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10.0 OTHER CONSIDERATIONS

10.1 National Standards

This chapter provides analyses demonstrating that the measures in Amendment 3 to the HMS FMP is consistent with the National Standards (NS), 16 U.S.C. §1851(a)(1)-(10) of the Magnuson-Stevens Act as implemented by the National Standard Guidelines (NSG1) 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 Amendments 1 and 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 NS1, NSG1 and 16 U.S.C. §1854(e)(4).

- The Magnuson-Stevens Act requires FMPs to include a mechanism for specifying ACLs and AMs for all fisheries. For stocks that were determined to be overfished before July 12, 2009, ACLs and AMs must be established before the 2010 fishing year; for all other species or complexes, ACLs and AMs must be established no later than 2011. The 2006 Consolidated HMS FMP does not presently include such a mechanism or a practice of specifying annual ACLs and AMs for Atlantic sharks. Therefore, the 2006 Consolidated HMS FMP needs to be amended for Atlantic sharks to meet this requirement by the statutory deadline. 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 SCS alternative A6 is consistent with NS 1 because it implements mortality reductions consistent with the 2007 SCS stock assessments to end overfishing and rebuild the blacknose shark stock. This alternative would establish a separate blacknose shark quota and non-blacknose SCS quota and, in combination with the other SCS alternatives, would meet the OY for blacknose sharks along with rebuilding the stock. While the overall quota for non-blacknose SCS would decrease since those species are sometimes caught in the same manner as blacknose sharks, because the quota would be established equal to average landings of those species, the actual landings should not decrease. Additionally, if fishermen show they can actively avoid blacknose sharks while targeting the other SCS, NMFS may increase the non-blacknose SCS quota accordingly to further increase the opportunity to land OY for all SCS. The decreased quota for blacknose sharks will end overfishing and rebuild the stock.
- The recreational SCS preferred alternative D1, maintaining the status quo with respect to retention and size limits, would continue to prevent the retention of the vast majority of recreationally caught blacknose sharks. The species rarely reaches the 54 inch minimum size.

- The commercial gear restrictions preferred alternative B1, maintaining the status quo with respect to gillnets in the shark fishery, is consistent with NS1. Although the preferred alternative in the FEIS is different than that in the DEIS, allowing gillnets to be used in the South Atlantic, in conjunction with the preferred alternative A6, should still stop overfishing of blacknose sharks and allow the stock to rebuild within the required timeframe. Based upon public comment, NEFSC and SEFSC input, and NMFS analyses, it was found that gillnets catch a larger-sized blacknose shark than other gears and can selectively target species within the SCS complex. These two findings resulted in a change to the preferred alternative. Catching a few larger-sized, mature individuals should be less damaging to the blacknose shark stock than catching many, smaller-sized (often immature) individuals. The apparent ability to avoid blacknose sharks should offer the necessary protection of the species while mitigating negative economic impacts to non-blacknose SCS fishermen. Thus, the preferred alternative B1 is consistent with both rebuilding goals and NS 1.
- Consistent with NS 1, the domestic commercial and recreational pelagic shark preferred alternatives (C5, C6, E3, and E4) to promote live release of shortfin mako in conjunction with existing management measures while also working internationally to prevent overfishing should reduce overfishing of the shortfin mako shark. This species has an Atlantic-wide distribution, and U.S. landings are a small percentage of the total international landings. The U.S. cannot unilaterally contribute to substantial reduction to or an end to overfishing of this stock through domestic management measures. Therefore, working at the international level to develop management measures for other nations to adopt 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. In November 2009, at the Twenty-First regular meeting of ICCAT in Recife, Brazil, the United States submitted a proposal that included measures to conserve shortfin mako sharks, including a measure to cap shortfin mako landings at 2008 levels. The proposal was not adopted, due to differences of opinion among contracting parties as some wanted to exempt shortfin mako sharks taken as bycatch from the proposal. Bycatch of shortfin mako sharks in the pelagic longline fishery is the leading cause of mortality in the ICCAT Convention area, thus this counterproposal was not acceptable. The United States advocated continued consideration of shortfin mako shark measures and its proposal was referred for consideration at the 2010 Annual ICCAT meeting.
- The preferred alternative for smooth dogfish (alternative F2) is consistent with NS 1 as it would provide federal management of the species and allow NMFS to establish an Optimum Yield for the species while preventing overfishing. The management measures would require a federal permit for commercial and recreational fishermen in order to fish for and 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 minimize changes to how the fishery is currently prosecuted while helping to characterize the fishery and identify its participants. Beyond the new federal permit, associated quota, and fins naturally attached requirement, 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 (A6 and D1) are consistent with NS2 because they are based on the latest SCS stock assessments. This stock assessment followed the SEDAR process, including a peer review. Results from the 2007 SCS stock assessments represent the best available science.
- The commercial gear restrictions preferred alternative B1, maintaining the status quo with respect to gillnets in the shark fishery, is consistent with NS2. 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. It was found that the continued use of gillnets in the South Atlantic shark fishery is consistent with rebuilding goals because gillnets catch a larger-sized blacknose shark than other gears and can selectively target species within the SCS complex.
- Consistent with NS2, the commercial and recreational shortfin mako shark preferred alternatives (C5, C6, E3, and E4) are based on the latest SCRS stock assessment for shortfin mako sharks. This stock assessment followed the same process used for other ICCAT managed stocks and results from this stock assessment represent the best available science.
- The preferred alternative for smooth dogfish management measures (F2) is 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 (A6 and D1) 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 (B1) is consistent with NS3 as it would not alter current shark gillnet regulations and would not alter the geographic scope of management.
- 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. As such, the commercial and recreational shortfin mako shark preferred alternatives (C5, C6, E3, and E4) are consistent with NS3.
- The smooth dogfish shark range extends beyond U.S. waters. The preferred alternative for smooth dogfish management measures (F2) is consistent with NS3 because it manages the species throughout its range in U.S. federal waters from Maine to Texas, including the

Caribbean. The alternative would also apply to federally permitted vessels fishing on the high seas. 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 A6 would apply to all fishermen in the Atlantic, Gulf of Mexico, and the Caribbean Sea. While the resulting quotas may disadvantage shark fishermen living in particular areas off Florida because they are the main fishermen targeting blacknose sharks, the quota is justified under NS 4 as a conservation measure to prevent overfishing and rebuild blacknose sharks and has no discriminatory intent. Furthermore, the quota applies to all shark fishermen, so fishermen from all states would be subject to the same restrictions.
- The commercial gear restrictions preferred alternative B1, maintaining the status quo with respect to gillnets in the shark fishery, would not alter current authorized gears and therefore does not discriminate between resident of different states.
- The recreational SCS preferred alternative D1 and the recreational and commercial pelagic shark preferred alternatives (C5, C6, E3, and E4) 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 (F2), 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 (A6 and B1) were analyzed for changes in the efficiency of utilization of the fishery resource. Reductions in the blacknose shark quota would lead to a significant reduction in blacknose shark harvest and could result in a decrease in efficiency of harvesting other SCSs. However, reducing the blacknose shark quota would help prevent overfishing of the species and these impacts would be mitigated by maintaining a high non-blacknose SCS quota. The non-blacknose

SCS quota will allow the fishery to continue at its average landings level. Additionally, if fishermen show they can actively avoid blacknose sharks while targeting the other SCS, NMFS may increase the non-blacknose SCS quota accordingly to further increase the opportunity to land OY for all SCS. Consistent with NS 5, neither of these preferred alternatives has economic allocation as their sole purpose.

- The preferred alternative for the SCS recreational measures (D1) would maintain the current retention and size limit, and would not alter efficiencies in the recreational fishery. 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 (C5, C6, E3, and E4) 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 (preferred alternative F2) would minimize changes to 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. Beyond the permit requirement and quota, the requirement to maintain smooth dogfish with fins naturally attached through offloading is the only change. Setting a quota and establishing a permit system could affect the efficiency of the current fishery in the short-term, but provide for the long-term efficient management of the fishery as it matures. Although requiring fins remain naturally attached could affect the efficiency of utilization, it already exists in other shark fisheries where new methods have been developed. The implementation of smooth dogfish management measures will be delayed until the 2012 fishing season, in part, to allow these techniques to be adopted in the smooth dogfish fishery, thereby maintaining efficiency. 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 (A6, B1, C5, C6, D1, E3, E4, and F2) implements measures that consider the variations among, and contingencies in, fisheries, fishery resources, and catches. The preferred measures relate to either fishing effort/retention restrictions, including the recreational and commercial pelagic shark preferred alternatives, or quotas, as is in the case of the commercial blacknose shark and the smooth dogfish fisheries. When preferring these management measures, NMFS analyzed the data considering variations among the fisheries, fishery resources, and catches. 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 or as outlined in the framework for alternative A6. 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 (A6, B1, C5, C6, D1, E3, and E4) 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 (alternative F2). 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 (A6, B1, C5, C6, D1, E3, and E4) are necessary to allow rebuilding and end overfishing of blacknose sharks consistent with NS 1. There are moderate social and economic impacts associated with the preferred alternatives to reduce blacknose shark mortality (A6, B1, and D1), however, NMFS mitigated these impacts by developing a preferred alternative which, if chosen and implemented, would maintain a non-blacknose SCS quota equal to the average annual landings. The non-blacknose SCS quota will allow the fishery to continue near its current landings level. Additionally, preferred alternative B1 will maintain the status quo for commercial gears, further mitigating negative impacts though the continued use of gillnets in the shark fishery.
- The preferred alternative for the SCS recreational measures (D1) would maintain the current retention and size limit, and would not impact fishing communities.
- Encouraging the live release of shortfin mako sharks in both the recreational and commercial fisheries (preferred alternatives C6 and E4) would still allow for retention and will not change the regulations. Preferred alternatives C5 and E3, taking action at the international level, could result in international efforts to decrease the catch of short mako sharks, but it would be unlikely to prohibit the retention of the species.
- The smooth dogfish permit (preferred alternative F2) would be open access and should not create any significant barriers to entering or remaining in the fishery. NMFS recognizes that requiring fins to remain naturally attached to the carcass through offloading differs from current practices in the fishery, and therefore plans to delay implementation until 2012 to allow the fishery time to modify processing practices. This additional time should allow smooth dogfish fishermen to adopt techniques used in other shark fisheries or to

develop new methods.

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.

- Consistent with NS 9, the conservation and management measures in both the commercial SCS and commercial gear restrictions preferred alternatives (A6 and B1) minimize bycatch. Data currently available indicate relatively low rates of bycatch and bycatch mortality of protected species and other finfish in the SCS gillnet fishery compared to other HMS fisheries. Allowing fishermen to use gillnets to target non-blacknose SCS would likely reduce bycatch relative to other gear types. Furthermore, the SCS quota will be adjusted based upon how successful fishermen are at avoiding blacknose sharks. If blacknose shark bycatch levels remain low, the non-blacknose SCS quota will remain high. If catch data shows that fishermen cannot avoid blacknose shark bycatch, the non-blacknose SCS quota will decrease. This quota framework offers an incentive to non-blacknose SCS fishermen to avoid bycatch. For these reasons, both the commercial SCS and commercial gear restrictions preferred alternatives (A6 and B1) are consistent with NS9.
- The recreational SCS preferred alternative (D1) to maintain the current retention and size limit in the recreational fishery does not directly address bycatch reduction, as it is the No Action alternative. 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 (C5, C6, E3, and E4) to take action at the international level and to encourage the live release of the species, including when caught incidentally, would minimize mortality. Encouraging the live release of shortfin mako sharks would have an impact in the short term, while international efforts offer the strongest protection for the species, including when incidentally caught, due to the low U.S. contribution to Atlantic-wide catch.
- The smooth dogfish preferred alternative (F2) does 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 (A6, B1, C5, C6, D1, E3, E4, and F2). 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 in the preparation of the DEIS for Amendment 3 (July 24, 2009, 74 FR 36892). Comments received on the DEIS from public submissions, public hearings, the HMS AP September 2009 meeting, and presentations to the five Atlantic Regional Fishery Management Councils were used in the preparation of this document.

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 meetings of the HMS AP during the public comment period of both the Predraft and DEIS 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. Chapter 9 in Section 9.4 also gives an overview of the fisheries impacts of the preferred management measures in the Final Fisheries Impact Statement. 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 less than 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. In addition, NMFS is delaying the implementation of the smooth dogfish management measures until the beginning of the 2012 fishing season in order to have additional discussions with fishery participants regarding the fins attached requirement for

smooth dogfish, which should ensure that domestic fishermen are not disadvantaged in relation to foreign competitors with respect to exports of smooth dogfish product.

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. Final 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.