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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BI10

Atlantic Highly Migratory Species; Spatial Fisheries Management

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

ACTION: Notice of intent (NOI) to prepare a draft environmental impact analysis and hold scoping meetings; availability of issues and options paper; request for comments.

SUMMARY: NMFS announces its intent to prepare a draft environmental impact analysis for an action to consider options to perform research and collect data in areas closed to or restricting fishing and gear types for highly migratory species (HMS) in support of and to evaluate spatial fisheries management. Strategies to facilitate research and data collection in these areas could improve sustainable management of HMS. This action will consider ways to perform such research and data collection. To gather input from the public, NMFS also announces the availability of an Issues and Options Paper for Research and Data Collection in Support of Spatial Fisheries Management (Issues and Options Paper) that outlines possible strategies to perform research and collect data in areas that currently prohibit or restrict commercial and/or recreational fishing for HMS. Fishery-dependent data is vital in informing and supporting effective fisheries management, and areas that restrict fishing effort often have a commensurate

decrease in fishery-dependent data collection. In addition, NMFS will hold scoping meetings to gather public comment on potential research and data collection options. Because constituents may be interested in several ongoing related rulemakings, these scoping meetings may be held in conjunction with scoping meetings for Amendment 13 (review of bluefin tuna measures including the Individual Bluefin Tuna Quota (IBQ) Program and quota allocations) and 14 (review of annual catch limits for sharks) to the 2006 Consolidated Atlantic HMS Fishery Management Plan. NMFS will announce the date and times for the scoping meetings in a separate *Federal Register* notice at a later date. NMFS requests comments on the approaches presented in the Issues and Options Paper as well as comments on or identification of other approaches that may warrant consideration.

DATES: Written comments on this NOI and the Issues and Options Paper must be received on or before July 31, 2019. NMFS is holding scoping meetings during the public comment period and will announce the date and times for the scoping meetings in a separate *Federal Register* notice at a later date.

ADDRESSES: Electronic copies of the Issues and Options Paper may also be obtained on the internet at: <https://www.fisheries.noaa.gov/action/research-and-data-collection-support-spatial-fisheries-management>. You may submit comments, identified by "NOAA-NMFS-2019-0035", by either 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-2019-0035,

click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Karyl Brewster-Geisz, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, or to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (*e.g.*, name, address), 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).

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz by phone at (301) 427-8503 or Tobey Curtis by phone at (978) 281-9260, or online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is the principal law governing marine fisheries in the U.S. and includes ten National Standards to guide fishery conservation and management. The Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving, on a

continuing basis, the optimum yield from each fishery (National Standard 1). It also requires that fishery “conservation and management measures shall be based upon the best scientific information available.” (National Standard 2). Other laws, such as the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), require NMFS to limit interactions with certain species affected by federal actions, such as permitted fishery operations. NMFS employs a variety of conservation and management measures to maintain appropriate levels of catch consistent with applicable science-based quotas or other management goals, to limit bycatch to the extent practicable, and to limit interactions with protected species as required. These measures include “spatial management techniques,” which refers to a suite of fisheries conservation and management measures that are based on geographic area, such as closed areas. Closed areas are typically discrete geographic areas where certain types of fishing are restricted or prohibited for limited periods or the entire year. Ideally, closed areas overlap in space and time with the species habitat and/or life stages in need of protection. Closed areas can be particularly effective for reducing fishing mortality by certain types of fishing to near zero within the designated areas, because species in need of protection are not in danger of catch or interaction with those fishing gears, even incidentally.

Although an effective management tool for achieving certain objectives, closed areas also reduce access to valuable target species, and eliminate the ability to gather some fishery-dependent data within the areas. Fishery-dependent data are information collected during normal fishing operations (*e.g.*, catch composition, bycatch rates, fishing effort), and are a vital and cost-effective source of information for fisheries management. Such data have been critical in

determining stock status, assessing bycatch levels, and in meeting other fishery management needs. In some instances, fishery-dependent data may be the only data from a fishery that are cost-effective and feasible when considering research and budgetary constraints. If normal fishing operations are curtailed or prohibited, as with closed areas, fishery-dependent data collection can be negatively affected and create data gaps that can have implications across multiple fisheries, such as a reduced understanding of species distribution and stock status. Ideally, when a fishery closure is implemented, fishery-independent monitoring can continue to take place in the closed area in order to assess the closure's success and continued appropriateness over time. Unfortunately, fishery-independent monitoring programs can be expensive, and resources to fund such research may not be readily available. In such cases, it may be appropriate to find ways to gather fishery-dependent data from active fisheries to make determinations about the effectiveness and appropriateness of a closed area, even though otherwise-applicable closed area restrictions may not allow such fishing. Nevertheless, prudent management requires that the benefits of closed areas be periodically reviewed to evaluate if a closed area's objectives are still being met, considering changes in fishery conditions, such as changes in fishing effort, fleet composition, stock status, and environmental changes. The ocean is a highly dynamic environment and long-term shifts in fish and habitat distributions can potentially undermine conservation and management effectiveness in these closed areas if they remain static.

NMFS has implemented a number of closed areas that curtail or prohibit fishing for Atlantic HMS (tunas, sharks, swordfish, and billfish). These include areas that restrict all gears

targeting HMS such as the Edges 40-Fathom Contour, areas that restrict pelagic longline gear such as the Charleston Bump, areas that restrict bottom longline gear such as the Mid-Atlantic Closure, areas that restrict gillnet gear such as the Southeast U.S. Restricted Area, and areas that restrict some recreational HMS fishing such as Madison-Swanson and Steamboat Lumps Marine Protected Areas. Some goals of certain closed areas are still relevant, such as conserving protected resources under the ESA or MMPA or effectively managing and rebuilding overfished stocks under the Magnuson-Stevens Act. However, some goals may no longer be as relevant, such as reducing fishing pressure on now-rebuilt stocks (such as North Atlantic swordfish), or the introduction of other management measures that achieve the intended conservation goals may reduce the need for the closed areas. Furthermore, reductions in fishing effort in one area can displace fishing effort to other areas, with possible adverse impacts. HMS closed areas should be periodically evaluated for their utility in meeting management goals and legal obligations, including those under the ESA, MMPA, and the Magnuson-Stevens Act. Such a review would include ensuring that closed areas are appropriately placed to achieve current conservation objectives and remain appropriate in light of other management measures.

The Issues and Options Paper explores different approaches to conduct research and collect data in closed areas in support of HMS management. As described above, closed area data collection is needed for several reasons. First, in most cases, no fisheries data has been collected in the closed areas using affected HMS gears during times when the closures are in effect. This lack of data complicates, and may compromise, effective management of HMS. To maintain a sustainable fishery that maximizes access to fishery resources while achieving

conservation goals, fishery managers need current and relevant catch data, along with protected resource interaction information. While closed areas can be effective at achieving management goals and objectives, such as curtailing or eliminating fishing mortality and bycatch interactions within the area, fishery managers need information to assess the continued effectiveness of the closed areas in meeting the objectives. These closures may need to be moved, reduced, or expanded to meet the original goals. However, without recent catch and interaction data, it is difficult to measure management success or shortcomings.

Second, the original goals of the closure may no longer be relevant. For example, if a closure was implemented to reduce fishing mortality of an overfished stock, the closure may no longer be needed if that stock is rebuilt. Without data from the closed areas, fishery managers cannot assess whether the closed areas are still needed to provide ancillary benefits to other species or whether the areas need to be modified.

Third, closed areas may be redundant or obsolete in the context of new management measures. If the original management goals of the closure are being met through more recent management measures, it is possible that the closure warrants reconsideration or modification. Data collection can help to determine whether closed area modifications are needed in light of more recent management measures.

Fourth, assessing the impact of closed areas through data collection can help achieve other Agency goals. For example, it is NMFS' goal to more fully utilize swordfish quota allocated by the International Commission for the Conservation of Atlantic Tunas (ICCAT). If some existing closed areas affect the U.S. fleet's ability to harvest the resource without offering

needed conservation benefits, due to one of the above reasons, those closed areas may warrant modification. The seafood trade imbalance is another Agency priority that could be impacted by inefficient closed areas. If closed areas reduce domestic catch without providing conservation benefits, and that reduced catch increases demand for foreign imports, the areas may warrant modification. While addressing goals such as full utilization of the swordfish quota or reducing the seafood trade imbalance, consideration must be given to possible adverse impacts, such as increased gear conflicts. Answering these questions depends on high-quality data collection in the relevant areas with the relevant gears during the relevant times.

The Issues and Options Paper explores different approaches to collect data in areas closed to HMS fishing in support of HMS management. The first step in considering ways to collect data and perform research in closed areas is publication of the Issues and Options Paper, which summarizes current spatial management of HMS and presents possible strategies to collect data and perform research in closed areas that affect HMS fishing. NMFS requests comments on the presented approaches as well as other approaches that should be considered.

NMFS has several ongoing actions affecting HMS management that are, or soon will be, available for public comment. While each of these actions are separate, they are related in some ways, and the comment periods may overlap. Depending on the outcomes, each action could have impacts on the other actions. To the extent any closed areas or other spatial management measures are affected or altered by these other actions, NMFS will take that into account and appropriately update the areas under consideration in this action.

NMFS recently released its ‘Draft Three-Year Review of the Individual Bluefin Quota

(IBQ) Program.” The IBQ Program, adopted in Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7), is a catch share program that introduced individual vessel accountability for bluefin bycatch in the pelagic longline fishery. Formal reviews of such catch share programs are required to evaluate whether their objectives are met. In Amendment 7, NMFS proposed and finalized a plan to formally evaluate the success and performance of the IBQ Program after three years of operation and to provide the HMS Advisory Panel with a publicly-available written document with its findings. This review is expected to be finalized in September 2019 after consideration by the HMS Advisory Panel.

NMFS also recently released a document (Amendment 13 Issues and Options Paper) for use in 2019 for scoping, a public process during which NMFS will consider a range of issues and objectives, as well as possible options for bluefin tuna management. The options being presented in the Issues and Options Paper consider the preliminary results of the Draft Three-Year Review and respond to recent changes in the bluefin fishery and input from the public and HMS Advisory Panel. The options include refining the IBQ Program; reassessing allocation of bluefin tuna quotas (including the potential elimination or phasing out of the Purse Seine category); and other regulatory provisions regarding bluefin directed fisheries and bycatch in the pelagic longline fishery, to determine if existing measures are the best means of achieving current management objectives for bluefin tuna management. During scoping, public feedback will be accepted via written comments or scoping meetings as described in separate Federal Register notices.

NMFS also is currently in the process of developing a Proposed Rule Modifying Pelagic

Longline Bluefin Tuna Area-Based and Weak Hook Management Measures. To analyze the potential environmental effects of a range of alternatives, NMFS recently released a Draft Environmental Impact Statement (DEIS). The DEIS evaluates whether current area-based and gear management measures remain necessary to reduce and/or maintain low numbers of bluefin tuna discards and interactions in the pelagic longline fishery, given more recent management measures, including the IBQ Program. The DEIS prefers alternatives that undertake a process to evaluate the need for the Northeastern United States Closed Area and the Gulf of Mexico Gear Restricted Area; removes the Cape Hatteras Gear Restricted Area; and adjusts the Gulf of Mexico weak hook effective period from year-round to seasonal (January - June). The comment period for the DEIS and proposed rule are open through July 31, 2019. NMFS is holding four public hearings across the Gulf of Mexico and Atlantic Coast. There will also be two webinars that will serve as public hearings for interested members of the public from all geographic locations. After consideration of public comment, NMFS expects to finalize the rule in the late Fall of 2019. The proposed rule related to this DEIS is expected to be released shortly.

Finally, NMFS has also recently published an Issues and Options Paper for Amendment 14, which will review annual catch limits and reference points for sharks. This action could result in a different process for establishing the annual catch limits for sharks, and therefore could affect all fishermen, commercial and recreational, that target or incidentally catch sharks. During scoping, public feedback will be accepted via written comments or at scoping meetings as described in separate Federal Register notices.

Scoping Process

NMFS encourages participation, by all persons affected or otherwise interested in recreational and commercial HMS fishing, in the process to determine the scope and significance of options to be analyzed and considered in a draft environmental impact analysis and regulatory action. All such persons are encouraged to submit written comments (see **ADDRESSES**), or comment at one of the scoping meetings or public webinar. Persons submitting comments are welcome to address the specific measures in the Issues and Options Paper.

NMFS intends to hold scoping meetings in the geographic areas that may be affected by these measures, including locations on the Atlantic and Gulf of Mexico coasts. NMFS will announce the date and times for the scoping meetings in a separate *Federal Register* notice at a later date. After public comment has been gathered and analyzed, NMFS will determine if it is necessary to proceed with preparation of a draft environmental impact analysis and proposed rule, which would include additional opportunities for public comment. The scope of the draft environmental impact analysis (whether an environmental assessment or environmental impact statement) would depend on the scope and potential effects of the agency action being considered and would consist of the range of actions, alternatives, and impacts to be considered. This scoping process also will identify, and possibly eliminate from further detailed analysis, issues that may not meet the purpose and need of the action.

The process of developing any resulting regulatory action is expected to take approximately two years. Until the draft environmental impact analysis and proposed rule are finalized or until other regulations are put into place, the current regulations remain in effect.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: May 13, 2019.

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