

## Requirements for Rebuilding Overfished Fisheries

February 3, 2020

**Excerpted from Magnuson-Stevens Act Section 304(e):**

(e) REBUILDING OVERFISHED FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3))<sup>1</sup> shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

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<sup>1</sup> Editor's note: Section 302(a)(3) refers to highly migratory species in the Atlantic and/or Gulf of Mexico managed by the Secretary of Commerce.

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures, which the Council should consider under paragraph (3) to achieve adequate progress.

**Excerpted from 50 Code of Federal Regulations 600.310(j):**

(j) *Council actions to address overfishing and rebuilding for stocks and stock complexes—*

(1) *Notification.* The Secretary will immediately notify in writing a Regional Fishery Management Council whenever the Secretary determines that:

- (i) Overfishing is occurring;
- (ii) A stock or stock complex is overfished;
- (iii) A stock or stock complex is approaching an overfished condition; or

(iv) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress (see MSA section 304(e)).

(2) *Timing of actions—*(i) *If a stock or stock complex is undergoing overfishing.* Upon notification that a stock or stock complex is undergoing overfishing, a Council should immediately begin working with its SSC (or agency scientists or peer review processes in the case of Secretarially-managed fisheries) to ensure that the ABC is set appropriately to end overfishing. Councils should evaluate the cause of overfishing, address the issue that caused overfishing, and reevaluate their ACLs and AMs to make sure they are adequate.

(ii) *If a stock or stock complex is overfished or approaching an overfished condition.* Upon notification that a stock or stock complex is overfished or approaching an overfished condition, a Council must prepare and implement an FMP, FMP amendment, or proposed regulations within two years of notification, consistent with the requirements of section 304(e)(3) of the Magnuson-Stevens Act. Council actions should be submitted to NMFS within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved.

(3) *Overfished fishery.—*(i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding ( $T_{\text{target}}$ ) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates, dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (see Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of  $T_{\text{target}}$  as follows:

(A) *The minimum time for rebuilding a stock ( $T_{\min}$ ).*  $T_{\min}$  means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term “expected” means to have at least a 50 percent probability of attaining the  $B_{\text{msy}}$ , where such probabilities can be calculated. The starting year for the  $T_{\min}$  calculation should be the first year that the rebuilding plan is expected to be implemented.

(B) *The maximum time for rebuilding a stock or stock complex to its  $B_{\text{msy}}$  ( $T_{\max}$ ).*

(1) If  $T_{\min}$  for the stock or stock complex is 10 years or less, then  $T_{\max}$  is 10 years.

(2) If  $T_{\min}$  for the stock or stock complex exceeds 10 years, then one of the following methods can be used to determine  $T_{\max}$ :

(i)  $T_{\min}$  plus the length of time associated with one generation time for that stock or stock complex. “Generation time” is the average length of time between when an individual is born and the birth of its offspring,

(ii) The amount of time the stock or stock complex is expected to take to rebuild to  $B_{\text{msy}}$  if fished at 75 percent of MFMT, or

(iii)  $T_{\min}$  multiplied by two.

(3) In situations where  $T_{\min}$  exceeds 10 years,  $T_{\max}$  establishes a maximum time for rebuilding that is linked to the biology of the stock. When selecting a method for determining  $T_{\max}$ , a Council, in consultation with its SSC, should consider the relevant biological data and scientific uncertainty of that data, and must provide a rationale for its decision based on the best scientific information available. One of the methods listed in subparagraphs (j)(3)(i)(B)(2)(ii) and (iii) may be appropriate, for example, if given data availability and the life history characteristics of the stock, there is high uncertainty in the estimate of generation time, or if generation time does not accurately reflect the productivity of the stock.

(C) *Target time to rebuilding a stock or stock complex ( $T_{\text{target}}$ ).*  $T_{\text{target}}$  is the specified time period for rebuilding a stock that is considered to be as short a time as possible, taking into account the factors described in paragraph (j)(3)(i) of this section.  $T_{\text{target}}$  shall not exceed  $T_{\max}$ , and the fishing mortality associated with achieving  $T_{\text{target}}$  is referred to as  $F_{\text{rebuild}}$ .

(ii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

(iii) For fisheries managed under an international agreement, Council action addressing an overfished fishery must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(iv) *Adequate Progress*. The Secretary shall review rebuilding plans at routine intervals that may not exceed two years to determine whether the plans have resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks (MSA section 304(e)(7)). Such reviews could include the review of recent stock assessments, comparisons of catches to the ACL, or other appropriate performance measures. The Secretary may find that adequate progress is not being made if  $F_{\text{rebuild}}$  or the ACL associated with  $F_{\text{rebuild}}$  is exceeded, and AMs are not correcting the operational issue that caused the overage, nor addressing any biological consequences to the stock or stock complex resulting from the overage when it is known (see paragraph (g)(3) of this section). A lack of adequate progress may also be found when the rebuilding expectations of a stock or stock complex are significantly changed due to new and unexpected information about the status of the stock. If a determination is made under this provision, the Secretary will notify the appropriate Council and recommend further conservation and management measures, and the Council must develop and implement a new or revised rebuilding plan within two years (see MSA sections 304(e)(3) and (e)(7)(B)). For Secretariially-managed fisheries, the Secretary would take immediate action necessary to achieve adequate progress toward rebuilding and ending overfishing.

(v) While a stock or stock complex is rebuilding, revising rebuilding timeframes (*i.e.*,  $T_{\text{target}}$  and  $T_{\text{max}}$ ) or  $F_{\text{rebuild}}$  is not necessary, unless the Secretary finds that adequate progress is not being made.

(vi) If a stock or stock complex has not rebuilt by  $T_{\text{max}}$ , then the fishing mortality rate should be maintained at its current  $F_{\text{rebuild}}$  or 75 percent of the MFMT, whichever is less, until the stock or stock complex is rebuilt or the fishing mortality rate is changed as a result of the Secretary finding that adequate progress is not being made.