§ 5108  TITLE 16—CONSERVATION
Page 2346

(c) Regulations to remain in effect until plan implemented

Regulations issued under subsection (a) or (b) of this section shall remain in effect until the Secretary implements regulations under section 5103(b) of this title to implement a coastal fishery management plan for American lobster.


REFERENCES IN TEXT

This chapter, referred to in subsection (a), 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 chapter 38 (§ 1801 et seq.) of this title and Tables.

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

PRIORITY PROVISION


AMENDMENTS


§ 5108. Authorization of appropriations

(a) In general

To carry out this chapter, there are authorized to be appropriated $10,000,000 for each of fiscal years 2001 through 2005.

(b) Cooperative statistics program

Amounts authorized under subsection (a) of this section may be used by the Secretary to support the Commission’s cooperative statistics program.


PRIORITY PROVISION


AMENDMENTS

2000—Pub. L. 106–555 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “(2) As a consequence of increased fishing pressure, environmental pollution, the loss and alteration of habitat, inadequacy of fishery conservation and management practices, and other causes; and

(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.


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 det-
rimental 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**


**SHORT TITLE**


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

Ex. Ord. No. 13449, Oct. 20, 2007, 72 F.R. 66531, 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 Magnon-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:

**Sect. 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.

**Sect. 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) review 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 (ii), insofar as they relate to Atlantic striped bass, jointly with the Secretary of the Interior, as appropriate.

**Sect. 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 5808 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.

**§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 1938.

(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 1938.

(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) 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 inciden-

**See References in Text note below.**
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."

§ 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.

§ 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.

§ 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.
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 determine, within 30 days, whether the State has not taken the actions described in the Plan and, if the State is not in compliance, the Commission 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, 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: “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.”


§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 fully 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 in section 310 of the Magnuson Act (16 U.S.C. 1860).

(B) Disposal of fish

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 regulations.

(d) Enforcement

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

(e) Regulations

The Secretaries may issue regulations to implement this section.


AMENDMENTS

1997—Pub. L. 105–146 amended section catchline and text generally. Prior to amendment, section defined terms “moratorium area” and “moratorium period”, prohibited acts during moratorium, and provided for penalties, forfeitures, and enforcement.


1991—Subsec. (e). Pub. L. 102–130 designated existing provisions as par. (1) and added pars. (2) and (3).


1986—Pub. L. 99–432, §3(b), which directed the substitution of “Secretaries” for “Secretary”, was executed
Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

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

Continuing studies of striped bass populations

(a) In general

For the purposes of carrying out this chapter, the Secretaries shall conduct continuing, comprehensive studies of Atlantic striped bass stocks. These studies shall include, but shall not be limited to, the following:

(1) Annual stock assessments, using fishery-dependent and fishery-independent data, for the purposes of extending the long-term population record generated by the annual striped bass study conducted by the Secretaries before 1994 and understanding the population dynamics of Atlantic striped bass.

(2) Investigations of the causes of fluctuations in Atlantic striped bass populations.

(3) Investigations of the effects of water quality, land use, and other environmental factors on the recruitment, spawning potential, mortality, and abundance of Atlantic striped bass populations, including the Delaware River population.

(4) Investigations of—

(A) the interactions between Atlantic striped bass and other fish, including bluefish, menhaden, mackerel, and other forage fish or possible competitors, stock assessments of these species, to the extent appropriate; and

(B) the effects of interspecies predation and competition on the recruitment, spawning potential, and abundance of Atlantic striped bass.

(b) Socio-economic study

The Secretaries, in consultation with the Atlantic States Marine Fisheries Commission, shall conduct a study of the socio-economic benefits of the Atlantic striped bass resource. The Secretaries shall issue a report to the Congress concerning the findings of this study no later than September 30, 1998.

(c) Reports

The Secretaries shall make biennial reports to the Congress and to the Commission concerning the progress and findings of studies conducted under subsection (a) of this section and shall make those reports public. Such reports shall, to the extent appropriate, contain recommendations of actions which could be taken to encourage the sustainable management of Atlantic striped bass.

The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission or with States, for the purpose of using amounts appropriated pursuant to this section to provide financial assistance for carrying out the purposes of this chapter.

Authorization of appropriations; cooperative agreements

(a) Authorization

For each of fiscal years 2007, 2008, 2009, 2010, and 2011, there are authorized to be appropriated to carry out this chapter—

(1) $1,000,000 to the Secretary of Commerce; and

(2) $250,000 to the Secretary of the Interior.

(b) Cooperative agreements

The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission or with States, for the purpose of using amounts appropriated pursuant to this section to provide financial assistance for carrying out the purposes of this chapter.

Amendments


2000—Subsec. (a). Pub. L. 106–555 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For each of fiscal years 1998, 1999, and 2000, there are authorized to be appropriated to carry out this chapter—

“(1) $800,000 to the Secretary of Commerce; and

“(2) $250,000 to the Secretary of the Interior.”


1986—Pub. L. 99–432 amended section catchline and text generally. Prior to amendment, text read as follows: “Funds for activities in fiscal year 1985 under this

So in original.
chapter shall be made available only from funds apportioned for the Department of Commerce and the Department of the Interior for fiscal year 1985. For fiscal year 1986, there are authorized such sums as may be necessary or appropriate to carry out the provisions of this chapter."

§ 5157. Public participation in preparation of management plans and amendments

(a) Standards and procedures

In order to ensure the opportunity for public participation in the preparation of management plans and amendments to management plans for Atlantic striped bass, the Commission shall prepare such plans and amendments in accordance with the standards and procedures established under section 316C(a)(2) of this title.

(b) Application

Subsection (a) of this section shall apply to management plans and amendments adopted by the Commission after the 6-month period beginning on December 16, 1997.


AMENDMENTS

1997—Pub. L. 105–146 amended section catchline and text generally, substituting provisions relating to public participation in preparation of management plans and amendments for provisions requiring the Secretaries to review the existing Plan and report to the Commission and Committees of Congress on its adequacy.

§ 5158. Protection of striped bass in the exclusive economic zone

(a) Regulation of fishing in exclusive economic zone

The Secretary shall promulgate regulations governing fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines—

(1) are consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851);

(2) are compatible with the Plan and each Federal moratorium in effect on fishing for Atlantic striped bass within the coastal waters of a coastal State;

(3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

(4) are sufficient to assure the long-term conservation of Atlantic striped bass populations.

(b) Consultation; periodic review of regulations

In preparing regulations under subsection (a) of this section, the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a) of this section, and if necessary to ensure their continued consistency with the requirements of subsection (a) of this section, shall amend those regulations.

(c) Applicability of Magnuson Act provisions

The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson 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 and any plan issued under subsection (a) of this section as if such regulations or plan were issued under the Magnuson Act.


PREREVISIONS


CHAPTER 72—RECREATIONAL HUNTING

SAFETY

Sec. 5201. Obstruction of a lawful hunt.

5202. Civil penalties.

5203. Other relief.

5204. Relationship to State and local law and civil actions.

5205. Regulations.

5206. Rule of construction.

5207. Definitions.

§ 5201. Obstruction of a lawful hunt

It is a violation of this section intentionally to engage in any physical conduct that significantly hinders a lawful hunt.


SHORT TITLE

Section 320801 of title XXXII of Pub. L. 103–322 provided that: "This subtitle [subtitle H (§§ 320801–320808) of title XXXII of Pub. L. 103–322, enacting this chapter] may be cited as the "Recreational Hunting Safety and Preservation Act of 1994"."'

§ 5202. Civil penalties

(a) In general

A person who violates section 5201 of this title shall be assessed a civil penalty in an amount computed under subsection (b) of this section.

(b) Computation of penalty

The penalty shall be—

(1) not more than $10,000, if the violation involved the use of force or violence, or the threatened use of force or violence, against the person or property of another person; and

(2) not more than $5,000 for any other violation.

(c) Relationship to other penalties

The penalties established by this section shall be in addition to other criminal or civil penalties that may be levied against the person as a result of an activity in violation of section 5201 of this title.

(d) Procedure

Upon receipt of—