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May 23,2002

Dr. Chris Rogers, Chief
 NMFS, HMS F/SF1
 1315 East-West Highway
 Silver Spring, MD 20910

Dear Dr. Rogers:

The National Audubon Society ardently supports the National Marine Fisheries Service's (NMFS) proposed rule to adopt a mandatory permit system for recreational fishermen targeting all Atlantic highly migratory species (HMS). We will also comment on the other regulation amendments included in the proposed rule.

HMS Vessel Permit

A general HMS permit would enable better quantification of the realm and potential effects of recreational fishing effort and should be implemented in the immediate future. Blue ~~marlin~~, white marlin, bluefin tuna, albacore tuna, swordfish, and sailfish, not to mention individual shark species, are all prized sportfish yet are also classified as overfished. Therefore, it **only** seems prudent for NMFS to require a permit for their take, even in the recreational sector. The expansion of the Atlantic tunas permit to a general HMS permit occurred for Charter/Headboats in **1999** with the **revised** HMS FMP and should be extended across the entire recreational sector **as** laid out in this proposed rule.

The activity of the recreational sector must be monitored closely to analyze its effects on **HMS**. Currently, recreational effort is roughly estimated via surveys, independent studies (e.g., Fisher and Ditton, 1992), and the Atlantic tunas permit. The surveys include the Marine Recreational Fishery Statistics **Survey** (MRFSS), the Large Pelagic Survey (LPS), the US Atlantic **Recreational** Billfish Survey (RBS), and the Texas Sportfish Creel Survey. Even together, these surveys are inadequate. **LPS** is done **only** north of 35°N, while RBS is done only south of this point. RBS targets only tournament billfishers. Given the **rarity** of HMS encounters, especially of billfish, landing surveys do not adequately assess catch and effort. Current estimates suggest that over 10,000 fishermen **target** HMS each year.

This permit should cover all species included in the Atlantic Tunas, Swordfish and **Sharks** Fishery Management **Plan** and the Atlantic Billfish Fishery Management Plan. This permit should be merged with the Atlantic tunas permit to reduce the cost of the program and the permit itself, and to reduce the paperwork burden since many HMS anglers fish for all these species. Together with collected recreational catch per unit effort data, this data **would** allow another estimation, albeit a rough one, of HMS catch. **These** data could help enforce the 250 fish limit set by the International Commission **for**

the conservation of Atlantic Tunas (ICCAT) for blue and white marlin and improve recreational data on pelagic shark catch in preparation for the future ICCAT pelagic shark assessment, among other things. The United States has long been a conservation leader at ICCAT and developing a recreational HMS permit will further the ability to properly manage the take of ICCAT species off the U.S. Atlantic and Gulf coasts.

The HMS permit application process would provide an invaluable, annual line of communication to anglers for regulations updates and reporting requirements, such as the previously proposed mandatory billfish call-in system should it be adopted. This information might also help to quantify the socio-economic importance of the recreational HMS fishery, which could provide insights on how to best balance conservation and stakeholder needs. On a final note, extensive and immediate outreach would be necessary to ensure compliance with the new permit requirement, should it be adopted.

Jurisdictional Issue Related to HMS Permits

Audubon asserts that federal regulations should apply to permitted vessels targeting HMS whether fishing occurs within or outside the US exclusive economic zone (EEZ). The precedent for this rule was set in the recreational shark and swordfish fisheries and is entirely logical given the migratory nature of highly migratory species. The populations listed as overfished by NMFS are overfished throughout their range and should be treated as such. The US must respond accordingly to be in compliance with the Magnuson-Stevens Act. Although the US would likely be taking unilateral action in many areas, we would be furthering our conservation lead at ICCAT. Consistency is critical for the legitimacy of our regulatory actions and could possibly serve to encourage other nations to adopt similar regulations. The US likely has the largest recreational fleet in the Atlantic, and our continued sustainable approach to fishing, even in our recreational sector, could influence other countries' commercial regulations. If we were to allow our fishermen to fish without limits outside our EEZ, it would be hypocritical for us to go to ICCAT and ask other nations to adopt more restrictive regulations for their recreational or commercial fisheries.

Charter/Headboat Operations

Audubon does not endorse the proposal to allow vessels with HMS Charterboat/Headboat (CHB) permits to retain fish in excess of recreational bag limits when not part of a for-hire trip. This measure is primarily directed to allow charter boats to exceed the three yellowfin-per-angler limit if fishing commercially on their recreationally permitted vessel. Yellowfin are fully exploited, and increasing take via this rule could have adverse effects on the stock status. Allowances for bag limit immunity for sharks and swordfish are even riskier as these fish are listed as overfished and thus more vulnerable to increased take. While we understand that fishermen must surrender commercial permits in order to obtain a CHB permit yet would like to continue to fish commercially for certain HMS species, it is necessary for NMFS to clarify regulations before instating this rule, e.g., which quotas will the catch be counted against. For example, there is currently no recreational bag limit for swordfish, and recreational catch is deducted from the incidental quota. If a bag limit is adopted, and CHB fishermen are able to exceed the bag limit when not part of a for-hire trip, it must be spelled out which quota the catch would be deducted from. Furthermore for sharks, will catch in excess of the bag limit be deducted from the directed quota? Catch in excess of the bag limits for species with commercial quotas must be accounted for to comply with rebuilding plans for these species.

While the proposed rule suggests defining a for-hire trip based on the number of passengers, **this** rule would also be difficult to enforce, especially at the dock. Furthermore, this rule would be inconsistent with existing domestic regulations, allowing licensed recreational fishermen to encroach on commercial fisheries at their convenience. We urge **NMFS** to maintain a distinction between these two sectors.

Bluefin Recreational Fisheries

With regards to adjusting bluefin retention limits according to vessel type, **Audubon** understands that it would be more equitable to allow headboats to retain more fish per vessel than charterboats, given the higher number of anglers. However, we can only endorse this proposed rule if it is more specific (i.e., **puts a cap** on the maximum number of fish per vessel, e.g., 10). Given the **8%** limit on U.S. catch of juvenile fish, retention limits for headboats must **be** conservative **and** consistent with existing bluefin regulations.

Audubon supports the changes to **9635.23** (b) **and** (c) to clarify that recreational **Angling** and Charterboat/Headboat category tuna fishermen may NOT target bluefin tuna in the Gulf of Mexico; rather, each vessel may retain only one bycatch large medium or giant each year. **TCCAT** prohibited directed bluefin fishing in the Gulf of Mexico **back** in 1982 to protect the critical status **of** the western Atlantic population on its only known spawning ground. This recommendation was meant to apply to both commercial and recreational fisheries. **Current** regulations are meant to impose such restrictions, but the wording is such that it leaves a loophole for landing more than one bluefin per year. The text changes set out in the proposed rule should solve this problem.

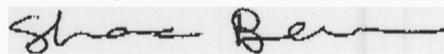
Protecting ripe bluefin that have completed the journey to the spawning ground **is** absolutely critical to the future of the western population. In addition to preventing directed fisheries, measures such **as** area closures should also be analyzed to prevent significant incidental take of the species in both recreational and commercial fisheries. Twenty years ago, ICCAT instated one of its first management measures, **and** it was to limit take of bluefin in the Gulf of Mexico. Western bluefin remain in trouble, **and** protecting spawners should continue **to** be a high priority.

E-Comments

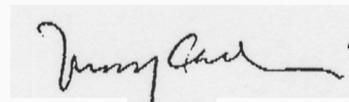
Audubon enthusiastically supports the use of e-comments. The internet allows for more efficient and hassle-free submission of comments; this fact will increase the number of members of the public who will comment on proposed rules, allowing **NMFS** to take more stakeholders' insights into account when **making** final rules. We commend **HMS** for **taking** this step **and** allowing these comments to be **submitted** on the E-Comments site. We were disappointed to learn that the site **closed** at 12:00 **am** EST, rather than the usual 5:00 **pm** **EST** comment deadline and have resorted to the traditional fax method. Next time.. .

Thank you **for** considering our comments.

Sincerely,



Shana Beemer, M.S.
Fisheries Policy Analyst



Merry Camhi, Ph.D
Acting Director