

A.0 APPENDIX: SUMMARY OF COMMENTS RECEIVED DURING SCOPING

A.1 Why is NMFS Amending the Consolidated HMS FMP?

On October 2, 2006 (71 FR 58058), the National Marine Fisheries Service (NMFS) finalized the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). The Consolidated HMS FMP replaced and consolidated all previous plans for Atlantic tunas, swordfish, sharks, and billfish. In 2007, the Southeast Data, Assessment and Review (SEDAR) panel conducted a stock assessment for small coastal sharks (SCS) which include Atlantic sharpnose, blacknose, bonnethead, and finetooth sharks. This assessment indicated that Atlantic sharpnose, bonnethead, and finetooth sharks were not overfished and overfishing was not occurring. The assessment indicated that blacknose sharks are overfished and overfishing is occurring. More information on the results of this assessment can be found in a Federal Register notice published on November 13, 2007 (72 FR 63888), and in the assessment itself, which is available via the HMS website (<http://www.nmfs.noaa.gov/sfa/hms/>) and via the SEDAR website (<http://www.sefsc.noaa.gov/sedar/>). Given the results of the 2007 assessment, changes to the 2006 FMP are required and will be made via an amendment to the existing HMS FMP to implement new rebuilding plans for depleted blacknose shark stocks and ensure sustainable fisheries for other shark stocks.

A.2 What is the Purpose of Scoping?

The first phase in amending an FMP or in preparing an environmental impact statement (EIS) is called scoping. During scoping, the public is given an opportunity to consider and comment on all the issues related to the subject at hand that have been identified by NMFS, as well as recommend additional issues for consideration during the rulemaking process. For this amendment, NMFS presented a broad range of potential shark issues during the scoping process. These issues included, but were not limited to, commercial and recreational measures to rebuild blacknose sharks, options for managing additional shark species, options for increasing compliance with HMS regulations and to improve vessel monitoring system (VMS) reporting and dealer reporting, and options for improving the Agency's ability to monitor and implement appropriate quotas. The advice and comments received during scoping are critical because they are used to identify and explore the full range of alternative approaches to future management, to define future priorities, and because it allows public involvement in the initial stages of the process, prior to analyzing, proposing, or adopting regulations.

To facilitate the process of collecting comments, NMFS released an issues and options presentation (73 FR 37932, July 2, 2008), made it available on the HMS website (<http://www.nmfs.noaa.gov/sfa/hms/>), and held four public hearings along the Atlantic and Gulf of Mexico coasts (73 FR 37932, July 2, 2008). NMFS also presented the issues and options presentation to the five Atlantic Regional Fishery Management Councils (Caribbean: 73 FR 43691, July 28, 2008; South Atlantic: 73 FR 50780, August 28, 2008; Northeast: 73 FR 54563, September 22, 2008; Mid-Atlantic: 73 FR 56804, September 30, 2008; Gulf of Mexico: 73 FR 58567, October 7, 2008) as well as the Atlantic States and

Gulf States Marine Fisheries Commissions. The comment period for scoping ended on November 14, 2008 (73 FR 64307, October 29, 2008).

During the scoping meetings, the public identified a number of issues and options beyond those presented by NMFS. NMFS considers the comments received when deciding which measures to include in Draft Amendment 3 to the 2006 Consolidated HMS FMP. Not all the issues raised or presented in the issues and options presentation or during scoping will be included in Draft Amendment 3. Some issues may be included in future amendments; other issues may be handled outside the FMP amendment process.

A.3 What Were the Comments Received?

Below is a summary of all the major comments received during scoping either verbally or in writing. Comments are categorized by major issue, but are not arranged in any particular order within a given category. The major issues include: the SEDAR 13 blacknose stock assessment, effort controls, time/area closures, reporting, monitoring, compliance, additional species considerations, and general comments. Because not all the comments received were related to the list of issues in the issues and options presentation, there is not a direct correlation between this document and the issues and options presentation. Additionally, responses to comments are not included in this document. Rather, the comments themselves will aid in developing the draft amendment and proposed rule documents, both in prioritizing the types of issues to be addressed and in the analyses of the alternatives themselves.

A.3.1 SEDAR 13 Stock Assessment Report

Issue: NMFS received several comments pertaining to the blacknose shark stock assessment, including:

- NMFS should have assessed blacknose sharks as two separate populations (Gulf of Mexico and South Atlantic);
- The assumption that blacknose shark reproduction occurs every 1.5 years instead of 1 year in the Gulf of Mexico (GOM) is likely to have a substantial (negative) impact on the intrinsic rate of population increase (r) for this stock;
- Blacknose sharks are not overfished; the blacknose stock is healthier than the stock assessment shows;
- There are inherent problems with the data used in the stock assessment;
- There have been large decreases in shrimp trawl effort since the blacknose stock assessment (2005); the red snapper fishery has bycatch limits in place that may help reduce blacknose bycatch through time/area closures;
- The Southeast Monitoring and Data Assessment Program (SEAMAP) nets do not use turtle exclusion devices (TEDs), therefore the number of takes of blacknose sharks used in the assessment are likely much higher than what actually occur in the shrimp trawl fisheries;
- The model used in the assessment has seasonal and geographic limitations and limitations on the amount of data specific to blacknose sharks;
- SEAMAP surveys are not routinely conducted in the areas where blacknose abundance is highest, such as the eastern GOM (statistical areas 1-9), but instead

- are conducted in the western GOM (statistical areas 10-21), where their abundance is lower. This raises questions as to the validity of the SEAMAP data;
- Shrimp fishing occurs during the night and blacknose bycatch occurs during the day, so day-night trends in blacknose mortality should be accounted for in the model;
 - Bycatch estimates during the winter may not be very good since SEAMAP surveys are only performed in the 2nd and 3rd trimesters;
 - Most of the observer data is from the 1970s and 1980s, when the fishery was very different;
 - NMFS needs to find a way to expand out the ‘unknown’ sharks observed during the 1970s and 1980s;
 - The number of blacknose caught over the years is larger than one may think because many of them were cut up and used as bait and not reported as landed;
 - NMFS needs to determine the correct commercial average size being used for different sectors;
 - According to the data used in the stock assessment, when the use of TEDs and bycatch reduction devices (BRDs) in shrimp trawl nets began and then became mandated, the number of blacknose shark bycatch increased rather than decreased;
 - SCS catch in the past may have been inflated due to misidentifying large coastal sharks (LCS) as SCS (to preserve LCS quota);
 - Fishermen have not seen the reduction in shark populations in the last ten years that the stock assessment models suggest, nor does this reduction manifest itself in any way when they are fishing for sharks;
 - NMFS needs to undertake stock assessments more frequently than what is occurring. A new stock assessment should be conducted every 2-3 years;
 - NMFS needs to explain how sensitive the model was to mortality;
 - NMFS needs to explain the benchmark period used in the assessment for the bycatch estimates;
 - NMFS observers only witnessed 11 actual blacknose sharks taken in the shrimp trawl fishery. NMFS needs to explain the validity of this data;
 - The assessment uses a correlation between a very small sample size of SEAMAP takes (273) and observed takes (27) as a predictor of shrimp trawl bycatch. NMFS needs to explain the validity of this data;
 - NMFS needs to explain why there is a difference in the stock status between Bayesian and age-specific models;
 - NMFS should clarify why blacknose mortality estimates are provided in numbers of fish and not in weight;
 - NMFS should explain whether the 1.5 lb average size for blacknose in the recreational fishery is really happening or if it is just a product of extrapolation;
 - The stock assessment appears to indicate that catch = 100 percent mortality in the commercial fisheries. NMFS needs to clarify if catch = 100 percent mortality in the commercial fisheries including the shrimp trawl fishery. NMFS also needs to clarify the amount of post-release survival of discarded sharks in these fisheries. If survival is greater than 0 percent, than the assessment may be overly

- pessimistic. NMFS should explain the sensitivity of the model based on the assumptions;
- NMFS needs to clarify whether the assessment assumes the same fishing mortality rate (F) for 1.5 lb fish taken in the recreational fisheries and 4.97 lb fish taken in the commercial fisheries. In reality, there is likely to be a substantial difference in the F rate associated with these different average sizes (ages). NMFS should explain what the sensitivity of the model is based on the assumptions; and,
 - NMFS needs to clarify whether the recreational data consist only of landings, or whether dead discards are also included in this data.

Issue: NMFS received several comments pertaining to the SEDAR review process, including:

- There is discussion in the Review Workshop Consensus Summary regarding the natural mortality rate being highest for the pup stage (i.e., low M) (page 14). NMFS needs to clarify whether this is a valid or reasonable assumption;
- The Review Workshop Consensus Summary suggests that there are serious problems with the selected indices because they cannot all account for the condition of the stock (page 14); and,
- The Review Workshop Consensus Summary indicates that the method used to estimate gear selectivity was “relatively crude” and there was insufficient information for the reviewers to determine if this approach was adequate or not (page 15).

A.3.2 Effort Controls

Issue: NMFS received several comments pertaining to blacknose mortality in shrimp trawls, including:

- Atlantic sharpnose sharks are the main bycatch in the shrimp trawl fishery;
- There is no way to reach the 19,200 total allowable catch (TAC) other than by shutting down the entire blacknose fishery, including the shrimp fishery;
- NMFS needs to set a shrimp trawl effort baseline to determine where bycatch needs to be reduced;
- NMFS should direct greater resources toward developing methods to reduce bycatch, this could be accomplished via time area closures or mechanical bycatch reduction measures;
- NMFS should consider that new bycatch regulations exist for the GOM;
- NMFS should work with the appropriate Councils to reduce blacknose bycatch in all related fisheries;
- NMFS should adopt compatible regulations with the Gulf of Mexico Fishery Management Council to protect blacknose shark spawners;
- NMFS should set bycatch caps/quotas for the Gulf and Atlantic shrimp trawl fisheries;
- Any more regulations to the shrimp trawl fishery will make it difficult to sustain that fishery;
- We are fully supportive of NMFS in their efforts to rebuild blacknose sharks, reduce bycatch, and prevent overfishing of other shark stocks;

- NMFS should consider gear modifications, particularly for trawls and TEDs, to increase shark escapement;
- NMFS should revisit the federal minimum recreational size limit for sharks;
- NMFS needs to clarify where the data is coming from which shows that sharks are going through the TEDs;
- NMFS needs to examine the species composition of the sharks that went through the bars of the TEDs (Georgia Bulldog video);
- NMFS needs to examine the mortality/survival rates of sharks found in the cod end of the shrimp trawl (Georgia Bulldog video); and,
- NMFS needs to confirm whether the average size of sharks which pass through the TED into the cod end of the net on the Georgia Bulldog video is 4.97 lbs.

Issue: NMFS received several comments regarding prohibiting blacknose sharks, including:

- Blacknose shark quotas should be closed for all fisheries to allow the stock to rebuild;
- Prohibiting blacknose sharks in the Atlantic shark fishery will put gillnet fishermen out of business;
- NMFS should completely shut down the shark fishery and implement a buyout of shark fishermen;
- Recreational fishermen should be prohibited from landing blacknose sharks; and,
- NMFS should not penalize the recreational fishermen by removing blacknose from the authorized species list.

Comment: NMFS should institute individual transfer quotas (ITQs), individual fishing quotas (IFQs), or annual catch limits (ACLs) for blacknose sharks across all fisheries to reduce mortality and rebuild the stock.

Comment: NMFS should elevate the level of observer coverage in fisheries catching sharks.

Comment: NMFS should not require recreational observers.

Comment: NMFS should work towards species specific and/or regional management for SCS.

Comment: NMFS should consider gear restrictions to limit dead discards of sharks.

A.3.3 Time/Area Closures

Issue: NMFS received several comments regarding time/area closures, including:

- If blacknose catches are in an isolated area, then NMFS should institute area closures for longlines in that area;
- Blacknose sharks should be prohibited in certain areas where they could be vulnerable to overfishing (e.g., off the coast of South Carolina);
- NMFS should consider the existing reef fish bottom longline boundaries (10- to 30-fathom area in the Gulf Statistical Subzones 10-21) instituted by the Gulf of

- Mexico Fishery Management Council as closed areas for shark longlines to reduce juvenile blacknose bycatch in the GOM; and,
- NMFS should consider delaying the start date of shrimp trawl season for states to in order to reduce bycatch of neonate blacknose sharks.

A.3.4 Monitoring and Compliance

Issue: NMFS received several comments regarding the use of vessel monitoring systems (VMS), including:

- There is a need for wider use of VMS as a means of monitoring the distribution of fishing effort and compliance with no-take areas;
- NMFS should exercise caution when mandating electronic reporting at this stage, as there are still a lot of issues with VMS transmissions; and,
- NMFS should mirror the reef fish VMS requirements if they implement VMS for the shark fishery to help minimize costs.

Issue: NMFS received several comments regarding compliance with HMS regulations, including:

- There is a need for tighter controls over recreational fishing for all targeted shark species;
- NMFS needs to implement actions which improve compliance with the recreational size limit for sharks; and,
- Enforcement actions for HMS violations should be timely and penalties should be stringent.

A.3.5 Additional Species Considerations

Issue: NMFS received several comments on smooth dogfish sharks, including:

- Effective conservation of smooth dogfish will require a management plan through either the HMS Management Division or the appropriate Council;
- A stock assessment for smooth dogfish is necessary in order to implement management measures for this species;
- A time/area closure instituted at both the state and federal level could be helpful in smooth dogfish conservation; and,
- Smooth dogfish have the potential to support a sustainable fishery with proper management.

Issue: NMFS received several comments on pelagic sharks, including:

- NMFS should implement additional management measures to protect common thresher and hammerhead sharks;
- NMFS should add ragged-tooth sharks to the management unit and prohibit their take;
- NMFS should prohibit take and minimize bycatch of particularly threatened species of wide-ranging sharks, including oceanic whitetips; and,
- Each pelagic shark species landed in the United States should have a species-specific stock assessment and a species-specific quota.

Comment: NMFS should increase the recreational bag limit for Atlantic sharpnose sharks from one per person per day, to two per person per day, particularly within the South Atlantic region.

Comment: NMFS should add deepwater sharks to their management unit and prohibit their take.

Comment: NMFS should add porbeagle sharks to the prohibited list.

A.3.6 General Comments

Issue: NMFS received several comments regarding education and outreach activities, including:

- NMFS needs to expand education and outreach efforts to recreational anglers, particularly with regard to shark species identification;
- It is necessary to educate anglers on how to release bycatch in a manner that ensures the maximum probability of survival;
- NMFS should implement commercial gear modifications such as circle hook requirements as well as careful handling and release technologies to reduce blacknose and other protected shark species discard mortality;
- NMFS should require that recreational fishermen complete a combination of the current commercial mandatory workshops with a recreational web-based tutorial and certification program to gain awareness and compliance with regulations and requirements;
- All juvenile sharks need to be released alive, and fishermen should have to use already approved release equipment; and,
- Release of sharks for recreational fishermen using approved gear should be mandatory.

Issue: NMFS received several comments regarding the Exempted Fishing Program (EFP), including:

- NMFS should not decrease the public display and research quota for sharks; this quota has never been filled, and it is conservation oriented;
- Animals that are only collected momentarily and then tagged and released alive as part of a research project should not be counted against the quota; and,
- The current system of display quotas for aquariums as well as the associated EFP process under the auspices of the 1999 FMP for HMS has worked very well.

Issue: NMFS received several comments regarding offloading and reporting of shark species, including:

- NMFS may not be getting accurate dealer data under the current reporting system;
- Most commercial trucking carriers will not pick up shark product if they are required to get a dealer permit;
- Species-specific landings should be recorded at the point of first contact at the dock to ensure accurate reporting;
- Recreational fishermen should be required to report all species caught and whether they were released or retained; and,

- NMFS landings reports should quantify both the number and weight of the dressed sharks when landed, even if the fins are the only product traded and the carcass is disposed of.

Comment: Tournaments should be managed separately from management of individual recreational fishermen.

Comment: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is statutorily required to rebuild blacknose sharks in as short a period of time as possible, not to exceed 10 years. The current rebuilding plan for blacknose sharks is in direct violation of this requirement.

Comment: The shark research fishery is discriminatory. NMFS should require that all permit holders take observers and let them fish for sandbar sharks.

A.4 Who Submitted Comments?

The following is a list of people who submitted written comments on the Notice of Intent (NOI) for Amendment 3 either via e-mail, fax, mail, or during a public scoping meeting.

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| 1) | 8/28/08 | Steve Atran, Gulf of Mexico Fishery Management Council |
| 2) | 8/29/08 | Forrest Young and C. Ben Daughtry, Dynasty Marine Associates, Inc. |
| 3) | 10/28/08 | Melvin Bell, South Carolina Department of Natural Resources |
| 4) | 10/30/08 | Sharon Young, The Humane Society of the United States |
| 5) | 11/6/08 | Shawn Dick, Aquatic Release Conservation, Inc. |
| 6) | 11/13/08 | Elizabeth Griffin, Oceana |
| 7) | 11/13/08 | Glenn Delaney, Southern Shrimp Alliance, Inc. |
| 8) | 11/14/08 | John Williams, Southern Shrimp Alliance, Inc. |
| 9) | 11/14/08 | Russell Hudson, Directed Shark Fisheries, Inc. |
| 10) | 11/14/08 | Sonja Fordham, The Ocean Conservancy |
| 11) | 11/14/08 | Joseph Choromanski, Ripley Aquarium, Inc. |

A.5 What Happens Now?

As described in Section A.2, scoping is the first phase in the EIS/FMP amendment process. NMFS is considering all the comments received during scoping,

prioritizing which issues will be addressed in Draft Amendment 3 or future rulemakings, and preparing a Predraft, which will outline the alternatives that are preliminarily being considered for Draft Amendment 3. After the Predraft has been released, NMFS will prepare a draft EIS and proposed rule.

Once the proposed rule and draft EIS are released, there is a second comment period where the public has an opportunity to comment on the draft EIS and proposed regulations. At the end of that second comment period, NMFS will consider those comments and prepare the final EIS. When the final EIS is released, there is a third, shorter waiting period on the final EIS. At the end of that final review period, NMFS will publish a final rule based on the final EIS and public comment. An outline of this process is shown in Table A.1.

For Amendment 3, NMFS anticipates the final regulations to be effective in early 2010. Preliminarily, NMFS expects to release a Predraft of proposed regulations in February 2009, a draft Amendment in early summer of 2009, and the final regulations in late fall/early winter of 2009. This schedule could change depending on the number of issues that are handled in Amendment 3 and other priorities within NMFS.

The Magnuson-Stevens Reauthorization Act included a section that revises the interaction between the National Environmental Policy Act (NEPA) and fishery management (section 304(i)). NMFS is currently finalizing the regulations that would implement this section of the Magnuson-Stevens Act. Depending on the final regulations, the process outlined here may change slightly.

A. 1 Summary of the Steps in the EIS/FMP Amendment Process

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| 1. Scoping/Initial Public Comment | A. Notice of Intent | Completed (May 7, 2008, 73 FR 25665) |
| | B. Release of issues and options presentation | Completed (July 2, 2008, 73 FR 37932) |
| | C. Hold public meetings | 4 meetings held; Completed |
| | D. Consult with Councils and Commissions | August 13, 2008 (CFMC); September 19, 2008 (SAFMC); October 7, 2008 (NEFMC); October 15, 2008 (MAFMC); October 29, 2008 (GMFMC); August 21, 2008 (ASMFC); October 13/15, 2008 (GSMFC); Completed |
| | E. End of comment period | November 14, 2008; Completed |
| 2. Draft EIS/FMP Amendment and Proposed Rule | A. Consider comments received in scoping | <i>In process</i> |
| | B. Predraft | Expected February 2009 |
| | C. Draft documents | Expected early Summer 2009 |
| | D. Publish proposed rule and Notice of Availability in <u>Federal Register</u> | |
| | E. Hold public meetings | |
| | F. End of comment period | |
| 3. Final EIS/FMP Amendment | A. Consider comments received on draft documents | Expected late Fall 2009 |
| | B. Finalize documents | |
| | C. Publish Notice of Availability in <u>Federal Register</u> | |
| | D. End of review period | |
| 4. Final Rule | A. Consider comments received on draft documents and Final EIS/FMP Amendment | Expected early Winter 2009 |
| | B. Finalize document and responses to comments | |
| | C. Publish rule in <u>Federal Register</u> | |