

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-BD22

Atlantic Highly Migratory Species;
Atlantic Shark Management Measures

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: On October 7, 2011, we published an NOI to prepare an EIS for Amendment 5 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) to address the results of recent shark stock assessments for several shark species, including dusky sharks. In that notice, based on the 2010/2011 Southeast Data, Assessment and Review (SEDAR) assessments for sandbar, dusky, and blacknose sharks, we declared that the status of the dusky shark stock is still overfished and still experiencing overfishing (i.e., their stock status has not changed). On November 26, 2012, we published a proposed rule for draft Amendment 5 to the 2006 Consolidated HMS FMP. After fully considering the public comments received on draft Amendment 5 and its proposed rule, we decided that further analysis and consideration of management approaches, data sources, and available information are needed for dusky sharks beyond those considered in the proposed rule. Thus, we announce our intent to prepare a separate EIS under the National Environmental Policy Act (NEPA) to conduct further analyses and explore management options specific to rebuilding and ending overfishing of dusky sharks. This EIS would assess the potential effects on the human environment of action to rebuild and end overfishing of the dusky shark stock, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Through the rulemaking process, we would amend the 2006 Consolidated HMS FMP and examine management alternatives available to rebuild dusky sharks and end overfishing, as necessary.

DATES: Comments must be received no later than 5 p.m., local time, on May 24, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0070, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!/docketDetail;D=[NOAA-NMFS-2013-0070], click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Highly Migratory Species Management Division, NMFS Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope "Comments on Amendment 5b NOI to the HMS FMP."
- **Fax:** 301-713-1917; Attn: Peter Cooper.

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 generally will be posted for public viewing on 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. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

For a copy of the stock assessments, please contact Peter Cooper (301) 427-8503 or download them online at <http://www.nmfs.noaa.gov/sfa/hms/> or <http://www.sefsc.noaa.gov/sedar/Index.jsp>.

FOR FURTHER INFORMATION CONTACT:

Karyl Brewster-Geisz or Peter Cooper at (301) 427-8503.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Management of these species is described in the 2006 Consolidated HMS FMP and its amendments, which are implemented by regulations at 50 CFR part 635. Copies of the 2006 Consolidated HMS FMP and amendments are available from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

On October 7, 2011 (76 FR 62331), we published an NOI that announced the

stock status determinations for various sharks, including dusky sharks. In that notice, based on the 2010/2011 SEDAR assessments for sandbar, dusky, and blacknose sharks, we declared that the status of the dusky shark stock is still overfished and still experiencing overfishing (i.e., their stock status has not changed). In the notice, we also announced our intent to prepare an EIS to assess the potential effects on the human environment of action to rebuild and end overfishing on various species of sharks, including dusky sharks, consistent with the Magnuson-Stevens Act.

On November 26, 2012, we published a proposed rule (77 FR 70552) for draft Amendment 5 to the 2006 Consolidated HMS FMP based on several shark stock assessments that were completed from 2009 to 2012. As described in the proposed rule, we proposed measures that were designed to reduce fishing mortality and effort in order to rebuild various overfished Atlantic shark species, including dusky sharks, while ensuring that a limited sustainable shark fishery for certain species could be maintained consistent with our legal obligations and the 2006 Consolidated HMS FMP. The proposed measures included changing commercial quotas and species groups, establishing several new time/area closures, changing an existing time/area closure, increasing the recreational minimum size for sharks, and establishing recreational reporting for certain species of sharks.

The comment period for the proposed rule closed on February 12, 2013. After reviewing all of the comments received, we decided to conduct further analyses on measures pertaining to dusky sharks in an FMP amendment, EIS, and proposed rule separate from but related to the FMP amendment, EIS, and rule for the other species of sharks. Thus, we announce our intent to prepare a separate EIS under NEPA to conduct further analyses and explore management options specific to rebuilding and ending overfishing of dusky sharks. This EIS would assess the potential effects on the human environment of the process of rebuilding and ending overfishing of the dusky shark stock, consistent with the Magnuson-Stevens Act. Through the rulemaking process, we would amend the 2006 Consolidated HMS FMP and examine management alternatives available to rebuild dusky sharks and end overfishing, as necessary. Moving forward, the ongoing FMP amendment for the other species of sharks included in draft Amendment 5, specifically scalloped hammerhead, sandbar, blacknose, and Gulf of Mexico blacktip

sharks, will be called “Amendment 5a.” The FMP amendment for dusky sharks will be called “Amendment 5b.”

In Amendment 5b, we will explore a variety of alternatives to rebuild dusky sharks. We will likely continue to consider alternatives similar to those considered in draft Amendment 5 while also considering the comments received on draft Amendment 5, and additional alternatives as appropriate. Some of the comments on the proposed rulemaking for Amendment 5 requested that we consider approaches to dusky shark fishery management significantly different from those we analyzed in the proposed rulemaking for Amendment 5. For example, draft Amendment 5 proposed to increase the recreational size limit for all sharks based on the dusky shark age at maturity and many recreational fishermen asked for specific exemptions to, or different approaches to allow landings of other sharks such as blacktip sharks or “blue” sharks such as shortfin mako or thresher sharks. As another example, pelagic longline fishermen asked us to consider closing

areas based on depth or other characteristics that may better define dusky shark habitats or to implement gear restrictions, such as limiting gangions to 300-pound test monofilament or requiring smaller circle hooks that might reduce interactions or allow any caught dusky sharks to escape with minimal harm.

In addition, we received numerous comments on the proposed dusky shark measures regarding the data sources used and the analyses of these data. Many commenters stated that they believed that economic analyses of the time/area closures underestimated the potential impacts either because the analyses did not fully consider regional impacts and the effects on vessels that could not move to other fishing areas or because the analyses did not fully consider that the proposed closures would effectively close a much larger area due to Gulf Stream currents causing longlines to drift into the proposed closed areas. Commenters asked for new summaries of the data used and additional data analyses, including

incorporating more observer data into the analysis of the alternatives. We plan to conduct additional analyses in the new EIS for Amendment 5b.

Addressing dusky shark management measures in a subsequent and separate rulemaking via Amendment 5b will allow us to fully consider and address public comments on those measures, to consider other measures beyond the scope of those proposed and analyzed in draft Amendment 5, and to conduct additional analyses based on the best scientific information available. Comments received on the dusky measures of the draft Amendment 5 will be considered during the development of the new rule and Amendment 5b.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 18, 2013.

Kara Meckley,

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

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