

them from finning. There are no other regulations on these species; fishermen do not currently need a permit to fish for them and are not limited in the number of fish that are taken. In most cases, the sharks in this management group are only taken as bycatch in some trawl fisheries. With the implementation of the Shark Finning Prohibition Act (67 FR 6194, February 11, 2002), these sharks are protected against finning. Given that the finning protection is no longer needed under the HMS FMP, NMFS is proposing to remove these species from the management unit. NMFS would continue to collect data for these species. NMFS does not expect any ecological, economic, or social impacts as a result of removing these species from the management unit.

#### *B. Prohibited Species*

In 1997, NMFS prohibited commercial and recreational fishermen from possessing or landing five species of sharks: white, whale, basking, sandtiger, and bigeye sandtiger. These species were identified as highly susceptible to overexploitation and the prohibition was seen as a precautionary measure to ensure that directed fisheries on these species did not develop.

In the 1999 HMS FMP, NMFS prohibited 14 additional species including, but not limited to, dusky, night, Atlantic angel, Caribbean reef, longfin mako, and sevengill sharks. These species were added as a result of a change in policy from one where a species could be caught unless it was shown to be susceptible to overfishing to one where possession of certain species was allowed only if that species was known or expected to be able to withstand specified levels of fishing mortality. Thus, species that were rarely caught (e.g., Caribbean reef) or that ones where NMFS had little biological data available (i.e., Atlantic angel) were added to the list. Additionally, species such as dusky or night sharks, that were candidates for listing under the Endangered Species Act (ESA) or that had become depleted, were also added to the list.

The 1999 HMS FMP possession limits on prohibited species went into effect for recreational fishermen in 1999 and for commercial fishermen on June 21, 2000 (65 FR 38440). Since that time, NMFS has had numerous questions regarding why certain species are or are not on the list and requests to add or remove certain species to or from the prohibited species list. To address these requests, NMFS is proposing a mechanism where, through the regulatory framework adjustment

process in the 1999 HMS FMP, species could be added to or removed from the prohibited species list.

Under the proposed rule, species could be added to the prohibited species list if at least two of the following criteria are met: (1) There is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries; (3) the species is not commonly encountered or observed caught as bycatch in fishing operations; or (4) the species is difficult to distinguish from other prohibited species (i.e., look-alike issue). Alternatively, a species could be removed from the prohibited species list if it meets only one of the criteria. Under the proposed alternative, NMFS does not expect any ecological, economic, or social impacts but the alternative could clarify the reason for species being added or removed and allow for more rapid and adaptive management of the species.

NMFS is not proposing to change the current prohibited species list at this time. However, NMFS would continue to issue EFPs or scientific research permits (SRPs), as appropriate, to fishermen or researchers who would like to collect information to indicate that a certain species of shark does or does not meet the above criteria. NMFS may remove some of the current species in the future using the proposed mechanism.

NMFS also considered alternatives for adding or removing certain species from the list including adding finetooth sharks, adding deepwater and other sharks, returning to the original five species, and removing dusky sharks. While these alternatives could have merit, NMFS believes it is not appropriate to change the list until a formal mechanism is approved.

#### *C. EFPs*

Under 50 CFR part 600, NMFS may authorize for limited testing, public display, and scientific data collection purposes, the harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. This exempted fishing may only be conducted if authorized by an EFP or SRP. In the 1999 HMS FMP, NMFS established a 60-mt whole weight (ww) shark public display quota for the purpose of collecting sharks for aquariums and other instances of public display. To collect sharks under this quota, vessel owners must be issued an EFP.

In this action, NMFS is proposing an administrative change where vessel owners who collect sharks or HMS for public display would be issued a "public display permit" instead of an EFP. At this time, the application and issuance procedures for a public display permit would be the same as those for an EFP. Sharks taken with a public display permit would still be counted against the 60 mt ww public display quota. The conditions of the permit would depend on the proposal submitted by the vessel owner. Changing the permit name should not have any ecological, economic, or social impacts but would clarify the purpose for which the permit was issued.

NMFS may consider other changes to the EFP/SRP/public display permitting system in the future. These changes could include a requirement for background checks regarding previous fisheries violations, a mandatory application form, or specific quotas for all HMS regarding public display or scientific research. NMFS welcomes any comments on these potential alternatives.

#### **6. EFH Update**

Under the Magnuson-Stevens Act, each FMP must describe EFH for the fishery, minimize to the extent practicable adverse effects on that EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. In the 1999 HMS FMP, NOAA Fisheries identified EFH for all actively managed species of sharks and two habitat areas of concern. Under the EFH regulations, NMFS must review EFH areas every five years and update EFH areas if there is a change of status or if new information becomes available. Because the new stock assessments resulted in a change of status for blacktip, sandbar, and finetooth sharks, NMFS must update EFH for those species. NMFS is also updating EFH for nurse and dusky sharks due to new information. NMFS will review EFH for all HMS over the next year.

In updating EFH identifications, NMFS is proposing two methods to identify EFH: (1) Identify EFH for each species and life stages as those habitats necessary for spawning, breeding, feeding, or growth to maturity and (2) increase or decrease existing EFH areas for individual species based on special needs. The first alternative would help to ensure identified EFH does not include marginal habitat. The second alternative would allow changes to the geographic scope of EFH based on the specific needs of the species. For example, an overfished species may