

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160328287–6486–01]

RIN 0648–BF94

Atlantic Highly Migratory Species (HMS); Porbeagle Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 15–06 regarding porbeagle sharks (*Lamna nasus*) caught in association with ICCAT fisheries. Recommendation 15–06 requires, among other things, fishing vessels to promptly release unharmed, to the extent practicable, porbeagle sharks caught in association with ICCAT fisheries when brought alive alongside for taking on board the vessel. This action would affect fishermen fishing in the commercial HMS pelagic longline fishery and the HMS recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action would implement an ICCAT recommendation, consistent with the Atlantic Tunas Convention Act (ATCA), and would further domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by July 15, 2016. An operator-assisted public conference call and webinar will be held on July 5, 2016, from 1:00 p.m. to 3:00 p.m., EST.

ADDRESSES: The conference call information is phone number 1 (888) 989–4573; participant passcode 9905999. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar go to: <https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e0db6c21990ed890e2857b1eb1746cd71>, event password: NOAA, event number: 990 192 262. Participants that have not used WebEx before will be prompted to

download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA–NMFS–2016–0066, 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-2016-0066, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Margo Schulze-Haugen, Chief, Atlantic HMS Management Division at 1315 East-West Highway, 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 will generally 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. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Larry Redd, Carrie Soltanoff, or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 927 *et seq.* ATCA requires the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

At its 24th Annual Meeting in 2015, ICCAT adopted Recommendation 15–06 on “Porbeagle [Sharks] Caught in Association with ICCAT Fisheries.” Recommendation 15–06 requires, among other things, fishing vessels “. . . to promptly release unharmed, to the extent practicable, porbeagle sharks caught in association with ICCAT fisheries when brought alive alongside for taking on board the vessel.” Recommendation 15–06 notes that,

according to the ICCAT Standing Committee for Research and Statistics (SCRS), biomass of northwest Atlantic and northeast Atlantic porbeagle sharks is depleted to well below the biomass at maximum sustainable yield, but recent fishing mortality is below the fishing mortality at maximum sustainable yield (*i.e.*, the stocks are overfished but overfishing is not occurring). Recommendation 15–06 further notes that the 2008 and 2012 Ecological Risk Assessments concluded that porbeagle shark was among the most vulnerable of shark species, which, even at low fishing mortality levels, makes it more susceptible to overfishing. Thus, Recommendation 15–06 was adopted by ICCAT to reduce fishing mortality of porbeagle sharks caught in association with ICCAT fisheries in order to reduce porbeagle shark fishing even further, and thus assist in rebuilding stocks which are currently overfished.

In this proposed rule, NMFS considers changes to the regulations at 50 CFR part 635 consistent with Recommendation 15–06. Specifically, NMFS is proposing regulatory changes that would require fishermen to release unharmed, to the extent practicable, any live porbeagle sharks that are caught in association with ICCAT fisheries, including commercial fishermen that use pelagic longline gear or recreational fishermen that hold an HMS recreational permit and retain tunas, swordfish, or billfish. The proposed regulations would not affect HMS recreational fishermen who retain sharks and do not retain tunas, swordfish, or billfish, since such fishing would not be “in association with” fishing for tuna and tuna-like species.

Currently, very few porbeagle sharks are kept annually by commercial and recreational HMS fishermen, as shown by analysis of data collected from 2010 through 2015. HMS pelagic longline fishery logbook data indicate that 3 to 23 porbeagle sharks were retained annually from 2010 through 2012 and no porbeagle sharks were retained from 2013 through 2015. According to HMS logbook data, of the porbeagle sharks that were caught, on average 554 porbeagle sharks were released alive each year (approximately 74 percent of those caught) and 193 were released dead each year (approximately 26 percent of those caught). Pelagic Observer Program (POP) data from 2010 through 2015 show similar trends. Specifically, POP data indicate that no porbeagle sharks were kept from 2010 through 2014 and one porbeagle shark was kept in 2015 (likely misidentified as a shortfin mako by the vessel owner). Of those observed caught, on average 66

porbeagle sharks were released alive each year (approximately 63 percent of those caught) and 36 were discarded dead per year (approximately 34 percent of those caught). Thus, according to HMS logbook and POP data, approximately 97 percent of porbeagle sharks were released (alive and dead) from 2010–2015.

Based on recreational data collected from the Large Pelagics Survey (LPS), which covers federal and state waters from Virginia to Maine, from 2010 through 2015, NMFS estimates that on average 86 porbeagle sharks were kept annually and 746 were released alive, for an average annual release of approximately 90 percent. LPS data indicate that no porbeagle sharks were discarded dead between 2010 and 2015. Specific to HMS Charter/Headboat vessels, NMFS estimates that on average 15 porbeagle sharks were kept annually and 146 were released, for an average annual release of approximately 91 percent. It is unknown whether the porbeagle sharks that were kept were dead or alive when brought to the vessel.

Under current regulations, commercial and recreational HMS fishermen that operate in ICCAT fisheries are authorized to retain any porbeagle shark, regardless of whether the shark is dead or alive at haulback. Even so, most fishermen keep very few porbeagle sharks and 90 percent or more of porbeagle sharks are released. Under the proposed rule, all live porbeagle sharks would have to be released by commercial and recreational HMS fishermen operating in ICCAT fisheries, as determined by the permits they hold or, in the case of recreational fisheries, whether they have also retained tuna-like species on a given trip. Because so few porbeagle sharks are kept now, NMFS expects that this proposed rule would have little ecological impact. If there are any ecological impacts, those impacts would be beneficial, and would only apply to those few sharks that otherwise would have been retained rather than released alive (approximately 23 sharks kept in the commercial pelagic longline fishery before 2013 and the approximately 86 sharks kept annually in HMS recreational fisheries). Additionally, among the approximately 86 porbeagle sharks retained annually in HMS recreational fisheries, those ecological benefits would apply only when fishermen were also retaining tunas, swordfish, or billfish; if the porbeagle sharks were caught by fishermen not retaining tunas, swordfish, or billfish, porbeagle sharks could still be retained under this proposed rule. Similarly,

under the proposed rule, these few porbeagle sharks may still be retained by all fishermen if the sharks are dead when brought to the vessel. Furthermore, because the commercial and recreational data indicate that fishermen already release 90 to 97 percent of porbeagle sharks, it is unlikely that a requirement to release live sharks would result in social or economic impacts on fishermen fishing in association with ICCAT fisheries. Therefore, this action is expected to have neutral socioeconomic impacts.

Request for Comments

NMFS is requesting comments on this proposed rule which would require commercial and recreational HMS fishing vessels fishing in ICCAT fisheries to release unharmed, to the extent practicable, porbeagle sharks that are alive when brought alongside a vessel. Comments on this proposed rule may be submitted via <http://www.regulations.gov>, or by mail. Written comments must be received by July 15, 2016. Please see the **ADDRESSES** section for more information about submitting comments.

Public Conference Call and Webinar

NMFS is requesting comments on the measures and analyses described in this proposed rule. During the comment period, NMFS will hold one conference call and webinar for this proposed rule. The conference call and webinar will be held on July 5, 2016, from 1:00–3:00 p.m. EST. Please see the **DATES** and **ADDRESSES** headings for more information. The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (e.g., all comments are to be directed to the agency on the proposed action; 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; attendees may not interrupt one another; etc.). NMFS representative(s) will 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(s). Attendees are expected to respect the ground rules, and those that do not may be removed from the conference call.

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Larry Redd, Carrie Soltanoff, or Karyl Brewster-Geisz by phone at 301–427–8503.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS has made a preliminary determination that this action qualifies to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NMFS' Environmental Review Procedures for Implementing the National Environmental Policy Act (NOAA Administrative Order 216–6), subject to further consideration after public comment. Section 6.03a.3.(b)(1) of the Administrative Order specifies that an action may be categorically excluded from further NEPA analysis where, “the action is an amendment or change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment. . . .” In Amendment 2 to the 2006 Consolidated HMS FMP, NMFS adopted a rebuilding plan and TAC for porbeagle sharks, which were overfished but without overfishing occurring. Through the amendment, a commercial quota of 1.7 mt dw was established, and NMFS estimated that commercial discards would be approximately 9.5 mt dw, and recreational catch, including landings in tournaments, would be approximately 0.1 mt dw per year. The overall TAC of 11.3 mt dw was adopted to increase the likelihood that fishing mortality would remain low, allowing the stock to rebuild within 100 years as set out in a rebuilding plan in the Final Environmental Impact Statement. The final rule acknowledged that while some bycatch of porbeagle sharks would continue, the majority of porbeagle sharks caught are discarded alive. This action implementing ICCAT Recommendation 15–06 only slightly modifies the fishing practices analyzed in an extensive Environmental Impact Statement for Amendment 2 to require the release of sharks, all but a handful of which are already being released under the management measures previously adopted and analyzed. Thus, this action is properly considered a minor change to a previously-analyzed and approved action (Amendment 2 to the 2006 Consolidated HMS FMP; 73 FR 40658; July 15, 2008), and one which is expected to have no effect individually

or cumulatively on the human environment.

NMFS determined that this proposed rule, if adopted, would not affect the coastal zone of any state, and a negative determination pursuant to 15 CFR 930.35 is not required. Therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state agencies under section 307 of the CZMA is not required. Since 90 to 97 percent of porbeagle sharks in the U.S. HMS fisheries currently are released, this rule, if adopted, is not expected to result in ecological, social, or economic impacts beyond the few additional sharks that will be released alive as a result. Given the high vulnerability of the species at low fishing mortality, this proposed rule would assist in the overall reduction of fishing mortality for porbeagle sharks in the Northwest Atlantic. Although interactions between U.S. fleets and porbeagle sharks are minor, because the ICCAT measure was adopted by multiple parties, U.S. compliance in addition to compliance by other nations would provide long-term benefits for the Atlantic-wide porbeagle stock.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule to implement ICCAT Recommendation 15–06 on porbeagle sharks, if adopted, would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act (RFA).

As discussed above, this proposed rule is necessary to implement ICCAT recommendations, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations. The proposed action considers implementing ICCAT Recommendation 15–06 on porbeagle sharks, in the Atlantic HMS fisheries that target tuna and tuna-like species because the National Marine Fisheries Service (NMFS) considers these fisheries to be “ICCAT-managed fisheries.”

ICCAT Recommendation 15–06 requires, among other things, fishing vessels “. . . to promptly release unharmed, to the extent practicable, porbeagle sharks caught in association with ICCAT fisheries when brought alive alongside for taking on board the vessel.” The regulatory changes would affect HMS vessels that catch sharks in ICCAT fisheries on commercial vessels

that deploy pelagic longline gear and HMS Angling and Charter/Headboat (CHB) vessels that retain tunas, swordfish, or billfish. The proposed regulations would not affect HMS-permitted fishermen who do not retain tunas, swordfish, or billfish.

NMFS has estimated that, as of October 2015, 280 vessels were issued an Atlantic Tunas Longline permit and can be reasonably assumed to use pelagic longline gear, and could be affected by this action. Of the 3,596 vessels that were issued an Atlantic HMS CHB permit only those vessels that retain porbeagle sharks at the same time as tunas, swordfish, or billfish would be affected by this action. Between 2010 and 2015, fewer than one percent of CHB vessels issued permits retained porbeagle sharks; NMFS does not know how many of those that retained porbeagle sharks also retained tunas, swordfish, or billfish during the same trip. As such, NMFS estimates that, at most, fewer than one percent of all CHB vessels would be affected by this action. Those Atlantic HMS CHB vessels that do not retain porbeagle sharks or that do not retain tunas, swordfish, or billfish would not be affected by this action. Most commercial pelagic longline and Atlantic HMS CHB vessels have not historically interacted with porbeagle sharks as detailed below.

For the purpose of this analysis, all fishermen affected by this rule are considered small entities based on the historical levels of revenue earned by these fishing vessels. HMS pelagic longline fishery logbook data indicate that 3 to 23 porbeagle sharks were retained annually by four vessels from 2010 through 2012 and no porbeagle sharks were retained from 2013 through 2015. From 2010 through 2015, vessels made an average of 1,386 trips per year. Only 18 of those trips on average interacted with porbeagle sharks (approximately 1 percent of all trips). According to HMS logbook data, of the porbeagle sharks that were caught, on average 554 were released alive each year (approximately 74 percent of those caught) and 193 were released dead each year (approximately 26 percent of those caught). Pelagic Observer Program (POP) data from 2010 through 2015 show similar trends. Specifically, POP data indicate that no porbeagle sharks were kept from 2010 through 2014 and one porbeagle shark was kept in 2015. NMFS believes that this one porbeagle shark reported by the observer was likely misidentified as a shortfin mako by the vessel owner. Of those observed caught, on average 66 porbeagle sharks were released alive each year (approximately 63 percent of those

caught) and 36 were discarded dead per year (approximately 34 percent of those caught). Thus, according to HMS logbook and Pelagic Observer Program data, approximately 97 percent of porbeagle sharks were released (alive and dead) from 2010–2015.

Based on recreational data collected from the Large Pelagics Survey (LPS), which covers federal and state waters from Virginia to Maine, from 2010 through 2015, NMFS estimates that on average 86 porbeagle sharks were kept annually and 746 were released alive by Atlantic HMS recreational vessels, for an average annual release of approximately 90 percent. LPS data indicate that no porbeagle sharks were discarded dead between 2010 and 2015. Specific to CHB vessels, NMFS estimates that on average approximately 15 porbeagle sharks were kept annually and 146 were released, for an average annual release of approximately 91 percent. It is unknown whether the porbeagle sharks that were kept were dead or alive when brought to the vessel.

HMS dealer data indicate that total ex-vessel revenues from porbeagle sharks caught on pelagic longline gear ranged from approximately \$560 per year to \$4,040 per year from 2010 through 2012. From 2013 through 2015, no porbeagle sharks were kept and no resulting revenue was earned. Thus, this action would likely not result in significant operational changes or adverse socioeconomic impacts on commercial HMS fishermen. This proposed rule is intended to ensure U.S. compliance with ICCAT Recommendation 15–06 and would continue to be consistent with the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments, as well as other requirements. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 9, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.21, add paragraph (c)(1)(iii) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1) * * *

(iii) Has pelagic longline gear on board, persons aboard that vessel are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

* * * * *

■ 3. In § 635.22, add paragraph (a)(3) to read as follows:

§ 635.22 Recreational retention limits.

(a) * * *

(3) Vessels issued an HMS General Category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel during that trip.

* * * * *

■ 4. In § 635.24, add paragraph (a)(10) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(10) Notwithstanding other provisions in this paragraph (a), vessels issued a permit under this part that have pelagic longline gear on board or on vessels

issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish, or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel, are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

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■ 5. In § 635.71, add paragraph (d)(20) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(20) Retain, possess, or land porbeagle sharks that were alive at the time of haulback as specified in §§ 635.21(c)(1)(iii), 635.22(a)(3), and 635.24(a)(10).

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