

Calendar No. 285

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
105-149

ATLANTIC STRIPED BASS CONSERVATION ACT AMENDMENTS OF 1997

NOVEMBER 8, 1997.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany H.R. 1658]

The Committee on Environment and Public Works, to which was referred (H.R. 1658), pursuant to the unanimous consent agreement on September 2, 1997, 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.

GENERAL STATEMENT

BACKGROUND

Striped bass are anadromous fish which live in marine waters during their adult lives and migrate to freshwater river systems to spawn. Atlantic striped bass are found in coastal waters from North Carolina to Maine. They are migratory, moving along the coast primarily within the three-mile zone which is subject to State fishery management. Conservation efforts must be well-coordinated to be successful because striped bass pass through the jurisdiction of several States.

Although striped bass populations have fluctuated since the Europeans first colonized America, a severe population decline that began in the 1970s caused serious concern about the fishery. Commercial striped bass harvests had dropped from 15 million pounds in 1973 to 3.5 million pounds in 1983, a 77 percent decrease. In 1979, Congress responded to the severe decline of the striped bass populations by authorizing the Emergency Striped Bass Study as part of the Anadromous Fish Conservation Act. The study con-

cluded that, while habitat degradation played a role, overfishing was the primary cause of the decrease in striped bass numbers. Over the past 16 years, this study has provided the scientific data for management of the Atlantic striped bass fishery.

In 1981, the Atlantic States Marine Fisheries Commission (ASMFC) adopted an interstate fishery management plan for the Atlantic striped bass to reduce harvest pressure on the species. In 1984, Congress enacted the Atlantic Striped Bass Conservation Act (Striped Bass Act) to promote a coordinated Federal-State partnership for striped bass management by requiring that States fully comply with the striped bass fishery management plan developed by the ASMFC. If a State is found to be out of compliance with the Commission's management plan, the Secretaries of Commerce and the Interior are to implement jointly a Federal moratorium on striped bass fishing in that State. The Striped Bass Act was amended and extended in 1986, 1988, and 1991. The authorization for the Act expired at the end of fiscal year 1994. Several attempts to reauthorize the Striped Bass Act have been made since 1994, most recently with S. 776 in the 104th Congress, which was favorably reported by both the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works.

As a result of efforts to protect striped bass through the Federal-State partnership created under the Striped Bass Act, populations have rebounded dramatically. The ASMFC declared striped bass stocks recovered as of January 1, 1995, and adopted a new management plan that became effective May 9, 1995. This plan phased in an increase in the fishing mortality target, thereby allowing States to increase their harvest limits. Atlantic striped bass stocks have continued to improve.

OBJECTIVES OF THE LEGISLATION

This legislation addresses several issues. First, it extends authorization of appropriations through fiscal year 2000 for implementation of the law by the Fish and Wildlife Service and the National Marine Fisheries Service. The Striped Bass Act is only reauthorized until fiscal year 2000 so that it can be considered concurrently with the Atlantic Coastal Fisheries Cooperative Management Act, which expires in 2000. Second, H.R. 1658 authorizes continued studies of the striped bass population. The bill modifies the requirements for future studies in response to the improvements in the fish populations and to attain appropriate information. The bill also makes technical corrections to eliminate duplicate provisions and repeals outdated provisions.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 designates the bill as the "Atlantic Striped Bass Conservation Act Amendments of 1997".

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

Section 2 amends the Atlantic Striped Bass Conservation Act of 1984 by substituting a revised version. The specific differences between the existing Act and H.R. 1658 are as follows:

SEC. 2. FINDINGS AND PURPOSES

Current law refers to the large decline in striped bass populations that led to the enactment of the Striped Bass Act. The findings, as modified by H.R. 1658, reflect that the striped bass populations are no longer depleted, but that Federal measures are still necessary to provide for effective interjurisdictional management of the fishery.

SEC. 3. DEFINITIONS

Changes to this section update certain terms and consolidate definitions from other sections. In current law, the definition of “Plan” references a now obsolete fishery management plan. H.R. 1658 clarifies this definition. Definitions of “moratorium area” and “moratorium period” are moved to this section from other sections of the Striped Bass Act. The definitions of “Secretary” and “Secretaries” are modified to make clear that the Secretaries of Commerce and the Interior are authorized to delegate their responsibilities under the Striped Bass Act to other agency officials. In addition, the bill includes a definition of the “exclusive economic zone.”

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

Section 4(b) in current law requires the Secretaries of Commerce and the Interior to declare a moratorium on fishing for the Atlantic striped bass within the waters of a State that they find to be out of compliance with the fishery management plan. This requirement is moved to section 5(a), as it relates specifically to the moratorium.

SEC. 5. MORATORIUM

As noted above, section 5(a) in current law, containing the definitions of “moratorium area” and “moratorium period,” is moved to section 3.

Subsections (c) and (d) in the bill modify current law to make it consistent with the Atlantic Coastal Fisheries Cooperative Management Act. This is not intended to effect the Secretaries enforcement of the Act.

H.R. 1658, as reported by the House, excluded the Secretary of the Interior from section 5(d) and 5(e). The committee adopted an amendment during its business meeting to include the Secretary of the Interior, consistent with current law in those subsections. The Secretary of the Interior plays an important role in monitoring landings and, thereby, enforcing the Act.

SEC. 6. CONTINUING STUDIES OF STRIPED BASS POPULATIONS

This section unifies existing authorization for studies of striped bass into one authorization and modifies its objectives to reflect current issues in the striped bass fisheries. In addition, it requires

the Secretaries of Commerce and the Interior to issue reports on the results of these studies biennially instead of annually, as in current law.

The socio-economic study authorized in H.R. 1658 will look at both the commercial and recreational striped bass fisheries. In doing so, the study should take into consideration the considerable variability among States in how they divide their total allowable catch between recreational and commercial striped bass fishers. This study should be closely coordinated with, and rely on funding for, the annual collection and analysis of economic data through the Recreational Fishing Information Network (RECFIN) program, which is funded through appropriations for the Department of Commerce. Economic data collected for the RECFIN program will be taken into consideration when calculating the recreational aspect of the study.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE
AGREEMENTS

This section of the reported bill authorizes the appropriation of \$1,050,000 to implement the Act for each of fiscal years 1998, 1999 and 2000, of which \$250,000 would go to the Secretary of the Interior and \$800,000 would go to the Secretary of Commerce. The existing Act authorized "such sums as may be necessary or appropriate" through fiscal year 1994.

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

This section replaces section 8 of current law, which contains a one-time reporting requirement that was fulfilled in 1985. It adds a new requirement for public participation in the development of striped bass management plans. This change would make the Striped Bass Act consistent with 805(a)(2) and (3) of the Atlantic Coastal Fisheries Cooperative Management Act's standards and procedures. The Atlantic Coastal Fisheries Cooperative Management Act requires, at a minimum, four public hearing and the opportunity to submit written comments during the plan preparation.

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

H.R. 1658 changes some of the requirements upon the Secretary in promulgating regulations governing fishing for Atlantic striped bass in the exclusive economic zone (EEZ). Subsection (a) (1) is the same as existing law, and provides that the Secretary determine that the regulations are consistent with the national standards in section 301 of the Magnuson Act. Subsection (a) (2) provides that the Secretary determine that the regulations are compatible with the Plan and any Federal moratorium in effect. This standard is based on the Atlantic Coastal Fisheries Cooperative Management Act. Subsection (a) (3) provides that the Secretary determine that the regulations ensure the effectiveness of State regulations on striped bass fishing. This standard is similar to existing law, which provides that the Secretary determine regulations to be necessary and appropriate to ensure the effectiveness of State regulations

and any moratorium on striped bass fishing. Subsection (a) (4) provides that the Secretary determine that the regulations are sufficient to assure the long-term conservation of striped bass populations. This standard has been modified to reflect the improved status of striped bass populations. While these requirements govern regulations regarding fishing in the EEZ, the National Marine Fisheries Service has indicated that, at this time, it has no intention of promulgating regulations before 2000, when the Striped Bass Act is next up for reauthorization.

Section 3. Repeals

Section 3 of the reported bill repeals three sections of the Striped Bass Act or the Anadromous Fish Conservation Act that are either outdated or have been integrated into the Atlantic Striped Bass Conservation Act by H.R. 1658 as reported by the committee.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that H.R. 1658 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

LEGISLATIVE HISTORY

H.R. 1658 was received by the Senate from the House on July 9, 1997 and referred to the Committee on Commerce, Science, and Transportation. At a business meeting on October 8, 1997, the Committee on Commerce, Science, and Transportation ordered the bill favorably reported by voice vote with an amendment by Senator Snowe. Consistent with a consent agreement made on September 2, 1997, H.R. 1658 was sequentially referred to the Committee on Environment and Public Works for a period not to exceed 20 session days. On Wednesday, October 29, 1997, the Committee on Environment and Public Works held a business meeting to consider the provisions of H.R. 1658. Senator Chafee offered an amendment, which was adopted by voice vote, to include the Secretary of the Interior in the enforcement provision in section 5 of the bill. H.R. 1658, as amended, was ordered favorably reported by voice vote.

HEARINGS

During the 105th Congress, the committee did not hold hearings on H.R. 1658. During the 104th Congress, however, on December 12, 1995, the Committee on Environment and Public Works held a hearing on S. 776, reauthorizing the Atlantic Striped Bass Con-

servation Act and the Anadromous Fish Conservation Act (S. Hrg. 104-467).

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 7, 1997.

Hon. JOHN H. CHAFEE,
Chairman, Committee on Environment and Public Works,
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) who can be reached at 226-2860, and Marjorie Miller (for the State and local impact), who can be reached at 225-3220.

Sincerely,

JUNE E. O'NEILL

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Atlantic Striped Bass Conservation Act Amendments of 1997 (H.R. 1658): As ordered reported by the Senate Committee on Environment and Public Works on October 29, 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 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. The costs of the Act fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars						
	1997	1998	1999	2000	2001	2002
Spending Under Current Law:						
Budget Authority ¹	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 S. 1658:						
Authorization level ¹	1	1	1	1	0	0
Estimated Outlays	1	1	1	1	0	0

¹The 1997 level is the amount appropriated for that year.

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. 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 appropriated (\$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 Estimates

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. On October 9, 1997, CBO provided a cost estimate for H.R. 1658 as ordered reported by the Senate Committee on Commerce, Science, and Transportation on October 8, 1997. The three versions of H.R. 1658 are nearly identical, and the estimated costs of the three versions are the same.

ESTIMATE PREPARED BY: Federal Costs: Gary Brown (226–2860) impact on State, Local, and Tribal Governments: Marjorie Miller (225–3220).

ESTIMATE APPROVED BY: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

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 fiscal year 1987, and of each fiscal year 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 fiscal years 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 fiscal years 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 Albermarle-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 fiscal year, 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】** Secretaries 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】** 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 State in carrying out that enforcement.

(e) *REGULATIONS.*—The **【Secretary】** Secretaries 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 conduct 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 fiscal years 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 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) *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.

