

LCS should be assessed. If they remain on the prohibited species list, NMFS will not have the data they need to assess them. Similarly, we support the proposed mechanism but NMFS should also remove any species that are logically not likely to be overfished (e.g., rarely caught species).

*Response:* The 1997 prohibition on the possession of whale, basking tiger, bigeye sand tiger, and white sharks within Federal waters was a precautionary measure developed to ensure that directed fisheries did not develop for these species. These five species were identified as highly susceptible to over exploitation. In 1999, the HMS FMP prohibited the retention of the remainder of the prohibited species because they were known to be vulnerable to overfishing, uncommon, or seriously depleted. Although the preferred alternative includes a mechanism and lays out criteria for the inclusion and removal of species from the prohibited species group, NMFS does not believe any changes to this group are warranted at this time. Each species will be considered on a case by case basis in future rulemakings. In the 2002 LCS stock assessment, there was sufficient information to assess the LCS complex as a whole, and sandbar and blacktip sharks individually. NMFS will assess individual species as more biological and fishery information become available.

*Comment 7:* If the proposed mechanism is finalized, what type of request would we be required for NMFS to start rulemaking to remove species?

*Response:* NMFS would require a petition for rulemaking to alter the prohibited species list. A petition for rulemaking should contain sufficient information for NMFS to consider the substance of the petition. For a petition regarding changes to the prohibited species list, the petition should, at a minimum: (1) Indicate what species are requested to be added to or removed from the list; (2) identify how the criteria warrant the addition or removal of the species; (3) provide data and other information relevant to those identified criteria; (4) state if additional research may be necessary to develop the requested change; (5) explain the interest of the petitioner or other stakeholders regarding the requested change; and (6) explain the importance of the action requested to promoting established NMFS' priorities and policies.

*Comment 8:* If the proposed mechanism is finalized, will NMFS conduct an annual assessment regarding

which species will be placed on the prohibited species list?

*Response:* NMFS will assess individual species as additional data becomes available and not necessarily on an annual basis.

#### C. EFPs

*Comment 1:* We support the preferred alternative as long as NMFS maintains some accountability on how the sharks are used, particularly the prohibited species. Any demographic information for age, growth, and offspring that evolves from aquarium use should be provided to NMFS annually for use as a comparative database for life history analyses versus wild stocks.

*Response:* NMFS maintains an EFP database which accounts for each highly migratory species requested, authorized, taken/collected, and/or tagged under an approved EFP. As for data reporting, each permitted individual is required to submit interim reports throughout the calendar as well as submit an annual report documenting the amount, composition, and disposition of the catch as well as information pertaining to fishing activities. Additionally, NMFS has finalized a rule that amends HMS reporting requirements under EFPs (68 FR 63738, November 10, 2003). Additional issues regarding EFPs and Display permits may be addressed in a future rulemaking.

*Comment 2:* We support a separate display permitting system, apart from research or EFPs. NMFS should overhaul the EFP system and establish separate classifications of permits for each specific use (e.g., public display, research, and other exempted activities).

*Response:* NMFS agrees and is establishing display permits in this rule. Other purpose classifications of exempted fishing permits may be addressed in future rulemakings.

*Comment 3:* NMFS received several comments regarding the issuance of permits. Comments included: NMFS should not issue any more permits for scientific research. Background checks should be made of all permit holders; anyone with previous violations of any kind should be denied a permit. Requests for EFPs and SRPs need to be fully evaluated, taking into consideration past performance and other background, particularly for species that are already critically overfished.

*Response:* Valuable information is gathered from activities under scientific research permits (SRPs) that would otherwise be prohibited. For example, SRPs have facilitated the collection of life history, migration, and age and growth information from prohibited

shark species. As noted above, NMFS recently amended the reporting regulations for EFPs and SRPs and will be investigating additional improvements in the permitting processes.

*Comment 4:* Fishermen catching sharks for display purposes should be required to have a purchase order from an aquarium in hand before going out. Annual follow-up investigations to the aquarium should be made to ensure that the shark is cared for properly. If someone is caught without a purchase order, the fine should be \$10,000 per shark.

*Response:* NMFS will be investigating these issues further in a future rulemaking.

*Comment 5:* Several changes are needed to the EFP process including incorporating more public comment into the EFP allocation process and letting the public know what the final decision is and what the environmental impacts are of its decision.

*Response:* NMFS will be investigating alternatives to improve the process in a future rulemaking and notes that information on the types of and number of permits issued are presented in the annual Stock Assessment and Fishery Evaluation (SAFE) reports.

*Comment 6:* Efforts should continue with the Atlantic States Marine Fisheries Commission (ASMFC) regarding coordination between state and federal permits. There often appears to be too many permits and too little oversight.

*Response:* NMFS supports continuing dialogues with the ASMFC regarding coordination between state and federal permits and has been working on improving its own database and collection methods, in part, to improve communication between NMFS and state agencies.

*Comment 7:* While criteria for each EFP may vary, there should be uniform standards of performance, reporting, and accountability that are equally applicable to fishermen, aquariums, researchers, and educational institutions. Implementation of measures to ascertain the educational need justifying the harvest of these animals and improving reporting should be investigated.

*Response:* NMFS will be investigating these issues further in a future rulemaking.

#### 6. Essential Fish Habitat Update

*Comment 1:* EPA recommends including a discussion on whether shark EFH is being affected by other fishery practices. For example, if shark EFH is protected by limiting clamming or