FINDING OF NO SIGNIFICANT IMPACT

Finding of No Significant Impact for Final Amendment 9 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan to implement the Smooth Dogfish-Specific Provisions of the 2010 Shark Conservation Act provisions and other regulations in the Atlantic smoothhound fishery

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for Atlantic HMS fisheries for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This EA analyzes the effects of establishment of an effective date for previously-adopted shark management measures finalized in Amendment 3 (June 1, 2010, 75 FR 30484) and the 2011 HMS Trawl Rule (August 10, 2011; 76 FR 49368); establishment of smoothhound shark quotas based on the recent SEDAR 39 stock assessments; implementation of a limited exception from certain provisions of the SCA that specifically apply to smooth dogfish; implementation of Term and Condition 4 of the 2012 Shark BiOp, which required either net checks or soak time restrictions in the Atlantic shark gillnet fisheries; and modifications of vessel monitoring system (VMS) requirements for shark gillnet fishermen. The EA was developed as an integrated document that includes a Regulatory Impact Review and Final Regulatory Flexibility Analysis. The responses in the Finding of No Significant Impact statement are supported by the analyses in the EA as well as in the other National Environmental Policy Act (NEPA) documents referenced. Copies of the EA/Regulatory Impact Review/Final Regulatory Flexibility Analysis are available at the following address:

Highly Migratory Species Management Division, F/SF1
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910
Phone: (301)-427-8503
or

http://www.nmfs.noaa.gov/sfa/hms

The preferred alternatives analyzed in the EA and preferred for implementation in the final rule are:

- Alternative A2: Implement the smooth dogfish-specific provisions of the Shark Conservation Act of 2010 to establish an allowance for the removal of smooth dogfish fins while at sea, selecting three of nine considered sub-alternatives;
    - Sub-Alternative A2-1e: Smooth dogfish must make up at least 25 % of the retained catch, and other sharks may be retained provided their fins remain naturally attached to the carcass
    - Sub-Alternative A2-2a: Require any state commercial fishing permit that allows smooth dogfish retention in conjunction with the federal smoothhound permit

- Sub-Alternative A2-3b: Apply exception for smooth dogfish along the Atlantic Coast but not to Florida's coast in the Gulf of Mexico

- Alternative B4: Establish a smoothhound shark TAC of 1,430.6 mt dw and commercial quota of 1,201.7 mt dw in the Atlantic region, and a TAC of 509.6 mt dw and commercial quota of 336.4 mt dw in the Gulf of Mexico region based on results of the 2015 smoothhound shark stock assessment

- Alternative C4: Establish a soak time limit of 24 hours for sink gillnet gear and a 2 hour net check requirement for drift gillnet gear in the Atlantic shark and smoothhound shark fisheries

- Alternative D2: Require federal directed shark permit holders with gillnet gear on board to use VMS only in the Southeast U.S. Monitoring Area, pursuant to Atlantic Large Whale Take Reduction Plan requirements

The National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of an action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. § 1508.27 state that the significance of an action should be analyzed both in terms of context and intensity. Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1. Can the action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?

No. The action is not expected to jeopardize the sustainability of smoothhound sharks (which includes smooth dogfish, Florida smoothhound, and Gulf smoothhound (genus *Mustelus*)). This action implements the provision of the SCA that creates a limited exception for smooth dogfish from the otherwise applicable fins-attached landings requirement for sharks. However, these measures would likely result in neutral impacts to smooth dogfish since fishermen are currently not required to land smooth dogfish with all fins naturally attached because the species have not been federally managed prior to the Amendment 9 rulemaking. The results of the 2015 smoothhound shark stock assessments found that the Atlantic and Gulf of Mexico stocks of smoothhound sharks are not overfished and not experiencing overfishing. Implementing science-based quotas would ensure continued sustainable harvest of smoothhound sharks in the Atlantic and Gulf of Mexico regions and increase the likelihood of maintaining healthy smoothhound shark stocks in both regions. Additionally, total landings harvested under the regional quotas established in Amendment 9 would be less than the quotas considered under either Alternative B2 or B3. Because commercial harvest of smoothhound sharks would be capped at a level recommended by scientific advice, Alternative B4 would provide short and long-term minor direct beneficial ecological impacts to the smoothhound shark stocks. This alternative would also likely have short and long-term neutral indirect ecological impacts on incidentally-caught species. As these regional quotas are near the recent annual landings for

smoothhound sharks, they would likely result in similar levels of interactions with incidentally-caught species as are currently occurring in the smoothhound shark fisheries. For these reasons, this action is not expected to jeopardize the sustainability of smoothhound sharks.

2. Can the action be reasonably expected to jeopardize the sustainability of any non-target species?

No. The action is not expected to jeopardize the sustainability of any non-target fish species because overall fishing effort is not expected to significantly increase and non-target species catches would still be limited within the applicable, previously analyzed total allowable catches for regulated species which were established consistent with NMFS' obligations to end overfishing and rebuild overfished stocks. This action addresses the landing condition of smooth dogfish based on the smooth dogfish-specific provisions of the SCA, establishes smoothhound shark quotas based on the SEDAR 39 stock assessments, implements measures from the 2012 Shark BiOp, and modifies VMS requirements for Atlantic shark fishermen using gillnet gear consistent with the ALWTRP requirements. This action is not likely to increase effort in the fishery and, therefore, is unlikely to increase impacts on non-target species. When considering each of the alternatives in this action, NMFS explicitly considers the impact on non-target shark species. The measures that implement the requirements of the 2012 Shark BiOp and the ALWTRP would help to mitigate or reduce interactions with protected resources, thus this action would not jeopardize the sustainability of any non-target species.

3. Can the action be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?

No. EFH designation for smoothhound sharks was analyzed and is detailed in Chapter 11 of Amendment 3. In Amendment 1 to the 2006 Consolidated HMS FMP and Amendment 3, NMFS reviewed the various gear types with the potential to affect EFH and, based on the best information available at this time, NMFS has determined that fishing is not likely to adversely affect EFH for smoothhound sharks. Thus, there is no evidence to suggest that implementing any of the preferred alternatives in this rulemaking would adversely affect EFH to the extent that adverse effects could be identified on the habitat or fisheries. On June 29, 2015, NMFS published a final 5-year review of EFH for Atlantic HMS (80 FR 36974). The purpose of the review was to gather all new information and determine whether modifications to existing EFH descriptions and delineations are warranted. Based on the review and public comment, NMFS determined that new information warrants the initiation of an amendment to revise EFH components found in Amendments 1 and 3 to the 2006 Consolidated HMS FMP, and the 2010 White Marlin/Roundscale Spearfish Interpretive Rule and Final Action. During the FMP amendment process, NMFS will apply any new and appropriate information including, but not limited to, observer data, survey data, logbook information, and tag/recapture data that are available for all HMS. Specifically for smoothhound sharks, the review found that recent studies do not support updating EFH boundaries. However, NMFS will update smoothhound shark EFH boundaries based on new observer, survey, and tag/recapture data since 2009. If any changes to the regulations are also needed, NMFS will issue proposed and final rules with public comment.

4. Can the action be reasonably expected to have a substantial adverse impact on public health and safety?

No. The implementation of a limited exception to allow the removal of smooth dogfish fins at-sea, implementation of smoothhound shark quotas, and measures to comply with the 2012 Shark BiOp and ALWTRP are not likely to have substantial adverse impacts on public health and safety. Because the actions are not expected to change current fishery practices and behaviors, no effects to public health and safety are anticipated from their implementation.

5. Can the action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

No. The action cannot reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species. There would not be any additional negative ecological impacts to endangered or threatened species, marine mammals or the critical habitat of these species beyond those impacts currently analyzed in the 2012 Shark BiOp. The 2012 Shark BiOp issued under the ESA concluded that the continued operation of the Atlantic shark and smoothhound shark fisheries is unlikely to jeopardize the continued existence of Atlantic sturgeon, smalltooth sawfish or any species of ESA-listed sea turtle. This action would not significantly increase fishing effort rates, levels, or locations. Rather, this action considers implementation of a limited exception to the fins attached requirement and establishment of smoothhound sharks quotas based on the SEDAR 39 stock assessments. Neither of these actions would significantly increase effort beyond status quo because the quotas would be only slightly higher than maximum annual landings over the past five years, and, therefore, are not expected to have any adverse impacts on protected resources. In addition, the management measures are not expected to alter interactions with protected species because effort is expected to be similar as in previous years. Thus, these alternatives are expected to have neutral ecological impacts on the environment and protected resources. Additionally, this action implements one of the Terms and Conditions of the 2012 Shark BiOp which would ensure that the Atlantic shark and smoothhound shark fisheries are fully compliant with the requirements of the BiOp. This action also modifies current VMS requirements consistent with the ALWTRP. Both of these measures would mitigate or reduce interactions with protected resources.

6. Can the action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g. benthic productivity, predator-prey relationships, etc.)?

No. The implementation of limited exception to the fins attached requirement in the SCA and establishment of smoothhound shark quotas are not expected to have a substantial impact on biodiversity and ecosystem function within the affected area, because the action is not expected to significantly increase fishing effort or change fishing practices, and/or interactions with non-target and endangered or threatened species. Similarly, this action implements measures to comply with the 2012 Shark BiOp and ALWTRP which would mitigate or reduce interactions with protected resources. Thus, the action as a whole is not likely to have substantial adverse impacts biodiversity and ecosystem function.

7. Are significant social or economic impacts interrelated with significant natural or physical environmental effects?

No. There are no anticipated significant natural or physical environmental effects associated with the action and no significant social or economic impacts interrelated with natural or physical environmental effects that would result from the action. The ecological impacts of implementing the exception to the fins attached requirement would likely be neutral and the ecological impacts of the smoothhound quotas would provide short and long-term minor direct beneficial ecological impacts to the smoothhound shark stocks. The measures to implement the 2012 Shark BiOp and the VMS requirements consistent with the ALWTRP would likely be beneficial because they would mitigate and reduce interaction with protected species. Because commercial harvest of smoothhound sharks would be capped at a level recommended by scientific advice, Alternative B4 would provide short and long-term minor direct beneficial ecological impacts to the smoothhound shark stocks. This alternative would also likely have short and long-term neutral indirect ecological impacts on incidentally-caught species. Additionally, NMFS anticipates short term, direct minor beneficial socioeconomic impacts given the combined commercial quotas for the Atlantic and Gulf of Mexico regions would result in increased revenues compared to the commercial quota under Alternative B1, though lower than those anticipated under Alternatives B2 or B3. These impacts are not expected to be significant since the action is not expected to significantly increase overall fishing effort. As these regional quotas are below the recent annual landings for smoothhound sharks, they would likely result in similar levels of interactions with incidentally-caught species as are currently occurring in the smoothhound shark fisheries. For these reasons, this action is not expected to jeopardize the sustainability of smoothhound sharks.

8. To what degree are the effects on the quality of the human environment expected to be highly controversial?

The effects of this action on the human environment are not expected to be highly controversial. Based upon public comment on this action and public comment on other, smoothhound-related rules, interest in the implementation of the 2010 Shark Conservation Act is high. However, the term "controversial" does not refer to the mere existence of opposition to, or interest in a proposed action; rather "controversial" refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action. Such substantial dispute does not exist here. As such, controversy resulting from the legislation does not impact NMFS' finding of no significant impact.

9. Can the action be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

No. This action would not result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas because fishing effort would occur in open areas of the ocean. In addition, there is no park land, prime farmlands, wetlands, or wild and scenic rivers within the action area so there would be no impacts to these areas.

10. Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

No. Effects on the human environment would be similar to those effects analyzed in similar shark actions since 1999, some of which have been considered in the Final Environmental Impact Statement (FEIS) prepared for the 2006 Consolidated HMS FMP as well as the EISs for the Amendments to the 2006 Consolidated HMS FMP. None of the previous actions resulted in highly uncertain effects or unique or unknown risks. This action would implement a congressionally-mandated exception to allow smooth dogfish fins to be removed at sea and would establish smoothhound shark quotas based on the SEDAR 39 stock assessments as well as implement the requirements of the 2012 Shark BiOp as required under the ESA and the ALWTRP, all of which do not involve unique or unknown risks.

11. Is the action related to other actions with individually insignificant, but cumulatively significant impacts?

No. This action is not related to other actions with individually insignificant but cumulatively significant ecological, economic, or social impacts. The actions would consider how to implement the smooth dogfish-specific fin removal exception in the SCA, establishment of smoothhound shark quotas based on the SEDAR 39 stock assessments, and implementation of measures to comply with the 2012 Shark BiOp and ALWTRP. The management measures are not expected to significantly increase fishing effort, or cause significant ecological, economic, or social impacts. The alternatives analyzed in this EA would continue to prevent overfishing without affecting the sustainability of the smoothhound shark stock or the stock of any incidentally encountered non-target species.

12. Is the action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

No. The actions would occur in the inshore and offshore waters of the Atlantic ocean and would not occur in any areas listed or eligible for listing in the National Register of Historic Places, and would not cause loss or destruction of significant scientific, cultural, or historical resources because there are no significant scientific, cultural, or historic resources within the action area.

13. Can the action reasonably be expected to result in the introduction or spread of a non-indigenous species?

No. The action is not expected to result in any significant change in fishery patterns or behaviors previously analyzed in the 2006 Consolidated HMS FMP. Most vessels in the smoothhound shark fishery are small vessels with limited range and hold capacity and do not travel between ecologically different bodies of water or exchange ballast water. Thus, they do not contribute to the introduction or spread of non-indigenous species.

14. Is the action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

No. Amendment 9 is primarily in response to legislation that is directly applicable to the smooth dogfish fishery. Therefore, this action does not set a precedent or represent a formal policy direction. Since the SEDAR 39 stock assessments have been finalized, Alternative B4 considers implementing TACs and quotas based on these results. Under Alternative B4, NMFS would establish separate TACs and commercial quotas for smoothhound sharks in the Atlantic and Gulf of Mexico regions, based on the finalized results from the 2015 assessments for smoothhound sharks. As described in Chapters 1 and 3, NMFS completed benchmark stock assessments on smoothhound shark stocks in the Atlantic and Gulf of Mexico and found that both stocks are not overfished with no overfishing occurring. Therefore, since the smoothhound quotas are based on SEDAR 39, they would not establish a new precedent, but rather follow an existing one that does not have significant impacts.

15. Can the action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

No. The action would be consistent with the Magnuson-Stevens Act and the HMS regulations at 50 CFR § 635. The action would not be expected to violate any Federal, state, or local law or requirement imposed for the protection of the environment. The Coastal Zone Management Act (CZMA) requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of federally-approved state coastal management program (CMP). NMFS has determined that the preferred alternatives would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have federally approved CMPs. In August 12, 2014, NMFS provided all coastal states along the eastern seaboard and the Gulf of Mexico (21 states), including Puerto Rico and the U.S. Virgin Islands with a consistency determination under CZMA § 307(c) and NMFS published a proposed rule in the Federal Register on August 7, 2014 (79 FR 46217), addressing implementation of Amendment 9 to the 2006 Consolidated HMS FMP. Under 15 C.F.R. § 930.41, states and/or U.S. territories have 60 days to respond after the receipt of the consistency determination and supporting materials. States can request an extension of up to 15 days. If a response is not received within those time limits, NMFS can presume concurrence (15 C.F.R. § 930.41(a)). Nine states replied within the response time period that the proposed regulations were consistent, to the extent practicable, with the enforceable policies of their CMPs (Alabama, Delaware, Florida, Louisiana, Mississippi, New Hampshire, Rhode Island, South Carolina, and Virginia). Another ten states (Connecticut, Maine, Maryland, Massachusetts, New York, Puerto Rico, Texas, and the U.S. Virgin Islands) did not respond within the response time period, nor did they request an extension in the comment period; therefore, NMFS presumes their concurrence. The States of Georgia, New Jersey, and North Carolina replied that the proposed rule was not consistent with the enforceable policies of their respective state's CMPs. NMFS responded to the letters from the States of Georgia, New Jersey and North Carolina in Chapter 4 (Section 4.8). NMFS has determined that, based on the new preferred alternatives in the Final EA that were developed based on public comments, updated data, and data analyses, the measures in Amendment 9 are consistent to the

maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean.

16. Can the action reasonably be expected to result in cumulative adverse effects that could have substantial effect on the target species or non-target species?

No. The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. The action would not result in a significant increase in fishing effort in the Atlantic shark and smoothhound fisheries and therefore, would not have substantial effect on the target species. With regards to non-target species, NMFS anticipates that fishermen in the smoothhound and Atlantic shark fisheries would not have adverse impacts to ESA-listed species beyond those impacts analyzed in the 2012 Shark BiOp, which concluded that these fisheries would not jeopardize any ESA-listed species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the attached EA that was prepared to address the landing condition of smooth dogfish as required in the SCA, establishment of smoothhound shark quotas, implementation of the Terms and Conditions of the 2012 Shark BiOp, and modification of the VMS measures consistent with the ALWTRP requirements, it is hereby determined that this action would not significantly impact the quality of the human environment as described above and in the EA. In addition, all impacts to potentially affected areas, including national, regional, and local, have been addressed to reach the conclusion of no significant impact. Accordingly, preparation of an EIS for this action is not necessary.

SEP 2 2 2015

for Alan Risenhoover
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Date