

conomic 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 chapter to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass.

(Pub. L. 98-613, §2, Oct. 31, 1984, 98 Stat. 3187; Pub. L. 105-146, §2, Dec. 16, 1997, 111 Stat. 2672.)

#### AMENDMENTS

1997—Pub. L. 105-146 amended section catchline and text generally, reenacting subsecs. (a)(1), (4), and (b) without change. Prior to amendment, pars. (2) and (3) of subsec. (a) read as follows:

“(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.”

#### SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-146, §1, Dec. 16, 1997, 111 Stat. 2672, provided that: “This Act [enacting section 5158 of this title, amending this section and sections 5152 to 5157 of this title, repealing section 757g of this title, amending provisions set out as a note 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 section 1851 of this title] may be cited as the ‘Atlantic Striped Bass Conservation Act Amendments of 1997.’”

#### SHORT TITLE

Pub. L. 98-613, §1, Oct. 31, 1984, 98 Stat. 3187, as amended by Pub. L. 105-146, §2, Dec. 16, 1997, 111 Stat. 2672, provided that: “This Act [enacting this chapter] may be cited as the ‘Atlantic Striped Bass Conservation Act.’”

#### EX. ORD. NO. 13449. PROTECTION OF STRIPED BASS AND RED DRUM FISH POPULATIONS

Ex. Ord. No. 13449, Oct. 20, 2007, 72 F.R. 60531, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of

America, to assist in ensuring faithful execution of the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Coastal Fisheries Cooperative Management Act, and the Atlantic Striped Bass Conservation Act (chapters 38, 71, and 71A of title 16, United States Code), and to conserve striped bass and red drum fish, it is hereby ordered as follows:

SECTION 1. *Policy.* It shall be the policy of the United States to conserve striped bass and red drum for the recreational, economic, and environmental benefit of the present and future generations of Americans, based on sound science and in cooperation with State, territorial, local, and tribal governments, the private sector, and others, as appropriate.

SEC. 2. *Implementation.* (a) To carry out the policy set forth in section 1, the Secretary of Commerce shall:

(i) encourage, as appropriate, management under Federal, State, territorial, tribal, and local laws that supports the policy of conserving striped bass and red drum, including State designation as gamefish where the State determines appropriate under applicable law;

(ii) revise current regulations, as appropriate, to include prohibiting the sale of striped bass and red drum caught within the Exclusive Economic Zone of the United States off the Atlantic Ocean and the Gulf of Mexico;

(iii) periodically review the status of the striped bass and red drum populations within waters subject to the jurisdiction of the United States and:

(A) take such actions within the authority of the Secretary of Commerce as may be appropriate to carry out the policy set forth in section 1 of this order; and

(B) recommend to the President such actions as the Secretary may deem appropriate to advance the policy set forth in section 1 that are not within the authority of the Secretary.

(b) Nothing in this order shall preclude or restrict the production, possession, or sale of striped bass or red drum fish that have been produced by aquaculture.

(c) The Secretary of Commerce shall implement subsections 2(a)(i) and (iii), insofar as they relate to Atlantic striped bass, jointly with the Secretary of the Interior, as appropriate.

SEC. 3. *Definitions.* As used in this order:

(a) “Exclusive Economic Zone of the United States” means the marine area of the United States as defined in Presidential Proclamation 5030 of March 10, 1983, with, for purposes of this order, the inner boundary of that zone being a line coterminous with the seaward boundary of each of the coastal States;

(b) “red drum” means the species *Sciaenops ocellatus*; and

(c) “striped bass” means the species *Morone saxatilis*.

SEC. 4. *General Provisions.* (a) This order shall be implemented in a manner consistent with applicable law (including but not limited to interstate compacts to which the United States has consented by law, treaties and other international agreements to which the United States is a party, treaties to which the United States and an Indian tribe are parties, and laws of the United States conferring rights on Indian tribes) and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

#### § 5152. Definitions

As used in this chapter—

(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)<sup>1</sup> 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 5154(a) of this title applies.

(9) The term “moratorium period” means the period beginning on the day on which moratorium is declared under section 5154(a) of this title 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.

(Pub. L. 98-613, §3, Oct. 31, 1984, 98 Stat. 3187; Pub. L. 99-432, §1, Oct. 1, 1986, 100 Stat. 989; Pub. L. 100-589, §6(g)(1), Nov. 3, 1988, 102 Stat. 2987; 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. 2673.)

#### REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in par. (1), 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.

Public Law 77-539, referred to in par. (5), 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. (5), is act Aug. 19, 1950, ch. 763, 64 Stat. 467, which is not classified to the Code.

Section 3(6) of the Magnuson Act, referred to in par. (6), was redesignated section 3(11) of that Act, by Pub. L. 104-297, title I, §102(1), (3), Oct. 11, 1996, 110 Stat. 3561.

#### AMENDMENTS

1997—Pub. L. 105-146 amended section catchline and text generally, substituting present provisions for provisions which defined the terms “Magnuson Act” in par. (1), “Atlantic striped bass” in par. (2), “coastal waters” in par. (3), “coastal State” in par. (4), “Commission” in par. (5), “fishing” in par. (6), “Plan” in par. (7), “Secretary” in par. (8), and “Secretaries” in par. (9).

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

1988—Par. (1). Pub. L. 100-589 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘Act of 1976’ means the Act entitled ‘An Act to provide for the conservation and management of the fisheries, and for other purposes’, approved April 13, 1976 (16 U.S.C. 1801 et seq.).”

1986—Pars. (2) to (4). Pub. L. 99-432 amended pars. (2) to (4) generally. Prior to amendment, pars. (2) to (4) read as follows:

“(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).

“(3) The term ‘coastal waters’ means—

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

“(B) the waters of a coastal State seaward from the baseline referred to in subparagraph (A) to the inner boundary of the exclusive economic zone.

“(4) The term ‘coastal State’ means Pennsylvania and each State of the United States bordering on the Atlantic Ocean north of the State of South Carolina.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

<sup>1</sup> See References in Text note below.

**§ 5153. 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) of this section, 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) of this section.

(Pub. L. 98-613, § 4, Oct. 31, 1984, 98 Stat. 3188; Pub. L. 99-432, § 2, Oct. 1, 1986, 100 Stat. 989; Pub. L. 100-589, § 4, Nov. 3, 1988, 102 Stat. 2984; Pub. L. 105-146, § 2, Dec. 16, 1997, 111 Stat. 2674.)

AMENDMENTS

1997—Pub. L. 105-146 amended section catchline and text generally, substituting provisions relating to monitoring of implementation and enforcement by coastal States for somewhat similar provisions, including Secretarial action upon notification.

1988—Subsec. (a)(1). Pub. L. 100-589 inserted “and at any other time it deems necessary,” after “thereafter,” in introductory provisions.

1986—Subsec. (a). Pub. L. 99-432, § 2(b), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Commencing on July 1, 1985, the Commission shall monitor on a biannual basis the enforcement of the Plan by each coastal State for purposes of deciding if that enforcement is satisfactory. Enforcement by a coastal State may 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.”

Pub. L. 99-432, § 2(a), redesignated subsec. (b) as (a) and struck out heading and text of former subsec. (a). Prior to amendment, text read as follows: “The Commission shall decide during June 1985 whether each coastal state has adopted all regulatory measures necessary to fully implement the Plan in its coastal waters. The Commission shall immediately notify the Secretaries of each negative determination made by it under the preceding sentence.”

Subsec. (b). Pub. L. 99-432, § 2(c), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Immediately upon receiving notice from the Commission—

“(1) under subsection (a) of this section that a coastal State has not taken the actions described in that subsection; or

“(2) under subsection (c) of this section that the enforcement of the Plan by a coastal State is not satisfactory;

the Secretary shall determine, within 30 days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretary shall declare a moratorium on fishing for Atlantic striped

bass within the coastal waters of that coastal State. In making such a determination, the Secretary shall carefully consider and review the comments of the Commission, that coastal State in question, and the Secretary of the Interior.”

Pub. L. 99-432, § 2(a), redesignated subsec. (d) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 99-432, § 2(a), struck out heading and text of subsec. (c). Prior to amendment, text read as follows: “On December 30, 1985, and on the closing date of each biannual period thereafter, the Commission shall notify the Secretaries of the results of the monitoring under subsection (b) of this section of each coastal State.”

Subsec. (d). Pub. L. 99-432, § 2(a), redesignated subsec. (d) as (b).

**§ 5154. Moratorium**

**(a) Secretarial action after notification**

Upon receiving notice from the Commission under section 5153(c) of this title 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) of this section 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) of this section 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) of this section shall be subject to forfeiture to the United States as provided