MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

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Department of Natural Resources Policy

SUBJECT: Fisheries Allocation Review
POLICY NUMBER: 12:XX
EFFECTIVE DATE: July XX, 2012

APPROVED: DATE:

I. PURPOSE

The purpose of this policy is to clarify and standardize the process for reviewing and establishing allocation of fishing privileges when it is necessary to partition allowable harvest among resource users.

II. SCOPE

Department wide.

III. POLICY

It is the policy of the Department to fully comply with the Fishery Management Plans law, Natural Resources Article, §4-215, Annotated Code of Maryland, and plans (FMPs) subsequently adopted.

IV. PROCEDURE

A. Definitions

"Allocation" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals, on the stock portion available for harvest. Broadly interpreted, conservation also represents an allocation. Adoption of an FMP that merely perpetuates resource conservation and existing fishing practices may result in an allocation, if those practices affect 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 geographic areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

"User groups", also called "sectors", broadly refers to the commercial and recreational fisheries. Each user group may be further subdivided (e.g. commercial = gillnet + pound net + hook & line). Maryland charterboat fisheries (i.e. "for hire") are considered part of the recreational fishery.

B. Maryland Law

Maryland law does not require allocation, rather, should allocation between user groups become desirable, guidance is provided in the Natural Resources Article,§4-215, Annotated Code of Maryland (Fishery Management Plans), paragraph (d):

(d) (1) Conservation and management measures adopted under a fishery management plan, to the extent possible:

(i) Shall prevent overfishing while attempting to achieve the best and most efficient utilization of the State's fishery resources;

(ii) Shall be based on the best information available;

(iii) May not discriminate unfairly among groups of fishermen or have economic allocation as its sole purpose;

(iv) Shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and

(v) Shall avoid duplication of regulatory efforts and unnecessary costs to the State and to any other person.

(2) If it becomes necessary to allocate or assign fishing privileges among various groups of individuals under paragraph (1)(iii) of this subsection, or under any fishery management plan, that allocation shall be:

(i) Fair and equitable to all individuals;

(ii) Reasonably calculated to promote conservation; and

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

Provisions of subparagraph (1) (conservation and management) are reasonably implied, as subparagraph (2) directs promotion of conservation. An allocation of fishing privileges is directly described as: fair and equitable; reasonably calculated to promote conservation[1]; and avoids excessive shares. Applying Maryland natural resources law requires understanding relevant factors explicitly stated and those implied for fisheries management. These several factors are considered in greater detail below; none are intended for application to the exclusion of the others.

Fairness and equity

1. An allocation of fishing privileges should be connected to the furtherance of an FMP objective. It may result in the advantaging of one group to the detriment of another. 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 connection between an objective of harvesting a fish at maturity or maximum size and prohibiting harvest in a nursery area.

2. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges addresses the FMP goals and maximizes overall benefits[2]. Serving multiple benefits may not necessarily maximize benefit to any single use. The evaluation 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. Particular attention will be given to impact on persons disadvantaged by re-allocation. Where re-allocation creates adverse effects, mitigation measures are recommended. Relevant judicial guidance should be considered in determining whether an allocation is fair and equitable.

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[1] Conservation does not require allocation and allocation does not necessarily result in conservation. Rather the intent is that allocation to a given fishery should not have an adverse consequence to conservation.

[2] Herein 'benefits' refer to market and non-market valuation.

Conservation and wise use:

Numerous fishery management methods are reasonably considered to promote conservation. These concepts may convey similar or dissimilar strategies. Conservation in natural resource management generally refers to stock goals such as maintaining spawning stock biomass at a given level or controlling fishing mortality while wise use includes social values. An allocation scheme may promote wise use by encouraging a certain use of the resource which may or may not have species conservation implications. Or, it may promote conservation in the sense of wise use by optimizing market conditions in terms of yield, size, value, market mix, or price. Allocation can also serve to sustain communities and cultures.

Avoidance of excessive shares:

An allocation must be designed to deter any person or entity[3] 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[4]. However, the realignment of some controls through allocation may be an intended effect.

C. Fishery Management Plans

Clearly by addressing allocation with FMP law, the General Assembly was directing responsibility to the DNR to evaluate, recommend, and implement, when appropriate, allocation consistent within the context of law and regulation.

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 modifying an existing allocation system should be examined. Allocation schemes considered, but rejected should be included in the discussion. Critically, a review will examine all factors when recommending alteration or elimination of an existing allocation structure. Recommended allocation structures must relate to the FMP's objectives, and address the factors listed in paragraph (d)(1) and (2) of §4-215.

Maryland law provides the overarching basis for allocation, however, each legal criteria requires understanding more specific and concrete subject areas. Those relevant factors are linked to FMP objectives and should be addressed to the extent supported by available information. Overarching factors in allocation decisions include:

- conservation;
- management goals for the species;
- social and cultural importance of maintaining fisheries and dependent industries;
- environmental impact[5];
- economic value of dependent fisheries;
- economic viability of activities supported by the fisheries;
- management resources[6,7];
- historical trends and values[8]; and,

[3] E.g. business, sector, user group ……
[4] There may be pre-existing conditions.
[5] Environment refers to both the natural biological system and other uses such as boating.
[6] Enforcement, monitoring, & accountability are intrinsic.
[7] If there is allocation but one fishery is not accountable or monitored, effective allocation may not exist.
[8] This generally refers to description of the fishery.

- potential for new fisheries to develop.

It was anticipated that these factors would cover all contingencies such as:

- food production;
- consumer interest;
- efficiency of various gears ;
- transferability of effort to and impact on other fisheries; and,
- opportunity for new participants to enter the fishery

Factors include both objective values such as stock biomass and subjective values like social and cultural importance. Reconciling such disparate goals may take different paths for each species.

D. Individual Fishery Review

Allocation review may be triggered by:

- initial development or revision of a FMP;
- significant shift in fisheries harvest;
- population shifts of target or non-target species;
- threatened and endangered species issues;
- changing social patterns & values;
- ecosystem needs;
- market dynamics;
- management resources;
- new data.

Under most management circumstances, allocation will be addressed within the FMP development and review process. Review outside the FMP process will be evaluated for special merit and substance of triggers. Before committing significant resources to a full review, a pre-assessment of those triggers should be conducted. That pre-assessment will be conducted internally by the DNR and results shared with the Sport and Tidal Fisheries Advisory Commissions (SFAC, TFAC).

Public requests for allocation review may be made to the DNR, in writing. The proponent is responsible for establishing merit of the request for each applicable trigger and providing supporting information. Within 180 days of receiving the request the Department shall assess the request and supporting information and take one of the following actions:

1) begin pre-assessment and establish timeline for completion;
2) defer action to the FMP process; or,
3) reject the request for lack of merit or information.

Many criteria from law and policy are currently addressed in fisheries management plans. Some criteria may require additional research and those which have not been previously addressed may require a unique and intensive effort. Criteria lacking information will not necessarily be cause to stop an allocation review or assignment of allocation. The conservation precautionary principle will be paramount.

The review will include description of all principally affected interests (e.g.[9] MWA, MSSA, CBCFA, CCA, CBF, CBSIA, MRA, ASA…..). Outreach will be conducted to all organizations and the public to solicit information pertinent to the review. The DNR may qualify information for applicability and objectivity. Lack of information (hard data) may not be justification for restarting evaluation although that could be a logical consequence.

The DNR will rate all information for applicability, symmetry between user groups, quality, objectivity, equitability and process transparency. Depending on available information, factors may be evaluated by objective, subjective, quantitative, or qualitative standards. Balancing the analyses and recommendations may be specific to each fishery.

E. Consultation

Upon completion of the DNR allocation evaluation, including recommended alternatives, the review will be presented to the SFAC/TFAC for their consideration and recommendation to the Secretary. Commission recommendations will be held as advisory.

F. Regulatory Decision

Allocation decisions will be formalized through the DNR public scoping and state regulatory process pursuant to the Administrative Procedures Act. Formal adoption will include incorporation by reference to the FMP (COMAR Title 08 Subtitle 02 Chapter .01) and adoption in the appropriate chapter of Fisheries Service regulation (e.g. Chapter .03 Crabs; Chapter .05 Fish; Chapter .15 Striped Bass).

[9] This list is descriptive, not prescriptive. All interests including tackle stores, food retailers, Maryland General Assembly, & county governments, should be included.