

FINAL

**Amendment 1 to the Consolidated Atlantic Highly
Migratory Species Fishery Management Plan
Essential Fish Habitat**

Including:

A Final Environmental Impact Statement

June 2009



DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Highly Migratory Species Management Division
Office of Sustainable Fisheries
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Amendment 1 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan

- Action:** Review and update Atlantic Highly Migratory Species (HMS) Essential Fish Habitat (EFH), identify new Habitat Areas of Particular Concern (HAPCs), and analyze fishing and non-fishing impacts on EFH.
- Type of Statement:** Final Environmental Impact Statement
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- Abstract:** The National Marine Fisheries Service (NMFS) is amending the Consolidated Atlantic Highly Migratory Species Fishery Management Plan based on a review of Atlantic HMS EFH. The purpose of the amendment is to update existing HMS EFH, designate a HAPC for bluefin tuna in the Gulf of Mexico, and analyze fishing impacts on EFH consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other relevant Federal laws, including the National Environmental Policy Act (NEPA). The Magnuson-Stevens Act EFH regulations call for a comprehensive review of all new EFH information at least once every five years, and an update of the EFH designations accordingly. This amendment constitutes the results of the comprehensive review and update of EFH for all HMS that began with the Consolidated HMS FMP. New information, including information on the biology, distribution, habitat requirements, life history characteristics, migratory patterns, spawning, pupping, and nursery areas of Atlantic HMS were taken into consideration when updating EFH in this amendment

EXECUTIVE SUMMARY

In 1996, Congress reauthorized the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) which included a requirement to identify and describe Essential Fish Habitat (EFH) for all federally managed fisheries based on the guidelines established by the Secretary of Commerce (Secretary) under section 305(b)(1)(A), to minimize, to the extent practicable, adverse effects on such habitat caused by fishing, and to identify other actions to encourage the conservation and enhancement of EFH. EFH was defined in the Magnuson-Stevens Act as those habitats necessary for spawning, breeding, feeding, or growth to maturity. The EFH guidance published on January 17, 2002 (67 FR 2343), stated that EFH must be identified and described for each life stage of all species in the fishery management unit (FMU) as well as the physical, biological, and chemical characteristics of EFH and if known, how these characteristics influence the use of EFH by each species and life stage. Fishery Management Plans (FMPs) and FMP amendments must provide written descriptions of EFH and must also provide maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found (50 CFR 600.815(a)(1)(i)).

In 1999, EFH for Atlantic tunas, swordfish, and sharks was identified and described in the FMP for Tunas, Swordfish and Shark, and EFH for billfish was described in the 1999 Amendment 1 to the Billfish FMP. The FMP and amendment included text descriptions, tables, and maps for each species and life stage depicting the geographic locations of HMS EFH. Habitat Areas of Particular Concern (HAPCs) were identified and described for sandbar sharks off the Chesapeake Bay in Virginia and Maryland waters, Delaware Bay, Delaware, Great Bay, New Jersey, and the Outer Banks off North Carolina.

In 2003, NMFS issued Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, which, among other things, updated EFH for five shark species (blacktip, sandbar, finetooth, dusky, and nurse sharks) based on new information that was available at the time.

In 2004, NMFS began the comprehensive review of all HMS EFH for the Consolidated HMS FMP, which was released on July 14, 2006 (71 FR 40096). In that document, NMFS provided new information collected since the EFH boundaries were established in 1999. NMFS did not modify or update any of the existing EFH identifications, descriptions, or boundaries in the Consolidated HMS FMP or propose any new measures to minimize impacts from fishing gear. Rather, NMFS presented new EFH information and data collected since 1999, including an evaluation of fishing gear impacts. The purpose of the EFH review was to gather any new information and determine whether modifications to existing EFH descriptions and delineations were warranted.

On November 7, 2006 (71 FR 65088), NMFS published a Notice of Intent to prepare an Environmental Impact Statement (EIS) to examine alternatives for updating existing HMS EFH, consider additional HAPCs, analyze fishing impacts on EFH, and if necessary, identify ways to avoid or minimize, to the extent practicable, adverse fishing impacts on EFH consistent with the Magnuson-Stevens Act and other relevant federal laws. At that time, NMFS requested new information not previously considered in the Consolidated HMS FMP,

comments on potential HAPCs, and information regarding potential fishing and non-fishing impacts that may adversely affect EFH.

EPA published a notice of availability of the Draft EIS and Draft Amendment 1 on September 19, 2008 (73 FR 54397) with public comment period open through November 18, 2008. On September 19, 2008, NMFS published a notice of availability of Draft Amendment 1 (73 FR 54384). Draft Amendment 1 considered a range of alternatives for updating HMS EFH, establishing new HAPCs, and analyzing fishing and non-fishing impacts on EFH. NMFS held several public hearings, including presentations to each of the Fishery Management Councils (FMCs) and interstate Marine Fisheries Commissions, with the exception of the Caribbean FMC. On November 12, 2008, the comment period for Draft Amendment 1 was extended until December 12, 2008 (73 FR 66844).

In this document, NMFS is providing the culmination of a review that began with the Consolidated HMS FMP. NMFS is updating identification and descriptions for EFH and revising existing EFH boundaries for Atlantic HMS, and establishing a new HAPC for bluefin tuna in the Gulf of Mexico. Three alternatives, including a No Action alternative, were fully analyzed in the Draft Amendment for identifying EFH. Four alternatives, including the No Action alternative, were fully analyzed to consider designation of HAPCs. NMFS also analyzed fishing and non-fishing impacts on EFH and concluded that while BLL gear in general may have an effect on EFH, shark BLL gear as currently used in the Atlantic shark fishery was not having more than a minimal and temporary effect on EFH. Likewise, other HMS gears are not considered to have an impact on EFH. As a result, NMFS is not implementing any measures to regulate shark BLL gear or any other HMS gears to minimize fishing impacts in this Final Amendment.

In addition to fulfilling the EFH requirements of the Magnuson-Stevens Act, NMFS' consideration of EFH designations must also be consistent with other applicable laws including, but not limited to, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. Sections 4321 to 4370(f)) and the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR Sections 1500 to 1508). This document is an integrated document prepared in accordance with the Magnuson Stevens Act and NEPA. Chapters 2 and 4 present and analyze the range of alternatives considered to meet NMFS' purpose and need for action, and Chapter 3 describes the human environment affected by the proposed action. Other considerations specifically required under NEPA also are considered in Chapter 4. In accordance with MSA, Chapter 5 provides Atlantic HMS life history accounts and EFH descriptions and maps. Note that these chapters present EFH and HAPC in accordance with the DEIS preferred alternatives (EFH Alternative 3 and HAPC Alternative 2). An analysis of fishing and non-fishing impacts in Chapter 6 is provided as required under MSA, and also presents a cumulative impact analysis for purposes of Magnuson-Stevens Act and consideration of potential cumulative impacts in accordance with NEPA. Chapter 7 presents research and information needs for Atlantic HMS, and Chapter 8 identifies the preparers of this document and other agencies consulted during preparation.

NMFS conducted a thorough public scoping and hearing process, including release of a Pre-Draft of Amendment 1, and a Draft Amendment 1. The scoping and public hearing

process resulted in input on the range of alternatives and analyses considered in the Amendment and Final EIS. Appendix 1 summarizes the public comments received and how these comments were considered and addressed.

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LIST OF COMMONLY USED ABBREVIATIONS AND ACRONYMS

AP	Advisory Panel
ADU	Adult
ASMFC	Atlantic States Marine Fisheries Commission
BFT	Bluefin tuna
BLL	Bottom Longline
BMP	Best management practices
CBP	Customs and Border Protection
CFMC	Caribbean Fishery Management Council
CFL	Curved fork length
CFR	Code of Federal Regulations
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COASTSPAN	Cooperative Atlantic States Shark Pupping and Nursery Survey
COST	Continental offshore stratigraphic test
CPUE	Catch per unit effort
CSFOP	Commercial Shark Fishery Observer Program (run by University of Florida)
CSR	Center for Shark Research
CSTP	Cooperative Shark Tagging Program
CTC	Cooperative Tagging Center
CTS	Cooperative Tagging System
DEIS	Draft Environmental Impact Statement
EEZ	Exclusive Economic Zone
EIS	Environmental Impact statement
EFH	Essential fish habitat
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FL	Fork length
FMP	Fishery management plan

FMU	Fishery management unit
FR	Federal Register
GIS	Geographic Information System
GOM	Gulf of Mexico
GMFMC	Gulf of Mexico Fishery Management Council
GSMFC	Gulf States Marine Fisheries Commission
GULFSPAN	Gulf of Mexico Shark Pupping and Nursery Survey
HAB	Harmful algal bloom
HAPC	Habitat area of particular concern
HMS	Highly migratory species: Atlantic sharks, tunas, swordfish, and billfish
ICCAT	International Commission for the Conservation of Atlantic Tunas
IUCN	International Union for the Conservation of Nature
JUV	Juvenile
LJFL	Lower jaw fork length
LNG	Liquified natural gas
MAFMC	Mid-Atlantic Fishery Management Council
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MMPA	Marine Mammal Protection Act
MMS	Minerals Management Service
MPA	Marine protected area
MPRSA	Marine Protection Research and Sanctuaries Act
NCMC	National Coalition for Marine Conservation
NEFMC	New England Fishery Management Council
NEFSC	Northeast Fisheries Science Center
NEO	Neonate shark
NEPA	National Environmental Policy Act
NERO	Northeast Regional Office
NMFS	National Marine Fisheries Service
nmi	Nautical mile
NOAA	National Oceanographic and Atmospheric Administration
NPDES	National Pollution Discharge Elimination System
NREFHSC	Northeast Region Essential Fish Habitat Steering Committee
OCS	Outer Continental Shelf
OMB	Office of Management and Budget

OSDS	Onsite disposal system
OSF	Office of Sustainable Fisheries
PAT	Pop-up archival tag
PLL	Pelagic longline
POP	Pelagic observer program
PSAT	Pop-up satellite archival tag
PVC	Percent volume contour
SAFE Report	Stock Assessment and Fishery Evaluation Report
SAFMC	South Atlantic Fishery Management Council
SCRS	Standing Committee for Research and Statistics
SEFSC	Southeast Fisheries Science Center
SERO	Southeast Regional Office
SOP	Shark bottom longline observer program
TAG	Tag-A-Giant
TBF	The Billfish Foundation
TIRN	Turtle Island Restoration Network
TL	Total length
ww	Whole weight
YOY	Young of the year