

## **A.0 APPENDIX A: SUMMARY OF COMMENTS RECEIVED DURING SCOPING**

On July 14, 2008 (73 FR 40301), the National Marine Fisheries Service (NOAA Fisheries) announced the availability of an issues and options document describing potential measures for inclusion in Amendment 4 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) in the Federal Register. In this same announcement, NOAA Fisheries provided details for five scoping meetings and requested comments on the issues and options document. The comment period was open until October 31, 2008. Five scoping meetings were held in Puerto Rico and the USVI during August and September 2008. These meetings were held in St. Thomas, USVI; San Juan, PR; Fajardo, PR; Mayaguez, PR; and, Ponce, PR. NOAA Fisheries also presented an issues and options paper for Amendment 4 to the 2006 Consolidated HMS FMP (Amendment 4) to the Caribbean, Gulf of Mexico, South Atlantic, Mid-Atlantic, and New England Fishery Management Councils. Additionally, NOAA Fisheries presented the Amendment 4 issues and options presentation and an Amendment 4 scoping summary to the HMS Advisory Panel (HMS AP) at the September 2008 meeting. A summary of the comments received during the scoping period is below.

### **Amendment 4 Scoping Comments**

#### **General**

- Do not make regulations you cannot enforce.
- NOAA Fisheries needs to address the insular nature of the Caribbean in its management plan.
- There are foreign commercial vessels that fish illegally in Puerto Rican territorial waters, particularly off the West coast of the island.
- Puerto Rico DNER expressed a need for better fisheries interaction data for marine mammals and recommended having observers on pelagic longline vessels to collect more marine mammal bycatch data.
- Commenters suggested that the federal government should purchase fishing gears designed to catch HMS species, especially buoy gear for swordfish (SWO), and requested training to teach them how to use such gears.
- Some commercial fishermen in Puerto Rico stated support for the Amendment 4 effort and are supportive of designing HMS regulations specific to the Caribbean region.
- Some commenters stated concern that large industries in Puerto Rico are polluting the coastal environment, which is reducing marine resource productivity and reducing the catch of fish. These commenters recommended that NOAA Fisheries address pollution issues instead of implementing new fishing regulations.
- Commenters noted that there are very few discards in Puerto Rican fisheries because the Puerto Rican fishermen use whatever they catch. Commenters indicated that if it is not sold, then the fishermen's families use it.
- Many of the species targeted by HMS fishers are overfished and/or experiencing overfishing.
- NOAA Fisheries should adopt strong, effective measures to end overfishing of HMS, rebuild stocks, eliminate bycatch, and integrate ecosystem concerns into fisheries management planning.
- NOAA Fisheries must implement measures in the Caribbean region that offer at least equal protection to the species as those in effect in other regions.

- Because HMS in the Caribbean are subject to significant impacts from other Caribbean nations, NOAA Fisheries must take a leadership role in establishing effective management measures and work with other U.S. government agencies to promote the implementation of similar management measures by other nations.
- NOAA Fisheries should engage the NOAA/NMFS Offices of International Affairs and the U.S. Department of State in this rulemaking process to greatest extent possible.
- From the perspective of managing stocks, NOAA Fisheries will need to make Amendment 4 a multi-national effort.
- The United States should be establishing a system of fisheries management that can work as a model throughout the Caribbean region and encouraging cooperation across Caribbean nations.
- Setting annual catch limits (ACLs) and accountability measures (AMs) by NOAA Fisheries, as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), is crucial to the conservation of HMS.
- Given the poor condition of HMS stocks, NOAA Fisheries should not allow any expansion of fishing effort targeting HMS.
- NOAA Fisheries must set strict catch limits on both target and non-target species – setting catch limits by species complex does not allow for sufficient monitoring or stock assessments.
- HMS fisheries target a number of important predatory species. Removing top predators from sensitive ecosystems like those in the Caribbean can cause adverse ecosystem effects, including habitat degradation.
- Some commenters objected to any expansion of the HMS fisheries, including shark fisheries, in the Caribbean.
- Some commenters noted the expanding effort offshore to increase catch of HMS should not move forward without a clear understanding of fishery impacts and the status of HMS.
- The Caribbean needs HMS regulations that are generally consistent with the rest of the HMS management unit.
- The lack of Caribbean HMS catch and effort data undermines the fishery management efforts in the Atlantic and Gulf of Mexico.
- NOAA Fisheries must establish effective management through a Count, Cap, and Control method (**Count** - collect species-specific landings and bycatch data and conduct species-specific population assessments; **Cap** – establish species-specific quotas and bycatch caps; **Control** – collect timely landings data and enforce quotas and bycatch caps).
- NOAA Fisheries must conduct species-specific stock assessments.
- Each HMS must have a set quota based on a stock assessment; these quotas must be applied to all U.S. landings, including those that occur in the Caribbean region, and must be species-specific.
- Existing shark quotas should be broken out into species-specific quotas.
- NOAA Fisheries must cap and control discards by setting and enforcing real limits on bycatch – to address the problem, NOAA Fisheries should set specific bycatch limits which would then be counted against quotas.

## **U.S./Territory Relationship Issues**

- Puerto Rico DNER commented that it has been working to develop a recreational fishing license, but does not have one yet. They noted that the political climate in Puerto Rico affects the creation and timing of the recreational permit. Puerto Rico DNER is aware of the upcoming angler registry and is watching to see how the registry will mesh with existing permits. Due to the lack of a Puerto Rico recreational permit, it may be necessary for the registry to be the main source of information about the number of recreational anglers until a recreational permit can be created.
- Caribbean Fisheries Management Council (CFMC) staff recommended that NOAA Fisheries ask Puerto Rico to create a special shark commercial permit and pelagics permit so that the number of permits, sales, etc., can be tracked.
- CFMC staff commented that a concentrated effort is needed on a Memorandum of Understanding (MOU) with the Commonwealth of Puerto Rico for enforcement, compatibility of regulations, and outreach and education.

## **Permitting**

### *General*

- The creation, if any, of a commercial fishing/dealer permit that is unique to residents of the USVI or Puerto Rico could generate complaints about special treatment or requests for similar consideration from other federal fishery management councils, depending on the content and approach of any new permit requirements.
- NOAA Fisheries will be going against one of the objectives of the recent rulemaking to increase the catch of SWO if the Agency limits the number fishermen able to participate in HMS fisheries in the Caribbean region.

### *Vessel Permitting*

- Fishermen in southern Puerto Rico supported development of one combined HMS permit for sharks, SWO, and tunas that limits vessel size. Fishermen also supported development of a new combination permit that would allow the wholesale/retail sale of their catch.
- Fishermen commented that any new HMS permits should be limited to only residents of the Caribbean Islands who show proof of vessel registration and fishing permits from the Caribbean Islands.
- NOAA Fisheries should maintain limited access to the Caribbean HMS fishery and should not expand either the effort allowed under the limited access program or the types of gear allowed.
- The lack of catch and effort data in the Caribbean reinforces the need for a better permitting system and improved reporting methods.
- Establishing a workable vessel permitting system would be a step toward obtaining accurate catch and effort data.
- With few vessel permits in the region, some fishermen catching and selling HMS in the Caribbean region may be operating illegally.

### *Dealer Permitting*

- There are few, if any, permitted Atlantic HMS dealers the U.S. Caribbean.

- Many Caribbean commercial fishermen do not know that they are only allowed to sell their HMS catch to a federally permitted dealer.
- Most fishermen in St. Thomas only have territorial permits. Fishermen typically do not sell their catch to federal dealers, and fishermen are retaining tunas in territorial waters without a federal permit.
- Puerto Rico does not require a territorial fishery dealer permit.
- Puerto Rican fishermen are not reporting shark catches from territorial waters to the DNER, especially on the west coast of the island.
- Puerto Rican fishermen are selling the sharks directly to restaurants, and they are being used in kebabs or fritters.
- Any changes to the current dealer permitting program should be aimed at matching the availability of dealer permits with the need to limit HMS catch in a species-specific manner.
- If the creation of a wholesale/retail sale dealer permit would improve data collection, it may be a viable alternative for analysis by NOAA Fisheries.
- Any changes to the permitting scheme must be to facilitate data collection and enforcement.
- Establishing a workable dealer permitting system would be a step towards obtaining accurate catch and effort data.

## **Enforcement**

- Enforcement must be increased to ensure fishermen are adhering to new regulations.
- A CFMC staffer recommended that in order to make federal fishery citations more effective, boats and gear should be impounded and a schedule of fines established.
- Recreational fishermen in Puerto Rico are selling their billfish (BLF). Most of the recreational fishermen sell whatever they land in tournaments. Mahi is commonly sold. Recreational fishermen think that because they spend so much money to enter the tournament and to cover fuel, they should be able to sell their catch to recover their costs.
- Puerto Rican law enforcement does not have enough resources. There are many new regulations being created, including this HMS Amendment 4 initiative, but there are not enough Puerto Rico DNER wardens to adequately enforce the regulations and the wardens may lack adequate knowledge, training, or budget to effectively enforce the regulations.
- There may be a problem with intimidation of Puerto Rico DNER wardens by wealthy recreational fishermen who are economically or politically powerful. Also, tickets that are issued are often not paid and there are no consequences for not paying. All of this undermines enforcement efforts.
- Puerto Rico DNER recommended that NOAA Fisheries consider ways to make new regulations enforceable. For instance, since many fishermen have been fishing without federal permits, permit sanctions would be ineffective. Notices of Violations (NOVA) will also be ineffective as fishermen just will not pay them. NOAA Fisheries may need to consider working with Puerto Rico's DNER and Treasury Department to work on violations that will affect fishermen's ability to renew either the state/territory boat registrations (which are enforced in Puerto Rico) or their local territorial fishing license if they are found in violation of HMS regulations.
- It was also suggested that a MOU could be worked out between the Commonwealth of Puerto Rico and NOAA Fisheries to provide Puerto Rico a share of fines paid for violating

federal regulations as an incentive for further enforcement by Puerto Rican law enforcement officials.

- Also, commenters noted that local enforcement (under a MOU) needs the ability to issue tickets for violations “on the spot” to get better enforcement efforts. This will require a penalty schedule for the region.
- Commenters noted that Puerto Rican enforcement officials need better training in species identification if they are to effectively enforce the regulations.

## **Improving Data Collection**

### *General*

- It is important for NOAA Fisheries to improve the accuracy and reliability of catch data from the U.S. Caribbean.
- The need for improved HMS data collection could be added to upcoming CFMC workshops to be held in St. Thomas and St. Croix to explain the new ACL requirement. These meetings were not being held in Puerto Rico.
- Puerto Rico DNER staff expressed dissatisfaction with NOAA Fisheries decision that the data Puerto Rico DNER had collected for years via commercial trip tickets was not useable. Puerto Rico DNER suggested that NOAA Fisheries and Puerto Rico DNER talk together early in a data collecting effort so that the data submitted is useable.

### *Recreational Reporting*

- Puerto Rican recreational fishermen do not report their recreationally landed fish because they are afraid they will get a fine.
- Outreach materials, such as the brochures which summarize the regulations, need to be in Spanish. Many Puerto Rican fishermen do not know the federal HMS regulations because the outreach materials are in English and they cannot read them. Charters are usually for English speaking people, but Puerto Rican recreational fishermen usually only speak/read Spanish.
- Many recreational Puerto Rican tournament fishermen sell their catch. They do not know that they need a permit and/or they think that since they caught the fish, it is theirs to sell.
- The Marine Recreational Information Program (MRIP) in Puerto Rico is underway which will better characterize the HMS recreational fishery. Puerto Rico DNER, as part of this effort, is also trying to determine how best to collect non-tournament HMS landings. Involvement from the Sportfishing Fishermen’s Association is needed.
- Recreational reporting should be mandatory for all HMS.
- Charter vessel operators should be required to collect catch data from their customers and report that data to NOAA Fisheries.
- Mandatory reporting stations and an increase in dockside intercept programs may be necessary to ensure that recreational fishermen report their HMS catch.
- Intercept programs and reporting stations may be used to educate fishermen about reporting requirements.
- Improving catch and fishery effort data should be the first step in the process for Amendment 4.
- Species-specific landings data must be collected.

- Under-reporting or non-reporting by recreational fishermen in the Caribbean region could undermine the management of the HMS fisheries in the Atlantic and Gulf of Mexico.

#### *Commercial Reporting*

- There is unreported shark fishing occurring in Puerto Rican territorial waters.
- Any new logbooks or other reporting forms need to be as simple as possible and in Spanish.
- Confusion exists over the local names for tuna species, which may vary from region to region in Puerto Rico.
- Economic analysis in Puerto Rico may be difficult due to reporting problems. Puerto Rican fishermen typically have a 90 percent exemption from federal taxes if they are considered a bonafide fisherman; however, in the past, they did not even have to file an income tax return. Local fishermen may be resistant to new regulations.
- NOAA Fisheries should develop uniform reporting requirements for all species subject to HMS management.
- NOAA Fisheries should require the collection of logbook data from all vessels targeting or catching HMS, regardless of gear types used.
- NOAA Fisheries should also collect data from the territorial governments and work with those governments to develop more consistent, useful reporting systems.
- With few vessel permits in the Caribbean region, most local fishermen are catching and selling HMS illegally, and since catch is not recorded, this results in underestimates in the size and value of the Caribbean landings.
- Improving catch and fishery effort data should be the first step in the process of improving commercial reporting.
- Species-specific landings data must be collected.
- NOAA Fisheries must collect landings data in a timely manner to prevent catches from exceeding quotas.
- NOAA Fisheries should require electronic reporting in the Caribbean to enable the Agency to do real time quota monitoring and management.
- Under-reporting or non-reporting by commercial fishermen in the Caribbean region could undermine the management of the HMS fisheries in the Atlantic and Gulf of Mexico.

#### *Dealer Reporting*

- See comments under **General** heading on page 1.

### **Education and Outreach**

- Education and Outreach must be increased.
- NOAA Fisheries needs to produce their outreach material and brochures in Spanish as well as English. Many fishermen in Puerto Rico do not speak English.
- NOAA Fisheries needs to do more outreach to let people know what the HMS regulations are and why it is important to report their fish.
- NOAA Fisheries needs to go to the fishing villages in Puerto Rico and try to meet with fishermen rather than holding hearings in central locations and expecting fishermen to attend.
- NOAA Fisheries should provide outreach material to businesses that cater to recreational fishermen and encourage their distribution.

- NOAA Fisheries should try providing outreach documents to sportfishing associations, since most recreational fishermen belong to one, to let fishermen know about HMS regulations and the importance of reporting.
- Shark identification workshops are not given in Puerto Rico. There is a real need shark identification information in Puerto Rico. The problem is that there are few shark dealers in Puerto Rico; therefore, workshops are not scheduled.
- CFMC staff said that a Coast Guard workshop is held with fishermen 1-2 times per year and a shark identification component might be added to the agenda to help with the shark identification problem. The shark identification training could concentrate on the most commonly caught species.
- NOAA Fisheries needs to inform fishermen of any new regulations and the importance of adhering to them. Fishermen need to understand the permitting process and requirements, including what species require permits, where they can legally sell their catch, and reporting requirements. Providing outreach to fishermen in the USVI and Puerto Rico may be difficult, but it is vital to the conservation and management of Caribbean HMS.

## **Authorized Gears**

### *General*

- Fishermen throughout the U.S. Caribbean want the flexibility to deploy traps or gillnets for non-HMS and be able to target HMS with other gear, such as handline, rod and reel, or “yo-yo gear” (unattached handlines) to maximize their fishing opportunities.
- There may be some interest in Caribbean fishermen fishing for SWO if they could use buoy gear and find a local market for SWO. Perhaps this would be an opportunity for new entrants to commercial fishing, but additional research should be done to test new gears and any potential bycatch issues.
- NOAA Fisheries should direct existing effort toward low-bycatch fishing technologies, like harpoon gear, and limit the use of longline and purse seine gear.
- NOAA Fisheries should encourage the use of selective gears that result in low or no bycatch.
- NOAA Fisheries should not allow the possession of HMS with non-authorized gears onboard.

### *Fish Aggregating Devices (FADS)*

- CFMC staff stated that interest in FADs has been tempered by the amount of work and time it takes to get permits for them. Also, liability and the amount of maintenance that is required to keep up the lights, reflectors, and other requirements have caused those that may have been previously interested not to pursue FAD development in Puerto Rico.
- The Caribbean commercial fishing associations are looking for FADs or anything that could be done to improve their ability to catch fish. Commercial fishermen want new FADs exclusively for commercial fishermen, and stated that recreational fishermen should not be able to fish around FADs.
- Recreational fishermen have been asking for FADs in Puerto Rico; however, there is very little data regarding the catch from FADs in the insular tropical areas. Some recreational fishermen in Puerto Rico are interested in FADs because of their success in the Dominican Republic.

- Puerto Rico DNER deployed some FADs off Puerto Rico in the past, but they no longer exist. There may be some data available from the DNER on these FADs.
- Fishing around FADs is important for some commercial fishermen in the U.S. Caribbean region. There are no data showing negative impacts on BLF or other pelagic species resulting from fishing around FADs in insular, tropical environments.
- If FADs are accommodated in management, perhaps water depth of placement could be used to manage which species they attract and what species fishermen would target (e.g. reef fish in shallow water, HMS in deep water, etc.).
- The use of FADs should be prohibited.
- NOAA Fisheries should not allow the possession of HMS while in the vicinity of FADs.
- There is concern over the use of FADs in the Caribbean region.
- The expansion of the use of FADs in the Caribbean region is of great concern.
- FADs are associated with increased bycatch or non-target species, as well as interference with normal migratory patterns of juvenile target species such as tunas; the use of FADs and relatively non-selective gears like longlines by vessels targeting HMS in the Caribbean could increase bycatch of vulnerable non-target fish species as well as protected species like sea turtles.
- The use of FADs accelerates the depletion of species and their ecosystem.
- The expansion of FADs in the Caribbean may have significant effects on the marine ecosystem through a change in the distribution of fish and the depletion of vulnerable species.
- NOAA Fisheries must fully analyze how the use of FADs in the HMS fishery would affect catch and bycatch, as well as analyze the ecosystem implications.
- NOAA Fisheries must evaluate all ecosystem impacts when considering how FADs may be used in the fishery.
- NOAA Fisheries should provide guidance on what exactly counts as a FAD (e.g. materials, size, anchoring, etc.).
- The use of FADs has led to high catch and bycatch of sensitive species, especially sharks and sea turtles, particularly in purse seine fisheries. Also, in the Eastern Tropical Pacific (ETP), there are examples of sea turtle mortalities resulting from entanglement in FADs.
- FADs, as free floating, drifting structures, in the ETP, have led to broader ecological effects on fish species found in waters below the structures, especially tunas, such as affecting the normal migration and feeding patterns of many tuna species, particularly juveniles. FADs have also been shown to reduce spawning stocks as a result of the shift in exploited size structure of the stock.
- The use of FADs raises concerns over the long term sustainability of fish stocks.
- The lack of catch and effort data in the Caribbean makes the use of FADs highly problematic. Without adequate numbers on the catch and effort, it is ill advised to approve the use of FADs.
- NOAA Fisheries must consider bycatch in FAD fisheries for HMS.
- NOAA Fisheries should put restrictions on construction and type of FADs that can be deployed.
- We have seen an increase in effort and mortality of marlins around FADs in foreign waters.
- NOAA Fisheries needs to be conservative minded in regards to the HMS FADs issue. There are probably a lot more FADs deployed in the U.S. Caribbean than are currently known.

- The Caribbean fishermen who fish on FADs may run small operations, but there are likely a lot of people doing it. If there are large numbers of small operations, there may be larger impacts than anticipated.
- Fishermen are targeting pelagics around FADs in the central Caribbean. There is some new literature available for NOAA Fisheries to consult on this issue. The CFMC is assessing what is being caught around the FADs. It looks like fishermen are catching mature (spawning stock) tuna and marlins. This is something NOAA Fisheries needs to look into more.

#### *Unattached Handlines*

- CFMC staff commented that “yo-yo gear” is really buoy gear, however more than two hooks are being used. The gear is apparently being used for some other species in deep water besides HMS.
- Fishermen in the USVI strongly oppose the handline definition change made in the 2006 Consolidated HMS FMP that prohibits unattached handlines; unattached handlines (“yo-yo gear”) are used by St. Croix fishermen who target tunas.
- Unattached handlines were designed and are used in the Eastern Caribbean to specifically target large fish/tunas. Due to the small vessel size of the fleet in the USVI, this fishing method should not affect tuna stocks.
- Fishermen in the USVI recommend allowing some form of free-floating handlines in the Caribbean BAYS tuna fishery.
- CFMC staff commented that the use of handline is a “fallacy.” The authorization of handlines for HMS was done at the request of the CFMC because some older fishermen used to use them. The commenter said that true “handlines” (monofilament pulled up by hand) are no longer being used.

#### **Observer Coverage**

- Inadequate observer coverage hinders monitoring and evaluation of the extent of bycatch in the Caribbean HMS fishery. The Agency must ensure adequate observer coverage throughout fisheries that catch HMS.

