



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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APR 14 2010

Mr. Alan D. Risenhoover
Director, Office of Sustainable Fisheries
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Springs, MD 20910

RE: Final Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), CEQ Number: 20100086 and ERP Number: NOA-E91028-00

Dear Mr. Risenhoover:

Pursuant to the National Environmental Policy Act (NEPA) Section 102(2)(C) and the Clean Air Act (CAA) Section 309, the U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service (NMFS) Final Environmental Impact Statement (FEIS) and amendment to the Consolidated Atlantic HMS FMP. EPA notes the Record of Decision, not this FEIS, is the final decision document. In light of new information, resulting in the selection and provision of new preferred alternatives in the FEIS from those expressed in the draft EIS (DEIS), EPA offers one recommendation while continuing to defer to NMFS in technical matters pertaining to fishery management.

The FEIS/FMP continues to identify the need to address the “overfished” status of the blacknose (BN) shark species, the “overfishing” status of the shortfin mako shark species, and the need for conservation and management of the smooth dogfish species. The FEIS has identified new preferred alternatives based upon new information from both the 2005 – 2008 Shark Gillnet Observer data and from public comments to the earlier DEIS.

Small Coastal Shark (SCS) Commercial Quotas

According to the FEIS, the 2005 – 2008 Shark Gillnet Observer data indicate commercial shark fishers can target non-blacknose SCS sharks and avoid catching BN sharks. Consequently, we note a new preferred alternative (A6) has been identified replacing the DEIS’ designated preferred alternative (A-4). NMFS has changed the preferred commercial quota alternative to raise the commercial non-BN SCS quota to 221.6 metric tons (mt) dressed weight (dw) (A6) from 56.9 mt dw (A4) and the BN shark quota to 19.9 mt dw (A6) from 14.9 mt dw (A4).

Additionally, the preferred alternative includes a framework, based upon gillnet shark fishers’ ability to avoid catching BN sharks, to give NMFS flexibility to change SCS quotas for either non-BN sharks and(or) BN sharks based upon the gillnet shark fishers’ demonstrated

avoidance and based upon new stock assessments that indicate changes to the status of these shark species.

Commercial and Recreational SCS measures – SCS and BN sharks

We note that NMFS has changed its preferred alternative to the No Action alternative (B1), effectively retaining all fishing gears including gillnet fishery, from a gillnet ban from the South Carolina south (B3). NMFS' position is the elimination of gillnets (B3) as an authorized Atlantic shark fishery gear would not achieve a conservation and management objective necessary for rebuilding the BN shark.

Recommendation: we note the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the State of Georgia, all, support banning gillnet gear believing it long overdue to reduce incidental take of sea turtles and marine mammals, protecting BN sharks, reducing bycatch and protected resource interactions. Consequently, EPA suggests NMFS consider identifying numeric and(or) narrative "trigger(s)" causing NMFS to either increase or decrease SCS quotas for either non-BN SCS and(or) BN sharks.

NMFS agrees with the public comments asserting few recreational fishers actually target BN sharks. Consequently if recreational fishers do not target BN sharks, then existing recreational size limits are deemed adequately protective. Therefore, NMFS is changing the preferred alternative identified in the DEIS, to the No Action alternative (D1) from a BN shark recreational possession prohibition (D4).

Commercial and Recreational Pelagic Shark Effort Controls

We note the FEIS reflects the DEIS and no changes appear to have been made to the identified preferred alternative. Regarding EPA's comment addressing the minimum size requirement, alternative C4, NMFS has concluded EPA's recommendation would not dramatically reduce shortfin mako shark mortality in the U.S. commercial fishery and any mortality reductions would be insufficient to end overfishing.

In addressing EPA's comment concerning apparent tournament recreational fishing pressure on this shark species, NMFS points to 1) promoting release of live sharks, 2) the NMFS Code of Angling Ethics (64 FR 8067) could result in mortality with corresponding ecological benefit, and 3) recreational fishers will have the opportunity to reduce this species mortality with the intent to maintain the stock and avoid an "overfished" determination and associated fishing restrictions.

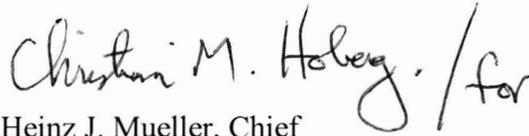
And last, we note NMFS' response to EPA's observation the DEIS appeared unclear regarding the recreational fishery's impact (110,256 shark landings) in comparison to the commercial fishery's impact (109,611 shark landings, all in the same time series) to the shortfin mako shark fishery. NMFS stated the lack of international data on this species may have resulted in an inflated calculated recreational fishery impact to this species but that implementing alternatives E2a and(or) E2b would reduce a large percentage of shark landings from a fishery contributing to a small percentage of total North Atlantic shark landings.

Smooth Dogfish

We note, based on the DEIS comments received, NMFS has changed the smooth dogfish quota preferred alternative to the maximum annual landings (1987 – 2007) plus two standard deviations (alternative F2A4) from a preferred quota of the maximum annual landings (1987 – 2007) plus one standard deviation (alternative F2A3).

Thank you for the opportunity to review this FEIS/FMP. Should you have questions regarding these comments, please contact Beth Walls (at 404-562-8309 or walls.beth@epa.gov) of my staff.

Sincerely,

Handwritten signature of Christian M. Heberg, with a slash and the word "for" written next to it.

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

cc: Dr. Paul Doremas, NEPA coordinator, NOAA, Silver Spring, MD