

103^D CONGRESS
1ST SESSION

H. R. 2134

IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, JUNE 30), 1993

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To improve the conservation and management of interjurisdictional fisheries along the Atlantic coast by providing for greater cooperation among the States in implementing conservation and management programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Atlantic Coastal Fish-
5 eries Cooperative Management Act of 1993”.

1 **SEC. 2. STATE-FEDERAL COOPERATION IN ATLANTIC**
2 **COASTAL FISHERIES MANAGEMENT.**

3 (a) FEDERAL SUPPORT FOR STATE COASTAL FISH-
4 ERIES PROGRAMS.—The Secretaries shall develop and im-
5 plement a program to support the fisheries management
6 programs of the Commission. The program shall include
7 elements to support and enhance State cooperation in—

- 8 (1) collection, management, and analysis of
9 fisheries data;
- 10 (2) law enforcement;
- 11 (3) habitat conservation;
- 12 (4) fisheries research, including biological and
13 socioeconomic research; and
- 14 (5) fishery management planning.

15 (b) FEDERAL REGULATIONS PERTAINING TO AN AT-
16 LANTIC OCEAN FISHERY COVERED BY AN INTERSTATE
17 FISHERY MANAGEMENT PLAN.—

18 (1) IN GENERAL.—The Secretary, after con-
19 sultation with the Councils having jurisdiction over
20 fisheries to which an interstate fishery management
21 plan applies, may prescribe regulations to govern
22 fishing in the exclusive economic zone that are nec-
23 essary to support the effective implementation of the
24 interstate fishery management plan adopted for a
25 fishery for which no Federal fishery management
26 plan is in effect. These regulations may include

1 measures recommended by the Commission that are
2 necessary to support the provisions of the interstate
3 fishery management plan for that fishery.

4 (2) SUPERSEDING REGULATIONS.—Regulations
5 issued by the Secretary to implement a Federal fish-
6 ery management plan for a fishery shall supersede
7 regulations issued by the Secretary under this sec-
8 tion for that fishery.

9 (3) ENFORCEMENT.—The provisions of sections
10 307, 308, 309, 310, and 311 of the Magnuson Fish-
11 ery Conservation and Management Act (16 U.S.C.
12 1857, 1858, 1859, 1860, and 1861) regarding pro-
13 hibited acts, civil penalties, criminal offenses, civil
14 forfeitures, and enforcement shall apply with respect
15 to regulations prescribed under this section.

16 **SEC. 3. ADOPTION AND IMPLEMENTATION OF INTERSTATE**
17 **FISHERY MANAGEMENT PLANS.**

18 (a) ADOPTION OF PLANS.—

19 (1) IN GENERAL.—The Commission shall pre-
20 pare and adopt fishery management plans or amend-
21 ments to fishery management plans in accordance
22 with this section to provide for the conservation and
23 management of coastal fishery resources.

24 (2) CONSULTATION.—In preparing a fishery
25 management plan or amendment, the Commission

1 shall consult with the appropriate Councils to deter-
2 mine ways Federal fishery management plans and
3 interstate fishery management plans may com-
4 plement each other.

5 (3) CONTENTS.—Each fishery management
6 plan or amendment prepared under this subsection
7 shall—

8 (A) contain information regarding the sta-
9 tus of the coastal fishery resources and fisheries
10 covered by the plan or amendment;

11 (B) identify each State that is required to
12 implement and enforce the plan or amendment;

13 (C) specify actions to be taken by States to
14 implement and comply with the plan or amend-
15 ment; and

16 (D) recommend actions for the Secretary
17 to take in the exclusive economic zone to con-
18 serve and manage the fishery resources and
19 fisheries covered by the plan or amendment.

20 (4) TIME FRAME FOR IMPLEMENTATION AND
21 ENFORCEMENT BY STATES.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), a State that is identified in
24 an interstate fishery management plan pursu-
25 ant to paragraph (3)(B) shall implement and

1 enforce the plan within the time established in
2 the plan.

3 (B) EXISTING PLANS.—Not later than 90
4 days after the date of the enactment of this
5 Act, the Commission shall develop a schedule
6 for States to implement and enforce of inter-
7 state fishery management plans adopted by the
8 Commission before the date of the enactment of
9 this Act. The schedule shall require each State
10 with a declared interest in a plan to implement
11 and enforce that plan within 1 year after the
12 date of the enactment of this Act.

13 (5) ADOPTION OF STANDARDS AND PROCE-
14 DURES FOR THE PREPARATION OF INTERSTATE
15 FISHERY MANAGEMENT PLANS.—Within 1 year after
16 the date of enactment of this Act, the Commission
17 shall establish standards and procedures to govern
18 the preparation of interstate fishery management
19 plans under this Act, including standards and proce-
20 dures to ensure that—

21 (A) such plans promote the conservation of
22 fish stocks throughout their ranges and are
23 based on the best scientific information avail-
24 able, and

1 (B) the Commission provides adequate op-
2 portunity for public participation in the plan
3 preparation process.”.

4 (b) COMMISSION MONITORING OF STATE IMPLEMEN-
5 TATION AND ENFORCEMENT.—Within 1 year after the
6 date of the enactment of this Act and at least annually
7 thereafter, the Commission shall—

8 (1) review each interstate fishery management
9 plan and determine whether each State which has
10 declared an interest in the plan, or that is required
11 under the plan to implement and enforce the plan,
12 has implemented and enforced the plan; and

13 (2) submit a report on the results of that re-
14 view to the Secretaries.

15 **SEC. 4. STATE NONCOMPLIANCE WITH INTERSTATE FISHERY**
16 **MANAGEMENT PLANS.**

17 (a) DETERMINATION.—The Commission shall deter-
18 mine that a State is not in compliance with an interstate
19 fishery management plan if it finds that the State has not
20 implemented and enforced the plan within the period es-
21 tablished under section 3(a)(4).

22 (b) NOTIFICATION.—If the Commission determines
23 under subsection (a) that a State is not in compliance with
24 an interstate fishery management plan, the Commission
25 shall notify the Secretaries of that determination within

1 10 working days. The notification shall include the reasons
2 for making the determination and specify an explicit list
3 of actions that the affected State must take to comply with
4 the interstate fishery management plan. The Commission
5 shall provide a copy of the notification to the State.

6 (c) MONITORING; WITHDRAWAL OF DETERMINA-
7 TION.—After making a determination under subsection
8 (a) regarding a State, the Commission shall continue to
9 monitor implementation and enforcement of the plan by
10 the State. On finding that a State has taken all actions
11 specified in the notification issued under subsection (b),
12 the Commission shall promptly notify the Secretaries that
13 the State is in compliance.

14 **SEC. 5. SECRETARIAL ACTION.**

15 (a) SECRETARIAL REVIEW OF COMMISSION DETER-
16 MINATION OF NONCOMPLIANCE.—Within 30 days after
17 receiving a notification regarding a State from the Com-
18 mission under section 4(b), the Secretary, in consultation
19 with the Secretary of the Interior, shall review the Com-
20 mission's determination of noncompliance and determine
21 whether—

22 (1) the State has failed to implement and en-
23 force the interstate fishery management plan in
24 question;

1 (2) the measures which the State has failed to
2 implement and enforce are necessary to conserve and
3 manage the fishery in question; and

4 (3) in the case of an interstate fishery manage-
5 ment plan adopted after January 1, 1995, the plan
6 in question was prepared under the standards and
7 procedures required to be established by the Com-
8 mission under section 3(a)(5).

9 (b) COMMENTS.—In making a determination under
10 subsection (a), the Secretary shall—

11 (1) give careful consideration to the comments
12 of the State that the Commission has determined
13 under section 4(a) is not in compliance with an
14 interstate fishery management plan, and provide
15 that State, upon request, the opportunity to meet
16 with and present its comments directly to the Sec-
17 retary; and

18 (2) solicit, review, and consider the comments
19 of the Commission and the appropriate councils.

20 (c) DECLARATION OF MORATORIUM.—On determin-
21 ing under subsection (a) that a State has failed to imple-
22 ment and enforce an interstate fishery management plan,
23 the Secretary shall declare a moratorium on fishing for
24 the species covered by the plan within the waters of that
25 State. The Secretary shall establish the effective date of

1 the moratorium to commence at any time within 6 months
2 following the declaration.

3 (d) SUSPENSION OF MORATORIUM.—On notification
4 by the Commission under section 4(c) that a State is in
5 compliance with an interstate fishery management plan,
6 the Secretary shall terminate the moratorium declared
7 under subsection (c) affecting fish species covered by that
8 plan.

9 (e) REGULATIONS.—

10 (1) IN GENERAL.—The Secretary shall pre-
11 scribe regulations necessary to implement this Act.

12 (2) CONTENT.—These regulations—

13 (A) may provide for the possession and use
14 of fish which have been produced in an aqua-
15 culture operation, subject to applicable State
16 regulations; and

17 (B) shall allow for the retention of fish
18 that are subject to a moratorium declared
19 under subsection (c) and unavoidably taken as
20 incidental catch in fisheries directed toward
21 menhaden, if—

22 (i) discarding the retained fish is im-
23 practicable;

1 (ii) the retained fish do not constitute
2 a significant portion of the catch of the
3 vessel; and

4 (iii) the retention of the fish will not,
5 in the judgment of the Secretary, adversely
6 affect the conservation of the species of
7 fish retained.

8 (f) PROHIBITED ACTS DURING MORATORIUM.—Dur-
9 ing a moratorium a person may not—

10 (1) engage in fishing for a species of fish sub-
11 ject to a moratorium within waters of the State sub-
12 ject to the moratorium;

13 (2) land, attempt to land, or possess fish that
14 are caught, taken, or harvested in violation of the
15 moratorium, this Act, or any regulation promulgated
16 under this Act;

17 (3) fail to return to the water immediately, with
18 a minimum of injury, any fish subject to a morato-
19 rium taken in waters of a State under a moratorium
20 incidental to fishing for species other than those to
21 which the moratorium applies, except as provided by
22 regulations prescribed under subsection (e);

23 (4) land, within a State that is subject to a
24 moratorium, any fish subject to a moratorium, re-
25 gardless of where it was caught;

1 (5) refuse to permit an authorized officer to
2 board a fishing vessel to conduct a search or inspec-
3 tion in connection with the enforcement of this Act;

4 (6) forcibly assault, resist, oppose, impede, in-
5 timidate, or interfere with an authorized officer at-
6 tempting to conduct a search or inspection under
7 this Act;

8 (7) resist a lawful arrest for an act prohibited
9 by this section;

10 (8) ship, transport, offer for sale, sell, purchase,
11 import, or have custody, control, or possession of,
12 fish taken or possessed in violation of this Act; or

13 (9) interfere with, delay, or prevent, by any
14 means, the apprehension or arrest of a person,
15 knowing that person has committed any act prohib-
16 ited by this section.

17 (g) PENALTIES.—

18 (1) CIVIL PENALTY.—A person violating sub-
19 section (f) of this section shall be liable to the
20 United States for a civil penalty as provided by sec-
21 tion 308 of the Magnuson Fishery Conservation and
22 Management Act (16 U.S.C. 1858). Subsections (b)
23 through (e) of section 308 of the Magnuson Fishery
24 Conservation and Management Act apply to persons
25 assessed a penalty under this paragraph.

1 (2) CRIMINAL PENALTIES.—A person violating
2 subsection (f)(5), (6), (7), or (9) is guilty of an of-
3 fense punishable under subsections (a)(1) and (b) of
4 section 309 of the Magnuson Fishery Conservation
5 and Management Act (16 U.S.C. 1859).

6 (h) CIVIL FORFEITURES.—

7 (1) FORFEITURE.—A vessel (including its gear,
8 equipment, appurtenances, stores, and cargo) used
9 in connection with an act unlawful under subsection
10 (f), and any fish (or the fair market value thereof)
11 taken or retained, in any manner, in connection
12 with, or the result of, the commission of an act pro-
13 hibited under subsection (f), shall be subject to for-
14 feiture to the United States as provided in section
15 310 of the Magnuson Fishery Conservation and
16 Management Act (16 U.S.C. 1860).

17 (2) DISPOSAL OF FISH.—Any fish seized pursu-
18 ant to this Act may be disposed of under an order
19 of a court of competent jurisdiction or, if perishable,
20 in a manner provided by regulation prescribed by
21 the Secretary.

22 (i) ENFORCEMENT.—A moratorium declared under
23 subsection (c) shall be enforced by the Secretaries and the
24 Secretary of the Department in which the Coast Guard
25 is operating, as provided in section 311 of the Magnuson

1 Fishery Conservation and Management Act (16 U.S.C.
2 1861 et seq.). The Secretaries may, by agreement, on a
3 reimbursable basis or otherwise, use the personnel, serv-
4 ices, equipment (including aircraft and vessels), and facili-
5 ties of any other Federal department or agency and of
6 any agency of a State in carrying out that enforcement.

7 **SEC. 6. FINANCIAL ASSISTANCE.**

8 The Secretaries may provide financial assistance to
9 the Commission and to the States to carry out their re-
10 spective responsibilities under this Act, including—

11 (1) the preparation, implementation, and en-
12 forcement of interstate fishery management plans;
13 and

14 (2) State activities that are specifically required
15 in interstate fishery management plans.

16 **SEC. 7. DEFINITIONS.**

17 For the purposes of this Act, the term—

18 (1) “coastal fishery resource” means any spe-
19 cies of fish that move among, or are broadly distrib-
20 uted across—

21 (A) waters under the jurisdiction of 2 or
22 more States that border the Atlantic Ocean; or

23 (B) waters under the jurisdiction of any
24 State that borders the Atlantic Ocean and wa-
25 ters of the exclusive economic zone;

1 (2) “Commission” means the Atlantic States
2 Marine Fisheries Commission constituted under the
3 interstate compact consented to and approved by the
4 Congress in the Acts of May 4, 1942 (56 Stat. 267),
5 and August 19, 1950 (64 Stat. 467);

6 (3) “Councils” means the Regional Fishery
7 Management Councils established under section 302
8 of the Magnuson Fishery Conservation and Manage-
9 ment Act (16 U.S.C. 1852) with jurisdiction over
10 fisheries in the Atlantic Ocean;

11 (4) “exclusive economic zone” means that por-
12 tion in the Atlantic Ocean of the exclusive economic
13 zone established by Presidential Proclamation Num-
14 ber 5030, dated March 10, 1983;

15 (5) “Federal Fishery management plan” means
16 a fishery management plan prepared by a Council or
17 the Secretary under the Magnuson Fishery Con-
18 servation and Management Act (16 U.S.C. 1801 et
19 seq.);

20 (6) “fish” means finfish, mollusks, crustaceans,
21 and all other forms of marine animal life other than
22 marine mammals and birds;

23 (7) “fishery” has the meaning given that term
24 in section 3 of the Magnuson Fishery Conservation
25 and Management Act (16 U.S.C. 1802);

1 (8) “fishing” has the meaning given that term
2 in section 3 of the Magnuson Fishery Conservation
3 and Management Act (16 U.S.C. 1802);

4 (9) “implement and enforce” means the enact-
5 ment or adoption laws, regulations, or rules as re-
6 quired to—

7 (A) comply with the provisions of an inter-
8 state fishery management plan; and

9 (B) assure compliance with such laws, reg-
10 ulations, or rules by persons participating in a
11 fishery that is subject to such plans;

12 (10) “interstate fishery management plan”
13 means—

14 (A) a fishery management plan or amend-
15 ment adopted by the Commission under section
16 3; or

17 (B) a fishery management plan or amend-
18 ment for managing a coastal fishery resource
19 adopted by the Commission before the date of
20 the enactment of this Act;

21 (11) “Secretaries” means the Secretary of
22 Commerce and the Secretary of the Interior;

23 (12) “Secretary” means the Secretary of Com-
24 merce; and

