



# REPORT TO CONGRESS

## SECTION 102 OF THE MODERNIZING RECREATIONAL FISHERIES MANAGEMENT ACT OF 2018

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*Developed pursuant to: Modernizing Recreational Fisheries Management  
Act of 2018 (Public Law 115-405)*

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MODERNIZING RECREATIONAL FISHERIES MANAGEMENT  
ACT OF 2018 (PUBLIC LAW 115-405) INCLUDED THE FOLLOWING LANGUAGE

*Report.—Not later than 180 days after the date of enactment of this Act, the Secretary of Commerce shall submit to the appropriate committees of Congress a report that describes any actions pursuant to paragraph (8) of section 302(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(h)), as added by subsection (a).*

THIS REPORT RESPONDS TO THIS CONGRESSIONAL REQUEST.

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## **I. EXECUTIVE SUMMARY**

Section 102 of the Modernizing Recreational Fisheries Management Act of 2018 (Modern Fish Act) amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to explicitly grant Regional Fishery Management Councils (Councils) the authority to use fishery management measures in managing recreational fisheries, such as extraction rates, fishing mortality targets, harvest control rules, and traditional or cultural practices of native communities. The use of flexible and adaptable management tools such as these for meeting the needs of the recreational fishing sector is strongly supported by the National Oceanic and Atmospheric Administration (NOAA). This report provides examples of actions that demonstrate how NOAA and the Councils can use such management approaches to meet the nuanced and varied needs of America's recreational fishing communities while adhering to the legal requirements of the MSA.

## **II. INTRODUCTION**

Section 102(a) of the Modern Fish Act amends the MSA by providing Councils with the authority to use fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery) in developing a fishery management plan, plan amendment, or proposed regulations, such as extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities in such fishery or fishery component.

Section 102(a) specifies that, in addition to having the authority to use these fishery management measures, a Council must comply with the standards and requirements under MSA section 302(h)(6) to develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process. The Council must also comply with Sections 301(a) (National Standards for Fishery Conservation and Management); 303(a)(15) (annual catch limits and accountability measures); and 304(e) (rebuilding requirements); and other applicable provisions of the MSA.

Furthermore, Section 102(b) of the Modern Fish Act requires the Secretary of Commerce to submit a report to the appropriate congressional committees that describes any actions pursuant to this section of the act.

This report fulfills the Modern Fish Act Section 102(b) requirement.

## **III. BACKGROUND**

Section 102 of the Modern Fish Act amended the MSA to explicitly grant Councils the authority to use certain fishery management measures in managing recreational fisheries such as extraction rates, fishing mortality targets, harvest control rules, and traditional or cultural practices of native communities.

The use of flexible and adaptable management tools such as these for meeting the needs of the recreational fishing sector is strongly supported by the National Oceanic and Atmospheric

Administration (NOAA). Extraction rates, fishing mortality targets, and harvest control rules have become essential components of Fishery Management Plans (FMP) throughout the Nation. For example, annual catch limits (ACL), as mandated by the MSA, are the principal fishing mortality targets around which FMPs are constructed. The standard approach for setting an ACL for a managed stock is dependent on other mortality targets, extraction rates, and control rules.

Specifically, where data are available, the development of an ACL begins with an estimate of the maximum fishing mortality threshold (MFMT), an extraction rate defined as the level of fishing mortality above which overfishing is considered to be occurring. The MFMT for a stock is applied to an assessment of stock abundance to convert the threshold from a rate into a level of catch, expressed as a number or weight of fish that may be caught without overfishing [the overfishing limit (OFL)]. The acceptable biological catch (ABC) is a fishing mortality target calculated by reducing OFL by an amount that accounts for scientific uncertainty. Similarly, ACL for a stock is derived from the ABC by reducing it by an amount that accounts for management uncertainty. These reductions are sometimes referred to as buffers and are determined by the harvest control rules developed for each stock. A control rule is a policy for establishing a limit or target catch level that is based on the best scientific information available. Control rules often take the form of formulas for calculating ABCs or ACLs and are influenced by a Council's risk policy, which may consider the economic, social, and ecological trade-offs between being more-or-less risk averse.

The National Standards for Fishery Conservation and Management (MSA Section 301) provide the statutory principles of Federal fisheries management. Sections 102 and 301 of the Modern Fish Act state that the recreational fishery management measures it describes must comply with the National Standards, the requirements for developing ACLs and accountability measures, rebuilding requirements, and other applicable provisions of the MSA. The Secretary of Commerce determines whether proposed fishery management measures are consistent with the National Standards, other provisions of the MSA, and other applicable law.

The explicit reference to the terms “extraction rates, fishing mortality targets, harvest control rules, and traditional or cultural practices of native communities” in the Modern Fish Act is beneficial in that it provides clear authority for the Councils to use these measures. A number of Councils have implemented some of the features of the Modern Fish Act even though explicit statutory authority for these measures was not provided until passage of this new law. This report includes examples from each region showing how such management approaches have been used to respond to the needs of the saltwater recreational community. These and other examples may serve as a valuable source of information for Councils that are considering revising their approaches for managing the recreational fisheries pursuant to the Modern Fish Act.<sup>1</sup>

#### **IV. EXAMPLES OF FLEXIBLE MANAGEMENT APPROACHES IN RECREATIONAL OR MIXED-USE FISHERIES**

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<sup>1</sup> The agency's National Standard 1 Guidelines (50 C.F.R. § 600.310) provide a framework for how Councils can use the tools described in Section 102 of the Modern Fish Act.

## **A. Greater Atlantic**

In 2013, the Mid-Atlantic Fishery Management Council revised its accountability measures for recreational Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass fisheries to moderate the impact of ACL paybacks. The previous accountability measures required that recreational catch in excess of a given year's recreational ACL be paid back by reducing the following year's ACL on a pound-for-pound basis. Such a system was more severe than necessary for stocks that were neither overfished nor subject to overfishing.

Accordingly, the Mid-Atlantic Council developed conditional recreational accountability measures that allow paybacks to vary depending on the status of the stock and the degree of the overage. Under the revised framework, overages for overfished stocks would still be paid back pound-for-pound, and overages for healthy stocks that were not in excess of the ABC would instead result in adjustments to management measures, rather than a payback. Additionally, in cases where the ABC was exceeded and the stock was not overfished or experiencing overfishing, payback would be scaled depending on the stock's biomass, rather than deducted pound-for-pound. Scaled paybacks are designed such that the magnitude of the payback decreases as the stock biomass increases. The intent of such a design is to minimize the impacts of paybacks for healthy stocks, while still accounting for the biological consequences of overages.

Additionally, the following actions in the Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda) feature some of the fishery management measures described in Section 102 in recreational or mixed-use fisheries.

- Framework Adjustment 59 to the Northeast Multispecies Fishery Management Plan, RIN: 0648-BJ12
- Amendment 21 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, RIN: 0648-BJ16
- Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, RIN: 0648-BI49
- Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, RIN: 0648-BJ18
- Framework 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, RIN: 0648-BI93

## **B. Southeast**

The South Atlantic Fishery Management Council uses extraction rates and fishing mortality targets to set limited fishing seasons for South Atlantic red snapper. Season lengths are based on projected landings and the catch rates of previous years. With input from the recreational fishing community, the South Atlantic Council divides the recreational season across multiple weekends to allow for greater participation by anglers. The season lengths are announced in advance and are designed to minimize

adverse socioeconomic impacts on fishing communities that utilize red snapper while continuing to rebuild the stock.

The South Atlantic Council also has conditional recreational accountability measures for snapper-grouper species that allow paybacks to vary depending on whether or not the stock is overfished. Additionally, the Council is considering revisions to its ABC control rules that would allow for unused portions of ACLs to be carried over for use in the following year. In some recreational fisheries, in-season fishery closures may be implemented based on preliminary landings data and effort estimates. As additional data are collected and analyzed after the season, it may be determined that some amount of ACL was ultimately not harvested. A mechanism for carrying over some of the unused quota to the following year could enable the Council to increase fishing opportunity for recreational anglers while continuing to prevent overfishing. Carry-over provisions like the ones being considered by the South Atlantic Council are designed to relieve the pressure to catch the entire ACL each year. This helps reduce the incentive to fish in unsafe situations and reduces the likelihood that an ACL is exceeded as fishermen try to catch every last pound.

The Gulf of Mexico Fishery Management Council is looking into the possibility of getting annual updates to assessments for some species that would allow for more timely adjustments to ACLs in response to changes in stock size. Such adjustments could help avoid early closures resulting from increases in stock abundance and catch frequency.

In 2010, the Caribbean Fishery Management Council began to reorient FMPs for the fisheries under its authority from a species-based model to an island-based model. The new, island-based approach divides the U.S. Caribbean into three sectors: Puerto Rico, St. Croix, and St. Thomas/St. John. Each island group receives its own FMP for each managed species or species group, including harvest control rules and sector-specific mortality targets in some cases. This shift was built on the premise that social, economic, and cultural practices differed substantially among the islands so that the island groups needed separate management plans. The new plans were developed with input from the District Advisory Panels for each island group, which are composed of representatives from both commercial and recreational fisheries, along with representatives of the SCUBA community, business owners, and local management agencies. This island-based, inclusive process has enabled the Caribbean Council to employ management measures that better match the traditional and cultural needs of the people and ecosystems it serves.

Additionally, the following actions in the Unified Agenda feature some of the fishery management measures described in Section 102 in recreational or mixed-use fisheries.

- Comprehensive Fishery Management Plan for Puerto Rico, RIN: 0648-BD32
- Comprehensive Fishery Management Plan for St. Croix, RIN: 0648-BD33
- Comprehensive Fishery Management Plan for St. Thomas/St. John, RIN: 0648-BD34
- Vision Blueprint Commercial Regulatory Amendment 27 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, RIN: 0648-BI32



- Regulatory Amendment 26 to the Snapper-Grouper Fishery Management Plan, RIN: 0648-BI33
- Regulatory Amendment 29 to the Snapper Grouper Fishery Management Plan, RIN: 0648-BI81
- Modifications to Gulf of Mexico Migratory Group Cobia Size and Possession Limits, RIN: 0648-BI83
- Amendments 50A-F to the Fishery Management Plan for Reef Fish in the Gulf of Mexico, RIN: 0648-BI84
- Reduce Gulf of Mexico Red Grouper Annual Catch Limits and Annual Catch Targets, RIN: 0648-BI63
- Framework Action to Reduce Gulf of Mexico Red Grouper Annual Catch Limits and Annual Catch Targets to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, RIN: 0648-BI95

### **C. West Coast**

The groundfish harvest control rules set by the Pacific Fishery Management Council contributed to the successful rebuilding of many overfished West Coast groundfish stocks. Several stocks of groundfish that had been declared overfished were rebuilt years ahead of schedule. Of particular note is the case of the bocaccio stock in California, which has in recent years been primarily targeted by the recreational sector.

Bocaccio was declared overfished in 1999 and a rebuilding plan was implemented that curtailed both recreational and commercial harvest. During rebuilding, recruitment was monitored closely and found to be exceeding estimated growth rates. This was in part due to the nature of bocaccio productivity, which is characterized by large episodic recruitment events. Such events are difficult to predict, and as the juveniles produced by such events mature, the corresponding increase in adult abundance can lead to spikes in catch rates. The Pacific Council used the flexibility afforded under the rebuilding plan requirements of the MSA to adjust the harvest control rule for bocaccio in a way to provide a buffer for sudden increases in abundance, while still supporting rebuilding, which minimized potential disruptions in the fishery. This allowed for recreational fishing to continue throughout the rebuilding process, while still achieving rebuilt status in 2017, 5 years ahead of schedule.

### **D. Alaska**

In Alaska, the North Pacific Fishery Management Council and the International Pacific Halibut Commission (IPHC) manage Pacific halibut using a catch share system. In certain IPHC geographic areas, two innovative programs have been developed to allow for shares to be transferred between commercial and charter sectors to increase allocation efficiency, as well as to improve the stability of charter operations.

The first of these to be implemented allows qualified charter halibut permit holders to lease shares from commercial quota holders in order to ease the fishing restrictions

applied to their clients. With additional leased shares, charter anglers can retain fish beyond the limit imposed on charter vessels, up to the bag limit set for unguided anglers, with no limit on the size of the additional fish retained. Since its implementation in 2014, this program has enabled charter vessel anglers to retain over 6,000 additional halibut.

In 2018, the North Pacific Council took action to further enhance the ability of the charter sector to secure halibut catch shares through a Recreational Quota Entity (RQE), a non-profit entity able to participate in the commercial catch share market on behalf of charter anglers. Whereas the first program functions on an individual operator level, shares purchased by the RQE are available for use by the charter fishery as a whole.

The effect of these two programs is to provide a means for each year's halibut mortality target to be redistributed dynamically between commercial and recreational sectors. This allows the charter sector to compensate for seasonal and geographic variations in halibut abundance and fishing restrictions without undermining conservation and management goals or causing adverse impacts to other halibut sectors.

## **E. Pacific Islands**

In 2009, Presidential Proclamations established the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments. The Western Pacific Fishery Management Council amended fishery ecosystem plans in the Pacific Islands to incorporate the management provisions of these proclamations.

The Proclamations banned commercial fishing in the areas surrounding the Monuments but, as these regions have long histories of subsistence fishing and other traditional fishing practices, the fishery ecosystem plan revisions protected these cultural practices. The final rule implementing this plan recognized the practice of "customary exchange," defining it as:

*"The non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons, and which may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, food, or fuel, that may be necessary to participate in fisheries in the western Pacific."*

The inclusion of this definition was notable, since customary exchange is a widespread practice in the Pacific Islands and, while it may involve monetary exchange, it is generally considered a non-commercial form of fishing. This definition marks the first instance of that concept being integrated into official policy.

Additionally, the following actions in the Unified Agenda feature some of the fishery management measures described in Section 102 in recreational or mixed-use fisheries.

- Amendment 8 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific; Catch and Effort Limits, Including Annual Catch Limit for Striped Marlin, RIN: 0648-BH64
- Framework Amendment for Fisheries of the Western Pacific; Territorial Specifications, RIN: 0648-BI24

## V. CONCLUSION

The management actions discussed in this report demonstrate how the measures that are now explicitly authorized by Section 102 are in use serving the needs of saltwater recreational fisheries. These actions provide a solid basis for potential future actions by the regional Councils. The pursuit of management solutions that can provide both recreational opportunity and ecological sustainability continues to be a priority for NOAA National Marine Fisheries Service (NMFS).

Throughout 2019, NMFS worked to educate and inform the Councils on the authorities granted by Section 102, both at the individual Council level and collectively by engaging the Council Coordinating Committee (CCC) which is comprised of all eight Councils. Detailed presentations with open question and answer sessions were offered to each Council on the provisions of the Modern Fish Act.

In addition to these Council presentations, NMFS hosted a session at the November 2019 CCC meeting to share successful approaches, discuss innovations to recreational fisheries management, and establish a common understanding of how the tools in Section 102 of the Modern Fish Act could be successfully implemented. The session featured presentations from a recreational fishing constituent and both state and Federal fisheries managers to foster discussion among Councils about different approaches for managing the recreational fisheries under their authority.

In addition to this targeted outreach related to the Modern Fish Act, NMFS continues to actively engage with and respond to the recreational fishing community at national and regional levels. For example, as a product of the discussions held at the 2018 National Saltwater Recreational Fishing Summit, all regions now hold roundtable meetings where members of the recreational community can meet with regional NMFS leadership to discuss concerns and priorities, including management approaches, data issues, and fishery access. At the regional level, engagement is ongoing. For example, NMFS' Greater Atlantic Regional Fisheries Office has invited members of their local recreational fishing community to participate in a series of workshops where they can work collaboratively with fishery managers to develop potential management approaches for recreational fisheries.

Saltwater recreational fisheries, like the marine ecosystems upon which they are built, are dynamic systems, subject to constant change and unanticipated challenges. Collaborative engagement efforts enable NMFS to maintain awareness of the nuanced and varied needs of the 9.8 million saltwater anglers we serve. The measures outlined in Section 102 of the Modern Fish Act reinforce the ability of NMFS and the Councils to implement flexible management that meet

the needs of America's recreational fishing communities while adhering to the legal requirements of the MSA.