

# **A Brief History of Limited Access Permits in HMS Fisheries**

The Highly Migratory Species (HMS) Management Division has prepared this brief background document to describe how, and why, limited access permits were first implemented in HMS swordfish, shark, and tuna fisheries. This document also summarizes some of the issues that have arisen since limited access permits were implemented. As managers, industry participants, and interested members of the public alike, we must recognize that fisheries are in a constant state of flux. Accordingly, management measures that may have been appropriate in the past might not be as effective in the future. The HMS Management Division, with your help, is currently looking at the key elements and foundations of the current HMS fishery management regime, and will be discussing potential ways to more effectively manage these resources in the future. To help initiate the process, this document provides a synopsis of how HMS limited access permits were developed and some of the issues that have arisen since then.

## **Development and Implementation of the 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Sharks and Swordfish**

- *What was the status of HMS stocks 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 long-term sustainability. To accomplish these objectives, it is necessary first to determine if a stock is 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 two important criteria: a biomass level (Bmsy) and a fishing mortality rate (Fmsy). 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 criteria are met, the fishery will be classified as overfished in NMFS' annual report to Congress and the fishery be rebuilt through remedial management. In 1999, the following stock status determinations were found to be in effect:
    - Swordfish – Overfished and overfishing was occurring;
    - Sharks – Generally were overfished and overfishing was occurring, but mixed results when some individual species were assessed separately;
    - BFT – Overfished and overfishing was occurring;
    - BAYS – Generally unknown, but mixed results when individual species were assessed separately.
- *Why were limited access permits implemented?*
  - The original goal of limited access permits in Atlantic swordfish and shark fisheries was to rationalize the harvesting capacity with the available quota and reduce latent fishing effort without significantly affecting the livelihoods of those who were

substantially dependent on these fisheries (in other words, to prevent further overcapitalization).

- Historically, before the 1999 FMP, management measures treated 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 other non-HMS fisheries were declared overfished and became subject to stricter management measures, some displaced fishing effort moved into open-access HMS fisheries as vessel owners attempted to enhance their future security by developing an HMS catch history.
- *What were the qualification criteria for an HMS limited access permit?*
  - Only fishermen who had a history of participating in an HMS fishery and were currently active, or fishermen who bought a limited access permit from an owner leaving the fishery, would be allowed to operate in these fisheries.
  - Permit Eligibility Period – Both historic and recent participants were eligible for a limited access permit, depending upon whether they had physically possessed an open-access permit during a pre-established time frame. Unique timeframes were developed for both shark and swordfish limited access permits.
  - Landings Eligibility Period - To be eligible for a limited access permit, vessel owners were required to have reported landings in either the swordfish fishery or the shark fishery during 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 were determined to belong 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 catch history of the vessel sold and did not acquire the history of the vessel purchased (unless otherwise stated in the sales agreement)).
  - Only one limited access permit was issued for a single vessel's catch history. Only vessel histories bought or 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 claimed eligibility for a limited access permit based on one vessel's ownership, or permit or landings history. The HMS Management Division evaluated applications and the accompanying documentation, then notified the applicant by letter of NMFS' decision to accept or deny the limited access permit application. If the application was denied, the applicant could appeal the decision 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 an appeal.
- *Why did NMFS establish incidental & directed permits?*
  - The two types of permits allowed directed fisheries to be defined and regulated separately from other commercial fisheries that targeted other species but encountered swordfish and/or sharks incidentally.

- *Why did NMFS establish a separate swordfish handgear permit?*
  - Due to the decreased availability of large swordfish that handgear vessels typically target, there were no commercial harpoon fishermen at the time who had both a current permit and the required amount of landings to qualify for a directed permit. Many traditional handgear fishermen would have been excluded from catching Atlantic swordfish or been restricted to landing only the specified incidental catch limit of two swordfish per trip. Thus, NMFS developed 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 provided documentation indicating: (1) that they had been issued a swordfish permit for use with harpoon gear or had landed swordfish with handgear as evidenced by logbook records, verifiable sales slips or receipts from registered dealers, or state landings records; and, (2) if they had used only handgear to harvest swordfish.
  - NMFS also allowed former harpooners and vessel owners who met the earned income requirement to qualify for a limited access permit.
  
- *Why did NMFS convert the incidental tuna permit to a longline permit?*
  - Without a tunas longline permit for the pelagic longline BAYS fishery, there would have been a loop-hole for entry into the multispecies pelagic longline fishery as vessel could have attained only the tuna permit. If this had happened, discards of swordfish and sharks caught while fishing for BAYS could have increased, as they tend to be caught in the same area, which was contrary to the goals of the limited access program and the 1999 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 did NMFS require pelagic longline vessels to possess three permits (SWO, SHK, & Tuna)?*
  - Permits were issued based primarily on species caught, and not on gears deployed.
  - Due to the non-selective nature of longline gear and the likelihood of encountering sharks and/or swordfish while fishing for tunas, it was necessary to address bycatch.
  
- *What was the number of open-access permits issued before the 1999 FMP?*
  - The number of open-access permitted swordfish vessels increased significantly from between 600 and 800 in the early 1990s to approximately 1,200 in 1995.
  - In 1998, approximately 315 incidental tuna permits had been issued.
  - In 1996, there were approximately 2,257 open-access 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.

- *Limited access permit renewal and transfer requirements*
  - 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.
  - HMS adopted New England Fishery Management Council and Mid-Atlantic Fishery Management Council vessel upgrading restrictions in the 1999 FMP. These allowed for one vessel upgrade provided that the upgrade did 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 would “sunset” if they were not renewed within one year of their expiration

### **Actions Taken After Implementation of the 1999 HMS FMP**

- *Why were Exempted Fishing Permits (EFP) issued to some vessels for a while after 1999?*
  - 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. These were issued for approximately two years.
  - The 1999 FMP inadvertently prohibited some activities that had previously been authorized. Because it was not clear what economic impact would result if these vessel operators could no longer participate in multiple seasonal fisheries, EFPs were issued those vessels.
  - 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.
  - NMFS stopped issuing these EFPs in 2001 due to the administrative difficulties in managing them as well as a diminished interest by permit holders in receiving them.
- *Recent regulatory actions*
  - Swordfish Revitalization (2007)
    - NMFS revised North Atlantic swordfish retention limits and modified vessel upgrading restrictions on vessels concurrently issued swordfish, shark, and Atlantic Tunas longline permits limited access permits.
    - The purpose of this action 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 (2008)
    - NMFS allowed for the renewal of Atlantic tunas longline limited access permits that had 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 had been maintained through timely renewal and all other requirements for permit renewal were met.

## Issues Since the 1999 HMS FMP

- *Permit implementation issues*
  - Different offices issue SWO/SHK permits and Tuna longline permits.
    - The SE Regional permit office handles SHK/SWO renewals/transfers.
    - The NE HMS field office handles Tuna Longline renewals/transfers.
  - The annual number of permit transfers has been steadily increasing.
  - The SE Regional permit office has the lead on conducting a review of upgrade eligibility for directed permits. That responsibility resides in the NE HMS office for Tuna LL permits.
  - Sequential order of transfers: SHK/SWO transfers must be completed by the SE permit office and confirmed by the NE prior to transferring the Tuna LL permit.
  - SHK/SWO transfers are confirmed by the NE using the SE permitting website or personal communication w/SE (e-mail).
  - SHK/SWO permits can be placed in a 'No Vessel ID' status (i.e., they can be purchased with no vessel to transfer them to). The Tuna permit system does not have the same capability, so Tuna permits remain in a previous owner's name until a vessel is acquired and the transaction can be completed. Therefore, the SHK and SWO permits can be "disconnected" from a vessel for a period of time, while the Tuna LL permit is simultaneously "disconnected" from the new owner for a period of time.
  - SHK and SWO vessels can be issued to an individual who leases a vessel. The current Tuna permit system does not have a way to track or differentiate an ownership change versus a lease agreement.
  - Tuna permits can be issued in different permit 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 permit category is changed to another category (e.g., General or CHB), the SWO permit is rendered 'invalid' (no pelagic longlining for HMS is allowed) but the SWO permit can still be renewed for future use. The SHK permit can be used for bottom longlining.
  - Once a vessel is eligible for a Tunas longline limited access permit (i.e., it qualified in 1999 or obtained a permit via transfer), so long as the SWO and SHK permits are valid the vessel remains eligible for a Tuna LL category permit even if the owner/operator intentionally changed the permit category to another category (i.e., General). However, the tuna category will remain in that other category for a year and the owner must wait until the subsequent Tuna permit issuance to change it back again to a longline category (i.e., no back and forth in the same season).
  - SHK and SWO permits that have not been renewed within one year of the permit's expiration date are ineligible for renewal or transfer, and are removed from the pool of eligible permits.
  - If the SHK and SWO permits have been renewed each year since the implementation of limited access, the Atlantic tunas longline permit may now be 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) compared to October 2000 numbers
    - Shark - *Now*: 243 directed shark, 299 incidental shark; *Then*: 287 directed shark, 585 incidental shark
    - Swordfish - *Now*: 197 directed swordfish, 91 incidental swordfish, 92 swordfish handgear; *Then*: 240 directed swordfish, 203 incidental swordfish, 125 swordfish handgear
    - Tuna LL - *Now*: 268 tuna longline; *Then*: 292
    - Owners/Permits: *Now*: There are approximately 648 federal HMS limited access permit holders for 1,190 permits; *Then*: There were approximately 982 federal HMS limited access permit holders for 1,732 permits as permit holders may be issued more than one permit.
  - Changes in stock status
    - Swordfish – Almost fully rebuilt (99%) and fishing mortality is low.
    - Sharks – Based on the 2005 Canadian porbeagle stock assessment, the 2006 dusky shark stock assessment, the 2005/2006 LCS stock assessment, and the 2007 SCS 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 assessed on a species by species level.
  
- *Recent problems encountered*
  - An increase in the volume of transfers has occurred as a result of the swordfish stock recovery.
  - The re-emergence of the swordfish fishery and the introduction of buoy gear has led to a number of permitting combination and permit/allowable gear issues.
  - The web-based Atlantic tunas/HMS permitting system and current business practices were not designed for the high volume of turnover currently being experienced in the limited access arena.
  - The complexity associated with analyzing the validity of a permit transfer or renewal has increased dramatically. For example, some permit holders possess two or more HMS permits for the same species on a single vessel which is referred to as permit “stacking.” Another example is when permits from various vessels with different baselines are consolidated onto one boat.