

DRAFT MEETING SUMMARY
Highly Migratory Species Management Team
Pacific Fishery Management Council
Hubbs Sea World Research Institute
San Diego, CA
October 1-2, 2003

Highly Migratory Species Management Team (HMSMT) Members Present:

Dr. Norm Bartoo, NMFS, La Jolla, CA
Mr. Steve Crooke, co-chair, CDFG, Los Alamitos, CA
Dr. Sam Herrick, NMFS, La Jolla, CA
Ms. Jean McCrae, ODFW, Newport, OR
Ms. Michele Robinson, WDFW, Montesano, WA
Ms. Susan Smith, NMFS, La Jolla, CA
Dr. Dale Squires, co-chair, NMFS, La Jolla, CA

Others Attending:

Mr. Anthony Augello, Western Fish Company
Mr. Lillo Augello, Western Fish Company
Mr. Frank Crivello, F\V Laura Ann
Ms. Donna Dealy, NMFS, La Jolla, CA
Mr. Pete Dupuy, HMSAS
Mr. August Felando, HMSAS
Mr. Bob Fletcher, HMSAS
Mr. Svein Fougner, NMFS, Long Beach, CA
Dr. Suzy Kohin, NMFS, La Jolla, CA
Mr. John LaGrange, WFOA, San Diego, CA
Mr. Jim Morgan, NMFS, Long Beach, CA
Mr. Russell Nelson, The Billfish Foundation
Mr. Bob Osborn, HMSAS
Mr. Dan Waldeck, PFMC staff, Portland, OR

Call to Order, Agenda, Minutes

The meeting was called to order by Mr. Steve Crooke (co-chair). After introductions, the agenda and April 2003 HMSPDT meeting summary were approved.

Committee Structure and Representation

Mr. Waldeck noted that the Council, in considering the need for a replacement for Dr. David Au, discussed the composition of the HMSMT, notably the types of expertise necessary as the committee transitions from a plan development team to a management team. The Council asked the HMSMT to discuss this topic and provide recommendations to the Council.

Dr. Squires noted that NMFS-SWFSC had nominated Dr. Suzy Kohin to replace Dr. Au. He also noted that NMFS intends to hire a recreational fishery economist. This individual would eventually replace Dr. Herrick on the HMSMT. Dr. Squires noted that Dr. Kohin's area of expertise was population dynamics and stock assessments.

In light of Mr. Morgan's retirement from NOAA Fisheries-SWR, Ms. Robinson asked Mr. Fougner if NOAA Fisheries-SWR intended to replace Mr. Morgan with another individual from the regional office. Specifically, she wanted to know if SWR intended to have a formal representative on the HMSMT or continue in an advisory role. Mr. Fougner stated that the SWR intends to continue providing technical and policy advice and that Mr. Craig Heberer would be filling Mr. Morgan's role of advisor to the HMSMT and HMSAS. SWR has not considered having a formal representative on the HMSMT.

The HMSMT was generally supportive of having formal SWR representation on the HMSMT because of the usefulness of this policy and regulatory perspective. The HMSMT will recommend the Council consider adding a SWR seat to the HMSMT and request NOAA Fisheries to nominate a formal representative to the committee.

It was noted that Dr. Bartoo is now an acting division director, which could reduce his participation on the HMSMT. For the time being, Dr. Bartoo intends to stay on the HMSMT and participate at a level in line with his other workload and responsibilities. It was noted that even if his presence on the HMSMT is reduced, he will still be able to advise the committee and individual members. The other members noted their intent to continue on the HMSMT.

The HMSMT briefly discussed the need for an HMSMT representative to act as a liaison on PacFIN-related data issues. Dr. Herrick noted that he and Ms. Dealy will continue as liaisons between the HMSMT and PacFIN. He noted Ms. Dealy intended to become more actively involved with HMSMT activities.

In their report to the Council, the HMSMT will highlight the importance of resolving HMS-related PacFIN issues and the need for close coordination between the HMSMT and PacFIN representatives.

FMP Update and Other NOAA Fisheries Activities

Mr. Fougner provided an update on the NOAA Fisheries review of the HMS FMP. He anticipated the review would formally commence on October 6, 2003 and that the final decision would occur by January 23, 2004. After the 30-day "cooling off" period, the HMS FMP would be implemented on February 23, 2004.

He noted that required ESA-related "Section 7" consultations have been initiated with SWR-Protected Resources Division and the U.S. Fish and Wildlife Service (FWS).

He spoke to the July 28, 2003 letter from Dr. Hogarth (AA for NOAA Fisheries) to the Council. In the letter, Dr Hogarth expressed continued concern about the lack of Council action to address potential sea turtle impacts from swordfish-style sets in the high seas pelagic long line fishery east of 150° W longitude. The letter notified the Council that NOAA Fisheries intended to promulgate regulations to address their concerns and requested the Council further consider developing measures to prevent impacts on sea turtles. Mr. Fougner reiterated Dr. Hogarth's commitment for NOAA Fisheries to support the Council, to the extent possible, in carrying out the analyses needed for consideration of alternatives and ultimate selection of management measures.

Mr. Fougner briefly discussed two recent court decisions that will affect management of WPFMC-managed pelagic longline fisheries and high seas pelagic long line fishing. The court decisions also have implications for West Coast HMS management, in the longer term.

In the Hawaii Longline Association (HLA) case, the court vacated the WPFMC Pelagics FMP 2002 regulations and the 2002 Biological Opinion (BO) on procedural grounds; it was noted that the substantive merits of the BO were not reviewed. Thus, there is no valid BO nor incidental take statement that would authorize takes of ESA-listed sea turtles by the WPFMC-managed pelagic long line fishery. If a vessel with a permit to participate in the WPFMC-managed pelagic long line fishery takes a sea turtle, it could be found in violation of the take prohibitions of the ESA.

In response, HLA requested a 45-day stay, with the 2002 regulation in place, to provide time for NOAA Fisheries and WPFMC to develop interim measures.

The Department of Justice (on behalf of NOAA Fisheries) requested a stay until June 2004 to provide time for NOAA Fisheries to develop a new BO and protected species jeopardy analysis. This would include a series of public workshops to review elements of the jeopardy standard and associated analytical approach used in the 2002 BO, which would be accomplished by February 2004. When these efforts are completed, a new BO for the WPFMC-managed pelagic long line fishery would be developed. NOAA Fisheries would then provide recommendations to the WPFMC for necessary management actions.

Meanwhile, at a recent Council meeting, the WPFMC adopted a recommended interim action, which would be implemented via an emergency rule. The interim rules, if approved by NOAA Fisheries, would be in effect for up to one year. The emergency rules would:

- Allow demonstration swordfish fishing at 75% of historic (1994 - 1998 average annual) levels in conjunction with fishing experiments;
- swordfish participants would be required to use new fishing techniques to conserve sea turtles, including changing from J hooks with squid bait to circle hooks with mackerel bait, as these techniques have been found to dramatically reduce sea turtle interactions in the Atlantic longline fishery;
- allow tuna fishing north of the equator (since 2001 the tuna fishery has been closed in April and May between the equator and 15° N latitude and between 145° W and 180° longitude);

- require night-setting by vessels shallow-setting north of 23° N to mitigate seabird interactions; and
- implement conservation measures including nesting beach protection and education of fishermen.

At the time of the HMSMT meeting, the WPFMC request for emergency action had not yet been submitted to NOAA Fisheries. Mr. Fougner noted that NOAA Fisheries had voted “no” on the motion during the WPFMC meeting. He did not know how NOAA Fisheries would respond to the WPFMC request for emergency action. He added that the experiments (from the Atlantic-based fishery) showing promise for the use of circle hooks and mackerel bait were not yet complete and the results had not been peer reviewed.

Also related to the HLA court decision, the Sea Turtle Restoration Project requested a stay and retention of the current regulations. They also provided a 60-day notice of intent to sue. Potentially, the suit could seek to enjoin (i.e., shut down) the entire WPFMC-managed pelagic long line fishery.

Mr. Fougner then briefly discussed the recent court decision related to the High Seas Fishing Compliance Act (HSFCA). He noted that the court found that the NOAA Fisheries action of issuing HSFCA permits required “Section 7” consultation per the ESA. In response, NOAA Fisheries notified the court that they are currently reviewing the PFMC HMS FMP and that NOAA Fisheries also intended, as a precautionary measure, to publish a proposed rule (via the formal rulemaking process) to prohibit swordfish-style sets in the PFMC-managed high seas pelagic long line fishery. That is, recognizing the uncertainty about whether the HMS FMP consultation will result in a jeopardy finding for the pelagic long line fishery, NOAA Fisheries wants to be in a position to implement regulations (under ESA) that would prohibit swordfish-style sets in conjunction with the other provisions of the HMS FMP that would provide needed protection in the event of a jeopardy conclusion. It is not known if this will satisfy the court or the plaintiffs in this case.

Mr. Fougner indicated, that while the WPFMC-related activities were of interest, the NOAA Fisheries review of the PFMC HMS FMP is an independent action that will be handled separately. He reiterated that NOAA Fisheries is preparing a regulatory package (under ESA) that would be promulgated in conjunction with implementation of the HMS FMP. This action is being undertaken because NOAA Fisheries believes there is a high probability that the section 7 consultation will result in a jeopardy finding for the pelagic long line fishery and that regulations will be needed because the HMS FMP regulations do not comprehensively address impacts on sea turtles. He noted that the analysis and projections of sea turtle takes presented to the Council in June 2003, along with information compiled and analyzed in other BOs, will likely be the basis for the section 7 consultation.

The intent is to have the ESA-based regulations in place, if needed, at the same time the HMS FMP is implemented (i.e., February 23, 2004). When asked how the PFMC would provide input to the ESA-based regulations, Mr. Fougner indicated these regulations were being developed independent of Council action. Hence, there was not a need to take the issue back to the PFMC for action. He noted the PFMC and the public will have the opportunity to review and comment on the ESA-based regulations during the formal rulemaking process.

The rationale provided for NOAA Fisheries in taking this independent action is that the Council, in the HMS FMP, did not propose to limit swordfish-style sets east of 150° W longitude. Therefore, if the section 7 consultation finds that swordfish-style sets in the PFMC-managed high seas pelagic long line fishery cause jeopardy to sea turtles, NOAA Fisheries could not approve the Council's proposed action. This would leave a void in management of this fishery. By promulgating regulations under the ESA, NOAA Fisheries is filling that void. That is, the HMS FMP implementing regulations do not cover swordfish-style sets east of 150° W longitude; because NOAA Fisheries is concerned the section 7 consultation may result in a jeopardy determination, NOAA Fisheries believes it is necessary to develop separate regulations to address the jeopardy finding.

Mr. Dupuy asked Mr. Fougner about the HLA request for "applicant status" in the development of the BO for the WPFMC-managed fishery. Mr. Fougner stated the HLA would be treated as an applicant in the next consultation for that region, but that the court decision in that case did not change the NOAA Fisheries' policy that fishermen/fishermen's groups should not be recognized as applicants, generally. NOAA Fisheries continues to recommend further appeal of the court decision on this point.

Mr. Dupuy also asked for clarification about whether the PFMC-managed high seas long line fishery simply interacted with sea turtles or if it had been found to cause sea turtle mortalities. Mr. Fougner indicated that the section 7 consultation and ESA jeopardy analysis will determine the level of impacts of takes and subsequent mortalities.

Mr. Nelson asked how the ESA-based regulations would be changed, if needed, in the future.

Mr. Fougner noted that after the jeopardy analysis was completed, the Council would have a basis to consider an FMP or regulatory amendment to incorporate protective measures into the HMS FMP.

Members of the public expressed their concern that NOAA Fisheries had pre-judged the impacts of the pelagic long line fishery and that NOAA Fisheries intended to prohibit swordfish-style sets regardless of what the data showed.

Mr. Fougner stated that the ESA-based regulations will be designed to prohibit swordfish-style sets east of 150° W longitude. However, if the HMS FMP jeopardy consultation shows that something other than an outright ban is feasible, the ESA-based regulations could be amended.

The HMSMT discussed how the NOAA Fisheries action relates to development of a limited entry program for the PFMC-managed high seas long line fishery. Specifically, the HMSMT asked, if the ESA-based regulations will close the swordfish fishery east of 150° W longitude, what need is there for a limited entry program? Mr. Fougner encouraged the HMSMT to proceed with discussion of initial considerations for a limited entry fishery.

The HMSMT noted that the need for limited entry in this fishery is principally driven by protected resource (sea turtle) concerns, rather than economic or fishery resource issues. It was suggested that it might be prudent to develop two types of limited entry programs—one that would include a swordfish fishery and one that would not.

Mr. Fougner suggested one approach would be to limit the fishery to historic participants fishing at historic levels (e.g., 1.55 million hooks per year).

In concluding this discussion, Mr. Fougner noted that the Council will have the opportunity to engage after the section 7 consultation is completed and jeopardy findings are determined. He reiterated, the NOAA Fisheries contention that the HMS FMP is silent to protecting sea turtles east of 150° W longitude. Thus, NOAA Fisheries is developing ESA-based regulations to address sea turtle impacts in a timely manner in the event that the section 7 consultation results in a jeopardy finding.

Some members of the public emphatically disagreed with the contention that the HMS FMP was silent to managing the high seas pelagic long line fishery in terms of sea turtle interactions.

Limited Entry – Initial Considerations

Analytical Approaches

Dr. Herrick presented information on past participation in West Coast HMS fisheries. The approach used borrows from the limited entry program developed for the Council's Coastal Pelagic Species FMP. [Editorial note – Dr. Herrick's complete presentation is not repeated in this summary. It is available, upon request, from Council staff.]

The initial information included records of vessels with landings of HMS in the PacFIN database. This includes the years 1981-2002. The HMSMT discussed the need to resolve PacFIN data issues, notably given the apparently very high number of vessels with HMS landing during the 1981-2002 period (i.e., 402 vessels). It was noted that some of these could be mis-recorded landings from the California-based set net fishery.

Dr. Herrick presented a range of potential qualifying window periods and minimum landing requirements (MLR). It was suggested that qualifying periods that ended on March 9, 2000 (the Council established control date) should also be included.

Dr. Herrick next presented two techniques for defining capacity in the fishery. He described the "Data Envelopment Analysis (DEA), which uses gross vessel tonnage (GT) as a measure of vessel capacity. The DEA techniques relies on U.S. Coast Guard documentation to estimate GT. Because only larger vessels are U.S. Coast Guard documented, this limits the analysis to approximately 200 vessels from the total of 402 with HMS landing records in PacFIN. Dr. Herrick also described a "Peak-to-Peak" analysis technique.

Dr. Herrick also provided a figure that showed distribution of vessels by maximum landings per trip. Per this figure, only about 50 vessels (out of the 402) would qualify under a 10 mt MLR.

Members of the public suggested a 50 foot minimum length could be used as a basis for determining past participation in the high seas pelagic long line fishery because smaller vessels did not, generally, operate on the high seas. It was also suggested that as a first qualifier, participation could be limited to vessels that had some history of landing HMS to West Coast ports.

Discussion of Limited Entry Program

The HMSMT discussed additional information that would be needed, including allowable take of sea turtles (from the section 7 consultation), target catch, vessel size, gear used, length of gear, and number of hooks.

It was re-emphasized that the need for a limited entry program was to prevent increased sea turtle takes. There are not a compelling economic or fishery resource concerns. Limiting the fishery to current participants at current fishing levels, that is, allow no increase in effort, should prevent increased sea turtle takes.

In addition to landings history, permits held by a vessel could be a measure used to determine eligibility. It was noted that most vessels landing HMS into West Coast ports hold (or held) WPFMC pelagic fishery permits. Before the BO for the WPFMC-managed fishery, WPFMC permitted vessels could land swordfish into West Coast ports (generally, California). After the BO prohibited WPFMC permitted vessels from targeting swordfish, many of these vessels surrendered/transferred their permits. These vessels continued to target swordfish, which were then landed into West Coast ports (generally, California).

If the main qualifying criteria were past West Coast HMS landings and possession of a WPFMC-permit, California-based drift gillnet fishermen (without long line landings history) and WPFMC-permitted vessels without landings history would not qualify.

The HMSMT discussed the key points for their report to the Council. These include:

- A joint (or comprehensive) BO, joint program design, and cooperative management are needed. The current approach of separate BOs treats fisheries in isolation, which is inappropriate given the characteristics of the fishery – many of the same vessels in both fisheries, same gear used, same markets, same stocks of fish, same stocks of sea turtles. The analysis should include all PFMC and PFMC fisheries that impact sea turtles, e.g., the California drift gill net fishery.

A BO for a specific fishery considers the full range of impacts (including other fisheries) on the sea turtle population. However, reasonable and prudent alternatives are set for the specific fishery. It might be better to develop comprehensive reasonable and prudent alternatives for the suite of fisheries. The lack of comprehensive alternatives, results in implicit allocation of allowable turtle takes among the various fisheries. Balancing allowable turtle takes among various fisheries appears hindered by the fishery-specific BO process.

This appears to be a prime opportunity for a joint/comprehensive BO. The HLA decision vacated previous WPFMC BO. A BO is needed for the PFMC HMS FMP. These provide incentive to do a BO that covers the full range of HMS fisheries that impact turtles.

NOAA Fisheries seems resistant to the comprehensive BO approach. Clarification as to whether this true and, if yes, why would be helpful.

- The need for a limited entry program is because of turtles, not fishery resource concern nor economic need.
- There is a need to develop a time line for initial analysis and development of preliminary alternatives.
- The first measure of eligibility could be based on West Coast landings history.
- Measures of capacity should include number of hooks not just vessels hold capacity or GT.
- There is need for reciprocal landings agreement with WPFMC. Currently, Hawaii-based vessels can land on the West Coast, but West Coast vessels land into WPFMC management area ports.

There was a brief discussion of management alternatives that provide for drift gill net (DGN) fishermen to switch to pelagic long line on the high seas. This could be a way for the two fisheries to operate without a net increase in turtle impacts. However, switching would be limited to those DGN vessels large enough to work on the high seas.

Some members of the public introduced the notion of giving jurisdiction over the high seas pelagic long fishery to the WPFMC. This idea was discussed extensively by the Team. In essence, a management option could be to allow only WPFMC-permitted pelagic long line vessels that previously landed on the Pacific coast to continue to land to the Pacific coast. These vessels appear to constitute a large proportion of the current West Coast-based pelagic long line fleet operating on the high seas. The WPFMC would continue to manage these vessels through its existing limited entry program, obviating the need for a PFMC limited entry program. In their report to the Council, the HMSMT will suggest the HMSAS further explore this idea as a potential management alternative.

Data Sources

The HMSMT noted that, while discussing operational aspects of a limited entry fishery and the BOs is interesting and useful, it is premature to formulate specific options. The first task is to identify, compile, refine, and analyze the available data. The available data, in large part, will dictate the types of management options that could be analyzed. To that end, the HMSMT discussed what data are available.

- PacFIN (1981-present). Based on fish tickets. Needs to be refined/filtered to focus on high seas pelagic long line participants with Pacific coast landings. For example, there is no gear code for California-based pelagic long line landings. This necessitates the use of proxies, such as gear/area/species landed. It was also suggested to use some measure of species composition percentage as an estimate of what species or species groups were targeted.
- NOAA Fisheries observer data (Fall 2002 - May 2003). Provides species composition, number of hooks, number of sets, bycatch, area fished, and length of set (miles of gear). There is information from 13 observed trips from one season. This includes some cost and earnings data.

- California and HSFCA high seas long line logbooks (1995 - present). These could provide information on recent versus historic effort.
- WPFMC-based long line logbooks.
- Recent (informal) socio-economic survey information.

Qualifying Criteria Measures

The following could be used to determining eligibility:

- Participation over time – landings, number of trips, years, number of hooks, etc.
- Fishery dependence.
- Catch composition (possibly including protected species takes) over time.
- Vessel size/capacity.

Data Necessary for Analysis

The time series of vessels and landings into West Coast ports from high seas long line fishing up to control date (and to present) would be used. Time series should also include information before and after WPFMC swordfish-style set prohibition. Data needed to perform the analysis include:

- Landings per trip – broken out by swordfish, tuna (other than albacore), albacore, and other HMS (dorado, sharks).
- Vessel size/length.
- U.S. Coast Guard documented – yes/no.
- Number of hooks per trip.
- Length of gear per trip.
- Number of trips by year.
- Amount (mt) landed per trip.
- WPFMC permit – yes/no.
- Revenue information.
- Measures of relative dependence – by vessel. For example, revenues derived from HMS as part of total Pacific coast landings; and Pacific coast HMS landings as part of total HMS landings (WPFMC and PFMC).
- Time line of management events that could have influenced participation.

Other Items Discussed

Specific to the March 9, 2000 control date, fishing patterns before and after the control date should be reviewed to determine effect on participation. It is possible, given the other events and actions affecting Pacific-based HMS fisheries, the control date had relatively little effect.

In developing the limited entry program, the HMSMT will need to have access to data used for the BO and its underlying assumptions and analytical methods. There is a need to know how the BO

defines "current" fleet. There should be consistent data used in BO and HMSMT limited entry program analysis.

The need to account for the combined impacts on sea turtles from the various fisheries was discussed extensively. For example, it is conceivable that, under the current BO process, the section 7 consultation and jeopardy determination for PFMC-based long line fishery could result in reasonable and prudent alternatives that do not provide for any additional allowable takes of sea turtles (relative to what is provided for the current fisheries). This would effectively eliminate the PFMC-based swordfish fishery. Thus, it was suggested there is a strong need for a comprehensive BO that covers all areas and all fisheries, and provides take allowances for all fisheries, if possible.

Conversely, some members of the public opined that the California-based DGN fishery and the WPFMC pelagic longline fisheries could be characterized as traditional fisheries. And, thus, should be given priority in take allowances.

Summary

The primary need for a limited entry program is driven by protected resources, not economic nor fishery resource concerns.

There is compelling need for the BO to be completed prior to development of a limited entry program. First, because the opinion may result in prohibition of swordfish style-sets, which would close the fishery and negate need for limited entry. Second, because principle driver for limited entry program is to prevent increase in sea turtle takes; need results of BO to know what allowable levels of takes would be.

Given the nature of the WPFMC and PFMC fisheries there is a compelling need for a coordinated BO, coordinated management, and a coordinated limited entry program. For example, most of the vessels landing HMS into West Coast ports hold (or held) WPFMC pelagic fishery permits. It is unclear under whose jurisdiction these vessels truly fall.

Given that several HMS fisheries (e.g., WPFMC long line, PFMC long line, PFMC drift gill net) interact with turtles, there are allocation implications that should be addressed.

Reciprocal fishing arrangements are needed – WPFMC vessels can land into West Coast ports, PFMC boats can not land into Hawaii.

Adjournment

Adjourned at 2:30 pm 10/02/2003

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