

Atlantic Highly Migratory Species Advisory Panel Meeting
Silver Spring, MD
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Brief/Informal History of Limited Access in HMS

Introduction:

The Highly Migratory Species (HMS) Management Division has prepared this brief background document to highlight how Limited Access came to be in our fisheries and some of the issues it was originally designed to address. This document also serves as a summary of the issues that have arisen since Limited Access was implemented. As managers, industry, and interested members of the public alike we must contend with the situation that the fisheries we manage are in a constant state of flux and what may have worked in the past may not as effective in the future. The HMS Management Division, with your help, will be looking at some of the key elements and foundations to the HMS regulations and engaging in discussions on how best to collectively manage these resources well into the future. Below is a brief synopsis of how Limited Access has been developed over the years and what we are continuing to struggle with today.

During the Development/implementation of the Fishery Management Plan (FMP) for Atlantic Tunas, Sharks and Swordfish (1999):

- *What were the status of the HMS stocks back in 1999?*
 - In General: Two fundamental objectives of the 1999 FMP were to halt or prevent overfishing and to rebuild overfished fish stocks to ensure the long-term sustainability of the stocks. In order to meet these objectives, managers must be able to determine when stocks are overfished and in need of rebuilding to the level of maximum sustainable yield (MSY). MSY is the maximum long-term average yield that can be produced by a stock on a continuing basis. MSY for any particular stock is characterized by a biomass level (BMSY) and a fishing mortality rate (FMSY). There are two important components to classification as an overfished fishery: a fishing mortality rate component and a stock biomass component. If the fishing mortality rate is higher than that required to produce MSY on a continuing basis, then overfishing is occurring. If the stock biomass level has fallen to a level below that necessary to produce MSY on a continuing basis, then the stock is overfished. If either or both of these situations exist, the fishery will be classified as overfished in NMFS' annual report to Congress and the fishery must be subject to rebuilding through remedial management.
 - Swordfish – Overfished and overfishing was occurring
 - Sharks – Generally were overfished and overfishing was occurring, but mixed results when species broken out individually.
 - BFT – Overfished and overfishing was occurring
 - BAYS – Generally unknown, but mixed results when broken out individually.
- *Why were Limited Access Permits implemented?*

- The original goal of limited access in the Atlantic swordfish and shark fisheries was to rationalize the harvesting capacity with the available quota, and reduce latent effort without significantly affecting the livelihoods of those who were substantially dependent on these fisheries (in other words, to prevent further overcapitalization).
- Historically, pre-1999 FMP, management measures treated both the commercial Atlantic swordfish and shark fisheries as common property resources and were primarily directed at controlling the rate of harvest rather than correcting the common property externality.
- As non-HMS overfished fisheries became subject to stricter management measures designed to promote rebuilding, fishing effort in open access HMS fisheries was starting to intensify. There was evidence that vessels from other depleted fisheries entered the Atlantic swordfish and shark fisheries; vessel owners may have been attempting to enhance their future security by developing an HMS catch.
- *What were the qualifications?*
 - Only those fishermen who had a history of participating in the fishery and who were currently active, or those fishermen who bought a limited access permit from an owner who is leaving the fishery, would be allowed to operate in these fisheries.
 - Permit Eligibility Period – Both historic and recent based on physical possession of the permit for given time frames. Unique timeframes were developed for both the Shark and Swordfish permits.
 - Landings Eligibility Period - To be eligible for a limited access permit vessel owners must have reported landings in either the swordfish fishery or the shark fishery for a given time period. The quantity of landings or the value of landings during the qualifying time frame dictated whether a directed or incidental permit was issued.
 - Catch histories belonged to the permit holders rather than to the vessel; i.e., if a permit holder sold one vessel and bought another, he/she retained the history of the vessel sold and did not acquire the history of the vessel purchased unless stated in the sale agreement.
 - Only one limited access permit was issued for a single vessel's catch history. Only vessel histories bought/sold in entirety were considered; vessel histories could not be split or consolidated.
 - NMFS established a provision for contested eligibility of vessel ownership or swordfish permit or landings histories in the event that more than one vessel owner claims eligibility for a limited access permit based on one vessel's ownership or permit or landings history. The HMS Management Division evaluated applications and accompanying documentation, then notified the applicant by letter of NMFS' decision to accept or deny the permit application. If the application was denied, the applicant had the opportunity to appeal within 90 days of receipt of the notice of denial. Provisional directed or incidental fishery permits, as appropriate, were issued by NMFS pending the outcome of those appeals.
- *Why have incidental vs. directed permits (SWO/SHK)?*
 - The two types of permits allowed the directed fisheries to be defined and regulated separately from other commercial fisheries that targeted other species but that encountered swordfish and/or sharks incidentally.
- *Why have a swordfish handgear permit?*
 - Due to decreased availability of the large swordfish handgear vessels targeted, there were no known commercial harpoon fishermen who had both a current permit and the specified landings required to qualify for a directed permit. Without this provision, many handgear fishermen would have been excluded from Atlantic swordfish fishing or been restricted to

- landing only the specified incidental catch limits of two swordfish per trip. Thus, NMFS developed a separate criteria to address the unique nature of this traditional fishery.
- Those former and current harpooners who applied were issued a directed fishery handgear permit if they provide documentation of having been issued a swordfish permit for use with harpoon gear or having landed swordfish with handgear as evidenced by logbook records, verifiable sales slips or receipts from registered dealers, or state landings records, and if they used only handgear to harvest swordfish.
 - NMFS allowed former harpooners and vessel owners who meet the earned income requirement to qualify for this limited access permit.
 - *Why convert the incidental tuna permit to a longline permit?*
 - Lack of a similar requirements for the pelagic longline BAYS fishery would have left a “back door” open for entry into the multi-species pelagic longline fishery. If this had happened, discards of swordfish and sharks may have increased, which was contrary to the goals of limited access and the ‘99 FMP.
 - Fishermen who qualified for a directed or incidental Atlantic swordfish limited access permit were allowed to fish for and land tunas according to the regulations regarding the use of the Atlantic Tunas Longline Permit. This allowed swordfish limited access permit holders to land tunas, and was consistent with the BAYS regulations.
 - Those commercial longline fishermen who had an Atlantic tunas incidental permit to fish for and land BAYS tuna and BFT incidentally were given incidental swordfish and shark limited access permits.
 - *Why require pelagic longline vessels to possess all three (Swordfish, Shark, and Tuna)?*
 - Permit structure was still largely based on Species versus Gear.
 - Due to the non-selective nature of longline gear and the likelihood of encountering sharks and/or swordfish while fishing for tunas, it was prudent to address this potential source of bycatch.
 - *What were the volume of permits then compared to now?*
 - The number of permitted swordfish vessels increased from between 600 and 800 in the early 1990s to just under 1,200 in 1995.
 - In 1996, there were approximately 2,257 shark permit holders but only about 565 landed at least one large coastal shark. In 1995, only 25 percent of permit holders reported landing a large coastal shark. However, only 352 of the active permit holders in 1995 were also active in 1996, indicating considerable ingress and egress in this fishery.
 - Incidental tunas – approximately 315 in 1998
 - *Permit maintenance and transferability*
 - Limited access permits are transferable with or without the sale of the permitted vessel, or to a replacement vessel owned or purchased by the original permittee (subject to upgrading restrictions - see following section), but not under any other circumstances.
 - Adopt NEFMC and MAFMC Upgrading Restrictions - allow for one vessel upgrade provided the upgrades do not exceed 20 percent of the horsepower (HP), and ten percent of the length (LOA), gross registered tonnage (GRT), and net tonnage (NT) of the vessel’s baseline.
 - Sunset Provision – Limited access permits were set to “sunset” if they were not renewed within one year of their expiration

Actions taken after the implementation of the 1999 HMS FMP

- *Exempted Fishing Permit (EFP) issuance for a while? Why?*
 - EFPs were issued to Atlantic Swordfish and Shark limited access permits holders who held an Atlantic Tunas permit in a category other than the Longline category at the time the 1999 FMP was implemented. Issued for a couple of years.
 - The 1999 FMP inadvertently prohibited activities that had previously been authorized and because it was not clear what economic impact would result if these vessel operators could no longer participate in multiple seasonal fisheries.
 - These vessels had maintained permits in other Atlantic Tunas categories as needed to conduct their preferred directed fishing operations for BFT (e.g., Atlantic Tunas General category). When the BFT season was closed, these vessel operators conducted longline fisheries for sharks, swordfish and BAYS and, consequently, their catch histories qualified the vessels for limited access swordfish and/or shark permits.
 - After a couple of years NMFS stopped issuing the EFPs due to the administrative difficulties in managing them as well as a diminished interest by permit holders in receive them.
- *Recent regulatory actions taken*
 - Swordfish Revitalization
 - Revised North Atlantic swordfish retention limits and modified the current vessel upgrading restrictions on vessels issued certain limited access HMS permits.
 - The purpose was to provide additional opportunities for U.S. vessels to fully harvest the ICCAT recommended domestic swordfish quota, in recognition of the improved stock status of North Atlantic swordfish.
 - Atlantic Tunas Longline Rule
 - Allow for the renewal of Atlantic Tunas Longline Limited Access Permits that have been expired for more than one year by the most recent permit holder of record, provided that their associated swordfish and shark Limited Access Permits have been maintained through timely renewal and all other requirements for permit renewal are met.
- *Permit implementation issues*
 - SE Regional permit office handles SHK/SWO renewals/transfers
 - NE HMS field office handles Tuna Longline renewals/transfers
 - The SE Regional permit office has the lead on conducting upgrade criteria checks for directed permits where that responsibility resided in NE HMS for incidental due to the Tuna LL permit
 - Sequential order of transfers: SHK/SWO to be completed by the SE and confirmed by the NE prior to transferring the Tuna LL permit
 - SHK/SWO transfers confirmed via SE permitting website or personal communication w/SE (email)
 - SHK/SWO permits can be placed in a 'No Vessel ID' status (i.e., purchased w/no vessel to transfer them to), the Tuna permit system does not have the same capability, so permits remain in previous owners name until vessel is acquired and the transaction can be completed. Therefore, the SHK/SWO permits can be disconnected from the vessel for a period of time while the Tuna LL permit is simultaneously disconnected from the new owner for a period of time. Can cause some legal issues.

- SHK/SWO vessels can be leased to a party for a predetermined period of time. This can impact the permits issued. The Tuna permit system does not have a way to track/differentiate an ownership change versus a lease agreement.
- Tuna permits can be issued in different categories. A permit can be renewed from one year to the next (keeping it valid), but is not required to remain in the same category. Categories can be changed once per year at the time the permit is renewed.
- Once a Tuna LL category is changed to another category (i.e., Gen or CHB), SWO permit is rendered 'invalid', no pelagic longlining for HMS is allowed, but the SWO permit can still be renewed/maintained for future use. SHK permit could be used for bottom LL purposes
- Once a vessel is eligible for the limited access permit (i.e., qualified in 1999 FMP or obtained via a transfer so long as SHK/SWO permits have not lapsed for more than 1 year), vessel is still eligible for Tuna LL category permit even if the owner/operator intentionally changed the permit category to another category (i.e., Gen). The category will be locked into place and must wait until the subsequent Tuna permit issuance to change it again (i.e., no back and forth in the same season).
- SHK/SWO permits that have not been renewed for within one year of the permits expiration date are ineligible for renewal or transfer and are removed from the pool of eligible permits.
- If the SHK/SWO permits have been renewed each year since the implementation of limited access, the Atlantic tunas longline permit was renewed even if more than one year has lapsed since the expiration date.
- *Changes observed in the HMS fisheries*
 - Current permitting levels (August 6, 2007)
 - Shark - 243 directed shark, 299 incidental shark
 - Sword - 197 directed swordfish, 91 incidental swordfish, 92 swordfish handgear
 - Tuna LL - 268 tuna longline
 - In total, there are approximately 648 federal HMS limited access permit holders, as permit holders may be issued more than one permit.
 - Changes in the stock
 - Swordfish – the North Atlantic swordfish stock is almost fully rebuilt and fishing mortality is low.
 - Sharks – Based on the 2005 Canadian porbeagle stock assessment, the 2006 dusky shark stock assessment and the 2005/2006 LCS stock assessment NMFS has determined that a number of shark species are overfished and overfishing is occurring.
 - BFT – Overfished; overfishing is occurring.
 - BAYS – Generally overfished, with variation in overfishing when broken out on a species by species level.
- *Problems encountered*
 - An increase in volume of transfers has occurred in recent years as a result for the Swordfish recovery
 - The introduction of buoy gear and the clarification of the use of green-stick has led to a number of permitting combination issues.

- The Atlantic tunas/HMS permitting system and business practices were not designed to account for the high volume of turnover currently being experienced in the limited access arena.
- The complexity of analyzing the validity of a transfer or renewal has increased dramatically.