

## CHAPTER 10 TABLE OF CONTENTS

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## **10.0 OTHER CONSIDERATIONS**

### **10.1 National Standards**

The analyses in this document are consistent with the National Standard (NS) guidelines set forth in the 50 CFR part 600 regulations. The following descriptions are a summary of how the preferred alternatives are consistent. More information can be found in earlier chapters.

NS 1 requires NMFS to prevent overfishing while achieving, on a continuing basis, OY from each fishery for the U.S. fishing industry. As summarized in other chapters, over the past several years, NMFS has undertaken numerous management actions, including the 2006 Consolidated HMS FMP and Amendment 2 to the 2006 Consolidated HMS FMP, to address overfishing and to rebuild HMS stocks. The preferred alternatives in this document are consistent, to the greatest extent practicable, with ongoing management efforts to rebuild, manage, and conserve target species in accordance with the NSG1.

- The Magnuson-Stevens Act requires FMPs to include a mechanism for specifying ACLs and AMs for all fisheries. ACLs and AMs must be effective for species or complexes subject to overfishing by 2010 and for all other species or complexes no later than 2011. The 2006 Consolidated HMS FMP does not presently include such a mechanism or a practice of specifying annual ACLs. Therefore, the 2006 Consolidated HMS FMP needs to be amended to meet this requirement by the statutory deadline for species and complexes it manages. In addition, it must also consider whether it needs to propose or amend implementing regulations to specify ACLs annually and apply AMs. This amendment develops an appropriate mechanism for specifying ACLs to prevent and end overfishing within the constraints of existing data and annually set ACLs and apply AMs to ensure that ACLs are not exceeded.
- The preferred commercial and recreational SCS alternatives would be consistent with NS 1 because they implement mortality reductions consistent with the 2007 SCS stock assessments to end overfishing and rebuild the blacknose shark stock. Furthermore, the preferred commercial SCS alternative would establish a separate blacknose shark quota and non-blacknose SCS quota. This will meet the OY for blacknose sharks along with rebuilding the stock; however catch of non-blacknose SCS will decrease since they are caught in the same manner as blacknose sharks.
- The commercial gear restrictions preferred alternative would be another measure by which recommended reductions in blacknose shark mortality would be achieved. This would serve as a way to stop overfishing of this species, consistent with NS 1. The shark gillnet gear closure would be implemented within the blacknose shark's range, thereby providing the opportunity for the harvest of shark stocks that are healthy and not currently overfished.
- Consistent with NS 1, the domestic commercial and recreational pelagic shark preferred alternatives to promote live release of shortfin mako in conjunction with existing management measures would potentially reduce overfishing of the shortfin mako shark. This species, however, has an Atlantic-wide distribution, and U.S. landings are a small percentage of the total international landings. Therefore, working at the international level to develop management measures for other nations to adopt and implement would support

ending overfishing of shortfin mako sharks. Domestically, encouraging the live release of shortfin mako sharks would help reduce the mortality within U.S. waters.

- The preferred alternative for smooth dogfish would be consistent with NS 1 as it would provide federal management of the species. The management measures would require a federal permit for commercial and recreational fishermen in order to retain smooth dogfish in federal waters. In addition, it would implement a commercial quota for this species at a level that could prevent overfishing. These measures should not affect how the fishery is currently prosecuted, rather, it would help characterize the fishery and identify its participants. Beyond the new federal permit and associated quota, no new restrictions would be placed on the fishery.

NS 2 requires that conservation and management measures be based on the best scientific information available. The preferred alternatives in this document are consistent with NS 2 guidelines.

- The preferred commercial and recreational SCS alternatives are consistent with NS2 because they are based on the latest SCS stock assessments. Results from the 2007 SCS stock assessments represent the best available science.
- The commercial gear restrictions preferred alternative would be consistent with NS2 since the mortality reductions are based on the 2007 SCS stock assessments. NMFS used the best available data in terms of dealer reports, observer reports, and logbook data to analyze the impacts associated with the commercial gear restrictions alternatives.
- Consistent with NS2, the commercial and recreational shortfin mako shark preferred alternatives are based on the latest SCRS stock assessment for shortfin mako sharks
- The preferred alternative for smooth dogfish management measures would be consistent with NS2. Due to the lack of previous federal management, data regarding catch levels and the number of participants in the fishery are sparse. Quotas established within this preferred alternative are based upon the best available landings data from VTR, logbook, and ACCSP data. While these data are not robust, they constitute the best scientific information available at this time.

NS 3 requires that, to the extent practicable, an individual stock of fish be managed as a unit throughout its range and interrelated stocks of fish be managed as a unit or in close coordination. The preferred alternatives in this document are consistent with this NS.

- The preferred commercial and recreational SCS alternatives are consistent with NS3 as blacknose sharks would be managed throughout their ranges to the extent of federal jurisdiction from Virginia through the Gulf of Mexico.
- The commercial gear restrictions preferred alternative would be consistent with NS3 as it would apply gillnet gear restrictions within the area where blacknose sharks interact with gillnet gear (South Carolina south).
- The shortfin mako shark range extends beyond U.S. waters. NMFS would work with other nations at the international level to establish appropriate management measures to reduce fishing pressure on shortfin mako sharks across its range.
- The preferred alternative for smooth dogfish management measures would be consistent with NS3 as they would manage the species throughout its range from Maine to Texas,

including the Caribbean. Federal permit requirements and quotas would apply to all shark fishermen wanting to retain smooth dogfish in these areas.

NS 4 requires that conservation and management measures do not discriminate between residents of different states. Furthermore, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation should be fair and equitable to all fishermen; be reasonably calculated to promote conservation; and should be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The preferred alternatives in this document are consistent with this NS.

- The commercial SCS effort control preferred alternative would apply to all fishermen in the Atlantic, Gulf of Mexico, and the Caribbean Sea.
- The commercial gear restrictions preferred alternative is limited in its geographic scope from South Carolina south. This measure is based on the range of blacknose sharks and does not directly allocate fishing privileges, nor does it discriminate between residents of different states. While it is true that the effect of the gear restriction will result in a disproportionate adverse effect to shark fishermen using gillnets for shark fishing south of South Carolina, the measure was based on the blacknose shark's distribution range and will serve an important conservation purpose for the species and is therefore consistent with NS4.
- The recreational SCS preferred alternative, and both the recreational and commercial pelagic shark preferred alternatives, apply to the entire U.S. EEZ within the Atlantic, Gulf of Mexico, and the Caribbean Sea. Therefore, these measures do not discriminate between residents of different states, nor do they allocate fishing privileges and are consistent with NS4.
- The smooth dogfish management preferred alternative, which entails a federal smooth dogfish permit and quota, is consistent with NS4 because it is an open access permit and does not allocate fishing privileges. Additionally, the measure would apply in the entire U.S. EEZ within the Atlantic, Gulf of Mexico, and Caribbean, and would not discriminate between residents of different states.

NS 5 requires that conservation and management measures should, where practicable, consider efficiency in the utilization of fishery resources with the exception that no such measure shall have economic allocation as its sole purpose. The preferred alternatives in this document are consistent with this NS.

- Consistent with NS 5, the conservation and management measures in both the commercial SCS and commercial gear restrictions preferred alternatives were analyzed for changes in the efficiency of utilization of the fishery resource. Closure of the shark directed gillnet fishery could lead to a significant reduction in blacknose shark harvest and could result in a decrease in efficiency of harvesting other SCSs. However, removing gillnets from the approved list of gears for the directed shark fishery would help prevent overfishing of blacknose sharks. Furthermore, the gear would only be prohibited within the blacknose shark's range (*i.e.*, South Carolina south, Gulf of Mexico, and the Caribbean Sea), thereby minimizing its impact in the utilization of the fishery resource. Consistent with NS 5, neither of these preferred alternatives has economic allocation as their sole purpose.

- The preferred alternative for the SCS recreational measures would prohibit the retention of blacknose sharks by recreational fishermen as a way to help rebuild blacknose sharks. Given blacknose sharks rarely, if ever, reach the current minimum size, this should not have an impact on the utilization of fishery resource. Consistent with NS 5, this preferred alternative does not have economic allocation as its sole purpose.
- Both the commercial and recreational pelagic shark preferred alternatives were analyzed for changes in the efficiency in the utilization of the fishery resource, consistent with NS 5. Encouraging the live release of shortfin mako sharks within the commercial and recreational fisheries will purposefully not impact the efficiency of fishery resource extraction. Measures promoted at the international level would similarly work to reduce fishing pressure, but likely maintain a certain level of catch. Consistent with NS 5, neither of these preferred alternatives have economic allocation as their sole purpose.
- Establishing federal management measures for smooth dogfish would not affect the efficiency of utilization of the fishery resource, consistent with NS 5. The preferred alternative would require a permit for fishermen fishing for smooth dogfish in federal waters and establish a commercial quota. The smooth dogfish fishery would remain an open access fishery with no new gear restrictions. Consistent with NS 5, this preferred alternative does not have economic allocation as its sole purpose.

NS 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The preferred alternatives in this document are consistent with this NS.

- Each of the preferred alternatives implements measures that consider the variations among, and contingencies in, fisheries, fishery resources, and catches. The measures proposed relate to either fishing effort/retention restrictions, including gear restrictions and prohibition of blacknose sharks in the recreational sector, or quotas, as is in the case of the commercial blacknose shark and the smooth dogfish fisheries. Measures are already in place to ensure quotas are not exceeded in the presence of variations in the fishery and catches; however, quotas could change in the future if warranted by new stock assessments. Timely reporting of catch data and the requirement to close the fishery after 80 percent of the quota utilized would allow for these measures to adjust to variations and contingencies, consistent with NS 6.

NS 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The preferred alternatives in this document are consistent with this NS.

- The costs associated with most of the preferred alternatives are minimal as they would implement measures restricting fishing effort and/or retention. The only preferred alternative to have an associated cost is the establishment of a smooth dogfish federal permit. A minimal fee would be required upon applying for the permit, but would not introduce a significant barrier to the fishery. Consistent with NS 7, the preferred alternatives were analyzed to avoid unnecessary duplication.

NS 8 states that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing

and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities. The preferred alternatives in this document are consistent with this NS.

- The preferred alternatives are necessary to allow rebuilding and end overfishing of blacknose sharks consistent with NS 1. There are substantial social and economic impacts associated with the preferred alternatives as a result of the management measures needed to reduce fishing mortality and effort as prescribed by recent stock assessments. NMFS considered a range of alternatives with varying environmental, economic, and social impacts but only certain alternatives would accomplish the goals necessary to rebuild overfished shark species and prevent overfishing. The preferred alternatives would strike an appropriate balance between positive ecological impacts that must be achieved to rebuild and prevent overfishing on depleted stocks while minimizing, to the extent practicable, the severity of negative social and economic impacts that will occur as a result.
- Closure of the shark gillnet fishery from South Carolina south is limited to the range of the blacknose shark. The preferred alternatives minimized impacts on the greatest number of fishermen possible.
- Encouraging the live release of shortfin mako sharks in both the recreational and commercial fisheries would still allow for retention.
- The smooth dogfish permit would be open access and should not create any significant barriers to entering or remaining in the fishery.
- The preferred alternative for the SCS recreational measures would prohibit the retention of blacknose sharks by recreational fishermen as a way to help rebuild blacknose sharks. Given blacknose sharks rarely, if ever, reach the current minimum size, this should not have an impact on federally permitted fishermen.
- Communities may be negatively affected by the need to reduce quotas and retention limits consistent with NS 1. While it is true that the effect of the gear restriction will result in a disproportionate adverse effect to shark fishermen using gillnets for shark fishing south of South Carolina, the measure was based on the blacknose shark's distribution range and will serve an important conservation purpose for the species and is therefore consistent with NS8. SCS quota reductions will not disproportionately affect any one community or region.

NS 9 states that conservation and management measures shall, to the extent practicable, minimize bycatch, and to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. The preferred alternatives in this document are consistent with this NS.

- The SCS and commercial gear restrictions preferred alternatives would minimize bycatch as it is expected to reduce overall fishing effort targeting sharks with gillnets. Gillnets have historically had bycatch rates larger than other types of gear, and the elimination of this gear type within a portion of the U.S. EEZ would likely reduce bycatch of sharks and protected species.
- The recreational SCS preferred alternative to prohibit landings of blacknose sharks in the recreational fishery does not directly address bycatch reduction; however, it is unlikely that this measures would increase bycatch. Management measures currently in place would

continue to address bycatch and reduce it the extent practicable.

- The commercial and recreational shortfin mako shark preferred alternatives will encourage the live release of the species including when caught incidentally; these management measure will minimize mortality.
- The smooth dogfish preferred alternatives do not directly address bycatch reduction; however, it is unlikely that these measures would increase bycatch. Management measures currently in place would continue to address bycatch and reduce it the extent practicable.

NS 10 states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. The preferred alternatives in the document are consistent with this NS.

- No impact to safety of life at sea is anticipated to result from these preferred alternatives. The management measures in the preferred alternatives would not require fishermen to travel greater distances, fish in bad weather, or otherwise fish in an unsafe manner.

## **10.2 Consideration of Magnuson-Stevens Section 304(g) Measures**

Section 304(g) of the Magnuson-Stevens Act sets forth requirements specific to the preparation and implementation of an FMP or FMP amendment for HMS. See 16 U.S.C. 1854(g) for full text. The summary of the requirements of Section 304(g) and an explanation of how NMFS is consistent with these requirements are below. The impacts of the preferred alternatives and how it meets these requirements are described in more detail in Chapters 2 and 4 of the document. This section provides only a summary of how each of the requirements is met.

### *1. Consult with and consider the views of affected Councils, Commissioners, and advisory groups*

NMFS published a Notice of Intent on May 7, 2008 (73 FR 25665) announcing the intent to initiate an amendment to the 2006 Consolidated HMS FMP. On July 2, 2008 (73 FR 37932), NMFS published a Notice of Availability to inform the public of the issues and options presentation that was available on the HMS website. This Notice also announced NMFS' intent to hold five public scoping meetings to discuss and collect comments on issues described in the presentation. A Predraft of Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) was developed and released to consulting parties and HMS Advisory panel (AP) members in February 2009. NMFS presented the Predraft to the HMS AP members at the February 2009 AP meeting to discuss and receive comments. Written comments received on the issues and options presentation, during the scoping meetings, and at the HMS AP meeting were considered at all stages when preparing this document. NMFS will send the document and its proposed rule to consulting parties including all five of the Atlantic Regional Fishery Management Councils, both the Atlantic and Gulf States Marine Fisheries Commissions, and the HMS AP. NMFS is also requesting time on the agenda to discuss this Amendment during the Council and Commission meetings that occur during the comment period.

### *2. Establish an advisory panel for each FMP*

As part of the 2006 Consolidated HMS FMP, NMFS combined the Atlantic Billfish and HMS APs into one panel. This combined HMS AP provided representation from the commercial and recreational fishing industry, academia, non-governmental organizations, state

representatives, representatives from the Regional Fishery Management Councils, and the Atlantic and Gulf States Marine Fisheries Commissions. This amendment will not change the HMS AP, and NMFS convened a meeting of the HMS AP during the public comment period of the Predraft of Amendment 3 to discuss and collect comments and proposed shark management measures.

3. *Evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to U. S. fishermen in relation to foreign competitors.*

Throughout this document, NMFS has described the effects of the management measures and any impacts on U. S. fishermen. The preferred alternatives in this document are necessary to meet Magnuson-Stevens Act mandates to rebuild overfished stocks and prevent overfishing, which in the long-term are not expected to disadvantage U.S. fishermen in relation to foreign competitors. Because the United States contribution to the total fishing mortality of shortfin mako sharks in the North Atlantic is only about 10 percent, the preferred alternative for shortfin mako sharks would not change domestic regulations but would look to establish international management measures to end overfishing on an international level.

4. *With respect to HMS for which the United States is authorized to harvest an allocation, quota, of fishing mortality level under a relevant international fishery agreement, provide fishing vessels with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level.*

There is currently no international agreement on blacknose shark, or smooth dogfish quotas, allocations, or fishing mortality levels. Therefore, this requirement is not applicable for these species. However, shortfin mako sharks are managed both domestically and internationally at ICCAT. Because of the small U.S. contribution to Atlantic shortfin mako shark mortality, domestic reductions on shortfin mako shark mortality would not end overfishing of the entire North Atlantic stock. Therefore, NMFS believes that ending overfishing and preventing an overfished status would be better accomplished through international action where other countries that have large takes of shortfin mako sharks could participate in mortality reduction discussions.

5. *Review on a continuing basis, and revise as appropriate, the conservation and management measures included in the FMP.*

NMFS continues to review the need for any revisions to the existing regulations for HMS. Draft Amendment 3 to the 2006 Consolidated HMS FMP is the culmination of one of those reviews.

6. *Diligently pursue, through international entities, comparable international fishery management measures with respect to HMS.*

NMFS continues to work with the ICCAT and other international entities such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to implement comparable international fishery management measures. To the extent that some of the management measures in this amendment are exportable, NMFS works to provide foreign nations with the techniques and scientific knowledge to implement similar management measures.

7. *Ensure that conservation and management measures under this subsection:*
- a. *Promote international conservation of the affected fishery;*
  - b. *Take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;*
  - c. *Are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and*
  - d. *Promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic HMS.*

All of the objectives of the document indicate how NMFS promotes the international conservation of the affected fisheries in order to obtain optimum yield while maintaining traditional fisheries and fishing gear and minimizing economic impacts on U.S. fishermen. The management measures in the preferred alternatives in this document are expected to meet these goals.