

Comment 5: Commenters generally disagreed with NMFS placing at-sea observers on board HMS collection vessels and suggested that NMFS should consider alternatives. Commenters noted that collecting operations are very specific and potentially hazardous, and that only experienced, trained personnel should be on board the vessels. Also, the vessels used are often small and crowded with no place for inexperienced newcomers who may jeopardize collecting operations. One commenter supported the provision to place observers on board collection vessels.

Response: At-sea observers are an important means for fishery managers to collect information on fishing activities that are generally considered too burdensome for fishermen to collect, either due to the specific details required or to potential interference with fishing operations. They also provide data that are used to verify other reporting requirements, allowing for more responsive management. In cases of overfished stocks, such as many HMS, or protected species such as sea turtles, observer data can be used to improve stock assessments. Observers are fully trained before being placed on board a vessel and should not interrupt fishing operations. Additionally, observers should be able to help the vessel captain and crew in releasing protected species. As specified in 50 CRF 635.7, 600.725, and 600.746, NMFS will not place an observer on a vessel that is deemed unsafe.

Reporting Requirements

Comment 6: The requirement that year-end reports be a mandatory component of a permit renewal package is appropriate.

Response: NMFS agrees and has retained this requirement in the final rule.

Comment 7: Commenters generally held that the reporting of dead discards and no-catch reporting is burdensome and not necessary. Because the intention is to collect and maintain live animals, the number of dead discards is very small and does not warrant the paperwork. Similarly, monthly no-catch reporting is questionable because collecting is not a year-round activity. Finally, the requirement to submit catch and no-catch reports within a 5-day time frame is impractical, and a more reasonable time frame should be considered. Conversely, one commenter supported the dead discard and no-catch reporting provisions.

Response: Through catch reports, NMFS will be better able to determine if many more animals are authorized for

collection than actually are collected. These reporting requirements will allow for more accurate counting against the public display quota or relevant quotas recommended by the International Commission for the Conservation of Atlantic Tunas. Including dead discards in the counting will further enhance the accuracy of stock assessments and the monitoring of species subject to dead discard allowances. Similarly, NMFS will be able to better evaluate collection trends by confirming those times when no animals are collected. NMFS believes that a 5-day time frame for submitting reports is reasonable, as the report forms take only a few minutes to complete and can be mailed upon the vessel's return to shore. Therefore, the dead discard and no-catch reporting requirements, as well as the 5-day time frame for submitting reports, have been retained in the final rule.

Comment 8: Reporting collections in state waters should not be mandatory, as this further complicates an already complicated process. If NMFS wants data on state-permitted collections, the information should be obtained from the states. Also, NMFS should pursue the proposed Federal-state coordination process that has been discussed and which could resolve this issue.

Response: NMFS is in favor of developing a coordinated Federal-state permitting program. However, as the states have differing permit and reporting requirements, the most efficient interim solution is for federally permitted collectors to provide information on their collections regardless of where the fishing activity occurs. This will enable NMFS to assess better the total number of HMS being removed from the stocks.

Comment 9: Commenters support the prohibitions provisions regarding submission of false information and violations of the terms and conditions of the permit.

Response: NMFS retains these provisions in the final rule.

Request for Comments on Potential Regulatory Provisions

Comment 10: There was general agreement that EFP applicants should be required to demonstrate that holding facilities adequate for HMS animal husbandry are maintained. Commenters also suggested that existing accreditation organizations be involved in this process. However, some commenters noted that accreditation does take time, and NMFS should not preclude collection of animals while certification is pending

Response: NMFS is considering these types of regulations and may issue a proposed rule in the future.

Comment 11: Commenters generally held that denying EFPs for the collection of HMS that are difficult to maintain may be denying the development of technological advances in aquarium science and research. Additionally, commenters expressed concern regarding the data to be used to justify such restrictions. However, one commenter supported the proposal.

Response: NMFS agrees that there could be future technological advances in animal husbandry, and would not want to inhibit such advances. However, restricting the collection of certain animals may be necessary to avoid unwarranted mortality in stressed populations. NMFS will continue to consider this type of measure and may issue a proposed rule in the future.

Comment 12: Several commenters supported the issuance of EFPs only to display facilities in that this may eliminate commercial collectors collecting HMS in advance of actual purchases. Other commenters disagreed with this proposal, holding that independent commercial collectors should continue to be authorized to collect HMS, some companies having made significant contributions to improving the process.

Response: NMFS will continue to consider this approach and may issue a proposed rule in the future.

Comment 13: Commenters generally questioned the necessity or disagreed with the proposal regarding the issuance of a NMFS display permit in order to maintain HMS in captivity for display purposes. These commenters noted the existence of other regulatory entities and accreditation organizations which can adequately address the animal welfare concerns regarding public display facilities. Questions were raised as to the procedures and authority for such a display permit. One commenter supported the proposal, but expressed concern regarding how this would be implemented.

Response: NMFS will continue to consider this approach and may issue a proposed rule in the future.

Changes From the Proposed Rule

A number of changes to the regulations were made in response to comments received on the proposed rule:

(1) The proposed requirement that collectors of HMS for public display notify the local NMFS Office for Law Enforcement 72 hours prior to departing on a collection trip has been reduced to a minimum of 24 hours prior