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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-BI59

Atlantic Highly Migratory Species; Amendment 14 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 on Amendment 14 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) and its intent to prepare an EIS under the National Environmental Policy Act (NEPA). Given revisions to the Magnuson-Stevens Fishery Conservation and Management Act National Standard 1 (NS1) guidelines, NMFS is exploring options related to the implementation of those new guidelines as they relate to annual catch limits (ACLs) for Atlantic sharks in the HMS management unit. In the scoping document, NMFS begins the process for re-examining how to establish these ACLs, including an examination of how to establish the acceptable biological catch (ABC) and account for uncertainty arising from the stock assessment and the impacts to the management measures. NMFS expects to consider the comments received on the scoping document for developing Amendment 14 to the 2006 Consolidated HMS FMP.

NMFS will announce the date and times for the scoping meetings in a separate Federal Register notice at a later date.

DATES: Topics included in this NOI will be discussed at the HMS Advisory Panel, May 21-23, 2019. Additional scoping meetings and a conference call will be announced in a subsequent notice in the **Federal Register**. Please see the **SUPPLEMENTARY INFORMATION** section of this NOI for more specifics regarding the HMS Advisory Panel meeting. NMFS requests receipt of any comments on the scoping document by July 31, 2019.

ADDRESSES: The presentation at the HMS Advisory Panel will be held at the Sheraton, 8777 Georgia Avenue, Silver Spring, MD, 20910. You may submit comments on the scoping document, identified by NOAA-NMFS-2019-0040, 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-2019-0040, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Peter Cooper, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

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), 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).

The Scoping Document on Amendment 14 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>, or contact Ian Miller by phone at 301-427-8503 for hard copies.

FOR FURTHER INFORMATION CONTACT: Ian Miller or Karyl Brewster-Geisz at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that any FMP or FMP amendment be consistent with ten National Standards. Specifically, NS1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. In 2016, NMFS revised the NS1 guidelines to improve and streamline them, enhance their utility for managers and the public, and to facilitate compliance with the requirements of the Magnuson-Stevens Act and provide management flexibility in doing so.

The revisions address a range of issues, including providing guidance on phasing in changes to catch limits and carrying over unused quota from one year to the next (81 FR 71858; October 18, 2016). With the changes in the NS1 guidelines and given that

NMFS is seeking additional management flexibility in establishment of shark reference points, NMFS is exploring options related to the implementation of those new provisions as it relates to shark ACLs.

Shark stock assessments conducted by the SouthEast Data, Assessment, and Review (SEDAR) process and conducted by the science branch of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Species are assessed individually to the extent possible, with matching TACs. In some cases, the available data are not sufficient for estimating a TAC for use in management (*e.g.*, dusky shark). Also, in some cases, TACs for individual species may be aggregated into species complexes for management purposes (*e.g.*, pelagic shark complex, large coastal shark complex, etc.).

Since Amendment 3 to the 2006 Consolidated Atlantic HMS FMP, NMFS has set the acceptable biological catch (ABC), overfishing limit (OFL), and overall ACL for these stocks equal to the TAC. NMFS has used this ABC to calculate the shark sector ACLs and commercial quotas for the fishery. In the NS1 guidelines, NMFS defines the ABC as a level of a stock or stock complex's annual catch, which is based on an ABC control rule that accounts for the scientific uncertainty in the estimate of OFL, any other scientific uncertainty, and the Council's risk policy (see 50 CFR 600.310(f)(1)(ii)). NMFS defines ACL as a limit on the total annual catch of a stock or stock complex, which cannot exceed the ABC, which serves as the basis for invoking AMs. An ACL may be divided into sector-ACLs (see 50 CFR 600.310(f)(1)(iii)). For the prohibited shark complex, where commercial and recreational retention and landings are not

allowed, NMFS has, consistent with NS1 guideline provisions, set the ACL equal to zero, although a small amount of bycatch occurs during other fishing operations.

In the scoping document, NMFS begins the process for re-examining how to establish the ACLs for shark species that are in the HMS management unit based on the 2016 final rule updating the NS1 guidelines (81 FR 71858, October 18, 2016), and examines how to establish the ABC and account for uncertainty arising from the stock assessment and the impacts to the management measures. Additionally, this document discusses how to establish ACLs in the absence of a full stock assessment and considers changes to quota carry-over provisions. The HMS shark regulations govern conservation and management of sharks in the management unit, under the authority of the Magnuson-Stevens Act. For sharks, the "management unit" means all fish of the species listed in Table 1 of Appendix A to 50 CFR part 635, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea. For some shark stocks caught in association with ICCAT fisheries, ICCAT adopts conservation and management measures, and NMFS implements them consistent with ATCA. NMFS welcomes comments on the appropriate scope of the action as it relates to the species with management measures under ICCAT.

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, one action could have impacts on other actions. The following summarizes these other actions for the regulated community's information and background.

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.

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 to Modify 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 comments, 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 also released an Issues and Options Paper considering approaches to collect data and perform research in areas that are currently closed to certain gears or fishing activities for Atlantic HMS. Such research will help evaluate and support spatial fisheries management for Atlantic HMS. "Spatial management" refers to a suite of fisheries conservation and management measures that are based on geographic area. When some spatial management tools, such as closed areas, are deployed, the

collection of fishery-dependent data is reduced or eliminated. This loss of data can compromise effective fisheries management. The Issues and Options Paper considers approaches to collect data and perform research in areas that may otherwise restrict commercial or recreational fishing, making the collection of fisheries-dependent data challenging or not possible. During scoping, public feedback will be accepted via written comments or at scoping meetings as described in separate Federal Register notices

Request for Comments

NMFS anticipates changes to management of the shark species that are in the HMS management unit. Based on the guidelines for NS1. This notice requests additional information and comments from the public related to the establishment of TACs and ACLs. The HMS shark regulations govern conservation and management of sharks in the management unit, under the authority of the Magnuson-Stevens Act. For sharks, the "management unit" means all fish of the species listed in Table 1 of Appendix A to 50 CFR part 635, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea. For some shark stocks caught in association with ICCAT fisheries, ICCAT adopts conservation and management measures, and NMFS implements them consistent with ATCA. NMFS welcomes comments on the appropriate scope of the action as it relates to the species with management measures under ICCAT. The document includes a summary of the anticipated purpose and need for the FMP amendment, and the potential environmental, social, and economic impacts of some potential conservation and management options. The scoping document is available online at the HMS website: <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>. The scoping meetings and a conference call will be announced in a

subsequent notice in the **Federal Register**. The comments received on the scoping document will be considered to assist in the development of the upcoming amendment to the 2006 Consolidated Atlantic HMS FMP. NMFS anticipates that a proposed rule and draft environment impact statement (DEIS) will be available in late 2019 and the Final Amendment 14 and its related documents will be available in 2020.

Dated: May 16, 2019.

Kelly L. Denit,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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