

December 22, 2016

Margo Schulze-Haugen  
Chief, Highly Migratory Species Division  
NMFS/SF1  
National Marine Fisheries Service, SSMC3  
1315 East-West Highway  
Silver Spring, MD 20910

**Re: Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Proposed Amendment 5b; 81 Fed. Reg. 71,672 (October 18, 2016); NOAA-NMFS-2013-0070; Draft Environmental Impact Statement for Amendment 5b to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; NOAA-NMFS-2013-0014<sup>1</sup>**

Dear Ms. Schulze-Haugen:

On behalf of the undersigned organizations and our members, we write to urge the National Marine Fisheries Service to significantly revise proposed Amendment 5b and the related Draft Environmental Impact Statement (DEIS). In the proposed amendment and the DEIS, the Fisheries Service is required to analyze and establish measures that will effectively count, cap, and control bycatch and mortality of dusky sharks in order to prevent overfishing and rebuild the species' population. As proposed, however, Amendment 5b would not significantly improve the currently ineffective management of dusky sharks. Dusky sharks, which are an important predator in the marine environment, are severely depleted and have been listed as a "Species of Concern" for more than a decade. Further delay in implementing effective management actions for dusky sharks will harm the species, the ecosystem, and fisheries in the region. The pressing need to recover the dusky shark population as well as compliance with the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA) compel the Fisheries Service to adopt robust measures in Amendment 5b to end overfishing, reduce bycatch and mortality of the species, and ensure expedient rebuilding.

Dusky shark populations off the Atlantic and Gulf of Mexico coasts have plummeted by 65 percent in the past two decades as a result of overfishing and bycatch. Despite the Fisheries Service's acknowledgment, nearly 20 years ago, that dusky sharks were severely depleted, these sharks are still overfished and experiencing overfishing today in violation of the Magnuson-Stevens Act. Past management, including a prohibition on the landing of dusky sharks in 2000 and fishermen education programs, has not stopped the overfishing of dusky sharks. Since the prohibition, three separate stock assessments have found that this species is overfished and subject to overfishing. As proposed in Amendment 5b, the Fisheries Service makes limited changes to the status quo despite the fact that recent stock assessments have confirmed these methods are ineffective at ending overfishing and reducing bycatch and mortality of dusky sharks.

The Fisheries Service estimates that it must reduce dusky shark mortality by at least 35 percent throughout its range in order to give the species even a coin flip chance of rebuilding by the year 2107 as per the proposed

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<sup>1</sup> Environmental Impact Statements; Notice of Availability, 81 Fed. Reg. 72,803 (Oct. 21, 2016) (including EIS No. 20160242, Draft, NMFS, NAT, Amendment 5b to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan and noting that the "Comment Period Ends: 12/22/2016" and to "Contact: Margo Schulze-Haugen 301-427-8503").

rebuilding plan in the DEIS. A coin flip chance – a mere 50% probability – of successful rebuilding is insufficient. In order to achieve this goal, proposed Amendment 5b imposes more stringent controls on Highly Migratory Species (HMS) fisheries while ignoring the impacts of other fisheries. For example, by the Fisheries Service’s estimate, bottom longline, handline, and troll fisheries for reef fish and snapper-grouper in the U.S. Southeast region took as bycatch an average of almost 4,000 dusky sharks per year between 2006 and 2010. In addition, recreational fisheries are responsible for hundreds of dusky shark deaths per year.

In order to fully manage the species throughout its range consistent with legal requirements, the Fisheries Service must account for dusky shark bycatch and mortality in fisheries other than the HMS fishery. Proposed Amendment 5b fails, however, to establish limits on either dusky shark bycatch or mortality. Instead, the Fisheries Service proposes an annual catch limit of zero, while acknowledging that actual catch will be substantially above zero every year and failing to implement effective accountability measures to restrict catch to the annual catch limit, or account for any overage. The superficial management changes proposed in Amendment 5b are insufficient to address overfishing, reduce bycatch and mortality of dusky sharks, and ensure expedient rebuilding.

To comply with the requirements of the Magnuson-Stevens Act, the Fisheries Service must:

- Count - use the best scientific data currently available regarding the numbers of dusky sharks caught in each fishery, including fisheries other than the HMS fishery in both state and federal waters in the Atlantic Ocean and Gulf of Mexico, to estimate total dusky shark bycatch and mortality;
- Cap - set a precautionary annual catch limit that will achieve at least a 50 percent reduction in dusky shark fishing mortality across all fisheries, such that the stock has more than a coin flip chance, i.e., at least a 70 percent probability, of successfully rebuilding by the target rebuilding date of 2107 as per the U-Shaped M scenario in the DEIS; and
- Control - establish accountability measures, including strict bycatch caps in all fisheries that catch dusky sharks, to effectively track and limit bycatch and mortality to ensure that the annual catch limit will not be exceeded and that any overage that does occur is quickly corrected.

To create this count, cap and control management system for dusky sharks, we urge the Fisheries Service to significantly revise proposed Amendment 5b as follows:

- Establish an annual catch limit based on the best scientific information available;
- Establish accountability measures, including bycatch caps and hotspot closures, that will ensure that the annual catch limit is a strict limit on bycatch and mortality by preventing and correcting for overages;
- Reduce dusky shark bycatch mortality by at least 50% (per the U-Shaped M scenario in the DEIS) in order to ensure that the population has a 70% chance of rebuilding by 2107; and
- Ensure NEPA compliance by analyzing all proposed alternatives and the effects those alternatives will have on dusky shark bycatch and mortality, including analyzing alternatives that will have the greatest

chance of success in ending overfishing and rebuilding the dusky shark population, such as bycatch caps and hotspot closures.

By implementing strict bycatch caps and hotspot closures in the fisheries where dusky sharks are most vulnerable, the Fisheries Service would provide an incentive for fisheries to avoid catching dusky sharks. Employing strict bycatch caps, for example, would prevent overages of the annual catch limit by shutting down fishing activity as soon as a scientifically-based cap is reached. If implemented in all fisheries where dusky sharks are caught, this accountability measure would be a vital component of a count, cap, and control management system for dusky sharks and would provide the Fisheries Service with an effective method to end overfishing and rebuild the dusky shark stock.

We appreciate the opportunity to provide our recommendations and thank you for your time. We look forward to working with the Fisheries Service to ensure that a management system that counts, caps and controls dusky sharks to end overfishing, reduce bycatch and mortality, and ensure expedient rebuilding is fully considered and implemented in the final version of Amendment 5b.

Sincerely,

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