

currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) Prohibited acts

(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g) of this section;

(B) to refuse to pay the fee imposed under subsection (d) of this section after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 [16 U.S.C. 1858] (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976 [16 U.S.C. 1857].

(g) Regulations

The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

(Pub. L. 96-339, §2, Sept. 4, 1980, 94 Stat. 1069; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (a)(1), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 101 of the Act of 1976 [16 U.S.C. 1811], referred to in subsec. (b)(1)(A), which established the fishery conservation zone, was amended generally by Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, and now relates to United States sovereign rights to fish and fishery management authority within the exclusive economic zone.

CODIFICATION

Section was not enacted as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (a)(1), Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

1980—Subsec. (a)(1), Pub. L. 96-561 substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971h, 971i of this title.

SUBCHAPTER IV—NATIONAL FISHERY
MANAGEMENT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1802, 1821, 3343 of this title.

§ 1851. National standards for fishery conservation and management

(a) In general

Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) Guidelines

The Secretary shall establish advisory guidelines (which shall not have the force and effect

of law), based on the national standards, to assist in the development of fishery management plans.

(Pub. L. 94-265, title III, §301, Apr. 13, 1976, 90 Stat. 346; Pub. L. 97-453, §4, Jan. 12, 1983, 96 Stat. 2484; Pub. L. 98-623, title IV, §404(3), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 104-297, title I, §106, Oct. 11, 1996, 110 Stat. 3570.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(8), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104-297, §106(a), substituted “consider efficiency” for “promote efficiency”.

Subsec. (a)(8) to (10). Pub. L. 104-297, §106(b), added pars. (8) to (10).

1984—Subsec. (a)(1). Pub. L. 98-623 inserted “for the United States fishing industry”.

1983—Subsec. (b). Pub. L. 97-453 substituted “advisory guidelines (which shall not have the force and effect of law)” for “guidelines”.

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-146, §1, Dec. 16, 1997, 111 Stat. 2672, provided that: “This Act [repealing section 757g of this title, amending provisions set out as notes under this section and listed in a table of National Wildlife Conservation Areas set out under section 668dd of this title, and repealing provisions set out as notes under this section] may be cited as the ‘Atlantic Striped Bass Conservation Act Amendments of 1997’.”

RESTRICTION ON FUNDING CERTAIN NEW FISHERY MANAGEMENT PLANS, AMENDMENTS OR REGULATIONS

Pub. L. 104-208, div. A, title I, §101(a) [title II, §§208, 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-40, 3009-41, provided that: “None of the funds appropriated under this Act or any other Act henceforth may be used to develop new fishery management plans, amendments, or regulations which create new individual fishing quota programs (whether such quotas are transferable or not) or to implement any such plans, amendments or regulations approved by a Regional Fishery Management Council or the Secretary after January 4, 1995, until offsetting fees to pay for the cost of administering such plans, amendments, or regulations are expressly authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). This restriction shall also apply to any program relating to the Gulf of Mexico commercial red snapper fishery that authorizes the consolidation of licenses, permits or endorsements that result in different trip limits for vessels in the same class. This restriction shall not apply in any way to the North Pacific halibut and sablefish, South Atlantic wreckfish, or the Mid-Atlantic surfclam and ocean (including mahogany) quohog individual fishing quota programs. The term ‘individual fishing quota’ does not include a community development quota.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-134, title I, §101[(a)] [title II, §210], Apr. 26, 1996, 110 Stat. 1321, 1321-31; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; repealed by Pub. L. 104-297, title I, §108(f)(6), Oct. 11, 1996, 110 Stat. 3579.

ALBEMARLE SOUND-ROANOKE RIVER BASIN: STRIPED BASS STUDY

Pub. L. 100-589, §5, Nov. 3, 1988, 102 Stat. 2984, related to requirement of biological study of striped bass fish-

ery resources and habitats of Albemarle Sound-Roanoke River basin area and development of short-term and long-term recommendations for restoring and conserving these resources and habitats, prior to repeal by Pub. L. 105-146, §3(b), Dec. 16, 1997, 111 Stat. 2677.

EXCLUSIVE ECONOMIC ZONE: ATLANTIC STRIPED BASS PROTECTION

Pub. L. 100-589, §6(a)-(f), Nov. 3, 1988, 102 Stat. 2986, as amended by Pub. L. 102-130, §4, Oct. 17, 1991, 105 Stat. 627; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, directed Secretary of Commerce to regulate fishing for Atlantic striped bass in exclusive economic zone determined to be consistent with national standards set forth in this section, prior to repeal by Pub. L. 105-146, §3(c), Dec. 16, 1997, 111 Stat. 2677.

ATLANTIC STRIPED BASS CONSERVATION

Pub. L. 98-613, §§1-9, Oct. 31, 1984, 98 Stat. 3187-3190, as amended by Pub. L. 99-432, §§1-5, Oct. 1, 1986, 100 Stat. 989, 990; Pub. L. 100-589, §§1, 2, 4, 6(g), Nov. 3, 1988, 102 Stat. 2984, 2987; Pub. L. 102-130, §2, Oct. 17, 1991, 105 Stat. 626; Pub. L. 103-206, title VIII, §812, formerly §810, Dec. 20, 1993, 107 Stat. 2453, renumbered §812, Pub. L. 104-297, title IV, §404(c), Oct. 11, 1996, 110 Stat. 3619; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 105-146, §2, Dec. 16, 1997, 111 Stat. 2672, provided that:

“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 [May 4, 1942, ch. 283, 56 Stat. 267] and 81-721 [Aug. 19, 1950, ch. 763, 64 Stat. 467].

“(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 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 30 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 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 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 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 with [sic] 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 [16 U.S.C. 5104(a)(2)].

“(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 [Dec. 16, 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 [16 U.S.C. 1801 et seq.].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1802, 5103, 5107b of this title.

§ 1852. Regional Fishery Management Councils

(a) Establishment

(1) There shall be established, within 120 days after April 13, 1976, eight Regional Fishery Management Councils, as follows:

(A) New England Council

The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(B) Mid-Atlantic Council

The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(C) South Atlantic Council

The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(D) Caribbean Council

The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).