

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)¹ 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—

¹ See References in Text note below.

“(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.

§ 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), 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).

(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) 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).