

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 216**

RIN 0648–XG809

**Notification of Receipt of a Supplemental Petition To Ban Imports of All Fish and Fish Products From New Zealand That Do Not Satisfy the Marine Mammal Protection Act**

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

**ACTION:** Receipt of supplemental petition to ban imports through emergency rulemaking; request for comments.

**SUMMARY:** NMFS announces receipt of a supplemental petition for emergency rulemaking under the Administrative Procedure Act. Sea Shepherd Legal, Sea Shepherd New Zealand Ltd., and Sea Shepherd Conservation Society petitioned the U.S. Department of Commerce and other relevant Departments to initiate emergency rulemaking under the Marine Mammal Protection Act (MMPA), to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of Māui dolphin in excess of United States standards.

**DATES:** Written comments must be received by 5 p.m. Eastern Time on October 9, 2020.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2019–0013, by the following method:

1. *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0013](http://www.regulations.gov/), click the “Comment Now!” icon, complete the required fields and enter or attach your comments.

*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. All comments received are a part of the public record and will generally be posted for public viewing on <http://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).

Anyone who is unable to comment through <http://www.regulations.gov> may contact the **FOR FURTHER INFORMATION CONTACT** below to discuss potential alternatives for submitting comments.

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (PDF) formats only. The complete text of the petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition, copies of this petition may be obtained by contacting NMFS at the above address.

**FOR FURTHER INFORMATION CONTACT:** Nina Young, NMFS F/IASI at [Nina.Young@noaa.gov](mailto:Nina.Young@noaa.gov) or 301–427–8383.

**SUPPLEMENTARY INFORMATION:****Background**

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that the Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology, which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions in section 101(a)(2) of the MMPA. This rule established conditions for evaluating a harvesting nation’s regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. In that rule’s preamble, NMFS stated that it may consider emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock.

**Information on the Petition**

On February 6, 2019, NMFS received a petition from Sea Shepherd Legal, Sea Shepherd New Zealand Ltd, and Sea Shepherd Conservation Society to the Department of Homeland Security, the Department of the Treasury, and the Department of Commerce to carry out non-discretionary duties under section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)), to ban the importation of

commercial fish or products from fish sourced in a manner that results in the incidental kill or incidental serious injury of Māui dolphins in excess of United States standards. The petition requested that the relevant Secretary immediately ban all fish and fish products originating from fisheries in the Māui dolphin’s range that employ either gillnets or trawls, unless affirmatively identified as having been caught with a gear type other than set nets or trawls or affirmatively identified as caught outside the Māui dolphin’s range.

NMFS reviewed the petition, supporting documents, New Zealand’s previous risk assessments and Threat Management Plans (TMP). On June 18, 2019, NMFS denied the petition, stating that: (1) New Zealand is implementing a regulatory program comparable in effectiveness to the United States; (2) New Zealand has in place an existing regulatory program to reduce Māui dolphin bycatch; and (3) New Zealand was in the process of proposing additional regulatory measures that would further reduce the risk to Māui dolphins. (See 84 FR 32853, July 10, 2019.)

Petitioners filed a lawsuit against the relevant Departments in the United States Court of International Trade (CIT) on May 21, 2020. On August 13, 2020, the CIT remanded Sea Shepherd’s February 2019 petition at NMFS’ request, because New Zealand had announced its final regulatory program. NMFS proposed, and the court agreed, that the petitioners should have the opportunity to supplement their petition.

On August 27, 2020, NMFS received the supplemental petition, which both maintains the grounds for action outlined in the original petition and includes facts that arose after submission of the original petition. The supplemental petition directs attention to the following new information: (1) The receipt of data from the New Zealand government noting sightings of Māui dolphins on the east coast of the North Island; (2) the issuance of the 2019 Draft TMP; (3) the final TMP announced on June 24, 2020; and (4) the 2020 draft List of Foreign Fisheries.

NMFS will consider public comments received in its evaluation of the supplemental information received from the petitioners.

Dated: September 24, 2020.

**Paul N. Doremus,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 200911–0242]

RIN 0648–XT038

#### Atlantic Highly Migratory Species; 2021 Atlantic Shark Commercial Fishing Year

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would adjust quotas and retention limits and establish the opening date for the 2021 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any overharvests and/or underharvests experienced during the 2020 fishing year. NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

**DATES:** Written comments must be received by October 29, 2020.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2020–0108, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0108](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0108), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

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](http://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).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Lauren Latchford ([lauren.latchford@noaa.gov](mailto:lauren.latchford@noaa.gov)) by phone at 301–427–8503.

#### FOR FURTHER INFORMATION CONTACT:

Lauren Latchford ([lauren.latchford@noaa.gov](mailto:lauren.latchford@noaa.gov)), Guy Eroh ([guy.eroh@noaa.gov](mailto:guy.eroh@noaa.gov)), or Karyl Brewster-Geisz ([karyl.brewster-geisz@noaa.gov](mailto:karyl.brewster-geisz@noaa.gov)) at 301–427–8503.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated Atlantic HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for underharvests and overharvests. Regulations also include provisions allowing flexible opening dates for the fishing year and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

##### 2021 Proposed Commercial Shark Quotas

NMFS proposes adjusting the quota levels for the different shark stocks and management groups for the 2021 Atlantic commercial shark fishing year based on overharvests and underharvests that occurred during the 2020 fishing year, consistent with existing regulations at 50 CFR 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a

number of subsequent fishing years up to a maximum of five years. If a sub-regional quota is overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only if NMFS knows the status of all species in the management group, none of the species in the group are overfished, and there is no overfishing in the group. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2020 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2021 quotas for certain management groups as shown in Table 1. All of the 2021 proposed quotas for the respective stocks and management groups will be subject to further adjustment in the final rule after NMFS considers the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2021 quotas, as appropriate, noting that in some circumstances, NMFS re-adjusts quotas in the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2020 fishing year for these management groups may be added to the respective 2021 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage implemented in Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (80 FR 50073; August 18, 2015).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2020 underharvests cannot be carried over to the 2021 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. With the exception of the sub-regional western Gulf of Mexico overharvest of the aggregated LCS quota, which will be discussed below, there are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these