



North Carolina Department of Environment and Natural Resources

Michael F. Easley, Governor  
William G. Ross Jr., Secretary

Division of Marine Fisheries

Preston P. Pate Jr., Director

February 22, 2005

William T. Hogarth, Ph.D.  
Assistant Administrator  
National Marine Fisheries Service  
1315 East West Highway  
Silver Spring, Maryland 20910

Dear Dr. Hogarth:

Please find attached to this letter our formal petition to amend the extent of the current time/area closure for Atlantic sharks off North Carolina.

The current rule which went into effect on January 1, 2005, closed the EEZ off North Carolina from Oregon Inlet to Cape Fear to directed shark fishing from January through July. As you are aware, North Carolina was the only east coast state to act on your request in 1996 to close state waters to directed shark fishing to protect neonates and juveniles. North Carolina fishermen were also very active in voluntary observer programs administered by the Gulf and South Atlantic Foundation. As a result, the waters off North Carolina, and only North Carolina, are closed for seven months. Available data suggest that juvenile sharks occur nearer shore. The offshore extent of the closed area, particularly during the first trimester, is unwarranted and severely restricts access to the shark quota off North Carolina. The fair and equitable resolution to this problem is to adjust the current closed area to only include waters out to 15 fathoms when the federal seasons are open so that North Carolina fishermen have access to the larger sharks in deeper waters from 15 to 55 fathoms and minimize discards of juvenile and protected sharks to a reasonable extent.

We believe that you will find our petition in order. If you or your staff require any further information or clarification please do not hesitate to contact me or Louis Daniel of my staff. Thank you for your attention to this request.

Sincerely,

Preston P. Pate, Jr., Director  
North Carolina Division of Marine Fisheries

cc:    The Honorable Charles Albertson      The Honorable William Wainwright  
      The Honorable Bonner Stiller       William Ross, Secretary, DENR  
      Jimmy Johnson                       Bob Mahood  
      Louis Daniel                         Willie Etheridge  
      Rom Whitaker                         Dewey Hemilright  
      Chris Rogers

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**PETITION TO AMEND THE TIME/AREA CLOSURE FOR ATLANTIC  
SHARKS OFF NORTH CAROLINA**  
**DECEMBER 16, 2004**

**(A) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner wants to have repealed or modified.**

The North Carolina Division of Marine Fisheries (DMF) hereby petitions the National Marine Fisheries Service (NMFS), pursuant to 5 U.S.C. 553(e), to modify the current time/area closure off North Carolina that extends out to 60 fathoms to a modified area that extends out to only 15 fathoms. The closure that extends from Oregon Inlet to Cape Fear encompasses the primary shark fishing grounds off North Carolina and disproportionately impacts our state. As a remedy, North Carolina requests that NMFS begin rulemaking procedures that modify the existing time/area closure to an offshore extent of 15 fathoms when federal quota is available and the season is open to permit North Carolina fishermen access to the entirety of the coastwide shark quota and still continue to protect juvenile sharks. This request will require a slight modification to 50 CFR 635.2 (Federal Register volume 68, number 247) in the definition section for the Mid-Atlantic shark closed area.

North Carolina has been advised by the agency that the proposed change may be handled through framework or an amendment, depending upon the scope of the change. North Carolina requests that NMFS select the most expeditious method possible.

**(B) Explain the interest of the petitioner in the action requested.**

North Carolina has been a very active partner with NOAA Fisheries to manage the coastwide shark fishery. At the request of NMFS, and to protect juvenile sharks, North Carolina closed state waters to directed harvest in 1997. In addition, North Carolina cooperated fully with federal observers to characterize the fishery and identify bycatch concerns. In taking these actions, North Carolina operated in good faith that the NMFS would treat North Carolina fairly under their federal plan for sharks in the Exclusive Economic Zone (EEZ).

The current time/area closure only off North Carolina to shark fishing from January through July is unnecessary based on available data and in violation of at least three National Standards (# 4, 8, and 10).

**(C) Indicate the size of the population affected.**

The proposed amendment would directly affect all current and future participants fishing under the large and small coastal shark quotas and holders of dealer permits off and in North Carolina. Indirectly and from an ecosystems approach, the time/area closure will have significant and negative economic benefits to South Atlantic fishing communities as many of these fishermen will be forced into other fisheries that are available during the closure.

**(D) Explain the importance of the regulation to promoting established NOAA priorities and policies.**

North Carolina believes that operating under the National Standards set forth in the Magnuson-Steven Act is a NOAA priority and policy. To that end, North Carolina believes that the time/area closure off North Carolina has serious issues related to several National Standards. We would also refer NMFS to a specific objective contained in the HMS plan "to better coordinate domestic conservation and management of the fisheries for Atlantic tunas, swordfish, sharks, and billfish, considering the multi species nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, and other relevant factors". North Carolina would also direct NMFS to a specific intent in the plan that states "to maintain the fishing season and the geographic range of the fishery within its historic context, not only for improving scientific monitoring but also to enhance fishing opportunities". This can be accomplished by insuring that sharks are available to the historical North Carolina fishery. Our proposed amendment is consistent with the FMP and directly relates to and supports stated NOAA priorities and policies

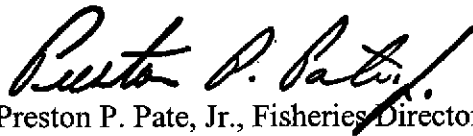
**(E) State the resources necessary to develop the proposed regulations.**

The proposed amendment can be easily addressed in an amendment to the Shark FMP. NMFS will be required to follow its standard rulemaking procedure that includes the proposed rule, comment period, and final rule. No new analysis or personnel time outside of standard rulemaking procedures should be required to make this simple modification.

**(F) Indicate the public interest in the proposed regulation.**

The public interest in this proposed amendment is clearly on the record. Letters from the NC DMF to Christopher Rogers of NMFS clearly outline North Carolina's concern with the final rule and a letter submitted to NMFS from the South Atlantic Fisheries Management Council likewise reflect objection to the time/area closure. Letters from North Carolina fishermen are also on the record objecting to the extent of the closed area.

Dated: March 1, 2005



Respectfully submitted by: Preston P. Pate, Jr., Fisheries Director

For

North Carolina Division of Marine Fisheries  
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