

because they are more likely to be overfished than coastal sharks.

Response: At this time, there are no known fishermen targeting deepwater and other sharks. Prohibiting these species would be precautionary, but it may not significantly reduce mortality because these species are only caught rarely in non-HMS fisheries. Further, prohibiting landings of these species in HMS fisheries could reduce the availability of important data on them.

Comment 3: To the extent that deepwater sharks are a target of fisheries in the Caribbean, the complex should be assessed and managed.

Response: NMFS will assess this species group when more biological and fishery information becomes available.

Comment 4: Deepwater and other sharks were added to the management unit not only to ban their finning, but also to preclude possession of species that may be vulnerable to overfishing and to help prevent development of directed fisheries or markets for uncommon or seriously depleted species.

Response: The species added to the prohibited species group in the HMS FMP were added because they were known to be vulnerable to overfishing, uncommon, or seriously depleted. The deepwater and other group was included in the management unit only to prohibit finning of these species. No other regulations were placed on this group (e.g., no permitting or reporting requirements). Presently, the only protection afforded under the HMS FMP, a ban on finning, is now afforded nationally under the Shark Finning Prohibition Act (February 11, 2002, 67 FR 6194). Given the national protection, maintaining data collection only on these species is sufficient at this time.

B. Prohibited Species

Comment 1: Fishermen should be fined \$10,000 for every prohibited species they capture.

Response: Currently, the possession and landing of prohibited species is illegal. Penalties and fines vary with the severity of the infraction. At this time, NMFS does not believe a \$10,000 fine for capturing a prohibited species would be appropriate under all circumstances.

Comment 2: NMFS received a range of comments stating that dusky sharks should be removed from the prohibited species list in order to determine where and how many are caught. Alternatively, some commenters stated that NMFS should not remove dusky sharks because they have suffered a severe population decline and all measures to reduce mortality should be imposed.

Response: Dusky shark catch rate data indicate large population declines since the early 1970s. Dusky sharks have a high bycatch mortality, approximately 80 percent, and are usually dead when gear is retrieved. Although commercial shark fishery observer data shows that dusky sharks comprise approximately one percent of total catch in recent years, removing dusky sharks from the prohibited species list could result in increased mortality of this overfished species by allowing the retention of individuals that may otherwise be released alive. NMFS determined that removing dusky sharks from the current prohibited species group would likely have significant ecological impacts.

Comment 3: NMFS received several comments regarding the addition of the deepwater and other species to the prohibited species group. The comments include: Because they are slow growing and because new fisheries can spring up and deplete populations before action can be taken, deepwater and other sharks should be added to the prohibited species list. Removing deepwater and other sharks reduces the chances for conserving slow growing deepwater sharks. NMFS continues to assert the lack of a fishery for deepwater sharks and yet has failed to reconcile their previous finding in the National Plan of Action for Reducing Fishing Capacity that deepwater sharks are overcapitalized.

Response: NMFS determined that adding the deepwater and other species to the prohibited species group would likely have only minor positive ecological impacts. Prohibiting these species takes a precautionary approach, but may not significantly reduce mortality because these species are only caught rarely in non-HMS fisheries. Further, prohibiting the landing of these species in HMS fisheries may limit the availability of data pertaining to them. If directed fisheries started, NMFS would evaluate data available at that time to see if an FMP amendment or other regulatory measures would be warranted. The draft National Plan of Action for Reducing Fishing Capacity stated that deepwater sharks are overcapitalized. NMFS believes the deepwater and other species were given this designation because the management group was included along with other shark management groups which are overcapitalized. The Highly Migratory Species Management Division has recommended that this finding for the deepwater and other species be amended because there are no known fishermen who target these species.

Comment 4: We support adding finetooth sharks to the prohibited

species list. Possession should be prohibited until effective management measures to stop overfishing are implemented.

Response: NMFS analyzed an alternative that would add the finetooth sharks to the prohibited species group, but determined that this alternative would likely have limited positive ecological impacts as finetooth sharks are common bycatch in non-HMS fisheries and prohibiting them in HMS fisheries will not prevent their capture. Additionally, finetooth sharks are not overfished and are commonly caught in HMS fisheries. As such, finetooth sharks do not appear to meet the criteria established in the selected alternative. As described in Amendment 1, NMFS will take a long-term approach of identifying where finetooth sharks are caught and work with the appropriate Fishery Management Council to reduce fishing effort, as appropriate.

Comment 5: NMFS received several comments regarding the preferred alternative for prohibited species. The comments include: We support the proposed alternative for prohibited species. We support the proposed alternative but recommend removing the criterion of rarity in LCS catch. If a species is commonly caught in the LCS fishery, but is depleted and warrants protection according to the biological criteria, then the species should be prohibited. We support the proposed mechanism but note that the criteria and procedures in the draft Amendment 1 require further investigation and clarification regarding appropriateness before finalization. We support the proposed mechanism but suggest that the criterion for adding and removing species be separated because the action may be contrary.

Response: NMFS believes the mechanism for adding and removing species to and from the prohibited species list and the associated criteria are appropriate for addressing the biological needs of individual shark species. In regard to concern over the second criterion, a species may be rarely caught in HMS fisheries but stock assessments show few signs of depletion (e.g., HMS gear types are not efficient at catching the shark species or the species is caught in areas not fished by HMS fishermen). Before any species is added or removed from the list, NMFS would issue a proposed and final rule that fully describes how and if the species meets the criteria. If adjustments to the criteria are found to be needed in the future, NMFS can modify the criteria in a future rulemaking.

Comment 6: NMFS should return to the original five prohibited species. All