Predraft of

Amendment 6 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

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Highly Migratory Species Management Division
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

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1 Introduction

This document is a Predraft for Amendment 6 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). A Predraft document allows the National Marine Fisheries Service (NMFS) to obtain additional information and input from Consulting Parties on potential alternatives prior to development of the formal Draft Environmental Impact Statement (DEIS) and proposed rule. The Magnuson-Stevens Act requires NMFS to "consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the [HMS] advisory panel in preparing and implementing any fishery management plan or amendment." As such, NMFS is requesting comments and views on this Predraft document for Amendment 6 to the 2006 Consolidated HMS FMP. An electronic version of the Predraft is also available on the website of the HMS Management Division at: http://www.nmfs.noaa.gov/sfa/hms.

On September 10, 2010, (75 FR 57235) NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) to solicit public comments on potential adjustments to regulations governing the Atlantic shark fisheries to address several specific issues affecting the management of those fisheries. In the ANPR, NMFS described that since sharks have been federally managed, there have been many changes to the regulations and major rules related to sharks, either through FMP amendments or regulatory amendments, in order to respond to results of stock assessments, changes in stock status, and other fishery fluctuations. Despite modifications to the regulations or Amendments to the FMP in order to respond to these changes, the Atlantic shark fishery continues to be faced with problems such as commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, "derby" fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices. Rather than react to these issues every year with a new regulation or every other year with a new FMP amendment, NMFS stated that it wanted the regulations to be more proactive in management and explore methods to establish more flexible regulations that would consider the changing needs of the fishery. More specifically, the ANPR explored management ideas related to quota structure, permit structure, and catch shares. NMFS held several public meetings regarding the ANPR and received many comments as explained below.

Based on the comments received in the ANPR, NMFS on September 16, 2011, published a Notice of Intent (NOI) (76 FR 57709) to prepare an FMP Amendment that would consider catch shares for the Atlantic shark fisheries. The NOI also established a control date for eligibility to participate in a catch share program and also announced the availability of a white paper that explored potential design elements of a shark catch share program. NMFS held several public meetings and received many comments regarding the NOI as explained below.

Since the ANPR and NOI, and considering the comments received, NMFS has continued to consider various ways to move forward to provide managers and fishermen flexibility in the regulations. Additionally, there have continued to be changes in the Atlantic shark fisheries in

terms of federal and state management that have affected the fishery and its communities. Thus, this Predraft explores potential alternatives for the future management of the Atlantic shark fisheries, taking into consideration comments received on the ANPR and NOI. NMFS will consider comments received on this Predraft during the development of Amendment 6 to the 2006 Consolidated HMS FMP. The primary goal of Amendment 6 remains to develop and implement management measures that have the flexibility to adapt to the changing needs of the fishery and that could maximize the sustainable yield of the shark fisheries, while staying within the current management group quotas that will rebuild overfished stocks and end overfishing.

NMFS anticipates that the proposed rule and DEIS will be available in late 2014 and that the Final Amendment 6 to the 2006 Consolidated HMS FMP and its related documents will be available in Spring 2015. Depending on the finalized measures, NMFS may consider delaying implementation until the start of the 2016 fishing season to reduce confusion with the new management measures.

Any written comments on the Predraft should be submitted to LeAnn Hogan or Guý DuBeck, HMS Management Division, F/SF1, Office of Sustainable Fisheries, 1315 East West Highway, Silver Spring, MD 20910 or faxed to (301) 713 1917 by April 25, 2014. For further information, contact LeAnn Hogan, Guý DuBeck or Karyl Brewster-Geisz at (301) 427-8503.

1.1 Management History

This Predraft for Amendment 6 to the 2006 Consolidated HMS FMP will examine the Atlantic shark fisheries based on management measures that have been implemented since 2008. In 2008, NMFS implemented Amendment 2 to the 2006 Consolidated HMS FMP, which as described below was a major action that changed how the shark fishery operated, including the prohibition of sandbar sharks, a reduced trip limit, and the requirement to land sharks with fins naturally attached. NMFS used landings data from 2008 to conduct analyses for the options that are considered in this document to appropriately reflect those changed operations and the current management of the fisheries. For more information on the complete HMS management history, please refer to the Final Environmental Impact Statement (FEIS) for Amendment 5a to the 2006 Consolidated HMS FMP.

1.1.1 Amendment 2 to the 2006 Consolidated HMS FMP

On April 10, 2008, NMFS issued the FEIS for Amendment 2 to the 2006 Consolidated HMS FMP (Amendment 2) based on several stock assessments that were completed in 2005/2006. Assessments for dusky (*Carcharhinus obscurus*) and sandbar sharks (*Carcharhinus plumbeus*) indicated that these species were overfished with overfishing occurring and that porbeagle sharks (*Lamna nasus*) are overfished. NMFS implemented management measures consistent with stock assessments for sandbar, porbeagle, dusky, blacktip (*Carcharhinus limbatus*), and the large coastal shark (LCS) complex. The implementing regulations were published on June 24, 2008 (73 FR 35778; corrected version published July 15, 2008; 73 FR 40658). Management measures implemented in Amendment 2 included, but were not limited to, establishing rebuilding plans for porbeagle, dusky, and sandbar sharks consistent with stock assessments; implementing commercial quotas and retention limits consistent with stock assessment recommendations to prevent overfishing and rebuild overfished stocks; modifying

recreational measures to reduce fishing mortality of overfished/overfishing stocks; modifying reporting requirements; requiring that all Atlantic sharks be offloaded with fins naturally attached; collecting shark life history information via the implementation of a shark research program; and implementing time/area closures recommended by the South Atlantic Fishery Management Council.

1.1.2 Amendment 3 to the 2006 Consolidated HMS FMP

Based on the 2007 small coastal shark (SCS) Southeast Data, Assessment, and Review (SEDAR 13) stock assessment, which was an update to the 2002 SCS stock assessment, NMFS determined blacknose sharks to be overfished with overfishing occurring in 2008 (73 FR 25665, May 7, 2008). In 2008, the International Commission for the Conservation of Atlantic Tunas (ICCAT), Standing Committee on Research and Statistics (SCRS), conducted an updated species-specific stock assessment for North Atlantic shortfin mako sharks. The ICCAT stock assessment found the stock is experiencing overfishing and is not overfished, but is approaching an overfished condition. Based on this stock assessment, NMFS determined that North Atlantic shortfin mako sharks had been experiencing overfishing as of December 31, 2008 (74 FR 29185, July 19, 2009). To address the results of these stock assessments, NMFS released the FEIS for Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) to implement management measures to rebuild blacknose sharks and end overfishing of blacknose and shortfin mako shark. This amendment also added smoothhound sharks (smooth dogfish (*Mustelus canis*) and Florida smoothhound (*Mustelus norrisi*)) under NMFS management. The implementing regulations were published on June 1, 2010 (75 FR 30484; June 1, 2010). Management measures implemented in Amendment 3 included, but were not limited to, establishing a non-blacknose SCS quota of 221.6 mt dw, and a blacknose shark quota of 19.9 mt dw. Quotas were linked to ensure both fisheries close when one of the quotas is reached.

Implementation of smoothhound management measures analyzed in Amendment 3 was initially delayed until the 2012 fishing season. However, the later-enacted Shark Conservation Act of 2010 necessitated NMFS re-evaluating some of its shark management measures. Therefore, NMFS delayed the effective date of implementation to fully consider the Shark Conservation Act implications and allow time for Section 7 consultation under the Endangered Species Act to be completed. The final rule to delay these measures became effective in December 2011 (76 FR 70064, November 10, 2011). The relevant regulatory sections will be re-established, with any needed amendments, in a final rule that implements both the smoothhound shark provisions of the Shark Conservation Act and any requirements of the Section 7 consultation regarding smoothhound sharks.

1.1.3 2011 Oceanic Whitetip and Hammerhead Shark ICCAT Rule

While not an amendment to the 2006 Consolidated HMS FMP, NMFS published a final rule (76 FR 53652, August 29, 2011) that implemented ICCAT Recommendations 10-07 and 10-08 which prohibit the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family *Sphyrnidae* (except for bonnethead sharks, *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with fisheries managed by ICCAT. This final rule, which became effective on September 28, 2011, prohibits the retention of

hammerhead and oceanic whitetip sharks for Atlantic HMS commercially permitted vessels that have pelagic longline gear on board, and recreational fishermen fishing with a General Category permit participating in a HMS tournament or fishing under an HMS Angling or Charter/Headboat permit where tunas, swordfish, and/or billfish are also retained. Commercial shark bottom longline, gillnet, or handgear fisheries, and shark recreational fisheries that are not retaining tunas, swordfish, and billfish were not impacted by this rule because they are not considered ICCAT fisheries (i.e., fisheries that target tunas, swordfish, and/or billfish) and can continue to retain oceanic whitetip and hammerhead sharks.

1.1.4 2012 Silky Shark ICCAT Rule

In 2012, NMFS published a final rule to implement ICCAT Recommendation 11-08, which prohibits retaining, transshipping, or landing silky sharks (*Carcharhinus falciformis*) caught in association with ICCAT fisheries (77 FR 37647; June 22, 2012). In order to simplify domestic enforcement, NMFS also prohibited storing, selling and purchasing the species, consistent with the similar regulations finalized the previous year regarding oceanic whitetip and most hammerhead sharks. This rule prohibited the retention of silky sharks by vessels with pelagic longline gear onboard.

1.1.5 Amendment 5, 5a, and 5b to the 2006 Consolidated HMS FMP

Based on a stock assessment for scalloped hammerhead sharks, NMFS made the determination on April 28, 2011, that scalloped hammerhead sharks are overfished and experiencing overfishing (76 FR 23794). Following this determination, on October 7, 2011, NMFS published a notice announcing our intent to prepare Amendment 5 to the 2006 Consolidated HMS FMP with an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act (76 FR 62331). NMFS made stock status determinations for sandbar, dusky, and blacknose sharks based on the results of SEDAR 21. Determinations in the October 2011 notice included that sandbar sharks are still overfished, but no longer experiencing overfishing, and that dusky sharks are still overfished and still experiencing overfishing (i.e., their stock status has not changed). The October 2011 notice also acknowledged that there are two stocks of blacknose sharks, the Atlantic blacknose shark stock and the Gulf of Mexico blacknose shark stock. The determination stated that the Atlantic blacknose shark stock is overfished and experiencing overfishing, and the Gulf of Mexico blacknose shark stock status is unknown.

A Federal Register notice on May 29, 2012 (77 FR 31562), notified the public that NMFS was considering the addition of Gulf of Mexico blacktip sharks to Amendment 5 to the 2006 Consolidated HMS FMP. This addition was proposed because Gulf of Mexico blacktip sharks were undergoing a stock assessment as part of the SEDAR 29 process, and that process would be completed before Amendment 5 to the 2006 Consolidated HMS FMP was finalized. Therefore, NMFS determined that the addition of Gulf of Mexico blacktip sharks to Amendment 5 to the 2006 Consolidated HMS FMP would allow NMFS to address new scientific information in the timeliest manner and facilitate administrative efficiency by optimizing our resources. NMFS also expected that this addition would provide better clarify and communicate to the public any possible impacts of the rulemaking on shark fisheries by combining potential management

measures resulting from recent shark stock assessments into fewer rulemakings. Since publication of the Federal Register notice announcing the intent to consider the addition of Gulf of Mexico blacktip sharks in Amendment 5 to the 2006 Consolidated HMS FMP, NMFS accepted the results of the stock assessment as final. The results indicated that the Gulf of Mexico blacktip shark stock is not overfished and overfishing is not occurring.

The Notice of Availability of the DEIS for Amendment 5 to the 2006 Consolidated HMS FMP and the proposed rule published in the Federal Register on December 7, 2012 (77 FR 73029), and November 26, 2012 (77 FR 70552), respectively. The public comment period ended on February 12, 2013.

Decision to Split Amendment 5 into Amendments 5a and 5b

During the comment period, NMFS received numerous comments on the proposed dusky shark measures regarding the data sources used and the analyses of these data. NMFS also received many comments requesting consideration of approaches to dusky shark fishery management that were significantly different from those NMFS proposed and analyzed in the Amendment 5 proposed rule and DEIS. For example, commenters suggested exemptions to the proposed recreational minimum size increase that would protect dusky sharks but still allow landings of other sharks--such as blacktip sharks or "blue" sharks such as shortfin mako and thresher sharks--and other commenters suggested implementing gear restrictions instead of additional pelagic longline closures.

After reviewing all of the comments received, NMFS concluded that further analyses were needed for dusky shark measures, and decided to conduct further analyses on those measures pertaining to dusky sharks in an FMP amendment, EIS, and proposed rule separate from but related to the existing FMP amendment, EIS, and rule for the other shark species.

Amendment 5a

The FMP amendment for non-dusky shark species (scalloped hammerhead, sandbar, blacknose, and Gulf of Mexico blacktip sharks) included in draft Amendment 5 was renamed "Amendment 5a," and continued to be developed into a final rule and FEIS. The final rule for Amendment 5a to the 2006 Consolidated HMS FMP was published on July 3, 2014 (78 FR 4038) and finalized the shark measures from the November 2012 proposed rule to maintain rebuilding of sandbar sharks; end overfishing and rebuild scalloped hammerhead and Atlantic blacknose sharks; and establish a TAC and commercial quota and recreational measures for Gulf of Mexico blacknose and blacktip sharks (NMFSa 2013). The new management groups, commercial quotas, and quota linkages, which became effective on July 3, 2013, are outlined in Figure 1.1 below. The new recreational minimum size limit for hammerhead (great, scalloped, and smooth) sharks of 78 inches fork length became effective on August 2, 2013.

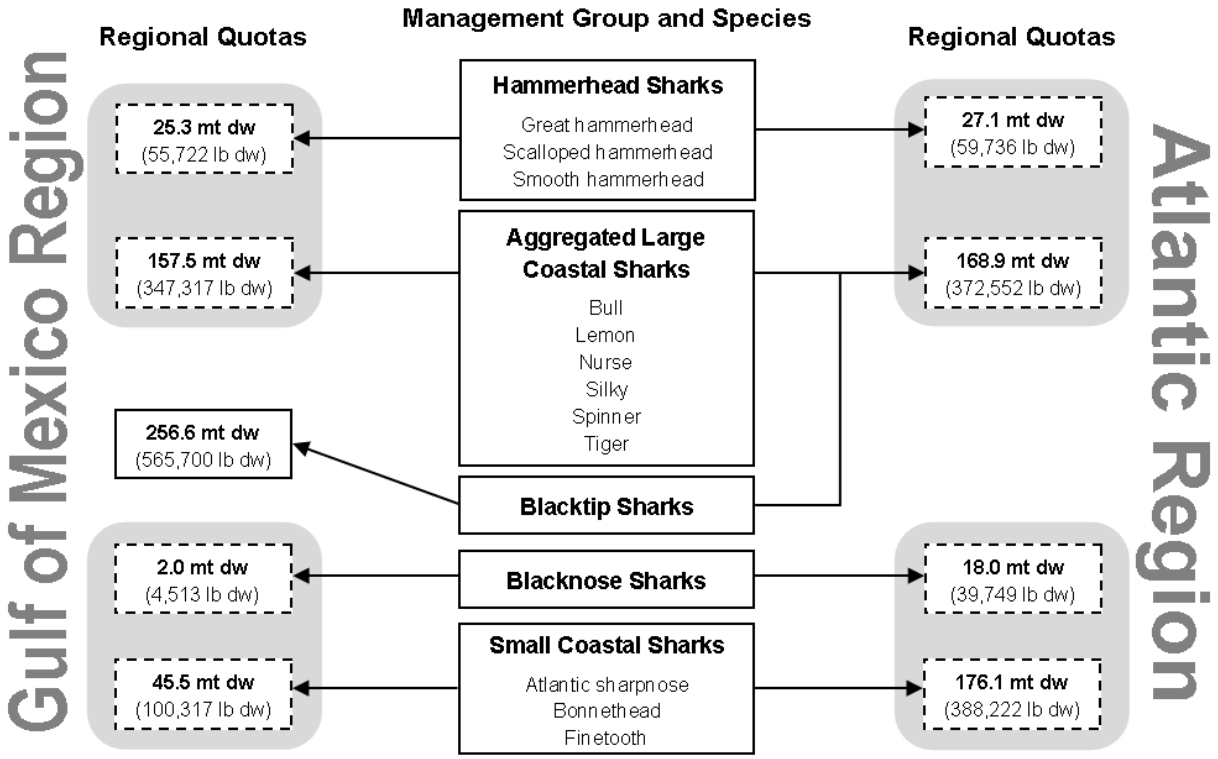

Figure 1.1: Diagram of Management Group, Commercial Quotas, and Quota Linkages Resulting From the Implementation of Amendment 5a to the 2006 Consolidated HMS FMP. Source: NMFS 2013.

Amendment 5b

The future FMP amendment for dusky sharks was renamed "Amendment 5b," and NMFS indicated that it would explore a variety of alternatives to rebuild dusky sharks, and will likely consider alternatives similar to those considered in draft Amendment 5 as well as new alternatives based on comments, including comments received on the dusky shark measures in draft Amendment 5. Currently, Amendment 5b is in the Predraft stage.

1.2 Amendment 6 Background

As described above in the Introduction section, NMFS started Amendment 6 to the 2006 Consolidated HMS FMP with the ANPR in 2010. The ANPR provided background information and requested public comment on potential adjustments to the regulations governing the Atlantic shark fishery. In the ANPR, NMFS explored changes to the current quota and permit structures. NMFS also requested comments on the implementation of catch shares such as limited access privilege programs (LAPPs), individual fishing quotas (IFQs), and/or sectors for the Atlantic shark fisheries.

With regard to quota structure changes presented in the ANPR, NMFS specifically looked at ideas such as moving towards species-specific quotas, rethinking species management complexes, quota linkages, reconsidering regional quotas, and seasons. The specific details and explanation of each of these ideas can be found in the Federal Register notice for the 2010

ANPR. During the ANPR comment period, NMFS received a variety of comments in response to these quota structure ideas including:

- Separate blacktip sharks from non-sandbar LCS and give them their own quota;
- Blacknose sharks should be prohibited and then the non-blacknose SCS quota would not be constrained by the quota linkage;
- Stock assessments cannot be performed quickly enough for species-specific quotas;
- It may be difficult to monitor numerous species-specific quotas;
- Quotas for blacktips and spinner sharks should be combined;
- NMFS should consider the impacts of no quota linkages and consider smaller commercial quotas;
- NMFS should structure the quotas and opening dates to coincide with regional shark availability; and
- The LCS and SCS quotas in the Atlantic should be split into 2 or more regions.

In the ANPR, NMFS also looked at ideas for possible changes to the current shark permit structure such as permit stacking, a use or lose permit system, and matching permit capacity to the shark quotas. Specific details related to each of these ideas can also be found in the Federal Register notice of the 2010 ANPR. During the ANPR comment period, NMFS received comments related to the potential changes to the permit structure, including:

- Permit stacking could be a reasonable solution for the directed fishery;
- Permit stacking may cause the quota to be harvested even faster;
- Permit stacking could make shark fishing more efficient and profitable due to higher trip limits;
- Permit stacking may lead to fewer dead discards of sharks;
- Permit stacking should only be implemented if the number of permits matches the effort needed to catch the current shark quotas;
- Permit stacking may cause many latent permits to become active;
- Permit stacking would disadvantage fishermen that do not have access to multiple permits;
- A “use or lose” permit system should not be implemented for the incidental shark permits;
- “Use it or lose it” for directed shark permits could be employed to reduce latent effort. Seven to ten years is a reasonable period of inactivity. These permits could be transferred to a reserve pool for future consideration; and
- A “use or lose” permit system may result in latent permits becoming active and harvesting the quotas more quickly.

The final topic discussed in the ANPR was catch shares. Prior to the publication of the ANPR, NMFS received multiple questions and requests from fishermen and other interested parties to consider catch shares for the Atlantic shark fishery. Therefore, in the ANPR, NMFS provided background information on catch shares programs in general and posed specific questions related to how these programs would apply to the Atlantic shark fishery and requested comments on these ideas. NMFS received many comments on catch shares in general and

specific comments related to the questions posed regarding the Atlantic shark fisheries, including:

- The 33 non-sandbar LCS trip limit is not economical for fishermen. Catch shares could help with this problem;
- The shark fishery needs management measures to decrease dead discards;
- IFQs and sector catch shares should be explored to improve the conservation and economic performance of the commercial shark fishery;
- IFQs can save fuel and maximize prices;
- IFQs can make fishermen more efficient because there is no trip limit;
- Catch shares are more predictable for managers;
- NMFS should consider a pilot catch share program in the Gulf of Mexico;
- NMFS does not need an IFQ program. NMFS could establish community quotas instead;
- If a catch share is implemented, NMFS should reevaluate quota distribution after three years;
- NMFS should not implement shark catch shares unless they conduct a referendum or a weighted referendum;
- Non-fishing interests might attempt to control quota shares by buying catch shares;
- NMFS should look into days at sea instead of catch shares;
- NMFS should not consider catch shares for the Atlantic shark fishery;
- Catch shares would not stop fishermen from fishing in dangerous conditions because fish houses dictate when fishermen fish; and
- Catch shares will take quota and profits away from fishermen.

After publication of the ANPR, NMFS also received a proposal from fishermen located in the Gulf of Mexico to implement a catch share program for the Atlantic shark fisheries, particularly the LCS portion in the Gulf of Mexico. In the proposal, these fishermen stated that they preferred to replace the current LCS management structure with an IFQ program. The fishermen expressed that they would like this IFQ program to be integrated into existing catch share programs in the Gulf of Mexico for reef fish (i.e., red snapper, red grouper, and tilefish) and employ some of the same infrastructure for monitoring and reporting as well as some of the same design and management elements associated with these Council-managed catch share programs in the Gulf of Mexico.

In light of these comments, NMFS decided to begin the rulemaking process to consider implementing catch shares for the Atlantic shark fisheries. Therefore, on September 16, 2011, NMFS published a NOI (76 FR 57709) to explore implementation of a catch share program and design elements for the Atlantic shark fishery. The NOI also established a control date for eligibility to participate in an Atlantic shark catch share program, announced the availability of a white paper describing design elements of catch share programs in general and issues specific to the Atlantic shark fisheries, announced a catch share workshop at an HMS AP meeting, and requested public comment on the implementation of catch shares in the Atlantic shark fisheries.

The white paper that was prepared in association with the publication of the NOI provided more detail concerning some of the design elements for catch share programs and provided the

public with additional information regarding issues in the Atlantic shark fisheries that NMFS was interested in obtaining feedback on, including, but not limited to: eligibility (directed and/or incidental permit holders), specification of the resource unit (species and regions to include), initial allocation (based on catch history and/or other means), and catch share management. During the NOI comment period, NMFS received comments in support of and in opposition to catch shares for the Atlantic shark fisheries and comments that were specific to the issues presented regarding regions, resource unit, eligibility, and allocation, including:

- Increase the trip limits instead of doing a catch share program;
- Catch shares can save fuel and maximize price;
- Catch shares can make fishermen more efficient because there's no trip limit;
- NMFS does not need an IFQ program. NMFS should look at community quotas instead;
- NMFS needs to consider regional differences if designing a catch share program;
- Sharks are a public resource and should not be privatized or individualized;
- NMFS should look into days at sea instead of catch shares;
- There is inequity in the shark fishery and catch shares would make it worse;
- NMFS should give Florida a January opening and 33 non-sandbar LCS/trip and there will be no need for catch shares;
- NMFS does not have the science it needs to implement a catch share program;
- Catch shares will shift effort in the shark fishery;
- NMFS should include all regions in a catch share program, not just the Gulf of Mexico;
- Fishermen are losing infrastructure as a result of state fin possession bans and catch shares will not help this problem;
- Catch shares will take quota and profits away from fishermen;
- Catch shares are being forced upon fishermen from the top down; and
- NMFS should conduct a referendum or a weighted referendum.

Since the publication of the NOI in September of 2011, there have been a few major changes in the management of the Atlantic shark fisheries. The most notable was the publication of the final rule for Amendment 5a to the 2006 Consolidated HMS FMP. As described above, this amendment established several new commercial regional shark management groups and quotas. Additionally, Amendment 5a implemented regional quota linkages between management groups whose species are often caught together in the same fisheries to prevent exceeding the newly established quotas through discarded bycatch.

In addition to the changes in federal regulations, while NMFS has been considering comments on the ANPR and the NOI, there have also been changes in state shark management. In 2010, Hawaii was the first U.S. state to pass legislation to ban the possession, sale, trade, and distribution of shark fins. Today, there are eleven states and territories that have enacted shark fin laws including Hawaii, Guam, American Samoa, Commonwealth of the Northern Marianas Islands, California, Oregon, Washington, Illinois, Maryland, Delaware, and New York. Other U.S. states have considered or are considering similar bills such as Pennsylvania, New Jersey, Massachusetts, Florida, and Nebraska.

In 2011, the President signed into law the Shark Conservation Act of 2010 (Pub. L. 111–348, Jan. 4, 2011), which amended the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks. In particular, the Shark Conservation Act prohibits any person from: (1) Removing any of the fins of a shark (including the tail) at sea; (2) having custody, control, or possession of a fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass; (3) transferring a fin from one vessel to another vessel at sea, or receiving a fin in such transfer, unless the fin is naturally attached to the corresponding carcass; or (4) landing a fin that is not naturally attached to the corresponding carcass, or landing a shark carcass without its fins naturally attached. On May 2, 2013, NMFS published a proposed rule to implement the provisions of the Shark Conservation Act of 2010 for sharks harvested seaward of state waters. NMFS is working with states to determine if their state shark fin possession bans are preempted by the Magnuson-Stevens Act, the Shark Finning Prohibition Act and the Shark Conservation Act of 2010. In February 2014, NMFS sent letters to California, Washington, and Maryland regarding the relationship between their laws and Federal shark fisheries management under the Magnuson-Stevens Act (see Appendix 1 for the letters). The Shark Conservation Act of 2010 includes smoothhound shark-specific provisions that exempt that fishery from the finning prohibition under certain limited conditions. NMFS is developing a proposed rule to implement these provisions in a separate action.

The Atlantic States Marine Fisheries Commission (ASMFC) recently made changes to the Atlantic state shark management measures. The ASMFC Coastal Shark Board made the decision to amend the Interstate Coastal Shark FMP to be consistent with NMFS's recent changes in Amendment 5a to the 2006 Consolidated HMS FMP, and they have expressed their preference for NMFS to open the LCS management group season in the Atlantic region after July 1 each year. The Shark Board also approved measures for each Atlantic state to implement the 12 percent fin to carcass ratio for smoothhound sharks as specified in the smoothhound shark-specific provisions of the Shark Conservation Act of 2010.

In addition to these state measures, there have also been many international efforts to prohibit shark finning at sea as well as campaigns targeted at the shark fin soup markets. All of these efforts, including the U.S. state shark fin possession bans, have impacted the market and demand for shark fins. In addition, NMFS has seen a steady decline in ex-vessel prices for shark fins in all regions since 2010 (NMFSb 2013).

1.3 Purpose and Need

While NMFS received a variety of comments on the 2011 NOI, many of the commenters opposed the idea of catch shares for the Atlantic shark fisheries. These NOI comments, along with the recent shark fishery trends and management changes in Amendment 5a, have led NMFS to re-consider whether catch shares are the best management tool for the Atlantic shark fisheries at this time. Catch shares remain a potential future management tool that could address some of the issues in the Atlantic shark fisheries. At this time, short-term management measures may be a better fit for the current problems facing these fisheries and economically benefit the Atlantic shark fishery. Thus, it is NMFS's goal to move forward with proactive short-term management

measures for the Atlantic shark fishery that will achieve specific-shark fishery goals and objectives.

The overarching purpose of Amendment 6 to the 2006 Consolidated HMS FMP is to develop and implement management measures that have the flexibility to adapt to the changing needs of, and that could maximize the sustainable yield of the Atlantic shark fisheries, while staying within the current management group quotas that will rebuild overfished stocks and end overfishing. This Predraft includes management options that explore specific changes to the current regional quota and permit structures, which could potentially be implemented in the short-term (i.e., one to two years). NMFS specifically solicits opinions and advice on the potential range of options presented here and whether there are additional options that should be addressed and considered in the rulemaking process.

2 Potential Management Options

In this chapter, NMFS sets out a broad range of options for possible consideration in a later Draft Amendment and proposed rule to address the management needs for the Atlantic shark fisheries. The options in this chapter are organized within the following sections: permit stacking, sub-regional quotas, and sandbar non- research fishery quotas, and associated pros and cons of each option.

2.1 Permit Stacking

Objective and Rationale

As described above, NMFS considered permit stacking in the 2010 ANPR and requested public comments on this potential change to the shark permit structure. NMFS has received comments from fishermen and other interested parties stating that increased trip limits would be more efficient and improve market conditions in the Atlantic shark fisheries. If NMFS were to implement a permit stacking system (as explained below), this would likely mean that fishermen with multiple shark limited access permits could use them concurrently on one vessel which would result in aggregated, and thus higher, trip limits. For example, the current Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management group trip limit is 36 sharks per trip. If two directed shark permits were stacked onto one vessel, that vessel could have an aggregated trip limit of 72 sharks per trip.

A permit stacking system could provide additional opportunities and more efficient use of resources for fishermen who have access to more than one permit since these fishermen would only need to pay fuel costs for one vessel (rather than two or more vessels) while still harvesting multiple trip limits on fewer trips. While this approach may provide benefits for fishermen, NMFS also wants to explore the appropriate limits on permit stacking. For instance, such a system could provide for inactive permits to be brought back into the fishery, resulting in additional effort and exacerbating current fishing problems. NMFS is seeking public comment on these types of issues, including:

- Who would be eligible to stack permits?
- How many permits could be stacked onto one vessel?
- How would inactive/latent permits be handled, and could they be stacked onto an active vessel?
- How would a permit stacking system incorporate the upgrading restrictions that are currently in place?

2.1.1 Permit stacking eligibility

- **Option 1**: All directed shark permit holders could stack permits
    - This option would allow only directed shark permit holders to stack permits.

- In order to allow directed shark permits to be stacked, NMFS would need to consider removing the shark permit upgrade restrictions. This would allow the swordfish, shark and tuna limited access permit (triple pack permit) holders to stack their directed shark permits and would not affect the current swordfish permit upgrading restrictions.

Table 2.1 **Number of directed shark permits held individually or as part of the HMS triple pack permit in each region.** *Active directed permit holders are defined as those with valid permits that landed one shark based on 2013 HMS electronic dealer reports.

Region	Total Directed Permit Holders	Triple Pack Directed Permit Holders	Active Directed Permit Holders*
Atlantic Region	136 (130 have different owners)	78	68
Gulf of Mexico Region	83 (73 have different owners)	27	22
Total	219	105	90

- **Option 2**: All directed and incidental permit holders could stack permits.
  - This option would allow both directed and incidental shark permit holders to stack permits.
  - Under this option, NMFS would need to consider whether directed permits could be stacked with incidental permits and vice versa.
  - As with Option 1, in order to allow directed shark permits to be stacked, NMFS would need to consider removing the shark permit upgrade restrictions.

Table 2.2 **Number of incidental shark permits held individually or as part of the HMS triple pack in each region.** Active incidental permit holders are defined as those with valid permits that landed one shark based on 2013 eDealer reports.

Region	Total Incidental Permit Holders	Triple Pack Incidental Permit Holders	Active Incidental Permit Holders*
Atlantic Region	155	74	6
Gulf of Mexico Region	98	52	3
Total	253	126	9

- **Option 3**: Only active directed permit holders could stack permits.
  - This option would limit the stacking of permits to those that have a directed shark permit and are currently considered active in the fishery (at least one shark landed per year). Table 2.1 above gives details on the number of active directed shark permit holders in each region.

- Under this option, NMFS would need to consider whether the active directed permit holders could stack permits obtained from inactive shark permit holders.
- As with Option 1, in order to allow directed shark permits to be stacked, NMFS would need to consider removing the shark permit upgrade restrictions.

2.1.2 Trip limit options for stacked permits:

The following options use the current directed shark permit trip limit of 36 LCS per trip as an example. These options explore different ways that the addition or stacking of another permit could be treated with regard to the aggregated allowable trip limit. The trip limits could be aggregated in whole (i.e., added together) or a portion of the trip limit for the subsequent stacked permit could be added as a way of limiting the aggregated trip limits. NMFS would also need to consider whether these should be per trip or per day limits.

- **Option 1**: Each stacked permit is equal to one trip limit
  - 1 permit equals 1 trip limit (36 LCS/trip)
  - 2 permits equals 2 trip limits (72 LCS/trip)
  - 3 permits equal 3 trip limits (108 LCS/trip)
- **Option 2**: Each stacked permit is equal to half of a trip limit
  - 1 permit equals 1 trip limit (36 LCS/trip)
  - 2 permits equals 1.5 trip limits (54 LCS/trip)
  - 3 permits equal 2 trip limits (72 LCS/trip)
- **Option 3**: Each stacked permit is equal to less than half of a trip limit
  - 1 permit equals 1 trip limit (36 LCS/trip)
  - 2 permits equals less than 1.5 trip limits (~ 45 LCS/trip)
  - 3 permits equal less than 2 trip limits (~ 60 LCS/trip)

2.1.3 Number of permits that can be stacked on each vessel

- **Option 1**: Maximum limit of 2 permits stacked per vessel
- **Option 2**: Maximum limit of 3 permits stacked per vessel

2.1.4 Pros and Cons of Permit Stacking

<u>Pros</u>

- Higher trip limits could make shark fishing more efficient and each trip more profitable

- Fishermen could save on fuel and other costs, such as bait, due to the ability to consolidate multiple permits onto one vessel and thus take fewer trips to catch multiple trip limits
- Permit stacking may lead to fewer dead discards of sharks
- Permit stacking could provide for new entrants or for previously-active fishermen to re-enter the shark fishery by making it more cost effective for fishermen

Cons

- Permit stacking may cause the shark quotas to be harvested faster due to aggregated and thus, higher trip limits
- Permit stacking may allow latent permits to become active if a system is designed where latent permits can be stacked onto active permits
- Permit stacking could comparatively disadvantage fishermen that do not have resources to buy multiple permits
- In the short-term, permit stacking may only provide benefits to those that currently have multiple permits
- Trip limits may be difficult to enforce since they would vary among fishermen depending on the number of permits that are stacked on each vessel

2.2 Sub-Regional Quotas

Objective and Rationale

In previous Atlantic shark management rulemakings, NMFS received numerous requests to change the regional management measures for the aggregated LCS, hammerhead, non-blacknose SCS, blacknose shark, and the Gulf of Mexico blacktip management groups because of the sub-regional differences in those shark fisheries. During the comment periods for recent shark season rules, fishermen and other interested parties from states in the Atlantic region have requested different seasonal opening dates for the various shark management groups and expressed concerns about fishing opportunities within the region for the aggregated LCS and hammerhead shark management groups. Fishermen from the north Atlantic area, including North Carolina, preferred a delayed opening date in July or August to accommodate the regional time/area closures and seasonal migration of sharks. Conversely, fishermen from the South Atlantic area preferred an opening date earlier in the year since sharks are more prevalent during those months. Since 2008, NMFS has opened the aggregated LCS and hammerhead shark management groups in the Atlantic region at different times (January 2009, July 2010-2012, January 2013, and June 2014) based on these comments. Due to the regional differences in the fisheries, NMFS is examining sub-regional quotas to accommodate these differences. The sub-regional shark quotas could allow NMFS the ability to open the aggregated LCS and hammerhead shark management groups in the Atlantic region at a time that reflects seasonal migration patterns and regional availability of sharks. For the non-blacknose SCS and blacknose shark management groups in the Atlantic region, fishermen and other interested parties have expressed concern over the quota linkages and the availability of blacknose and non-blacknose SCS between the South Atlantic and North Atlantic areas. The creation of sub-regional shark quotas in the SCS fishery could better account for the regional differences in the fisheries and potentially allow for year-round fisheries, which did not occur in 2013.

In the Gulf of Mexico, fishermen and other interested parties have expressed similar concerns as in the Atlantic region with regard to season opening dates. For the Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups, fishermen and other interested parties in the western part of the region, including Louisiana, would prefer an opening date around the religious holiday of Lent, which they find is the best time to sell shark meat, while fishermen and other interested parties in the eastern part of the region would prefer the season to start at the beginning of the year. Thus, creation of sub-regional shark quotas in the Gulf of Mexico could account for regional differences in these shark fisheries. With regard to the non-blacknose SCS and blacknose shark quota linkages, NMFS is currently not considering changes to these measures because the blacknose shark quota has not caused the non-blacknose SCS quota to close early in the Gulf of Mexico and the majority of the non-blacknose SCS landings occur in Florida and Alabama.

Description of Management Measure

NMFS is considering options to create new sub-regional quotas for the Atlantic aggregated LCS, hammerhead, non-blacknose SCS, and blacknose shark management groups. In the Gulf of Mexico, NMFS is considering sub-regional quotas for blacktip, aggregated LCS, and the hammerhead shark management groups.

In the Atlantic region, NMFS could establish sub-regional quotas, which would divide the regional quotas into two, for the aggregated LCS, hammerhead, non-blacknose SCS, and blacknose shark management groups at the state line between North Carolina and South Carolina. Thus, shark landings of these management groups from the State of North Carolina and northern states (Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine) would be counted against a new North Atlantic regional shark quota, while shark landings from the State of South Carolina, Georgia, and Florida would be counted against a new South Atlantic regional shark quota.

In the Gulf of Mexico, NMFS could establish sub-regional quotas for the blacktip, aggregated LCS, and hammerhead shark management groups at the state line between Mississippi and Alabama. This would mean that shark landings from Mississippi, Louisiana, and Texas would be counted against a new Western Gulf sub-regional shark quota, while shark landings from Alabama and Florida would be counted against a new Eastern Gulf sub-regional shark quota.

Because NMFS is considering modifying the regions in this Predraft, NMFS is also considering making the Caribbean region separate from the Gulf of Mexico region given the geographic and fishery differences in the Caribbean. In Amendment 4 to the 2006 Consolidated HMS FMP, NMFS created an HMS Commercial Caribbean Small Boat permit (CCSB) that is valid only in the U.S. Caribbean and limited shark landings under the CCSB permit by setting the retention to zero in the Caribbean until such time that shark populations recover and they can be sustained under increased fishing effort. Therefore, in this Predraft, NMFS is considering prohibiting all shark landings in the Caribbean region (see section 2.2.3, below).

2.2.1 Sub-Regional Quotas for the aggregated large coastal shark, hammerhead shark, and Gulf of Mexico blacktip management groups

- **Option 1**: Create sub-regional quotas for the Atlantic aggregated LCS and hammerhead shark management groups based on landings from 2008 through 2013
    - This option would create two sub-regional shark quotas: South Atlantic region (South Carolina, Georgia, and Florida) and North Atlantic region (North Carolina and northern states).
    - As shown in Table 2.3, the South Atlantic region had the highest landings of aggregated LCS from 2008-2013 with the highest landings in 2009 (90.6 percent of the landings), while the North Atlantic region had lower landings during this time period with the highest landings in 2008 (38.4 percent of the landings).

- For the hammerhead shark management group, the regional landings fluctuated through the years with the South Atlantic region having the highest landings from 2008-2013. (Table 2.3).

Table 2.3 **Atlantic Aggregated LCS and Hammerhead Shark Landings (lb dw) by Region (percent of landings presented in parenthesis);** Source: ACCSP Database (2008-2012) and HMS eDealer System (2013).

Management Group	Region	2008	2009	2010	2011	2012	2013
Aggregated LCS	North Atlantic (NC north)	151,263 (38.4)	34,227 (9.4)	70,328 (18.1)	57,504 (18.1)	98,251 (34.0)	92,113 (27.0)
	South Atlantic (SC south)	224,294 (61.6)	330,545 (90.6)	319,078 (81.9)	259,618 (81.9)	190,611 (66.0)	249,495 (73.0)
Hammerhead Shark	North Atlantic (NC north)	22,562 (63.1)	19,926 (30.8)	20,494 (49.0)	18,207 (61.1)	11,913 (49.3)	7,116 (24.2)
	South Atlantic (SC south)	13,201 (36.9)	44,835 (69.2)	21,315 (51.0)	11,570 (38.9)	12,235 (50.7)	22,338 (75.8)

Based on the landings in Table 2.3, NMFS calculated the new potential sub-regional quotas for the Atlantic aggregated LCS and hammerhead shark management groups using the 2014 annual base quotas for the Atlantic aggregated LCS and hammerhead sharks. According to the landings data for the aggregated LCS management group, the North Atlantic region would receive 24 percent of the sub-regional quota, or 40.6 metric tons (mt) dressed weight (dw) (89,556 lb dw), while the South Atlantic region would receive 76 percent of the sub-regional quota, or 128.4 mt dw (282,996 lb dw). For the hammerhead shark management group, the North Atlantic region would receive 44 percent of the sub-regional quota, or 12.0 mt dw (26,523 lb dw), while the South Atlantic region would receive 56 percent of the sub-regional quota, or 15.1 mt dw (33,213 lb dw) (Table 2.4). NMFS is considering maintaining the current quota linkages between the aggregated LCS and hammerhead sharks in each of the new sub-regions.

Table 2.4 **Potential Atlantic Aggregated LCS and Hammerhead Shark Quotas by Region;** Source: ACCSP Database (2008-2012) and HMS eDealer System (2013). Potential new sub-regional quotas are based on the base annual quota of the aggregated LCS (168.9 mt dw; 372,552 lb dw) and hammerhead shark (27.1 mt dw; 59,736 lb dw).

Management Group	Region	Total Landings (lb dw)	Percentage of Quota	New Sub-Regional Quotas	
				lb dw	mt dw
Aggregated LCS	North Atlantic (NC north)	503,685	24	89,556	40.6
	South Atlantic (SC south)	1,591,640	76	282,996	128.4
Hammerhead Shark	North Atlantic (NC north)	100,218	44	26,523	12.0
	South Atlantic (SC south)	125,494	56	33,213	15.1

- **Option 2**: Create sub-regional quotas for the blacktip, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region
    - This option would create two sub-regional shark quotas: Western Gulf region (Mississippi, Louisiana, and Texas) and Eastern Gulf region (Alabama and Florida).
    - As shown in Table 2.5 for the Gulf of Mexico blacktip management group, the majority of the landings from 2008-2013 (62.5-94.3 percent) came from the Western Gulf region, while the Eastern Gulf region had lower landings every year with the highest in 2012 (37.5 percent of the landings).
    - For the Gulf of Mexico aggregated LCS management group, the landings fluctuated by year with the Eastern Gulf region having the highest landings in 2009 (73 percent of the landings) and the Western Gulf region having the highest landings in 2013 (87.2 percent of the landings) (Table 2.5).
    - The majority of the Gulf of Mexico hammerhead shark landings from 2008-2013 occurred in the Eastern Gulf region (73.6-99.0 percent) with very few hammerhead sharks being landed in the Western Gulf region before 2013.

Table 2.5 **Gulf of Mexico Blacktip Shark Landings (lb dw) by Region (percent of landings presented in parenthesis);** Source: GULFIN Database (2008-2012) and HMS eDealer System (2013).

Management Group	Region	2008	2009	2010	2011	2012	2013
Blacktip Shark	Eastern Gulf (AL & FL)	132,885 (30.2)	148,858 (30.1)	40,517 (6.1)	107,444 (23.5)	222,382 (37.5)	30,221 (5.7)
	Western Gulf (MS, LA, & TX)	306,484 (69.8)	345,028 (69.9)	619,756 (93.9)	349,359 (76.5)	369,849 (62.5)	497,640 (94.3)
Aggregated LCS	Eastern Gulf (AL & FL)	265,725 (64.1)	220,135 (73.0)	89,399 (32.5)	306,097 (63.7)	204,188 (43.5)	46,363 (12.8)
	Western Gulf (MS, LA, & TX)	148,669 (35.9)	81,534 (27.0)	185,394 (67.5)	174,490 (36.3)	265,602 (56.5)	314,851 (87.2)
Hammerhead Shark	Eastern Gulf (AL & FL)	31,230 (99.0)	51,944 (99.8)	21,042 (97.2)	37,700 (98.6)	7,711 (96.8)	17,086 (73.6)
	Western Gulf (MS, LA, & TX)	300 (1.0)	105 (0.2)	614 (2.8)	517 (1.4)	259 (3.2)	6,126 (26.4)

Based on the landings data in Table 2.5, NMFS calculated the new potential sub-regional quotas for the Gulf of Mexico blacktip shark and the aggregated LCS management groups based on the 2014 adjusted base annual quota, and the hammerhead shark management group based on the 2014 base annual quota. In the Gulf of Mexico blacktip shark management group, the Western Gulf region would receive 78 percent of the regional quota, or 215.2 mt dw (474,504 lb dw), while the Eastern Gulf region would receive 22 percent of the regional quota, or 59.0 mt dw (130,122 lb dw) (Table 2.6). According to 2008-2013 landings data for the Gulf of Mexico aggregated LCS management group, the Eastern Gulf region would receive 49 percent of the regional quota, or 74.4 mt dw (164,113 lb dw), while the Western Gulf region would receive 51

percent of the regional quota, or 77.0 mt dw (169,715 lb dw) (Table 2.6). For the Gulf of Mexico hammerhead shark management group, the Eastern Gulf region would receive 95 percent of the regional quota, or 24.1 mt dw (53,195 lb dw), while the Western Gulf region would receive 5 percent of the regional quota, or 1.1 mt dw (2,527 lb dw) (Table 2.6).

NMFS is considering maintaining the current management group linkages between the aggregated LCS and hammerhead shark management groups in the Eastern Gulf region. Due to the difficulty in monitoring the small hammerhead shark quota in the Western Gulf region, NMFS is considering prohibiting the retention of hammerhead sharks in the region and considering no quota linkage between the aggregated LCS and hammerhead shark management groups. The Gulf of Mexico blacktip shark management groups would be separate from the aggregated LCS and hammerhead groups, but could close before landings reach, or are expected to reach, 80 percent of the quota based on the criteria at 50 CFR 635.28(b)(4).

Table 2.6 **Potential Gulf of Mexico Blacktip, Aggregated LCS, and Hammerhead Shark Quotas by Region;** Source: GULFIN Database (2008-2012) and HMS eDealer System (2013). Potential new regional quotas are based on the adjusted 2014 base annual quota of blacktip shark (274.3 mt dw; 604,626 lb dw) and aggregated LCS (151.2 mt dw; 333,828 lb dw), and the base annual quota of hammerhead shark (25.3 mt dw; 55,722 lb dw).

Management Group	Region	Total Landings (lb dw)	Percentage of Shark Quota	New Sub-Regional Quotas	
				lb dw	mt dw
Blacktip Shark	Eastern Gulf (AL & FL)	682,308	22	130,122	59.0
	Western Gulf (MS, LA, & TX)	2,488,116	78	474,504	215.2
Aggregated LCS	Eastern Gulf (AL & FL)	1,131,907	49	164,113	74.4
	Western Gulf (MS, LA, & TX)	1,170,539	51	169,715	77.0
Hammerhead Shark	Eastern Gulf (AL & FL)	166,712	95	53,195	24.1
	Western Gulf (MS, LA, & TX)	7,921	5	2,527	1.1

2.2.2 Sub-Regional Quotas for the Atlantic non-blacknose SCS and blacknose shark management groups

- **Option 1**: Create sub-regional quotas for the Atlantic non-blacknose SCS and blacknose shark management groups based on landings from 2010 through 2013.
    - This option would create two sub-regional shark quotas: South Atlantic region (South Carolina, Georgia, and Florida) and North Atlantic region (North Carolina and northern states), based on landings data from 2010-2013. NMFS is using data from this time period due to the changes to the non-blacknose SCS and blacknose

shark fisheries that were implemented in 2010 in Amendment 3 to the 2006 Consolidated HMS FMP

- As shown in Table 2.7 for the Atlantic non-blacknose SCS management group, most of the landings were caught by South Atlantic regional fishermen (63.2-77.4 percent), while the percentage of landings in North Atlantic region ranged from 22.6-36.8 percent.
- For the Atlantic blacknose shark management group, the majority of the blacknose shark landings were caught in South Atlantic region (88-100 percent), while the North Atlantic region had lower landings (0-12 percent) from 2010 - 2013.

Table 2.7 **Atlantic Non-Blacknose SCS and Blacknose Shark Landings (lb dw) by Region (percent of landings presented in parenthesis);** Source: ACCSP Database (2010-2012) and HMS eDealer System (2013).

Management Group	Region	2010	2011	2012	2013
Non-Blacknose SCS	North Atlantic (NC north)	84,267 (29.8)	69,856 (22.6)	143,002 (36.8)	65,312 (28.9)
	South Atlantic (SC south)	198,821 (70.2)	238,767 (77.4)	245,079 (63.2)	160,755 (71.1)
Blacknose Shark	North Atlantic (NC north)	0 (0)	1,169 (3.9)	1,697 (4.3)	4,007 (12.0)
	South Atlantic (SC south)	32,827 (100)	28,515 (96.1)	37,809 (95.7)	29,375 (88.0)

Based on the data in Table 2.7, NMFS calculated the new potential sub-regional quotas for the Atlantic non-blacknose SCS and blacknose shark management groups based on the 2014 adjusted base annual quota. For the non-blacknose SCS management group, the North Atlantic region would receive 30.3 percent of the regional quota, or 80.1 mt dw (176,594 lb dw), while the South Atlantic region would receive 69.7 percent of the regional quota, or 184.0 mt dw (405,739 lb dw) (Table 2.8). According to the 2010-2013 landings for the blacknose shark management group, the North Atlantic region would receive only 2.8 percent of the regional quota, or 0.5 mt dw (1,074 lb dw), while the South Atlantic region would receive 97.2 percent of the regional quota, or 17.0 mt dw (37,564 lb dw) (Table 2.8). Thus, based on these new sub-regional quotas, NMFS is considering maintaining the current linkage between the non-blacknose SCS and blacknose shark management groups in the South Atlantic region. In the North Atlantic region, NMFS is considering eliminating the linkage between blacknose and non-blacknose SCS and prohibiting blacknose shark landings due to difficulties in monitoring a blacknose sub-regional quota of 0.5 mt dw (1,074 lb dw).

Table 2.8 **Potential Atlantic Non-Blacknose SCS and Blacknose Shark Quotas by Region;** Source: ACCSP Database (2010-2012) and HMS eDealer System (2013). Potential new regional quotas are based on the adjusted 2014 base annual quota of non-blacknose SCS (264.1 mt dw; 582,333 lb dw) and blacknose shark (17.5 mt dw (38,638 lb dw).

Management Group	Region	Total Landings (lb dw)	Percentage of Quota	New Sub-Regional Quotas	
				lb dw	mt dw
Non-Blacknose SCS	North Atlantic (NC north)	297,125	30.3	176,594	80.1
	South Atlantic (SC south)	682,667	69.7	405,739	184.0
Blacknose Shark	North Atlantic (NC north)	2,866	2.8	1,074	0.5
	South Atlantic (SC south)	100,236	97.2	37,564	17.0

- **Option 2**: Maintaining current quota management measures for non-blacknose SCS and blacknose sharks in the Gulf of Mexico
    - After review of the Gulf of Mexico non-blacknose SCS and blacknose shark management group shark landings by state from 2010-2013, NMFS is considering leaving the current quota measures in place for these management groups instead of splitting these quotas into sub-regions because 99.5 percent of the landings of these two management groups occurs in Alabama and Florida (western gulf region) and potentially restricting the landings of an underharvested non-blacknose SCS quota.

2.2.3 Creating a new Caribbean region for management of Atlantic sharks

- **Option 1**: This option would create a new, separate region in the Caribbean for the management of LCS, SCS, and pelagic sharks.
    - This option would separate the Caribbean region from the Atlantic and Gulf of Mexico regions for the management of sharks.
    - Currently, shark landings are prohibited in the Caribbean for fishermen who hold an HMS Caribbean small boat permit as implemented in Amendment 4 to the 2006 Consolidated HMS FMP. NMFS is considering extending this prohibition to all shark permit holders (directed and incidental) in this Predraft.
    - Federally-permitted HMS fishermen have landed a minimal number of shark species in the past few years, while targeting swordfish and tuna species.

2.2.4 Pros and Cons for Sub-Regional Quotas in the Atlantic Region

Pros

- Sub-regional quotas could result in different management measures and opening dates within a region, thus alleviating some of the tensions between certain states.
- Sub-regional quotas could provide more fishing opportunities if sub-regional opening dates match regional shark availability.
- Sub-regional quotas could create regional fishing accountability for these management groups.
- New management measures, including sub-regional quotas and different opening dates, could provide for extended fishing seasons in each region.

Cons

- Under the potential sub-regional quota scenarios based on historical landings, there would be an unequal distribution of the quota between regions due to differences in regional landings, which may have been impacted by regulations in place at those times.
- There would be different management measures within the Atlantic region making regulations potentially more difficult to monitor and enforce.
- Fishermen from the North Atlantic or the South Atlantic region would have access to both sub-regional quotas potentially allowing the quotas to be harvested faster.
- The sub-regional quotas are smaller and could cause the fishery to close earlier than in past fishing seasons.

Pros and Cons to Maintaining the Quota Linkage for the Aggregated LCS and Hammerhead Shark Management Groups

Pros

- The linkage prevents overfishing on the overfished hammerhead shark stock by not allowing additional fishing mortality to occur from discards because the aggregated LCS and hammerhead shark management groups would be closed for the rest of the fishing season.
- The linkage reduces dead discards of shark species in the aggregated LCS and hammerhead shark management groups since fishing pressure would decline with the closed fishing season.
- The linkage assists with the rebuilding plan for hammerhead sharks by decreasing fishing mortality.

Cons

- The sub-regional quotas are smaller and could cause the aggregated LCS and hammerhead shark management groups to close earlier than in past fishing seasons.

- Monitoring smaller sub-regional quotas such as the 1.1 mt dw (2,527 lb dw) hammerhead shark quota in the Western Gulf region may be difficult.

Pros and Cons of Maintaining the Quota Linkage for the Non-Blacknose SCS and Blacknose Sharks in the South Atlantic Region and Prohibiting Blacknose Sharks in the North Atlantic Region

Pros

- The quota linkages provide incentive for fishermen to continue avoiding blacknose sharks and fish within scientifically recommended quotas.
- The quota linkages provide for rebuilding of blacknose shark stock by not allowing additional fishing mortality to occur from discards because the non-blacknose SCS and blacknose shark management groups would be closed for the rest of the fishing season.
- If blacknose were prohibited in the North Atlantic, the non-blacknose SCS management group would not be linked and would remain open instead of being closed if blacknose quotas are reached, thus providing more fishing opportunities for non-blacknose SCS.

Cons

- The linkage decreases fishing opportunities for non-blacknose SCS when non-blacknose SCS quota is still available.
- If NMFS were to prohibit blacknose shark landings in the North Atlantic region, this may create unequal fishing opportunities for non-blacknose SCS between the North and South Atlantic regions.
- Prohibiting blacknose sharks could lead to an increase in discards and potentially continued overfishing on the overfished blacknose shark stock.

2.3 Commercial sandbar fishery quota

Objective and Rationale

NMFS has received extensive comments from commercial fishermen and Atlantic HMS Advisory Panel members to consider allowing commercial fishermen to land sandbar sharks outside of the Atlantic shark research fishery. As the existing sandbar research fishery quota has not been caught in recent years due to limited resources available to fund observed trips, there may be an adequate amount of research quota available to expand landings of sandbar sharks outside of the shark research fishery. Efforts to expand commercial sandbar shark fishing opportunities would allow NMFS to collect additional information on the abundance and distribution of sandbar sharks for stock assessments, minimize discards by converting regulatory discards into landings, and provide additional fishing opportunities for fishermen to land sharks of high commercial value.

In 2008, NMFS implemented Amendment 2, which prohibited the retention of sandbar sharks and established, among other things, an Atlantic shark research fishery. The objective of the Atlantic shark research fishery is to manage a very limited sandbar quota within a small, closely observed research fishery in order to maintain a time series of catch data and to obtain life history data of sandbar and other Atlantic shark species for stock assessments and to meet NMFS' research needs and objectives. Through this shark research fishery, federal commercial shark fishermen can apply and be selected on an annual basis to assist NMFS in the collection of fishery-dependent data while earning revenue from selling additional sharks, including sandbar sharks. Only the commercial shark vessels selected to participate in the shark research fishery with an observer onboard are authorized to land and sell the available sandbar shark research quota as well as other LCS, SCS, and pelagic shark species. Participants in the shark research fishery are not authorized to possess any species of sharks that are prohibited from the commercial fishery. Commercial shark fishermen not participating in the shark research fishery may only land SCS, pelagic sharks, and a lower trip limit of LCS. In the shark research fishery, the trip limits and gear restrictions that are set every year depend on the number of selected vessels, available quota, number of NMFS-approved observers available, and the scientific and research needs for the year.

Description of Management Measure

Since the Atlantic shark research fishery was implemented through Amendment 2 to the 2006 Consolidated HMS FMP in 2008, the status of the sandbar shark stock has improved, going from "overfished with overfishing occurring," to "overfished," according to the results of the 2011 stock assessment (SEDAR 21). Furthermore, the limited numbers of boats that can be managed through the resource-intensive shark research fishery have been consistently unable to catch the scientifically-recommended sandbar shark quota. In addition, the allowable annual sandbar quota has effectively increased as of 2013 now that all of the past underharvest has been accounted for (going from 87.9 mt to 116.6 mt). Thus, NMFS is considering implementing a

new commercial sandbar fishery quota that would allow commercial fishermen to incidentally land a limited number of sandbar sharks outside of the Atlantic shark research fishery.

Based upon HMS dealer data from 2008 to 2013, the amount of sandbar shark research landings has declined due to limited observer coverage in recent years. On average during this time period, 64 percent of the sandbar shark research quota has been caught, leaving an average of 76,332 lb dw of unharvested sandbar research quota potentially available to fishermen outside the shark research fishery (Table 2.9). Under this management option, a portion of the remaining research sandbar quota could be allocated to federally-permitted commercial shark fishermen. Under this option, NMFS would need to consider whether the shark research fishery participants would be prohibited from landing sandbar sharks on non-research trips. In addition, NMFS would consider maintaining the current prohibition of sandbar sharks in the recreational fishery due to the potential mis-identification with dusky sharks and how or whether these options overlap with the permit stacking options noted above.

The amount of sandbar shark research quota that would be allocated to each commercial shark permit holder outside the shark research fishery would depend on the unharvested sandbar shark research quota and eligible commercial shark permit holders. NMFS is exploring the following options.

2.3.1 Commercial sandbar quota eligibility

- **Option 1**: Only directed shark permit holders would be allocated a commercial sandbar shark quota
    - This option would allow only directed shark permit holder to receive an equal allocation from the new commercial sandbar quota.
    - Based on the amount of research landings (Table 2.9), directed shark permit holders would potentially be able to land an average of 7 sandbar sharks per year per permit holder.
    - The allocation of sandbar sharks could range between 2 to 17 sandbar sharks per year per directed shark permit holder depending on how much of the unharvested sandbar shark research landings are allocated to create the new commercial sandbar shark quota.
- **Option 2:** All directed and incidental shark permit holders would be allocated a commercial sandbar shark quota
    - This option would include all directed and incidental shark permit holder to receive an equal allocation from the new commercial sandbar quota.
    - Based on the amount of research landings (Table 2.9), directed and incidental shark permit holders would potentially be able to land an average of 3 sandbar sharks per year per permit holder.

- This allocation of sandbar sharks could range between 1 to 8 sandbar sharks per year per directed and incidental shark permit holder depending on how much of the unharvested sandbar shark research landings are allocated to create the new commercial sandbar shark quota.

- **Option 3**: All active directed shark permit holders would be allocated a commercial sandbar shark quota

  - This option would only allow active directed permit holders to receive an equal allocation from the new commercial sandbar quota.

  - Based on the amount of research landings (Table 2.9), active directed shark permit holders would potentially be able to land on average of 17 sandbar sharks per year per permit holder.

  - This allocation of sandbar sharks could range between 4 to 41 sandbar sharks per year per directed and incidental shark permit holder depending on how much of the unharvested sandbar shark research landings are allocated to create the new commercial sandbar shark quota.

Table 2.9 **Allocation of unused sandbar shark research quota to commercial fishermen outside the shark research fishery.** Note: Calculations are based on an average weight of a sandbar shark to be 50 lb dw and eligible directed and/or incidental shark permit holders.

Year	Sandbar Research Quota (lb dw)	Sandbar Research Landings (lb dw)	Percentage of Sandbar Research quota landed	Unused sandbar research quota (lb dw)	Equal sandbar allocation lb dw per permit holder (# sandbar sharks per permit holder)		
					# Directed shark permit holders (219)	# Directed and Incidental shark permit holders (472)	# Active Directed shark permit holders (90)
2008	193,784	151,497	78	42,287	193 (4)	90 (2)	470 (9)
2009	193,784	176,091	91	17,693	81 (2)	37 (1)	197 (4)
2010	193,784	143,227	74	50,557	231 (5)	107 (2)	562 (11)
2011	193,784	155,714	80	38,070	174 (3)	81 (2)	423 (8)
2012	193,784	68,212	35	125,572	573 (11)	266 (5)	1395 (28)
2013	257,056	73,244	28	183,812	839 (17)	389 (8)	2042 (41)
Average			64	76,332	349 (7)	162 (3)	848 (17)

2.3.2 Pros and Cons of New Commercial Sandbar Shark Quota

Pros

- Expanding commercial sandbar shark fishing opportunities would allow the collection of additional information on the abundance and distribution of sandbar sharks and additional large coastal species for stock assessments
- The new commercial sandbar shark quota would minimize regulatory discards of sandbar sharks by converting discards into landings in the commercial shark fishery
- This option would provide additional fishing opportunities for fishermen to land sharks of high commercial value.

Cons:

- The new commercial sandbar shark quota would potentially create the incentive to target this overfished species.
- The new quota would make it difficult to monitor sandbar shark landings inside and outside the shark research fishery because the quota would be very small.
- The new commercial sandbar shark quota would only apply to commercial fishermen; recreational fishermen would still be unable to land sandbar sharks
- Allowing fishermen outside of the shark research fishery to land sandbar sharks may result in additional landings or discards of other prohibited shark species such as dusky sharks due to mis-identification
- The new commercial sandbar shark quota could lead to high-grading by commercial fishermen
- Hard to monitor an annual retention limit

2.4 Literature Cited

NMFSa. 2013. Amendment 5a to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. NOAA, NMFS, Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910.

NMFSb. 2013. Stock Assessment and Fishery Evaluation (SAFE) Report For Atlantic Highly Migratory Species. Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910. 179 p.

SEDAR. 2011. SEDAR 21 Stock Assessment Report: Sandbar, Dusky, and Blacknose Sharks. SEDAR, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405. 415p.

APPENDIX 1

SHARK CONSERVATION ACT LETTERS TO THE SATES OF CALIFORNIA, WASHINGTON, AND MARYLAND

As described above, NMFS published a proposed rule to implement the provisions of the Shark Conservation Act of 2010 in all U.S. federal shark fisheries. NMFS is working with a few states to determine if the proposed rule for the implementation the Shark Conservation Act of 2010 is consistent with their state regulations regarding the shark fin possession bans. In February 2014, NMFS sent letters to California, Washington, and Maryland regarding the impact of their law on Federal shark fisheries management under the Magnuson-Stevens Act. The letter and responses are below.

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
916.653.7667
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

February 3, 2014

Eileen Sobeck
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Dear ~~Ms. Sobeck:~~ Eileen:

We write to memorialize a series of conversations between our respective offices and legal counsel beginning on September 6, 2013, regarding the relationship between California's Shark Fin Prohibition, Cal. Fish & Game Code §§ 2021 & 2021.5, and the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884, as amended by the Shark Finning Prohibition Act of 2000, Pub. L. No. 106-557, 114 Stat. 2772 (2000), and the Shark Conservation Act of 2010, Pub. L. No. 111-348, 124 Stat. 3668 (2010). We appreciate the opportunity to consult with you and believe that this process has been highly productive. This process was initiated after the United States filed an amicus brief in *Chinatown Neighborhood Association et al., v. Brown, et. al.*, Ninth Circuit Case No. 13-15188, and in that filing the United States observed that California's Shark Fin Prohibition may conflict with or obstruct federal law. However, in light of our discussions and the full information and analysis we have provided regarding the scope and effect of California's law, we now agree that California law and federal law are consistent and that there is no basis for finding California's Shark Fin Prohibition to be preempted by the Magnuson-Stevens Act, as amended.

The Magnuson-Stevens Act governs the management of federal fisheries, including shark fisheries. As we have discussed, the Shark Fin Prohibition and the Magnuson-Stevens Act, as amended, share a goal of promoting conservation and ending the practice of shark finning. To this end, the California Shark Fin Prohibition proscribes the possession, sale, trade, and distribution of detached shark fins in California. *See* Cal. Fish & Game Code §§ 2021(a)&(b). Of particular significance here, and unlike federal law, the California Shark Fin Prohibition does not regulate the act of finning or the taking and landing of sharks within the Exclusive Economic Zone (EEZ). Moreover, under California law, a federally-licensed fisher may land a shark in California with the fins attached, as required by the Shark Conservation Act of 2010. *See id.* § 2021(a) (defining "shark fin" as the "raw, dried, or otherwise processed *detached* fin, or the raw, dried, or otherwise processed *detached* tail, of an elasmobranch.") (emphases added).

With respect to your concern regarding the ability of fishers to possess fins (from sharks caught in the EEZ), pursuant to California Fish and Game Code sections 2021(d) and 2021.5(a)(1), properly-licensed fishers are exempt from the ban on possession. Because all fishers, including those who operate in federal waters pursuant to a federal

license, are required to hold state licenses in order to land sharks in California, *see id.* §§ 7850, 7881, this exemption applies equally to federal and state fishers.

Finally, California's Shark Fin Prohibition does not interfere with the management of federal fisheries. As you are aware, and as set forth in our reply to your amicus brief, we reject the notion that simply because a state ban might have an effect on fishing within federal waters and consequently on the attainment of "optimum yield," that it conflicts with and/or is preempted by the Magnuson-Stevens Act. While we may continue to disagree on this point, as a practical matter, the California Shark Fin Prohibition has no meaningful effect on fishing behavior or "optimum yield." Relatively few sharks are landed in California. The California-based drift gillnet fleet and the Hawaii-based pelagic longline fleet account for the majority of shark landings in California from federally-managed fisheries. Both of these fleets target swordfish and thus fishing behavior in these fleets is driven primarily by swordfish, and not by sharks.[1] The relative importance of swordfish and sharks is apparent in both landings and revenue. For example, in 2012, according to PacFIN data, shark landings in California (from both federal and state waters) totaled 107.5 metric tons, and represented $189,910 in revenue.[2] By comparison, 402.5 metric tons of swordfish were landed in California in 2012, with an ex-vessel value of $2,092,050.[3] With respect to the relatively small number of sharks that are landed in California, state law permits the sale of all of the parts of a shark caught in federal waters and landed in California, excluding its detached fin and tail. Accordingly, we do not expect an appreciable impact on income to federally-licensed shark harvesters in California as a result of California's law.

For these reasons, we believe that California's Shark Fin Prohibition is consistent with and does not conflict with the Magnuson-Stevens Act, as amended by the Shark Finning Prohibition Act of 2000, and the Shark Conservation Act of 2010.

Please feel free to contact Thomas Gibson, General Counsel, at (916) 654-5295, if you have further questions or concerns.

Sincerely,

Charlton H. Bonham

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[1] The other federally-managed fishery with shark landings in California is the federal groundfish fishery, managed under the Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP). The federal groundfish FMP includes spiny dogfish and leopard shark. According to PacFIN data, in 2012, 0.9 metric tons of spiny dogfish were landed in California, with an ex-vessel value of $575, and 2.8 metric tons of leopard shark were landed, with an ex-vessel value of $5,869. *See* Pacific States Marine Fisheries Commission, Pacific Fisheries Information Network (PacFIN) Report #308 (2012).
[2] *See id.*
[3] *Id.*

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

THE DIRECTOR

FEB - 3 2014

Mr. Charlton Bonham
Director
California Department of Fish and Wildlife
1416 Ninth Street
12th Floor
Sacramento CA 95814

Dear Mr. Bonham:

Thank you for your February 3, 2014, letter regarding your assessment of the relationship between the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Finning Prohibition Act of 2000 and the Shark Conservation Act of 2010, and the California Shark Fin Prohibition and the impact of California's law on federal shark harvesters.

NOAA Fisheries West Coast Region confirms that revenue from the sale of sharks harvested in federal waters off California derives mostly from the sale of the meat of the shark, not from the sale of fins sold after the shark is legally harvested and landed with fins naturally attached. Further, you confirm that all federal fishers who land sharks in California, including those who operate in federal waters pursuant to a federal license, are also required to hold state licenses and are therefore exempt from the ban on possession of shark fins. Based on the full information about the California law set forth in your letter, and the current facts specified there regarding the scale and nature of the federal shark fishery in California, we agree with your conclusion that California's Shark Fin Prohibition law will have minimal impact on federally licensed and permitted shark harvesters in California, and does not unlawfully burden their ability to achieve the benefits from federal fisheries provided under the Magnuson-Stevens Fishery Conservation and Management Act, as amended. Accordingly, it is our position, based on the information that you have provided, that California's Shark Fin Prohibition law is not preempted by the Magnuson-Stevens Act, as amended.

We agree that this has been a very productive process. Our consultations have addressed fully our initial concern, as expressed in the amicus brief of the United States *Chinatown Neighborhood Association et al., v. Brown, et al.,* Ninth Circuit Case No. 13-15188, that California's Shark Fin Prohibition might conflict with or obstruct the Magnuson-Stevens Act, as amended. In light of our present conclusion that California law does not conflict with or obstruct the purposes, goals, or methods of the Magnuson-Stevens Act, we do not intend to seek authorization from the Department of Justice to further participate in the case of *Chinatown Neighborhood Association, et al. v. Brown, et al.*, No. CV 12 3759 WHO (N.D. Cal.). We request that you contact us if there are significant changes to the facts described in your letter as this could necessitate further consultation.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

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We appreciate your willingness to work with us on this important matter and we hope this letter addresses your concerns.

Sincerely,

Eileen Sobeck
Assistant Administrator
for Fisheries

cc: Alexandra Robert Gordon
Deputy Attorney General, California
Department of Justice

State of Washington
Department of Fish and Wildlife

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

December 12, 2013

Mr. Sam D. Rauch, III
Acting Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Rauch:

In July, the Washington Department of Fish and Wildlife (WDFW) submitted a comment letter on the National Marine Fisheries Service's (NMFS's) proposed rule implementing the provisions of the Shark Conservation Act of 2010, which proposes to preempt state shark finning laws and regulations. Since then, WDFW has worked with NMFS and NOAA General Counsel and consulted our Attorney General's Office about the effects of Washington's laws and regulations on shark fisheries authorized under the Magnuson-Stevens Fisheries Conservation and Management Act (MSA). As a result of those discussions, WDFW believes that our state laws are having a minimal impact on MSA-authorized shark fisheries.

Washington's shark finning law (Revised Code of Washington 77.15.770) went into effect on July 22, 2011. The statute provides, in part, as follows: a person is guilty of unlawful trade in shark fins in the second degree if: (a) The person sells, offers for sale, purchases, offers to purchase, or otherwise exchanges a shark fin or shark fin derivative product for commercial purposes; or (b) The person prepares or processes a shark fin or shark fin derivative product for human or animal consumption for commercial purposes. In summary, the law does not prohibit the landing of sharks, but rather regulates the commercial sale and processing of shark fins. Specifically, the law prohibits the commercial trade or processing of shark fins standing alone as a product. The law includes exemptions for shark fins and derivative products that are used for bona fide research or educational purposes.

Under RCW 77.15.770, harvested sharks may be landed whole with fins attached, which we believe is consistent with Section 307 of the MSA. There is only one shark species that is landed in commercial quantities into Washington's ports—Pacific spiny dogfish (*Squalus suckleyi*). Considering the ex-vessel value of spiny dogfish landings in Washington State, we do not believe Washington's laws are fairly characterized as having a significant economic impact downstream in the chain of commerce from landings of whole sharks to the later sale and processing of shark parts (fins).

The value of spiny dogfish landings into Washington have dropped steadily and consistently since the 1980s and now exist at very low levels. In terms of 2012 dollars, spiny dogfish brought in over $2 million in ex-vessel revenue at its peak, which was in 1987. Yet, since the latest drop in ex-vessel value that occurred in 2009, ex-vessel revenues for spiny dogfish have averaged less than $30,000 per year. Our best estimate is that the value of the dogfish fins could be about ten percent of that.

For context, spiny dogfish is one of over 90 species managed as part of the Pacific Fishery Management Council's (PFMC's) fishery management plan for groundfish. The ex-vessel revenues into Washington from all groundfish landings, except Pacific whiting, have averaged $13 million per year since 2009, with an additional $5 million, on average, from shoreside landings of Pacific whiting. The at-sea fleets targeting Pacific whiting, also Washington-based, can produce another $20 million in annual ex-vessel revenues, on average. And the expected ex-vessel revenues from PFMC's groundfish can average $70-$90 million in total coastwide. Therefore, from the national, coastwide, and even statewide perspective, the economic value of spiny dogfish is very small, and the value of the dogfish fins in the context of the broader groundfish fishery is miniscule.

For these reasons, we do not believe that Washington's regulation of the sale or processing of shark fins removed from landed sharks has an appreciable indirect effect on MSA-authorized shark fisheries.

While we reserve our ability to address other issues associated with your basis for the proposed preemption, we hope that this letter satisfies the primary concerns raised by NMFS in the proposed rule. As stated in our previous comments, we believe that the PFMC process provides the best avenue for coordination and discussions about the interactions and effects of applicable state and federal laws and regulations on MSA-authorized fisheries.

If you have any questions, please feel free to contact me at (360) 249-1211.

Sincerely,

Michele K. Culver
Regional Director

cc: Mike Grossman, AG's Office
Phil Anderson, WDFW
Corey Niles, WDFW

FEB - 3 2014

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

THE DIRECTOR

Ms. Michele K. Culver
Regional Director
Washington Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091

Dear Ms. Culver:

Thank you for your December 12, 2013 letter regarding your assessment of the impacts to federal shark harvesters of Washington State's law prohibiting the sale and other actions related to detached shark fins (Revised Code of Washington 77.15.770).

Based on the information about the Washington law set forth in your letter and the current facts regarding the scale and nature of the shark fishery in Washington, we agree with your conclusion that Washington State's shark fin law will have minimal impact on federally licensed and permitted shark harvesters in Washington. As noted in your letter, spiny dogfish harvested by the west coast groundfish fishery is the only shark landed in Washington from federally managed commercial fisheries. You noted in your letter that the ex-vessel value from spiny dogfish is small (an average of less than $30,000 per year since 2009), and also that the value of spiny dogfish fins is estimated to be only 10 percent of the total ex-vessel value.

We also understand from your letter that Washington's law does not prohibit a federal fisherman from landing a legally caught shark with fins naturally attached, but rather prohibits the commercial trade and processing of shark fins. We thus understand that federal fishermen can land a shark with fins naturally attached and sell the non-fin parts of the shark in Washington. In effect, federal fishermen can legally possess a detached shark fin, but cannot sell that fin.

Based on these facts, we agree with your conclusion that Washington's law will have minimal impact on federally licensed shark fishermen in Washington and does not unlawfully burden their ability to achieve the benefits from federal fisheries and is therefore consistent with and not preempted by the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Conservation Act of 2010.

We request that you contact us if there are significant changes to the facts described in your letter, as those changes may affect our conclusions. We appreciate your willingness to work with us on this important matter.

Sincerely,

for Eileen Sobeck

cc: Mike Grossman, Washington Attorney General's Office
Phil Anderson, Washington Department of Fish and Wildlife
Corey Niles, Washington Department of Fish and Wildlife

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

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MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*
Joseph P. Gill, *Secretary*
Frank W. Dawson III, *Deputy Secretary*

September 27, 2013

Samuel D. Rauch, III
Acting Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Rauch,

I am writing in follow-up to a telephone conversation between our respective legal counsel on September 6, 2013 regarding recently passed legislation in Maryland prohibiting the possession of detached shark fins under certain circumstances. For the following reasons, the Maryland Department of Natural Resources believes that the new law will have a minimal impact on federally licensed and permitted shark harvesters in the State of Maryland.

Chapter 297 of the 2013 Laws of Maryland, as enacted, adds a new § 4-747 to the Natural Resources Article prohibiting a person from possessing, selling, offering for sale, trading, or distributing a shark fin. "Shark" in the bill is defined as "any species of the subclass Elasmobranchii," excluding "smooth-hounds, spiny dogfish, or species in the superorder Batoidea." "Shark fin" is defined as "the raw, dried, or otherwise processed detached fin or tail of a shark." Under the new law, a person with a state or federal license or permit authorizing the taking or landing of a shark for recreational or commercial purposes is expressly exempt from the possession restriction, and may possess a shark fin from any shark that the person took or landed in a manner consistent with the person's license. The law takes effect October 1, 2013.

Maryland's shark fishery is relatively small in comparison to that of some other states. Over the past six years, an average of 15 commercial fishing licensees harvested shark annually in Maryland. Confidential federal dealer landing data provided to the Department through the Atlantic Coastal Cooperative Statistics Program data warehouse indicates that from 2008 – 2012, a mean of 14,417 pounds of sharks, not including Smoothhounds and Spiny Dogfish, were landed in Maryland. In 2011, for example, Maryland licensees reported harvesting 14,293 pounds of Atlantic Sharpnose, Blacktip, Shortfin Mako, Spinner, and Thresher sharks combined, for a total dockside value of $24,095. In the same year, Maryland licensees harvested 1,494,077 pounds of Smoothhounds and Spiny Dogfish, for a total dockside value of $690,020. These numbers reflect that Smoothhounds and Spiny Dogfish make up approximately 90% of the commercial shark catch in Maryland, and sales of other shark species account for less than 5% of the shark licensees' income from the shark fishery. The landings data for sharks other than Smoothhounds and Spiny

Tawes State Office Building – 580 Taylor Avenue – Annapolis, Maryland 21401
410-260-8DNR or toll free in Maryland 877-620-8DNR – *dnr.maryland.gov* – TTY Users Call via the Maryland Relay

Dogfish have remained stable since at least 2008, and the Department expects this trend to continue after the new legislation takes effect.

Under the new law, state or federally permitted commercial shark fishermen may continue to catch, land, and, after landing, remove the fins of all species of shark in accordance with already existing and applicable laws and regulations. The new legislation has no impact on the harvest, possession, or sale of fins and carcasses from lawfully caught Smoothhounds and Spiny Dogfish. Sharks of other species, caught less frequently in Maryland, may still be fished, landed, and finned after landing in accordance with existing laws and regulations. The carcasses of those sharks may be sold to any eligible dealer or processor, and the commercial licensee may keep any detached fins. The new law prohibits fins from those shark species from being sold, offered for sale, traded, or distributed in the State of Maryland, but nothing prohibits the commercial licensee from selling lawfully taken fins outside the State.

For these reasons, we believe that the new prohibition on shark fin possession in Maryland will have a minimal impact on federally licensed and permitted shark harvesters, and does not unlawfully burden their efforts to obtain "optimum yield" from the commercial shark fishery. We hope that this letter serves to address some of your concerns. Please feel free to contact me at (410)260-8102, if you have questions about this.

Sincerely,

Frank W. Dawson III
Deputy Secretary

Cc: Julia Solomon, Assistant Attorney General, Maryland Office of the Attorney General
Lois Schiffer, General Counsel, National Oceanic and Atmospheric Administration

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

FEB - 3 2014

Mr. Frank Dawson
Deputy Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401

Dear Mr. Dawson:

Thank you for your September 27, 2013, letter regarding your assessment of the impacts to federal shark harvesters of the recently passed legislation in Maryland prohibiting the possession of detached shark fins under certain circumstances.

Based on the current facts regarding the scale and nature of the shark fishery in Maryland as described in your letter, we agree with your conclusion that Maryland's state shark fin law will have minimal impact on federally licensed and permitted shark harvesters, does not unlawfully burden their efforts to obtain "optimum yield" from the commercial shark fishery, and is therefore consistent with and not preempted by the Magnuson-Stevens Fishery Conservation and Management Act, including the Shark Conservation Act of 2010.

We request that you contact us if there are significant changes to the facts described in your letter, as those changes may affect our conclusions. We appreciate your willingness to work with us on this important matter.

Sincerely,

Eileen Sobeck
Assistant Administrator
for Fisheries

cc: Julia Solomon
Assistant Attorney General, Maryland
Office of the Attorney General

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