

§ 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) 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), 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), the Commission shall continue to monitor State implementation and enforcement. Upon finding that a State has complied with the actions required under subsection (b), 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), 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) 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 non-complying 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 de-

termination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If so, the moratorium shall be terminated.

(d) Implementing regulations

The Secretary may issue regulations necessary to implement this section. Such regulations—

(1) may provide for the possession and use of fish which have been produced in an aquaculture operation, subject to applicable State regulations; and

(2) shall allow for retention of fish that are subject to a moratorium declared under this section and unavoidably taken as incidental catch in fisheries directed toward menhaden if—

(A) discarding the retained fish is impracticable;

(B) the retained fish do not constitute a significant portion of the catch of the vessel; and

(C) retention of the fish will not, in the judgment of the Secretary, adversely affect the conservation of the species of fish retained.

(e) Prohibited acts during moratorium

During the time in which a moratorium under this section is in effect, it is unlawful for any person to—

(1) violate the terms of the moratorium or of any implementing regulation issued under subsection (d);

(2) engage in fishing for any species of fish to which the moratorium applies within the waters of the State subject to the moratorium;

(3) land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium or of any implementing regulation issued under subsection (d);

(4) fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies, except as provided by regulations issued under subsection (d);

(5) refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter;

(6) forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this chapter;

(7) resist a lawful arrest for any act prohibited by this section;

(8) ship, transport, offer for sale, sell, purchase, import, or have custody, control, or possession of, any fish taken or retained in violation of this chapter; or

(9) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(f) Civil and criminal penalties

(1) Any person who commits any act that is unlawful under subsection (e) shall be liable to

the United States for a civil penalty as provided by section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).

(2) Any person who commits an act prohibited by paragraph (5), (6), (7), or (9) of subsection (e) is guilty of an offense punishable as provided by section 309(a)(1) and (b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859(a)(1) and (b)).

(g) Civil forfeitures

(1) 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 (e), shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1860).

(2) Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed in regulation.

(h) Enforcement

A person authorized by the Secretary or the Secretary of the department in which the Coast Guard is operating may take any action to enforce a moratorium declared under subsection (c) of this section that an officer authorized by the Secretary under section 311(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(b)) may take to enforce that Act [16 U.S.C. 1801 et seq.]. The Secretary 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.

(Pub. L. 103-206, title VIII, §807, Dec. 20, 1993, 107 Stat. 2451; Pub. L. 106-555, title I, §122(b)(3), Dec. 21, 2000, 114 Stat. 2766.)

Editorial Notes

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (h), 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—Subsecs. (f) to (h). Pub. L. 106-555 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery” wherever appearing.

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reor-

ganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5107. Financial assistance

The Secretary and the Secretary of the Interior may provide financial assistance to the Commission and to the States to carry out their respective responsibilities under this chapter, including—

(1) the preparation, implementation, and enforcement of coastal fishery management plans; and

(2) State activities that are specifically required within such plans.

(Pub. L. 103–206, title VIII, § 808, Dec. 20, 1993, 107 Stat. 2453.)

Statutory Notes and Related Subsidiaries

REPORTS

Pub. L. 106–555, title I, § 122(c), Dec. 21, 2000, 114 Stat. 2766, provided that:

“(1) ANNUAL REPORT TO THE SECRETARY.—The Secretary shall require, as a condition of providing financial assistance under this subtitle [subtitle B (§§ 121, 122) of title I of Pub. L. 106–555, amending sections 5101 to 5103, 5106, and 5107a to 5108 of this title and enacting provisions set out as a note under section 5101 of this title], that the Commission and each State receiving such assistance submit to the Secretary an annual report that provides a detailed accounting of the use of the assistance.

“(2) BIENNIAL REPORTS TO THE CONGRESS.—The Secretary shall submit biennial reports to the Committee on Resources [now Committee on Natural Resources] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the use of Federal assistance provided to the Commission and the States under this subtitle. Each biennial report shall evaluate the success of such assistance in implementing this subtitle.”

§ 5107a. State permits valid in certain waters

(a) Permits

Notwithstanding any provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), this chapter, or any requirement of a fishery management plan or coastal fishery management plan to the contrary, a person holding a valid license issued by the State of Maine which lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobster in the following areas designated as Federal waters, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

(1) west of Monhegan Island in the area located north of the line 43° 42' 08" N, 69° 34' 18" W and 43° 42' 15" N, 69° 19' 18" W;

(2) east of Monhegan Island in the area located west of the line 43° 44' 00" N, 69° 15' 05" W and 43° 48' 10" N, 69° 08' 01" W;

(3) south of Vinalhaven in the area located west of the line 43° 52' 21" N, 68° 39' 54" W and 43° 48' 10" N, 69° 08' 01" W; and

(4) south of Bois Bubert Island in the area located north of the line 44° 19' 15" N, 67° 49' 30" W and 44° 23' 45" N, 67° 40' 33" W.

(b) Enforcement

The exemption from Federal fishery permitting requirements granted by subsection (a) may

be revoked or suspended by the Secretary in accordance with section 308(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858(g)) for violations of such Act or this chapter.

(Pub. L. 103–206, title VIII, § 809, as added Pub. L. 104–297, title IV, § 404(c), Oct. 11, 1996, 110 Stat. 3619; amended Pub. L. 106–555, title I, § 122(b)(3), Dec. 21, 2000, 114 Stat. 2766.)

Editorial Notes

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in text, 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.

This chapter, referred to in subsec. (b), was in the original “this Act”, and was translated as reading “this title”, meaning title VIII of Pub. L. 103–206, Dec. 20, 1993, 107 Stat. 2447, which is classified principally to this chapter. For complete classification of title VIII to the Code, see Short Title note set out under section 5101 of this title and Tables.

PRIOR PROVISIONS

A prior section 809 of Pub. L. 103–206 was renumbered section 811, and is classified to section 5108 of this title.

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106–555 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

§ 5107b. Transition to management of American lobster fishery by Commission

(a) Temporary limits

Notwithstanding any other provision of this chapter or of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no regulations have been issued under section 5103(b) of this title by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

(1) 100 lobsters (or parts thereof) for each fishing trip of 24 hours or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

(b) Secretary to monitor landings

Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1851], and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, im-