

## **8.0 RELATED MANAGEMENT JURISDICTIONS, LAWS, AND POLICIES**

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Until recently, shark resources were of little concern to states or the Federal Government, although warnings were sounded from time to time. A commercial market was almost nonexistent and the demand for sharks by recreational fishermen did not overtax the available resources.

Even with the passage of the Magnuson Act, which gives exclusive jurisdiction for fishery management to 200 nautical miles offshore, Federal action was considered unwarranted, except for a foreign fishing PMP. The Magnuson Act does not alter the states' jurisdiction that extends three nautical miles offshore (except off Texas, the West Coast of Florida, and Puerto Rico, where it extends nine nautical miles). Yet, as the shark fishery intensified and the resource became vulnerable to overfishing, management became necessary under the Magnuson Act and other Federal laws.

### **8.1 FEDERAL LAWS, POLICIES, AND REGULATIONS**

The following Federal laws, policies, and regulations may directly or indirectly influence the management of sharks. However, there are no known laws or policies that will constrain any of the measures in the FMP.

#### MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 AS AMENDED: 16 U.S.C. 1801-1882

The Magnuson Act mandates the preparation of fishery management plans for important fishery resources within the EEZ. All FMPs and their respective management measures must be based on seven national standards as prescribed in the Magnuson Act. In 1990, an amendment mandated the authority to the Secretary over highly migratory species, including sharks, Atlantic billfishes and swordfish, and tunas and tuna-like species. NMFS has concluded preliminarily that all sharks are highly migratory and accordingly will be under Secretarial jurisdiction.

#### ATLANTIC TUNAS CONVENTION ACT (ATCA) AS AMENDED: 16 U.S.C. 971 et seq.

The ATCA provides for the conservation and management of tuna and tuna-like species for U.S. citizens under the authority of the International Convention for the Conservation of Atlantic Tunas (ICCAT).

#### MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972 (MPRSA), TITLE III AS AMENDED: 16 U.S.C. 1431-1445

This Act provides for establishment of marine sanctuaries and may

include regulation of the fishery resource within them. As of November 30, 1992, the following sanctuaries in the Atlantic Ocean or gulf of Mexico were established: (1) Gray's Reef National Marine Sanctuary; (2) Flower Garden Bank National Marine Sanctuary; (3) Florida Keys National Marine Sanctuary; and (4) Monitor National Marine Sanctuary. The Looe Key and Key Largo Marine Sanctuaries were recently combined with the Florida Keys National Marine Sanctuary.

CLEAN WATER ACT (CWA) AS AMENDED: 33 U.S.C. 1251 et seq.

The CWA requires that a National Pollutant Discharge Elimination System (NPDES) permit be obtained before any pollutant is discharged from a point source into waters of the United States, including waters of the contiguous zone of the adjoining ocean. The disposal of drilling effluent and other drilling platform wastes is among the activities that require an EPA NPDES permit. Issuance of a permit is based primarily on the effluent guidelines found in 40 CFR Part 435. However, additional conditions can be imposed on permit issuance on a case basis to protect valuable resources in the discharge area.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA), TITLE 1 AS AMENDED: 33 U.S.C.1401-1421; 1441-1445

The transportation of materials for ocean dumping requires a permit. EPA issues the permits, except for transportation of dredged materials that is issued by the Corps of Engineers. Criteria for issuing such permits include consideration of effects of dumping on the marine environment, ecological systems, and fisheries resources.

COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED (CZMA): 16 U.S.C. 1451-1464

Under the CZMA states are encouraged, with Federal funding, to develop coastal zone management programs that establish unified policies, criteria, and standards for dealing with land and water use in their coastal zone. Coastal states also can control activities in estuarine areas to protect particularly sensitive resources.

ENDANGERED SPECIES ACT OF 1973, AS AMENDED: 16 U.S.C. 1531-1543

The Endangered Species Act provides for the listing of threatened or endangered plant and animal species. Once listed as a threatened or endangered species, taking (including harassment) is prohibited. The process ensures that projects authorized, funded, or carried out by Federal agencies do not jeopardize the species existence or result in habitat destruction or modification critical to species existence.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA), AS AMENDED: 42 U.S.C. 4321-4370a

NEPA requires that all Federal agencies recognize and give appropriate consideration to environmental amenities and values in their decision-making. NEPA requires that Federal agencies prepare an Environmental Impact Statement (EIS) before undertaking major actions that might significantly affect the quality of the human environment. Alternatives to the proposed action must be carefully assessed.

FISH AND WILDLIFE COORDINATION ACT, AS AMENDED: 16 U.S.C. 661-666c

Under the Fish and Wildlife Coordination Act, the FWS and the NMFS review and comment on aspects of proposals for work and activities sanctioned, permitted, assisted, or conducted by Federal agencies that take place in or affect navigable waters. The review focuses on potential damage to fish and wildlife and their habitat, particularly in near shore waters, and may, therefore, serve to provide protection to fishery resources from Federal activities. Federal agencies must consider the recommendations of the two agencies.

FISH RESTORATION AND MANAGEMENT PROJECTS ACT, AS AMENDED: 16 U.S.C. 777-7771

Under this Act, the Department of Interior apportions funds to state fish and game agencies for fish restoration and management projects. Funds for protection of threatened fish communities located within state waters, including marine areas, could be made available under the Act.

NATIONAL PARK SERVICE ORGANIC ACT, AS AMENDED: 16 U.S.C. 1-4,22,43

The National Park Service under the Department of Interior may regulate fishing activities within park boundaries. There are many parks, monuments, and seashores along the Atlantic Ocean.

LACEY ACT, AS AMENDED: 16 U.S.C. 1540, 3371-3378

The Act prohibits import, export, and interstate transport of illegally taken fish or wildlife. This Act strengthens and improves enforcement of Federal fish and wildlife laws and provides Federal assistance in enforcement of state and foreign laws.

MARINE MAMMAL PROTECTION ACT OF 1972, AS AMENDED 16 U.S.C. 1361-1407

This Act makes it unlawful (except to some native Americans) to

kill, capture, or harass any marine mammal or attempt to do so; prohibits the importation of pregnant, nursing, or illegally taken marine mammals; and prohibits whaling within U.S. jurisdiction.

## **8.2 MANAGEMENT INSTITUTIONS**

### **8.2.1 FEDERAL MANAGEMENT INSTITUTIONS**

#### REGIONAL FISHERY MANAGEMENT COUNCILS

Management in the EEZ is based on FMPs developed by eight Regional Fishery Management Councils. Each Council prepares and amends plans for the fisheries in need of management within its geographical area. Plans are submitted to the Secretary of Commerce through NMFS and NOAA for approval and implementation through Federal regulations.

The Councils' guidelines are standards that require, to the extent practicable, a fish stock be managed as a unit throughout its range and a stock be protected from overfishing while continuing to achieve Optimum Yield. As of October 23, 1992, there were 24 FMPs and PMPs in effect in the Atlantic Ocean, Gulf of Mexico and Caribbean Sea (Table 8.1). While some involve a single species, others involve many species, such as the Snapper-Grouper FMP (33 species) and the Caribbean Shallow Water Reef Fish FMP (64 species). The Shark FMP will probably impact all or most of the FMPs, either directly or indirectly, through the predator-prey relationship. As apex predators, sharks probably prey on most species involved in these plans. However, the most direct effect will be from directed fisheries using longlines and drift nets, such as the swordfish and tuna fisheries, and the shrimp trawl fishery that take sharks as bycatch. A possible reduction in swordfish landings, and the mandatory use of TEDs in the shrimp fishery will reduce shark bycatch. Besides mortality inflicted by the trawl fishery, juvenile sharks are eaten by larger species.

#### NATIONAL MARINE FISHERIES SERVICE (NMFS), NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

The Secretary, acting through NMFS, has the authority to approve or disapprove all FMPs prepared by the Councils pursuant to the Magnuson Act. The NMFS has issued regulations and guidelines for the development of FMPs and the operation of the Councils. Where a Council fails to develop a plan, or correct an unacceptable plan, the Secretary may do so. The five Councils originally having jurisdiction over shark resources requested the Secretary to develop the FMP because of apparent overfishing and finning. Another consideration was the amount of time it would take the combined Councils to develop a FMP.

In 1990, Congress transferred authority to manage highly migratory species of sharks, tunas and tuna-like species, Atlantic billfishes and swordfish to NMFS. NMFS will manage highly migratory sharks under ATCA and Magnuson Acts.

If an FMP does not exist, Section 204(b) of the Magnuson Act authorizes the Secretary to prepare PMPs for any fishery for which a foreign nation has applied to fish. The Secretary has prepared two PMPs (Table 8.1) in the Atlantic Ocean.

The NMFS also collects data and statistics on fisheries and develops stock assessments necessary to manage fisheries. The NMFS enforces regulations promulgated under an FMP, and NOAA processes civil penalties for violations.

#### OFFICE OF COASTAL RESOURCE MANAGEMENT (OCRM), NOAA

The OCRM asserts authority over fisheries through National Marine Sanctuaries, pursuant to Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA). By setting standards for approving and funding state coastal zone management programs, OCRM may further influence fishery management.

#### NATIONAL PARK SERVICE (NPS), DEPARTMENT OF INTERIOR

The NPS manages fish through the establishment of coastal and near shore national parks and national monuments. Everglades National Park is an example of an area managed by the NPS.

#### FISH AND WILDLIFE SERVICE (FWS), DEPARTMENT OF INTERIOR

The ability of the FWS to affect fish management is based primarily on the Endangered Species Act and the Fish and Wildlife Coordination Act. Under the Fish and Wildlife Coordination Act, the FWS reviews and comments on proposals for work and activities in or affecting navigable waters that are sanctioned, permitted, assisted, or conducted by Federal agencies. The review focuses mainly on potential damage to fish and wildlife, and to their habitats.

#### ENVIRONMENTAL PROTECTION AGENCY (EPA)

The EPA provides protection to fish communities by granting National Pollutant Discharge Elimination System (NPDES) permits, or approving state programs to issue such permits, for pollutant discharges into ocean waters, and the conditioning of those permits to protect valuable resources. The EPA also has review and approval authority over the Corps of Engineers' Section 404 permits.

**Table 8.1**

**Fishery Management Plans**

<u>Name of FMP/PMP</u>	<u>Lead Council or Office</u>
1. Atlantic Sea Scallops FMP	New England Council
2. American Lobster FMP	New England Council
3. Northeast Multispecies FMP	New England Council
4. Atlantic Salmon FMP	New England Council
5. Atlantic Mackerel, Squid and Butterfish FMP	Mid-Atlantic Council
6. Atlantic Surf Clam and Ocean Quahog Fisheries FMP	Mid-Atlantic Council
7. Summer Flounder FMP	Mid-Atlantic Council
8. Atlantic Bluefish	Mid-Atlantic Council
9. Hake Fisheries of the NW Atlantic PMP	Secretary of Commerce
10. Foreign Trawl Fisheries of the NW Atlantic PMP	Secretary of Commerce
11. Atlantic Billfishes FMP <sup>1</sup>	Secretary of Commerce
12. Gulf of Mexico Spiny Lobster Fishery FMP	Gulf of Mexico & South Atlantic Councils
13. Gulf of Mexico Shrimp FMP	Gulf of Mexico Council
14. Gulf of Mexico Stone Crab FMP	Gulf of Mexico Council
15. Snapper-Grouper FMP	South Atlantic Council
16. Gulf & South Atlantic Corals FMP	Gulf of Mexico & South Atlantic Councils
17. Reef Fish FMP	Gulf of Mexico Council
18. Coastal Migratory Pelagic Resources FMP	Gulf of Mexico & South Atlantic Councils
19. Atlantic Swordfish FMP	Secretary of Commerce
20. Red Drum FMP	Gulf of Mexico Council
21. Caribbean Shallow Water Reef Fish FMP	Caribbean Council
22. Caribbean Spiny Lobster FMP	Caribbean Council
23. Red Drum FMP	South Atlantic Council
24. Atlantic Bluefin Tuna <sup>2</sup>	Secretary of Commerce

<sup>1</sup> This FMP was originally the Atlantic Billfishes and Shark PMP. The Billfishes FMP replaced the billfish aspects of the PMP. The Shark FMP adopts the shark-related measures of the PMP.

<sup>2</sup> This fishery is managed under the Atlantic Tuna Conventions Act and the Magnuson Act.

## CORPS OF ENGINEERS (COE), DEPARTMENT OF THE ARMY

The COE jurisdiction over the disposal of dredged material, pursuant to both the Clean Water Act and the MPRSA, is to be exercised in a manner protective of fishery resources. Under the Rivers and Harbor Act, proposals to dispose of materials during the construction of artificial reefs are assessed to assure that materials do not physically alter the environment in a manner that endangers navigation.

## U. S. COAST GUARD (USCG), DEPARTMENT OF TRANSPORTATION

The USCG shares responsibility for enforcement of the NOAA - administered Acts with NMFS. The USCG provides most of the air and sea patrols for enforcement of regulations.

### **8.2.2 STATE MANAGEMENT INSTITUTIONS**

There are 18 states bordering the Atlantic Ocean and Gulf of Mexico. In addition, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands border the Caribbean Sea. Each of these entities has management authority over marine resources in state waters -- including shark resources.

Except for Florida, North Carolina, Texas, and Virginia, there are no specific regulations on sharks in the state waters. The first state, Florida, established bag and possession limits, catch limitations, permit requirements, commercial seasons, and protected species status for basking and whale sharks. The purpose of these regulations are to protect and conserve Florida's shark resources and to assure the continuing health and abundance of these species. The further intent is to provide special protection to basking and whale sharks since these species are deemed particularly vulnerable to overfishing. Specific regulations: (1) established daily bag limit of one shark per person and a maximum possession limit of two sharks harvested of two sharks harvested from state waters aboard a vessel for both recreational and commercial vessels; (2) required that commercial fishermen have a federal permit to fish in state waters; (3) establishes a harvest season for sharks as July 1- June 30 each year; (4) prohibit the commercial harvest in state waters whenever federal waters close to the harvest of large coastal sharks. The sale of shark fins and carcasses harvested from state waters is prohibited beginning 31 days after state waters closure; (5) prohibit the finning of sharks but allow the removal of fins at sea provided the number of fins does not exceed 5 per carcass landed; (6) require the sharks not kept be released in a manner that will ensure maximum probability of survival; (7) prohibit sharks caught by recreational fishermen from being transferred at sea or sold; and (8) prohibits all harvest, landing, and sale of basking and whale sharks and declares them as "protected species."

The second state, North Carolina, established catch limitations on the taking, landing, and dealer reporting of sharks. These regulations are designed to restrict the practice of finning sharks. Specific regulations included prohibitions against: (1) the possession of fins or dried fins on board a vessel or the landing of fins without the carcasses or dried fins; (2) the possession of fins constituting more than 7 percent by weight of any catch of shark; and (3) a licensed dealer to fail to keep and available to the state records of all sharks landed at their facility.

The third state, Texas established a daily five-sharks per person bag and possession limit.

The fourth state, Virginia, established gear restrictions, a bag limit, and catch limitations on the taking and landing of sharks. These regulations are designed to ensure the conservation of shark resources by preventing overfishing by commercial and recreational fisheries and to control the practice of finning. Specific regulations included: (1) a daily catch and possession limit of one shark per person for recreational fishermen; (2) a 7,500-pound per day commercial trip limit; (3) a prohibition on the landing of fins alone or possession and landing of dried fins; (4) a prohibition on the possess or land shark fins that are more than 10 percent by weight of any catch of shark.

Some states have regulations in effect that impact sharks. For example, Florida prohibits taking food fish within state waters with a purse seine, purse gillnet, pound net, or other type of net using a purse drawn through the lead line. For brevity, a description of other laws, regulations, and policies that might impact shark resources is not included in this FMP. No known state law, regulation, or policy, other than in waters managed by Florida, North Carolina, Texas, and Virginia, is expected to be impacted by the shark FMP management measures. However, states are encouraged to adopt regulations conforming to the management measures contained in this FMP.

### **8.3 INTERNATIONAL TREATIES AND AGREEMENTS**

Foreign fishing is prohibited within the EEZ and for anadromous species or continental shelf fishery resources beyond the EEZ unless: (1) it is authorized by an international fishery agreement that existed before passage of the Magnuson Act and is still in force and effect, or (2) it is authorized by a Governing International Fishery Agreement (GIFA) issued according to the Magnuson Act.

GIFAs resulting from the Magnuson Act are bilateral agreements in which participants agree to abide by the fishing laws and regulations of the other nation when fishing their waters. A GIFA is required before a nation can apply for fishing privileges

in a particular fishery. While several nations presently have GIFAs with the United States, none involve sharks. The original PMP on sharks was prepared to accommodate a foreign harvest up to 1,150 mt in the Atlantic; however, only a small catch of sharks occurred. Presently, the only foreign fisheries in U.S. Atlantic waters are a Japanese tuna fishery and a fishery for Atlantic mackerel in the Northwest Atlantic. Sharks, however, are prohibited species and cannot be retained by foreign vessels. Foreign fishing is not expected to expand in U.S. Atlantic waters in the future.

Mexico, Bahamas, Canada, and Cuba, like the United States, have economic or conservation zones and exclude foreign fishermen from fishing local stocks.