

**GMFMC Draft Principles for Allocation
For Discussion August, 2008
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In the Gulf of Mexico, fishery resource allocations between the commercial and recreational sectors are increasingly challenged by various constituencies due to greater resource scarcity, real or perceived changes in relative economic values of resources allocated to each sector, and, due to the compounding indirect effects on several allocations that have resulted from management measures implemented throughout the years. In addition, the expected implementation of sector-specific annual catch limits (ACL) and accountability measures (AM) and the greater reliance on quota shares in the commercial sector, e.g., implementation of IFQ programs, are anticipated to heighten the need for a well defined set of principles for resource allocation.

This document builds upon a draft discussed during the Council's June 2008 meeting (Tab F, No. 5) and will be discussed at the August 2008 Council meeting. Remaining sections provide a list of principles for potential inclusion in the Council's framework for allocation (Section I). These principles are based on relevant regulatory provisions. Although the list of principles proposed does not include an allocation principle for each relevant regulatory provision, it is important to note that any future (re)allocation has to conform to existing regulation, e.g., promote conservation and be consistent with FMP objectives. Relevant regulatory provisions are provided in Section II.

Questions included in this document (Section III) may, if deemed relevant by the Council, further the debate on allocation and result in additional principles for allocation. Issues considered include procedures to request and initiate (re)allocation, (re)allocation review frequency, tools and methods suitable for evaluating alternative (re)allocations, and, preferred outcomes of (re)allocations.

I – Draft Principles for Allocation

- Conservation and management measures shall not discriminate between residents of different States.
- allocation shall be:
 - fair and equitable to fishermen and fishing sectors;
 - fairness should be considered for indirect changes in allocation
 - any harvest restrictions or recovery benefits should be allocated fairly and equitably among sectors

- promote conservation
 - connected to the achievement of OY
 - furtherance of a legitimate FMP objective,
 - promotes a rational, more easily managed use
- no particular individual, corporation, or other entity may acquire an excessive share.
- shall, consider efficient utilization of fishery resources:
 - harvest OY with the minimum use of economic inputs,
 - should not just redistribute gains and burdens without an increase in efficiency
 - lowest possible cost for a particular level of catch and initial stock size are considered efficient
 - no measure shall have economic allocation as its sole purpose.
- shall take into account: the importance of fishery resources to fishing communities by utilizing economic and social data in order to:
 - provide for the sustained participation of fishing communities
 - minimize adverse economic impacts on fishing communities.
- Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery shall contain conservation and management measures that:
 - Establish separate quotas for recreational fishing (including charter fishing) and commercial fishing.
 - when either the recreational or commercial quotas is reached, retention of red snapper by that sector is prohibited for the remainder of the fishing year.
 - Ensure that the recreational and commercial quotas reflect allocation among sectors and do not reflect harvests in excess of allocations.

II - General Fishery Harvest Allocation Specific Provisions of the MSA and the National Standard Guidelines Relevant to Domestic Fisheries in the Gulf of Mexico

(This is not intended to be a comprehensive compilation of all aspects of allocation as regulated under the MSA, but only those provisions generally applicable to Gulf of Mexico fisheries. It does not include provisions specific to allocation within LAPPs as specified in section 303A, HMS specific provisions, or international allocation specific provisions.)

Section 301

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

...

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

...

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

...

Section 303(a)

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery

...

Section 407(d)

CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.

50 CFR 600.325

(a) Standard 4. Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be:

(1) Fair and equitable to all such fishermen.

(2) Reasonably calculated to promote conservation.

(3) Carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

...

(c) Allocation of fishing privileges. An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(1) Definition. An “allocation” or “assignment” of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) Analysis of allocations. Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) Factors in making allocations. An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (c)(3)(iii) of this section:

(i) Fairness and equity. (A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) Promotion of conservation. Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

(iii) Avoidance of excessive shares. An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) Other factors. In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

50 CFR 600.330

(a) Standard 5. Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) Efficiency in the utilization of resources — (1) General. The term “utilization” encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) Efficiency. In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where “conservation” constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) Limited access. A “system for limiting access,” which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) Definition. Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) Factors to consider. The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in §600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) Analysis. An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain, in terms of the FMP's objectives, any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If, during FMP development, the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) Economic allocation. This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.

50 CFR 600.345

(a) Standard 8. Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for the sustained participation of such communities; and

(2) To the extent practicable, minimize adverse economic impacts on such communities.

...

(c) Analysis. (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

III – Additional Questions

A – Procedures to Request and Initiate (Re)Allocation

1. Initiate when Council members request (Motion passed with a 2/3 majority or some other mechanism)?
2. Initiate when User Groups Representatives request (under what conditions)?

B – (Re)Allocation and Review Frequency

1. Should (re)allocation be tied to SEDAR schedule?
2. Should the Council set time interval for reviewing allocation?
3. Should (re)allocation be part of each rebuilding plan to address overfished status?

C – Tools and Methods

What tools and methods should be used to establish and/or evaluate alternative (re)allocations?

1. Catch-Based (and mortality)
 - a. historical landings data (which years, how to account for management constraints, quality/credibility of data); average harvest levels over a period of recent years that have been used as the basis for reductions in FMP's
 - b. Total fisheries mortality by sector (landings plus discard mortality; data issues)
 - c. Allocations set in a previous FMP
2. Valuation-based
 - a. socio-economic analyses (net benefits to the nation, fishing communities, participation trends)
 - b. scope of economic analyses
 - i. Limits to economic analysis (only impacts on direct participants in the fisheries)?
 - c. efficiency analysis (lowest possible cost for a particular level of catch; harvest OY with the minimum use of economic inputs)
 - d. data availability and limitations

3. Market-based mechanisms
 - a. Should the Council allow commercial and recreational sectors to purchase quota from each other?
 - b. If yes, what are prerequisites, will quota or tags or some other mechanism be required in both sectors?
 - c. who will broker or bank the purchases and exchanges?
 - d. will they be annual, multi-year, or permanent?
 - e. how will the purchased or exchanged quota be accounted for or managed in the receiving sector?

4. Negotiation-Based
 - a. how would representatives be selected
 - b. would negotiations require a facilitator...

5. Should the Council address Intra Sector Allocation (Charter, Headboat, Private recreational sectors; Allocation between commercial gear groups)?

6. Conservation Based
 - a. (re)allocation achieves Optimum Yield
 - b. (re)allocation furthers legitimate Fishery Management Plan objectives
 - c. (re)allocation achieves a rational more easily managed fishery
 - d. (re)allocation optimizes , economic or social benefits

IV – (Re)Allocation Outcomes

1. See GMFMC Draft Principles for Allocation For Discussion August, 2008

2. Should (re)allocation should avoid creating a windfall for a sector (only allocate TAC increases or decreases)?

V – Other Issues

1. Projected Future trends in the fisheries (who will determine them; supporting data/models?)