

9. HMS PERMITS

9.1 Capacity in HMS Fisheries

Summary

NOAA Fisheries' HMS Management Division continues to monitor capacity in HMS fisheries. Due to the large number of permits, overcapacity remains a concern in HMS fisheries. The overall number of limited access permits declined in 2002 from 1275 to 1262. The rate at which the number of issued permits is decreasing, however, leveled off in 2002. The tuna longline category was the only limited access permit category in which the number of permits increased in 2002. All other tuna permit categories increased in 2002 as well. The overall number of dealer permits declined slightly in 2002.

Overview

Resulting from a 1998 FAO initiative to develop definitions and metrics to measure fishing capacity and NOAA's goal of eliminating excess capacity in 20 percent of federally managed fisheries by 2005, NOAA Fisheries developed a project to define and measure domestic fishing capacity to assist in determining 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 metrics by which capacity could be measured. A report assessing capacity levels in commercial U.S. fisheries is still under development, but should be completed in 2003. 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, suggesting that excess capacity exists. Once the final report is available, NOAA Fisheries will begin to discuss options for reducing or, if appropriate, maintaining capacity in Atlantic HMS fisheries with industry and the public.

To date, HMS has responded to overcapitalization issues through a variety of methods in addition to implementing limited access programs for swordfish, shark, and tuna longline permits. These additional mechanisms include overall harvest quotas, trip limits, size limits, and banning certain types of gear such as driftnets. Individual Vessel Quotas (IVQs) for bluefin tuna purse seiners were implemented in 1982 to exclude new entrants into the fishery. In 1991, NOAA Fisheries 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, NOAA Fisheries established a control date for the shark fishery (February 22, 1994) and for the Atlantic tunas fisheries (September 1, 1994). In 1995 and 1996, NOAA Fisheries held a number of workshops to discuss limited access in the Atlantic HMS fisheries. More recently, on July 1, 1999, NOAA Fisheries 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 prevent further overcapitalization of the fishery with a longer range goal of reducing latent effort without significantly affecting the livelihoods of those who are dependent on the fisheries. 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 limited access permit types: 1) directed swordfish, 2) incidental swordfish, 3) swordfish handgear, 4) directed shark, 5) incidental shark, and 6) 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.

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 permits by October 2000. In the past year, the number of permit holders declined 5 percent from 752 to 713, and the number of dealer permits declined 1 percent from 1275 to 1262. However, in the past two years, the number of permit holders and limited access permits has declined by 27 percent (Table 9.1), with most of the decline occurring in 2001. The number of permit holders declined in all categories except the tuna longline category which increased from 213 to 226. The largest reduction in 2002 came in the incidental shark permit category which decreased 4 percent (390 to 376 permit holders). In the past two years, the largest reductions have been in the incidental swordfish (46 percent decrease) and incidental shark (36 percent) permit categories. These reductions 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 renewed their permits;
- A number of vessel owners did not renew their permits within a year and have lost their permits through attrition;
- Some permit holders chose to exit the fishery after the implementation of certain regulations (for example, the time/area closures for pelagic longlining);
- 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.

In response to the large decline in permit numbers from 2000-2001, NOAA Fisheries and one constituent examined the database for potential problems. While several permit holders had let one or more of their permits lapse, no other reasons were found to explain the decrease. NOAA Fisheries will continue to monitor the permits in case a similar decline should occur in the future. The tuna longline permit category likely increased because a number of permit holders had not yet renewed their permits when the analysis of the database was conducted in 2001.

Transfers

In 2002, there were approximately 184 shark and swordfish permit transfers. The number represents a 42% increase over the 130 permits transferred in 2001. NOAA Fisheries examined a small number of 2002 permit transfers to obtain an estimate of the cost of buying a HMS limited access permit. Recording sale price on permit transfers is not required, thus many of the transfers did not include this information. Of the transfers examined, prices for swordfish directed, swordfish incidental, shark directed, and shark incidental ranged from \$0 to \$7,500. The average price was \$750. Several permits were transferred at no cost.

Implementation problems and corrections

NOAA Fisheries has 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. NOAA Fisheries 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 NOAA Fisheries 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, NOAA Fisheries has provided for two separate decision levels for permit holders: reconsideration and appeal. In cases where a tuna permit is revoked, NOAA Fisheries may consider changing the permit category if requested.

Table 9.1 Distribution of Shark, Swordfish, and Tuna longline Limited Access Permits as of October, 2002. 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	# Permit Holders/# Permits
ME	1	2	5	2	7	1	14/18
NH	-	-	1	1	2	-	4/4
MA	12	3	17	3	15	6	34/56
RI	5	3	26	1	11	6	34/52
CT	-	-	1	-	1	-	2/2
NY	16	5	10	10	13	17	32/71
NJ	36	20	11	31	37	33	79/168
DE	1	-	-	1	1	1	2/4
MD	6	3	-	3	7	8	11/27
VA	1	7	-	5	5	3	10/21
NC	8	13	3	21	21	11	44/77
SC	5	1	-	8	14	5	22/33
GA	1	-	-	2	2	1	4/6
FL	72	33	20	150	165	74	330/514
AL	1	2	-	3	2	4	6/12
MS	-	-	-	1	8	1	9/10
LA	33	9	-	4	46	42	52/134
TX	4	9	-	5	16	10	21/44
CA	2	-	-	-	2	1	2/5
VI	1	-	-	-	1	2	1/4
Total October 2002	205	110	94	251	376	226	713/1262
Total October 2001	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. Previous 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.

At the April 2001 AP meeting and in Chapter 10 of the 2001 SAFE report, NOAA Fisheries 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 this same meeting, NOAA Fisheries heard that a number of AP members would prefer the permitting system to be streamlined. Some suggestions included:

- NOAA Fisheries 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.

At the April 2002 AP meeting, NOAA Fisheries and AP members continued to hear from Caribbean fishery representatives who stated that fishermen in Puerto Rico and the U.S. Virgin Islands continue to fish for HMS without the necessary permits and that NOAA Fisheries needs 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. The Caribbean representative has written to NOAA Fisheries 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, NOAA Fisheries 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 future rulemaking on limited access permitting issues.

9.2.4 Upgrading and Safety Issues

When the limited access program was implemented, NOAA Fisheries 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. NOAA Fisheries 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, NOAA Fisheries 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. NOAA Fisheries 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, NOAA Fisheries mentioned other possible options including: eliminating upgrading restrictions; limiting hold capacity instead of, or in addition to, the current restrictions; allowing a greater percentage increase; and creating vessel categories. NOAA Fisheries heard similar comments as those above from the AP in April 2001 and in 2002. NOAA Fisheries is considering these options, and, as

with any potential changes in the permitting system, will allow for adequate public comment during the rulemaking process before making any changes to the regulations.

9.3 Atlantic Tuna Permits

In 2000, NOAA Fisheries contracted Aquilent, formerly known as Commerce One, 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 2002 are valid from the date of issuance through May 31, 2003. 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 decreased from 2000 to 2001, but increased from 2001 to 2002. The number of permits in the harpoon category has continued to increase slightly since 2000 (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 charter/headboat vessels fishing for Atlantic HMS. For more information on this permit, please see section 9.4 below.

In December 2002, NOAA Fisheries published a final rule (67 FR 77434, December 18, 2002) that required the owner of each vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed, to obtain an HMS Angling permit. This permit will replace the Atlantic Tunas Angling category permit. The HMS Angling permits will be required as of March 1, 2003. Current Atlantic Tunas Angling permits will meet HMS Angling category requirements through May 31, 2003.

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. A vessel issued a HMS Charter/Headboat permit for a fishing year will not be issued an HMS Angling permit or any Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership. A final rule to expand the HMS recreational permit from tuna to include all HMS and define charter/headboat operations was published in December 2002 (67 FR 77434, Dec. 18, 2002).

Table 9.2 The number of Atlantic tunas permit holders in each category. The actual number of permit

holders in each category is subject to change.

Category	As of October 2000	As of October 2001	As of October 2002
Longline	292	213	226
Angling	14,908	12,685	13,263
Harpoon	44	53	56
Trap	4	1	6
General	6,705	6,072	6,431
Purse Seine	5	5	5
Charter/headboat	2,728	No longer a tuna-only permit, now a HMS charter/headboat (3,260)	No longer a tuna-only permit, now a HMS charter/headboat (3,659)
Total	24,686	19,029 Does not include HMS charter/headboat	19,987 Does not include HMS charter/headboat

As of October 2002, there were 3,659 Atlantic HMS charter/headboat permit holders. This is a 12% increase over the number of charter/headboat category permits issued in 2001 and a 34% increase over the tuna charter/headboat category permits issued in 2000 (Table 9.2). This increase could be due to the requirement for all charter/headboats to hold an HMS charter/headboat permit in case they catch any highly migratory species.

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. To facilitate quota monitoring “negative reports” for shark and swordfish are required from dealers when no purchases are made (i.e., NOAA Fisheries can determine who has not purchased fish versus who has neglected to report). NOAA Fisheries 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, NOAA Fisheries 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 has not changed substantially from the numbers in 2000. In fact, there was an increase in the number of dealer permits for Atlantic swordfish and sharks in 2002, whereas the number of Atlantic tunas dealer permits declined.

Table 9.3 Number of dealer permits issued in each state as of October, 2002. The actual number of permits per state may change as permit holders move or sell their businesses.

State	Atlantic tunas	Atlantic swordfish	Atlantic sharks	# of permits
AL	1	3	5	9
CA	34	36	12	82
CT	6	-	-	6
DE	4	1	1	6
FL	19	102	100	221
GA	-	1	1	2
GU	1	-	-	1
HI	8	11	4	23
IL	1	1	1	3
KY	-	-	-	0
LA	15	18	19	52
MA	114	27	19	160
MD	6	4	0	10
ME	35	3	3	41
MO	-	-	1	1
MS	-	-	2	2
NC	32	15	21	68
NH	7	-	-	7
NJ	48	14	12	74

State	Atlantic tunas	Atlantic swordfish	Atlantic sharks	# of permits
NY	62	21	11	94
OR	1	-	-	1
OH	-	1	1	2
PA	-	3	1	4
PR	3	-	-	3
RI	33	14	11	58
SC	9	8	13	30
TX	3	7	10	20
VA	22	4	5	31
VI	14	4	1	19
WA	1	7	7	15
Canada	-	13	5	18
Chile	-	1	-	1
New Zealand	-	-	-	0
Uruguay	-	1	-	1
Ecuador		1	1	2
TOTAL OCTOBER 2002	479	321	267	1067
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. These EFPs/SRPs would authorize collections of a limited number of tunas, swordfish, billfishes, and sharks from federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display. In addition, NOAA Fisheries 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 from 2000-2002 are listed in Table 9.4. Year-end reports for permits issued for 2002 are required, and are expected to be submitted to NOAA Fisheries in early 2003. During 2002 there were 8 public display EFPs issued, which authorized 695 sharks, 68 tuna, and 2 swordfish to be taken. To date, 42 sharks, no tuna, and no swordfish are reported to have been taken.

During 2002 there were 11 EFPs issued to non-scientific research vessels. These EFPs authorized 313 sharks, 300 swordfish, 30 billfish, and over 450 BFT, 100 YFT, and 50 ABT. To date, 92 sharks no sharks, and no tunas have been reported to have been taken.

During 2002 there were 4 EFPs issued to scientific research vessels. These EFPs authorized 108 BFT, 100 YFT, 100 sailfish, 100 blue marlin, 100 white marlin, and 100 swordfish.

Table 9.4 Number of EFPs and SRPs issued.

Permit type		2000	2001	2002
Exempted Fishing Permit	Sharks for display	14	9	7
	HMS for display	-	-	1
	Tunas for display	1	1	No longer a Tunas for display, now HMS for display
	Tuna fishing	0	4	7
	Observers for sharks	0	1	1
	Observers for HMS (multi-species)	0	1	1
	Shark research on a non-scientific vessel	2	4	4
	Tuna research on a non-scientific vessel	1	4	4
	HMS research on a non-scientific vessel	1	4	4
	TOTAL	19	28	29
Scientific Research Permit	Shark research	0	2	2
	Tuna research	4	1	1
	Billfish research	2	1	0
	HMS (multi-species) research	0	1	1
	TOTAL	6	5	4