

Comment 3: Dusky sharks are of particular concern due to incidental mortality. This mortality will continue as long as there is a directed shark fishery that is unable to selectively fish certain species. NMFS should conduct a thorough evaluation and reporting of the incidental mortalities of prohibited and overfished species occurring in the fishery.

Response: NMFS believes that many fishermen target certain species of sharks. However, bycatch of other species is inevitable. The latest observer report for the bottom longline fishery indicates that dusky sharks represent approximately one percent of the total shark catch. In Amendment 1 to the HMS FMP, NMFS is considering options to reduce bycatch in the shark fishery.

Comment 4: NMFS should reconsider the prohibition of dusky sharks, and several other coastal shark species such as the Atlantic angel, bignose, Caribbean reef, Caribbean sharpnose, and night sharks. NMFS should set a bycatch quota of 100,000 pounds dw for bignose sharks.

Response: As noted above, according to the latest observer report for the bottom longline fishery, dusky sharks comprise approximately one percent of the total shark catch. The other species listed are either not observed caught or comprise less than one percent of total shark catch in aggregate. NMFS may consider several options to address prohibited species and reduce bycatch as part of Amendment 1 to the HMS FMP.

Comment 5: Dusky, night, and sand tiger sharks are so depleted that they are considered candidates for listing under the Endangered Species Act (ESA). NMFS should assess and reduce unintentional bycatch of these species.

Response: NMFS will be considering various options in Amendment 1 to the HMS FMP to reduce bycatch, as required by the Magnuson-Stevens Act. NMFS recently completed a status review under ESA for dusky sharks and hopes to complete status reviews for night and sand tiger sharks in the near future. The results of the dusky shark status review indicated that recent years have shown an increase in abundance but that catch rates are still much lower than catch rates in the late seventies and early eighties.

Comment 6: NMFS should consider slot sizes to protect large females.

Response: NMFS is examining several options to reduce bycatch as part of Amendment 1 to the HMS FMP. NMFS may consider this option at that time.

General

Comment 1: State regulations should mirror federal regulations, particularly with regard to closures.

Response: NMFS agrees and will work with states during and after the amendment process in order to reach this goal.

Comment 2: The emergency rule sidestepped the process of giving the public an opportunity to comment on management decisions.

Response: NMFS agrees that the public should be given every opportunity to comment on management decisions. The current emergency rule was necessary because, once the December 2001 emergency rule expired, certain measures from the 1999 HMS FMP, which were no longer based on the best available science, would have gone into place unless regulations were promulgated to replace them. While prior notice and comment were impracticable in this case, NMFS held four public hearings on the emergency rule, received comments from the HMS Advisory Panel members at a February 2003 meeting, and gathered significant public input which was considered in the decision to extend the emergency rule.

Comment 3: NMFS should not have proceeded with new quotas before peer reviews were complete. The peer reviews did not endorse raising the LCS quota.

Response: The peer review process, per the settlement agreement with the commercial industry, was not complete until mid-December 2002. If NMFS had waited for the peer reviews before moving forward with a rule, the commercial regulations in the HMS FMP would have gone into place, contrary to National Standard 2 of the Magnuson-Stevens Act. Those regulations in the HMS FMP could have caused substantial harm to the fishing industry. NMFS did consider the peer reviews of the 2002 LCS stock assessment once they were available and found that they were generally positive and supported the 2002 LCS stock assessment. Additionally, the peer reviews themselves were not intended to endorse quota recommendations, but rather to provide an unbiased review of methodology and appropriateness of stock assessment models and interpretation of those models. All peer reviews concluded that the models and methodology used were appropriate. Had the peer reviews been negative or concluded that models were inappropriate, NMFS would have acted immediately to revise the emergency rule.

Comment 4: The Advisory Panel should have been consulted on the emergency rule.

Response: NMFS makes every effort to consult the Advisory Panel prior to issuing FMP amendments or major and/or controversial rules. As described above, the Advisory Panel did provide comments during the comment period on the emergency rule. Additionally, NMFS is in the process of developing Amendment 1 to the HMS FMP that will take into consideration the comments and opinions of the Advisory Panel, stakeholders, conservationists and the public.

Comment 5: NMFS should report which states are allowing shark landings after federal closures and the magnitude of these landings for each state.

Response: NMFS provided a summary of this information at the Advisory Panel meeting and plans to make it available in Amendment 1 to the HMS FMP.

Comment 6: NMFS should implement minimum size limits for recreational fishermen.

Response: NMFS currently has a minimum size limit for recreational shark fishermen. Except for Atlantic sharpnose, recreational fishermen are authorized to keep one shark per vessel per trip larger than 4.5 feet fork length. There is no minimum size for Atlantic sharpnose sharks. NMFS may consider other minimum size requirements for recreational fishermen in Amendment 1 to the HMS FMP.

Comment 7: Based on the improved stock picture provided by the 2002 SCS assessment, NMFS should consider increasing the recreational bag and size limits for SCS. Recreational fishermen have been unfairly penalized by LCS and SCS assessments in the past.

Response: NMFS is examining several options for recreational fishing as part of Amendment 1 to the HMS FMP. NMFS may consider this option at that time.

Comment 8: Vessel upgrading restrictions are a safety concern. The current management regime forces smaller boats to fish further offshore in adverse conditions.

Response: Vessel upgrading restrictions were implemented to control excess fishing capacity in the shark fishery. NMFS believes that announcing the duration of the shark fishing season ahead of time should allow fishermen to avoid fishing under adverse conditions. NMFS is considering an amendment to some of the limited access regulations and will consider this issue in that process.

Comment 9: NMFS should leave a quota for incidental catch.