

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON IMPLEMENTATION OF THE MAGNUSON-STEVENSON REAUTHORIZATION ACT

The Highly Migratory Species Management Team (HMSMT) reviewed the rules proposed under the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 2007 to prevent or end overfishing through the use of annual catch limits (ACLs) and accountability measures (AMs). With respect to the species in the HMS Fishery Management Plan (FMP), the HMSMT has several concerns and considers the language of the proposed rule to be vague on a number of issues.

The HMS FMP contains 13 management unit species, nine prohibited species, and over 50 monitored species. Some species will likely be exempted because they are managed internationally and others may qualify as ecosystem component species. However, in some cases information on population dynamics and stockwide catch is poor, although the U.S. west coast catch is believed to be small relative to stockwide catch. Two species, common thresher and shortfin mako shark, range throughout U.S. and Mexico waters and could conceivably be managed through the use of ACLs and AMs taking the Mexico catch into consideration.

The HMSMT believes the proposed rule language is unclear about which species would be covered under the exception for international agreements, and therefore which HMS FMP species would be covered. For example, convention texts for the Inter-American Tropical Tuna Commission (IATTC) and Western and Central Pacific Fisheries Commission (WCPFC) reference tunas, tuna-like species, and other fish species caught in the fisheries. If interpreted broadly, almost all species in the HMS FMP would be exempted. For clarification, the rule could establish a threshold, such as species for which assessments have been approved by regional fishery management organizations (RFMOs), or for which RFMOs have adopted conservation and management measures.

Also for species under international agreements, it is the HMSMT's understanding that SDC and MSY targets would still be required. However, it is not clear how status determination criteria (SDCs) would be used. There is no guarantee that RFMOs would adopt comparable SDCs. Presumably they would be used for Secretarial determinations that would trigger the process described in MSA section 304(i). Section 600.310(k) provides guidance on interpreting the "relative impact" of domestic fisheries for the purposes of domestic regulations (per Section 304(i)), which would come into play if the adopted SDCs triggered a Secretarial determination. This section references existing domestic and international management measures and the catch, bycatch, and fishing mortality of nations. These criteria seem to state the obvious; the HMSMT recommends that the relative impact guidance more clearly describe that domestic measures need only be reasonably comparable to actions taken by other nations to address fishing mortality.

For stocks or species identified in more than one FMP, the proposed rule states that Councils should choose which FMP will be primary, and in most cases the primary FMP will be the one in which the stock is identified as a target stock. The HMSMT expects that some species (e.g., opah) may be target stocks in FMPs for both the PFMC and WPFMC. Therefore, the HMSMT recommends that the reference to target stock as the criterion for determining a primary FMP be deleted to allow greater flexibility for Councils to jointly determine which, if either, FMP will be

primary. In addition, the HMSMT anticipates that significant coordination and agreement between the councils will be required to establish ABCs, AMs, reference points, control rules, etc. Specifically, for species in more than one FMP, the HMSMT recommends the final rule provide greater clarity regarding:

- How the decision of which FMP is the “primary FMP” will be made.
- The procedures for cooperation between the Councils and their advisory bodies. For example, some mandate for a coordinated set of SOPPs could be required.
- How to select appropriate ACLs and AMs such as something comparable to the sector ACLs and AMs.

In the case of HMS, environmental variability on larger than annual cycles can have a large effect on recruitment. If MSY or SDC targets are set based on a high productivity regime they may not be met over several years during a low productivity regime. Therefore, the HMSMT appreciates the provisions for allowing flexibility in developing ACLs and AMs (e.g., the requirement to keep yields below the ACL in 3 of 4 years, and the possibility of using species complexes in the case of associated species within an ecosystem context).

The proposed rule language is unclear as to whether non-target species that are rarely caught and landed would be considered “in the fishery” and subject to ACLs and AMs or would be “ecosystem component” species that do not require specification of ACLs and AMs. The HMSMT wants to ensure that Councils would have the flexibility to determine what constitutes “de minimus” amounts of species taken, sufficient to trigger the exemption from the ACL and AM requirements.

The HMSMT is concerned about the deadline for having the ACLs and AMs in place: 2010 for species currently experiencing overfishing and 2011 for all other species. The HMSMT was informed that NMFS has convened a group of scientists that will prepare a document containing guidelines in order to assist with the development of ACLs and AMs and how to develop them in the case of data poor species. The documents are expected to be available in 2009. The Council must select an appropriate framework for selecting ACLs and AMs and amend each FMP. The SSC will have to identify acceptable biological catches (ABC), and the HMS advisory bodies will have to provide advice to the Council regarding ACLs and AMs for each relevant species. Furthermore, time will be needed to draft any environmental assessment, environmental impact statement, or biological opinion needed to amend the HMS FMP. Therefore, the HMSMT believes it will be difficult to have ACLs and AMs in place for HMS by 2011. At the least, the Council should develop a draft work plan to comply with the final rule soon after it is adopted, and NMFS should provide the Council with the additional resources necessary to complete the task.

PFMC
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