

§ 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