

the scope (1.1), update the filing and effective dates (1.3, 1.4) and update West Virginia's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods from June 1, 2020 to June 1, 2021 (1.6, 3.1, 3.2). West Virginia is incorporating the Federal rules in 40 CFR parts 50 and 53 as they existed on June 1, 2021, into sections 45–8–1 and 45–8–3.

## II. Proposed Action

EPA is proposing to approve the West Virginia SIP revision of July 1, 2022 updating the IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods. EPA is soliciting public comments on the update to West Virginia's IBR. Please note that EPA is not seeking public comment on the level of the NAAQS which West Virginia incorporated by reference into its regulations. An opportunity for public comment on the level of each individual NAAQS was given when EPA proposed each such NAAQS. Relevant comments will be considered before taking final action.

## III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes IBR. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 45CSR8, as effective on April 1, 2022, as discussed in Sections I and II of this document. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and,
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, this proposed rulemaking, proposing to approve the West Virginia SIP revision updating its IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of

environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

WVDEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Adam Ortiz,**

*Regional Administrator, Region III.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

**RIN 0648–BM08**

#### Atlantic Highly Migratory Species; Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

**SUMMARY:** NMFS announces the availability of the scoping document for Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 16) and its intent to prepare an EIS under the National Environmental Policy Act (NEPA). Based on the mechanism used in establishing shark quotas and related management measures from

Amendment 14 to the 2006 Consolidated HMS FMP (Amendment 14), Amendment 16 would modify the acceptable biological catch (ABC) and annual catch limits (ACLs) for Atlantic sharks and the process used to account for carryover of underharvests of quotas. In the scoping document, NMFS considers changes to commercial and recreational shark management measures related to commercial and recreational quotas, management groups, retention limits, and size limits. NMFS expects to consider the comments received on the scoping document when developing Amendment 16.

**DATES:** Written comments must be received by August 18, 2023. Three in-person scoping meetings and two virtual scoping meetings will be held from May through August 2023. See

**SUPPLEMENTARY INFORMATION** for all meeting dates and times.

**ADDRESSES:** Electronic copies of the final document for Amendment 14 to the 2006 Consolidated HMS FMP (<https://www.fisheries.noaa.gov/action/amendment-14-2006-consolidated-hms-fishery-management-plan-shark-quota-management>) and the scoping document for Amendment 16 to the 2006 Consolidated HMS FMP (<https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management>) may be obtained on the internet.

You may submit comments on this document, identified by NOAA–NMFS–2023–0010, via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov>, enter NOAA–NMFS–2023–0010 into the search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Scoping meetings will be held virtually and in person. See

**SUPPLEMENTARY INFORMATION** for more information on the locations.

**FOR FURTHER INFORMATION CONTACT:** Guy DuBeck ([Guy.DuBeck@noaa.gov](mailto:Guy.DuBeck@noaa.gov)), Karyl Brewster-Geisz ([Karyl.Brewster-Geisz@noaa.gov](mailto:Karyl.Brewster-Geisz@noaa.gov)), Carrie Soltanoff ([Carrie.Soltanoff@noaa.gov](mailto:Carrie.Soltanoff@noaa.gov)), or Ann Williamson ([Ann.Williamson@noaa.gov](mailto:Ann.Williamson@noaa.gov)) by email, or by phone at (301) 427–8503 for information on the scoping document for Amendment 16.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

Under the Magnuson-Stevens Act, conservation and management measures must prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery (16 U.S.C. 1851(a)(1)). Where a fishery is determined to be in or approaching an overfished condition, NMFS must adopt conservation and management measures to prevent or end overfishing and rebuild the fishery (16 U.S.C. 1853(a)(10) and 1854(e)). In addition, NMFS must, among other things, comply with the Magnuson-Stevens Act’s 10 National Standards, including a requirement to use the best scientific information available as well as to consider potential impacts on residents of different States, efficiency, costs, fishing communities, bycatch, and safety at sea (16 U.S.C. 1851(a)(1–10)). Internationally, the International Commission for the Conservation of Atlantic Tunas (ICCAT) has issued recommendations for the conservation of shark species caught in association with ICCAT fisheries, while the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has passed measures that place requirements or restrictions on the trade of some shark species and shark fins.

In Amendment 14 (88 FR 4157, January 24, 2023), NMFS sets forth a revised framework for establishing quotas and related management measures for Atlantic shark fisheries. This amendment incorporated, for potential use, several optional fishery management tools that were adopted in the revised guidelines for implementing National Standard 1 (NS1) of the Magnuson-Stevens Act (81 FR 71858, October 18, 2016). Amendment 14 modified the general procedures that are followed in establishing the ABC and

ACLs, and the process used to account for carryover or underharvest of quotas. It also allows the option to phase-in ABC control rules and to adopt multi-year overfishing status determination criteria (SDC) in certain circumstances.

In addition to Amendment 14, NMFS recently developed the Atlantic shark fishery review (SHARE) document (88 FR 16944, March 21, 2023). This document analyzed trends within the commercial and recreational shark fisheries to identify main areas of success and concerns with conservation and management measures and to find ways to improve management of the shark fishery. Overall, the review found that NMFS is sustainably managing shark stocks; however, the commercial shark fishery is in decline in terms of use of available quota and the number of participants. This decline is happening despite fishermen having available quotas for many species, and, in most regions, an open season year-round. The review also identified a need in the recreational fishery to improve angler education so that improved species identification could improve shark fishery data, thus improving management overall. The final report can be found here: <https://www.fisheries.noaa.gov/action/atlantic-shark-fishery-review-share>.

Additionally, some recent national and international regulations are likely to have direct and indirect impacts on the commercial shark fishery. On December 23, 2022, President Biden signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA), Public Law 117–263. Section 5946(b) of the NDAA, which is also known as the Shark Fin Sales Elimination Act, makes it illegal, with certain exceptions, to possess, buy, sell, or transport shark fins or any product containing shark fins, with an exemption for smooth or spiny dogfish fins. The Agency is currently considering a separate rule to implement the Shark Fin Sales Elimination Act. Internationally, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has passed measures to list all *Carcharhinidae* species (requiem sharks) under Appendix II, with a 12-month implementation delay. This listing means that as of November 2023, all of the authorized shark species, except for smoothhound sharks, in our fishery management unit will require CITES permits before any trade can occur. At this time, the impacts of the Shark Fin Sales Elimination Act and CITES listing are unknown. However, in the scoping document, we consider several management options that could

add flexibility to the fishery in order to be reactive to these additional factors affecting the Atlantic shark fisheries.

Through the scoping document, NMFS is beginning the process under the revised framework for establishing quotas and related management measures for Atlantic shark fisheries, as established in Amendment 14. Additionally, the scoping document provides examples of how NMFS could potentially implement the ABC control rule finalized in Amendment 14, while also considering options on the potential process. These potential changes also lead NMFS to consider options to potentially revise commercial shark management groups and quotas, since shark ACLs would be revised and some of the management groups might not be suitable. Since external factors (markets, different state and international regulations, etc.) have impacted participation in the shark fishery, NMFS is considering options to update the commercial retention limits to ensure the fishery stays viable in the future. In the recreational shark fishery, the number of trips targeting or catching coastal sharks has stayed fairly consistent, while target effort levels for

pelagic sharks have decreased significantly since the prohibition on shortfin mako sharks. In response to these changes, NMFS is reviewing the current recreational shark fishery regulations. This includes considering options for the authorized species list, minimum size limits, and bag limits. The current list of authorized species for recreational fishermen has been in place since 2008 when NMFS revised the list based on the sandbar shark stock assessment. Minimum size limits and bag limits for sharks are the main accountability measures NMFS can implement to control or adjust recreational shark harvest rates during the fishing year.

Given the substantial amount of existing relevant information (e.g., Amendment 14, SHARE, and various state and international actions), the scoping document for this FMP amendment outlines some potential management measures for Atlantic shark fisheries. The list of management measures should not be considered an exhaustive list. The management options are intended to facilitate discussion of the merits of each range of topics under consideration. Interested

members of the public are encouraged to provide specific suggestions and recommendations on the options or other options that NMFS should consider.

#### Request for Comments

NMFS anticipates large overall changes to shark management through Amendment 16. In the scoping document, NMFS details a wide range of potential management options based on the framework action in Amendment 14 and the findings from the SHARE document. The scoping document along with the public hearing presentation is available online at the HMS website: <https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management>. Three in-person scoping meetings and two virtual scoping meetings will be held to provide the opportunity for public comment on these potential management options (Table 1). Any comments received on the scoping document will be used to assist in the development of options to be considered in Amendment 16.

TABLE 1—DATES, TIMES, AND LOCATIONS OF UPCOMING PUBLIC HEARINGS AND CONFERENCE CALLS

Venue	Date/time	Street address/webinar information
Conference call/Webinar .....	May 25, 2023, 2 p.m. to 4 p.m. ....	<a href="https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management">https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management</a> .
Public Hearing .....	June 13, 2023, 5 p.m. to 8 p.m. ....	Belle Chasse Auditorium, 8398 LA-23, Belle Chasse, LA 70037.
Public Hearing .....	June 21, 2023, 5 p.m. to 8 p.m. ....	Cocoa Beach Public Library, 550 North Brevard Ave., Cocoa Beach, FL 32931.
Public Hearing .....	July 25, 2023, 5:30 p.m. to 8:30 p.m.	Dare County Library—Manteo, 700 Highway 64/264, Manteo, NC 27954.
Conference call/Webinar .....	August 7, 2023, 2 p.m. to 4 p.m. ...	<a href="https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management">https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management</a> .

The public is reminded that NMFS expects participants at in-person and virtual scoping meetings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., all comments are to be directed to the Agency; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees

should not interrupt one another). The in-person meeting locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guy DuBeck at 301-427-8503, at least 7 days prior to the meeting. A NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment if they so choose, regardless of the controversial

nature of the subject matter. If attendees do not respect the ground rules they will be asked to leave the scoping meeting. For the virtual scoping meetings, participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

In addition to the scoping meetings, NMFS will discuss the topics of this NOI at the HMS Advisory Panel meeting, May 9–11, 2023. The HMS Advisory Panel meeting will be accessible via conference call and webinar. Conference call and webinar access information are available at: <https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management>. NMFS has

requested to present the scoping document to the five Atlantic Regional Fishery Management Councils (the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils) and the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. Please see the Councils' and Commissions' meeting notices for times and locations. NMFS anticipates that a proposed rule and

draft environment impact statement (DEIS) will be available in 2024 and the Final Amendment 16 and its related documents will be available in 2025.

Dated: May 2, 2023.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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