

Written comments should be sent to Mr. Al Koss, HC 68, Box 50, Mimbres, NM 88049-9301. Comments may also be sent via e-mail to [alkoss@fs.fed.us](mailto:alkoss@fs.fed.us), or via facsimile to 575-520-2551.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Wilderness Ranger District, HC 68, Box 50, Mimbres, NM 88049-9301. Visitors are encouraged to call ahead to 575-536-2250 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Mr. Al Koss, Designated Federal Official, 575-536-2250 or [alkoss@fs.fed.us](mailto:alkoss@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Finalization of operating guidelines; (2) create a news release that will solicit project proposals; (3) Selection of a chairperson by the committee members; (4) create evaluation criteria to use for project proposals; and (5) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 26 will have the opportunity to address the Committee at those sessions.

July 6, 2010.

**Alan E. Koss,**  
Designated Federal Official.

[FR Doc. 2010-16865 Filed 7-9-10; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Coconino Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Coconino Resource Advisory Committee will meet in Flagstaff, Arizona. The purpose of the meeting is for the committee members to discuss committee protocols, operating guidelines, and project proposal requirements.

**DATES:** The meeting will be held July 22, 2010, beginning at 1 p.m. to approximately 4 p.m.

**ADDRESSES:** The meeting will be held in the Ponderosa Room of the Coconino County Health Department, 2625 N. King St., Flagstaff, Arizona 86004. Send written comments to Brady Smith, RAC Coordinator, Coconino Resource Advisory Committee, c/o Forest Service, USDA, 1824 S. Thompson St., Flagstaff, Arizona 86001 or electronically to [bradysmith@fs.fed.us](mailto:bradysmith@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Brady Smith, Coconino National Forest, (928) 527-3490.

**SUPPLEMENTARY INFORMATION:** Agenda items for this meeting include discussion about (1) Whether or not projects will need to be NEPA-ready; (2) Possible limits on proposals; (3) Roles and responsibilities of the Coconino RAC; (4) Meeting structure, voting processes and agendas; (5) Budget; and (6) Project solicitation. The meeting is open to the public.

Dated: July 1, 2010.

**M. Earl Stewart,**  
Forest Supervisor, Coconino National Forest.

[FR Doc. 2010-16652 Filed 7-9-10; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The ONMS is seeking applications for the following vacant seats on the Florida Keys National Marine Sanctuary Advisory Council: Boating Industry (member), Boating Industry (alternate), Citizen at Large—Middle Keys (alternate), Citizen at Large—Upper Keys (member) Citizen at Large—Upper Keys (alternate), Diving—Upper Keys (member), Diving—Upper Keys (alternate), Fishing Charter Sports Fishing (member), Fishing—Charter Sports Fishing (alternate), Fishing—Commercial—Marine/Tropical (member), Fishing Commercial Marine/Tropical (alternate), Fishing—Commercial—Shell/Scale (alternate), Fishing—Recreational (member), Fishing Recreational (alternate), Research and Monitoring (member), Research and Monitoring (alternate),

South Florida Ecosystem Restoration (member), Tourism—Lower Keys (member), Tourism Lower Keys (alternate), and Tourism Upper Keys (member). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

**DATES:** Applications are due by August 6, 2010.

**ADDRESSES:** Application kits may be obtained from Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 292-0311 x245; [Lilli.Ferguson@noaa.gov](mailto:Lilli.Ferguson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

**Authority:** 16 U.S.C. 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 14, 2010.

**Daniel J. Basta,**  
Director of National Marine Sanctuaries,  
National Ocean Service, National Oceanic  
and Atmospheric Administration.

[FR Doc. 2010-16744 Filed 7-9-10; 8:45 am]

**BILLING CODE 3510-NK-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 100607244-0246-01]

RIN 0648-XW40

#### Listing Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions to List the Porbeagle Shark under the Endangered Species Act

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, NMFS, announce a 90-day finding for two petitions to list

porbeagle sharks (*Lamna nasus*) under the Endangered Species Act (ESA). We find that neither petition presents substantial scientific information indicating the petitioned actions may be warranted. Accordingly, we will not initiate a status review of the species at this time.

**FOR FURTHER INFORMATION CONTACT:** Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282-8485 or Marta Nammack, NMFS, Office of Protected Resources (301) 713-1401. The petition and other pertinent information are also available electronically at the NMFS website at [http://www.nero.noaa.gov/prot\\_res/CandidateSpeciesProgram/csr.htm](http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm). References are available upon request.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under Section 4(b)(3)(A) of the ESA, within 90 days after receiving a petition to list a species under the ESA, the Secretary of Commerce (Secretary), to the maximum extent practicable, must make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding must be promptly published in the **Federal Register**. In determining whether a petition contains substantial information, we take into account information submitted with and referenced in the petition and all other information readily available in our files. Our ESA implementing regulations at 50 CFR 424.14(b)(1) define “substantial information” as the “amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” If the petition is found to present such information, the Secretary must conduct a review of the status of the involved species and make a determination whether the petitioned action is warranted within 12 months of receipt of the petition. In making a finding on a petition to list a species, the Secretary shall consider whether such a petition “(i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by appropriate supporting documentation in the form

of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps” (50 CFR 424.14(b)(2)).

On January 22, 2010, we received a petition from Wild Earth Guardians (WEG), requesting that we list porbeagle sharks (*Lamna nasus*) throughout their entire range, or as Northwest Atlantic, Northeast Atlantic, and Mediterranean Distinct Population Segments (DPS), as either threatened or endangered under the ESA, as well as designate critical habitat for the species. We also received a petition from the Humane Society of the United States (HSUS), on January 22, 2010, requesting that we list a Northwest Atlantic DPS of porbeagle sharks as endangered under the ESA. The WEG and HSUS will hereafter jointly be referred to as the “petitioners,” and the petitions referred to jointly as the “petitions.” Information contained in the petitions focuses on the species’ imperilment due to historical and continued overfishing; modification of habitat through pollution, climate change, and ocean acidification; failure of regulatory mechanisms; and low productivity of the species.

**ESA Statutory Provisions and Policy Considerations**

Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532 (16)). The ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” (ESA section 3(6)). A threatened species is defined as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range” (ESA section 3(19)).

The ESA defines species to include subspecies or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16); 50 CFR 424.02 (k)). The U.S. Fish and Wildlife Service and NMFS have adopted a joint policy describing what constitutes a DPS of a taxonomic species (61 FR 4722; February 7, 1996). The joint DPS policy identifies two criteria for making DPS determinations: (1) The population must be discrete in relation to the remainder of the taxon (species or subspecies) to which it belongs; and (2) the population must be significant to the remainder of the taxon to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) “It is markedly separated from other populations of the same taxon as a consequence of physical,

physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) “it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D)” of the ESA.

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) “persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.”

The WEG petition requested that porbeagle sharks throughout their entire range, or proposed Northwest Atlantic, Northeast Atlantic, and Mediterranean DPSs, be listed under the ESA. The petitioner states “the species and DPSs face threats from historic and continued overfishing, as well as a low reproduction rate, which hinders its recovery.” The information contained in the WEG petition focuses on historical and continued overfishing of DPSs of porbeagle sharks globally. The HSUS petition only addresses a Northwest Atlantic DPS of porbeagle sharks. As such, we first reviewed whether either petition presented information indicating that the global porbeagle shark species consists of one or multiple DPSs, and then, assessed whether available information indicated that the petitioned actions may be warranted.

We evaluated whether the information provided or cited in the petition met the ESA’s standard for “substantial information.” We reviewed information that is readily available in our files, and consulted shark experts from NMFS’ Highly Migratory Species (HMS) Management Division, Northeast Fisheries Science Center- Apex Predator Program, and the Southeast Fisheries Science Center to determine if the information readily available in our files indicates that the petitioned actions may be warranted, and if the available information supports the identification

of any DPS(s) for this species. In 2009, the International Council for the Exploration of the Sea (ICES) and the International Commission for the Conservation of Atlantic Tunas (ICCAT) conducted a stock assessment for porbeagle sharks - Report of the 2009 Porbeagle Stock Assessments Meeting (ICES/ICCAT, 2009). The HSUS petition references information from this report. In this finding, we heavily relied on the information from this report, as it was readily available in our files prior to receiving the petitions, it is referenced within the HSUS petition, and it is the most recent compilation of porbeagle shark data available.

In the following sections, we use the information presented in the petitions and in our files to: (1) describe the distribution of the porbeagle shark; (2) determine whether porbeagle shark populations may meet the criteria for being identified as DPSs; (3) evaluate whether the porbeagle shark or DPSs proposed by the petitioners are at abundance levels that would lead a reasonable person to conclude that listing under the ESA may be warranted; (4) evaluate whether any of the factors listed under section 4(a)(1) of the ESA may present threats to the existence of the species or DPSs proposed by the petitioners. We include conclusion subsections within each section, and our final conclusion regarding these petitions is under the Petition Finding section.

#### **Porbeagle Shark Distribution and Analysis of DPS Information**

Porbeagle sharks are found in the North Atlantic Ocean in the following locations: the Northeast coast of the United States.; Newfoundland Banks; Iceland; Barents, Baltic and North Seas; coast of western Europe; and the Mediterranean Sea. In the southern hemisphere, they are distributed in a circumglobal band of temperate waters in the southern Atlantic, southern Indian, southern Pacific, and Antarctic Oceans. The porbeagle prefers colder water, and it appears that they do not occur in equatorial waters; however, recent evidence from pop-up archival tags has revealed that mature female porbeagle sharks migrate to a subtropical pupping ground in the Sargasso Sea in winter (Campana *et al.*, 2010).

In its petition, HSUS states that “the Northwest Atlantic porbeagle population is distinct’ because it is “markedly separated from other populations” due to “physical [and] behavioral factors,” as evidenced by “genetic..discontinuity.” The WEG petition suggests that the “Northwest

Atlantic, Northeast Atlantic, and Mediterranean populations of the porbeagle shark qualify as DPSs under the ESA.” The petitioners cite Kohler *et al.* (2002), COSEWIC (2004), Stevens *et al.* (2006), and NMFS (2010) in support of their conclusion about the existence of Northeast and/or Northwest Atlantic DPSs. Based on the best available information, there is conflicting scientific evidence regarding whether DPSs of porbeagle sharks exist. As indicated in the HSUS petition, most tagging data indicate porbeagle sharks are highly migratory, but remain within the range of the particular stock; thus, there is little exchange between the geographically dispersed populations in the Northeast and Northwest Atlantic (Stevens *et al.*, 2006; COSEWIC, 2004). As noted in the HSUS petition, a single transatlantic migration has been recorded; however, conventional tagging data (approximately 200 recaptures from three separate studies) and recent satellite tagging data indicate that transatlantic migrations are very limited (ICES/ICCAT, 2009). While the tagging data indicate that there is little movement between populations in the North Atlantic, which could lead to limited genetic exchange, mitochondrial DNA studies which were readily available in our files indicate that there is no differentiation among the stocks within the North Atlantic (Pade *et al.*, 2006; Testerman *et al.*, 2007). Genetic studies did, however, show marked differences in haplotype frequencies between the northern and southern hemispheres, which support the contention that there is restricted gene flow between the North and South Atlantic populations (ICES/ICCAT, 2009; Pade *et al.*, 2006; Testerman *et al.*, 2007). Based upon the available information, ICES/ICCAT (2009) determined, for management purposes, that porbeagle sharks consist of four separate stocks - the Northwest Atlantic, Northeast Atlantic, Southwest Atlantic, and Southeast Atlantic. However, fishery management units are not the equivalent of DPSs unless they also meet the criteria for identifying a DPS.

#### **Conclusion**

Given the conflicting evidence from the tagging and genetic data, without a more thorough analysis it is unclear as to whether porbeagle shark DPSs exist. As cited in the HSUS petition and noted above, the ICES/ICCAT porbeagle stock assessment (2009) separates the North Atlantic porbeagle population into two stocks, the Northwest (NW) and Northeast (NE) Atlantic stocks. The NW Atlantic stock includes porbeagles from the waters on and adjacent to the

continental shelf of North America, and the NE Atlantic stock includes porbeagles from the waters in and adjacent to the Barents Sea, south to northwest Africa (ICES/ICCAT, 2009). Current information is insufficient to conclude whether fish from the Mediterranean represent a discrete population and should be considered separate from the NE stock. As such, NMFS considers the NE Atlantic stock to include the Mediterranean Sea. ICES/ICCAT (2009) also divides porbeagle in the South Atlantic into two separate stocks - the Southwest and Southeast. As mentioned above, however, fishery management units are not the equivalent of DPSs unless they also meet the criteria for identifying a DPS. The petitioners have not presented substantial information indicating that these populations meet the criteria for being identified as DPSs under the ESA.

However, in order to be thorough and ensure that each petitioned action is fully evaluated to determine if it may be warranted, we considered whether the petitioners presented substantial evidence indicating that the petitioned action for the full species or for the DPSs as proposed by WEG and HSUS may be warranted.

#### **Abundance**

##### **NW Atlantic**

In 2005, the NW Atlantic population size was estimated to vary from 188,000 to 195,000 fish (DFO, 2005). Based on the model estimates in 2005, the population was estimated to be 12 to 24 percent of what it had been in 1961. The ICES/ICCAT stock assessment working group ran several different models using the data that was used by DFO in 2005. The Bayesian Surplus Production (BSP) model estimated current (2005) biomass to be 66 percent of the 1961 biomass, compared to the age-structured model results presented above (ICES/ICCAT, 2009). The BSP model with equal weighting provided results that were more similar to the age-structured model, estimating current biomass at 37 percent of 1961 biomass. The BSP model with equal weighting predicted that the NW Atlantic stock would recover to sustainable biomass (BMSY) levels in approximately 20 years with no fishing (ICES/ICCAT, 2009). The working group also ran the BSP model again using data through 2009 and derived similar results; however, they noted the model indicated a low current fishing mortality rate relative to maximum sustainable yield (FMSY) because of low catches in 2008 (ICES/ICCAT, 2009). A forward projecting age- and sex- based model was also used by

the working group. This model estimated the total population size in 2009 to be approximately 22 to 27 percent of its size in 1961 and about 95 to 103 percent its size in 2001 (ICES/ICCAT, 2009). With this model, they also estimated the number of mature females in 2009 to range from 11,000 to 14,000 individuals, or 12 to 16 percent of its 1961 level and 83 to 103 percent of its 2001 value (ICES/ICCAT, 2009). Based on the results of this most recent modeling effort, the working group concluded that the NW Atlantic stock biomass is depleted below BMSY, recent fishing mortality is below FMSY, and recent biomass appears to be increasing (ICES/ICCAT, 2009).

#### NE Atlantic

According to ICES/ICCAT (2009), the NE Atlantic stock has the longest history of commercial exploitation; however, the lack of catch per unit effort (CPUE) data derived during the peak of the fishery makes it difficult to estimate current status relative to virgin biomass. The working group determined that this stock is depleted and that recent fishing mortality rates were either near or above sustainable levels (ICES/ICCAT, 2009). Based on their modeling efforts, the working group concluded that current management efforts are likely to result in the stock remaining fairly stable (ICES/ICCAT, 2009).

#### SW Atlantic

The working group concluded that the data for the southern hemisphere porbeagle stock are too limited to provide a robust indication on the status of this stock (ICES/ICCAT, 2009). They noted that the data that are available indicate a decline in CPUE in the Uruguayan fleet, suggesting a potential decline in porbeagle abundance in the SW Atlantic to levels below MSY (ICES/ICCAT, 2009). They conducted a similar modeling effort and noted that depletion levels are below MSY and fishing mortality rates are above those producing MSY; however, they also indicated that catch and other data are generally too limited to allow definition of sustainable harvest levels (ICES/ICCAT, 2009).

#### SE Atlantic

According to ICES/ICCAT (2009), information and data for porbeagle in the SE Atlantic are too limited to assess their status. The working group did note that available catch rate patterns suggest that this stock has stabilized since the early 1990s (ICES/ICCAT, 2009).

The abundance information in the petition and in our files does not indicate that listing the full species of

porbeagle or any of the DPSs proposed by WEG or HSUS as threatened or endangered may be warranted.

#### **Present or Threatened Destruction, Modification or Curtailment of Habitat or Range**

The HSUS petition asserts that “[P]resent or threatened destruction, modification, of porbeagle habitat is negatively affecting the species,” and provides references suggesting that coastal pollution, global climate change, and ocean temperatures and acidification could potentially have adverse effects on NW Atlantic porbeagle sharks. For coastal pollution, bioaccumulated contaminants are suggested as a concern to porbeagle fitness, as sharks are high on the trophic level. Available information does not indicate that the fitness of the NW Atlantic porbeagle stock is impacted by mercury or other bioaccumulated contaminants. The National Shark Research Consortium (NSRC) conducted studies from 2002–2007 that focused on essential fish habitat (EFH) and the effects of environmental pollutants on the reproduction, growth, and maturation of sharks along the eastern U.S. coast. NSRC submitted a five-year technical report to NOAA/NMFS (NSRC, 2007), which was readily available in our files before the petitions were received. NSRC (2007) found that although coastal and estuarine U.S. Atlantic sharks were exposed to polychlorinated bi-phenyls (PCB), the concentrations of PCB congeners showed that the more harmful, highly toxic congeners only accounted for 0.7 to 4 percent of the total PCB load, indicating that effects from these contaminants did not pose a significant threat. In addition, they determined that it was unlikely that infertility rates were associated with exposure to contaminants like organochlorine pesticides (OCP) and PCBs (NSRC, 2007). Although no studies have focused specifically on NW Atlantic porbeagle sharks, no information is presented to indicate that porbeagle sharks, as DPSs or as a single species, are currently at greater risk of being impacted by coastal pollution than other sympatric shark species.

HSUS also asserts that due to global climate change, the distribution of prey resources and competitors for these resources may change, which would limit the potential for porbeagles to recover. In addition, they stress that while there is no available information indicating a change in porbeagle distribution, ocean temperatures have increased by 0.1 degrees Celsius (C). Porbeagle sharks are opportunistic

feeders, taking advantage of available prey (Campana and Joyce, 2004). They thermoregulate and have adapted to be able to hunt in colder waters but are commonly found in temperatures ranging from 2 to 23 degrees C (32 to 59 degrees Fahrenheit) (Campana and Joyce, 2004). As they are adapted to a fairly wide temperature range and are opportunistic feeders, available information does not indicate that a change in temperature of 0.1 degrees C would have a significant impact on porbeagle sharks. Furthermore, there is no information available that indicates there has been any change in the distribution of porbeagle sharks as a result of climate change, or that porbeagles are not adapting to potential changes in distributions of prey species.

Ocean acidification is posed as an additional threat to habitat or the range of porbeagle sharks by HSUS. HSUS states that “[T]he ongoing increase in ocean acidification poses an additional threat to the health of the populations of a number of marine species, porbeagle sharks among them,” specifically pointing out hypercapnia, an increase in the amount of carbon dioxide in the tissues (Fabry *et al.*, 2008). As noted in the HSUS petition, Fabry *et al.* (2008) indicates that increases in carbon dioxide (CO<sub>2</sub>) have the potential to affect pH levels in marine organisms; however, they state that active animals have a higher capacity for buffering pH changes, and that the tolerance of CO<sub>2</sub> by marine fish appears to be very high. Porbeagle sharks are an active, highly migratory species, and active animals have a higher capacity for buffering pH changes; therefore, they may have the ability to tolerate changes in CO<sub>2</sub> and buffer pH changes (Compagno, 2001; Fabry *et al.*, 2008). Ocean acidification, therefore, does not appear to pose a significant risk to porbeagle sharks throughout the taxon’s range or within separate DPSs.

#### *Conclusion*

Porbeagle sharks are a highly migratory species capable of thermoregulation and with the ability to feed opportunistically. Although coastal pollution, global climate change, and ocean temperatures and acidification were posed by HSUS as adversely affecting NW Atlantic porbeagle sharks, current information does not indicate that these factors are currently having significant impacts on porbeagle sharks or will in the foreseeable future; information was not presented on how these factors might affect populations in the NE Atlantic, SW Atlantic, or SE Atlantic. While we have concluded that

the petitions do not present substantial information indicating that the petitioned actions of listing the full porbeagle shark species or any of the DPSs proposed by WEG or HSUS under the ESA due to present or threatened destruction, modification, or curtailment of habitat or range may be warranted at this time.

#### **Overutilization for Commercial, Recreational, Scientific or Education Purposes**

The petitioners claim that overutilization of porbeagle shark for commercial and recreational purposes in the form of historical and continued overfishing requires that the species be listed under the ESA. Porbeagle sharks are currently managed by the Division of Fisheries and Oceans (DFO) in Canada, NMFS in the United States, the European Union (EU) in Europe, with ICES and ICCAT working collaboratively to perform stock assessments and make recommendations for management actions specific to porbeagles.

As indicated previously, ICES/ICCAT (2009) presented information on porbeagle stocks in the NW, NE, SW, and SE Atlantic. Although the stocks are depleted, available information indicates that the stocks are stable or increasing in size (ICES/ICCAT, 2009). Potential declines were suggested for the SW Atlantic stock; however, it was determined that data are too limited to indicate a trend (ICES/ICCAT, 2009). For all the stocks, it was determined that although catches on the high seas did occur, they occurred at low levels (ICES/ICCAT, 2009); therefore, bycatch and directed catch on the high seas is not a significant threat to the species. Furthermore, bycatch of porbeagle within the ICES and NAFO fisheries of Spain were very rare, and bycatch of porbeagle in the North and South Atlantic in swordfish (*Xiphias gladius*) fisheries by Spanish longliners was very low (ICES/ICCAT, 2009).

In the Northwest Atlantic, NMFS has set a total allowable catch (TAC) for porbeagles at 11.3 metric tons (mt) dressed weight (dw), and a commercial quota of 1.7 mt dw (50 CFR 635). The TAC is the total amount of a species that is allowed to be caught by all resource users over a particular period of time (e.g., year/fishing season). The commercial quota is the amount of the TAC allocated to fishermen issued a Federal limited access shark permit; however, all fishing for that species ceases when the commercial quota is reached. It has been determined that porbeagle sharks in the NW Atlantic are overfished and biomass has been

depleted; however, biomass is currently increasing, and overfishing is no longer occurring (NMFS/HMS, 2009; ICES/ICCAT, 2009).

According to CITES (2010), Canadian catch data indicate that commercial porbeagle landings have progressively decreased from a peak in 1995 of 1400 tons (t) to 92t in 2007, corresponding with decreasing TAC levels (cited from Campana and Gibson, 2008). The TAC for porbeagle shark in Canada has been decreased from 250t to 185t; of this amount, 125t is the quota for the directed commercial shark fishery in the Maritimes Region; 10t is the quota for the directed commercial fishery in the Gulf and Quebec Regions combined; and the remaining 50t quota is reserved to account for bycatch of porbeagle shark in other fisheries (DFO, 2009). Mating grounds for the species have also been closed in Canada to directed fisheries. CITES (2010) states that population projections indicate that the population will eventually recover if harvest rates are kept under 4 percent (approximately, 185t, as cited in DFO 2005b). Canadian landings have been below the TAC the last several years, and ICES/ICCAT (2009) indicates that the NW Atlantic stock is increasing. Thus, reduced commercial landings in both the United States and Canada appear to be having a positive impact on the stock, and the stock is expected to continue to recover under the management measures in place in both countries.

According to a draft CITES proposal that was readily available in our files prior to receiving the petitions, catch of porbeagles in recreational fisheries is considered to be extremely low in Canada and the United States (CITES, 2009). Recreational fisheries for sharks in the United States are limited to rod, reel, and handline gear (50 CFR part 635). In addition, according to NMFS/HMS (2009), between 2000 and 2008, only 40 porbeagle sharks were observed in the rod and reel fishery, and out of that total, only 4 were kept and 36 were released alive.

The HSUS notes that it feels NMFS underestimates the number of porbeagle sharks caught and discarded as a result of recreational fisheries. It also notes discrepancies between Tables 3.24 and 3.26 in Amendment 2 of the HMS Fishery Management Plan (FMP) (NMFS/HMS, 2008). Table 3.24 is a compilation of recreational fisheries data from the Marine Recreational Fisheries Statistics Survey (MRFSS), showing expanded MRFSS survey estimates, while table 3.26 shows raw, unexpanded numbers of fish from the large pelagic survey (LPS). Offshore

fishing trips targeting pelagic sharks typically make up a relatively small proportion of all recreational fishing trips. As a result of the "rare event" nature of these trips, generalized angler surveys, such as the MRFSS, aimed at estimating catch and effort for all species do not produce very precise estimates for many shark species. In addition to low precision, shark catch estimates derived from MRFSS may suffer from biases associated with sampling under-coverage of shark tournaments, since MRFSS interviews are not conducted at tournament sites. Specialized surveys are often needed to achieve the desired level of statistical precision. For example, the NMFS LPS was specifically designed to collect information on recreational fishing directed at highly migratory species (e.g., tunas, billfishes, swordfish, and sharks). Also, unlike the MRFSS, LPS dockside interviews are conducted at HMS tournaments. This specialization has allowed the higher levels of sampling needed to provide more precise landings estimates of pelagic sharks such as shortfin mako, common thresher, and blue sharks from Maine through Virginia. However, for shark species less commonly encountered by recreational anglers, including porbeagle, even a specialized survey such as the LPS cannot produce precise landings estimates. A mandatory census approach that accounts for every fish landed (both during and outside of tournaments) would be needed instead of a survey if precision is desired on the small recreational landings of these extremely rare event species. Despite the identified shortcomings associated with the numbers presented in Tables 3.24 and 3.26, these numbers still represent the best available data on recreational fishing catch for porbeagle sharks. The fact that only 2 landed fish were observed and only 20 were reported as released alive during 18,626 LPS dockside interviews conducted from 2005 through 2009 suggests that porbeagles are very rarely encountered by recreational anglers from Virginia through Maine.

Results for the NE Atlantic stock indicate that the stock is depleted but is projected to remain stable under the TAC of 436 tons (t) (ICES/ICCAT, 2009). Furthermore, ICES/ICCAT (2009) determined that reductions in fishing mortality would allow the population to rebuild. The TAC of 436t referred to in ICES/ICCAT (2009) is no longer applicable as new regulations setting the TAC at zero in domestic waters and prohibiting EU vessels from fishing for, retaining on board ships, trans-shipping

(e.g., transferring from one ship to another), and landing porbeagle sharks in international waters were implemented by the European Union (EU) on January 14, 2010 (EU, 2010).

Although information on the southern hemisphere stocks is limited, data for the SE Atlantic suggest, through catch rate patterns, that the stock has stabilized; however, ICES/ICCAT (2009) determined that the data are too limited to adequately assess their status at this time. In addition, the SW data suggest a potential decline has been observed through the CPUE reported for the Uruguayan fishing fleet, but the data are too limited to adequately assess their current status (ICES/ICCAT, 2009). Camhi *et al.* (2009), as referenced by HSUS, reports that porbeagle fins are neither highly valued, nor a significant portion of the Hong Kong shark fin trade.

#### Conclusion

Although the petitioners claim that overutilization of porbeagle sharks for commercial and recreational purposes in the form of historical and continued overfishing requires that the species be listed under the ESA, available information indicates that porbeagle shark population trends are stable or increasing globally, and that protections for the species are increasing in these areas as well; therefore, the petitions do not present substantial information indicating that the petitioned actions of listing the full porbeagle shark species or DPSs proposed by WEG or HSUS under the ESA due to historical and current overutilization may be warranted at this time.

#### Predation and Disease

The petitions assert that disease or predation are not likely a threat to this species. As indicated in the petitions, porbeagle sharks are an apex predator, and other than possible predation by white sharks and orcas, humans are likely to be the only significant predator (CITES, 2007). The petitions also state that studies have shown some incidence of cancer in sharks, although actual rates of cancer in sharks have not been determined, and evidence of cancer in porbeagles is limited (National Geographic, 2003).

#### Conclusion

Available information on disease and predation on porbeagles is limited; however, available information indicates that it is not likely that these factors pose a significant threat to the species; therefore, the petitions do not present substantial information indicating that the petitioned actions of

listing the full porbeagle shark species or DPSs proposed by WEG or HSUS under the ESA due to disease or predation may be warranted at this time.

#### Inadequacy of Existing Regulatory Mechanisms

The petitions assert that inadequacy of existing regulatory mechanisms requires that the porbeagle shark be listed under the ESA. As indicated by WEG, porbeagles are a species of concern (SOC), and SOC status does not carry any protections under the ESA. The WEG petition states that “the species therefore lacks Federal protection in the U.S.” The Magnuson-Stevens Fishery Conservation and Management Act (MSA) regulates fisheries in Federal waters in the United States, and states generally have authority within state waters. Generally, Regional Fishery Management Councils construct FMPs for each fishery under their jurisdiction, and these plans are designed to allow fisheries to thrive while preventing overfishing. FMPs are implemented by NMFS. Because porbeagle sharks are considered to be a highly migratory species, as defined under the MSA, NMFS, as delegated by the Secretary of Commerce, and not the Regional Fishery Management Councils, manages the species. As such, the porbeagle shark is included in the 2006 Consolidated HMS FMP. The 2006 Consolidated HMS FMP regulates fishing for highly migratory species in Federal waters by measures such as quotas, permit requirements, retention limits, time/area closures, prohibited species, observer coverage, and fishermen and dealer reporting. The FMP also requires that all sharks be landed with all fins naturally attached. Porbeagle sharks are an authorized species, and the Federal commercial fishery for porbeagle sharks is regulated by a base commercial quota of 1.7 mt dw per year. This quota can only be harvested by fishermen who possess a Federal limited access shark permit when the fishing season, as announced by NMFS, is open. In other words, porbeagle sharks are managed through the MSA by the 2006 Consolidated HMS FMP, and regulations are implemented and enforced by NMFS; therefore, porbeagle sharks do not lack Federal protection in the United States.

HSUS states that despite NMFS management, porbeagle sharks are continuing to decline in the Northwest Atlantic, and thus, protections are inadequate. The most recent stock assessment report for porbeagle sharks reports that although biomass is depleted, trends indicate that it is currently increasing (ICES/ICCAT,

2009). NMFS' regulatory mechanisms for porbeagle sharks are a factor in allowing biomass to increase by preventing overfishing; therefore, NMFS regulatory measures are adequate.

ICES/ICCAT (2009) note that in Canada and internationally, management efforts and regulations that benefit porbeagle sharks are increasing. Canada has implemented closures of porbeagle shark mating grounds to targeted fisheries, and also lowered the TAC to 185t from a maximum sustainable yield (MSY) of 250t (ICES/ICCAT, 2009). Furthermore, ICES/ICCAT (2009) considers Canada's harvest regime of porbeagle sharks in Canada's Exclusive Economic Zone (EEZ) to be conservative.

#### Conclusion

Although the petitioners claim that inadequacy of existing regulatory mechanisms warrants that the porbeagle shark be listed under the ESA, the petitions do not present substantial information indicating that the petitioned actions either for DPSs proposed by WEG or HSUS or the full species may be warranted. When considering new and existing U.S., Canadian, and EU regulations and fisheries management mechanisms, and taking into account the most recent stock assessment by ICES/ICCAT (2009) which indicates that stocks have stabilized or increased, it is reasonable to conclude that the existing regulatory mechanisms are adequately protecting porbeagle sharks; therefore, the petitioned actions do not appear to be warranted at this time.

#### Other Natural or Manmade Factors Affecting Its Existence

The petitions contend that “biological vulnerability,” in the form of low productivity, isolated populations, and low population density, is a natural factor that is affecting the continued existence of porbeagle sharks. As stated earlier, ICES/ICCAT (2009) determined that the stocks were generally stable or increasing in biomass. Genetic studies indicate that there is no differentiation between the North Atlantic stocks, which indicates that there is the potential for some mixing in the North Atlantic; therefore, the threat of isolated populations does not appear to be a factor for this HMS in the northern hemisphere (Pade *et al.*, 2006; Testerman *et al.*, 2007). Available information for the southern hemisphere indicates that the distribution of porbeagle sharks in the South Atlantic appears to be continuous around the tips of South America and southern Africa, and although genetic

data are lacking, the porbeagle sharks in the southern hemisphere do not appear to be isolated (ICES/ICCAT, 2009). Considering the highly migratory nature of this species, isolation does not appear to be a factor for decline. Low productivity is an aspect of the species' life history that has the potential to make the species more vulnerable to specific threats; however, this trait along with all other life history parameters is evaluated and addressed in management and conservation actions. As indicated by literature cited in the HSUS petition, female porbeagle sharks mature at approximately 13 years and males at 8 years in the Northwest Atlantic Ocean (Campana and Gibson, 2005; Campana *et al.*, 2003; Natanson *et al.*, 2001). They produce an average litter size ranging from two to six pups, and reproduce annually (Jensen *et al.*, 2002; Gibson and Campana, 2005). A recent Ecological Risk Assessment for Atlantic pelagic sharks found that porbeagle sharks ranked among the less vulnerable species in terms of their biological productivity and susceptibility to pelagic longline fisheries (Cortes *et al.*, 2010). Available information is insufficient to indicate that there has been any decrease in productivity of porbeagle sharks.

#### Conclusion

Although the petitions contend that "biological vulnerability" is a natural factor that is affecting the continued existence of porbeagle sharks, available information does not indicate that these factors pose a significant threat to the species. It does not appear that porbeagle populations are isolated, and the most recent stock assessment reports that biomass is either stable or increasing. In addition, available information does not indicate that there has been any decrease in porbeagle shark productivity. While much of the life history information presented is specific to Northwest Atlantic population, it is reasonable to assume that life history parameters for other porbeagle shark populations are similar to those of the Northwest Atlantic population. Therefore, the petitions do not present substantial information indicating that the petitioned actions for either DPSs proposed by WEG or HSUS or the full species may be warranted at this time.

#### Petition Finding

After reviewing the information contained in the petitions, as well as information readily available in our files, we have determined that the petitions do not present substantial scientific or commercial information indicating that the petitioned actions

may be warranted. While the petitions assert that porbeagle sharks have suffered disastrous declines and that they are continuing to decline, we do not believe that the information presented in the petitions is substantial. This finding is supported by information contained within the ICES/ICCAT Stock Assessment Report (2009), which indicates increases in biomass in some stocks and stability in others. As stated previously, the United States has managed porbeagle shark through the HMS FMP since 2006. The Federal commercial fishery for porbeagle sharks is regulated by a base commercial quota of 1.7 mt dw per year. This quota can be harvested only by fishermen who possess a Federal limited access shark permit when the fishing season, as announced by NMFS, is open. In addition, Canada and the EU are increasing protections for porbeagle sharks internationally. Increasing numbers and stability in these stocks, coupled with new and continuing national and international management efforts, also support our conclusion that the petition does not present substantial information indicating that the petitioned actions may be warranted. If new information becomes available to suggest that porbeagle sharks may, in fact, warrant listing under the ESA, we will reconsider conducting a status review of the species.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: July 7, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 43-2010]

#### Foreign-Trade Subzone 116A—Port Arthur, TX; Expansion of Manufacturing Authority; Motiva Enterprises, LLC (Oil Refinery)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting an expansion of the scope of manufacturing authority approved within Subzone 116A, on behalf of Motiva Enterprises, LLC in Port Arthur, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part

400). It was formally filed on July 1, 2010.

Subzone 116A (1,005 employees, 250,000 barrel per day capacity) was approved by the Board in 1993 for the manufacture of fuel products and certain petrochemical feedstocks (Board Order 668, 59 FR 61, 12-3-1994, as amended by Board Order 740, 60 FR 26716-26717, 5-18-1995 and Board Order 1116, 65 FR 52696-52697, 9-30-2000). The subzone consists of six sites in Jefferson and Hardin Counties, Texas: *Site 1*: (3,036 acres) Port Arthur refinery complex, Jefferson County; *Site 2*: (402 acres) Port Neches Terminal, Jefferson County; *Site 3*: (126 acres) Port Arthur Terminal, Jefferson County; *Site 4*: (37 acres) Sour Lake underground LPG storage facility, Hardin County; *Site 5*: (63 acres) Seventh Street tank facility, Jefferson County; and, *Site 6*: (97 acres) National Station Extension Tank Farm, Jefferson County.

The current request involves the construction of additional crude distillation, coking, integrated hydrocracker/diesel hydrocracker, naphtha, catalytic feed, sulfur recovery, power generation and storage units within Site 1. The proposed expansion would increase the overall crude distillation capacity allowed under FTZ procedures to 600,000 barrels per day. No additional feedstocks or products have been requested.

Zone procedures would exempt production associated with the proposed expansion from customs duty payments on the foreign products used in exports. On domestic sales, the company would be able to choose the customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 27, 2010.

A copy of the application will be available for public inspection at the