

## 1.0 INTRODUCTION

This document is the Final Amendment 1 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) for Essential Fish Habitat (EFH). On November 7, 2006 (71 FR 65088), the National Marine Fisheries Service (NMFS) published a Notice of Intent to prepare an Environmental Impact Statement (EIS) to examine alternatives for updating existing HMS EFH, consider additional Habitat Areas of Particular Concern (HAPCs), analyze fishing gear impacts, and if necessary, identify ways to avoid or minimize, to the extent practicable, adverse fishing impacts on EFH, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other relevant Federal laws. At that time, NMFS requested new information not previously considered in the Consolidated HMS FMP, comments on potential HAPCs, and information regarding potential fishing and non-fishing impacts that may adversely affect EFH.

In addition to the Magnuson-Stevens Act, the document must be consistent with other applicable laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). This document is an integrated document that includes both the Final Environmental Impact Statement (FEIS) and the Final Fishery Management Plan Amendment. Chapters 2 and 4 of this document provide a description of the alternatives considered and the analyses of the potential impacts. Chapter 3 provides a description of the affected environment, Chapter 5 describes the EFH life history accounts and provides EFH maps, Chapter 6 analyzes fishing and non-fishing impacts as well as cumulative impacts, Chapter 7 presents research and information needs for Atlantic HMS, and Chapter 8 identifies the preparers of this document and other agencies consulted during preparation.

On November 7, 2006, NMFS made available a Pre-Draft of Amendment 1 that included a general description of the approaches being considered to update EFH, to consider new HAPCs, and where applicable, to minimize fishing impacts. The Pre-Draft also served to obtain additional information and input from the public and Atlantic HMS Consulting Parties on potential options or alternatives to consider prior to development of the formal Draft Environmental Impact Statement (DEIS) for Amendment 1 of the Consolidated HMS FMP. Consulting Parties for Atlantic HMS fisheries are defined under the Magnuson-Stevens Act as affected Regional Fishery Management Councils (Councils), International Commission for the Conservation of Atlantic Tunas (ICCAT) commissioners and advisory groups, and the HMS Advisory Panel (AP). The Magnuson-Stevens Act requires NMFS to consult with Consulting Parties regarding FMPs or FMP amendments.

The Pre-Draft included a summary of the purpose and need, and a general description of the ecological, social, and economic impacts of alternatives that NMFS was considering at that time. The alternatives outlined in Chapter 2 are the result of comments received and additional analyses that were done to include additional alternatives or to update existing alternatives presented in the Pre-Draft. As such, new alternatives were included in the DEIS

that had not been in the Pre-Draft. A summary of the comments received during the public scoping period were included in DEIS and are not repeated here.

EPA published a notice of availability of the Draft EIS and Draft Amendment 1 on September 19, 2008 (73 FR 54397) with public comment period open through November 18, 2008. On September 19, 2008, NMFS published the notice of availability (73 FR 54384) of Draft Amendment 1 to the 2006 Consolidated HMS FMP and held public hearings to discuss changes to HMS EFH boundaries. The comment period closed on December 12, 2008. Draft Amendment 1 proposed to update HMS EFH boundaries using new data and a new approach for mapping EFH, as well as designate a new HAPC for bluefin tuna in the Gulf of Mexico. Draft Amendment 1 also included an analysis of fishing and non-fishing impacts on EFH as required by the Magnuson-Stevens Act and the EFH regulations. NMFS presented Draft Amendment 1 to the HMS Advisory Panel, the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Fishery Management Councils, and to the Gulf and Atlantic States Marine Fisheries Commissions. However, because NMFS was not proposing new regulations with respect to EFH, NMFS did not prepare a proposed rule in conjunction with Draft Amendment 1.

NMFS solicited comments and advice from Atlantic HMS Consulting Parties, including the HMS Advisory Panel, on the impacts described for each of the alternatives. As described in Chapters 2 and 4, NMFS took into account comments received from the HMS AP and the public on how best to proceed with alternatives to update EFH. NMFS received a number of comments ranging from data considerations, extent of EFH, impacts on EFH, to concerns about HAPCs and aquaculture impacts on EFH. Specific comments and responses are included in Appendix 1.

## **1.1 Management History**

In 1996, Congress reauthorized the Magnuson-Stevens Act. The reauthorized Act included a requirement to identify and describe EFH for all federally managed fisheries based on the guidelines established by the Secretary of Commerce (Secretary) under section 305(b)(1)(A), to minimize, to the extent practicable, adverse effects on such habitat caused by fishing, and to identify other actions to encourage the conservation and enhancement of EFH. EFH was defined in the Magnuson-Stevens Act as those habitats necessary for spawning, breeding, feeding, or growth to maturity. The EFH guidance published on January 17, 2002 (67 FR 2343), stated that EFH must be identified and described for each life stage of all species in the fishery management unit (FMU) as well as the physical, biological, and chemical characteristics of EFH and if known, how these characteristics influence the use of EFH by each species and life stage. FMPs and FMP amendments must provide written descriptions of EFH and must also provide maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found (50 CFR 600.815(a)(1)(i)).

The EFH regulations state that NMFS and the Councils should periodically review and revise or amend the EFH provisions as warranted based on available information (50

CFR 600.815(a)(10)). The Magnuson-Stevens Reauthorization Act of 2006, signed into law and enacted on January 12, 2007, did not include any revisions to the EFH provisions.

The EFH regulations also provided procedures for the Secretary, other federal agencies, and the Councils to coordinate, consult, or provide recommendations on federal and state actions that may adversely affect EFH. Section 305(b)(1)(D) of the Magnuson-Stevens Act requires all federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH conservation recommendations to federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by the agency. Section 305(b)(4)(B) requires federal agencies to respond in writing to such comments.

**Table 1.1 Management history for HMS EFH.**

FMP or Amendment	Species for which EFH was identified
1999 FMP for Atlantic Tunas, Swordfish, and Sharks	EFH first identified and described for Atlantic tunas, swordfish and sharks
1999 Amendment 1 to the Billfish FMP	EFH first identified and described for Atlantic billfish
2003 Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Sharks	EFH updated for five shark species (blacktip, sandbar, finetooth, dusky, and nurse sharks)
2006 Consolidated Atlantic HMS FMP	Comprehensive review of EFH for all HMS; EFH for all Atlantic HMS consolidated into one FMP; No changes to EFH descriptions or boundaries
2009 Amendment 1 to the Consolidated Atlantic HMS FMP	EFH updated for all Atlantic HMS; new HAPC for bluefin tuna established in the Gulf of Mexico

### **1.1.1 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and Amendment 1 to the Billfish Fishery Management Plan**

NMFS issued two separate FMPs in April 1999 for the Atlantic HMS fisheries. The 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, combined, amended, and replaced previous management plans for swordfish and sharks, and was the first FMP for tunas. Amendment 1 to the Billfish FMP updated and amended the 1988 Billfish FMP.

EFH for Atlantic tunas, swordfish, and sharks was identified and described in the 1999 FMP, and EFH for billfish was identified and described in the 1999 Amendment 1 to the Billfish FMP. The FMP and amendment included text descriptions, tables, and maps for

each species and life stage depicting the geographic locations of HMS EFH. There were some species for which insufficient information prevented identification and description of EFH, and in those cases, text descriptions and maps were not provided. HAPCs were identified and described for sandbar sharks (*Carcharhinus plumbeus*) off Chesapeake Bay, Virginia and Maryland, Delaware Bay, Delaware, Great Bay, New Jersey, and the Outer Banks off North Carolina.

### **1.1.2 Amendment 1 to the 1999 FMP for Tunas, Swordfish, and Sharks**

In November 2003, NMFS issued Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, which, among other things, updated EFH for five shark species. NMFS decided to update EFH for these five species based on either a change in management status (*e.g.*, from overfished to not overfished or vice versa) or based on new information that had become available at that time. Species for which management status had changed at the time of drafting Amendment 1 to the 1999 FMP included the blacktip shark (*Carcharhinus limbatus*) (determined to be no longer overfished), sandbar shark (overfishing was occurring), and finetooth shark (*C. isodon*) (overfishing was occurring). Species for which new information had become available included the dusky shark (*C. obscurus*) and nurse shark (*Ginglymostoma cirratum*). As described below, these updated descriptions and maps were also included in the Consolidated HMS FMP.

The focus of Amendment 1 to the 1999 FMP was a comprehensive review of management measures for Atlantic sharks and did not consider any changes to the management of tunas, swordfish, or billfish. No new HAPCs were proposed at that time, and NMFS did not update EFH for any of the other species in the HMS management unit.

### **1.1.3 Consolidated HMS FMP**

NMFS began the comprehensive review (referred to as Phase 1) of all HMS EFH for the Consolidated HMS FMP, which was released on July 14, 2006 (71 FR 40096). In that document, NMFS provided new information collected since the EFH boundaries were established in 1999. NMFS did not modify or update any of the existing EFH identifications, descriptions, or boundaries in the Consolidated HMS FMP or propose any new measures to minimize impacts from fishing gear. Rather, NMFS presented new EFH information and data collected since 1999, including an evaluation of fishing gear impacts, and requested public comment on any additional data or information that needed to be included in the review. The purpose of the EFH review was to gather any new information and determine whether modifications to existing EFH descriptions and delineations were warranted. While NMFS had presented new information on HMS EFH in the annual Stock Assessment and Fishery Evaluation (SAFE) reports in previous years, the Consolidated HMS FMP included the first comprehensive review of all new information related to EFH that had been completed since 1999.

As part of the comprehensive review under Phase 1, a search for all new literature and information was undertaken to assess habitat use and ecological roles of HMS EFH. Published and unpublished scientific reports, fishery dependent and independent datasets,

and expert and anecdotal information detailing the habitats used by the managed species were evaluated and synthesized for inclusion in the review process in the Consolidated HMS FMP. Ongoing research on the biology, ecology, and early life history of Atlantic HMS and research and publications relating to HMS EFH are described in Chapter 10 of the Consolidated HMS FMP.

Based on the data collected and presented in the Consolidated HMS FMP, NMFS determined that modification to existing EFH for some species and/or life stages may be warranted, but that any changes to EFH, including new HAPCs and potential measures to minimize fishing impacts, should be considered in a separate amendment (referred to as Phase 2). NMFS also conducted a comprehensive review of all federal and non-federally managed fishing gears that formed the basis for further analysis on gear impacts in this amendment.

In order to consolidate all Atlantic HMS EFH into one document, all EFH text descriptions and maps previously provided in separate documents were combined in the Consolidated HMS FMP. Specifically, all the EFH descriptions and maps from the 1999 FMP for Tunas, Swordfish, and Sharks, Amendment 1 to the Billfish FMP (1999), and Amendment 1 to the FMP for Tunas, Swordfish, and Sharks (2003) were provided in the Consolidated HMS FMP. Maps in the Consolidated HMS FMP also depicted distribution data acquired through the review process and provided an opportunity for public comment on the need for any additional information to be considered. The original EFH descriptions and boundaries from the 1999 FMP, as well as updates from the 2003 FMP Amendment, may be found in Appendix B (Volume III) of the Consolidated HMS FMP. In addition, as described in Chapter 2, an internet-based mapping program (the HMS EFH Evaluation Tool) was used to make the Draft Amendment 1 proposed changes to EFH boundaries available to the public during the comment period. The same site is now being used to distribute the revised HMS EFH boundaries presented in this amendment.

## **1.2 Purpose and Need for Action**

The purpose of this amendment is to update and revise existing HMS EFH, designate a new HAPC for bluefin tuna in the Gulf of Mexico, and analyze fishing and non-fishing impacts on EFH. The Magnuson-Stevens Act regulations call for a comprehensive review of all EFH information at least once every five years, and this amendment constitutes Phase 2 of the comprehensive review and update of EFH for all HMS that began with the Consolidated HMS FMP. New information that has become available since the 2006 Consolidated HMS FMP, including information on the biology, distribution, habitat requirements, life history characteristics, migratory patterns, spawning, pupping, and nursery areas of Atlantic HMS was taken into consideration when updating EFH in this amendment.