
9. HMS PERMITS

9.1 Capacity in HMS Fisheries

One major concern in the management of commercial fisheries worldwide is overcapitalization or “too many fishermen chasing too few fish”. Limited access and permitting mechanisms are ways of addressing this dilemma. Overcapitalization, which often occurs in open access fisheries, is associated with many problems, including derby fisheries and market gluts, poor product quality, safety concerns, and loss of market niches due to shortened fishing seasons and reliance on imported fish.

As a result of an international effort begun by FAO in 1998 to develop definitions and metrics to measure fishing capacity and NOAA’s Build Sustainable Fisheries objective to eliminate excess capacity in 20 percent of federally managed fisheries by 2005, NMFS developed a project to define and measure domestic fishing capacity to determine which U.S. fisheries have excess capacity and the magnitude of the problem. A task force was assembled to develop capacity definitions and to recommend measures and metrics with which capacity could be measured. A report assessing capacity levels in commercial U.S. fisheries is still under development, but should be completed in late 2001/early 2002. Preliminary results in the Atlantic HMS fisheries indicate that the potential production of the commercial fleet is in excess of the actual level of production which suggests that excess capacity exists. Once the final report is available, NMFS will begin to discuss with industry options for reducing or, if appropriate, maintaining the capacity in Atlantic HMS fisheries.

To date, HMS has responded to overcapitalization issues through a variety of methods in addition to limited access to swordfish, shark, or tuna longline permits. Individual Vessel Quotas (IVQs) for bluefin tuna purse seiners were implemented in 1982 to exclude new entrants into the fishery. In 1991, NMFS established a control date for the swordfish fishery (August 30, 1991). After this date, new vessels entering the Atlantic swordfish fishery were not guaranteed future access to the fishery. In 1994, NMFS established a control date for the shark fishery (February 22, 1994) and for the Atlantic tunas fisheries (September 1, 1994). In 1995 and 1996, NMFS held a number of workshops to discuss limited access in the Atlantic HMS fisheries. More recently, on July 1, 1999, NMFS implemented a limited access program for the commercial Atlantic shark, swordfish, and Atlantic tunas longline category fisheries.

9.2 Limited Access Permits for Atlantic Swordfish, Atlantic Sharks, and Atlantic Tunas Longline Category

9.2.1 History of the Program Established in the HMS FMP

The HMS FMP outlined several objectives of a program that would limit access to the swordfish, shark, and tuna longline fisheries. These objectives included:

- Minimize, to the extent practicable, economic displacement and other adverse impacts on fishing communities during the transition from overfished fisheries to healthy ones.
- Consistent with other objectives of this FMP, manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.
- Reduce latent effort and overcapitalization in HMS commercial fisheries.
- Develop eligibility criteria for participation in the commercial shark and swordfish fisheries based on historical participation, including access for traditional swordfish handgear fishermen to participate fully as the stock recovers.
- Create a management system to make fleet capacity commensurate with resource status so as to achieve the dual goals of economic efficiency and biological conservation.

This program was designed to reduce latent effort without significantly affecting the livelihoods of those who are substantially dependent on the fisheries (in other words, to prevent further overcapitalization). Because this program did not directly reduce the capacity in these fisheries, this program was meant to be the first step towards reducing capacity in the Atlantic swordfish, shark, and tuna longline fisheries.

The program implemented in the HMS FMP set up six different permit types: directed swordfish, incidental swordfish, swordfish handgear, directed shark, incidental shark, and tuna longline. To reduce bycatch concerns in the pelagic longline fishery, these permits were designed so that the swordfish directed and incidental permits are valid only if the permit holder also holds both a tuna longline and a shark permit. Similarly, the tuna longline permit is valid only if the

permit holder also holds both a swordfish (directed or incidental, not handgear) and a shark permit. Swordfish handgear and shark permits are valid without another limited access permit.

In May, 1999, NMFS mailed permits to 796 vessel owners that met the final eligibility criteria, based on permit and landings records (203 directed swordfish, 218 incidental swordfish, 213 directed shark, 583 incidental shark, and 421 tuna Incidental/Longline limited access permits). NMFS finished processing the last of the appeals in September, 2000. Overall, NMFS received approximately 593 applications, 397 of which resulted in approval for a limited access permit. NMFS received 65 appeals, 24 of which resulted in the issuance of a limited access permit.

9.2.2 Status of the Program Established in the HMS FMP

Number of Permits

Between the permits issued in May, 1999, and successful applications/appeals, a total of 982 permit holders received limited access permit by October 2000. However, in the past year, the number of permit holders has decreased by 23% to 752 and the number of limited access permits has decreased by 26% to 1275 (Table 9.1). While the number of permit holders in all categories decreased, the largest reductions came in the incidental swordfish permit category which decreased 45 percent (203 to 112 permit holders) and the incidental shark permit category which decreased 33 percent (585 to 390 permit holders). Interestingly, this reduction occurred across all states and not just states adjacent to the time/area closures implemented in 2000 and 2001. There are a few possible explanations for the large decrease:

- a number of permit holders have not yet renewed their permits;
- a number of vessel owners did not renew their permits within a year and have lost their permits through attrition;
- the implementation of some regulations (for example the recent time/area closures for pelagic longline fishermen) forced permit holders out of these fisheries;
- permit holders tried to sell their permits when they left the fishery but could not find buyers due to the upgrading restrictions (although incidental permits are not subject to upgrading restrictions);
- incidental permit holders wanted to change gear types or use a different gear in the tuna fishery (e.g. they would rather have a charter/headboat permit than a tuna longline permit) and let their permits lapse; or
- some combination of the above.

NMFS is surprised by large reduction in the number of permits and will continue to monitor the program to try to determine the reason(s) for this reduction.

Transfers

In 2001, there were approximately 130 shark and swordfish permit transfers. NMFS has examined the information received at the time of the transfer and has obtained some estimates as to the costs of buying a limited access permit. It appears that a number of permits are sold to family members for one dollar or are given away free. Prices for permits (swordfish directed, swordfish incidental, shark directed, and shark incidental) ranged from \$1.00 to \$5,000.00. There did not appear to be any difference in price between permit types.

Implementation problems and corrections

In the past year, NMFS has continued to hear from vessel owners who recently found out about limited access or recently realized they were issued an incidental limited access permit when they feel they should have been given a directed limited access permit. When requested in writing, NMFS considers these cases on an individual basis to determine if a NMFS made an error in the original determination of eligibility in May 1999.

During the original application and appeal phase of this program both the permit office in the Southeast Regional Office and the HMS Management Division were changing the permit holder database as transfers were made and applications and appeals were approved or denied. After the application and appeal phase was complete, NMFS became aware of a number of permit holders who had erroneously been issued a permit or had not been mailed a renewal notice. In the case of the permit renewals, NMFS gave permit holders who had not received a renewal notice on time a one-time exemption to the one year renewal time frame. In the cases where NMFS erroneously issued a permit, NMFS revoked the permit and allowed the vessel owner a chance to prove eligibility for the fishery by following a reconsideration and appeal process similar to the one designed for the original issuance of limited access permits.

Additionally, NMFS has recently noted that a number of tuna longline permit holders do not hold valid swordfish and shark limited access permits and a number of swordfish directed or incidental permit holders do not hold valid tuna longline or shark permits. NMFS is trying to determine the best method to handle these cases. In some instances, vessel owners who hold one permit but not the others may find that NMFS has revoked their permit until the vessel owner provides information proving they hold the other required permits. In these cases, similar to the application and appeals format of the implementation of the limited access program, NMFS has provided for two separate decision levels for permit holders: reconsideration and appeal. In cases where a tuna permit is revoked, NMFS may consider changing the permit category if requested.

Table 9.1 Distribution of Shark, Swordfish, and Tuna longline Limited Access Permits as of October, 2001. The actual number of permit holders in each category and state is subject to change as permits are renewed or expire.

State	# Directed Swordfish	# Incidental Swordfish	# Swordfish Handgear	# Directed Shark	# Incidental Shark	# Tuna Longline	
ME	1	3	7	1	11	3	20/26
NH	-	1	1	1	3	-	5/6
MA	11	3	22	2	14	3	37/55
RI	6	3	27	1	12	6	37/55
CT	-	-	1	-	-	-	1/1
NY	18	6	11	9	17	16	36/77
NJ	32	19	12	32	35	33	81/163
DE	2	-	-	1	2	1	3/6
MD	7	1	-	3	6	8	10/25
VA	1	3	-	4	3	4	10/15
NC	8	14	3	20	23	11	46/79
SC	4	-	-	7	13	5	20/28
GA	-	-	-	2	2	-	4/4
FL	78	36	16	156	172	66	346/525
AL	1	2	-	2	3	3	6/11
MS	-	2	-	1	8	1	9/12
LA	32	10	-	4	45	40	52/131
TX	5	9	-	6	19	10	26/49
CA	1	-	-	-	1	1	1/3
VI	1	-	-	-	1	2	2/4
TOTAL	208	112	100	252	390	213	752/1275
Total: October 2000	240	203	125	287	585	292	982/1732
Total: December 1999	243	208	114	279	599	451	976/1892

9.2.3 Possible Next Steps

As noted in the HMS FMP, the current limited access system was designed to be the first step in addressing overcapitalization. Both the 2000 and 2001 SAFE reports noted that possible future management measures could include:

- Attrition/Use or lose - reduce the number of permits based on lack of landings;
- Two-for-One entry - require entrants to the fishery to transfer two permits in order to obtain one limited access permit;
- Non-transferable Individual Fishing Quotas (IFQs);
- Individual Transferable Quota (ITQ) systems including landings based, auction, and/or lottery allocation;
- Permit buybacks; and,
- Changing the current species-based permits to a more gear-based permitting system.

Before making any changes, NMFS must analyze the success of the current program and regulations to determine if future steps are needed and to find out the reason for the recent decrease in limited access permits. Thus, NMFS will continue to monitor the number of permit holders and will ensure that the public has ample time to comment before any additional steps are taken.

At the April 2001 AP meeting and in Chapter 10 of the 2001 SAFE report, NMFS presented a number of options to reduce the confusion of having multiple permits. These options included:

- allowing for conversion from swordfish directed permits to swordfish handgear permits;
- allowing any tuna permit category to be acceptable with a swordfish directed or incidental permit, not just the tuna longline category;
- eliminating the need for squid trawlers who occasionally catch swordfish to hold a tuna longline category permit; and,
- changing the permit structure to issue permits by gear type, not species.

At the AP meeting, NMFS heard that a number of AP members would prefer the permitting system to be streamlined. Some suggestions included:

- NMFS should have only two types of permits, commercial and recreational;
- a single limited access permit type is preferable to the three permits currently needed to use pelagic longline gear; and,

- gear-based permits are acceptable as long as vessels can be issued more than one type of permit.

Additionally, some AP members expressed concern about the one year renewal time period. NMFS is considering these options and hopes to begin the rulemaking process for limited access permitting issues in 2002/2003.

Also at the April 2001 AP meeting, NMFS and AP members heard from a Caribbean fishery representative who stated that fishermen in Puerto Rico and the U.S. Virgin Islands did not know about limited access and that something should be done to accommodate these fishermen and to ensure that their catches are accurately reported. Generally, AP members expressed concern and sympathy for these fishermen but felt that opening the limited access permitting process for those fishermen could create problems. After the meeting, the representative wrote to NMFS with some suggestions on how to address this issue including:

- allow the incidental take of swordfish and shark on the Atlantic tunas handline permit in the Caribbean EEZ only;
- require vessels to be registered in Puerto Rico or the U.S. Virgin Islands for commercial fishing;
- restrict vessels to two swordfish and two sharks per trip;
- restrict vessels to 30 feet in length; and,
- restructure data collection contracts with Puerto Rico and Virgin Island Governments to include an HMS component with swordfish, sharks, tunas, wahoo, and dolphin.

Not all of the above suggestions are possible given the National Standards, particularly National Standard 4 that states management measures should not discriminate against residents of different states, some of them are not enforceable, and some of them are already in effect (e.g. vessels must have either state registration or Coast Guard documentation in order to fish commercially for HMS). Additionally, all states, including Puerto Rico and the Virgin Islands, are asked to provide representatives for the HMS and Billfish APs in order to ensure our regulations are consistent with and consider state regulations and fishermen. However, NMFS would appreciate comments on this issue, particularly from fishermen in Puerto Rico and the U.S. Virgin Islands, and may consider different options to address this issue in the upcoming rulemaking on limited access permitting issues.

9.2.4 Upgrading and Safety Issues

When this limited access program was implemented, NMFS included upgrading restrictions that were the same as those implemented by the New England Fishery Management Council (NEFMC) and Mid-Atlantic Fishery Management Council (MAFMC) in order to help

minimize the number of regulations for fishermen in those areas. These regulations restrict vessels from any increase over 10 percent length overall (LOA), 10 percent gross or net tonnage, and 20 percent horsepower. NMFS continues to receive comments that these vessel upgrading restrictions are not appropriate for primarily longline fisheries, are not the preferred vessel characteristics to limit overcapitalization, and have substantial safety at sea concerns. In the past year, NMFS has received comments that the current upgrading restrictions are too restrictive for smaller vessels (e.g. less than 35 ft LOA). In developing the current upgrading restrictions, hold capacity was identified by constituents as a vessel characteristic that would not impact safety at sea and would meet the objective of addressing overcapitalization in HMS commercial fisheries. NMFS did not implement hold capacity as a measure to limit vessel upgrading in 1999 due to the lack of standard measurements of vessel hold capacity as well as the lack of consistent collection of this information for HMS commercial vessels as part of existing vessel registration systems. In Chapter 10 of the 2001 SAFE report, NMFS mentioned other possible options including eliminating upgrading restrictions; limiting hold capacity instead of, or in addition to, the current restrictions; and allowing a greater percentage increase; creating vessel categories. NMFS heard similar comments as those above from the AP in April 2001. NMFS is considering these options, and, as with any potential changes in the permitting system, will ensure adequate public comment during the rulemaking process before making any changes to the regulations.

9.3 Atlantic Tuna Permits

In 2000, NMFS contracted Commerce One, formerly known as AppNet, Inc., to issue Atlantic tunas permits. These permits, made available December 1, 1999, allow vessels to fish for, take, retain, or possess Atlantic bluefin, yellowfin, skipjack, albacore, and bigeye tunas. The HMS FMP established a fishing year for Atlantic tunas (June 1 through May 31 of the following year) in order to facilitate timely implementation of international management recommendations. Therefore, Atlantic tunas permits issued for the fishing year 2001 are valid from the date of issuance through May 31, 2002. The Atlantic tunas permit are renewable on an annual (fishing year) basis.

The Atlantic tunas permits are the only HMS permits at this time that have categories based on gear type. The number of Atlantic tunas permit holders in each category is listed in Table 9.2. The number of permits in the longline, angling, trap, and general categories has decreased while the number of permits in the harpoon category has increased slightly (Table 9.2). In previous years, charter/headboat vessels fishing for HMS only needed a charter/headboat permit if they were fishing for Atlantic tunas. However, in July 2001, HMS implemented a charter/headboat permit for all vessels fishing for Atlantic HMS. For more information on this permit, please see section 9.4 below.

Table 9.2 The number of Atlantic tunas permit holders in each category. The actual number of permit holders in each category are subject to change.

Category	As of October 2000	As of October 2001
Longline	292	213
Angling	14,908	12,685
Harpoon	44	53
Trap	4	1
General	6,705	6,072
Purse Seine	5	5
Charter/headboat	2,728	No longer a tuna-only permit
Total	24,686	19,029

9.4 HMS Charter/Headboat Permits

The HMS FMP established a new requirement that owners of charter boats or headboats that are used to fish for, take, retain, or possess Atlantic tunas, sharks, swordfish, or billfish must obtain a Highly Migratory Species Charter/Headboat permit. This new permit replaced the Atlantic tunas Charter/Headboat permit. In late 2000, NMFS received approval for these permits under the Paperwork Reduction Act and implemented this program on June 1, 2001. To alleviate confusion between the different permit types, NMFS is in the process of articulating the full range of alternatives to address the new charter/headboat requirements. A proposed rule for the different options is expected late 2001/early 2002.

As of October 2001, there were 3,260 Atlantic HMS charter/headboat permit holders. This is a 19.5 % increase over the number of tuna charter/headboat category permits issued in 2000 (Table 9.2). This increase could be due to the implementation in June 2001 of the regulations established in the HMS FMP.

9.5 Dealer Permits

Dealer permits are required for commercial receipt of Atlantic tuna, swordfish, and sharks, and are detailed in Section 2.6.1 of the HMS FMP. Additionally, the appropriate dealer permit is necessary for those importing bluefin tuna and/or swordfish from any ocean, the specifics of which are discussed in Section 7 of this report. All dealer permit holders are required to submit

reports detailing the nature of their business. For swordfish and shark permit holders (including those who *only* import swordfish), dealers must submit bi-weekly dealer reports on all HMS they purchase. Tuna dealers must submit, within 24 hours of the receipt of a bluefin tuna, a landing report for each bluefin purchased from a U.S. fishermen. Dealers must also submit bi-weekly reports that include additional information on tunas they purchase. Negative reports for shark and swordfish dealers are required when no purchases are made to facilitate quota monitoring (i.e., NMFS can determine who has not purchased fish versus who has neglected to report). NMFS continues to automate and improve its permitting and dealer reporting systems and plans to make additional permit applications and renewals available online in the near future. For instance, NMFS is considering mandatory negative reporting for BAYS tunas dealers.

The number of dealer permits issued by state and species is listed in Table 9.3. Unlike the number of limited access vessel permits, the number of dealer permits did not decrease substantially from the numbers in 2000.

Table 9.3 Number of dealer permits issued in each state as of October, 2001. The actual number of permits per state may change as permit holders move or sell their businesses.

State	Atlantic tunas	Atlantic swordfish	Atlantic sharks	
AL	-	2	4	6
CA	40	36	7	83
CT	8	-	-	8
DE	3	-	-	3
FL	24	90	97	211
GA	-	1	1	2
GU	1	-	-	1
HI	5	9	4	18
IL	1	1	1	3
KY	-	-	-	0
LA	17	17	17	51
MA	120	22	12	154
MD	9	6	5	20
ME	39	3	3	45
MO	-	-	1	1

State	Atlantic tunas	Atlantic swordfish	Atlantic sharks	# of permits
MS	-	-	1	1
NC	32	13	18	63
NH	7	-	2	9
NJ	47	16	14	77
NY	69	23	13	105
OR	1	-	-	1
PA	2	4	1	7
PR	7	-	-	7
RI	33	13	10	56
SC	9	10	15	34
TX	4	8	12	24
VA	19	4	5	28
VI	23	1	1	25
WA	2	7	7	16
Canada	-	13	4	17
Chile	-	1	-	1
New Zealand	-	1	-	1
Uruguay	-	1	-	1
TOTAL OCTOBER 2001	522	302	249	1073
TOTAL OCTOBER 2000	544	312	251	1107

9.6 Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs)

EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic highly migratory species.

Issuance of EFPs and/or SRPs may be necessary because possession of certain shark species is prohibited, possession of billfishes on board commercial fishing vessels is prohibited, and because the commercial fisheries for bluefin tuna, swordfish and large coastal sharks may be closed for extended periods during which collection of live animals and/or biological samples would otherwise be prohibited. In addition, NMFS regulations at 50 CFR 635.32 regarding implantation or attachment of archival tags in Atlantic highly migratory species require prior authorization and a report on implantation activities.

The number of EFPs and SRPs issued in 2000 and 2001 are listed in Table 9.4 below. Year-end reports for permits issued for 2001 are required, and are expected to be submitted to NMFS in early 2002.

Table 9.4 Number of EFPs and SRPs issued.

Permit type		2000	
Exempted Fishing Permit	Sharks for display	14	9
	Tunas for display	1	1
	Tuna fishing	0	4
	Observers for sharks	0	1
	Observers for HMS (multispecies)	0	1
	Shark research on a non-scientific vessel	2	4
	Tuna research on a non-scientific vessel	1	4
	Billfish research on a non-scientific vessel	1	3
	Swordfish research on a non-scientific vessel	0	1
Scientific Research Permit	Shark research	0	2
	Tuna research	4	1
	Billfish research	2	1
	HMS (multispecies) research	0	1