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50 CFR Part 635
Docket No: 230315-0075
RIN: 0648-BK54

Introduction:

My name is David O'Boyle, Esq. I am writing on behalf of myself as an attorney with expertise in federal administrative law, and as an author of children's books featuring animals, amongst them sharks. I am also writing as general counsel for my publishing company D/B/A David O'Boyle; for Finboy, a fictional character with a shark fin in a children's book I wrote with the same name; and as chairman of Friends from Other Flower Pots, an unincorporated association with a mission to help Americans exercise their right to comment on federal policies related to the protection of endangered species.

Background:

"Oceanic whitetip sharks...were once among the most prevalent sharks in tropical and temperate surface waters of the world's equatorial oceans (Compagno, 1984), but are now among the most threatened."¹ According to the Ocean Conservancy, "Oceanic whitetip sharks are **found all over the world**—they used to be one of the most abundant shark species in the ocean. Unfortunately, their populations have decreased by about 70-80%...this is primarily because they have been caught in large numbers as bycatch or harvested for the shark fin, skin, and oil trade."² (boldness added for emphasis). Moreover, "The oceanic whitetip shark is one of the most widely ranging sharks, common throughout the warm latitudes of all oceans."³ In terms of relevant latitude, their specific range is between 45-degrees N and 43-degrees South.⁴ For reference, in the Western United States, 45 degrees N latitude is in the Pacific Northwest, specifically Oregon, just north of Salem, Idaho.

Some other relevant characteristics for this note: the Oceanic Whitetip ("Whitetip") has a lengthy gestation period of 10-12 months and gives birth to live young. Pups in a litter range from 1-14 but

¹ [Frontiers | Inferring Life History Characteristics of the Oceanic Whitetip Shark *Carcharhinus longimanus* From Vertebral Bomb Radiocarbon \(frontiersin.org\)](#) (referencing Compagno, L. J. V. (1984). *FAO Species Catalogue Vol 4. Sharks of the World: an Annotated and Illustrated Catalogue of Shark Species Known to Date. Parts 1 and 2.* FAO Fisheries Synopsis No. 125. Italy: FAO, 655).

² [Wildlife Fact Sheets: Oceanic Whitetip Shark - Ocean Conservancy](#)

³ [Oceanic Whitetip Shark - Oceana](#)

⁴ Froese, Rainer; Pauly, Daniel (eds.) (2013). "Carcharhinus longimanus" in FishBase. February 2013 version.

average 6- essentially, the bigger the female, the bigger the litter. The age until maturity is 4-15 years. Spawning is believed to occur biennially. Life span is about 25 years. Some live into their mid-thirties.

With that in mind, we support proposed rule A2 and B4 jointly promulgated by the Department of Commerce, the National Marine Fisheries Service, and the National Oceanic Atmospheric Association. Alternative A2, the focus of this comment, would do the following:

- Add Whitetips to the prohibited shark species group;
- Prohibit retention, possession, landing, sale, or purchase of Whitetips or parts of Whitetips in all commercial and recreational HMS fisheries;
- Remove Whitetips from the list of pelagic indicator species.

To better assess methods and approaches for carrying out Whitetip conservation, this comment seeks further clarification on the following items:

- 1) Why is this regulation limited to U.S. Atlantic and not U.S. Pacific waters?
- 2) The data from the fishing logbooks used to justify the proposed rule needs further clarification to understand the full scope of the Whitetip issue.

Analysis:

Distribution Range of the Whitetip Does not Include U.S. Pacific waters.

The entire range of the Whitetip is not covered by this rule. Despite having a range that includes West Coast Waters up as north as Oregon, the rule only addresses conservation efforts in Atlantic fisheries. While it is true that the study about Whitetips shows their range to the 45-degree latitude (Oregon), this study dates to 2013. It does appear more recent maps are less liberal with their distribution, or simply more accurate, as they take into consideration the decline of the Whitetip since the 2013 publication. Still, even these more circumscribed distributions keep them inside U.S. Pacific waters north of Mexico. Why are Whitetips in this range, whatever their number, however limited it may be, not protected as they are in the Atlantic U.S. waters.

Logbook Data Used in Rule Leaves Some Unanswered Questions

From 2017-2021, 2856 Whitetips were discarded alive and 425 were discarded dead. To begin, what is the more recent data from 2022? Why is it unavailable to inform the proposed rule?

The available logbook data also needs to go into further detail about total Whitetip populations in proposed protected waters. In the rule, numbers for discarded Whitetips are provided, but those numbers are not provided in comparison to the actual remaining number of Whitetips that remain in these waters. Without more knowledge about the remaining number, the significance of discarded capture numbers is harder to conceptualize. For instance, if 3500 Whitetips exist in U.S. Atlantic waters, then nearly 3000 captured is a much bigger cause for concern than if the population contained many more animals.

Request for More Data on Whitetips Discarded Alive

On a similar note, out of the Whitetips discarded alive, does data or evidence exist to suggest they remain living for reasonable time periods after discard? If discard of the living animal constitutes a proximate cause of their eventual death, is it fair to say they were discarded alive? Or is it more accurate

to say that they were discarded dead, at least to some level of adjustable probability. This seems to depend on the resiliency of the shark species to catch and release. Tiger sharks, for instance, are quite resilient. Giant Hammerheads are not.⁵ Do we know where Whitetips are on this scale? Are they closer to hammerheads or closer to Tigers in terms of resiliency? The concern here is that if Whitetips are a species less resilient to capture, what is being considered discarded alive for data purposes may be a sort of fiction. Put differently, just because the fish swims away after the catch does not mean he won't be dead in a few minutes down the river. Does the logbook incorporate such thinking into the discarding alive v discarding dead data points?

Equally important with respect to the logbook data is the omission of sex categorization from captured sharks before discarding. A population that is trying to grow needs mature females. In terms of Whitetips, the bigger the females, the bigger the litter. It follows that the sex and size of Whitetip capture should be documented in the logbooks. If it is documented already in the logbooks and that data is simply omitted from the proposed rule, then the trends for capture (male to female, female size, whether female is assumed to be pregnant) should be provided. The latter designation is particularly important, for a pregnant Whitetip capture and unsuccessful discard could kill not only the mother, but 1-14 pups in a litter. Add on the long 10–12-month Whitetip gestation period alongside their biennial mating cycles and you have a shark population with quite a lot of pregnant females at any given time. If the aspiration is to save to Whitetip, there is a lot of value in gathering information on where the females are, whether those females are pregnant, and whether those females are surviving as discarded capture.

While those with licenses are generally required to enter Whitetip shark captures in the logbook, what about the capture of Whitetips by unlicensed residential fisherman? Is there any data on this at the agency's disposal?

Conclusion:

Using evidence in their explanation, the agencies should articulate why the instant proposed rule does not expand its protections to Whitetips in U.S. Pacific waters; and

Provide more information/gather evidence around logbook data collection as it results to the type of Whitetip (male, female, size, maturity, pregnant) discarded. If the data is unavailable, why not add these categories to the logbooks. If that data is available, a further breakdown of the discarded Whitetip sharks is necessary to determine what percentage of them are females/pregnant females. If the data skews towards large pregnant females being caught at high rates, there is a higher cause for concern, as they carry their young inside of them for long periods of time.

Sincerely,

David O'Boyle, esq /s/ individually

David O'Boyle /s/ as general counsel for David O'Boyle's publishing company and on behalf of Finboy

David O'Boyle, esq. /s/ on behalf of the Friends from Other Flower Pots.

⁵[Catch-and-release fishing creates trauma sharks | Earth | EarthSky](#)