
9. ISSUES FOR CONSIDERATION

Since the publication of the HMS FMP, issues requiring additional management have surfaced. While some have already been proposed as new rules, others will be addressed at the next round of the HMS Advisory Panel meetings. This section overviews some of the challenges resulting from implementation of the HMS FMP measures, the regulatory framework in which they are defined, and regulatory issues addressed after the HMS FMP.

9.1 Overview of Measures Established in the HMS FMP

Final regulations to implement the HMS FMP and the Billfish Amendment were published in the Federal Register on May 28, 1999 (64 FR 29090). This final rule not only implemented the new management regulations developed under the FMPs, but also consolidated into one new part of the Code of Federal Regulations (CFR), namely 50 CFR part 635 -- Atlantic Highly Migratory Species, all of the existing regulations previously issued for Atlantic tunas (50 CFR part 285), Atlantic swordfish (50 CFR part 630), Atlantic billfish (50 CFR part 644) and Atlantic sharks (50 CFR part 678). The consolidation was in response to the President's Regulatory Reinvention Initiative.

In developing the FMPs, new management measures were needed to implement the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA). Generally, these new management measures include quotas, size and retention limits, prohibited species, time-area closures, vessel/dealer permits and reports, and effort controls as needed to rebuild overfished stocks, reduce bycatch as a source of mortality and address other legislative requirements. Other substantive changes to the regulations were needed to achieve consistency within the context of the regulatory consolidation. More detailed summaries of the new management measures can be found in the executive summaries of the HMS FMP and the Billfish Amendment.

9.2 Technical Amendments

Shortly after publication of the consolidated final rule to implement the FMPs, a technical amendment was issued (64 FR 37700, July 13, 1999) to correct and clarify provisions of the regulations. The technical amendments were needed to clarify the applicability of recreational retention limits to persons aboard charter/headboat vessels; to set Atlantic bluefin tuna (BFT) quotas for the period beginning January 1, 1999, and ending May 31, 1999; to clarify the requirements for embarking observers aboard shark gillnet vessels; to reestablish certain

enforcement provisions inadvertently edited from the consolidated HMS regulations; to clarify transfer provisions for limited access permits; to correct the baseline reference point for limited access fishery vessel upgrades; to clarify references to the management unit and jurisdictional areas for species under regulation by the International Commission for the Conservation of Atlantic Tunas (ICCAT); to correct the effective dates of the restriction on length of pelagic longlines; to correct cross references; and to remove the interim provisions that were not intended to remain in effect beyond June 30, 1999.

9.3 Issues for Framework Regulatory Amendment

Since the final regulations were issued, several constituent groups have raised questions about interpretations of the regulations, especially in cases where certain activities now prohibited under the consolidated regulations were previously authorized when the regulations were published in separate parts of the CFR. In other cases, constituents have raised concerns that the consolidation caused substantive changes to authorized activities, or created situations where the applicability of restrictions or requirements was broadened, that were not clearly communicated in the preamble to the proposed rule or adequately explained during public hearings. Finally, several lawsuits were filed against the Secretary of Commerce relative to implementation of the FMPs.

NMFS has addressed, or plans to address, some of these issues under the framework provisions of the HMS fishery management plan (FMP). The framework adjustment process involves publication of a proposed rule and an opportunity for public comment. Such provisions for public input may involve convening a meeting of the Advisory Panel(s). The removal of the purse seine cap (64 FR 58793, November 1, 1999), discussed in Section 4.2.1, and the proposed time/area closures for pelagic longline gear (64 FR 69982, December 15, 1999), discussed in Section 4.1.6, were framework adjustments introduced in 1999 and addressed at a June 1999 joint HMS and Billfish Advisory Panel meeting.

NMFS will work towards implementing the 1999 ICCAT recommendations in an upcoming proposed rule. The rule will include measures to establish the 2000, 2001, and 2002 North Atlantic swordfish quotas and a dead discard allowance for each of those three years. The proposed rule will also include a proposal to prohibit the import of swordfish from Honduras and Belize, prohibit the import of bluefin tuna from Equatorial Guinea and eliminate the existing trade restriction for bluefin tuna from Panama.

Other issues raised for which NMFS may propose to amend the consolidated regulations include: adjustment of the boundary line for the north-south division of the BFT Angling category; respecification of authorized gear, permitting requirements and fishing years in the respective HMS fisheries; prohibition of the retention of Atlantic billfish on board any vessel issued a commercial category permit for any Atlantic HMS; revision of the requirements for dealer permitting and reporting for HMS purchases and imports; specification of installation procedures for vessel monitoring systems; adjustment of the regulations pertaining to

charter/headboat operations relative to sale of fish, applicability of retention limits and the requirements for licensed captains on board; revisions to the requirements for observers on board shark drift gillnet vessels; revision of the requirements for vessel upgrading and permit transfer for vessels issued limited access permits; prohibiting removal of shark fins at sea; and revision of certain portions of the regulatory text to facilitate enforcement. Some or all of these measures may be addressed in a "Miscellaneous Rule." Expected published rules in early 2000 include the Miscellaneous Rule, the 1999 ICCAT recommendations rule, and the final time/area closure rule.

9.4 Issues for FMP Amendment

The other primary method that can be used to change management measures included in an FMP is an FMP amendment, required when the proposed action will have a significant impact on the environment or would change the fundamental approach to management. The Outlook Section (Section 10) of this report identifies problem areas in current management and issues to discuss with the Advisory Panel and constituents. Some of these issues may be significant enough to require an eventual FMP amendment.

9.5 Additional Issues

Late in the fall 1999 session, four separate bills were introduced to address the issues of bycatch mortality and overfishing in HMS fisheries. Three of the four bills (S 1991, introduced by Sen. John Breaux (D-LA); HR 3390, an identical companion bill introduced by Rep. Goss (R-FL); and HR 3331, introduced by Rep. Jim Saxton (R-NJ)) focus on reduction of billfish bycatch and the catch of undersize swordfish through measures similar to that in NMFS' time area rule (64 FR 69982, December 15, 1999). Although the above bills were constructed with input from the Billfish Foundation, the Coastal Conservation Association, the American Sportfishing Association and the Blue Water Fishermen's Association, they do contain different language. The fourth bill, HR 3516 introduced by Rep. Sanford (R-SC), prohibits "pelagic longline fishing in the exclusive economic zone in the Atlantic Ocean." The bill provisions mentioned here can be expected to change as the proposed pieces of legislation move through the legislative process and incorporate more constituent feedback.

S 1991 and HR 3390 are identical and consist of a three point plan involving time/area closures, a buyout program, and additional research. As introduced in the Senate on November 10, 1999, and in the House on November 16, 1999 the bill:

- Establishes a permanent year-round closure to pelagic permanent year-round closure to pelagic longline fishing in the South Atlantic from the North Carolina/South Carolina ocean boundary to Key West, Florida.
Establishes two seasonal closures in the Gulf of Mexico: A permanent closure in the Northeastern Gulf of Mexico from January 1st to Memorial Day each year; a temporary 5-

year closure from the Texas/Mexico ocean boundary to the Florida Panhandle that will be closed from Memorial Day to Labor Day of each year for five years.

- Provides a longline permit voluntary buyout program for 68 longline commercial vessels "through a partnership of the recreational and commercial fishing industries and federal funds." All vessels that participate in the program would have to surrender all commercial fishing permits.
- Directs the National Marine Fisheries Service to conduct a research program to identify and test the most effective fishing gear configurations in reducing the billfish bycatch in the Atlantic and Gulf of Mexico.

HR 3331 is similar, but the version introduced in the House on November 10, 1999, adds the following provisions:

- Amends the Atlantic Tunas Convention Act to allow the Secretary of Commerce to reduce swordfish quotas below International Commission for the Conservation of Atlantic Tuna (ICCAT) recommendations.
- Restricts effort increases on longliners fishing in the Mid-Atlantic bight; Creates a second voluntary vessel buyout category for Mid-Atlantic Bight commercial longline fishermen.

The bills are expected to be taken up again at the start of the 2000 session. The House Resources Committee has currently scheduled two hearings in February on the three house bills. With the exception of HR 3516, the bills would all support HMS management of the pelagic longline fishery through effort reductions and increased research.

9.6 HMS Management Process

The Secretary of Commerce was first given management authority for the Atlantic HMS under the Fishery Conservation Amendments of 1990. Subsequently, NMFS published a proposed process for the management of Atlantic HMS to request public comment on procedures for rulemaking and obtaining public input during the rulemaking process. A final HMS process was published in the Federal Register in 1992 that outlined the rulemaking stages of scoping, proposed rule and final rule. In 1996, the reauthorized Magnuson-Stevens Act directed the Secretary to issue FMPs for HMS not currently managed under an FMP (Atlantic Tunas) and to form Advisory Panels for each FMP. A revised HMS management process was proposed by NMFS in 1997 and specifically addressed the issue of public input through the Advisory Panels. NMFS is considering public comment on the proposed revisions to the process and will publish a final process in the future.