

103D CONGRESS
1ST SESSION

H. R. 2134

To improve the conservation and management of interjurisdictional fisheries along the Atlantic coast by providing for greater cooperation among the States in implementing conservation and management programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1993

Mr. STUDDS (for himself, Mr. MANTON, Mr. HUGHES, Mr. FRANK of Massachusetts, Mr. SAXTON, Mr. TOWNS, Mr. ACKERMAN, and Mrs. BENTLEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To improve the conservation and management of interjurisdictional fisheries along the Atlantic coast by providing for greater cooperation among the States in implementing conservation and management programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Atlantic Coastal Fish-
5 eries Cooperative Management Act of 1993”.

1 **SEC. 2. STATE-FEDERAL COOPERATION IN ATLANTIC**
2 **COASTAL FISHERIES MANAGEMENT.**

3 (a) FEDERAL SUPPORT FOR STATE COASTAL FISH-
4 ERIES PROGRAMS.—The Secretaries shall develop and im-
5 plement a program to support the fisheries management
6 programs of the Commission. The program will include
7 elements to support and enhance State cooperation in—

- 8 (1) collection, management, and analysis of
9 fisheries data;
- 10 (2) law enforcement;
- 11 (3) habitat conservation;
- 12 (4) fisheries research, including biological and
13 socioeconomic research; and
- 14 (5) fishery management planning.

15 (b) FEDERAL REGULATIONS PERTAINING TO A FISH-
16 ERY COVERED BY AN INTERSTATE FISHERY MANAGE-
17 MENT PLAN IN THE ATLANTIC OCEAN.—

18 (1) IN GENERAL.—The Secretary, after con-
19 sultation with the Councils having jurisdiction over
20 fisheries to which an interstate fishery management
21 plan applies, may issue and implement regulations to
22 govern fishing in the exclusive economic zone that
23 are necessary to support the effective implementa-
24 tion of the interstate fishery management plan
25 adopted for a fishery for which there is not in effect
26 a Federal fishery management plan. These regula-

1 tions may include measures recommended by the
2 Commission to the Secretary that are necessary to
3 support the provisions of the interstate fishery man-
4 agement plan for that fishery.

5 (2) SUPERSEDING REGULATIONS.—Regulations
6 issued by the Secretary to implement a Federal fish-
7 ery management plan for a fishery shall supersede
8 any regulations issued by the Secretary under this
9 section for that fishery.

10 (3) ENFORCEMENT.—The provisions of sections
11 307, 308, 309, 310, and 311 of the Magnuson Fish-
12 ery Conservation and Management Act (16 U.S.C.
13 1857, 1858, 1859, 1860, and 1861) regarding pro-
14 hibited acts, civil penalties, criminal offenses, civil
15 forfeitures, and enforcement shall apply with respect
16 to regulations issued under this subsection as if such
17 regulations were issued under the Magnuson Fishery
18 Conservation and Management Act.

19 **SEC. 3. ADOPTION AND IMPLEMENTATION OF INTERSTATE**
20 **FISHERY MANAGEMENT PLANS.**

21 (a) ADOPTION OF PLANS.—

22 (1) IN GENERAL.—The Commission shall pre-
23 pare and adopt fishery management plans or amend-
24 ments to fishery management plans in accordance

1 with this section to provide for the conservation and
2 management of coastal fishery resources.

3 (2) CONSULTATION.—In preparing a fishery
4 management plan or an amendment under this sub-
5 section, the Commission shall consult with appro-
6 priate Councils to determine areas where Federal
7 fishery management plans prepared by Councils
8 under section 302 of the Magnuson Fishery Con-
9 servation and Management Act (16 U.S.C. 1853)
10 and interstate fishery management plans may com-
11 plement each other.

12 (3) CONTENTS.—Each fishery management
13 plan or amendment prepared under this subsection
14 shall—

15 (A) contain information regarding the sta-
16 tus of the coastal fishery resources and fisheries
17 covered by the plan or amendment;

18 (B) identify each State that is required to
19 implement and enforce the plan or amendment;

20 (C) specify actions to be taken by States to
21 implement and be in compliance with the plan
22 or amendment; and

23 (D) recommend actions for the Secretary
24 to take in the exclusive economic zone to con-

1 serve and manage the fishery resources and
2 fisheries covered by the plan or amendment.

3 (4) TIME FRAME FOR IMPLEMENTATION AND
4 ENFORCEMENT BY STATES.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), a State that is identified in
7 an interstate fishery management plan pursu-
8 ant to paragraph (3)(B) shall implement and
9 enforce the plan within the time established in
10 the plan.

11 (B) EXISTING PLANS.—Not later than 90
12 days after the date of the enactment of this
13 Act, the Commission shall develop a schedule
14 for the implementation and enforcement by
15 States of interstate fishery management plans
16 that were adopted by the Commission before
17 the date of the enactment of this Act. Such
18 schedule shall provide for that implementation
19 and enforcement by not later than 1 year after
20 the date of the enactment of this Act, or in the
21 case of the Weakfish Plan, by not later than 6
22 months after that date of enactment.

23 (b) COMMISSION MONITORING OF STATE IMPLEMEN-
24 TATION AND ENFORCEMENT.—Not later than 1 year after
25 the date of the enactment of this Act (or in the case of

1 the Weakfish Plan, 6 months after that date) and at least
2 annually thereafter, the Commission shall—

3 (1) review each interstate fishery management
4 plan and determine whether each State which has
5 declared an interest in the plan, or that is required
6 under the plan to implement and enforce the plan,
7 has implemented and enforced the plan; and

8 (2) submit a report on the results of that re-
9 view to the Secretaries.

10 **SEC. 4. STATE NONCOMPLIANCE WITH INTERSTATE FIS-**
11 **ERY MANAGEMENT PLANS.**

12 (a) DETERMINATION.—The Commission shall deter-
13 mine that a State is not in compliance with an interstate
14 fishery management plan if it determines that the State
15 has not implemented and enforced the plan within the pe-
16 riod applicable under section 3(a).

17 (b) NOTIFICATION.—If the Commission determines
18 under subsection (a) that a State is not in compliance with
19 an interstate fishery management plan, the Commission
20 shall within 10 working days notify the Secretaries of that
21 determination. The notification shall include the reasons
22 for making the determination and specify an explicit list
23 of actions that the affected State must make to be in com-
24 pliance with the interstate fishery management plan. The

1 Commission shall provide a copy of the notification to the
2 State.

3 (c) MONITORING; WITHDRAWAL OF DETERMINA-
4 TION.—After making a determination under subsection
5 (a) regarding a State, the Commission shall continue to
6 monitor implementation and enforcement by the State.
7 Upon finding that a State has taken the actions specified
8 by a notification under subsection (b), the Commission
9 may withdraw its determination. The Commission shall
10 promptly notify the Secretaries of any such withdrawal.

11 **SEC. 5. SECRETARIAL ACTION.**

12 (a) SECRETARIAL REVIEW OF COMMISSION DETER-
13 MINATION OF NONCOMPLIANCE.—Within 30 days after
14 receiving a notification regarding a State from the Com-
15 mission under section 4(b), the Secretary, in consultation
16 with the Secretary of the Interior, shall review the Com-
17 mission's determination of noncompliance and determine
18 whether—

19 (1) the State has filed to implement and en-
20 force the interstate fishery management plan in
21 question; and

22 (2) the measures which the State has filed to
23 implement and enforce are necessary for the con-
24 servation and management of the fishery in ques-
25 tion.

1 (b) COMMENTS.—In making a finding under sub-
2 section (a), the Secretary shall solicit, review, and consider
3 the comments of the Commission, the affected coastal
4 State, and the appropriate Councils.

5 (c) DECLARATION OF MORATORIUM.—Upon deter-
6 mining under subsection (a) that a State has failed to im-
7 plement and enforce an interstate fishery management
8 plan, the Secretary shall declare a moratorium on fishing
9 for the species covered by the plan within the waters of
10 that State.

11 (d) SUSPENSION OF MORATORIUM.—Upon notifica-
12 tion by the Commission of its withdrawal under section
13 4(c) of a determination of noncompliance by a State, the
14 Secretary shall terminate any moratorium declared under
15 subsection (c) with respect to that noncompliance.

16 (e) REGULATIONS.—The Secretary, shall promulgate
17 regulations necessary to implement this section. Such reg-
18 ulations may provide for the possession and use of fish
19 which have been produced in an aquaculture operation,
20 subject to applicable State regulations.

21 (f) PROHIBITED ACTS DURING MORATORIUM.—Dur-
22 ing the time in which a moratorium is in effect, it is un-
23 lawful for any person to—

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

4 (2) land, attempt to land, or possess fish that
5 are caught, taken, or harvested in violation of the
6 moratorium, this Act, or any regulation issued under
7 this Act;

8 (3) fail to return to the water immediately, with
9 a minimum of injury, any fish to which the morato-
10 rium applies that are taken incidental to fishing for
11 species other than those to which the moratorium
12 applies;

13 (4) to land, within a State that is subject to a
14 moratorium, any fish to which the moratorium ap-
15 plies, regardless of where it was caught;

16 (5) refuse to permit any officer authorized to
17 enforce the provisions of this Act to board a fishing
18 vessel subject to the person's control for purposes of
19 conducting any search or inspection in connection
20 with the enforcement of this Act;

21 (6) forcibly assault, resist, oppose, impede, in-
22 timidate, or interfere with any such officer in the
23 conduct of any search or inspection under this Act;

24 (7) resist a lawful arrest for any act prohibited
25 by this section;

1 (8) ship, transport, offer for sale, sell, purchase,
2 import, or have custody, control, or possession of,
3 any fish taken or possessed in violation of this Act;
4 or

5 (9) interfere with, delay, or prevent, by any
6 means, the apprehension or arrest of another person,
7 knowing that such other person has committed any
8 act prohibited by this section.

9 (g) PENALTIES.—

10 (1) CIVIL PENALTY.—Any person who commits
11 any act that is unlawful under subsection (f) of this
12 section shall be liable to the United States for a civil
13 penalty as provided by section 308 of the Magnuson
14 Fishery Conservation and Management Act (16
15 U.S.C. 1858). Subsections (b) through (e) of section
16 308 of the Magnuson Fishery Conservation and
17 Management Act (16 U.S.C. 1858(b)–(e); relating to
18 review of civil penalties, action upon failure to pay
19 assessment, compromise, and subpoenas) apply to
20 penalties assessed under this paragraph to the same
21 extent and in the same manner as if those penalties
22 were assessed under subsection (a) of that section.

23 (2) CRIMINAL PENALTIES.—Any person who
24 commits an act prohibited by paragraph (5), (6),
25 (7), or (9) of subsection (f) is guilty of an offense

1 punishable under subsections (a)(1) and (b) of sec-
2 tion 309 of the Magnuson Fishery Conservation and
3 Management Act (16 U.S.C. 1859).

4 (h) CIVIL FORFEITURES.—

5 (1) FORFEITURE.—Any vessel (including its
6 gear, equipment, appurtenances, stores, and cargo)
7 used, and any fish (or the fair market value thereof)
8 taken or retained, in any manner, in connection
9 with, or the result of, the commission of any act that
10 is unlawful under subsection (f), shall be subject to
11 forfeiture to the United States as provided in section
12 310 of the Magnuson Fishery Conservation and
13 Management Act (16 U.S.C. 1860).

14 (2) DISPOSAL OF FISH.—Any fish seized pursu-
15 ant to this Act may be disposed of pursuant to the
16 order of a court of competent jurisdiction or, if per-
17 ishable, in a manner prescribed by regulation issued
18 by the Secretary.

19 (i) ENFORCEMENT.—A moratorium declared under
20 subsection (c) shall be enforced by the Secretaries and the
21 Secretary of the Department in which the Coast Guard
22 is operating, as provided in section 311 of the Magnuson
23 Fishery Conservation and Management Act (16 U.S.C.
24 1861 et seq.). The Secretaries may, by agreement, on a
25 reimbursable basis or otherwise, utilize the personnel,

1 services, equipment (including aircraft and vessels), and
2 facilities of any other Federal department or agency and
3 of any agency of a State in carrying out that enforcement.

4 **SEC. 6. FINANCIAL ASSISTANCE.**

5 The Secretaries may provide financial assistance to
6 the Commission and to the States to carry out their re-
7 spective responsibilities under this Act, including—

8 (1) the preparation, implementation, and en-
9 forcement of interstate fishery management plans;
10 and

11 (2) State activities that are specifically required
12 within such plans.

13 **SEC. 7. DEFINITIONS.**

14 In this Act the following definitions apply:

15 (1) COASTAL FISHERY RESOURCES.—The term
16 “coastal fishery resource” means species of fish that
17 move among, or are broadly distributed across—

18 (A) waters under the jurisdiction of 2 or
19 more States that border the Atlantic Ocean; or

20 (B) waters under the jurisdiction of any
21 State that borders the Atlantic Ocean and wa-
22 ters of the exclusive economic zone.

23 (2) COMMISSION.—The term “Commission”
24 means the Atlantic States Marine Fisheries Commis-
25 sion constituted under the interstate compact con-

1 sented to and approved by the Congress in the Acts
2 of May 4, 1942 (56 Stat. 267), and August 19,
3 1950 (64 Stat. 467).

4 (3) COUNCILS.—The term “Councils” means
5 the Regional Fishery Management Councils estab-
6 lished under section 302 of the Magnuson Fishery
7 Conservation and Management Act (16 U.S.C.
8 1852) with jurisdiction over fisheries in the Atlantic
9 Ocean.

10 (4) EXCLUSIVE ECONOMIC ZONE.—The term
11 “exclusive economic zone” means that portion in the
12 Atlantic Ocean of the exclusive economic zone estab-
13 lished by Presidential Proclamation Number 5030,
14 dated March 10, 1983.

15 (5) FEDERAL FISHERY MANAGEMENT PLAN.—
16 The term “Federal Fishery management plan”
17 means a fishery management plan prepared by a
18 Council or the Secretary under the Magnuson Fish-
19 ery Conservation and Management Act (16 U.S.C.
20 1801 et seq.).

21 (6) FISH.—The term “fish” means finfish, mol-
22 lusks, crustaceans, and all other forms of marine
23 animal life other than marine mammals and birds.

24 (7) FISHERY.—The term “fishery” has the
25 meaning given that term in section 3 of the Magnu-

1 son Fishery Conservation and Management Act (16
2 U.S.C. 1802).

3 (8) FISHING.—The term “fishing” has the
4 meaning given that term in section 3 of the Magnu-
5 son Fishery Conservation and Management Act (16
6 U.S.C. 1802).

7 (9) IMPLEMENT AND ENFORCE.—The term
8 “implement and enforce” means the enactment or
9 adoption and the enforcement of statutes, regula-
10 tions, or rules as required to—

11 (A) comply with the provisions of an inter-
12 state fishery management plan; and

13 (B) assure compliance with such laws, reg-
14 ulations, or rules by persons participating in a
15 fishery that is subject to such plans.

16 (10) INTERSTATE FISHERY MANAGEMENT
17 PLAN.—The term “interstate fishery management
18 plan” means—

19 (A) a fishery management plan or amend-
20 ment adopted by the Commission under section
21 3; and

22 (B) any other plan for managing a coastal
23 fishery resource that was adopted by the Com-
24 mission before the date of the enactment of this

1 Act, and any amendment to such a plan adopt-
2 ed before the date of the enactment of this Act.

3 (11) SECRETARIES.—The term “Secretaries”
4 means the Secretary of Commerce and the Secretary
5 of the Interior.

6 (12) SECRETARY.—The term “Secretary”
7 means the Secretary of Commerce.

8 (13) STATE.—The term “State” means each of
9 Maine, New Hampshire, Massachusetts, Rhode Is-
10 land, Connecticut, New York, New Jersey, Penn-
11 sylvania, Delaware, Maryland, Virginia, North Caro-
12 lina, South Carolina, Georgia, Florida, the District
13 of Columbia, and the Potomac River Fisheries Com-
14 mission.

15 (14) WEAKFISH PLAN.—The term “Weakfish
16 Plan” means the Interstate Fisheries Management
17 Plan for Weakfish prepared by the Commission,
18 dated October 1985, and all amendments thereto re-
19 lated to fishing for weakfish that are formally adopt-
20 ed before the date of the enactment of this Act.

21 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated to the Sec-
23 retaries such sums as may be necessary for the purposes
24 of carrying out the provisions of this Act.

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