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09-006008

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

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April 22, 2009

Secretary Gary Locke
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

NS EXECUTIVE SECRETARIAT
2009 APR 23 AM 9:14

Dear Mr. Secretary:

At its April 2009 meeting the Mid-Atlantic Fishery Management Council (Council) passed the following motion:

"Move that the Mid-Atlantic Fishery Management Council staff draft a letter to the Secretary of Commerce requesting management authority for smooth dogfish."

Further to the Council's motion, the Council hereby requests management authority for smooth dogfish (*Mustelus canis*) in the Atlantic Exclusive Economic Zone (EEZ). The Atlantic States Marine Fisheries Commission currently manages the smooth dogfish fishery in state jurisdictional waters. As you are aware, at the present time there is no management oversight for this species in federal waters.

The above motion was made in the context of a broader action taken by the Council at its April meeting to authorize the initiation of Amendment 1 to the federal Spiny Dogfish Fishery Management Plan (FMP). The Council believes the inclusion of smooth dogfish in Amendment 1 to the Spiny Dogfish FMP is justified on both practical and legal grounds.

As a practical matter, the participants in the smooth dogfish fishery comprise a subset of active participants in the spiny dogfish fishery. The smooth dogfish fishery occurs primarily in the Mid-Atlantic region, and both fisheries (spiny dogfish and smooth dogfish) use the same gear to commercially harvest these species. The directed smooth dogfish fishery falls within the geographic range of the much larger fishery for spiny dogfish, and the two fisheries are separated temporally as a function of water temperature. From a practical perspective, the smooth dogfish fishery closely overlaps the spiny dogfish fishery and adding smooth dogfish to the Spiny Dogfish FMP would enable the Council to manage the fishery more efficiently than the current HMS proposal to include smooth dogfish with the small coastal shark (SCS) complex in Amendment 3, which is geographically removed from the smooth dogfish fishery, and involves a different set of constituents. The Councils already have standing committees and advisory panels in place for spiny dogfish management.

The Council questions the finding in a recent letter (March 18) from Alan Risenhoover of NMFS' Office of Sustainable Fisheries regarding its preliminary determination that smooth dogfish should be classified as a highly migratory species. Our concern centers on the definition of smooth dogfish as a "highly

migratory species." Section 3 (21) of the Magnuson - Stevens Fishery Conservation and Management Act (Act) defines these species as "tuna species, Marlin (*Tetrapturus spp* and *Maikaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*)." Smooth dogfish can only meet these criteria if it is determined to be an oceanic shark. The literature does not support this conclusion. The distribution of smooth dogfish is primarily near shore in depths of less than 18 meters with occasional entry into fresh water (Bigelow and Schroeder 1948, Castro 1983, Compagno 1984). Additionally, and unlike highly migratory oceanic shark species such as shortfin mako which may migrate throughout entire ocean basins, the migration patterns of the Mid-Atlantic smooth dogfish population is described in the literature as regionally discrete. Specifically, the literature indicate that the regional population of smooth dogfish along the Mid-Atlantic coast winters between southern North Carolina and Chesapeake Bay, moving northward along the coast to New England and southward to South Carolina as water temperatures warm in the springtime, then withdrawing to their wintering area at the end of the summer (Compagno, 1984). The species is also encountered offshore. However, like spiny dogfish, because of the low value of the product, harvest is typically concentrated in state jurisdictional waters.

The commercial fishery for smooth dogfish along the Atlantic States of the U.S. is highly concentrated within the jurisdiction of the Mid-Atlantic Fishery Management Council. Specifically, 98.3 percent (10,870,677 pounds) of the total coastal landings of smooth dogfish from the Atlantic States were landed in the Mid-Atlantic States (North Carolina through New York - reference Table 1). The balance was landed in New England, principally in Rhode Island and Massachusetts. Like the migratory patterns of the species, the commercial landings are regional in nature. This regional fishery does not raise the typical array of issues associated with highly migratory pelagic shark species, which may have vast migratory ranges that raise international resource-sharing considerations, Transboundary Resource Assessment Committee (TRAC) issues, or related complexities.

Table 1. Pounds of Smooth Dogfish Commercially Landed on the Atlantic Coast

Year	NC	NJ	VA	NY	MD	RI	MA	CT	DE	ME	TOTAL
1997	526,998	212,643		3,014	74,530	2,802	11,245				831,232
1998	489,451	184,220	80,753	21,556	300,240	15,896					1,092,116
1999	504,943	309,100	337,891	4,570	124,749	43,873					1,325,126
2000	335,282	409,592	264,465	23,146	36,458	4,052					1,072,995
2001	510,383	280,883	289,600	116,853	6,864			1,919		270	1,206,772
2002	341,672	248,077		148,996	17,780	3,366			131		760,022
2003	373,056	86,428		164,876	14,193	4,833			273		643,659
2004	623,697	213,565		96,093		3,954	1,281	6,459	475		945,524
2005	647,578	97,978	351,403	80,878	9,286	8,544	15,263				1,210,930
2006	610,248	89,614	254,309	114,165	14,433	4,063	45,156	4,066			1,136,054
2007	641,888	77,658		103,743		14,058		1,961			839,308
TOTAL	5,605,196	2,209,758	1,578,421	877,890	598,533	105,441	72,945	14,405	879	270	11,063,738

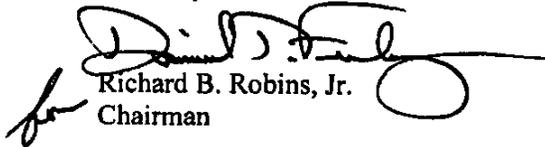
Source: http://www.st.nmfs.gov/st1/commercial/landings/annual_landings.html, last accessed 21 April, 2009

We recognize and respect the fact that Section 302 (a)(3) of the Act states that "[t]he Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council." While the Mid-Atlantic Council would also agree that smooth dogfish are distributed among several Council areas of authority, over 98 percent of the

Council, Gulf Council, and Caribbean Council." While the Mid-Atlantic Council would also agree that smooth dogfish are distributed among several Council areas of authority, over 98 percent of the commercial landings occur within the Mid-Atlantic States. Furthermore, we would point out that the Spiny Dogfish FMP is a joint plan for coastal sharks that was developed and is carried out cooperatively with the New England Council. The spiny dogfish fishery has been rebuilt in large part due to very restrictive management measures put in place since 2000 when the Councils first assumed jurisdictional authority over this previously unmanaged and overfished stock. The Councils' history of recovering the spiny dogfish stock is evidence of their ability to successfully manage and recover coastal shark species, and we request that you take this successful history into consideration in weighing the determination of management authority.

Because of the strong overlap of the spiny and smooth dogfish fisheries, in terms of geographical distribution, management partners, stakeholders and gear, and the fact that we believe the species does not meet the criteria for being classified as a highly migratory species, the Council has concluded that incorporation of management authority for this species into the current Spiny Dogfish FMP would greatly serve the sustainable management of this species in Federal waters and also provide an effective and efficient mechanism for constituent input into the management process. Your positive consideration and approval of this request will be appreciated.

Sincerely,


Richard B. Robins, Jr.
Chairman

cc: Jane Lubchenco, NOAA Administrator
James Balsiger, Assistant Administrator for NMFS
Alan Risenhoover, Chief, Office of Sustainable Fisheries, NMFS
Patricia Kurkul, NMFS, NE Regional Administrator
John Pappalardo, Chairman, New England Fishery Management Council

Literature cited:

Bigelow, H.B., and W.C. Schroeder. 1953. Fishes of the Gulf of Maine. Fish. Bull. 74(53):1- 577.

Castro, J. I. 1983. The Sharks of North American waters. Texas A&M Univ. Press, College Station, TX. 180 p.

Compagno, L. J. V. 1984. Sharks of the world. An annotated and illustrated catalogue of shark species known to date. FAO Species Catalogue, vol 4, part 2. FAO Fish. Synop., p. 404-406. FAO, Rome

NMFS commercial landings http://www.st.nmfs.gov/st1/commercial/landings/annual_landings.html, last accessed 21 April, 2009



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

MAY 14 2009

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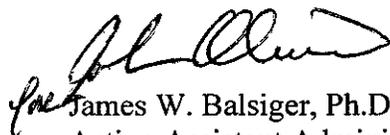
Dear Mr. Robins:

Thank you for your letter to Secretary Gary Locke regarding the Mid-Atlantic Fishery Management Council's request for management authority for smooth dogfish.

NOAA's National Marine Fisheries Service (NMFS) is reviewing your request and will provide a formal determination in the near future. As noted in your letter, the biology of smooth dogfish and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act will need to be carefully assessed to determine proper jurisdiction over the species. NMFS has begun reviewing fishery and life history data of smooth dogfish to inform our determination.

I appreciate your commitment to fishery management.

Sincerely,



James W. Balsiger, Ph.D.
Acting Assistant Administrator
for Fisheries





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MO 20910

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JUL 08 2009

Dear Mr. Robins:

Thank you for your letter to Secretary Locke regarding the Mid-Atlantic Fishery Management Council's (MAFMC) request for management authority for smooth dogfish.

The National Marine Fisheries Service (NMFS) has carefully considered the MAFMC request and analyzed each of the points presented in your letter. NMFS approached the issue with a firm belief that the stock would be well served either under Secretarial or MAFMC management. With this belief, I directed my staff to perform an analysis of the lawful placement of smooth dogfish management. As detailed in the attached document (Smooth Dogfish Management Authority Analysis), NMFS has determined that smooth dogfish falls within the congressional directive regarding highly migratory species (HMS) and should be managed under the Secretary's authority.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is the primary statute giving fishery management authority to NMFS, on behalf of the Secretary, and the Regional Fishery Management Councils. In most cases, Regional Fishery Management Councils have authority for fisheries management for stocks and species within each Council's geographic jurisdiction due to the Council's close cooperation with constituents, fishery experience and knowledge, and consensus building process. The only exception to this management authority is for Atlantic HMS that are more effectively managed as a single unit. For this reason, management of HMS was unified by the Magnuson-Stevens Act under the Secretary of Commerce.

Smooth dogfish are found in each of the five Atlantic Regional Fishery Management Council regions and recreational and commercial catches have been reported in four of these regions. While the fisheries in these regions are not currently as developed as that in the mid-Atlantic, the species is currently caught and fishing effort on smooth dogfish could expand in these other regions. If federal smooth dogfish management measures are implemented, including commercial and recreational permit requirements, through Amendment 3 to the 2006 Consolidated HMS FMP, the full impact of the fishery outside of the mid-Atlantic will likely be clarified. Such a wide distribution and range necessitates singular authority resulting in NMFS' determination that smooth dogfish, an oceanic shark, should be managed by the Secretary.

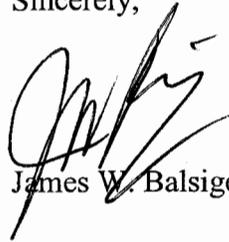
As you noted in your letter, the current commercial fishery is highly concentrated within the mid-Atlantic region and overlaps with the spiny dogfish fishery. As such, I have asked the HMS staff to work closely with the MAFMC to develop specific management measures to ensure



complementary management between smooth dogfish and other fisheries under your authority. I encourage you to submit specific draft management measures and plans relative to the mid-Atlantic portion of the fishery directly to NMFS where they will be reviewed and implemented to the greatest extent practicable in an appropriate rulemaking.

Your commitment to fishery management is sincerely appreciated, and I look forward to close collaboration on federal smooth dogfish management.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Balsiger', written over the printed name below.

James W. Balsiger, Ph.D.

cc: Daniel Furlong, Executive Director, MAFMC
Patricia Kurkul, NMFS, NE Regional Administrator
Alan Risenhoover, Chief, Office of Sustainable Fisheries, NMFS
John Pappalardo, Chairman, New England Fishery Management Council

Smooth Dogfish Management Authority Analysis

Magnuson-Stevens Fishery Conservation and Management Act

Two subsections and one National Standard in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) are particularly relevant for determining legal authority and are as follows:

- Section 302 (3):

The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

- Section 3 (21):

The term "highly migratory species" means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

- Section 301(3) (National Standard 3)

To the extent practicable, an individual stock of fish should be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

Magnuson-Stevens Act Section 3 (21) defines highly migratory species (HMS). Unlike other HMS, sharks are not defined by family or species. Rather, the term "oceanic shark" is used. The statute does not further expound upon or define this term. Given the broad application of the term in conjunction with the habitat, migratory patterns and geographic distribution of the species, smooth dogfish is fairly characterized as an oceanic shark.

NMFS examined Section 302 (3) and Section 301 (3) (National Standard 3). Both of these sections relate to management authority based on the distribution of the species. The Compagno (1984) reference included in the MAFMC letter states that smooth dogfish inhabit the geographical area of all five Atlantic Regional Fishery Management Councils, and across international boundaries to South America and Mexico.

Based upon the distribution, occurrence, and seasonal patterns of the smooth dogfish, NMFS has concluded that the smooth dogfish is properly considered highly migratory. According to Compagno (1984), smooth dogfish tend to be found inshore during the warmer months. However, thermally stable, deep offshore waters are preferred in the colder months (up to 200m) and Caribbean populations occupy waters deeper than 200m. Based on distribution maps provided in Compagno (1984), smooth dogfish are found along the eastern seaboard, in the Gulf of Mexico, and in the Caribbean Sea. Their distribution further extends to the northern South American coast.

Smooth dogfish observation data from research cruises supports this conclusion. The following map summarizes nearly 6,000 NMFS and university observations of smooth dogfish from the Cooperative Atlantic States Shark Pupping and Nursery (COASTSPAN) and the Southeast Area Monitoring and Assessment Program (SEAMAP) surveys, as well as data from Southeast Fisheries Science Center (SEFSC) and a Virginia Institute for Marine Sciences (VIMS) shark nursery area study (Figure 1).

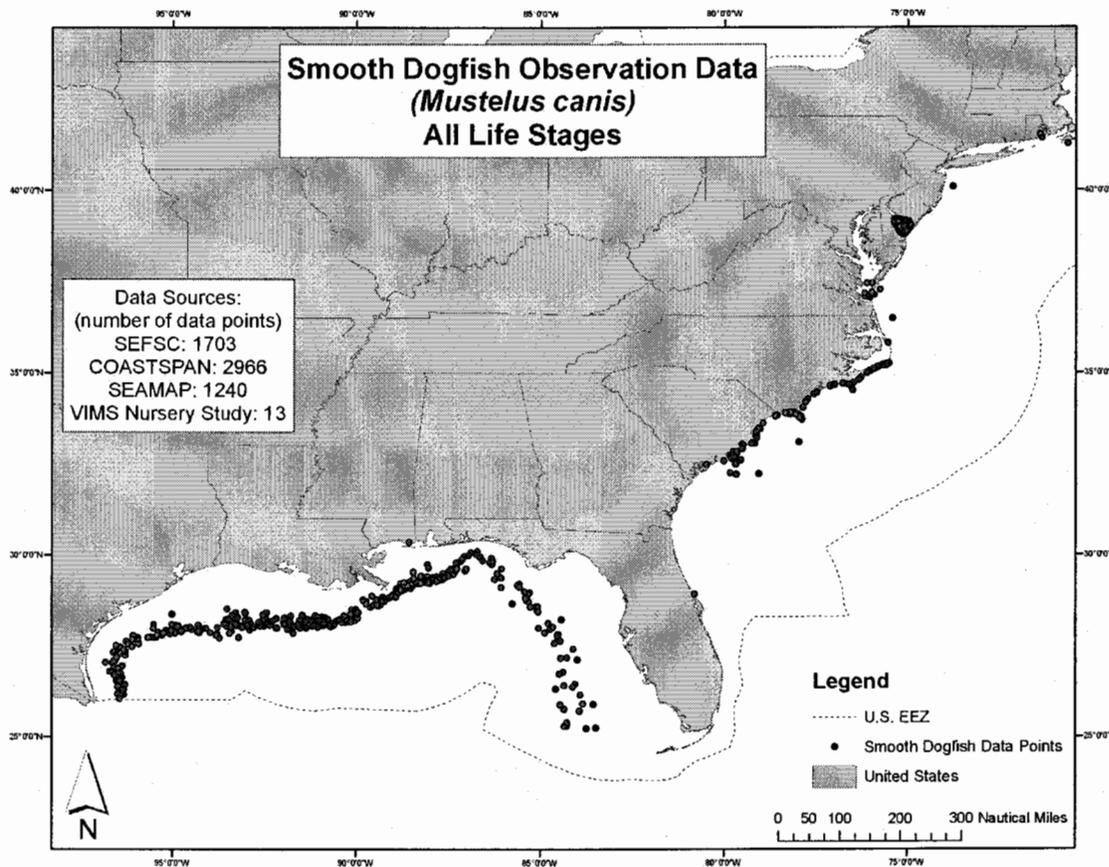


Figure 1 Smooth dogfish observation data across all life stages

Emerging research indicates that there have been taxonomic classification errors relating to smooth dogfish. The Florida smoothhound (*Mustelus norrisi*), found in the Gulf of Mexico, has been found to be the same species as smooth dogfish as determined by genetic analysis (Driggers, pers. comm.). This misclassification has likely led to under-representation of smooth dogfish in data from the Gulf of Mexico. Once this taxonomic misclassification is addressed, NMFS expects that our understanding of the proportion of the smooth dogfish stock within the Gulf of Mexico to increase relative to the mid-Atlantic. Amendment 3 to the 2006 Consolidated HMS FMP will address this misclassification within the smooth dogfish management measures.

In order to comply with Section 302 (3) and National Standard 3, smooth dogfish, an oceanic shark, should be managed as an HMS across its entire distribution which spans multiple Councils. Due to this wide distribution, smooth dogfish is appropriately managed by the Secretary under its statutory HMS authority.

Smooth dogfish overlap with the spiny dogfish fishery

The April 22 2009, MAFMC request noted a high degree of overlap between the smooth and spiny dogfish fisheries including participants, gear types and geographic range. NMFS has concluded that while there is overlap, smooth dogfish fishermen are not simply a subset of spiny dogfish fishermen. Based on vessel trip report (VTR) data between 2004 and 2007, NMFS found that:

- a) Of vessels that reported landing spiny dogfish, approximately 20 percent also landed smooth dogfish in the same year; spiny dogfish fishermen land about 44 percent of the total smooth dogfish landings.
- b) Of vessels that reported landing smooth dogfish, approximately 35 percent also landed spiny dogfish in the same year; smooth dogfish fishermen land about 2.4 percent of the total spiny dogfish landings
- c) Vessels that retain both smooth and spiny dogfish in the same year do not necessarily land both species consistently year after year. Of the vessels that catch both species within a year, approximately 35-45 percent are the same year to year.
- d) Both fisheries utilize trawl and gillnet gear for the majority of the landings.

NMFS also found that there is some geographic overlap between the spiny and smooth dogfish commercial landings. However, the spiny dogfish fishery is primarily concentrated in the north (64 percent of the landings occur in New Hampshire, Massachusetts, and Rhode Island), and the smooth dogfish fishery is primarily concentrated in the south (72 percent of the landings occur in Virginia and North Carolina). There is also some temporal distinction between the fisheries with smooth dogfish landings peaking in May, and spiny dogfish landings peaking in July, staying consistent through December, and tapering off through January and February.

References

Compagno, L.J.V. 1984. FAO Species Catalog Vol.4, Part 1 and 2: Sharks of the world: An annotated and illustrated catalogue of shark species known to date. FAO Fish. Synop. 125. FAO, Rome, Italy.

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