

# **Reef Fish Recreational Management for Headboat Survey Vessels**

## **Amendment 42 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico Draft**

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## ABBREVIATIONS USED IN THIS DOCUMENT

ACL	annual catch limit
ACT	annual catch target
AM	accountability measure
AP	Advisory Panel
APA	Administrative Procedures Act
Council	Gulf of Mexico Fishery Management Council
CS	consumer surplus
CZMA	Coastal Zone Management Act
DQA	Data Quality Act
EA	environmental assessment
EEZ	exclusive economic zone
EFH	essential fish habitat
EIS	environmental impact statement
EJ	environmental justice
ESA	Endangered Species Act
FMP	Fishery Management Plan
Gulf	Gulf of Mexico
GMFMC	Gulf of Mexico Fishery Management Council
GSMFC	Gulf States Marine Fisheries Commission
HAPC	habitat area of particular concern
HBC	headboat collaborative
Headboat AP	Ad Hoc Reef Fish Headboat Advisory Panel
IFQ	individual fishing quota
LAPP	limited access privilege program
LHV	Landings History Vessel
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MMPA	Marine Mammal Protection Act
mp	million pounds
MRFSS	Marine Recreational Fisheries Survey and Statistics
MRIP	Marine Recreational Information Program
NEPA	National Environmental Policy Act
nm	nautical mile
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOR	net operating revenue
OY	optimum yield
PFQ	permit fishing quota
PS	producer surplus
RA	Regional Administrator
RFA	Regulatory Flexibility Act of 1980
RIR	Regulatory Impact Review
RQ	regional quotient
SBA	Small Business Administration
Secretary	Secretary of Commerce

SEDAR	Southeast Data, Assessment, and Review
SEFSC	Southeast Fisheries Science Center
SERO	Southeast Regional Office
SRHS	Southeast Region Headboat Survey
SSC	Scientific and Statistical Committee
TPWD	Texas Parks and Wildlife Department
USCG	United States Coast Guard
ww	whole weight

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# CHAPTER 1. INTRODUCTION

## 1.1 Background

The Gulf of Mexico Fishery Management Council (Council) has taken steps to provide more flexibility in managing various components of the reef fish recreational sector. In 2014, the Council approved Reef Fish Amendment 40 which established separate private angling and federal for-hire components of the red snapper recreational sector in the Gulf of Mexico (Gulf), allocated the red snapper recreational annual catch limit (ACL) between these two components, and implemented separate closure provisions for each component. The federal for-hire component includes all for-hire operators with a valid or renewable federal reef fish charter/headboat permit (reef fish for-hire permit). The private angling component includes all other for-hire operators and private recreational anglers. The decrease over time in the proportion of the red snapper recreational ACL harvested by anglers fishing from federal for-hire vessels and differences in regulatory environments faced by federal for-hire operators and private anglers - including changes in state regulations relative to red snapper - contributed to the Council's decision to restructure the red snapper recreational sector are discussed in Amendment 40 (GMFMC 2014). Recreational fishing for other reef fish species has not been as restricted as red snapper, but fishing has closed for several species in federal waters in recent years for some of the same reasons. Also, some state seasons have differed from federal seasons. Thus, other species may also benefit from flexible management for different components of the recreational sector.

In early 2015, the Council requested the initiation of an amendment addressing management for the reef fish headboat component and established an Ad Hoc Reef Fish Headboat Advisory Panel (Headboat AP). The charge to the Headboat AP was to make recommendations relative to the design and implementation of flexible measures for the management of reef fish for the headboat component of the recreational sector. In addition to the Headboat AP, the Council also created an Ad Hoc Red Snapper Charter Vessel Advisory Panel (Charter AP), which was tasked with recommending measures for the management of red snapper for charter vessel operators, and requested the initiation of an amendment specific to charter vessels fishing for red snapper

### Definitions

**Southeast Region Headboat Survey (SRHS)** – NMFS survey of headboats in the Gulf of Mexico and South Atlantic

**Landings History Vessel (LHV)** – a vessel that has a valid or renewable Gulf reef fish for-hire permit with individual landings history recorded by the SRHS as of December 31, 2015

**Recreational Annual Catch Limit (ACL)** – pounds of fish allowed to be landed by recreational fishers (includes private anglers, charter boats and headboats)

**Red Snapper For-hire Quota** - pounds of red snapper allowed to be landed by federally-permitted for-hire vessels (charter boats and headboats)

(Amendment 41). It is important to emphasize that the Headboat AP is charged with recommendations for all reef fish, whereas the Charter AP is limited to red snapper.

Management measures under consideration in Amendment 42 include allocation-based programs and recommendations made by the Headboat AP. Summary reports of the Headboat AP meetings, including recommendations provided to the Council in May 2015 and May 2016, are provided in Appendix A.

In the Gulf, the National Marine Fisheries Service (NMFS) issues one reef fish for-hire permit that does not distinguish between headboats and charter vessels. Therefore, the development of two distinct amendments addressing the management of red snapper for the charter vessel component (Amendment 41) and the management of reef fish for the headboat component (Amendment 42) requires clear definitions of which vessels would be included in each amendment. The Council established a December 31, 2015 control date to help determine the time period during which vessels could meet the eligibility criteria for Amendment 42.

The Southeast Region Headboat Survey (SRHS) collects catch and effort data from headboats in the southeast region, thereby producing a landings history for each vessel included in the survey. In the Gulf, for the purpose of reporting (as specified in 50 C.F.R. § 622.26(b)), the SRHS considers a for-hire vessel to be a headboat if it meets these criteria:

- 1) Vessel is licensed to carry 15 or more passengers (as indicated on the vessel's certificate of inspection;
- 2) Vessel fishes in the exclusive economic zone or state and adjoining waters for federally managed species; and
- 3) Vessel charges primarily per angler (i.e., by the "head").

The SRHS has been conducted in the Gulf since 1986<sup>1</sup>. However, detailed catch histories by individual vessels were only recorded starting from 2004. In addition, for fishery managers, the SRHS continues to be the sole source for effort and landings estimates for the headboat component as a whole. For these reasons, the universe of vessels for Amendment 42 is defined as vessels that have valid or renewable Gulf reef fish for-hire permits with individual landings histories recorded by the SRHS as of the control date of December 31, 2015. Hereafter, these vessels are referred to as landings history vessels (LHV). For the Gulf, the number of LHV by state between 2011 and 2015 is provided in Table 1.1.1.

**Table 1.1.1.** Number of vessels reporting landings to the SRHS by Gulf state, 2011-2015.

Year	AL	FL	LA	MS	TX	Total
2011	8	35	4	5	17	69
2012	8	35	4	5	16	68
2013	8	36	3	5	16	68
2014	7	37	2	5	16	67
2015	9	36	2	5	15	67

Source: NMFS SRHS database 010516

<sup>1</sup> The SRHS also includes vessels with South Atlantic for-hire permits and some state licensed vessels.



## **Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Requirements for Limited Access Privilege Programs (LAPPs)**

A LAPP is a federal permit to harvest a quantity of fish representing a portion of the total allowable catch that may be received or held for exclusive use by a person. The two programs being considered by the Council in Amendment 42 are an individual fishing quota (IFQ) program and a permit fishing quota (PFQ) program. Both types of programs are considered LAPPs and must meet certain Magnuson-Stevens Act requirements.

The Magnuson-Stevens Act states: “the Gulf Council(s) may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program...unless such a system, as ultimately developed, has been approved by...a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum.” The Gulf Council will determine which participants have substantially fished for the species proposed in this amendment and NMFS will conduct a referendum of those participants after details of the management program have been developed.

The Magnuson-Stevens Act prohibits any person from participating in a LAPP that is not a U.S. citizen, corporation, partnership, or other entity established under the laws of the U.S. or any state, or a permanent resident alien. It also requires participants to meet the eligibility and participation requirements established by the program. As previously indicated, for purposes of this amendment, all vessels must have valid or renewable Gulf reef fish for-hire permits with individual landings histories recorded by the SRHS as of December 31, 2015.

Section 303A(c) in the Magnuson-Stevens Act specifies requirements for LAPPs. The following is a list of the topics specified as LAPP requirements that may be relevant to potential management of the LHV:

- Goals and objectives of the program
- Program duration and provisions for regular review
- Enforcement, monitoring, and management
- Appeals process
- Initial allocation
- Maximum shares
- Transferability

The goals and objectives are in the Purpose and Need statement in Section 1.2. The Magnuson-Stevens Act specifies that a detailed review of the program be conducted after the first five years of implementation of the program and, thereafter, no less than once every seven years. Section 303A(f) indicates a limited access privilege is a permit to be issued for no more than 10 years that will be renewed unless it has been revoked, limited, or modified.

An appeals process provides a procedure for resolving disputes regarding initial eligibility and distribution of shares and allocation. In the past, the Council has implemented regulatory

actions in a number of fisheries that have included an appeals process for eligibility determinations, including Amendment 29 which established the Grouper/Tilefish IFQ Program. In each instance, the Council has utilized a virtually identical process. Because the process has been consistent and has worked well in different circumstances, consideration of other options for appeals is not necessary. In addition, appeals would be processed by the NMFS National Appeals Office which is governed by the regulations and policy at 15 CFR Part 906. Details of the appeals process are described in the appropriate sections of Chapter 2.

Management alternatives are developed in this amendment for requirements that necessitate further specification by the Council. For example, actions in this document have been established to analyze alternatives for several requirements including, but not limited to, initial allocation, maximum shares, and transferability.

## **1.2 Purpose and Need**

The purpose of this action is to reduce management uncertainty and improve economic conditions for Gulf reef fish headboat operators/owners, and provide flexibility by increasing fishing opportunities for their angler passengers through a management program for vessels with a valid or renewable Gulf reef fish for-hire permit with individual landings history recorded by the SRHS as of December 31, 2015.

The need for this action is to prevent overfishing while helping achieve the optimum yield from the harvest of reef fish, and taking into account and allowing for variations among fishery resources and participants.

## CHAPTER 2. MANAGEMENT ALTERNATIVES

In this amendment, the Gulf of Mexico Fishery Management Council (Council) must first determine the type of management approach deemed appropriate to addressing challenges for landings history vessels (LHV). In the second step, the Council has to focus on the design characteristics corresponding to the selected management approach. Based on this two-step decision making process, the first action includes alternative management approaches. The remaining actions include design elements and provisions corresponding to fishing quota programs. Therefore, all actions beginning with Action 2 are only valid if Alternative 2 or 3 is chosen in Action 1 and, the “No Action” alternatives in those actions assume a fishing quota program will be developed and are worded accordingly.

### 2.1 Action 1. Type of Recreational Management Program for Landings History Vessels

**Alternative 1.** No Action. For landings history vessels, continue to manage the reef fish species chosen in Action 2 using current recreational seasons, size limits, and bag limits.

**Alternative 2.** For landings history vessels, manage the reef fish species chosen in Action 2 by establishing an Individual Fishing Quota Program (IFQ). **(AP Preferred)**

**Alternative 3.** For landings history vessels, manage the reef species chosen in Action 2 by establishing a Permit Fishing Quota Program (PFQ).

#### Discussion

**Alternative 1** would continue to rely on bag limits, size limits, and fishing seasons to manage LHV. If the Council elects to continue to manage reef fish effort and harvests for LHV using traditional approaches, the range of management measures would be fairly limited and could be implemented through the framework process. Traditional management instruments, commonly referred to as command and control management, would include adjustments to the bag limits and changes to the structure of fishing seasons. None of the command and control approaches were favored by a majority of the Ad Hoc Reef Fish Headboat Advisory Panel (Headboat AP) members.

At their May 2015 meeting, the Headboat AP made a motion recommending the Council develop an allocation-based program (**Alternatives 2 and 3**) using reported landings from the Southeast Region Headboat Survey (SRHS). In a subsequent meeting held in May 2016, the Headboat AP further indicated its preference for the implementation of an individual fishing quota program (IFQ). In an allocation-based program, the quota is divided among participants, who can then choose when to use that allocation. In the case of an LHV program, each participant would have allocation to account for fish harvested by the passengers on each trip. Timely reporting is a key element of allocation-based programs; as allocation is used, it must be subtracted from the annual allocation for the participant. When a participant has used all of their allocation, they must stop fishing or obtain more allocation (if allowed by the program).

An IFQ program (**Alternative 2**) involves shares and allocation held by permit holders with landings history vessels in this case. Permit holders may be businesses or one or more individuals jointly holding a permit. Shares would be distributed to each permit holder based on the landings history associated with their permit in the SRHS and National Marine Fisheries Service (NMFS) databases. Those shares would represent a percentage of the LHV quota for the program. After the initial distribution, shares would be associated with the permit holder but not the permit itself. Therefore, shares could be transferred separately from the permit, in accordance with any restrictions in the program. Each year, NMFS would distribute allocation to participants holding shares; individual allocation would be determined by multiplying the share percentage by the LHV quota.

### Definitions

**LHV Quota** – pounds or numbers of fish allowed to be landed by all vessels in the LHV program developed in this amendment

**Share** – a set percentage of the quota held by an IFQ or PFQ participant

**Allocation** – pounds or numbers of fish each LHV is allowed to land each year

A PFQ program (**Alternative 3**) involves shares and allocation associated with a permit, in this case the federal Gulf of Mexico (Gulf) reef fish charter/headboat permit that is associated with a vessel in the SRHS. Those shares would represent a percentage of the LHV quota and allocation would be distributed to the permit holder at the start of the year. Shares would not be independently transferrable. But if the permit transferred, the shares would transfer with the permit and now be associated with the new shareholder.

The two programs differ in terms of how the shares and/or allocation would be distributed, as well as other program details (Table 2.1.1.1). These types of programs could provide LHV with the flexibility to operate when customers are most abundant, which may differ by region. The programs could also promote safety at sea, by allowing vessels to wait for calm weather.

The NMFS Southeast Regional Office currently manages two commercial IFQ programs: the red snapper IFQ and the grouper–tilefish IFQ program. The NMFS Southeast Regional Office also currently maintains and supports the commercial Bluefin Tuna Individual Bluefin Quota program, which is a type of PFQ. The Headboat Collaborative (HBC) pilot program (2014–2015) was also managed through the same online system. The structure of an IFQ or PFQ program for LHV could also be incorporated into the current online system. Participants would hold shares and allocation in accounts within the system and report landings via the system. Distribution, usage, and transfers would all be tracked by NMFS.

An IFQ or PFQ program would act as an accountability measure and replace the need for in-season closures or post-season restrictions. In the commercial IFQ programs, participants who hold shares are allowed to land up to 10% more of the amount of allocation left in their account on the last trip of the season. This allowance accounts for the inability to precisely weigh catch and must be paid back from the following year’s allocation. If allocation for the LHV program is in numbers of fish, this type of overage allowance may not be needed.

**Table 2.1.1.** Comparison of proposed management programs.

	<b>IFQ (Alternative 2)</b>	<b>PFQ (Alternative 3)</b>
<b>Shareholder:</b>	Account holder	Permit holder
<b>Allocation Distributed by:</b>	NMFS	NMFS
<b>Annual Allocation Distributed to:</b>	Accounts based on shareholdings and quota at the time of distribution	Permit accounts based on shareholdings and quota at the time of distribution
<b>Share Transfers:*</b>	Between entities with accounts; may transfer any percentage (e.g., partial amounts to one or more accounts or as a whole)	Must transfer permit to transfer shares; the whole share percentage is transferred with the permit, the percentage can never be divided;
<b>Allocation Transfers:*</b>	Between entities with accounts	Between permit holders with accounts
<b>Share Caps:</b>	Determined at time of transfer if violating share cap	Needs to be determined before permit transferred and may deny a permit transfer.
<b>Permit Transfers:</b>	Independent of the IFQ system, unless requirement to have a permit to hold shares	Before a permit transfer is approved, NMFS will need to see if the permit transfer violates the share caps
<b>Permit termination:</b>	Independent of the IFQ system, unless requirement to have a permit to hold shares.	Shares will need to be redistributed; allocation is transferred independent of permit.

\*Limitations may be set by the program.

Allocation-based programs, as with other management changes, can affect fishing behavior in complex and unpredictable ways. These changes can affect the utility of the fishery dependent information used in stock assessments. For example, the commercial IFQ program has resulted in the truncation of the commercial indices of abundance in several assessments. The change in behavior of fishing due to the IFQ system requires a different index of abundance due to changes in effort. Effort changes based on differences in allocation and how each vessel uses their allocation to plan fishing trips. To date in the Gulf, for any species in an IFQ program, indices of abundance have not been calculated since the start of the programs do to these problems. These issues also affect discard rates, although effort has been made to incorporate those changes in the stock assessment. Changes in catch rates coincident with the introduction of the commercial IFQs cannot be easily decoupled from possible changes in abundance. The problem is greatest at the beginning of a new program, before many years are available under the new management regime.

### Compliance and Monitoring

The ability to enforce and monitor program compliance is a key component of this program. Some conditions that would aid in this include trip declarations, pre-landing notifications, and

restricted landing locations. In the HBC pilot program, e-mail notifications of hail-outs and hail-ins allowed enforcement and biological collection agents (port agents) to prioritize sampling.

Trip declarations made before leaving the dock (hail-outs) would include vessel name, return destination, and estimated date/time of return. These declarations would aid enforcement officers/agents and port agents in scheduling their activities for the day so they could meet a vessel when it returns to the dock. For the commercial IFQ system, declarations are made through the vessel monitoring system (VMS) unit or the VMS , a call service center, and include vessel identifiers, type of fishing trip (e.g., Gulf, South Atlantic, HMS), fishing activity (e.g., reef fish, mackerel, research trip), and permit type (i.e., Commercial, Charter or Recreational). Trip declarations would need to be real-time for the LHV program and contain a method to distribute the information to enforcement and port agents. The commercial IFQ system does not currently distribute hail-out information. For the commercial IFQ program, notifications (hail-ins) are made through the vessel monitoring system (VMS) unit or a call service center and the commercial IFQ system distributes the information via email to the agents listed within the region of landing.

Pre-landing notifications (hail-ins) would aid in validation and auditing programs. Under the commercial IFQ program, notifications need to be submitted 3 to 24 hours in advance of landing and can be submitted through three different methods (online, VMS, IFQ call service). For the HBC pilot program, pre-landing notifications were submitted 1 hour in advance of landing through VMS. The pre-landing notifications for the LHV program would contain information on the vessel, landing location, date and time of landing, and estimated pounds or numbers of IFQ/PFQ species being landed by species. The commercial IFQ system distributes the information via email to the agents listed within the region of landing. Methods that would have near real-time distribution would include a direct entry in the IFQ online system, entry through a VMS unit, or a 24-hour call service that enters the information in the IFQ online system. In the HBC pilot program, knowing the number fish on board allowed port agents to ensure they had sufficient supplies for biological sampling available and allowed enforcement to immediately identify a discrepancy between the actual count and the hail-in count. Many of the agents felt that the hail-out/hail-in notifications improved sampling efficiency and reporting accuracy. For a VMS unit, the burden of the cost would be on the shareholder, while for a 24-hour call service center the burden of cost would be on NMFS. The HBC pilot program found that VMS units cost around \$6,000, with a monthly service fee of around \$60/month. Estimates for a call service center can be calculated through estimating the number of trips per year, and the amount of time per phone call

In the commercial IFQ programs and the HBC pilot program, landing sites must be approved by NMFS Office of Law Enforcement. This is to ensure that the sites are accessible to enforcement officers by land and water. Landing locations for LHV are more likely to be publicly accessible because the vessel must meet the customers and return to the same location.

## 2.2 Action 2. Species to Include in the LHV Management Program

**Alternative 1.** No Action. Do not define reef fish species to include in the management program.

**Alternative 2.** Include red snapper and gag in the management program.

**Preferred Alternative 3.** Include red snapper, gray triggerfish, greater amberjack, gag, and red grouper in the management program. **(AP Preferred)**

### Discussion

For each reef fish species included in this action, the development of management measures specific to LHV would initially require the allocation of a portion of the recreational annual catch limit (ACL) to LHV. Only reef fish species that already have recreational ACLs are considered for inclusion in this amendment. Within the reef fish complex managed by the Council, the six species with separate recreational and commercial ACLs are: red snapper, gag, red grouper, greater amberjack, gray triggerfish, and black grouper.

The Headboat AP recommended the inclusion of these six major reef fish species. However, black grouper recreational landings are typically very low and a very limited number of black grouper are landed by LHV. Based on the negligible black grouper recreational landings, reef fish species considered for inclusion in this amendment exclude black grouper and are limited to the five major reef fish species with recreational ACLs.

Recreational fishing for most of these species has been limited in recent years, which has prompted the Council to search for new management regimes to increase fishing opportunities. Tables 2.2.1 to 2.2.5 show landings by LHV of each of the species and the proportion of those landings versus landings for the recreational sector as a whole. For LHV, red snapper has the highest landings by far in both numbers and pounds.

**Table 2.2.1.** Landings (in pounds) of red snapper by LHV from 2011 through 2015 by homeport region, plus percentage of the total recreational landings. Note: Some regions have been combined because of confidentiality requirements. 2015 landings are preliminary.

Year	SWFL	NWFL	AL	MS/LA	TX	Total	Percent
2011	14,362	218,833	80,867	29,578	286,928	630,568	15%
2012	17,955	187,878	71,483	27,093	419,675	724,084	14%
2013	12,493	132,300	56,378	22,618	221,491	445,280	5%
2014	10,289	107,534	67,338	12,436	184,696	382,293	10%
2015	19,003	102,632	94,718	18,188	333,733	568,273	10%

Source: SRHS database, MRIP, LA Creel, TX HBS.

**Table 2.2.2.** Landings (in pounds) of gray triggerfish by LHV from 2011 through 2015 by homeport region, plus percentage of the total recreational landings. Note: Some regions have been combined because of confidentiality requirements. 2015 landings are preliminary.

Year	SWFL	NWFL	AL/MS/LA	TX	Total	Percent
2011	1,401	34,832	11,915	2,303	50,449	11%
2012	997	13,570	3,018	1,121	18,706	7%
2013	796	21,443	3,421	1,453	27,112	6%
2014	229	7,002	932	530	8,693	4%
2015	221	2,344	731	161	3,457	6%

Source: SRHS database, MRFSS, LA Creel, TX HBS.

**Table 2.2.3.** Landings (in pounds) of greater amberjack by LHV from 2011 through 2015 by homeport region, plus percentage of the total recreational landings. Note: Some regions have been combined because of confidentiality requirements. 2015 landings are preliminary.

Year	FL	Other Gulf	Total	Percent
2011	31,915	30,921	62,836	6%
2012	61,989	37,692	99,681	7%
2013	34,961	38,286	73,247	5%
2014	21,936	24,500	46,435	5%
2015	23,251	35,249	58,500	6%

Source: SRHS database, MRFSS, LA Creel, TX HBS; all MRFSS landings for greater amberjack from Monroe County are assigned to the South Atlantic.

**Table 2.2.4.** Landings (in pounds) of gag by LHV from 2011 through 2015 by homeport region, plus percentage of the total recreational landings. Note: Some regions have been combined because of confidentiality requirements. 2015 landings are preliminary.

Year	SWFL	NWFL	AL/MS/LA	TX	Total	Percent
2011	47,688	1,948	256	344	50,236	7%
2012	34,707	9,808	408	595	45,519	4%
2013	32,083	2,560	22	431	35,096	2%
2014	40,023	1,598	93	183	41,898	5%
2015	22,761	2,920	194	184	26,059	3%

Source: SRHS database, MRFSS, LA Creel, TX HBS; all MRFSS landings for gag from Monroe County are assigned to the South Atlantic.

**Table 2.2.5.** Landings (in pounds) of red grouper by LHV from 2011 through 2015 by homeport region, plus percentage of the total recreational landings. Note: Some regions have been combined because of confidentiality requirements. 2015 landings are preliminary.

Year	SWFL	NWFL	Other Gulf	Total	Percent
2011	28,836	9,163	459	38,459	6%
2012	74,211	12,731	382	87,324	5%
2013	71,960	8,950	344	81,255	3%
2014	41,145	5,953	175	47,272	3%
2015	48,390	4,318	332	53,040	3%

Source: SRHS database, MRFSS, LA Creel, TX HBS.



Some of the proposed species are overfished and/or undergoing overfishing (Table 2.2.6). Changes to management for these species could extend seasons and increase fishing opportunities while protecting the stock. **Alternative 1** would not specify reef fish species to include in the management program for LHV. Therefore, **Alternative 1** would not allow further development of management measures for LHV.

**Table 2.2.6.** Overfished and overfishing status of Gulf stocks considered for Amendment 42.

Species	Status of the Gulf Stock	
	Overfished	Overfishing
Red Snapper	Y	N
Greater Amberjack	Y	Y
Gray Triggerfish	Y	N
Gag	N	N
Red Grouper	N	N

**Alternative 2** would mirror the species included in the HBC pilot program exempted fishing permit that expired at the end of 2015. These species are generally the most desirable among headboat passengers. Red snapper is overfished but not undergoing overfishing. The recreational sector experienced quota overages for many years until recently, and shorter seasons recently, as well. Although the recreational quota has increased in recent years, the season length has decreased, in part because the average size of the fish harvested has increased (i.e., it takes fewer fish to fill the quota). Gag recreational landings have been below the ACL since 2012. Although a stock assessment for gag, completed in 2014 (SEDAR 33 2014), indicated the gag stock was no longer overfished or undergoing overfishing, anecdotal information from fishermen indicate that the stock may not be in as good shape as suggested by the assessment. Low landings may be indicative of a reduced stock. New management for gag could help prevent overfishing from recurring.

**Preferred Alternative 3** would include the species in **Alternative 2**, plus three other species landed in relatively high numbers by headboats. Gray triggerfish and greater amberjack are both overfished and under rebuilding plans. Greater amberjack landings exceeded the ACL in 2013, and the season closed early in 2014, 2015, and 2016. The gray triggerfish season has closed before the end of the year since 2012, including 2016. Red grouper is considered neither overfished nor undergoing overfishing. However, the red grouper ACL was exceeded in 2013 and the season closed in 2014; the Council reduced the bag limit for 2015 to try to extend the season, but it still closed early. In 2016, the quota was increased and the season is expected to remain open for the entire year with a two-fish bag limit.

The establishment of a separate management program for LHV harvesting red snapper would not exempt the program from section 407(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) which requires that red snapper recreational fishing be halted once the total recreational quota is caught. Some participants in the selected program may have to forgo remaining annual allocation of red snapper and lose fishing opportunities after the red snapper recreational ACL is caught. During the HBC pilot program, the total recreational quota was not reached for red snapper and HBC vessels were able to fish throughout the year. This provision does not apply to other species that might be included in the program.

## 2.3 Action 3. Participation at the Onset of the LHV Program

**Alternative 1.** No Action. Any vessel that meets the control date, has a valid or renewable federal reef fish for-hire permit, and is still participating in the SRHS, must participate in the program selected in Action 1. **(AP Preferred)**

**Alternative 2.** Any vessel that meets the control date, has a federal reef fish for-hire permit, *and is still participating in the SRHS*, may choose to opt out of the LHV program at the onset of the program. Vessels choosing not to participate must notify NMFS by October 1 of the year before implementation of the program. Vessels not in the program will be managed under the federal recreational regulations for species selected in Action 2.

**Alternative 3.** Any vessel that meets the control date and has a federal reef fish for-hire permit, *regardless of SRHS participation*, may choose to opt out of the program selected in Action 1 at the onset of the program. Vessels choosing not to participate must notify NMFS by October 1 of the year before implementation of the program. Vessels not in the program will be managed under the federal recreational regulations for species selected in Action 2.

### **Discussion**

This action allows the Council to choose if the IFQ or PFQ program would be mandatory or voluntary. All the commercial IFQ programs currently in place in the southeast region are mandatory; anyone holding a commercial vessel permit for the species covered must participate in the program to fish for those species. **Alternative 1** would make the LHV program mandatory as well. Any vessel eligible to participate in the LHV program as of December 31, 2015, would have to maintain an IFQ/PFQ account with allocation to possess and land any of the species chosen for the program (Action 2).

**Alternatives 2 and 3** would allow vessels to opt out of the program chosen in Action 1, at the onset of the program. **Alternatives 2 and 3** would allow vessels that meet the control date still participating in the SRHS and any vessel that meets the control date to opt out, respectively. Each vessel owner would have until October 1 of the year before implementation to inform NMFS of his/her desire to not participate in the program. This would allow time for NMFS to calculate the LHV quota and IFQ/PFQ shares. Any LHV owner that does not contact NMFS by October 1 would be included in the program and would need allocation to fish for and land any of the species included in Action 2. The landings associated with any vessel opting out of the program may be subtracted from the LHV allocation set in Action 5. These landings would be calculated according to the formula chosen for initial distribution in Action 7.

The option not to participate would only be allowed at the onset of the program because that is when shares are distributed. Vessels not in the program may be able to join later, depending on transferability options chosen for endorsements/permits, shares, and allocation (Actions 4, 8, and 10) and options for new entrants in Action 15. Vessels opting out of the program would follow the applicable recreational regulations for charter vessels and private anglers. In the case of red

snapper, if management of charter vessels is maintained separately from private anglers<sup>2</sup>, vessels opting out of the LHV program would be managed with the charter vessels, including any management developed in Amendment 41.

Vessels could not be allowed to opt in and out every year with either an IFQ or PFQ program. Once shares are determined at implementation of the program, those shares by definition should not change, except as a result of transfers, if allowed. Each share represents a percentage of the quota, and all shares must add up to 100%. If vessels opt in and out every year, the shares would need to be recalculated each year, and would become meaningless. An allocation-based program could be developed without shares, but that type of program is not an alternative in Action 1 of this amendment.

## 2.4 Action 4. Landings History Vessel Endorsement or Permit

**Alternative 1.** No Action. Landings History Vessel (LHV) program participants are required to have a Gulf reef fish for-hire permit.

**Alternative 2.** Establish an endorsement for LHV. LHV program participants are required to have an LHV endorsement to their Gulf reef fish for-hire permit. Endorsements will be issued to qualifying LHV program participants at the time of implementation of this action. With a PFQ, the shares would be attached to the endorsement. An LHV endorsement holder may only fish off the LHV quota for the species selected in Action 2 throughout the year. LHV endorsements are transferrable to any vessel with a Gulf reef fish for-hire permit. **(AP Preferred)**

**Alternative 3.** Establish a Gulf reef fish LHV permit. LHV program participants are required to have a Gulf reef fish LHV permit. Gulf reef fish for-hire permits held by qualifying LHV program participants at the time of implementation of this action will be converted to Gulf reef fish LHV permits. A Gulf reef fish LHV permit holder may only fish off the LHV quota for the species selected in Action 2 throughout the year. Gulf reef fish LHV permits are fully transferrable.

### Discussion

Currently, one federal permit covers charter vessels and headboats in the reef fish fishery. These permits do not distinguish between the two types of vessels. **Alternative 1** would continue the use of the single permit and rely on the definition in this amendment to distinguish LHV. This would be the easiest alternative to implement, but may create difficulties for enforcement in distinguishing which regulations a specific vessel should be following.

An endorsement or permit could help distinguish which vessels are in the LHV program. This would help with administration and enforcement. However, if the Council chooses to establish an endorsement or permit, they should consider the interaction between the LHV program in this amendment and the charter vessel program being developed in Amendment 41, so that there are not two endorsements available for the same federal permit.

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<sup>2</sup> The Council recently voted to maintain separate red snapper quotas for private angler and for-hire components through 2022.

**Alternative 2** would establish an LHV endorsement to the Gulf reef fish for-hire permit for only those vessels that are in the LHV program developed through this amendment. This endorsement would help clarify who is eligible to participate in the LHV program. An endorsement would help with monitoring and enforcement of an IFQ or PFQ as only those vessels with the endorsement could fish off the LHV quota and not be subject to seasons and bag limits. A vessel owner would be able to transfer his endorsement but retain his permit. Endorsements may add an additional level of complexity to the permit process and the IFQ/PFQ system. Managing both permits and endorsements requires consideration of the interactions between them, including what the implications are if the permit expires or terminates but the endorsement does not. These issues could create an increasingly complex and unwieldy system, which would not only be onerous for NMFS to manage, but a likely source of confusion and frustration for constituents. The complexity increases if Amendment 41 establishes endorsements for charter vessels; the same federal permit would have two separate and distinct endorsements, which would further complicate permit transfer rules.

The transferability of the endorsement would provide a means for vessels that opted out of the program at the onset (Action 3) to change their mind and become participants. It would also allow new vessels to participate, as well as charter vessels, by purchasing an endorsement. However, currently permits are frequently transferred between vessels that participate in the SRHS and those that do not during the year. When that happens, the burden on NMFS and the permit holder would likely increase because both the endorsement and the permit it endorses will require separate administration and management. In addition, renewing an endorsement would cost an additional \$10 to the permit holder each year.

**Alternative 3** would essentially split the Gulf for-hire reef fish permit into two mutually exclusive permits: one for LHV and one for other Gulf federally-permitted for-hire vessels. Like **Alternative 2**, this alternative would help clarify who is eligible to participate in the LHV program. Administratively, **Alternative 3** would require a more simple procedure because only the permit would be required, rather than a permit and an endorsement. However, the LHV program would only be for five species in the reef fish fishery. Therefore, the LHV permit would also need to cover other reef fish species not in the LHV program, so that each vessel would not need additional permits to harvest Gulf reef fish. The new LHV permits would be fully transferable, as are the current reef fish for-hire permits.

## **2.5 Action 5. Allocation of Annual Catch Limit to the Landings History Vessel Program**

**Alternative 1.** No Action. Do not allocate a portion of the recreational ACL to the LHV Program.

**Alternative 2.** Allocate a portion of the recreational ACL for each species to the LHV Program based on average landings from the most recent five years (2011-2015), according to the Southeast Region Headboat Survey.

**Option a.** Use all years

**Option b.** Exclude 2014

**Option c.** Exclude 2014 and 2015

	<b>Option a</b>	<b>Option b</b>	<b>Option c</b>
Red Snapper	14.90%	13.80%	14.90%
Gray Triggerfish	6.40%	7.00%	7.90%
Gag	4.40%	4.30%	4.30%
Red Grouper	3.90%	4.20%	4.80%
Greater Amberjack	5.60%	5.80%	6.40%

**Alternative 3.** Allocate a portion of the recreational ACL for each species to the LHV Program based on average landings from the longest time series (2004-2015), according to the Southeast Region Headboat Survey.

**Option a.** Use all years

**Option b.** Exclude 2010

**Option c.** Exclude 2014

**Option d.** Exclude 2014 and 2015

	<b>Option a</b>	<b>Option b</b>	<b>Option c</b>	<b>Option d</b>
Red Snapper	13.10%	12.50%	12.80%	12.90%
Gray Triggerfish	9.50%	9.50%	9.90%	10.50%
Gag	3.60%	3.60%	3.60%	3.50%
Red Grouper	3.50%	3.60%	3.60%	3.70%
Greater Amberjack	5.30%	5.40%	5.40%	5.50%

**Alternative 4.** Allocate a portion of the recreational ACL for each species to the LHV Program based on 50% average landings from the most recent five years (2011-2015) and 50% average landings from the longest time series (2004-2015), according to the Southeast Region Headboat Survey.

**Option a.** Use all years

**Option b.** Exclude 2010

**Option c.** Exclude 2014

**Option d.** Exclude 2014 and 2015

	<b>Option a</b>	<b>Option b</b>	<b>Option c</b>	<b>Option d</b>
Red Snapper	13.90%	13.50%	13.30%	13.80%
Gray Triggerfish	7.90%	9.20%	9.60%	10.10%
Gag	4.00%	4.70%	4.70%	4.70%
Red Grouper	3.70%	4.40%	4.50%	4.80%
Greater Amberjack	5.40%	7.10%	7.20%	7.50%

**Alternative 5:** For each species, allocate a portion of the recreational ACL to the LHV Program based on 50% average from 1986-2013 (2010 excluded) and 50% average landings from 2006-2013 (2010 excluded). (Preferred Alternative from Amendment 40). (**AP Preferred**)

Red Snapper	14.5%
Gray Triggerfish	11.0%
Gag	4.0%
Red Grouper	3.9%
Greater Amberjack	6.9%

**Alternative 6.** The landings associated with any vessels opting out of the program (Action 3) will be subtracted from the LHV allocation. These landings will be calculated according to the formula chosen for initial distribution in Action 7.

**Discussion**

For each reef fish species included in this management plan, a portion of the corresponding recreational ACL must be allocated to the LHV component prior to the development of management measures tailored to the specific needs of LHV. Therefore, **Alternative 1** would not allow development of an IFQ or PFQ program for LHV.

**Alternatives 2-4** consider different time periods of landings to calculate the percent of the recreational ACL for each species that would be allocated to the LHV program. Each species would have its own LHV quota that would be allotted to participants according to the formula determined in Action 7. Table 2.5.1 provides percentages of the recreational landings harvested by LHV since 2004 for greater amberjack, gray triggerfish, gag, and red grouper.

**Table 2.5.1.** Percentage of the recreational landings harvested by LHV.

Year	Greater Amberjack	Gray Triggerfish	Gag Grouper	Red Grouper
2004	5%	11%	3%	2%
2005	4%	14%	3%	5%
2006	6%	13%	3%	3%
2007	7%	15%	3%	2%
2008	5%	12%	2%	4%
2009	7%	9%	4%	3%
2010	4%	9%	4%	4%
2011	6%	11%	7%	6%
2012	7%	7%	4%	5%
2013	5%	6%	2%	3%
2014*	5%	4%	5%	3%
2015*	6%	6%	3%	3%

Source: SRHS, MRIP, MRFSS, LA Creel, TX Headboat Survey

\*2014 and 2015 include LA Creel data.

Red snapper is unique among reef fish in that it is the only species with a recreational ACL that has been further divided into private angling and for-hire component ACLs. Because LHV are part of the for-hire component, the allocation to the LHV program would come from the for-hire ACL, and the percentage of the for-hire landings attributed to LHV would be used to determine the allocation of the for-hire ACL between charter and headboats (Table 2.5.2). However, the separate red snapper component quotas are scheduled to sunset after 2022<sup>3</sup>; i.e., the ACL would no longer be divided into private angling and for-hire ACLs. Unless the sunset provision is removed, the LHV ACL would be subtracted from the total recreational ACL after the sunset, as for the other species. Table 2.5.2 provides percentages of the for-hire landings for red snapper harvested by LHV.

**Table 2.5.2.** Percentage of the red snapper for-hire landings harvested by LHV.

Year	% of For-Hire Landings
1986	19%
1987	34%
1988	41%
1989	61%
1990	43%
1991	27%
1992	48%
1993	37%
1994	47%
1995	47%
1996	44%
1997	37%
1998	38%
1999	35%
2000	34%
2001	28%
2002	27%
2003	29%
2004	25%
2005	25%
2006	26%
2007	22%
2008	25%
2009	38%
2010	49%
2011	39%
2012	36%
2013	26%
2014*	52%
2015*	26%

Source: SRHS, MRIP, MRFSS, LA Creel, TX Headboat Survey.  
 2014 and 2015 include LA Creel data, which has not been calibrated to MRIP data.

<sup>3</sup> Current regulations sunset the separate quotas in 2017; however, the Council has voted to extend the sunset date by five years. The Secretary of Commerce is reviewing this proposal.

**Alternative 2** would use only the most recent five years of landings. Because some vessels move in and out of the survey, the recent years would capture landings by most of the vessels currently in the program. Of the 68 vessels selected to participate in the SRHS for 2016, 60 had landings every year during 2011-2015; all but one had at least one year of landings during that time period.

**Alternative 3** would use a 12-year time period, which includes all years with landings by vessel from SRHS. Although allocation to the LHV program is based on landings for the fishery component as a whole, if the number of vessels per year varied, the average could be skewed. Table 2.5.3 shows the number of vessels with landings in the SRHS each year. With the exception of 2006, the total number of vessels was relatively stable, although these might not be the same vessels each year.

**Alternative 4** would calculate the percent of the recreational ACL to allocate to the LHV using 50% of landings from the recent time period (**Alternative 2**) and 50% of landings from the longer time period (**Alternative 3**). This would give a greater weight to the recent time period (because it is included in both time periods), but still include the longer time period.

The options under **Alternatives 2-4** allow the Council to choose certain years to exclude from the calculation of allocation for LHV. **Option a** would use all years in the time period. This may be the appropriate choice if the conditions in any year did not differentially affect headboats versus other recreational fishing. **Option b** would exclude 2010, when the Deepwater Horizon MC 252 oil spill affected fishing in the Gulf. **Options c** and **d** would eliminate the years during which the Headboat Exempted Fishing Permit collaborative was in effect and exclude either 2014 or 2014 and 2015.

**Table 2.5.3.** Number of vessels in the SRHS with landings, 2004-2015.

Year	Number of Vessels
2004	64
2005	66
2006	59
2007	68
2008	67
2009	66
2010	69
2011	69
2012	68
2013	68
2014	67
2015	67

Source: SRHS

To apportion the for-hire quotas, **Alternative 5** would use the same time period preferred by the Council in Amendment 40, which established the separation of the for-hire and private angler components of the red snapper recreational quota. As discussed in previous sections, reef fish landings from LHV have been documented by the SRHS since 1986; however, landings before



2004 were not recorded by vessel. Without the number of vessels participating in the SRHS during earlier years, we cannot know how much the level of fishing changed. **Alternative 5** also only uses landings through 2013 and, therefore, ignores landings from the most recent two years. However, the Council could change the time periods in the alternative to extend to 2015.

**Alternative 6** addresses the possibility of some eligible vessels opting out of the LHV program, as outlined in Action 3. This alternative would calculate the share that each vessel would have received under the program, subtract the percent of that share from the LHV allocation, and include that percent in the remaining recreational ACL. This alternative complicates any analysis of the impacts of this action because the number of vessels opting out of the program cannot be predicted. Thus, the true LHV ACL could not be known before implementation of the IFQ or PFQ program. Also, the likelihood of unintended and potentially adverse effects becomes greater as more variability is introduced. Regardless of the alternative chosen, the ACLs for each species will be subject to the ACL/annual catch target (ACT) buffers currently in place. Therefore, the actual quota for each species distributed among PFQ/IFQ participants will be the LHV ACT, reduced from the LHV ACL by the buffer shown in Table 2.5.4. In the future, the Council may decide to revisit the LHV ACTs based on the performance of the LHV program.

**Table 2.5.4.** Buffers between the recreational ACL and ACT for each species.

Species	ACL/ACT buffer
Red Snapper	20%
Greater Amberjack	13%
Gray Triggerfish	10%
Gag	10%
Red Grouper	9%

#### Data Issues

Recreational landings in the Gulf are obtained through multiple sources. SRHS started in 1986 and covers headboats in the Gulf and South Atlantic. The Marine Recreational Information Program (MRIP), implemented in 2012, provides private angler and charter vessel landings and effort data for Gulf states other than Texas. Texas Parks and Wildlife Department (TPWD) began its own sampling program in 1986 and provides recreational landings, except for headboat landings, from Texas. MRIP replaced the Marine Recreational Fishery Statistics Survey (MRFSS), which collected data beginning in 1979. MRFSS landings data from 2004-2011 were calibrated to MRIP landings. In 2013, MRIP implemented new angler catch survey procedures, which improved the sampling program. However, changes in methods require calibration of data collected with the old methods versus the new methods, and these calibrations have only been completed for red snapper; therefore, the landings provided in this amendment have not been calibrated for the 2013 change in MRIP methods. Also in 2013, Louisiana began a sampling program in tandem with MRIP, called LA Creel, to sample fish landed in that state. In 2014, MRIP was discontinued in Louisiana and only LA Creel surveyed recreational landings. In 2015, MRIP re-entered Louisiana, but did not collect all data for charter vessels. LA Creel has not yet been fully certified by MRIP.

The HBC pilot program, conducted under an exempted fishing permit, was in effect in 2014 and 2015. This pilot program worked much like the proposed IFQ/PFQ program in this amendment.

The collaborative was granted a proportion of the recreational red snapper and gag quotas based on 2011 landings of those species by participating vessels. Landings data from HBC vessels were still collected through the SRHS. Because their quota was based on previous gag and red snapper landings, the landings in 2014 and 2015 should not have differed markedly from years before the pilot program. However, in 2014 the regular red snapper recreational fishing season was reduced to only nine days, substantially reducing red snapper landings for charter vessels and non-HBC headboats (Table 2.5.5); HBC headboats were not constrained by this short season.

**Table 2.5.5.** Recreational red snapper landings (in pounds) harvested by the for-hire component of the recreational sector. 2015 landings are preliminary.

Year	For-Hire Season Length (Days)	Charter Vessel	LHV	Total For-Hire	LHV %
2011	48	991,418	630,563	1,621,981	39%
2012	46	1,281,662	724,077	2,005,739	36%
2013	42	1,273,819	445,276	1,719,095	26%
2014	9	351,990	382,290	734,280	52%
2015	44	1,615,253	580,226	2,195,479	26%

Source: NMFS dataset MRIPACLspec\_rec81\_15wv6\_17Mar16\_w14and15LACreel.

## 2.6 Action 6. Units of Measure for Quota Distribution and Reporting

**Alternative 1.** No Action. The LHV quotas are distributed and reported in pounds.

**Alternative 2.** The LHV quotas are distributed and reported in numbers of fish.

**Alternative 3.** The LHV quotas are distributed in pounds and reported in numbers of fish. (**AP Preferred**)

### Discussion

Quotas for all managed species are set in pounds. Recreational data collection programs such as MRIP and the SRHS estimate recreational harvests in number of fish caught and in pounds. For the management measures considered in this amendment, the distribution of the quota allotted to the LHV component and between vessels in the LHV component could be based on pounds or number of fish.

Quota distributions to individual vessels expressed in pounds (**Alternative 1**) may be challenging for headboats, as well as for managers, due to the multitude of anglers on the vessels. Reporting landings in pounds would be more burdensome to vessel operators because they would need to weigh each fish. **Alternative 1** would also be more burdensome to enforcement for the same reason. However, because ACLs and quotas are set in pounds, no conversion would be needed to compare landings to the quotas.

**Alternative 2** would require the conversion of the LHV portion of the quota from pounds to number of fish before distribution to participants. This would require an estimation of an

average weight per fish, which can vary throughout the year and throughout the Gulf. The commercial programs in the Gulf distribute annual allocations in pounds of fish. However, recreational anglers and for-hire operators are less concerned with weight of fish and more concerned with numbers because bag limits have historically been expressed in numbers of fish. In the HBC pilot program, port samplers and law enforcement agents found that numbers of fish were quick and easy to validate against the pre-landing notifications.

**Alternative 3** mimics the distribution and reporting methods for the HBC pilot program. The HBC pilot program distributed allocation in pounds of fish, but participants reported in numbers of fish (for full details, see NMFS 2015). Each HBC vessel’s individual amount of allocation in pounds was calculated by taking the vessel’s percentage of the HBC aggregate landings and applying this to the HBC quotas. The pounds for each species were then converted to numbers of fish within the vessel accounts by using the average pre-season regional weight as determined through SRHS for the area in which they were fishing. Because the average weight varied by region and time, the amount of fish resulting from a set poundage varied as well. For example, 10,000 lbs in region A that had an average fish weight of 5 lbs would result in 2,000 fish, while 10,000 lbs in region B that had an average fish weight of 8 lbs would result in 1,250 fish.

In the HBC pilot program, landings reported in numbers were converted back to pounds to compare against the quota using both pre-season average weights (used to originally convert pounds to fish) and in-season average weights (based on the most recent weights collected during the year). In-season weights were based on species-specific regional and monthly average values. During the first year of the program, the in-season and pre-season weights were similar for both species (<5% difference). In the second year of the program, the in-season weights were greater for both red snapper and gag (up to 23% difference). The difference in weights between years (Table 2.4.1), particularly with gag, suggests that in-season weights should be monitored closely if allocation and landings are in numbers of fish.

**Table 2.6.1.** Minimum and maximum monthly average in-season fish weights (in pounds) for the HBC pilot program.

	Minimum fish weight	Maximum fish weight
Red Snapper 2014	2.16	9.91
Red snapper 2015	2.67	9.46
Gag 2014	6.14	14.57
Gag 2015	6.47	23.69

Source: NMFS SERO Neptune database

Due to temporal and spatial fluctuations in average weights, weights might have to be monitored during the year. For example, in the HBC pilot program, NMFS compared the pre-season average weight to the actual average weight during the season and made adjustments if warranted. Port side sampling is crucial for these calculations and may need to be increased to accurately track average weights per region. Fish tags could also be used to validate landings in numbers.

## 2.7 Action 7. Initial Apportionment of Shares

### Action 7-1. Time Period of Landings to Determine Initial Apportionment of Shares

**Alternative 1.** No Action. Do not apportion shares to participants based on any landings period.

**Alternative 2.** Apportion initial shares among eligible participants based on average landings by vessel for each species during the most recent five years (2011-2015).

**Alternative 3.** Apportion initial shares among eligible participants based on average landings by vessel for each species during the most recent five years (2011-2015) omitting the year with the lowest landings.

**Alternative 4.** Apportion initial shares among eligible participants based on the year with the highest landings by vessel for each species during the most recent five years (2011-2015). (**AP Preferred**)

#### Discussion

For an IFQ or PFQ program, shares are distributed to participants for each species at the start of the program. Shares are a percentage of the quota for each species and do not change for each participant, unless share transfers are allowed under an IFQ program.

The Council began development of this amendment for LHV because those vessels have landings histories through the SRHS. However, **Alternative 1** would not use landings to determine the initial apportionment of shares. This alternative would only be appropriate if shares were distributed 100% equally among all vessels or 100% by auction. However, the Council requested an amendment specific to vessels with landings histories, so those types of distribution should not occur in Amendment 42.

**Alternatives 2-4** would establish the time interval used to determine landings for each eligible participant. As an example, Tables 2.7.1 to 2.7.5 provide preliminary estimates of the number of vessels in each share category for each species using data from 2015 only.

**Table 2.7.1.** Preliminary frequency distribution of red snapper shares (percent of the total LHV landings) by vessel based on 2015 landings.

Share Category – Red Snapper	Number of Vessels	Cumulative Frequency
0	13	13
0.01-0.10	8	21
0.11-0.99	15	36
1.00-1.99	16	52
2.00-3.99	9	61
4.00-9.20	7	68

Source: SRHS database, MRIP, LA Creel, TX HBS.

**Table 2.7.2.** Preliminary frequency distribution of greater amberjack shares (percent of the total LHV landings) by vessel based on 2015 landings.

Share Category – Greater Amberjack	Number of Vessels	Cumulative Frequency
0	25	25
0.01-0.10	4	29
0.11-0.99	23	52
1.00-1.99	6	58
2.00-9.99	6	64
10.00-18.50	4	68

Source: SRHS database, MRIP, LA Creel, TX HBS.

**Table 2.7.3.** Preliminary frequency distribution of gray triggerfish shares (percent of the total LHV landings) by vessel based on 2015 landings.

Share Category – Gray Triggerfish	Number of Vessels	Cumulative Frequency
0	38	38
0.01-0.10	3	41
0.11-0.99	11	52
1.00-1.99	5	57
2.00-9.99	7	64
10.00-16.55	4	68

Source: SRHS database, MRIP, LA Creel, TX HBS.

**Table 2.7.4.** Preliminary frequency distribution of gag shares (percent of the total LHV landings) by vessel based on 2015 landings.

Share Category – Gag	Number of Vessels	Cumulative Frequency
0	22	22
0.01-0.10	14	36
0.11-0.99	16	52
1.00-1.99	8	60
2.00-9.99	3	63
10.00-15.50	5	68

Source: SRHS database, MRIP, LA Creel, TX HBS.

**Table 2.7.5.** Preliminary frequency distribution of red grouper shares (percent of the total LHV landings) by vessel based on 2015 landings.

Share Category – Red Grouper	Number of Vessels	Cumulative Frequency
0	29	29
0.01-0.10	4	33
0.11-0.99	19	52
1.00-1.99	3	55
2.00-7.99	9	64
8.00-20.65	4	68

Source: SRHS database, MRIP, LA Creel, TX HBS.

**Alternative 2** would use a five-year time period of landings. Of the 67 vessels selected to participate in the SRHS for 2016, 60 had landings every year during 2011-2015. For the seven vessels without landings every year, averages including zero landing years could result in low amounts of shares distributed. These vessels may have landed fish, but were not selected for the SRHS; therefore, their landings would not be recorded by vessel.

**Alternative 3** would account for the fact that a vessel may have a year without any landings by allowing the vessel to drop the lowest year of landings during the five-year period. However, five vessels had more than one year without landings.

**Alternative 4** would use only one year of landings, but it would be the highest year for each vessel during the five-year period. All vessels currently in the SRHS and that are eligible for the program based on the Council’s control date of December 31, 2015, had at least one year of landings during 2011-2015. One vessel was selected for the SRHS in 2016 that will not be eligible; more vessels may be selected in the future that would not be eligible either. In addition, eight vessels previously selected for the SRHS had at least one year of landings during 2011-2015, but are no longer in the SRHS. Whether those vessels still have reef fish for-hire permits has not been determined at this time.

## Action 7-2. Distribution of Initial Shares

**Alternative 1.** No Action. Do not distribute shares to participants.

**Alternative 2.** Distribute a percentage of initial shares for each species proportionally based on average landings per permit during the time interval selected in Action 7-1 and distribute the remaining percentage of the initial shares equally among LHV permit holders participating in the program. Percentages distributed proportionally and equally are as follows (**AP Preferred; with Option a**):

Option	Distribution of Initial Shares	
	Proportional	Equal
2a	100	0
2b	75	25
2c	50	50
2d	25	75

**Alternative 3.** Distribute all or some initial shares for each species through an auction system. All LHV permit holders participating in the program are allowed to place bids. (**AP recommends moving auctions to considered but rejected**).

Option	Distribution of Initial Shares	
	By Alternative 2	By Auction
3a	0	100
3b	25	75
3c	50	50
3d	75	25

### Discussion

The quota for the LHV program will be determined in Action 5. For an IFQ or PFQ program to be developed, shares of the LHV quota would need to be distributed to participants at the beginning of the program. Therefore, **Alternative 1** would not allow development of these programs.

**Alternative 2 (Options 2a to 2d)** would distribute a portion of the quota equally among participants and the remaining percentage proportionally, e.g., **Option 2b** would distribute 25% of the initial shares equally and 75% proportionally (based on landings histories). Landings used for calculating initial shares for each species would come from the SRHS database during the time period chosen in Action 7-1. **Option 2a** would distribute all shares proportionally; this is how initial shares were distributed for the commercial IFQ programs.

**Alternative 3** would distribute shares through an auction facilitated by NMFS. The Magnuson-Stevens Act states that a Council must consider an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a LAPP. Although the Council has considered auctions, none of the LAPPs in the Southeast Region utilized this option. **Option 3a** would distribute the entire quota by auction, which could allow LHV owners to choose not to participate by not placing bids. **Options 3b-3d** would distribute a portion of the quota by auction and a portion of the quota by the means selected in **Alternative 2**. Shares distributed by auction would go to the highest bidder.

### Appeals

In accordance with Section 303A(c)(I) of the MSA, an appeals process will be established to provide a procedure for resolving disputes regarding initial distribution of shares. A small percentage of the quota will be set aside at the beginning of the program to cover potential successful appeals. Items subject to appeal are eligibility to participate, the accuracy of the landings, and the correct assignment of landings to the permit owner. Appeals based on hardship factors will not be considered.

Landings data for appeals would be based on logbooks submitted to and received by the Southeast Fisheries Science Center by a date to be determined, for the years chosen in the preferred alternative and option in Action 7-1. In addition, NMFS records of federal reef fish charter/headboat permits constitute the sole basis for determining ownership of such permits.

Appeals will be processed by the NMFS National Appeals Office and will be governed by the regulations and policy of the National Appeals Office at 15 CFR Part 906. Appeals must be submitted to the National Appeals Office no later than 90 days after the date the initial determination is issued. Appeals must contain documentation supporting the basis for the appeal. The Regional Administrator will review, evaluate, and render final decision on appeals. NMFS will notify potential participants of the appeals dates and process when initial distribution is determined.

## **2.8 Action 8. Transferability of Shares (IFQ only)**

*Note: A PFQ program attaches shares to a permit. Therefore, if a permit is moved from one owner to another, the shares automatically move with the permit and are not considered “transferred.”*

**Alternative 1.** No Action. Do not allow transfer of shares.

**Alternative 2.** Require a valid reef fish for-hire permit with LHV endorsement or a reef fish LHV permit (whichever is established in Action 4) to receive shares through transfer. Shares can only be transferred to US citizens or permanent resident aliens. **(AP Preferred)**

**Alternative 3.** Shares can be transferred to any US citizen or permanent resident alien.



## **Discussion**

The Magnuson-Stevens Act prohibits any person from participating in a LAPP that is not a U.S. citizen, corporation, partnership, or other entity established under the laws of the U.S. or any state, or a permanent resident alien. **Alternative 1** would be the most restrictive of the alternatives. Shares would be distributed at the beginning of the program, and no transfers would be allowed. Therefore, no participant could adjust the amount of shares (s)he owns and no one could get into the program by obtaining shares. If a permit expires or is transferred, the shares would stay with the individual. This could allow shares to be held by individuals who no longer participate in the fishery. The lack of transferability would limit the efficiency of the program because the shares would not flow to their highest value use. In addition, **Alternative 1** would not allow program participants to adjust and react following temporal fluctuations or long term regional variations in species abundance across the Gulf. Furthermore, not allowing share transfers may work against the goals and objectives of the program. **Alternative 1** would be appropriate if the Council chooses a PFQ program to manage landings history vessels.

**Alternative 2** would require a reef fish charter/headboat permit and LHV endorsement or reef fish headboat permit (whichever is established in Action 4) to receive shares through transfer. Eligibility criteria to qualify for a LHV endorsement or permit and thereby eligibility to receive shares are discussed in Action 4. **Alternative 2** would ensure that all shares stay with participants eligible to harvest reef fish species included in this program.

**Alternative 3** would allow any US citizen or permanent resident alien to set up an account and acquire transferred shares. **Alternative 3** is comparable to the current transferability provisions in the red snapper and grouper-tilefish commercial IFQ programs. Although a federal commercial reef fish permit was needed to receive initial shares, the commercial IFQ programs do not currently have permit requirements for acquiring shares. During the first five years of each commercial program, shares could only be transferred to permit holders, but now (as of 2012 for red snapper and 2015 for grouper/tilefish) anyone meeting the citizenship requirement can open an IFQ account and receive transferred shares.

## **2.9 Action 9. Maintenance of Shares**

**Alternative 1.** No Action. Shares can be held by any US citizen or permanent resident alien.

**Alternative 2.** Require a reef fish charter/headboat permit with LHV endorsement or a reef fish LHV (whichever is established in Action 4) to hold shares. Shares can only be held by US citizens or permanent resident aliens. For an IFQ program, if a participant transfers their permit/endorsement or the permit/endorsement expires, the owner must divest of their shares. For a PFQ program, if a permit/endorsement is transferred, the shares automatically transfer with it; if a permit/endorsement terminates, NMFS will redistribute the shares proportionally to the current participants. **(AP Preferred)**

**Alternative 3.** Require either a reef fish for-hire permit (with or without endorsement) or a reef fish LHV permit to hold shares. Shares can only be held by US citizens or permanent resident aliens. For an IFQ program, if a participant transfers their permit/endorsement or the permit/endorsement expires, the owner must divest of their shares. For a PFQ program, if a

permit/endorsement is transferred, the shares automatically transfer with it; if a permit/endorsement terminates, NMFS will redistribute the shares proportionally to the current participants.

### **Discussion**

**Alternative 1** would be the same as for the commercial IFQ programs. A person is an individual, corporation, partnership, or other entity established under the laws of the United States or any state, or a permanent resident alien. A person who was in the program initially and received shares could continue to hold those shares after transferring the permit. This would allow shares to be held by individuals who do not participate in the type of fishing the program was designed to manage. These individuals' involvement in the program would be limited to trading shares and annual allocation.

**Alternative 2** would require shares to remain with participants in the LHV program. With an IFQ program, individuals would be required to divest their shares once notified by NMFS if they no longer participate in the LHV program. With a PFQ program, if the permit is no longer associated with the LHV program, those shares would automatically revert to NMFS and be redistributed to current participants.

With **Alternative 3**, any Gulf reef fish for-hire permit would be eligible to hold shares and receive allocation each year. Gulf reef fish for-hire permit holders that are not associated with the LHV program (i.e., no endorsement or LHV permit) would not be allowed to harvest their annual allocation but could transfer annual allocation on a yearly basis.

Under an IFQ program, the shares belong to the account holder and are not tied to the permit after initial distribution. **Alternatives 2** and **3** would require a participant to divest of their IFQ shares if they no longer possess the appropriate permit/endorsement. Under **Alternative 3**, if the account holder transfers the permit, he would be required to transfer his shares to another account with a valid for-hire permit once notified by NMFS. If the permit expires but is renewable, the account holder would have one year to renew the permit or transfer his shares to another account with a valid charter/headboat permit. If the account holder did not divest their shares as required by NMFS, NMFS would redistribute the shares to current shareholders.

Under a PFQ program, **Alternatives 2** and **3** would automatically be in effect because when a permit is transferred, the shares would stay with the permit. Also under a PFQ program, if a permit expires, the shares would no longer be available to the account holder. These shares would revert to NMFS and would be redistributed to remaining program participants.

## **2.10 Action 10. Transferability of Annual Allocation**

**Alternative 1.** No Action. Do not allow transfer of LHV annual allocation.

**Alternative 2.** Require a valid reef fish charter/headboat permit with LHV endorsement or a valid reef fish headboat permit (whichever is established in Action 4) to receive annual allocation through transfer. Annual allocation can only be transferred to US citizens or permanent resident aliens. **(AP Preferred)**

**Alternative 3.** Annual allocation can be transferred to any US citizen or permanent resident alien.

### **Discussion**

**Alternative 1** would be the most restrictive of the alternatives. Allocation would be distributed at the beginning of the year to shareholders, and no transfer would be allowed. Therefore, no one could obtain additional allocation. Obtaining extra allocation during the year is often desirable if a participant uses all of their allocation before the end of the year. If IFQ/PFQ species were caught incidental to fishing for other species, allocation could not be obtained and those species would need to be discarded. **Alternative 1** would not promote the efficient use of annual allocation because it would prevent annual allocation from flowing to their highest valued uses. **Alternative 1** would not offer program participants the flexibility to adjust their catch composition to reflect changes in the relative abundance of the species in the program or to adjust to temporary increases (or decreases) in demand for a given species or group of species in a particular region.

**Alternative 2** would keep annual allocation within the LHV program. For **Alternative 2**, only those who are eligible to harvest species included in the LHV program would be allowed to receive annual allocation through transfer.

With **Alternative 3**, any US citizen or permanent resident alien could hold allocation even without a vessel in the LHV or without a permit. However, persons holding allocation without a permit could not fish the allocation. Those individuals would only be able to receive allocation through transfer. The commercial IFQ programs do not currently have permit or participation requirements for holding allocation. During the first five years of each commercial program, allocation could only be transferred to permit holders, but now (as of 2012 for red snapper and 2015 for grouper/tilefish) anyone meeting the citizenship requirement can have an IFQ account and receive transferred allocation.

## **2.11 Action 11. Share Caps**

**Alternative 1.** No Action. Do not constrain the amount of shares that one person can hold.

**Alternative 2.** In each share category, no person shall hold more shares than the maximum percentage issued to the recipient of the largest shares at the time of the initial apportionment of shares. **(AP Preferred)**

**Alternative 3.** Across all share categories, no person shall hold more shares than the maximum percentage issued to the recipient of the largest aggregate share at the time of the initial apportionment of shares.

### **Discussion**

A person is an individual, corporation, partnership, or other entity established under the laws of the United States or any state, or a permanent resident alien. Each person's total holdings are the sum of the shares assigned to each vessel that a person owns plus their portion of the shares for

each vessel the person has an interest in (e.g., someone who owns part of a corporation). The Magnuson-Stevens Act requires NMFS to ensure that no limited access privilege holder acquires an excessive share of the total privileges in the program. Thus, **Alternative 1** would not meet the requirements of the Magnuson-Stevens Act.

For each species (share category), **Alternative 2** would cap the maximum share a participant can hold to the percentage issued to the recipient of the largest shares at the time of the initial apportionment. **Alternative 2** could result in a different maximum percentage for each share category in the program, depending on the amount of share initially distributed to the largest shareholder. For a given species, **Alternative 2** would allow all participants, except the one who received the greatest amount of shares, to increase their holdings by acquiring additional shares. The commercial IFQ programs follow **Alternative 2**, although the commercial red snapper IFQ program only has one species.

**Alternative 3** would set an aggregate share cap across all species (share categories). For example if a participant received 1% of 100,000-lb quota for species A and 2.5% of a 200,000-lb quota for species B, the aggregate shareholding would be 2.0% of a 300,000-lb total. By setting an aggregate cap, **Alternative 3** would likely prevent a single entity from holding the largest percentage in each share category. **Alternatives 2** and **3** could be implemented jointly, thereby setting species-specific caps as well as an aggregate cap.

## 2.12 Action 12. Allocation Caps

**Alternative 1.** No Action. Do not constrain the amount of allocation that one person can hold.

**Alternative 2.** At any point in time, a person's total holdings (from all accounts) cannot be more than the maximum holdings attributed to a person (as determined in Action 11) in **each species category.** (AP Preferred)

**Alternative 3.** At any point in time, a person's total holdings (from all accounts) cannot be more than the aggregate maximum holdings attributed to a person (as determined in Action 11) **across all species categories.**

### Discussion

A person is an individual, corporation, partnership, or other entity established under the laws of the United States or any state, or a permanent resident alien. Each person's total holdings are the sum of the allocation assigned to each vessel that a person owns plus their portion of the allocation for each vessel the person has an interest in (e.g., a shareholder in a corporation). The Magnuson-Stevens Act requires NMFS to ensure that no limited access privilege holder holds, acquires, or uses an excessive share of the total privileges in the program. Therefore, **Alternative 1** would not meet the requirements of the Magnuson-Stevens Act.

**Alternative 2** sets a cap for each species on the amount of allocation a person can hold at any one point in time during the fishing year. If a person reaches the allocation cap, and uses or transfers a portion of their allocation, more allocation could subsequently be acquired during the

calendar year. The commercial grouper/tilefish IFQ program follows **Alternative 2**. The commercial red snapper IFQ program does not have a cap on allocation because the version of the Magnuson-Stevens Act in effect at the time of the program's implementation did not require one. To avoid requiring a participant to decrease their annual allocation, the cap would be set at the level of the total holdings by the participant with the maximum allocation amount.

**Alternative 2** could set a separate cap for each species in the program because the participant with the maximum annual allocation holdings would likely be different for each category.

**Alternative 3** sets a cap on the total amount of allocation a person can hold across all species categories at any point in time. Because it is unlikely that a given person receives the highest annual allocation for each of the species included in the LHV program, **Alternative 3** would prevent a given participant from holding the greatest amount of annual allocation in all species categories. To mitigate the amount of control a single participant could have on the resources allocated to the LHV program, **Alternatives 2 and 3** could be implemented jointly, setting a species-specific cap as well as an aggregate maximum.

### 2.13 Action 13. Retaining Annual Allocation before a Quota Reduction

**Alternative 1.** No Action. Distribute 100% of annual allocation to IFQ shareholders on January 1 of each year.

**Alternative 2.** If the quota for a species is anticipated to decrease after January 1, the RA has the authority to retain the anticipated amount of decrease during distribution of allocation for that species at the beginning of the year. If the decrease does not occur, the amount retained will be distributed as soon as possible. **(AP Preferred)**

#### Discussion

This action addresses a decrease in the LHV ACL and quota that may happen after the first of the year. After allocation is distributed to shareholders on January 1, taking any back would be impossible if participants have landed all or some of their allocation or have transferred allocation to another participant. Only two alternatives are presented for this action because the decision is to either retain the anticipated reduction or not. Under **Alternative 1**, NMFS would not be able to implement a quota decrease for the recreational sector until the following fishing year, unless the Council determines to withhold annual allocation through a framework action and there is sufficient time to implement the action.

A similar problem was encountered with the commercial red snapper IFQ program, and the solution was to hold back some of the quota at the beginning of the year to cover the anticipated decrease in the commercial quota<sup>4</sup>. Under **Alternative 2**, NMFS would hold back the anticipated amount that may be subtracted from the total LHV quota before distributing allocation to each shareholder at the beginning of the year. If the anticipated decrease did not

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<sup>4</sup> The hold back of commercial red snapper allocation for 2016 only was implemented through a framework action. An action to give authority to the Regional Administrator to hold back commercial allocation for IFQ species in the future is being considered in Reef Fish Amendment 36A.

occur or was less than expected, NMFS would distribute the hold back amount proportionally to shareholders. Should IFQ shares be transferred between participants during a year in which some portion of annual allocation was withheld and later distributed, the holdback amount will be distributed according to the current shareholder at the time the holdback amount is released. NMFS would only exercise this authority if the Council has approved an action that would decrease the quota, but the rule implementing the action could not be in place until after the start of the year.

## 2.14. Action 14. Cost Recovery Fees

**Alternative 1.** No Action. Cost recovery fees will not be collected.

**Alternative 2.** For each participant, cost recovery fees will be based on a **standard price** per pound (or per fish) of a given species multiplied by the number of pounds (or of fish) harvested by the participant during the specified time period. The **standard price** will be equal to (**AP Preferred**):

**Option a:** the commercial ex-vessel price (**AP Preferred**)

**Option b:** the average price of annual allocation

**Alternative 3.** Cost recovery fees will be calculated as follows: Total fees paid per trip and total pounds (or number of fish) of all species harvested must be reported. The total fees will be divided by the total pounds (or number of fish) of all species harvested to achieve a price per pound (or per fish). The price per pound (or per fish) will be multiplied by the pounds (or number of fish) of covered species (species in the program) **harvested** to achieve the total value. The cost recovery fee will be up to 3% of the total value.

### Discussion

**Alternative 1** would not conform to Magnuson-Stevens Act cost recovery provisions. The Magnuson-Stevens Act requires that LAPPs include provisions to recover the incremental costs of management, monitoring, data collection and analysis, and enforcement. This includes the cost of computer systems necessary to manage the disbursement and tracking of annual harvest privileges, as well as observer and enforcement programs. The Magnuson-Stevens Act limits cost recovery fees to 3% of the value of the fish harvested under the program. Fees collected must be in addition to any other fees charged under the Magnuson-Stevens Act and must be deposited in the Limited Access System Administration Fund established under Section 305(h)(5)(B) of the Magnuson-Stevens Act. In the commercial IFQ programs, the fees are calculated during sale, deducted from the seller's check, and submitted by the dealer to NMFS on a quarterly basis. Because headboats do not sell fish, the program participants would be responsible for submitting the fees directly to NMFS.

**Alternative 2** would require the specification of standard prices. NMFS would publish, at regular intervals, standard prices (per pound or per fish) by species to be used for cost recovery purposes. These standard prices would be determined based on commercial ex-vessel prices (**Option a**) or average prices of annual allocations (**Option b**). For **Option b**, if annual

allocation prices for species categories in the LHV program are not available, an average annual allocation price derived from commercial IFQ programs could be used as a temporary proxy. For each species included in the LHV program, cost recovery fees to be submitted by a participant cannot exceed 3% of the total dollar amount calculated by multiplying the standard price by the pounds (or numbers) of fish harvested by the participant's vessel(s) during the specified time interval. The exact percentage to collect will be determined by NMFS based on reasonable estimates of costs incurred to administer the program. The percentage withheld would be adjusted as the costs estimates are refined.

**Alternative 3** would require program participants to report total fees collected for each trip. The percentage to be recovered, up to a maximum of 3%, will be determined by NMFS based on estimates of costs incurred to administer the LHV program. **Alternative 3** would use the actual fees paid by passengers and the amount of fish harvested as the price basis. The fees for each trip would need to be reported, as well as the amount of all fish caught of all species. For **Alternative 3**, actual weights or the number of fish harvested would be needed. Dividing the total fees by the total number or weight of all retained fish would give a price per unit (pound or fish). These prices would be based on all fish harvested, even if they are not species in the LHV program, because those fish have value to the fishermen as well. However, the 3% cost recovery fee would only be assessed on species in the LHV program. Compared to Alternative 2, Alternative 3 may lead some vessel operators to underreport the passenger fees collected to minimize their cost recovery burden. Numerical examples illustrating **Alternative 3** (for pounds and number of fish) are provided below.

**Alternative 3** Example (pounds of fish):

Total passenger fees = \$5,000  
Total pounds of all species harvested = 1,000 lb  
Price per pound =  $\$5,000 / 1,000 \text{ lb} = \$5/\text{lb}$   
Total pounds of LHV Program Species harvested = 500 lb  
Value of LHV Program Species =  $\$5/\text{lb} \times 500 \text{ lb} = \$2,500$   
Cost Recovery Fee =  $\$2,500 \times 0.03 = \$75$

**Alternative 3** Example (number of fish):

Total passenger fees = \$5,000  
Total number of all species harvested = 100 fish  
Price per fish =  $\$5,000 / 100 \text{ fish} = \$50/\text{fish}$   
Total LHV Program Species harvested = 50 fish  
Value of LHV Program Species =  $\$50/\text{fish} \times 50 \text{ fish} = \$2,500$   
Cost Recovery Fee =  $\$2,500 \times 0.03 = \$75$

## 2.15. Action 15. New Entrants

**Alternative 1.** No Action. No additional endorsements to the reef fish for-hire permit or reef fish LHV permits (whichever is established in Action 4) will be issued. To participate in the LHV program, a vessel owner must obtain an endorsement to the reef fish for-hire permit or a reef fish LHV permit (whichever is established in Action 4) from a current participant.

**Alternative 2.** At the beginning of each calendar year, vessels with valid federal Gulf for-hire reef fish permits that are not participating in the LHV program may be issued an endorsement to the reef fish for-hire permit or a reef fish LHV permit (whichever is established in Action 4). To be able to start participating in the LHV program at the beginning of the year, potential new entrants would have to apply for an endorsement or permit before the beginning of the year. The amount of lead time required will be determined by NMFS permit office. Receiving an endorsement or a reef fish headboat permit (whichever is established in Action 4) does not grant shares or annual allocation to the recipient. Furthermore, as all participants in the LHV program, these recipients have can only fish on the LVH quotas.

**Alternative 3.** At any time of the year, vessels with valid federal Gulf for-hire reef fish permits that are not participating in the LHV program may be issued an endorsement to the reef fish for-hire permit or a reef fish LHV permit (whichever is established in Action 4). However, the endorsement or LHV permit will not be effective until the beginning of the next fishing year. Receiving an endorsement or a reef fish LHV permit (whichever is established in Action 4) does not grant shares or annual allocation to the recipient.

**Alternative 4.** At the beginning of each calendar year, vessels with valid federal Gulf for-hire reef fish permits that are not participating in the LHV program are eligible to apply for an endorsement to the reef fish for-hire permit or for a reef fish headboat permit (whichever is established in Action 4) if the vessels are selected to participate in the Southeast Region Headboat Survey. This would be limited to vessels that carry over 49 passengers. Receiving an endorsement or a reef fish LHV permit (whichever is established in Action 4) does not grant shares or annual allocation to the recipient. **(AP Preferred)**

## Discussion

**Alternative 1** would not allow entries into the LHV program outside of endorsement/permit transfers. Therefore, **Alternative 1** would cap the total number of participants in the LHV program at the number set of participants identified during the implementation phase of the program.

**Alternatives 2-4** would allow the number of participants in the LHV program to expand over time by allowing new entrants other than those who elected to join the program by acquiring LHV endorsements or permits through transfer. **Alternative 2** would let prospective participants in the LHV program apply for an endorsement at the beginning of each calendar year. Depending on the number of applicants, **Alternative 2** could result in delays in the issuance of LHV endorsements or permits. Although the LHV endorsements or permits would only be valid starting January 1 of the calendar year following the year of application, **Alternative 3** would allow applicants to request an endorsement or permit at any time during a year. Therefore, **Alternative 3** would allow NMFS to issue LHV endorsements or permits on a more manageable timetable and could mitigate delays in processing applications that could result from **Alternative 2**. **Alternative 4** would restrict the eligibility to apply for an endorsement or a reef fish LHV permit (whichever is established in Action 4) to vessel that carry over 49 passengers and limit application period to the beginning of each year.



**Alternatives 2-4** would not grant shares or annual allocation to new entrants. Once a prospective applicant receives a LHV endorsement or permit, she would be responsible for acquiring shares or annual allocation to be able to harvest reef fish species included in the LHV. It is also noted that once a new entrant receives an LHV endorsement or permit, he would de facto forego opportunities to harvest LHV-managed species as a for-hire operator. To prevent new entrants from fishing as members of the for-hire component and as participants in the LVH program during the same calendar year, newly issued endorsements to the reef fish for-hire permit or reef fish LHV permits (whichever is established in Action 4) would not be valid until the first of the year.

# APPENDIX A: HEADBOAT AP MEETING SUMMARIES

## Motions Report for the Ad Hoc Headboat Reef Fish Advisory Panel Tampa, FL May 3-4, 2016

<u>Panel Members</u>	<u>Council and Staff</u>	<u>Attendance-Others</u>
Pam Anderson	Pam Dana	Ken Anderson
Randy Boggs	Assane Diagne	Susan Gerhart
Clifton Cox	Ava Lasseter	Tim Hobbs
James Green	Charlotte Schiaffo	Britni LaVine
Chad Haggert	Carrie Simmons	Rich Malinowski
Mark Hubbard		Jessica Stephen
Charles Paprocki		Andy Strelcheck
Eric Schmidt		Mike Travis
Skipper Thierry		Daniel Willard
Dustin Trochesset		
John Williams		

Recommendations provided by the Advisory Panel are detailed below. Failed or withdrawn motions are listed at the end of this report. In addition to the motions report, verbatim minutes are provided in **Tab B, No. 12(b)**.

**Motion:** The AP recommends that the headboat component be managed by establishing an IFQ program to be implemented by referendum vote of the Gulf headboats that participate in the SE headboat survey program with a 1-federal permit, 1-vote status.

**Motion passed 7-2, with 1 abstention.**

**Motion:** The AP moves to make Preferred Alternative 3 (In Action 2): *Include red snapper, gray triggerfish, greater amberjack, gag, and red grouper in the management program*, the alternative.

**Motion passed 9-1.**

**Motion:** The AP moves to make Alternative 1 (in Action 3) - No Action. *All HBSV as of December 31, 2015 must participate in the program*, the Preferred Alternative.

**Motion passed 7-1, with 2 abstentions.**

**Motion:** The AP moves to make Alternative 2, (in Action 4) - *Establish an endorsement for HBSV*, the Preferred Alternative.

**Motion passed unanimously.**

**Motion:** The AP moves to have Alternative 4, Option a (in Action 5) be the Preferred Alternative.

**Motion passed unanimously.**

**Motion:** The AP moves that in Action 6 a new Alternative, 3, be added that distributes pounds to the shareholder account and distributes fish for each vessel in accordance to the port average weight of each species.

**Motion passed unanimously.**

**Motion:** The AP moves to make Alternative 4 (In Action 7.1), *For each species, the apportionment is based on the most recent five years (2011-2015) omitting the year with the lowest landings*, as the Preferred Alternative.

**Motion passed 10-1.**

**Motion:** The AP moves that Alternative 3 in Action 7.2 be moved to considered, but rejected.

**Motion passed unanimously.**

**Motion:** The AP moves to reconsider the previous motion passed on Action 7.1.

**Motion passed 9-1, with 1 abstention.**

**Motion:** The AP moves that Alternative 5, *For each species, the apportionment is based on the year with the highest landings during the most recent five years (2011-2015)*, in Action 7.1, be the Preferred Alternative.

**Motion passed unanimously.**

**Motion:** The AP moves that Alternative 2, (Option b), *Distribute 25% of initial shares for each species equally among HBSV permit holders participating in the program and distribute 75% of the initial shares proportionally*, in Action 7.2 be the Preferred Alternative.

**Substitute Motion:** The AP moves that Alternative 2, (Option a), *Distribute 0% of initial shares for each species equally among HBSV permit holders participating in the program and distribute 100% of the initial shares proportionally*, in Action 7.2 be the Preferred Alternative.

**Substitute Motion passed with 3 abstentions.**

**Motion:** The AP moves that Alternative 2, *Require a valid reef fish for-hire permit with HBSV endorsement, or a reef fish headboat permit (whichever is established in Action 4) to receive shares through transfer. Shares can only be transferred to US citizens or permanent resident aliens*, be the Preferred Alternative in Action 8.

**Motion passed unanimously.**

**Motion:** The AP moves to have Alternative 2, In Action 9, *To hold shares, require a reef fish for-hire permit with HBSV endorsement, or a reef fish headboat permit (whichever is established in Action 4). Shares can only be held by US citizens or permanent resident aliens. IFQ: If a*

*participant transfers their permit or the permit expires, the owner must divest of their shares. PFQ: If a permit is transferred, the shares automatically transfer with it; if a permit terminates, NMFS will redistribute the shares proportionally to the current participants, be the Preferred Alternative.*

**Motion passed unanimously.**

**Motion:** The AP moves to have Alternative 2 in Action 10, *Require a valid reef fish for-hire permit with HBSV endorsement or a valid reef fish headboat permit (whichever is established) to receive annual allocation through transfer. Transfers to US citizens or permanent resident aliens, be the Preferred Alternative.*

**Motion passed unanimously.**

**Motion:** The AP moves to have Alternative 2, in Action 11, *In each species category, no person shall own more shares than the maximum percentage issued to the recipient of the largest shares at the time of the initial apportionment of shares, be the Preferred Alternative*

**Motion passed unanimously.**

**Motion:** The AP moves to have Alternative 1 in Action 12, *No Action. Do not constrain the amount of allocation that one person can hold, be the Preferred Alternative.*

**Substitute Motion:** The AP moves to have Alternative 2 in Action 12, *Each person's total holdings (from all accounts) cannot be more than the maximum holdings attributed to a person (as determined in Action 11) in each species category at any point in time, be the Preferred Alternative.*

**Substitute Motion passed 6-5.**

**Motion:** The AP moves to request that Council make Alternative 2 (option a) in Action 13, *Only distribute allocation during the year in which a quota increases. If the quota for a species increases within a year, distribute the increased allocation to all participants holding shares for that species on or near the effective date of the increase, based on the option chosen.*

*Option a. Distribute the allocation increase proportionally to all participants holding shares for that species based on shareholdings when the increase is effective, be the Preferred Alternative.*

**Motion passed unanimously.**

**Motion:** The AP moves that Alternative 5 in Action 13, *If the quota for a species is anticipated to decrease, the RA has the authority to hold back the anticipated amount of decrease during distribution of allocation for that species at the beginning of the year. If the decrease does not occur, the amount held back will be distributed as soon as possible, be the Preferred Alternative.*

**Motion passed 8-2, with 1 abstention.**

**Motion:** The AP moves to support cost recovery as required by the MSA. The AP would like the Council's input on the cost recovery to the extent required.

**Motion passed 9-2.**

**Motion:** The AP moves to add a new Action, with Alternative 3, as the Preferred Alternative, *to allow a provision for new entrants at the beginning of each calendar year, vessels with valid federal Gulf for-hire reef fish permits that are not participating in the HBSV program are eligible to apply for an endorsement to the reef fish for-hire permit or for a reef fish headboat permit (whichever is established in Action 4) if the vessels are selected to participate in the Southeast Region Headboat Survey.* This would be limited to vessels that carry over 49 passengers.

**Motion passed 10-1.**

**Motion:** That the Council reconvene this AP once they have a chance to go through this document.

**Motion passed unanimously.**

**FAILED or WITHDRAWN MOTIONS**

**Motion:** The AP moves to make an additional alternative (in Action 1) for staff to analyze benefits and costs of an observer program for headboats as an additional type of recreational program.

**Motion failed 3-6.**

**Substitute Motion:** The AP recommends that the headboat component be managed by establishing an IFQ program to be implemented by referendum vote deemed necessary by the MSA and the Gulf Council with a 1-federal permit, 1-vote status.

**Substitute Motion failed 1- 8, with 2 abstentions.**

**Second Substitute Motion:** The AP moves to have Alternative 1 in Action 1 be the Preferred Alternative.

*No Action. Continue to manage the reef fish species included in the headboat management program using recreational seasons, size limits, and bag limits.*

**Second Substitute Motion failed 3-8.**

**Substitute Motion:** The AP moves to make Alternative 2 (in Action 3) the Preferred Alternative.

**Substitute Motion failed 2-8.**

**Substitute Motion:** The AP moves to make Alternative 1 in Action 2, *No Action. Do not define reef fish species to include in the management program,* the Preferred Alternative.

**Substitute Motion failed for lack of 2<sup>nd</sup>.**

**Substitute Motion:** The AP moves that in Amendment 42-endorsements will be transferable or eligible to any vessel that meets the headboat criteria.

**Substitute Motion withdrawn.**

**Substitute Motion:** The AP moves that the apportionment of each initial share among eligible participants be based on the average landings per vessel during 2011-2015. The AP recommends that Alternative 3 in Action 7.2 be moved to considered, but rejected.

**Substitute Motion withdrawn.**

**Substitute Motion:** The AP moves that a valid reef fish permit be required to receive shares through a transfer. Shares can only be transferred to those who own a headboat endorsement.

**Substitute Motion withdrawn.**

**Substitute Motion:** To move Action 12, Allocation Caps, to considered but rejected.

**Substitute Motion withdrawn.**

**Summary for the Ad Hoc  
Headboat Reef Fish Advisory Panel  
New Orleans, LA  
May 19, 2015**

**Panel Members**

Pam Anderson  
Randy Boggs  
Clifton Cox  
Jim Green  
Chad Haggert  
Mark Hubbard

**Council and Staff**

Myron Fischer  
Assane Diagne  
Ava Lasseter  
Karen Hoak

**Panel Members cont'd**

Kelly Owens  
Charles Paprocki  
Tom Steber  
Skipper Thierry  
Dustin Trochesset  
John Williams

**Attendance-Others**

Jeff Barger  
Kristen McConnell  
Jessica Stephen  
Shane Cantrell  
Ken Brennan  
J.P. Brooker  
Tim Hobbs  
Elbert Whorton

The meeting was convened at 8:30 a.m. The AP elected Randy Boggs as Chair and Mark Hubbard as Vice-Chair. The Chair read the charge to the AP, which is to make recommendations to the Council relative to the design and implementation of flexible measures for the management of reef fish for the headboat component of the for-hire sector.

Ken Brennan gave a presentation on the geographical distribution of headboats participating in the Southeast survey and their reef fish landings. AP members discussed how to differentiate

charter boats and headboats and staff added that for the purpose of a management plan, headboats would be defined as those participation in the Southeast Headboat Survey (HBS).

AP members discussed the species to include in a management plan for the headboat fleet. Staff noted the reef fish species for which sector allocations currently exist and the AP passed the following motion:

- **To investigate the possibility of managing all 6 major reef fish species in this management plan (red snapper, gag, red grouper, greater amberjack, gray triggerfish, and black grouper).**

AP members discussed whether headboats should be managed as a stand-alone component and the benefits and obstacles of different management approaches. Staff noted that headboats participating in the HBS had recorded landings histories, while charter boats do not. An AP member expressed concern with further dividing the recreational sector, stating the sector will be stronger if they do not separate into subgroups, which diminishes their collective voice. The AP member added that aiming toward a year-round fishery would require catch shares, but providing flexibility for different fishing seasons could be accomplished under regional management. Other AP members preferred to be managed separately, citing the increased access provided to passengers fishing under the headboat collaborative and the flexibility of the allocation-based headboat collaborative which allows operators to decide when to fish and use quota. The AP passed the following motions:

- **That headboats be acknowledged as a stand-alone component of the recreational sector. This would include all vessels with federal for-hire reef fish permits that participate in the Southeast Region Headboat Survey (Beaufort survey).**
- **To recommend to the Council to develop a management approach that provides year round fishing opportunities for headboat businesses and anglers, stability in business plans, safety at sea, improved data collection, reduced discards, and accountability to catch limits.**
- **To recommend to the Council that the headboat management plan be allocation based on reported landings by the Beaufort headboat survey (HBS).**

AP members discussed enforcement and validation tools, such as vessel monitoring systems (VMS) or fish tags. Those opposed to VMS felt it was expensive and unnecessary for hailing out and hailing in, especially for headboats which follow tight, predictable schedules, and that other options were available. Other AP members responded to those concerns, noting the reliability of the VMS units and flexibility to use other options for hailing in. The AP passed the following motion:

- **To recommend to Council that enforcement tools for monitoring are:**
  - **VMS used for hail-out/hail-in on all trips, landings notification on fishing trips**
  - **Tags used to improve enforcement**
  - **Electronic logbooks submitted to the Beaufort survey on the same day as each fishing trip.**

AP members discussed the transferability of allocation under an allocation-based management system. Concern was expressed that transferability could result in increased costs for passengers to retain fish, and that allocated fish should not be purchasable by other vessels, but be returned and be redistributed fairly. Those in support of transferability argued it allowed for flexibility in the management plan. The AP also discussed management costs of a new headboat management plan. The AP passed the following motions:

- **The advisory panel supports transferability of headboat allocations among participants in the headboat component, consistent with MSA guidelines on transferability, but without inter-sector trading.**
- **To recommend to the Council to consider how management costs can be shared between the NMFS and the headboat component of the fishery.**

Staff noted that both the Ad Hoc Charter AP and this Ad Hoc Headboat AP passed motions recommending separate management of charter boats and headboats. To accomplish separate management, the for-hire component's quota would need to be divided between charter boats and headboats. Headboats that participate in the HBS have landings histories which could be used as the basis for allocating between the for-hire components and an AP member stated that headboats have accounted for 32 to 36% of red snapper landings. The AP passed the following motions:

- **To recommend to the Council that the headboat component become a subsector of the for-hire sector/component, and that allocation based fisheries be deemed from our historical Beaufort headboat survey data, using the formula from Amendment 40.**
- **To recommend to the Council that this panel reconvenes as soon as possible to continue advising on the headboat component for the reef fish fishery.**

Continuing to manage headboats with bag limits, size limits, and seasons was discussed, but those opposed stated that traditional management approaches have not worked. Additional discussion concerned identifying data needs and improving accountability for the fleet, with the goal of reducing uncertainty and removing the 20% buffer to the recreational quota. AP members asked headboat collaborative participants about the program, including customer perceptions, use of tags, and bag limits. An AP member noted that one of the challenges of the program was that more people could not participate. The AP passed the following motion:

- **To recommend to the Council that the key components of the headboat EFP be considered for allocation-based management of headboats.**

Following review of their recommendations, the AP meeting was adjourned at 3:30 pm.



**All meeting motions including substitute and failed motions:**

Motion: That red snapper and gag grouper be the primary species that this management plan encompasses.

Substitute motion: To investigate the possibility of managing all 6 major reef fish species in this management plan (red snapper, gag, red grouper, greater amberjack, gray triggerfish, and black grouper)

**Substitute Motion carried 8 to 3**

Motion: That headboats be acknowledged as a stand-alone component of the recreational sector. This would include all vessels with federal for-hire reef fish permits that participate in the Southeast Region Headboat Survey (Beaufort survey).

**Motion carried 11 to 1**

Motion: To recommend to the Council to develop a management approach that provides year round fishing opportunities for headboat businesses and anglers, stability in business plans, safety at sea, improved data collection, reduced discards, and accountability to catch limits.

**Motion carried 11 to 1**

Motion: To recommend to the Council that the headboat management plan be allocation based on reported landings by the Beaufort headboat survey (HBS).

**Motion carried 10 to 2**

Motion: To recommend to Council that enforcement tools for monitoring are:

- VMS used for hail-out/hail-in on all trips, landings notification on fishing trips
- Tags used to improve enforcement
- Electronic logbooks submitted to the Beaufort survey on the same day as each fishing trip

**Motion carried 8 to 4**

Substitute motion: To recommend to the Council that enforcement tools, an app, or a traditional logbooks be used, with a call-in/call-out component that do not require VMS.

Motion failed 4 to 7

Second substitute motion: To use an allocation based management system, that a VMS system will be required. With a traditional management system (size limits, bag limits, seasons, etc.) that VMS not be required.

Motion failed for lack of a second

Motion: The advisory panel supports transferability of headboat allocations among participants in the headboat component, consistent with MSA guidelines on transferability, but without inter-sector trading.

**Motion carried 11 to 1**

Substitute motion: That if the Council chooses to move towards an allocation based management system, that there will not be a monetary value assigned to the allocation for transferability.

Motion failed 10 to 2

Motion: To recommend to the Council to consider how management costs can be shared between the NMFS and the headboat component of the fishery.

**Motion carried 9 to 2**

Motion: To recommend to the Council that the headboat component become a subsector of the for-hire sector/component, and that allocation based fisheries be deemed from our historical Beaufort headboat survey data, using the formula from Amendment 40.

**Motion carried 11 to 1**

Motion: To recommend to the Council that this panel reconvenes as soon as possible to continue advising on the headboat component for the reef fish fishery.

**Motion carried with no opposition**

Motion: To recommend to the Council to manage the headboat fleet with seasons, bag limits, and size limits along with additional appropriate accountability measures, allowing scientists to determine what data they need, and applying that request of data to the current headboat survey.

Motion failed 2 to 9

Motion: To recommend to Council that a management plan for the headboat sector be designed closely mirroring the headboat EFP.

Motion carried 10 to 2

Motion: to reconsider prior motion

**Motion carried 7 to 3**

Substitute Motion: To recommend to the Council that the key components of the headboat EFP be considered for allocation-based management of headboats.

**Revised Substitute Motion carried 8 to 3**

## APPENDIX B: ALTERNATIVES CONSIDERED BUT REJECTED

### Action 13-1. Distribution of Quota Increases

**Alternative 1.** No Action. If the quota for a species increases after January 1, distribute the increased allocation proportionally to *all participants holding shares for that species*. The distribution will occur on the effective date of the increase or as soon as possible thereafter.

**Alternative 2.** If the quota for a species increases after January 1, distribute the increased allocation equally to *all participants holding shares for that species*. The distribution will occur on the effective date of the increase or as soon as possible thereafter.

**Alternative 3.** If the quota for a species increases after January 1, distribute the increased allocation equally to *participants who do not hold shares for that species* but hold an endorsement to the reef fish for-hire permit or a reef fish LHV permit (whichever is established in Action 4). The distribution will occur on the effective date of the increase or as soon as possible thereafter.

**Alternative 4.** If the quota for a species increases after January 1, distribute the increased allocation equally to *all participants* that hold an endorsement to the reef fish for-hire permit or a reef fish LHV permit (whichever is established in Action 4). The distribution will occur on the effective date of the increase or as soon as possible thereafter.

*Note: Under any of these alternatives, each participant's shares will not change. At the beginning of the next year and each year thereafter, the entire quota (including any in-season increase) will be distributed proportionally based on the current shareholdings.*