

H.R.2150

Coast Guard Authorization Act of 1993 (Enrolled as Agreed to or
Passed by Both House and Senate)

TITLE VIII--ATLANTIC COASTAL FISHERIES

SEC. 801. SHORT TITLE.

This title may be cited as the 'Atlantic Coastal Fisheries Cooperative Management Act'.

SEC. 802. FINDINGS AND PURPOSE.

(a) FINDINGS- The Congress finds the following:

- (1) Coastal fishery resources that migrate, or are widely distributed, across the jurisdictional boundaries of two or more of the Atlantic States and of the Federal Government are of substantial commercial and recreational importance and economic benefit to the Atlantic coastal region and the Nation.
- (2) Increased fishing pressure, environmental pollution, and the loss and alteration of habitat have reduced severely certain Atlantic coastal fishery resources.
- (3) Because no single governmental entity has exclusive management authority for Atlantic coastal fishery resources, harvesting of such resources is frequently subject to disparate, inconsistent, and intermittent State and Federal regulation that has been detrimental to the conservation and sustainable use of such resources and to the interests of fishermen and the Nation as a whole.
- (4) The responsibility for managing Atlantic coastal fisheries rests with the States, which carry out a cooperative program of fishery oversight and management through the Atlantic States Marine Fisheries Commission. It is the responsibility of the Federal Government to support such cooperative interstate management of coastal fishery resources.
- (5) The failure by one or more Atlantic States to fully implement a coastal fishery management plan can affect the status of Atlantic coastal fisheries, and can discourage other States from fully implementing coastal fishery management plans.
- (6) It is in the national interest to provide for more effective Atlantic State fishery resource conservation and management.

(b) PURPOSE- The purpose of this title is to support and encourage the development, implementation, and enforcement of effective interstate conservation and management of Atlantic coastal fishery resources.

SEC. 803. DEFINITIONS.

In this title, the following definitions apply:

- (1) The term `coastal fishery management plan' means a plan for managing a coastal fishery resource, or an amendment to such plan, prepared and adopted by the Commission, that--
 - (A) contains information regarding the status of the resource and related fisheries;
 - (B) specifies conservation and management actions to be taken by the States; and
 - (C) recommends actions to be taken by the Secretary in the exclusive economic zone to conserve and manage the fishery.
- (2) The term `coastal fishery resource' means any fishery, any species of fish, or any stock of fish that moves among, or is broadly distributed across, waters under the jurisdiction of two or more States or waters under the jurisdiction of one or more States and the exclusive economic zone.
- (3) The term `Commission' means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by the Congress in Public Laws 77-539 and 81-721.
- (4) The term `conservation' means the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis.
- (5) The term `Councils' means Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852).
- (6) The term `exclusive economic zone' means the exclusive economic zone of the United States established by Proclamation Number 5030, dated March 10, 1983. For the purposes of this title, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of that zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.
- (7) The term `fish' means finfish, mollusks, crustaceans, and all other forms of marine animal life other than marine mammals and birds.
- (8) The term `fishery' means--
 - (A) one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, commercial, recreational, or economic characteristics; or
 - (B) any fishing for such stocks.
- (9) The term `fishing' means--

- (A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity that can be reasonably expected to result in the catching, taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity or the catching, taking, or harvesting of fish in an aquaculture operation.

(10) The term 'implement and enforce' means to enact and implement laws or regulations as required to conform with the provisions of a coastal fishery management plan and to assure compliance with such laws or regulations by persons participating in a fishery that is subject to such plan.

(11) The term 'person' means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(12) The term 'Secretary' means the Secretary of Commerce.

(13) The term 'State' means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission.

SEC. 804. STATE-FEDERAL COOPERATION IN ATLANTIC COASTAL FISHERY MANAGEMENT.

(a) **FEDERAL SUPPORT FOR STATE COASTAL FISHERIES PROGRAMS-** The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.

(b) **FEDERAL REGULATION IN EXCLUSIVE ECONOMIC ZONE-** (1) In the absence of an approved and implemented fishery management plan under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the exclusive economic zone that are--

- (A) necessary to support the effective implementation of a coastal fishery management plan; and
- (B) consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851).

The regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the coastal fishery management plan. Regulations issued by the Secretary to implement an approved fishery management plan prepared by the appropriate Councils or the Secretary under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall supersede any conflicting regulations issued by the Secretary under this subsection.

(2) The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under this subsection as if such regulations were issued under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 805. STATE IMPLEMENTATION OF COASTAL FISHERY MANAGEMENT PLANS.

(a) COASTAL FISHERY MANAGEMENT PLANS- (1) The Commission shall prepare and adopt coastal fishery management plans to provide for the conservation of coastal fishery resources. In preparing a coastal fishery management plan for a fishery that is located in both State waters and the exclusive economic zone, the Commission shall consult with appropriate Councils to determine areas where such coastal fishery management plan may complement Council fishery management plans. The coastal fishery management plan shall specify the requirements necessary for States to be in compliance with the plan. Upon adoption of a coastal fishery management plan, the Commission shall identify each State that is required to implement and enforce that plan.

(2) Within 1 year after the date of enactment of this Act, the Commission shall establish standards and procedures to govern the preparation of coastal fishery management plans under this title, including standards and procedures to ensure that--

(A) such plans promote the conservation of fish stocks throughout their ranges and are based on the best scientific information available; and

(B) the Commission provides adequate opportunity for public participation in the plan preparation process, including at least four public hearings and procedures for the submission of written comments to the Commission.

(b) STATE IMPLEMENTATION AND ENFORCEMENT- (1) Each State identified under subsection (a) with respect to a coastal fishery management plan shall implement and enforce the measures of such plan within the timeframe established in the plan.

(2) Within 90 days after the date of enactment of this Act, the Commission shall establish a schedule of timeframes within which States shall implement and enforce the measures of coastal fishery management plans in existence before such date of enactment. No

such timeframe shall exceed 12 months after the date on which the schedule is adopted.

(c) COMMISSION MONITORING OF STATE IMPLEMENTATION AND ENFORCEMENT- The Commission shall, at least annually, review each State's implementation and enforcement of coastal fishery management plans for the purpose of determining whether such State is effectively implementing and enforcing each such plan. Upon completion of such reviews, the Commission shall report the results of the reviews to the Secretaries.

SEC. 806. STATE NONCOMPLIANCE WITH COASTAL FISHERY MANAGEMENT PLANS.

(a) NONCOMPLIANCE DETERMINATION- The Commission shall determine that a State is not in compliance with the provisions of a coastal fishery management plan if it finds that the State has not implemented and enforced such plan within the timeframes established under the plan or under section 805.

(b) NOTIFICATION- Upon making any determination under subsection (a), the Commission shall within 10 working days notify the Secretaries of such determination. Such notification shall include the reasons for making the determination and an explicit list of actions that the affected State must take to comply with the coastal fishery management plan. The Commission shall provide a copy of the notification to the affected State.

(c) WITHDRAWAL OF NONCOMPLIANCE DETERMINATION- After making a determination under subsection (a), the Commission shall continue to monitor State implementation and enforcement. Upon finding that a State has complied with the actions required under subsection (b), the Commission shall immediately withdraw its determination of noncompliance. The Commission shall promptly notify the Secretaries of such withdrawal.

SEC. 807. SECRETARIAL ACTION.

(a) SECRETARIAL REVIEW OF COMMISSION DETERMINATION OF NONCOMPLIANCE- Within 30 days after receiving a notification from the Commission under section 806(b) and after review of the Commission's determination of noncompliance, the Secretary shall make a finding on--

(1) whether the State in question has failed to carry out its responsibility under section 805; and

(2) if so, whether the measures that the State has failed to implement and enforce are necessary for the conservation of the fishery in question.

(b) CONSIDERATION OF COMMENTS- In making a finding under subsection (a), the Secretary shall--

(A) give careful consideration to the comments of the State that the Commission has determined under section 806(a) is not in compliance with a coastal fishery management plan, and

provide such State, upon request, with the opportunity to meet with and present its comments directly to the Secretary; and
(B) solicit and consider the comments of the Commission and the appropriate Councils.

(c) MORATORIUM- (1) Upon making a finding under subsection (a) that a State has failed to carry out its responsibility under section 805 and that the measures it failed to implement and enforce are necessary for conservation, the Secretary shall declare a moratorium on fishing in the fishery in question within the waters of the noncomplying State. The Secretary shall specify the moratorium's effective date, which shall be any date within 6 months after declaration of the moratorium.

(2) If after a moratorium is declared under paragraph (1) the Secretary is notified by the Commission that the Commission is withdrawing under section 806(c) the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If so, the moratorium shall be terminated.

(d) IMPLEMENTING REGULATIONS- The Secretary may issue regulations necessary to implement this section. Such regulations--

(1) may provide for the possession and use of fish which have been produced in an aquaculture operation, subject to applicable State regulations; and

(2) shall allow for retention of fish that are subject to a moratorium declared under this section and unavoidably taken as incidental catch in fisheries directed toward menhaden if--

(A) discarding the retained fish is impracticable;

(B) the retained fish do not constitute a significant portion of the catch of the vessel; and

(C) retention of the fish will not, in the judgment of the Secretary, adversely affect the conservation of the species of fish retained.

(e) PROHIBITED ACTS DURING MORATORIUM- During the time in which a moratorium under this section is in effect, it is unlawful for any person to--

(1) violate the terms of the moratorium or of any implementing regulation issued under subsection (d);

(2) engage in fishing for any species of fish to which the moratorium applies within the waters of the State subject to the moratorium;

(3) land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium or of any implementing regulation issued under subsection (d);

(4) fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies, except as provided by regulations issued under subsection (d);

- (5) refuse to permit any officer authorized to enforce the provisions of this title to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this title;
 - (6) forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this title;
 - (7) resist a lawful arrest for any act prohibited by this section;
 - (8) ship, transport, offer for sale, sell, purchase, import, or have custody, control, or possession of, any fish taken or retained in violation of this title; or
 - (9) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.
- (f) CIVIL AND CRIMINAL PENALTIES- (1) Any person who commits any act that is unlawful under subsection (e) shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858).
- (2) Any person who commits an act prohibited by paragraph (5), (6), (7), or (9) of subsection (e) is guilty of an offense punishable as provided by section 309 (a)(1) and (b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859 (a)(1) and (b)).
- (g) CIVIL FORFEITURES- (1) Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or as the result of, the commission of any act that is unlawful under subsection (e), shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1860).
- (2) Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed in regulation.
- (h) ENFORCEMENT- A person authorized by the Secretary or the Secretary of the department in which the Coast Guard is operating may take any action to enforce a moratorium declared under subsection (c) of this section that an officer authorized by the Secretary under section 311(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(b)) may take to enforce that Act. The Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a State in carrying out that enforcement.

SEC. 808. FINANCIAL ASSISTANCE.

The Secretary and the Secretary of the Interior may provide financial assistance to the Commission and to the States to carry out their respective responsibilities under this title, including--

- (1) the preparation, implementation, and enforcement of coastal fishery management plans; and
- (2) State activities that are specifically required within such plans.

SEC. 809. AUTHORIZATION OF APPROPRIATIONS.

To carry out the provisions of this title, there are authorized to be appropriated \$3,000,000 for fiscal year 1994, \$5,000,000 for fiscal year 1995, and \$7,000,000 for fiscal year 1996.

SEC.