

ALLOCATION MORASS (from page 34)

New York anglers started encountering, and landing, a far larger number of summer flounder than they had before. In 2009, in order to shoehorn the state's anglers into their decade-old allocation, New York was forced to adopt the most restrictive summer flounder regulations ever seen on the coast: two fish per day, a 21-inch minimum size and a short 78-day season.

During the same year, New Jersey anglers, who sometimes fished within shouting distance of their New York counterparts, were governed by regulations that included a six-fish daily limit, an 18-inch minimum size and a 103-day season, all because their state retained their large allocation even though it no longer hosted the greatest abundance of fish.

Although the ASMFC was already talking about replacing the outdated allocation with a new and more equitable approach, nothing was done for years; the states that benefitted from the old way of doing things didn't want to cede fish to the other states.

When the ASMFC came up with a temporary plan in 2014, that both reallocated some unused recreational quota from the southern states and grouped the states into regions that shared the same regulations and a single allocation of fish, New Jersey was strongly opposed.

ASMFC's temporary plan worked. Even so, after the ASMFC adopted a modified version of it in 2017, New Jersey refused to comply, adopted its own set of regulations, and appealed to the Secretary of Commerce for relief. The Secretary of Commerce sided with New Jersey.

In the summer flounder fishery, the primary debate is focused on how to allocate the resource among the states; in the Gulf of Mexico red snapper fishery, it is focused on how to allocate fish between the sectors.

In 1989, the Gulf of Mexico Fishery Management Council (GMFMC) allocated 51% of red snapper landings to the commercial sector and 49% to anglers, based on historical landings. For many years, anglers have been seeking to increase their share even though, because they chronically overfish their quota, anglers usually land most of the fish. Finally, late in 2015, the GMFMC adopted Amendment 28 to its reef fish management plan (Amendment 28), which reallocated 51.5% of the red snapper to anglers, leaving 48.5% for the commercial sector.

It didn't survive very long.

Commercial fishermen sued. In 2017 a federal court decided that the reallocation violated National Standard Four of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens), which requires, in part, that any allocation be "fair and equitable to all...fishermen." The violation occurred because "Amendment 28 enables the recreational sector to catch more fish in the future because they caught more fish in the past, *in excess of applicable restrictions*. [emphasis added]" The court observed that Amendment 28 "created a system in which one sector must demonstrate an increase in landings in excess of its quota in order to obtain an increase in their allocation."

Rewarding a sector for repeatedly overfishing was clearly not acceptable policy, so the years of work that the GMFMC spent preparing Amendment 28 ultimately accomplished nothing.

That's not an uncommon outcome for allocation debates, which is another reason why regional fishery management councils usually avoid revisiting allocations unless there is a compelling reason to do so. Even when compelling reasons exist, and years of work is invested in reallocation efforts, such efforts often fail. Thus, it's difficult not to be skeptical of legislation known as the Modernizing Recreational Fisheries Management Act (Modern Fish Act), designated S. 1520 in the Senate, which among other things would require the South Atlantic and Gulf of Mexico regional fishery management councils to revisit allocations of all managed species two years after such bill was enacted, and every five years thereafter.

Given that the South Atlantic Fishery Management Council manages 75 different species, and that the GMFMC manages at least 35, repeatedly revisiting all of the species' allocations would be a daunting task, one likely to devour much of such councils' time and resources, leaving little remaining for the councils' primary task of conserving and managing fish stocks.

Certainly, changing conditions in the ocean and in our fisheries justify taking a new look at some allocations, but creating arbitrary deadlines for allocation review guarantees neither a good result nor any result at all.

When, and whether, allocations should be reviewed is a matter best left up to those who know their fisheries and their local waters best, the people who sit on the regional fishery management councils.

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