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*1st Session* }

SENATE

{ REPORT  
105-148

ATLANTIC STRIPED BASS CONSERVATION  
ACT AMENDMENTS OF 1997

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

H.R. 1658



NOVEMBER 8, 1997.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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ATLANTIC STRIPED BASS CONSERVATION ACT  
AMENDMENTS OF 1997

NOVEMBER 8, 1997.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and  
Transportation, submitted the following

REPORT

[To accompany H.R. 1658]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R.1658) “A Bill to reauthorize and amend the Atlantic Striped Bass Conservation Act and related laws”, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1658 is to extend the authorization of appropriations for the Atlantic Striped Bass Conservation Act (ASBCA), and to extend the authorization for federal studies of the Atlantic striped bass resource. The bill also revises and updates the ASBCA.

BACKGROUND AND NEEDS

Along the coast of the Eastern United States, Atlantic striped bass (*Morone saxatilis*, also called “stripers” or “rockfish”) are an important commercial and recreational fish. Atlantic striped bass are anadromous; they spend their adult lives in estuarine or marine waters, but return to freshwater each spring to spawn. The Atlantic coast stocks of striped bass migrate seasonally, moving along the coast from North Carolina to Maine, and generally remaining within the three-mile zone which is subject to state fishery management. Because striped bass pass through the jurisdictions of multiple states and the federal government, conservation efforts must be well coordinated among these entities. Over the last fifteen years, the integration of management and research efforts among federal agencies, state agencies, and the Atlantic States Marine Fisheries Commission (Commission) has enabled Atlantic striped

bass populations to make a successful recovery. These once severely depleted fish populations are now considered to be healthy.

While striped bass population abundances have fluctuated dramatically throughout their recorded history, the population began a serious decline in the 1970s which raised concerns about the fishery. Commercial striped bass harvests dropped from 15 million pounds in 1973 to 2.9 million in 1984. In 1979, Congress responded to concerns about the health of the resource by authorizing an emergency striped bass study under the Anadromous Fish Conservation Act. This legislation called for the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to undertake a joint study of the causes of the striped bass decline and to recommend remedial action. The results of that study indicated that, while habitat degradation played a role, fishing pressure needed to be substantially reduced in order to conserve the Atlantic striped bass population.

In 1981, the Commission, which consists of representatives from each of the states bordering the western Atlantic Ocean, developed an interstate fishery management plan for striped bass. The interstate plan established guidelines for state regulations to reduce harvest pressure in coastal waters. To ensure each state's cooperation in implementing and enforcing the plan, Congress enacted the ASBCA in 1984. The ASBCA requires the states to fully implement the plan developed by the Commission. If a state is found to be out of compliance with the Commission's management plan, the ASBCA requires the Secretary of Commerce and the Secretary of the Interior to implement a federal moratorium on striped bass fishing in that state. In general, this federal authority has been effective in encouraging state compliance and a federal moratorium was briefly imposed only once. The ASBCA also provided for an annual study and population assessment, conducted jointly by NMFS and USFWS.

The ASBCA and the study authorized under the Anadromous Fish Conservation Act have been reauthorized a number of times, but, at the end of fiscal year (FY) 1994, the authorization of appropriations expired. However, the 1994 striped bass research study report was promising. It reported that the Chesapeake Bay populations were restored, and that the Delaware River, Hudson River, and Albemarle-Roanoke populations were continuing to recover. The Commission adopted a new management plan that was implemented on May 9, 1995. This plan phased in an increase in the fishing mortality target, thereby allowing states to increase their harvest limits. Since that time, it appears that the stocks have continued to improve.

H.R. 1658 extends the authorization of appropriations for the ASBCA, including studies on the striped bass populations, through FY 2000. The bill also reorganizes, revises, and integrates provisions related to striped bass research from the Anadromous Fish Conservation Act, provisions from the existing ASBCA and provisions from the 1988 reauthorization of the ASBCA (Public Law 100-589) governing the protection of Atlantic Striped Bass in the exclusive economic zone (EEZ).

## LEGISLATIVE HISTORY

H.R. 1658 was received by the Senate from the House on July 9, 1997 and was referred to the Committee on Commerce, Science, and Transportation. On October 8, 1997, H.R. 1658 was considered by the Committee during an open executive session. Senator Snowe offered an amendment to: (1) restore the existing statutory requirement that any regulation of fishing in federal waters ensure the effectiveness of state regulations; and (2) require a study of the socio-economic benefits of the striped bass fishery. The Snowe amendment was adopted by voice vote, and the bill as amended was unanimously adopted by voice vote. Upon being reported by this Committee, the bill will be sequentially referred to the Committee on Environment and Public Works for a period of 20 legislative days, pursuant to a unanimous consent agreement adopted by the Senate.

During the 104th Congress, the Commerce Committee considered a similar bill, S. 776, which was reported by this Committee and, subsequently, by the Committee on Environment and Public Works. The bill was not considered by the full Senate before the end of the Congress.

## SUMMARY OF MAJOR PROVISIONS

H.R. 1658 would: (1) reauthorize appropriations for the Striped Bass Act through FY 2000; (2) provide for public participation in the management process; (3) incorporate into the ASBCA provisions dealing with striped bass studies from the Anadromous Fish Conservation Act and provisions authorizing the Secretary of Commerce to regulate striped bass fishing in federal waters from Public Law 100-589; (4) clarify and amend the civil penalties; and (5) make technical amendments.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 9, 1997.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Commerce Science, and Transportation,  
U.S. Senate, Washington DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1658, the Atlantic Striped Bass Conservation Act Amendments of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gary Brown (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 1658—Atlantic Striped Bass Conservation Act Amendments of 1997*

Summary: H.R. 1658 would amend the Atlantic Striped Bass Conservation Act (the Striped Bass Act) to authorize appropriations of about \$1 million annually through 2000 for the management and conservation of striped bass, including studies. The act also would increase penalties for fishing for striped bass in state waters (zero to the three miles offshore) during a federal moratorium.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1658 would cost \$1 million in 1998 and about \$3 million over the 1998–2000 period. H.R. 1658 could affect governmental receipts by increasing a civil penalty for fishing in state waters during a federally imposed moratorium; therefore, pay-as-you-go procedures would apply. However, CBO estimates that any new receipts would total less than \$500,000 a year. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and would not impose any costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1658 is shown in the following table.

	By fiscal year, in millions of dollars					
	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority <sup>1</sup> .....	1	0	0	0	0	0
Estimated outlays .....	1	0	0	0	0	0
Proposed changes:						
Authorization level .....	0	1	1	1	0	0
Estimated outlays .....	0	1	1	1	0	0
Spending under H.R. 1658:						
Authorization level <sup>1</sup> .....	1	1	1	1	0	0
Estimated outlays .....	1	1	1	11	0	0

<sup>1</sup>The 1997 level is the amount appropriated for that year.

The costs of the act fall within budget function 300 (natural resources).

Basis of estimate: For purposes of this estimate, CBO assumes that all amounts authorized by H.R. 1658 would be appropriated for each fiscal year and that outlays would follow historical spending patterns for the authorized programs.

H.R. 1658 would increase from \$1,000 per violation to \$100,000 the penalty for fishing for striped bass in state waters when a federal moratorium is in effect. CBO expects that any collections from this penalty would total less than \$500,000 a year because federal moratoriums are rarely imposed. (Since the authority was first provided in 1984, a federal moratorium on fishing for striped bass in state waters has been imposed only once, for a six-day period in 1990 in New Jersey.) The act would maintain the current system of penalties for violating federal regulations governing fishing in federal waters.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 1658's provision increasing penalties for striped bass fishing in state waters during a moratorium could affect receipts, but CBO estimates that the amount of any new receipts would not be significant.

Estimated impact on state, local, and tribal governments: H.R. 1658 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

H.R. 1658 would benefit the Atlantic States Marine Fisheries Commission by providing access to federal funds that the act authorizes to be appropriate (\$1.05 million per year for fiscal years 1998–2000). The commission could receive some of these funds under cooperative agreements with federal agencies.

Estimated impact on the private sector: The legislation would impose no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 7, 1997, CBO provided a cost estimate for H.R. 1658, as ordered reported by the House Committee on Resources on June 25, 1997. The two versions of H.R. 1658 are nearly identical, and the estimated costs of the two versions are the same.

Estimate prepared by: Federal costs: Gary Brown; Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

#### NUMBER OF PERSONS COVERED

This legislation provides for the reauthorization of an existing law and does not change current regulatory authority. Thus, the bill, as reported, is not expected to affect the number of persons covered.

#### ECONOMIC IMPACT

Section 7 of the reported bill authorizes the appropriation of \$1.05 million for each of FYs 1998, 1999, and 2000. This funding level is modest and is not expected to have an inflationary impact on the economy.

#### PRIVACY

The reported bill will not have any adverse impact on the personal privacy of the individuals covered by the bill.

#### PAPERWORK

The reported bill does not impose any new paperwork requirements on citizens or businesses covered by the bill.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

The short title of the reported bill is “The Atlantic Striped Bass Conservation Act Amendments of 1997”.

*Section 2. Reauthorization and amendment of Atlantic Striped Bass Conservation Act*

Section 2 of the reported bill is a full substitute for the ASBCA which includes provisions related to striped bass research from the Anadromous Fish Conservation Act, and provisions from Public Law 100–589 governing the protection of Atlantic Striped Bass in the EEZ. Changes to existing law are noted below.

**Findings and purposes.**—The reported bill revises the findings and purposes contained in section 2 of the ASBCA. These revisions reflect the recovery of Atlantic striped bass by removing outdated references to a severely depressed striped bass population and ineffective management efforts. The revisions also emphasize the previous fluctuations in striped bass populations and the importance of interjurisdictional cooperation in managing the species.

**Definitions.**—The reported bill revises section 3 of the ASBCA which contains the definitions. The revisions consolidate the definitions in the ASBCA and Public Law 100–589, update the reference to the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act), and update the definition of “Plan” to refer to a plan for managing Atlantic striped bass prepared and adopted by the Commission. The definition of “Plan” in existing law refers specifically to the 1981 Interstate Fisheries Management Plan for striped bass and amendments thereto.

**Monitoring of implementation and enforcement by coastal States.**—The reported bill makes a few primarily technical changes to section 4 of the ASBCA. It changes the title of the section from “Commission Functions” to “Monitoring of Implementation and Enforcement by coastal States”, which is the title of section 4(a) in the existing ASBCA. The new title describes the section more precisely.

Under section 4(a) in the existing law, the Commission is required to determine in December of FY 1987 and in subsequent fiscal years whether each coastal state has adopted all regulatory measures necessary to fully implement a Commission management plan, and whether the enforcement of the plan by each state is satisfactory. The reported bill updates the provision by deleting the reference to FY 1987, and replacing it with “December of each fiscal year”.

The reported bill also moves section 4(b) in the existing ASBCA to section 5 on moratoriums.

**Moratorium.**—The reported bill revises section 5 of the ASBCA by combining section 4(b) of existing law regarding secretarial action after notification of State non-compliance and section 5 regarding the imposition of a moratorium. The revised section 5 also: (1) makes the provisions regarding civil penalties consistent with those imposed for violations of the Magnuson-Stevens Act; and (2) authorizes the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to take action to enforce a moratorium. This section of the reported bill deletes the



provision in existing law authorizing the Secretary of the Interior to enforce the Act. However, the Committee anticipates that the Secretary of the Interior will continue to play a role in all aspects of the implementation of this legislation.

Continuing studies of striped bass populations.—The reported bill amends section 6 of the ASBCA dealing with comprehensive annual surveys. Changes to this section update the ASBCA's existing requirements for fisheries data collection and revise and incorporate striped bass research provisions currently found in section 7 of the Anadromous Fish Conservation Act. Under the language of the reported bill, studies conducted would include, but not be limited to: (1) stock assessments; (2) investigations into the causes of Atlantic striped bass population fluctuations; (3) studies of the impacts of environmental factors on striped bass populations; and (4) investigations of the interactions between striped bass and other fish, including the effects of interspecies predation and competition. Under existing law, reports on these studies are required annually. The reported bill would change this to a biennial requirement.

The revisions to section 6 of the ASBCA also require the Secretaries, in consultation with the Commission, to undertake a study of the socio-economic benefits of the striped bass resource and to report their findings to Congress by September 30, 1998. The Committee intends that this study will examine both the commercial and recreational striped bass fisheries. In doing so, the study should examine the socio-economic benefits of the fisheries for each state, and should take into account each state's allocation of its total allowable catch between the recreational and commercial fishing sectors. The Secretaries and the Commission shall make use of all available data in conducting this study, including data from the states and from the Recreational Fishing Information Network (RECFIN).

Authorization of appropriations; cooperative agreements.—The reported bill amends section 7 of the ASBCA to authorize annual appropriations of \$1,050,000 to implement the ASBCA through FY 2000. Of that annual amount \$250,000 would be authorized for the Secretary of the Interior and \$800,000 for the Secretary of Commerce. The existing authorization of appropriations does not specify a particular appropriations level.

Public participation in preparation of management plans and amendments.—The reported bill adds a new section 8 to the ASBCA regarding public participation in the preparation of management plans and plan amendments. The new section would clarify that the Commission is required to adhere to the standards and procedures for public participation in the process of preparing management plans and plan amendments established under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). ACFCMA requires, at a minimum, four public hearings and the opportunity to submit written comments during the plan preparation process.

Protection of striped bass in the Exclusive Economic Zone.—The reported bill adds a new section 9 to the ASBCA which incorporates the existing requirements under Public Law 100-589 that apply to the Secretary of Commerce when promulgating regulations

for striped bass fishing in the EEZ. Such regulations must: (1) be consistent with the national standards outlined in the Magnuson-Stevens Act; (2) be compatible with the Commission's Plan and any federal moratorium in effect; (3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass; and (4) be sufficient to assure the long-term conservation of the Atlantic striped bass population. The language in this section which requires the federal regulations for the EEZ to "ensure the effectiveness of State regulations on fishing for Atlantic striped bass" was added to the reported bill by the Snowe amendment and is identical to a provision in the existing statute. This language is designed to ensure that State regulations are not undermined or weakened by federal regulations promulgated for the EEZ. The great majority of the Atlantic striped bass resource resides in State waters, and it is imperative that nothing is done intentionally or unintentionally by federal agencies which could harm state or Commission management initiatives. The Committee believes that the retention of this language in H.R. 1658 is particularly important, given that federal fisheries managers expressed interest as recently as 1995 in lifting the current moratorium on harvesting in the EEZ.

### *Section 3. Repeals*

Section 3 of the reported bill repeals three separate sections of existing law which are either outdated or have been integrated into the ASBCA by H.R. 1658 as reported by the Committee.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

#### **[SECTION 1. SHORT TITLE.**

**[**This Act may be cited as the "Atlantic Striped Bass Conservation Act".

#### **[SEC. 2. FINDINGS AND PURPOSES.**

**[(a) FINDINGS.—**The Congress finds and declares the following:

**[(1)** Atlantic striped bass are of historic commercial and recreational importance and economic benefit to the Atlantic coastal States and to the Nation.

**[(2)** As a consequence of increased fishing pressure, environmental pollution, the loss and alteration of habitat, and the inadequacy of fishery conservation and management practices and controls, certain stocks of Atlantic striped bass have been severely reduced in number.

**[(3)** Because no single government entity has full management authority throughout the range of the Atlantic striped bass, the harvesting and conservation of these fish have been subject to diverse, inconsistent, and intermittent State regulation that has been detrimental to the long-term maintenance of stocks of the species and to the interests of fishermen and the Nation as a whole.

[(4) It is in the national interest to implement effective procedures and measures to provide for effective interjurisdictional conservation and management of this species.

[(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass.

**[SEC. 3. DEFINITIONS.**

[As used in this Act—

[(1) The term “Magnuson Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

[(2) The term “Atlantic striped bass” means members of stocks or populations of the species *Morone saxatilis*, which ordinarily migrate seaward of the waters described in paragraph (3)(A)(i).

[(3) The term “coastal waters” means—

[(A) for each coastal State referred to in paragraph (4)(A)—

[(i) all waters, whether salt or fresh, of the coastal State shoreward of the baseline from which the territorial sea of the United States is measured; and

[(ii) the waters of the coastal State seaward from the baseline referred to in clause (i) to the inner boundary of the exclusive economic zone;

[(B) for the District of Columbia, those waters within its jurisdiction; and

[(C) for the Potomac River Fisheries Commission, those waters of the Potomac River within the boundaries established by the Potomac River Compact of 1958.

[(4) The term “coastal State” means—

[(A) Pennsylvania and each State of the United States bordering on the Atlantic Ocean north of the State of South Carolina;

[(B) the District of Columbia; and

[(C) the Potomac River Fisheries Commission established by the Potomac River Compact of 1958.

[(5) 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.

[(6) The term “fishing” means—

[(A) the catching, taking, or harvesting of Atlantic striped bass, except when incidental to harvesting that occurs in the course of commercial or recreational fish catching activities directed at a species other than Atlantic striped bass;

[(B) the attempted catching, taking, or harvesting of Atlantic striped bass; and

[(C) any operation at sea in support of, or in preparation for, any activity described in subparagraph (A) or (B).

The term does not include any scientific research authorized by the Federal Government or by any State government.

[(7) The term "Plan" means the Interstate Fisheries Management Plan for Striped Bass, dated October 1, 1981, prepared by the Commission, and all amendments thereto related to fishing, including interim restoration measures for Chesapeake Bay striped bass stocks as developed by the Atlantic States Marine Fisheries Commission Striped Bass Management Board in December 1983, whether or not such language is formally adopted as an amendment to the Plan of October 1, 1981.

[(8) The term "Secretary" means the Secretary of Commerce.

[(9) The term "Secretaries" means the Secretary of Commerce and the Secretary of the Interior.

**[SEC. 4. COMMISSION FUNCTIONS.**

**[(a) MONITORING OF IMPLEMENTATION AND ENFORCEMENT.—**

[(1) During December of FY 1987, and of each FY thereafter, and at any other time it deems necessary, the Commission shall determine:

[(A) whether each coastal State has adopted all regulatory measures necessary to fully implement the Plan in its coastal waters; and

[(B) whether the enforcement of the Plan by each coastal State is satisfactory. Enforcement by a coastal State shall not be considered satisfactory by the Commission if, in its view, the enforcement is being carried out in such a manner that the implementation of the Plan within its coastal waters is being, or will likely be, substantially and adversely affected.

[(2) The Commission shall immediately notify the Secretaries of each negative determination made by it under this subsection.

**[(b) SECRETARIAL ACTION AFTER NOTIFICATION.—**Upon receiving notice from the Commission under subsection (a) that a coastal State has not taken the actions described in that subsection, the Secretaries shall determine jointly, within thirty days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and that coastal State in question.

**[SEC. 5. MORATORIUM.**

**[(a) DEFINITIONS.—**For purposes of this section—

[(1) The term "moratorium area" means the coastal waters with respect to which a declaration under section 4(b) applies.

[(2) The term "moratorium period" means the period beginning on the day on which moratorium is declared under section 4(b) regarding a coastal State and ending on the day on which the Commission notifies the Secretaries that that State has taken appropriate remedial action with respect to those matters that were the cause of the moratorium being declared.

**[(b) PROHIBITED ACTS DURING MORATORIUM.—**During a moratorium period, it is unlawful for any person—

[(1) to engage in fishing within the moratorium area;

[(2) to land, or attempt to land, Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);

[(3) to land lawfully harvested Atlantic striped bass within the boundaries of a coastal State when a moratorium declared under section 4(b) applies to that State; or

[(4) to fail to return to the water Atlantic striped bass to which the moratorium applies that are caught incidental to harvesting that occurs in the course of commercial or recreational fish catching activities, regardless of the physical condition of the striped bass when caught.

[(c) PENALTIES AND FORFEITURES.—

[(1) Any person who is found by the Secretaries, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act that is unlawful under subsection (b), shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$1,000 for each violation. Each day of continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretaries by written notice. In determining the amount of such penalty, the Secretaries shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, the degree of culpability, any history of prior violations, ability to pay, and such other matters as justice may require.

[(2) Subsections (b) through (e) of section 308 of the Magnuson Act (16 U.S.C. 1858 (b)–(e)) (relating to review of civil penalties, action upon failure to pay assessment, compromise, and subpenas) shall apply to penalties assessed under paragraph (1) to the same extent and in the same manner as if those penalties were assessed under subsection (a) of such section 308.

[(d) 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 the result of, the commission of any act that is unlawful under subsection (b), shall be subject to forfeiture to the United States. All or part of the vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States under a civil proceeding described in paragraph (2). The district courts of the United States have jurisdiction over proceedings under this subsection.

[(2) Subsections (c) through (e) of section 310 of the Magnuson Act (16 U.S.C. 1860(c)–(e)) (relating to judgment, procedure, and rebuttable presumptions) apply with respect to proceedings for forfeiture commenced under this subsection to the same extent and in the same manner as if the proceeding were commenced under subsection (a) of such section 310.

[(e) ENFORCEMENT.—

[(1) The Secretaries shall enforce a moratorium declared under section 4(b). The Secretaries 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 coastal State in carrying out that enforcement.

[(2) ENFORCEMENT AUTHORITY.—A person authorized by the Secretaries may take any action to enforce a moratorium declared under section 4(b) that an officer authorized by the Secretary under section 311(b) of the Magnuson-Stevens Fishery Conservation and Management Act may take to enforce that Act.

[(3) REGULATIONS.—The Secretaries may issue regulations to implement this subsection.

**[SEC. 6. COMPREHENSIVE ANNUAL SURVEYS.**

[For the purposes of implementing the provisions of this Act, the Secretary and the Secretary of the Interior shall jointly conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey shall include, but not be limited to, a compilation and assessment of the recreational and commercial landings of that species in the coastal States during the period considered in the survey. The results of each annual survey shall be published in the Federal Register.

**[SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE AGREEMENTS.**

[(a) AUTHORIZATION.—For each of FYs 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, there are authorized to be appropriated such sums as may be necessary or appropriate to carry out this Act.

[(b) COOPERATIVE AGREEMENTS.—The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission for the purpose of using amounts appropriated pursuant to this section to provide financial assistance to the Commission for carrying out its functions under this Act.

**[SEC. 8. SECRETARIAL STUDY.**

[Within six months of the date of enactment of this Act, the Secretaries shall review the existing Plan and shall report to the Commission, the Chairman of the House Committee on Merchant Marine and Fisheries, the Chairman of the Senate committee on Commerce, Science and Transportation and the Chairman of the Senate Committee on Environment and Public Works on the adequacy of the Plan to achieve the purposes of this Act. Such report shall include recommendations for additional measures that may need to be taken and include recommendations concerning specific State actions regarding the management and conservation of striped bass.]

ANADROMOUS FISH CONSERVATION ACT

**[SEC. 7. STRIPED BASS POPULATION STUDIES.**

[(a) CONDUCT OF STUDIES WITH STATES AND OTHER NON-FEDERAL INTERESTS; SCOPE OF STUDIES.—The Secretary shall cooperate with States and other non-Federal interests in conducting scientific studies of the anadromous stocks of Atlantic striped bass. These studies shall include, but not be limited to—

[(1) estimates of recruitment, spawning potential, mortality rates, stock composition of coastal fisheries, and other population parameters;

[(2) investigations of factors affecting abundance of striped bass, including analyses of the extent and causes of mortality at successive life stages; and

[(3) monitoring population abundance and age and sex composition of striped bass stocks on fishery-dependent and fishery-independent data.

[(b) ANNUAL REPORTS TO CONGRESS; RESPECTING PROGRESS AND FINDINGS OF STUDIES; REPORT RECOMMENDATIONS.—The Secretary shall make annual reports to the Congress concerning the progress and findings of the studies conducted pursuant to subsection (a) of this section. Such reports shall, where appropriate, contain recommendations of actions which could be taken to improve the population of striped bass.

[(c) IMPLEMENTATION OF CONDUCT OF STUDIES.—For purposes of conducting the studies required by this section, the Secretary may enter into agreements with States and other non-Federal interests in accordance with the provisions of the first section of this Act or he may carry out such studies directly, as he deems appropriate: Provided, That any agreement entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

[(d) FUNDING OF STUDIES.—There are authorized to be appropriated for the purposes of carrying out the studies described in subsection (a) of this section not to exceed \$1,000,000 for each of the FYs 1991, 1992, 1993, and 1994. Funds authorized to be appropriated by this subsection are in addition to any funds authorized by section 4 which may be used for projects involving or affecting striped bass.]

PUBLIC LAW 100-589

**[SEC. 5. STUDY OF STRIPED BASS IN ALBEMARLE SOUND AND ROANOKE RIVER BASIN.**

[(a) FINDINGS.—The Congress finds that:

[(1) The anadromous stock of striped bass in the Albemarle Sound-Roanoke River Basin area of North Carolina sustained important commercial and recreational fisheries as recently as the 1960's and 1970's.

[(2) This stock has been declining for some time and is severely depressed at present, and may soon reach a level from which recovery will be exceptionally difficult.

[(3) The reasons for this decline are thought to include fishing; other human activities and environmental factors, such as unsuitable water flow before, during, and after critical spawning periods; degradation of water quality by pollutants; the impact of eutrophication on the food chain, and the impact of changing land use activities.

[(4) Current Federal and interstate efforts to conserve the Atlantic striped bass, while effective in identifying factors contributing to the decline of other important Atlantic coastal migratory stocks of striped bass and steps that will be effective in reversing that decline, have not made a major contribution to the protection and restoration of the Albemarle Sound-Roanoke River stock of striped bass.

[(5) Because the striped bass and the aquatic environment of the Albemarle Sound-Roanoke River basin presently are being significantly affected by combined but not fully understood causes, a study should be undertaken to obtain additional biological information to understand the significance of fishing, water flows, and other factors in the decline of the striped bass populations in the Albemarle Sound-Roanoke River basin and, if feasible, develop an effective course of action for restoring these important stocks of striped bass.

[(b) STUDY.—

[(1) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall—

[(A) immediately undertake a biological study of the striped bass fishery resources and habitats of the Albemarle Sound-Roanoke River basin area;

[(B) develop short-term and long-term recommendations for Federal and State government agencies for restoring and conserving such resources and habitats; and

[(C) submit the results of such study and such recommendations to the Congress and to the States of North Carolina and Virginia as soon as practicable, but not later than 36 months after the date of the enactment of this Act.

[(2) CONTENTS OF THE STUDY.—The study conducted under this subsection shall, to the extent existing data are adequate, use such existing data and shall include—

[(A) a description of the Albemarle Sound-Roanoke River basin area, and an investigation and analysis of the effects of land and water use practices on the striped bass population and habitats of the area;

[(B) an investigation and analysis of the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including the amount and geographical location of migration and spawning habitat;

[(C) an investigation and analysis of factors that may affect the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including—

[(i) the extent and causes of mortality at successive stages in the life cycle of striped bass, including mortality due to recreational and commercial fishing; and

[(ii) the combined effects of pollution and other natural and human alterations of the physical environment, including the effects of water withdrawals, discharges, and flows, on striped bass migration and spawning and on the viability and condition of eggs and larval fish;

[(D) an investigation and analysis of the status and effectiveness of current striped bass management measures implemented by State and Federal authorities, including State fishing regulations and Federal fish stocking activities, reservoir management and water flow regulation, and



an analysis of whether any additional State or Federal measures would be effective in halting the decline and initiating the recovery of the Albemarle Sound-Roanoke River stock of striped bass; and

[(E) a recommendation of whether conservation of the Albemarle Sound-Roanoke River stocks of striped bass could be improved by management of these stocks under the provisions of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass and the Atlantic Striped Bass Conservation Act.

**[(c) PARTICIPATION BY STATE AGENCIES.—**

[(1) The Director of the North Carolina Division of Marine Fisheries, the Executive Director of the North Carolina Wildlife Resources Commission, the Secretary of the Virginia Department of Natural Resources, and the District Engineer for the Wilmington District of the United States Army Corps of Engineers shall be invited to have their agencies participate in conducting the study and developing recommendations pursuant to subsection (b).

[(2) To facilitate participation by the agencies referred to in paragraph (1), should they decide to participate, a Memorandum of Understanding will be executed with such officials setting forth the respective responsibilities of the entities involved in conducting the study and developing those recommendations.

[(d) CONSULTATION.—In carrying out the study under subsection (b), the Atlantic States Marine Fisheries Commission, other Federal agencies, the Albemarle-Pamlico Estuarine Study, Dominion Resources, Inc./Virginia Power/North Carolina Power, affected local governments in North Carolina and Virginia, appropriate commercial and recreational fishing interests, and other interests shall be consulted, to the maximum extent practicable.

[(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of \$1,000,000 to carry out the requirements of this section. These appropriations will remain available until expended.

[(f) STATE AUTHORITY.—Nothing in this section shall be construed as authorizing any State to manage fisheries within the jurisdiction of another State.

[(g) RESTRICTION ON USE OF OTHER FUNDS.—Amounts appropriated pursuant to the authorization contained in section 7(d) of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) shall not be used to carry out this section.

**[SEC. 6. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.**

[(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—The Secretary of Commerce shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—

[(1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

[(2) achieve conservation and management goals for the Atlantic striped bass resource.

[(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

[(c) [Repealed]

[(d) APPLICABILITY OF MAGNUSON ACT PROVISIONS.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson-Stevens 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 and any plan issued under subsection (a) of this section as if such regulations or plan were issued under the Magnuson-Stevens Fishery Conservation and Management Act.

[(e) DEFINITION.—As used in this section, the term “exclusive economic zone” has the meaning given such term in section 3(6) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(6)).]

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the “Atlantic Striped Bass Conservation Act”.*

**SEC. 2. FINDINGS AND PURPOSES.**

(a) *FINDINGS.—The Congress finds and declares the following:*

(1) *Atlantic striped bass are of historic commercial and recreational importance and economic benefit to the Atlantic coastal States and to the Nation.*

(2) *No single government entity has full management authority throughout the range of the Atlantic striped bass.*

(3) *The population of Atlantic striped bass—*

(A) *has been subject to large fluctuations due to natural causes, fishing pressure, environmental pollution, loss and alteration of habitat, inadequacy of fisheries conservation and management practices, and other causes; and*

(B) *risks potential depletion in the future without effective monitoring and conservation and management measures.*

(4) *It is in the national interest to implement effective procedures and measures to provide for effective interjurisdictional conservation and management of this species.*

(b) *PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass.*

**SEC. 3. DEFINITIONS.**

*As used in this Act—*

(1) *the term “Magnuson Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).*

(2) *The term “Atlantic striped bass” means members of stocks or populations of the species *Morone saxatilis*, which ordinarily migrate seaward of the waters described in paragraph (3)(A)(i).*

(3) *The term “coastal waters” means—*

(A) *for each coastal State referred to in paragraph (4)(A)—*

(i) *all waters, whether salt or fresh, of the coastal State shoreward of the baseline from which the territorial sea of the United States is measured; and*

(ii) *the waters of the coastal State seaward from the baseline referred to in clause (i) to the inner boundary of the exclusive economic zone;*

(B) *for the District of Columbia, those waters within its jurisdiction; and*

(C) *for the Potomac River Fisheries Commission, those waters of the Potomac River within the boundaries established by the Potomac River Compact of 1958.*

(4) *The term “coastal State” means—*

(A) *Pennsylvania and each State of the United States bordering on the Atlantic Ocean north of the State of South Carolina;*

(B) *the District of Columbia; and*

(C) *the Potomac River Fisheries Commission established by the Potomac River Compact of 1958.*

(5) *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.*

(6) *The term “exclusive economic zone” has the meaning given such term in section 3(6) of the Magnuson Act (16 U.S.C. 1802(6)).*

(7) *The term “fishing” means—*

(A) *the catching, taking, or harvesting of Atlantic striped bass, except when incidental to harvesting that occurs in the course of commercial or recreational fish catching activities directed at a species other than Atlantic striped bass;*

(B) *the attempted catching, taking, or harvesting of Atlantic striped bass; and*

(C) *any operation at sea in support of, or in preparation for, any activity described in subparagraph (A) or (B). The term does not include any scientific research authorized by the Federal Government or by any State government.*

(8) *The term “moratorium area” means the coastal waters with respect to which a declaration under section 5(a) applies.*

(9) *The term “moratorium period” means the period beginning on the day on which moratorium is declared under section 5(a) regarding a coastal State and ending on the day on which the Commission notifies the Secretaries that that State has*

*taken appropriate remedial action with respect to those matters that were the case of the moratorium being declared.*

(10) *The term “Plan” means a plan for managing Atlantic striped bass, or an amendment to such plan, that is prepared and adopted by the Commission.*

(11) *The term “Secretary” means the Secretary of Commerce or a designee of the Secretary of the Secretary of Commerce.*

(12) *The term “Secretaries” means the Secretary of Commerce and the Secretary of the Interior or their designees.*

**SEC. 4. MONITORING OF IMPLEMENTATION AND ENFORCEMENT BY COASTAL STATES.**

(a) *DETERMINATION—During December of each FY, and at any other time it deems necessary the Commission shall determine—*

(1) *whether each coastal State has adopted all regulatory measures necessary to fully implement the Plan in its coastal waters; and*

(2) *whether the enforcement of the Plan by each coastal State is satisfactory.*

(b) *SATISFACTORY STATE ENFORCEMENT—For purposes of subsection (a)(2), enforcement by a coastal State shall not be considered satisfactory by the Commission if, in its view, the enforcement is being carried out in such a manner that the implementation of the Plan within the coastal waters of the State is being, or will likely be, substantially and adversely affected.*

(c) *NOTIFICATION OF SECRETARIES—The Commission shall immediately notify the Secretaries of each negative determination made by it under subsection (a).*

**SEC. 5. MORATORIUM.**

(a) *SECRETARIAL ACTION AFTER NOTIFICATION.—Upon receiving notice from the Commission under section 4(c) of a negative determination regarding a coastal State, the Secretaries shall determine jointly, within thirty days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and that coastal State in question.*

(b) *PROHIBITED ACTS DURING MORATORIUM.—During a moratorium period, it is unlawful for any person—*

(1) *to engage in fishing within the moratorium area;*

(2) *to land, or attempt to land, Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);*

(3) *to land lawfully harvested Atlantic striped bass within the boundaries of a coastal State when a moratorium declared under subsection (a) applies to that State; or*

(4) *to fail to return to the water Atlantic striped bass to which the moratorium applies that are caught incidental to harvesting that occurs in the course of commercial or recreational fish catching activities, regardless of the physical condition of the striped bass when caught.*

(c) *CIVIL PENALTIES.—*

(1) *CIVIL PENALTY.*—Any person who commits any act that is unlawful under subsection (b) shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. 1858).

(2) *CIVIL FORFEITURES.*—

(A) *IN GENERAL.*—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 (b) shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson Act (16 U.S.C. 1860).

(B) *DISPOSAL OF FISH.*—Any fish seized pursuant to this Act may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed in regulations.

(d) *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 (a) that an officer authorized by the Secretary under section 311(b) of the Magnuson Act (16 U.S.C. 1861(b)) may take to enforce that Act (16 U.S.C. 1801 et seq.). 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.

(e) *REGULATIONS.*—The Secretary may issue regulations to implement this section.

**SEC. 6. CONTINUING STUDIES OF STRIPED BASS POPULATIONS.**

(a) *IN GENERAL.*—For the purposes of carrying out this Act, the Secretaries shall conduct continuing, comprehensive studies of Atlantic striped bass stocks. These studies shall include, but shall not be limited to, the following:

(1) Annual stock assessments, using fishery-dependent and fishery-independent data, for the purposes of extending the long-term population record generated by the annual striped bass study conducted by the Secretaries before 1994 and understanding the population dynamics of Atlantic striped bass.

(2) Investigations of the causes of fluctuations in Atlantic striped bass populations.

(3) Investigations of the effects of water quality, land use, and other environmental factors on the recruitment, spawning potential, mortality, and abundance of Atlantic striped bass populations, including the Delaware River population.

(4) Investigations of—

(A) the interactions between Atlantic striped bass and other fish, including bluefish, menhaden, mackerel, and other forage fish or possible competitors, stock assessments of these species, to the extent appropriate; and

(B) the effects of interspecies predation and competition on the recruitment, spawning potential mortality, and abundance of Atlantic striped bass.

(b) *SOCIO-ECONOMIC STUDY.*—The Secretaries, in consultation with the Atlantic States Marine Fisheries Commission, shall con-

duct a study of the socio-economic benefits of the Atlantic striped bass resource. The Secretaries shall issue a report to the Congress concerning the findings of this study no later than September 30, 1998.

(c) *REPORTS.*—The Secretaries shall make biennial reports to the Congress and to the Commission concerning the progress and findings of studies conducted under subsection (a) and shall make those reports public. Such reports shall, to the extent appropriate, contain recommendations of actions which could be taken to encourage the sustainable management of Atlantic striped bass.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE AGREEMENTS.**

(a) *AUTHORIZATION.*—For each of FYs 1998, 1999, and 2000, there are authorized to be appropriated to carry out this Act—

- (1) \$800,000 to the Secretary of Commerce; and
- (2) \$250,000 to the Secretary of the Interior.

(b) *COOPERATIVE AGREEMENTS.*—The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission or with States, for the purpose of using amounts appropriated pursuant to this section to provide financial assistance for carrying out the purposes of this Act.

**SEC. 8. PUBLIC PARTICIPATION IN PREPARATION OF MANAGEMENT PLANS AND AMENDMENTS.**

(a) *STANDARDS AND PROCEDURES.*—In order to ensure the opportunity for public participation in the preparation of management plans and amendments to management plans for Atlantic striped bass, the Commission shall prepare such plans and amendments in accordance with the standards and procedures established under section 805(a)(2) of the Atlantic Coastal Fisheries Cooperative Management Act.

(b) *APPLICATION.*—Subsection (a) shall apply to management plans and amendments adopted by the Commission after the 6-month period beginning on the date of enactment of the Atlantic Striped Bass Conservation Act Amendments of 1997.

**SEC. 9. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.**

(a) *REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.*—The Secretary shall promulgate regulations governing fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines—

- (1) are consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851);
- (2) are compatible with the Plan and each Federal moratorium in effect on fishing for Atlantic striped bass within the coastal waters of a coastal State;
- (3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass within the coastal waters of a coastal State; and
- (4) are sufficient to assure the long-term conservation of Atlantic striped bass populations.

(b) *CONSULTATION; PERIODIC REVIEW OF REGULATIONS.*—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appro-

*priate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.*

*(c) APPLICABILITY OF MAGNUSON ACT PROVISIONS.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson 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 and any plan issued under subsection (a) of this section as if such regulations or plan were issued under the Magnuson Act.*

