

103^D CONGRESS
1ST SESSION

S. 1126

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 SENATE OF THE UNITED STATES

JUNE 17 (legislative day, JUNE 15), 1993

Mr. HOLLINGS (for himself, Mr. KERRY, and Mr. SARBANES) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 at the “Atlantic Coastal Fish-
5 eries Cooperative Management Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDING.—The Congress finds the following:

1 (1) Coastal fishery resources that migrate, or
2 are widely distributed, across the jurisdictional
3 boundaries of two or more of the Atlantic States and
4 of the Federal Government are of substantial com-
5 mercial and recreational importance and economic
6 benefit to the Atlantic coastal region and the
7 Nation.

8 (2) Increased fishing pressure, environmental
9 pollution, and the loss and alteration of habitat have
10 reduced severely certain Atlantic coastal fishery
11 resources.

12 (3) Because no single governmental entity has
13 exclusive management authority for Atlantic coastal
14 fishery resources, harvesting of such resources is fre-
15 quently subject to disparate, inconsistent, and inter-
16 mittent State and Federal regulation that has been
17 detrimental to the conservation and sustainable use
18 of such resources and to the interests of fishermen
19 and the Nation as a whole.

20 (4) The responsibility for managing Atlantic
21 coastal fisheries rests with the States, which carry
22 out a cooperative program of fishery oversight and
23 management through the Atlantic States Marine
24 Fisheries Commission. It is the responsibility of the

1 Federal Government to support such cooperative
2 interstate management of coastal fishery resources.

3 (5) The failure by one or more Atlantic States
4 to fully implement a coastal fishery management
5 plan can adversely affect the status of Atlantic
6 coastal fisheries, and can discourage other States
7 from fully implementing coastal fishery management
8 plans.

9 (6) It is in the national interest to provide for
10 more effective Atlantic State fishery resource con-
11 servation and management.

12 (b) PURPOSE.—The purpose of this Act is to support
13 and encourage the development, implementation, and en-
14 forcement of effective interstate conservation and manage-
15 ment of Atlantic coastal fishery resources.

16 **SEC. 3. DEFINITIONS.**

17 In this Act, the following definitions apply:

18 (1) The term “coastal fishery management
19 plan” means a plan for managing a coastal fishery
20 resource, or an amendment to such plan, prepared
21 and adopted by the Commission, that—

22 (A) contains information regarding the sta-
23 tus of the resource and related fisheries;

24 (B) specifies conservation and management
25 actions to be taken by the States; and

1 (C) recommends actions to be taken by the
2 Secretary in the exclusive economic zone to con-
3 serve and manage the fishery.

4 (2) the term “coastal fishery resource” means
5 any fishery, any species of fish, or any stock of fish
6 that moves among, or is broadly distributed across,
7 waters under the jurisdiction of two or more States
8 or waters under the jurisdiction of one or more
9 States and the exclusive economic zone.

10 (3) the term “Commission” means the Atlantic
11 States Marine Fisheries Commission established
12 under the interstate compact consented to and ap-
13 proved by the Congress in Public Laws 77-539 and
14 81-721.

15 (4) The term “Councils” means Regional Fish-
16 ery Management Councils established under section
17 302 of the Magnuson Fishery Conservation and
18 Management Act (16 U.S.C. 1852).

19 (5) The term “exclusive economic zone” means
20 the exclusive economic zone of the United States es-
21 tablished by Proclamation Numbered 5030, dated
22 March 10, 1983. For the purposes of this Act, the
23 inner boundary of that zone is a line coterminous
24 with the seaward boundary of each of the coastal
25 States, and the outer boundary of that zone is a line

1 drawn in such a manner that each point on it is two
2 hundred nautical miles from the baseline from which
3 the territorial sea is measured.

4 (6) The term “fish” means finfish, mollusks,
5 crustaceans, and all other forms of marine animal
6 life other than marine mammals and birds.

7 (7) The term “fishery” means—

8 (A) one or more stocks of fish that can be
9 treated as a unit for purposes of conservation
10 and management and that are identified on the
11 basis of geographical, scientific, technical, com-
12 mercial, recreational, or economic characteris-
13 tics; or

14 (B) any fishing for such stocks.

15 (8) The term “fishing” means—

16 (A) the catching, taking, or harvesting of
17 fish;

18 (B) the attempted catching, taking, or har-
19 vesting of fish;

20 (C) any other activity that can be reason-
21 ably expected to result in the catching, taking,
22 or harvesting of fish; or

23 (D) any operations at sea in support of, or
24 in preparation for, any activity described in
25 subparagraphs (A) through (C).

1 Such term does not include any scientific research
2 activity.

3 (9) The term “implement and enforce” means
4 to enact and implement laws or regulations as re-
5 quired to conform with the provisions of a coastal
6 fishery management plan and to assure compliance
7 with such laws or regulations by persons participat-
8 ing in a fishery that is subject to such plan.

9 (10) the term “person” means any individual
10 (whether or not a citizen or national of the United
11 States), any corporation, partnership, association, or
12 other entity (whether or not organized or existing
13 under the laws of any State), and any Federal,
14 State, local, or foreign government or any entity of
15 any such government.

16 (11) The term “Secretaries” means the
17 Secretary of Commerce and the Secretary of the
18 Interior.

19 (12) the term “Secretary” means the Secretary
20 of Commerce.

21 (13) the term “State” means Maine, New
22 Hampshire, Massachusetts, Rhode Island, Connecti-
23 cut, New York, New Jersey, Pennsylvania, Dela-
24 ware, Maryland, Virginia, North Carolina, South

1 Carolina, Georgia, Florida, the District of Columbia,
2 or the Potomac River Fisheries Commission.

3 **SEC. 4. STATE-FEDERAL COOPERATION IN ATLANTIC**
4 **COASTAL FISHERY MANAGEMENT.**

5 (a) FEDERAL SUPPORT FOR STATE COASTAL FISH-
6 ERIES PROGRAMS.—The Secretary in cooperation with the
7 Secretary of the Interior shall develop and implement a
8 program to support the interstate fishery management ef-
9 forts of the Commission. The program shall include activi-
10 ties to support and enhance State cooperation in collec-
11 tion, management, and analysis of fishery data; law en-
12 forcement; habitat conservation; fishery research, includ-
13 ing biological and socioeconomic research; and fishery
14 management planning.

15 (b) FEDERAL REGULATION IN EXCLUSIVE ECO-
16 NOMIC ZONE.—(1) In the absence of an approved and im-
17 plemented fishery management plan under the Magnuson
18 Fishery Conservation and Management Act (16 U.S.C.
19 1801 et seq.), and after consultation with the appropriate
20 Councils, the Secretary may implement regulations to gov-
21 ern fishing in the exclusive economic zone that are—

22 (A) necessary to support the effective imple-
23 mentation of a coastal fishery management plan;
24 and

1 (B) consistent with the national standards set
2 forth in section 301 of the Magnuson Fishery Con-
3 servation and Management Act (16 U.S.C. 1851).

4 The regulations may include measures recommended by
5 the Commission to the Secretary that are necessary to
6 support the provisions of the coastal fishery management
7 plan. Regulations issued by the Secretary to implement
8 an approved fishery management plan prepared by the ap-
9 propriate Councils or the Secretary under the Magnuson
10 Fishery Conservation and Management Act (16 U.S.C.
11 1801 et seq.) shall supersede any conflicting regulations
12 issued by the Secretary under this subsection.

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

22 **SEC. 5. STATE IMPLEMENTATION OF COASTAL FISHERY**
23 **MANAGEMENT PLANS.**

24 (A) COASTAL FISHERY MANAGEMENT PLANS.—The
25 Commission shall prepare and adopt coastal fishery man-

1 agement plans to provide for the conservation and man-
2 agement of coastal fishery resources. In preparing a coast-
3 al fishery management plan for a fishery that is located
4 in both State waters and the exclusive economic zone, the
5 Commission shall consult with appropriate Councils to de-
6 termine areas where such coastal fishery management
7 plan may complement Council fishery management plans.
8 The coastal fishery management plan shall specify the re-
9 quirements necessary for States to be in compliance with
10 the plan. Upon adoption of a coastal fishery management
11 plan, the Commission shall identify each State that is re-
12 quired to implement and enforce that plan.

13 (b) STATE IMPLEMENTATION AND ENFORCEMENT.—

14 (1) Each State identified under subsection (a) with respect
15 to a coastal fishery management plan shall implement and
16 enforce the measures of such plan within the time frame
17 established in the plan.

18 (2) Within ninety days after the date of enactment
19 of this Act, the Commission shall establish a schedule of
20 time frames within which States shall implement and en-
21 force the measures of coastal fishery management plans
22 in existence before such date of enactment. No such time
23 frame shall exceed twelve months after the date on which
24 the schedule is adopted.

1 (c) COMMISSION MONITORING OF STATE IMPLEMEN-
2 TATION AND ENFORCEMENT.—The Commission shall, at
3 least annually, review each State’s implementation and en-
4 forcement of coastal fishery management plans for the
5 purpose of determining whether such State is effectively
6 implementing and enforcing each such plan. Upon comple-
7 tion of such reviews, the Commission shall report the re-
8 sults of the reviews to the Secretaries.

9 **SEC. 6 STATE NONCOMPLIANCE WITH COASTAL FISHERY**
10 **MANAGEMENT PLANS.**

11 (a) NONCOMPLIANCE DETERMINATION.—The Com-
12 mission shall determine that a State is not in compliance
13 with the provisions of a coastal fishery management plan
14 if it finds that the State has not implemented and enforced
15 such plan within the time frames established under the
16 plan or under section 5.

17 (b) NOTIFICATION.—Upon making any determina-
18 tion under subsection (a), the Commission shall within ten
19 working days notify the Secretaries of such determination.
20 Such notification shall include the reasons for making the
21 determination and an explicit list of actions that the af-
22 fected State must take to comply with the coastal fishery
23 management plan. The Commission shall provide a copy
24 of the notification to the affected State.

1 (c) WITHDRAWAL OF NONCOMPLIANCE DETERMINA-
2 TION.—After making a determination under subsection
3 (a), the Commission shall continue to monitor State imple-
4 mentation and enforcement. Upon finding that a State has
5 complied with the actions required under subsection (b),
6 the Commission shall immediately withdraw its determina-
7 tion of noncompliance. The Commission shall promptly no-
8 tify the Secretaries of such withdrawal.

9 **SEC. 7. SECRETARIAL ACTION.**

10 (a) SECRETARIAL REVIEW OF COMMISSION DETER-
11 MINATION OF NONCOMPLIANCE.—Within thirty days after
12 receiving a notification from the Commission under sec-
13 tion 6(b) and after review of the Commission’s determina-
14 tion of noncompliance, the Secretary in consultation with
15 the Secretary of the Interior shall make a finding on—

16 (1) whether the State in question has failed to
17 carry out its responsibility under section 5; and

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

22 (b) CONSIDERATION OF COMMENTS.—In making a
23 finding under subsection (a), the Secretary shall solicit
24 and consider the comments of the Commission, the af-
25 fected State, and the appropriate Councils.

1 (c) MORATORIUM.—(1) Upon making a finding under
2 subsection (a) that a State has failed to carry out its re-
3 sponsibility under section 5 and that the measures it failed
4 to implement and enforce are necessary for conservation
5 and management, the Secretary shall declare a morato-
6 rium on fishing in the fishery in question within the waters
7 of the noncomplying State. The Secretary shall specify the
8 moratorium's effective date, which shall be any date within
9 6 months after declaration of the moratorium.

10 (2) If after a moratorium is declared under para-
11 graph (1) the Secretaries are notified by the Commission
12 that the Commission is withdrawing under section 6(c) the
13 determination of noncompliance, the Secretary in con-
14 sultation with the Secretary of the Interior shall imme-
15 diately determine whether the State is in compliance with
16 the applicable plan. If so, the moratorium shall be termi-
17 nated.

18 (d) IMPLEMENTING REGULATIONS.—The Secretary
19 in consultation with the Secretary of the Interior may
20 issue regulations necessary to implement this section.
21 Such regulations may provide for the possession and use
22 of fish which have been produced in an aquaculture oper-
23 ation, subject to applicable State regulations.

1 (e) PROHIBITED ACTS DURING MORATORIUM.—Dur-
2 ing the time in which a moratorium under this section is
3 in effect, it is unlawful for any person to—

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

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

10 (3) land, attempt to land, or possess fish that
11 are caught, taken, or harvested in violation of the
12 moratorium or of any implementing regulation is-
13 sued under subsection (d);

14 (4) fail to return to the water immediately, with
15 a minimum of injury, any fish to which the morato-
16 rium applies that are taken incidental to fishing for
17 species other than those to which the moratorium
18 applies;

19 (5) possess within the State subject to the mor-
20 atorium, including the waters of that State, any fish
21 to which the moratorium applies;

22 (6) refuse to permit any officer authorized to
23 enforce the provisions of this Act to board a fishing
24 vessel subject to such person's control for purposes

1 of conducting any search or inspection in connection
2 with the enforcement of this Act;

3 (7) forcibly assault, resist, oppose, impede, in-
4 timidate, or interfere with any such authorized offi-
5 cer in the conduct of any search or inspection under
6 this Act;

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

9 (9) ship, transport, offer for sale, sell, purchase,
10 import, or have custody, control, or possession of,
11 any fish taken or retained in violation of this Act;
12 or

13 (10) interfere with, delay, or prevent, by any
14 means, the apprehension or arrest of another person,
15 knowing that such other person has committed any
16 act prohibited by this section.

17 (f) CIVIL AND CRIMINAL PENALTIES.—(1) Any per-
18 son who commits any act that is unlawful under sub-
19 section (e) shall be liable to the United States for a civil
20 penalty as provided by section 308 of the Magnuson Fish-
21 ery Conservation and Management Act (16 U.S.C. 1858).

22 (2) Any person who commits an act prohibited by
23 paragraph (6), (7), (8), or (10) of subsection (e) is guilty
24 of an offense punishable as provided by section 309 (a)(1)

1 and (b) of the Magnuson Fishery Conservation and Man-
2 agement Act (16 U.S.C. 1859 (a)(1) and (b)).

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

11 (2) Any fish seized pursuant to this Act may be dis-
12 posed of pursuant to the order of a court of competent
13 jurisdiction or, if perishable, in a manner prescribed in
14 regulation.

15 (h) ENFORCEMENT.—A person authorized by the
16 Secretary, the Secretary of the department in which the
17 Coast Guard is operating, or the Secretary of the Interior
18 may take any action to enforce a moratorium declared
19 under subsection (c) of this section that an officer author-
20 ized by the Secretary under section 311(b) of the Magnu-
21 son Fishery Conservation and Management Act (16
22 U.S.C. 1861(b)) may take to enforce that Act. The Sec-
23 retaries may, by agreement, on a reimbursable basis or
24 otherwise, utilize the personnel, services, equipment (in-
25 cluding aircraft and vessels), and facilities of any other

1 Federal department or agency and of any agency of a
2 State in carrying out that enforcement.

3 **SEC. 8. FINANCIAL ASSISTANCE.**

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

7 (1) the preparation, implementation, and en-
8 forcement of coastal fishery management plans; and

9 (2) State activities that are specifically required
10 within such plans.

11 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

12 To carry out the provisions of this Act, there are au-
13 thorized to be appropriated \$3,000,000 for fiscal year
14 1994, \$5,000,000 for fiscal year 1995, and \$7,000,000
15 for fiscal year 1996.

16 **SEC. 10. ATLANTIC STRIPED BASS CONSERVATION ACT.**

17 Section 9 of the Atlantic Striped Bass Conservation
18 Act (16 U.S.C. 1851 note) is repealed.

19 **SEC. 11. INTERJURISDICTIONAL FISHERIES ACT OF 1986.**

20 Section 308(c) of the Interjurisdictional Fisheries Act
21 of 1986 (16 U.S.C. 4107(c)) is amended by inserting “,
22 and \$600,000 for each of the fiscal years 1994 and 1995,”
23 immediately after “and 1993”.

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