

(C) any other activity that can be reasonably expected to result in the catching, taking, or harvesting of fish; or

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

Such term does not include any scientific research activity or the catching, taking, or harvesting of fish in an aquaculture operation.

(10) The term “implement and enforce” means to enact and implement laws or regulations as required to conform with the provisions of a coastal fishery management plan and to assure compliance with such laws or regulations by persons participating in a fishery that is subject to such plan.

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

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

(13) The term “State” means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission.

(Pub. L. 103–206, title VIII, § 803, Dec. 20, 1993, 107 Stat. 2448; Pub. L. 104–297, title IV, § 404(a), Oct. 11, 1996, 110 Stat. 3619; Pub. L. 106–555, title I, § 122(b)(3), Dec. 21, 2000, 114 Stat. 2766.)

#### REFERENCES IN TEXT

Public Law 77–539, referred to in par. (3), is act May 4, 1942, ch. 283, 56 Stat. 267, which is not classified to the Code.

Public Law 81–721, referred to in par. (3), is act Aug. 19, 1950, ch. 763, 64 Stat. 467, which is not classified to the Code.

Proclamation Number 5030, referred to in par. (6), is set out as a note under section 1453 of this title.

#### AMENDMENTS

2000—Par. (5). Pub. L. 106–555 made technical amendment to reference in original act which appears in text as reference to section 1852 of this title.

1996—Par. (1). Pub. L. 104–297 inserted “and” after semicolon in subpar. (A), substituted “States.” for “States; and” in subpar. (B), and struck out subpar. (C) which read as follows: “recommends actions to be taken by the Secretary in the exclusive economic zone to conserve and manage the fishery.”

#### TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

### § 5103. State-Federal cooperation in Atlantic coastal fishery management

#### (a) Federal support for State coastal fisheries programs

The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The

program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.

#### (b) Federal regulation in exclusive economic zone

(1) In the absence of an approved and implemented fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the exclusive economic zone that are—

(A) compatible with the effective implementation of a coastal fishery management plan; and

(B) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851).

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

(2) 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 issued under this subsection as if such regulations were issued under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(Pub. L. 103–206, title VIII, § 804, Dec. 20, 1993, 107 Stat. 2449; Pub. L. 104–297, title IV, § 404(b), Oct. 11, 1996, 110 Stat. 3619; Pub. L. 106–555, title I, § 122(b)(3), Dec. 21, 2000, 114 Stat. 2766.)

#### REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### AMENDMENTS

2000—Subsec. (b). Pub. L. 106–555 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery” wherever appearing.

1996—Subsec. (b)(1)(A). Pub. L. 104–297 substituted “compatible with” for “necessary to support”.

### § 5104. State implementation of coastal fishery management plans

#### (a) Coastal fishery management plans

(1) The Commission shall prepare and adopt coastal fishery management plans to provide for

the conservation of coastal fishery resources. In preparing a coastal fishery management plan for a fishery that is located in both State waters and the exclusive economic zone, the Commission shall consult with appropriate Councils to determine areas where such coastal fishery management plan may complement Council fishery management plans. The coastal fishery management plan shall specify the requirements necessary for States to be in compliance with the plan. Upon adoption of a coastal fishery management plan, the Commission shall identify each State that is required to implement and enforce that plan.

(2) Within 1 year after December 20, 1993, the Commission shall establish standards and procedures to govern the preparation of coastal fishery management plans under this chapter, including standards and procedures to ensure that—

(A) such plans promote the conservation of fish stocks throughout their ranges and are based on the best scientific information available; and

(B) the Commission provides adequate opportunity for public participation in the plan preparation process, including at least four public hearings and procedures for the submission of written comments to the Commission.

**(b) State implementation and enforcement**

(1) Each State identified under subsection (a) of this section with respect to a coastal fishery management plan shall implement and enforce the measures of such plan within the timeframe established in the plan.

(2) Within 90 days after December 20, 1993, the Commission shall establish a schedule of timeframes within which States shall implement and enforce the measures of coastal fishery management plans in existence before December 20, 1993. No such timeframe shall exceed 12 months after the date on which the schedule is adopted.

**(c) Commission monitoring of State implementation and enforcement**

The Commission shall, at least annually, review each State's implementation and enforcement of coastal fishery management plans for the purpose of determining whether such State is effectively implementing and enforcing each such plan. Upon completion of such reviews, the Commission shall report the results of the reviews to the Secretaries.

(Pub. L. 103-206, title VIII, §805, Dec. 20, 1993, 107 Stat. 2450.)

**§ 5105. State noncompliance with coastal fishery management plans**

**(a) Noncompliance determination**

The Commission shall determine that a State is not in compliance with the provisions of a coastal fishery management plan if it finds that the State has not implemented and enforced such plan within the timeframes established under the plan or under section 5104 of this title.

**(b) Notification**

Upon making any determination under subsection (a) of this section, the Commission shall within 10 working days notify the Secretaries of

such determination. Such notification shall include the reasons for making the determination and an explicit list of actions that the affected State must take to comply with the coastal fishery management plan. The Commission shall provide a copy of the notification to the affected State.

**(c) Withdrawal of noncompliance determination**

After making a determination under subsection (a) of this section, the Commission shall continue to monitor State implementation and enforcement. Upon finding that a State has complied with the actions required under subsection (b) of this section, the Commission shall immediately withdraw its determination of noncompliance. The Commission shall promptly notify the Secretaries of such withdrawal.

(Pub. L. 103-206, title VIII, §806, Dec. 20, 1993, 107 Stat. 2451.)

**§ 5106. Secretarial action**

**(a) Secretarial review of Commission determination of noncompliance**

Within 30 days after receiving a notification from the Commission under section 5105(b) of this title and after review of the Commission's determination of noncompliance, the Secretary shall make a finding on—

(1) whether the State in question has failed to carry out its responsibility under section 5104 of this title; and

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

**(b) Consideration of comments**

In making a finding under subsection (a) of this section, the Secretary shall—

(A) give careful consideration to the comments of the State that the Commission has determined under section 5105(a) of this title is not in compliance with a coastal fishery management plan, and provide such State, upon request, with the opportunity to meet with and present its comments directly to the Secretary; and

(B) solicit and consider the comments of the Commission and the appropriate Councils.

**(c) Moratorium**

(1) Upon making a finding under subsection (a) of this section that a State has failed to carry out its responsibility under section 5104 of this title and that the measures it failed to implement and enforce are necessary for conservation, the Secretary shall declare a moratorium on fishing in the fishery in question within the waters of the noncomplying State. The Secretary shall specify the moratorium's effective date, which shall be any date within 6 months after declaration of the moratorium.

(2) If after a moratorium is declared under paragraph (1) the Secretary is notified by the Commission that the Commission is withdrawing under section 5105(c) of this title the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If so, the moratorium shall be terminated.