

commercial bottom longline fishing. Based on public comments that the catch of dusky sharks has declined in recent years, and that the time/area closure would have severe economic impacts on commercial fishing entities in those states, NMFS re-examined the data for the time/area closure, specifically by looking at a shorter time period of catches from 2001–2002. Based on an analysis of the data, NMFS revised the time/area closure to close the portion of the original time/area closure which had the highest catch rate of dusky and juvenile sandbar sharks. NMFS believes that the revised time/area closure will reduce the catch of dusky and juvenile sandbar sharks, while also mitigating the economic impact of the closure by allowing vessels to continue fishing in waters north and south of the time/area closure off North Carolina from January through July. This should prevent vessels from having to fish in Florida, and will allow the quota to be harvested over a larger area.

Comment 21: NMFS received several comments regarding how the proposed boundaries were established. Comments included: NMFS needs to improve the transparency in how the time/area boundaries were established and include maps of all observed trips and research cruises, not just observed takes of sandbar and dusky sharks.

Response: The final Amendment provides a more thorough explanation and justification for the boundaries established for the revised time/area closure. The seaward boundary of the revised area follows the 60 to 80 fathom contour, and was selected to include all observed catches of dusky sharks and sandbar sharks. No dusky or sandbar sharks were observed caught east of approximately 50 fathoms. Since large numbers of sharks appear to be caught in a line along the 50 fathom contour, a buffer of approximately two miles was included thus extending the boundary to 60 to 80 fathoms. The northern boundary was selected to include the HAPC for sandbar sharks off Cape Hatteras, and because areas north of Cape Hatteras have historically had low catches of both dusky and sandbar sharks. The southern boundary was selected based on low numbers of dusky sharks that have been observed caught there in recent years, and because the proportion of juvenile and neonate sandbar sharks is much lower there than in the time/area closure. In summary, the revised time/area closure will reduce the catch of dusky sharks by 79 percent versus 85 percent under the original proposal, and will reduce the catch of sandbar sharks by 51 percent

versus 66 percent under the original proposal. Detailed maps of the revised time/area closure, all observed trips, and research cruises are provided in the final Amendment.

Comment 22: Why is Virginia closed? The marginal benefit of extending the closed area into Virginia does not appear as great as it would be off of Cape Canaveral, Florida. There appears to be another area of high sandbar and dusky abundance off central Atlantic Florida; NMFS should have proposed a similar closed area in that region.

Response: Based on public comments received, NMFS re-examined the data and concluded that the waters off Virginia did not warrant being closed at this time. The time/area closure boundary has been revised to include only waters south of the HAPC off Cape Hatteras. For the area near Cape Canaveral, Florida, NMFS found that the area accounted for only 8 percent of the observed dusky shark catch from 1994–2002, and less than 14 percent of sandbar sharks, of which a very high proportion were adults. Given the low percentage of catch of prohibited dusky sharks from this area, and the high proportion of adult sandbar sharks, NMFS did not feel it was appropriate to close the area at this time.

Comment 23: NMFS must adopt the alternative that would establish a time/area closure for smalltooth sawfish critical habitat. The smalltooth sawfish is the first marine fish to be listed under ESA, and although critical habitat has not yet been designated, NMFS should act immediately.

Response: NMFS does not have the basis for implementing a time/area closure for smalltooth sawfish at this time. Without information about smalltooth sawfish critical habitat, NMFS does not have sufficient information to identify an appropriate time/area closure. Once a recovery plan is developed and critical habitat identified, NMFS will reconsider a closure to protect smalltooth sawfish.

Comment 24: The depths on the maps depicting the time/area closure are incorrect.

Response: NMFS has provided updated maps showing the correct bathymetry in the final Amendment.

Comment 25: NMFS needs to compare the number of dusky shark takes in the commercial and recreational fisheries. MRFSS data are not credible.

Response: NMFS has provided estimates of the number of dusky sharks caught in the commercial and recreational fisheries in the final Amendment. The estimates show that the number of dusky sharks caught in the commercial fishery was

considerably higher (18,867) than in the recreational fishery (5,570) in 1999, but that the recreational fishery may have caught more dusky sharks in 2000–2001 (8,100 vs. 6,063). MRFSS data are not the only data used in calculating recreational catch estimates. Other data are obtained from the NMFS Headboat Survey (HBOAT) and the Texas Parks and Wildlife Recreational Fishing Survey (TXPWD).

Comment 26: The proposed time/area closure splits South Carolina. How will enforcement enforce the regulation?

Response: The revised time area closure is located entirely off the coast of North Carolina and enforcement should no longer be an issue off South Carolina. Other time/area closures have been implemented that did not fully encompass a state's waters, and NMFS utilized VMS to ensure the effectiveness and enforcement of the closures. NMFS intends to implement VMS for the current time/area closure as well. VMS will have the added benefit of allowing vessels to transit the closed area.

5. Other Management Measures

A. Deepwater and Other Sharks

Comment 1: NMFS received a range of comments regarding the alternatives for the deepwater and other species group. The comments include: Deepwater sharks should be protected. Because there is little practical effect of leaving or removing them from the management unit, deepwater and other sharks should be left in the management unit. Leaving the deepwater and other sharks in the management unit could decrease the time needed to act, if necessary. Deepwater and other sharks should remain in the management unit because if any fishery should develop, it could take years to create an FMP following section 305(a) of the Magnuson-Stevens Act in terms of gear evaluation and notification of entry. We support the preferred alternative. NMFS should continue to collect data on these species until such a time that they can be assessed or until a potential fishery develops. If needed, NMFS should move to put them back in the management unit to protect them.

Response: Maintaining data collection only on the deepwater and other sharks is sufficient because there are not significant landings of the species in this group and no known fishermen target these species. If directed fisheries were to start, NMFS would evaluate data available at that time to see if an FMP amendment or other regulatory measures would be warranted.

Comment 2: Fishing for deepwater and other sharks should be prohibited