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Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Marine Resources Commission
Virginia Administrative Code (VAC) Chapter citation(s)	4 VAC 20-490
VAC Chapter title(s)	Pertaining to Sharks
Action title	Removing Oceanic whitetip shark from a permitted shark species to a prohibited shark species.
Final agency action date	September 1, 2024
Date this document prepared	June 14, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia Marine Resources Commission (VMRC) proposes to amend Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks", to move Oceanic whitetip shark from the commercially and recreationally permitted shark species list to the commercially and recreationally prohibited shark species list in the definitions section of this regulation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the

ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

[Mandate] VMRC is authorized by § 28.2-201 of the Code of Virginia to promulgate regulations and guidelines necessary to carry out the provisions of Title 28.2. In addition, this specific amendment is a published final rule issued by NOAA on January 3, 2024.

[Impetus] In federal waters, Oceanic whitetip sharks are jointly managed by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and NOAA Fisheries. This prohibition on Oceanic whitetip sharks is in response to biological opinions for highly migratory species that strongly encouraged a prohibition on fishing for this species. The Oceanic whitetip is currently listed as threatened under the Endangered Species Act.

Starting February 2, 2024, this final rule adds Oceanic whitetip sharks to NOAA’s prohibited species list and requires all commercial and recreational fishermen to leave Oceanic whitetips in the water and any caught must be released immediately. Moving Oceanic whitetip sharks to the commercial and recreational prohibited species lists in the definitions sections of the shark regulation will align state regulations with those in federal waters. The ASMFC Coastal Sharks Management Board voted unanimously to implement NOAA’s prohibitions for state waters and recommended states adopt these changes as soon as possible.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

This is to certify that the foregoing is a true and accurate copy of the chapter (4VAC20-490-10 et seq., “Pertaining to Sharks”, passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Hampton, Virginia on August 27, 2024.