

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued January 12, 2026

Decided August 25, 2026

No. 25-5042

SLASH CREEK WATERWORKS, INC., ET AL.,
APPELLANTS

v.

HOWARD W. LUTNICK, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF COMMERCE AND NATIONAL MARINE FISHERIES
SERVICE,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:23-cv-01755)

Seth L. Atkinson argued the cause and filed the briefs for appellants.

Ezekiel Peterson, Attorney, U.S. Department of Justice, argued the cause for appellees. With him on the brief were *Adam R.F. Gustafson*, Principal Deputy Assistant Attorney General, and *Thekla Hansen-Young* and *Kamela A. Caschette*, Attorneys.

Before: SRINIVASAN, *Chief Judge*, HENDERSON, *Circuit Judge*, and GINSBURG, *Senior Circuit Judge*.

Opinion for the Court filed by *Chief Judge* SRINIVASAN.

SRINIVASAN, *Chief Judge*: Fishing of the South Atlantic red snapper is regulated by the National Marine Fisheries Service under the South Atlantic Snapper-Grouper Fishery Management Plan. The Service must establish in the Plan or regulations “a mechanism for specifying annual catch limits . . . at a level such that overfishing does not occur in the fishery.” 16 U.S.C. § 1853(a)(15). In 2018, the Service promulgated a final rule implementing Amendment 43 to the Plan, which established an annual catch limit for red snapper set solely in terms of the number of “landings”—fish brought ashore. The limit did not restrict so-called “dead discards”—fish that die after being caught and thrown back.

Appellants are commercial fishers and buyers of South Atlantic red snapper. They challenge the Amendment 43 rule, alleging that, by excluding dead discards, the Service failed to establish an “annual catch limit” that prevents overfishing as required by § 1853(a)(15). The district court granted summary judgment to the Service, holding that our recent decision in *A.P. Bell Fish Co. v. Raimondo*, 94 F.4th 60 (D.C. Cir. 2024), largely resolved the case. After the district court’s decision, the Service promulgated a final rule implementing Amendment 59 to the Plan, which updates the annual catch limit for red snapper but continues to measure and enforce it based only on landings.

We affirm the district court. As an initial matter, we reject the Service’s argument that the promulgation of the Amendment 59 rule rendered this case moot. While the numerical catch limit set in the Amendment 43 rule has been

displaced, the operative rule continues to measure and enforce the annual catch limit based only on red-snapper landings. Appellants' challenge to that approach, while originally levied against Amendment 43, fully applies to Amendment 59. On the merits, we agree with the district court that *A.P. Bell* controls and requires concluding that the Service's landings-only annual catch limit does not violate § 1853(a)(15).

I.

A.

The Magnuson-Stevens Act aims, among other things, to “promote domestic commercial and recreational fishing under sound conservation and management principles.” 16 U.S.C. § 1801(b)(3). To that end, the Act establishes national standards for fishery conservation and management. *Id.* § 1851. The National Marine Fisheries Service shares responsibility for effectuating the standards with eight regional councils. *See id.* §§ 1851(b), 1802(39), 1852; *see also A.P. Bell*, 94 F.4th at 62. The Service must establish advisory guidelines based on the standards to assist in the development of fishery management plans. 16 U.S.C. § 1851(b). The regional councils prepare and implement the plans, which the Service reviews and approves. *Id.* §§ 1801(b)(4)–(5), 1854; *see Nat. Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 749 (D.C. Cir. 2000).

In 2006, Congress amended the Act to require that fishery management plans “establish a mechanism for specifying annual catch limits . . . at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.” Pub. L. No. 109–479, § 104(a)(10), 120 Stat. 3575, 3584 (Jan. 12, 2007) (codified at 16 U.S.C. § 1853(a)(15)). The Act defines “overfishing” as “a rate or level of fishing mortality that jeopardizes the capacity of a

fishery to produce the maximum sustainable yield on a continuing basis.” 16 U.S.C. § 1802(34). It does not define “annual catch limit.”

The Service has identified a set of interrelated reference points it uses to implement the Act’s command to prevent overfishing. *See* 50 C.F.R. § 600.310(b)(1)(ii), (b)(2)(iv). The reference points include the overfishing limit, the acceptable biological catch, and of most relevance here, the annual catch limit. The overfishing limit is “the annual amount of catch” corresponding to the level of fish mortality above which overfishing is occurring. *Id.* § 600.310(e)(2)(i)(D), (e)(2)(i)(C). The acceptable biological catch is the annual amount of fish that can be caught without exceeding the overfishing limit, taking scientific uncertainty into account. *Id.* § 600.310(f)(1)(ii). The annual catch limit is defined as “a limit on the total annual catch of a stock or stock complex . . . that serves as the basis for invoking [accountability measures]” to prevent overfishing. *Id.* § 600.310(f)(1)(iii). In sum, the overfishing limit is the maximum amount of catch that can occur without causing overfishing; the acceptable biological catch sets a lower reference point to account for the margin of error in the overfishing limit; and the annual catch limit is the binding mechanism for enforcing these limits.

Those three reference points operate in tandem to achieve the Act’s goals. The acceptable biological catch cannot exceed the overfishing limit. *Id.* § 600.310(f)(3). And the annual catch limit cannot exceed the acceptable biological catch. *Id.* § 600.310(f)(4)(i). The overfishing limit for a particular fish stock thus imposes a ceiling on the annual catch limit at a level at or below which overfishing will not occur.

The Service defines those reference points in terms of the amount of “catch” in a given fish stock. The guidelines define “catch” as the “total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries”—including “fish that are retained for any purpose, as well as mortality of fish that are discarded” (dead discards). *Id.* § 600.310(f)(1)(i).

B.

1.

Red snapper are found in waters from North Carolina to the Florida Keys and throughout the Gulf of Mexico. They are bottom-dwellers and can grow to 40 inches and 50 pounds. They are subject to both commercial and recreational fishing, and they have been chronically overfished since the 1960s.

When fish are caught, they can be “landed” or “discarded.” Fish caught and brought ashore for any purpose are referred to in the industry as “landings.” Fish caught but not brought ashore are called discards. Many discarded red snapper subsequently die due to hooking injuries, pressure changes, or predation. Those are called “dead discards.” Dead discards are a subset of “bycatch,” which refers to “fish which are harvested in a fishery, but which are not sold or kept for personal use”—i.e., any fish that are discarded, whether they live or die. 16 U.S.C. § 1802(2). Estimates suggest that dead discards comprise approximately 90% of the catch of red snapper, likely because they are incidentally caught when fishermen target other species in the same area. Those estimates are somewhat uncertain because they rely on fishermen’s recall and are extrapolated from a small sample size, but the number of red-snapper dead discards appears significant and growing.

The Service approved the first fishery management plan for snapper and grouper in the South Atlantic in 1983. Despite the plan's measures to reduce overfishing of red snapper, red-snapper landings remained elevated through the 1980s, and the stock declined to a very low level in 1990. The South Atlantic Council adopted additional measures in an effort to rebuild the stock.

Following the 2006 amendments to the Magnuson-Stevens Act, the Service for the first time established an annual catch limit for red snapper. There was a prohibition against red-snapper landings at the time, so the annual catch limit for red snapper was set at zero. The Service amended the Plan in 2013, allowing limited harvests that year and the next. A 2016 stock assessment determined that, while red snapper remained overfished, the amount of red snapper had increased to levels not seen since the 1970s. The Service accordingly reauthorized modest red-snapper landings the following year.

In 2018, the Service promulgated a final rule implementing Amendment 43 to the Plan (for simplicity, we will use the term Amendment 43 to refer to the rule implementing that amendment). Amendment 43 revised the governing regulation to establish an ongoing annual catch limit for South Atlantic red snapper, divided between the commercial and recreational sectors. *See Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 43*, 83 Fed. Reg. 35,428 (July 26, 2018) (codified at 50 C.F.R. § 622.193(y) (2018)). To enforce the annual catch limit on the commercial sector, the Service would monitor commercial landings and close the fishing season if landings were projected to reach the annual catch limit. *Id.* at 35,435. As for the

recreational sector, annual rules would establish the length of the recreational fishing season based on the Service's estimate of how many fishing days could take place before reaching the annual catch limit. *Id.*

In setting the annual catch limit, the Service acknowledged it had been unable to calculate an acceptable biological catch due to uncertainty about dead-discard estimates. *Id.* at 35,429. The annual catch limit was instead based on the number of observed landings in 2014, and was set below the most recent acceptable biological catch. *Id.* That annual catch limit, the Service determined, would not lead to overfishing because the red-snapper stock had increased in 2014. From 2019 to 2024, the Service published temporary rules setting the landings-based annual catch limit for red snapper.

3.

Appellants are commercial fishers and buyers of South Atlantic red snapper. They brought this suit in June 2023, initially challenging Amendment 43 and the 2023 temporary rule and then adding the 2024 temporary rule after it took effect. As relevant to this appeal, appellants challenge Amendment 43 and the temporary rules as contrary to § 1853(a)(15) for two reasons: first, that the rules have “failed to establish a limit on the annual catch of South Atlantic red snapper” because they restrict only landings, not dead discards; and second, that the rules more generally “have failed to establish a mechanism for specifying annual catch limits for South Atlantic red snapper that prevents overfishing.” Am. Compl. at 28–39 (J.A. 69–82).

The district court granted summary judgment to the Service. *Slash Creek Waterworks, Inc. v. Raimondo*, No. 23-cv-1755, 2025 WL 358770 (D.D.C. Jan. 31, 2025). With

respect to whether the term “annual catch limit” in § 1853(a)(15) requires the Service to directly restrict dead discards, the court determined that our court’s recent decision in *A.P. Bell Fish Co., Inc. v. Raimondo*, 94 F.4th 60 (D.C. Cir. 2024), had largely resolved the issue by deciding the Service could permissibly set the overfishing limit in terms of landings without directly restricting bycatch (of which dead discards are a subset). *Id.* at *12–13. With respect to whether Amendment 43’s landings-only approach is conceptually incapable of preventing overfishing, the court found “no reason” to believe that it is impossible to address overfishing if dead discards are excluded from the annual catch limit. *Id.* at *13.

After appellants noticed their appeal, the Service issued a final rule implementing Amendment 59 to the Fishery Management Plan (as with Amendment 43, we will use the term Amendment 59 to refer to the rule implementing that amendment). *See* Snapper-Grouper Fishery of the South Atlantic; Amendment 59, 90 Fed. Reg. 24,527 (June 11, 2025). Amendment 59 calculates a new landings-based annual catch limit of 34,000 fish, which, as the agency explained in the rule’s preamble, is derived from a “total” annual catch limit of 509,000 fish, made up of 475,000 dead discards and a remaining 34,000 landings apportioned between the commercial and recreational sectors. *Id.* at 24,529. While the preamble describes that the annual catch limit is derived from total figures that account for dead discards, the resulting annual catch limit continues to be measured and enforced based solely on landings, without restricting dead discards. *Id.* Accordingly, apart from updating the numerical limits, Amendment 59 did not alter the operative regulatory text.

II.

Appellants renew their contention that the Service's landings-only annual catch limit for red snapper violates § 1853(a)(15). We review the Service's interpretation and application of § 1853(a)(15) to determine if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see* 16 U.S.C. § 1855(f)(1)(B).

A.

Before reaching the merits of appellants' claims, we must first address the Service's threshold argument that its adoption of Amendment 59 has rendered appellants' challenge moot. Federal courts lack jurisdiction under Article III to decide an issue "when the question sought to be adjudicated has been mooted by subsequent developments." *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 680 F.2d 810, 813–14 (D.C. Cir. 1982) (citation omitted). "A case becomes moot . . . when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (*per curiam*)). So, when a challenged regulation or policy no longer exists, the challenge is "classically moot." *See Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1203 (D.C. Cir. 2020); *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 827 F.3d 100, 106 (D.C. Cir. 2016); *see also Samma v. Dep't of Def.*, 136 F.4th 1108, 1113 (D.C. Cir. 2025); *Larsen v. U.S. Navy*, 525 F.3d 1, 4–5 (D.C. Cir. 2008).

But the mootness inquiry imposes an added burden on the defendant when, as in this case, the potentially mooted event is "of the [defendant's] own doing." *Initiative & Referendum*

Inst. v. U.S. Postal Serv., 685 F.3d 1066, 1074 (D.C. Cir. 2012). The Service argues that its adoption of Amendment 59 superseded the rule being challenged—Amendment 43—thus mooted this case. As the party that voluntarily promulgated the rule purportedly mooted the case, the Service bears the “heavy burden” of showing that “(1) there is no reasonable expectation that the conduct will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *True the Vote, Inc. v. Internal Revenue Serv.*, 831 F.3d 551, 561 (D.C. Cir. 2016) (quoting *Qassim v. Bush*, 466 F.3d 1073, 1075 (D.C. Cir. 2006)). That inquiry, as applied in a context in which a new policy displaces the challenged one, asks whether the new policy injures the plaintiffs “in the same fundamental way” as the prior one—that is, whether the “gravamen” of the challenge applies equally to the new rule. *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656, 662 (1993). It does here.

The gravamen of appellants’ complaint—that the Service’s annual catch limit for red snapper violates § 1853(a)(15) because it restricts only landings, without restricting dead discards—applies to Amendment 59 in the same way it did to Amendment 43. Amendment 59, like Amendment 43, establishes annual catch limits for the commercial and recreational sectors that restrict only landings and are measured only in landings.

To the extent the Service may have given some sort of consideration to the effect of dead discards in calculating the annual catch limits, that has no bearing on whether the *result* of its analysis—a regulation again establishing a landings-only limit—contravenes § 1853(a)(15) in the alleged ways. Even if Amendment 59’s preamble purports to consider a “total ACL [i.e., annual catch limit]” that includes both landings and dead

discards, only the regulatory text is binding on regulated parties and enforced by the Service—so, only the regulatory text carries the force of law. *See AT&T Corp. v. FCC*, 970 F.3d 344, 350–51 (D.C. Cir. 2020) (per curiam). And the regulatory text makes no mention of a “total ACL,” instead containing only the landings-only annual catch limits applicable to the commercial and recreational sectors. In fact, the regulatory text under Amendment 59 is identical to the text under Amendment 43, except that the annual catch limits have been updated with new numerical values.

Importantly, appellants do not argue that the numerical catch limits established by Amendment 43 infringed § 1853(a)(15) by failing to prevent overfishing as an empirical matter. Nor have they brought an arbitrary-or-capricious claim requiring us to analyze the Service’s explanation for its rule. Were those sorts of claims before us, the mootness inquiry would look different. But the sole claim appellants press before us is a conceptual challenge to the Service’s landings-only mechanism for monitoring and enforcing the annual catch limits. If Amendment 43 violates § 1853(a)(15) because it imposes a direct cap only on landings, so too does Amendment 59. Because Amendment 59 injures appellants in fundamentally the same way as did Amendment 43, appellants’ challenge is not moot.

B.

The Service raises a second threshold argument for disposing of this case before reaching the merits. It contends that appellants’ claims are time-barred because appellants brought their challenge to Amendment 43 more than 30 days after its promulgation. The relevant provision states that “[r]egulations promulgated by the Secretary . . . and actions described in [§ 1855(f)(2)] shall be subject to judicial

review . . . if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable.” 16 U.S.C. § 1855(f)(1). We need not resolve whether appellants’ challenge is timely under § 1855(f)(1) because we ultimately deny their claims on the merits in any event, and we are not obligated to address the timeliness question because § 1855(f)(1)’s 30-day deadline is not a jurisdictional limit.

The Supreme Court “treat[s] a procedural requirement as jurisdictional only if Congress ‘clearly states’ that it is.” *Boechler, P.C. v. Comm’r*, 596 U.S. 199, 203 (2022). As a result, “most time bars are nonjurisdictional.” *Wilkins v. United States*, 598 U.S. 152, 158 (2023) (quoting *United States v. Kwai Fun Wong*, 575 U.S. 402, 410 (2015)). And “Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional.” *Kwai Fun Wong*, 575 U.S. at 410. Congress has done nothing special in § 1855(f)(1).

Although § 1855(f)(1) imposes a condition on when regulations “shall be subject to judicial review,” merely addressing a claims-processing rule to the “courts” and indicating the rule limits “review” does not provide the requisite clear statement that the provision circumscribes the court’s jurisdiction—particularly when the requirement “speak[s] to a party’s procedural obligations,” as a timeliness rule does. *Santos-Zacaria v. Garland*, 598 U.S. 411, 420 (2023). And we should be especially reluctant to find claims-processing rules jurisdictional if it would be out of step with how we generally treat rules of the same sort. *Id.* at 417–18. On that score, filing deadlines are “quintessential claims-processing rules” that “seek to promote the orderly progress of litigation” rather than “deprive a court of authority to hear a case.” *Kwai Fun Wong*, 575 U.S. at 410 (quoting *Henderson*

v. Shinseki, 562 U.S. 428, 435 (2011)). Additionally, Congress elsewhere in the Act spoke in expressly jurisdictional terms in providing for district courts' exclusive jurisdiction over cases arising under the statute, *see* 16 U.S.C. § 1861(d), reinforcing that the 30-day time bar in § 1855(f)(1), which contains no such language, is non-jurisdictional.

C.

On the merits, appellants contend that Amendment 43's landings-only annual catch limit violates § 1853(a)(15). Our recent decision in *A.P. Bell* dictates that we conclude otherwise. Appellants' challenge to the Service's landings-only approach encompasses two related arguments, both of which are foreclosed by *A.P. Bell*.

Appellants' first argument is grounded in § 1853(a)(15)'s requirement that a fishery management plan "specify[] annual catch limits." According to appellants, because the "annual catch" of red snapper includes both landed fish and discarded fish, and because Amendment 43's annual catch limits restrict only landings without distinctly restricting dead discards, those limits do not in fact "limit" the "catch" of red snapper as required by § 1853(a)(15). In *A.P. Bell*, our court rejected a materially indistinguishable claim, and we did so with reasoning that forecloses appellants' claim here.

Like this case, *A.P. Bell* involved a challenge to a landings-only limit (concerning red grouper rather than red snapper) brought by commercial fishers. They contended that the landings-only limit "fails to establish 'catch limits'" as is required by § 1853(a)(15). 94 F.4th at 65. That case involved the overfishing limit, and the basis of the challenge was that the limit was set "in terms of landings, not catch." *Id.* Our decision

accepted that “catch” includes “both landed fish and dead discards.” *Id.*

We rejected the challenge, explaining that the landings-only overfishing limit ultimately “accounts for all sources of mortality, including bycatch,” which in turn includes discards. *Id.* (quoting *A.P. Bell Fish Co., Inc. v. Raimondo*, No. 22-cv-1260, 2023 WL 6159985, at *17 n.10 (D.D.C. Sept. 21, 2023)). The annual catch limit, we further explained, “account[s] for bycatch in the same fashion” because it is “based on [the] overfishing limit.” *Id.* (citation omitted). The upshot was that the landings-only limit did not violate § 1853(a)(15)’s requirement “to establish catch limits.” *Id.* (internal quotation marks omitted).

A.P. Bell controls the outcome here. Although the claim in that case technically challenged an overfishing limit rather than the interrelated annual catch limit, the alleged deficiency was the same one appellants advance here: that the landings-only nature of the limit failed to account for all types of “catch” as required by § 1853(a)(15). In rejecting that argument, we held that the Act does not require either the overfishing limit or the annual catch limit to directly restrict “bycatch” (which is another name for discards). *Id.* We reasoned that the landings-only overfishing limit indirectly accounted for bycatch, and that was enough to satisfy the statute—and we added that annual catch limits account for bycatch in the same way because they are based on the overfishing limit. *Id.* If the overfishing limit and annual catch limit need not directly restrict bycatch—the conclusion we reached in *A.P. Bell*—it follows that they need not directly restrict dead discards, which are a subset of bycatch.

The result and reasoning of *A.P. Bell* leave no room to rule in favor of appellants here. The overfishing limit (challenged

there) and annual catch limit (challenged here) are closely related reference points used by the Service to prevent overfishing. To set an annual catch limit, the Service must first identify the overarching overfishing limit—i.e., the level of catch above which overfishing would occur. The Service then sets the acceptable biological catch at or below the overfishing limit to build in a margin of error. And the acceptable biological catch in turn establishes a ceiling for the annual catch limit. Given the direct relationship between the overfishing limit and the annual catch limit—which *A.P. Bell* itself recognized in explaining that “annual catch limits are based on [the] overfishing limit,” *id.*—there could be no ground for concluding that the overfishing limit can be set only in terms of landings (as we held in *A.P. Bell*) but the annual catch limit cannot. If the annual catch limit were required to restrict both discards and landings but the overfishing limit could restrict landings alone, the annual catch limit might well exceed the overarching overfishing limit, an incoherent result.

A.P. Bell also forecloses appellants’ second argument for why a landings-only annual catch limit violates § 1853(a)(15). Unless it imposes restrictions on dead discards, appellants contend, an annual catch limit is conceptually incapable of being set “at a level such that overfishing does not occur.” 16 U.S.C. § 1853(a)(15). That argument is incompatible with *A.P. Bell*’s explanation that: “Section 1853(a) requires only the establishment of annual catch limits and accountability measures such that overfishing does not occur, and does not require the further step of setting an overfishing limit that more directly accounts for bycatch.” 94 F.4th at 65 (cleaned up). *A.P. Bell* thus establishes that an annual catch limit need not directly restrict bycatch (including dead discards) to qualify as a limit that is “at a level such that overfishing does not occur.” 16 U.S.C. § 1853(a)(15).

Appellants suggest that *A.P. Bell* need not govern our resolution of their challenge because *A.P. Bell* did not discuss the scale of dead discards in the fishery in that case. *A.P. Bell*, though, expressly assumed that dead discards could affect an overfishing limit's ability to prevent overfishing, and the court concluded that a landings-only limit sufficiently accounted for those effects to satisfy § 1853(a)(15) at the conceptual level. *See* 94 F.4th at 65. That conclusion fully applies here. And it may be true, as appellants observe, that the relevant discussion in *A.P. Bell* comprised only two paragraphs. But that discussion considered and rejected a functionally indistinguishable claim with directly controlling reasoning. *A.P. Bell* holds that a landings-only limit is not inherently incapable of constituting an “annual catch limit” or of operating at a “level such that overfishing does not occur.” 16 U.S.C. § 1853(a)(15). That means appellants cannot prevail in their claims.

That is true because of the conceptual nature of the claims appellants present. They have not challenged the annual catch limits set in Amendment 43 or Amendment 59 as arbitrary or capricious, and we therefore have no reason to consider whether such a challenge might succeed.

* * * * *

For the foregoing reasons, we affirm the judgment of the district court.

So ordered.