many fishermen may decide simply not to fish for sharks to avoid the burden of the online course. Another commenter noted that since hunters need to take a safety class with bird identification in the State of Florida to get a hunting license, an online class such as what is proposed and another for all HMS species, particularly in regard to reporting requirements, in order to receive a vessel permit is reasonable. Another comment indicated that misidentification and lack of data are the underlying issues facing the rebuilding of dusky sharks, and both of these can be properly and sufficiently addressed through a comprehensive HMS shark endorsement program (as outlined in Alternative A2) with online education modules during issuance and renewal of the endorsement. The commenter suggested that the quiz should focus on prohibited species identification (specifically dusky, sandbar, or ridgeback sharks), best practices for safe handling interaction, and a cooperative data collection initiative through reporting requirements. The commenter felt that cooperatively increasing fisherman knowledge and understanding of resource interactions allows for responsible management while also creating a sense of responsibility and stewardship of the resource. Lastly, another commenter noted that most anglers who have the time, resources, and knowledge to fish offshore already know how to properly identify a fish before harvesting it.

Response: NMFS recognizes that the shark identification and regulations quiz accompanying the proposed shark endorsement represents a novel measure in the realm of marine recreational fisheries; however, it is by no means unprecedented in the realm of conservation management. As one of the supporting commenters noted, hunters in the State of Florida are required to take hunter safety classes that include a bird identification section, and similar hunter safety courses are required in almost all states. Compared to hunter safety courses, which historically could last an entire day or more, the proposed shark identification and regulations training course and quiz will place minimal burden on recreational anglers as it is intended to take only a few minutes to complete, while still conveying the necessary information in an efficient manner. The quiz will focus on dusky shark conservation to more effectively meet sustainability goals. Additionally, many commercial fishermen that pursue HMS fisheries have long been required to take extensive training workshops on the identification and safe release of protected species that can take a full day to complete. NMFS has identified accidental landings due to misidentification as one of the primary sources of dusky shark mortality in the recreational fishery. NMFS

considered several alternatives to address this problem including drastically increasing the minimum size for sharks and making the recreational shark fishery catch-and-release only. Both of these alternatives will have been assured to largely end accidental landings of dusky sharks in federal waters, but will have had a far greater impact on the recreational fishery while doing far less to target the underlying issue of misidentification. As such, NMFS decided to prefer the more targeted approach of education and communication that could be provided by the shark identification and regulation training course and quiz. NMFS realizes that many recreational HMS anglers already know how to identify HMS species, including dusky sharks, and are familiar with HMS regulations. However, NMFS cannot be assured of getting the necessary information to those anglers who need it without requiring it of all federal water anglers that wish to target and land sharks.

Comment 29: NMFS received a comment from the State of South Carolina which noted that they do not oppose the requirement for the shark endorsement for HMS permit holders fishing in federal waters, but stated that NMFS needs to remove the phrase “fishing for sharks recreationally” to make it clear that the endorsement is needed to land sharks caught in federal waters whether the angler in question was targeting sharks or not. The State of South Carolina also stated that the proposed shark endorsement is in direct conflict with South Carolina law as cited in Section 50-5-2725 because permits are not required for the possession of sharks in state waters, and therefore will not be enforced in South Carolina state waters.

Response: NMFS recognizes that it does not have management authority over shark fisheries in state waters. As such, recreational shark anglers fishing exclusively in state waters will not be required to obtain the shark endorsement just as they are not required to obtain an Atlantic HMS Angling or Charter/Headboat permit. However, those recreational shark anglers that wish to target, retain, and land sharks in federal waters will be required to obtain a shark endorsement along with their Atlantic HMS Angling or Charter/Headboat permit. Once the angler has a federal permit, as a condition of that permit the angler must abide by the federal regulations, regardless of where they are fishing, including in state waters, unless the state has more restrictive regulations.

Comment 30: NMFS received a comment that supported the shark endorsement and suggested that NMFS implement the shark endorsement in non-HMS recreational fisheries that interact with sharks as well.

Response: NMFS only has authority to manage shark fisheries in federal waters, and any recreational angler fishing in federal waters of the Atlantic, Gulf of Mexico, or Caribbean that wishes to retain sharks must possess an Atlantic HMS Angling or Charter/Headboat permit. As such, all recreational anglers that fish in federal waters of the Atlantic will be required to obtain the shark endorsement to retain sharks. Individual states and the Regional Fisheries Management Commissions and Councils have the option to require Atlantic HMS permits of anglers fishing in state waters or for non-HMS, but the authority to do so lies with them and not NMFS. As stated above, once the angler has a federal permit, as a condition of that permit, the angler must abide by the federal regulations, regardless of where they are fishing, including in state waters, unless the state has more restrictive regulations.

Comment 31: Commenters stated that NMFS should include a reporting requirement as part of the shark endorsement for all shark landing or develop a sampling protocol to survey shark populations to improve data reliability in the recreational sector.

Response: As described in Chapter 2 (under Alternatives Considered but Not Further Analyzed), NMFS is not planning to include reporting requirements as part of the initial implementation of the shark endorsement, which could result in duplicative data collection efforts in recreational fisheries (e.g., MRIP, the Large Pelagics Survey (LPS)). However, NMFS is hopeful that the endorsement can serve as a framework for improving the sampling of recreational anglers that target sharks for surveys like those conducted by MRIP. How well this works will depend on what percentage of HMS anglers acquire the endorsement. The more HMS permit holders that acquire the endorsement, the less of a targeted sample it would provide compared to the existing HMS Angling and Charter/Headboat permits. However, this is counterbalanced by the fact that the more anglers getting the endorsement means the more anglers that will be receiving the targeted outreach and education materials on shark identification, safe handling, and shark fishing regulations, and the more anglers would then provide the correct shark identification when responding to surveys.

As for the suggestion to include a reporting requirement in conjunction with the shark endorsement, HMS permit holders are already required to report their catches and landings when intercepted by NMFS catch and effort surveys like MRIP and the LPS. At this time, NMFS is not planning to require any additional reporting requirements similar to the requirements for billfish, bluefin tuna, and swordfish. The mandatory reporting requirement for most of these species is only to report fish that are landed (bluefin tuna reporting also includes dead discards), and since landing dusky sharks is prohibited, any similar reporting requirement for sharks should not provide data on dusky catches. NMFS is also reluctant to require reporting on released sharks as the agency does not have the authority to extend the requirement to state water anglers who are responsible for a significant portion of recreational catches and landings for most shark species. This is not a concern with other HMS with mandatory reporting requirements as NMFS manages bluefin tuna to the shore, and billfish and swordfish are very rarely caught in state waters. NMFS is also in the process of reviewing the needs of MRIP and the LPS as part of the Regional MRIP Implementation Plan. As part of that review, NMFS is considering what, if any changes, are needed to improve recreational estimates of shark harvest.

Comment 32: NMFS received comments requesting an option to cancel the shark endorsement for fishermen when they are not fishing for sharks or sharks are not in their area. Other commenters expressed concern that providing an option for cancelling the shark endorsement throughout the year would create confusion as to who and when fishermen could retain/land sharks during a given year.

Response: NMFS believes the demand for the option to drop the shark endorsement will be largely negated by the new circle hook alternative (A6d) that requires endorsement holders to use circle hooks only when fishing for sharks, as opposed to the previously preferred alternative (A6a), which required the use of circle hooks whenever fishing with wire or heavy monofilament or fluorocarbon leader, as the new preferred alternative removes any potential conflicts with non-shark fisheries. If sharks are to be retained, circle hooks must be used, regardless of bait or gear

configuration (with the exception of artificial lures and flies). NMFS will still provide the option for anglers to drop the shark endorsement if they so desire.

Comment 33: NMFS received a comment from the SAFMC suggesting that NMFS include a small fee for the shark endorsement to provide a minor barrier to entry. The comment noted that the fee would assist with defining the universe of fishermen actually targeting sharks, and thus improve the ability of the shark endorsement to provide a targeted sampling frame for shark anglers. Other commenters stated that there should not be an extra fee for the sharks endorsement since the HMS Angling Permit already has a fee.

Response: NMFS has considered the possibility of charging a separate fee for the shark endorsement, but has opted not to take that direction at this time as it does not represent a stand alone permit. Additionally, NMFS does not want to unduly discourage permit holders from receiving the endorsement as the primary goal of the endorsement is to facilitate education and outreach on shark identification, safe handling, and fishing regulations while using the endorsement as a sample frame for data collection is only a secondary benefit. Furthermore, it is generally agreed that those anglers and charter/headboat captains that do not regularly target sharks, and are more likely to only interact with a sharks incidentally, are the ones that will most benefit from the educational aspects of the shark endorsement while also being the ones most likely to opt not to obtain it if it required paying an additional fee. As such, NMFS believes the benefits of the shark endorsement to dusky shark conservation will be maximized if a fee is not charged. Furthermore, NMFS does not see a need to limit entry into the recreational shark fishery to promote dusky shark conservation as they are not a target species, but are only caught incidentally.

Comment 34: NMFS received numerous comments regarding the online shark identification and training course. One commenter noted that the online quiz should be short and quick, and specifically address dusky sharks. Another commenter felt that shark identification quiz should focus on prohibited species identification, and best practices for safe handling. To improve and evaluate the effectiveness of the shark endorsement, one commenter recommended that implementation of the endorsement and online training course follow key principles for effective e-learning, and include an evaluation component to assess its effectiveness at educating permit holders. This commenter submitted detailed information on how to approach and evaluate adult learning in online training.

Response: In the interest of minimizing burden to the angling public, NMFS intends to keep the shark endorsement short and targeted. It will focus on key recreational shark fishing regulations (minimum size limits, bag limits, and circle hooks), and key identifying characteristics of prohibited shark species such as the interdorsal ridge. More detailed information on shark identification and safe handling techniques will be distributed to shark endorsement holders through targeted outreach materials that the angler can keep on hand for future reference. NMFS greatly appreciates the information and literature one commenter provided on adult learning and online training. NMFS will strive to apply adult learning principles in the design of the shark endorsement training and quiz. NMFS intends the shark endorsement quiz to be an adaptive tool that will be evaluated on a regular basis to determine which questions provide the most

educational benefit, what topics require the most targeted outreach, and how the training course can be improved.

Comment 35: NMFS received a comment requesting that all applicants applying for the shark endorsement be asked to provide an estimated number of sharks caught in the previous year. The comment noted that many fishermen may choose to get the shark endorsement regardless of whether they intend to target sharks “just in case.” Providing information on the number of sharks caught in the previous year would allow NMFS to have a more accurate representation of the universe of fishermen targeting sharks in any given year.

Response: Asking shark anglers to recall the number sharks they have caught in the previous year as part of the shark endorsement would result in highly inaccurate responses given the long length of the recall period (12 months). None of the current MRIP surveys use recall periods of anywhere near this length with most using recall periods of only two months. This measure is not considered reasonable because it would be duplicative with existing recreational fishery data collection efforts (e.g., MRIP, LPS) and would not meet the primary objectives of this amendment (i.e., ending overfishing and rebuilding dusky sharks). Furthermore, the collection of such data would likely be inaccurate and difficult, if not impossible, to verify as anglers would need to remember all trips and catches from the previous year. Existing data collection efforts, while still flawed, produce better catch and effort estimates than collection of such information once a year when someone is applying for a permit. Additionally, creation of this type of data collection would likely be costly in terms of the data management infrastructure needed, and the data management clearances required for the collection could delay implementation of this action, which is needed to end overfishing on dusky sharks. NMFS is currently looking at ways to improve MRIP and LPS data collection surveys for all HMS as part of its regional MRIP implementation plan. Any changes as a result of those data collection methods would result in more reliable recreational data than a once-a-year collection of information when people are applying for the shark endorsement.

Comment 36: NMFS received a comment from the SAFMC which noted that when applying for the shark endorsement, NMFS should make it clear that those fishermen holding the endorsement would need to use circle hooks in certain situations and that sharks caught incidentally on J-hooks would need to be released. Additionally, the SAFMC noted, when presented with the option to apply for the endorsement, NMFS should clearly inform fishermen that, without the endorsement, sharks cannot be retained.

Response: NMFS agrees with the SAFMC’s comment that it is important to make it clear to anglers applying for the shark endorsement that circle hooks will be required when fishing for sharks, that sharks incidentally caught on J-hooks will need to be released, and that the shark endorsement will be required to retain sharks caught in federal waters. All of these issues will be highlighted during the permit application process and shark endorsement quiz.

Comment 37: NMFS received comments suggesting shark fishermen or all HMS permitted vessels be required to carry a shark identification placard (Alternative A3) instead of taking the online quiz to receive the shark endorsement.

Response: NMFS considered requiring HMS permitted vessels to carry a shark identification placard in alternative A3. NMFS did not prefer this alternative because while anglers could be required to carry a placard that, if used, might help identify dusky and other sharks, ensuring that anglers reference the material would be difficult. NMFS feels that Alternative A3 will provide for a more passive learning experience and does not provide feedback to the angler like the online shark endorsement quiz in Alternative A2. However, as part of the outreach and education campaign described in Alternative A2, NMFS intends to provide additional outreach materials, in addition to the placard, that anglers could use as a reference after taking the quiz.

Comment 38: NMFS received a comment requesting that NMFS require all HMS recreational permit applicants participate in a broader training course encompassing regulations on all HMS recreational fisheries including sharks. The comment noted that the HMS permit should be issued on completion of the training course.

Response: The purpose of this action is to address the specific issue of ending overfishing of dusky sharks in the Atlantic, and no additional benefit to dusky sharks would likely occur as a result of the broader training course suggested by the commenter. Rather, the commenter's suggestion was aimed at improving angler knowledge of all HMS identification and recreational fishing regulations, which has not proven to be a significant issue. Using this action to require all anglers applying for an HMS permit to take a broad training course on HMS fisheries regulations and species identification to address a minor issue that is not targeted exclusively toward ending overfishing of and rebuilding dusky sharks is beyond the scope of this action. While such a training course might be beneficial, issues of species misidentification have not proven to be a consistent problem and driver of overfishing in non-shark HMS fisheries. As such, NMFS believes that a more targeted course on shark identification and regulations will be more likely to achieve the goals of this action.

Comment 39: NMFS received numerous comments from recreational fishermen regarding the impact of the shark endorsement on data collection. One commenter noted the shark endorsement would provide a better estimate of recreational shark fishermen and increase the confidence in MRIP shark catch estimates. Other commenters were concerned that the shark endorsement would lead to inflated shark catch estimates, further noting that most HMS anglers would choose to get the endorsement, regardless of whether they plan to target sharks in order to keep the option for shark fishing open. Additionally, one commenter felt that the shark endorsement benefit would be minimized by the fact that HMS permits are vessel-based therefore the permit holder and not the individuals fishing would be reporting.

Response: NMFS expects that the endorsement can serve as a framework for improving the sampling of recreational anglers that target sharks for MRIP surveys like the LPS. NMFS recognizes that the more HMS permit holders that acquire the endorsement, the less of a targeted sample it would provide compared to the existing HMS Angling and Charter/Headboat permits; however, this should not result in inflated estimates of sharks caught in federal waters. The HMS Angling and Charter/Headboat permit lists are already used as sampling frames for the LPS and the For-Hire Survey which provide estimates of shark fishing effort and landings by HMS permit holders. If all HMS permit holders obtain the shark endorsement, then the survey sampling frames would remain the same, and the resulting estimates should be largely

unchanged. However, the fact that HMS permits, and thus the shark endorsement, are vessel-based permits will limit its usefulness as a sampling frame for other MRIP surveys that are not vessel based, but instead target individual anglers.