UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

CLARIFICATION OF THE PROPOSED RULE REGARDING LANDING SHARKS WITH THE FINS ATTACHED AND THE SHARK FINNING PROHIBITION ACT

During the Highly Migratory Species (HMS) Advisory Panel (AP) meeting on October 2 through October 4, 2007, AP members asked a number of questions regarding the proposed management measures in draft Amendment 2 to the Consolidated HMS Fishery Management Plan (FMP) that would require all sharks to be landed with their fins still attached. Specifically, AP members asked how the requirement is related to the Shark Finning Prohibition Act of 2000 (Public Law 105-557)(Act), both in terms of the statutory language and implementing regulations. In addition, AP members asked what the enforcement response would be if the weight of sharks landed with their fins attached exceeded the 5 percent fin-to-carcass ratio specified in the Act.

On December 21, 2000, the Act was signed into law. The Act amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at Section 307(1)(P), making it unlawful for any person "(i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea; (ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or (iii) to land any such fin without the corresponding carcass." The Act established a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of the aforementioned subsection if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board. The Act also required the National Marine Fisheries Service (NMFS) to issue regulations to implement the Act.

On February 11, 2002 (67 FR 6194), NMFS published a final rule that established regulations at § 600, Subpart N, which, among other things, prohibit any person from engaging or attempting to engage in shark finning; possessing shark fins without the corresponding carcasses while on board a U.S. fishing vessel; and landing shark fins without the corresponding carcasses. The final rule and regulation at § 600.1203(b)(1) reflected the statutory provision that it is a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of the regulations if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.
On July 27, 2007, NMFS published a proposed rule (72 FR 41392) that would require all sharks be landed with their fins attached. Fishermen would be allowed to leave the fins attached by just a small piece of skin so that sharks could be packed at sea efficiently. Fins could be fully removed from the shark at the dock without having to thaw the shark.

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The AP members asked many hypothetical questions such as what would happen if a fisherman lands a shark with its fins attached but the fin-to-carcass weight ratio of 5 percent is exceeded. AP members stated that in those instances, shark fishermen may be conducting illegal activities even if they land sharks with the fins attached.

To clarify, NMFS is considering changing the proposed requirement to state that if sharks are landed with their fins naturally attached, then the presumption in the Act that finning has occurred if the 5 percent fin-to-carcass ratio is exceeded is inapplicable. To help fishermen document that sharks were landed with their fins attached, NMFS is considering providing a place on weigh-out slips where dealers may indicate that sharks were landed with their fins naturally attached. Comments on these considerations are welcome.

NMFS cannot answer questions regarding hypothetical enforcement scenarios (*e.g.*, "What if I did this?" or "What if you saw that?") because decisions about what, if any, action to take are made on a case by case basis based on the totality of the circumstances. In addition, when such hypothetical questions are related to ongoing enforcement cases, NMFS cannot talk about or discuss the case.

This notice is a courtesy to the HMS fishery participants to help keep you informed about your fishery. Official notice of Federal fishing actions is made through filing such notice with the Office of Federal Register. For further information on this issue or other issues regarding Amendment 2, contact Mike Clark or Karyl Brewster-Geisz at 301-713-2347 or Jackie Wilson at 240-338-3936. Copies of the draft Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis and proposed rule for Amendment 2 to the Consolidated HMS FMP are available upon request from the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910. This information is also posted on the HMS website at: http://www.nmfs.noaa.gov/sfa/hms/ and on the e-rulemaking website at www.regulations.gov.

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Date