

Dated: August 12, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager. By direction of the Commander, Fifth Coast Guard District.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-XA658

Atlantic Highly Migratory Species; Commercial Porbeagle Shark Fishery Closure

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

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the commercial fishery for porbeagle sharks. This action is necessary because landings for the 2011 fishing season have reached at least 80 percent of the available quota.

DATES: The commercial porbeagle shark fishery is closed effective 11:30 p.m. local time August 29, 2011 until, and if, NMFS announces in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Peter Cooper, 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS all sharks landed every two weeks. Dealer reports

for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under § 635.28(b)(2), when NMFS projects that fishing season landings for a species group have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a closure action for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces in the **Federal Register** that additional quota is available and the season is reopened, the fishery for that species group is closed, even across fishing years.

On December 8, 2010 (75 FR 76302), NMFS announced that the porbeagle shark fishery for the 2011 fishing year was open and the available porbeagle shark quota was 1.6 metric tons (mt) dressed weight (dw) (3,479 lb dw). Dealer reports through the July 31, 2011, reporting period indicate that 2.3 mt dw or 147 percent of the available quota for porbeagle sharks has been landed. Dealer reports received to date indicate that 2.6 percent of the quota was landed from the opening of the fishery on January 1, 2011, through January 31, 2011; 0.4 percent of the quota was landed in March; 39 percent was landed in May; and 33 percent of the quota was landed in June. Preliminary numbers indicate that 72 percent of the quota was landed in July. The fishery has reached 147 percent of the quota, which exceeds the 80 percent limit specified in the regulations. Accordingly, NMFS is closing the commercial porbeagle shark fishery as of 11:30 p.m. local time August 29, 2011. This closure does not affect any other shark fishery.

During the closure, retention of porbeagle sharks is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is properly permitted to operate as a

charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (50 CFR 635.22(a) and (c)). A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive porbeagle sharks from a vessel issued an Atlantic shark limited access permit (LAP), except that a permitted shark dealer or processor may possess porbeagle sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under this closure, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a porbeagle sharks if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. If the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: August 23, 2011.

James P. Burgess,

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

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