

Union Calendar No. 113

103D CONGRESS
1ST SESSION

H. R. 2134

[Report No. 103-202]

A BILL

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.

AUGUST 2, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1993

Mr. STUDDS (for himself, Mr. MANTON, Mr. HUGHES, Mr. FRANK of Massachusetts, Mr. SAXTON, Mr. TOWNS, Mr. ACKERMAN, and Mrs. BENTLEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

AUGUST 2, 1993

Additional sponsors: Mrs. MALONEY, Mr. RAVENEL, Mr. CASTLE, and Mr. CARDIN

AUGUST 2, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 17, 1993]

A BILL

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”.*

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

8 (a) *FEDERAL SUPPORT FOR STATE COASTAL FISH-*
9 *ERIES PROGRAMS.*—*The Secretaries shall develop and im-*
10 *plement a program to support the fisheries management*
11 *programs of the Commission. The program shall include ele-*
12 *ments to support and enhance State cooperation in—*

13 (1) *collection, management, and analysis of fish-*
14 *eries data;*

15 (2) *law enforcement;*

16 (3) *habitat conservation;*

17 (4) *fisheries research, including biological and*
18 *socioeconomic research; and*

19 (5) *fishery management planning.*

20 (b) *FEDERAL REGULATIONS PERTAINING TO AN AT-*
21 *LANTIC OCEAN FISHERY COVERED BY AN INTERSTATE*
22 *FISHERY MANAGEMENT PLAN.*—

23 (1) *IN GENERAL.*—*The Secretary, after consulta-*
24 *tion with the Councils having jurisdiction over fish-*

1 *eries to which an interstate fishery management plan*
2 *applies, may prescribe regulations to govern fishing*
3 *in the exclusive economic zone that are necessary to*
4 *support the effective implementation of the interstate*
5 *fishery management plan adopted for a fishery for*
6 *which no Federal fishery management plan is in ef-*
7 *fect. These regulations may include measures rec-*
8 *ommended by the Commission that are necessary to*
9 *support the provisions of the interstate fishery man-*
10 *agement plan for that fishery.*

11 (2) *SUPERSEDING REGULATIONS.*—*Regulations*
12 *issued by the Secretary to implement a Federal fish-*
13 *ery management plan for a fishery shall supersede*
14 *regulations issued by the Secretary under this section*
15 *for that fishery.*

16 (3) *ENFORCEMENT.*—*The provisions of sections*
17 *307, 308, 309, 310, and 311 of the Magnuson Fishery*
18 *Conservation and Management Act (16 U.S.C. 1857,*
19 *1858, 1859, 1860, and 1861) regarding prohibited*
20 *acts, civil penalties, criminal offenses, civil forfeitures,*
21 *and enforcement shall apply with respect to regula-*
22 *tions prescribed under this section.*

23 **SEC. 3. ADOPTION AND IMPLEMENTATION OF INTERSTATE**
24 **FISHERY MANAGEMENT PLANS.**

25 (a) *ADOPTION OF PLANS.*—

1 (1) *IN GENERAL.*—*The Commission shall prepare*
2 *and adopt fishery management plans or amendments*
3 *to fishery management plans in accordance with this*
4 *section to provide for the conservation and manage-*
5 *ment of coastal fishery resources.*

6 (2) *CONSULTATION.*—*In preparing a fishery*
7 *management plan or amendment, the Commission*
8 *shall consult with the appropriate Councils to deter-*
9 *mine ways Federal fishery management plans and*
10 *interstate fishery management plans may complement*
11 *each other.*

12 (3) *CONTENTS.*—*Each fishery management plan*
13 *or amendment prepared under this subsection shall—*

14 (A) *contain information regarding the sta-*
15 *tus of the coastal fishery resources and fisheries*
16 *covered by the plan or amendment;*

17 (B) *identify each State that is required to*
18 *implement and enforce the plan or amendment;*

19 (C) *specify actions to be taken by States to*
20 *implement and comply with the plan or amend-*
21 *ment; and*

22 (D) *recommend actions for the Secretary to*
23 *take in the exclusive economic zone to conserve*
24 *and manage the fishery resources and fisheries*
25 *covered by the plan or amendment.*

1 (4) *TIME FRAME FOR IMPLEMENTATION AND EN-*
2 *FORCEMENT BY STATES.*—

3 (A) *IN GENERAL.*—*Except as provided in*
4 *subparagraph (B), a State that is identified in*
5 *an interstate fishery management plan pursuant*
6 *to paragraph (3)(B) shall implement and enforce*
7 *the plan within the time established in the plan.*

8 (B) *EXISTING PLANS.*—*Not later than 90*
9 *days after the date of the enactment of this Act,*
10 *the Commission shall develop a schedule for*
11 *States to implement and enforce of interstate*
12 *fishery management plans adopted by the Com-*
13 *mission before the date of the enactment of this*
14 *Act. The schedule shall require each State with*
15 *a declared interest in a plan to implement and*
16 *enforce that plan within 1 year after the date of*
17 *the enactment of this Act.*

18 (5) *ADOPTION OF STANDARDS AND PROCEDURES*
19 *FOR THE PREPARATION OF INTERSTATE FISHERY*
20 *MANAGEMENT PLANS.*—*Within 1 year after the date of*
21 *enactment of this Act, the Commission shall establish*
22 *standards and procedures to govern the preparation*
23 *of interstate fishery management plans under this*
24 *Act, including standards and procedures to ensure*
25 *that—*

1 (A) such plans promote the conservation of
2 fish stocks throughout their ranges and are based
3 on the best scientific information available, and

4 (B) the Commission provides adequate op-
5 portunity for public participation in the plan
6 preparation process.”.

7 (b) *COMMISSION MONITORING OF STATE IMPLEMENTA-*
8 *TION AND ENFORCEMENT.*—Within 1 year after the date of
9 the enactment of this Act and at least annually thereafter,
10 the Commission shall—

11 (1) review each interstate fishery management
12 plan and determine whether each State which has de-
13 clared an interest in the plan, or that is required
14 under the plan to implement and enforce the plan,
15 has implemented and enforced the plan; and

16 (2) submit a report on the results of that review
17 to the Secretaries.

18 **SEC. 4. STATE NONCOMPLIANCE WITH INTERSTATE FISH-**
19 **ERY MANAGEMENT PLANS.**

20 (a) *DETERMINATION.*—The Commission shall deter-
21 mine that a State is not in compliance with an interstate
22 fishery management plan if it finds that the State has not
23 implemented and enforced the plan within the period estab-
24 lished under section 3(a)(4).

1 (b) *NOTIFICATION.*—If the Commission determines
2 under subsection (a) that a State is not in compliance with
3 an interstate fishery management plan, the Commission
4 shall notify the Secretaries of that determination within 10
5 working days. The notification shall include the reasons for
6 making the determination and specify an explicit list of
7 actions that the affected State must take to comply with
8 the interstate fishery management plan. The Commission
9 shall provide a copy of the notification to the State.

10 (c) *MONITORING; WITHDRAWAL OF DETERMINA-*
11 *TION.*—After making a determination under subsection (a)
12 regarding a State, the Commission shall continue to mon-
13 itor implementation and enforcement of the plan by the
14 State. On finding that a State has taken all actions speci-
15 fied in the notification issued under subsection (b), the
16 Commission shall promptly notify the Secretaries that the
17 State is in compliance.

18 **SEC. 5. SECRETARIAL ACTION.**

19 (a) *SECRETARIAL REVIEW OF COMMISSION DETER-*
20 *MINATION OF NONCOMPLIANCE.*—Within 30 days after re-
21 ceiving a notification regarding a State from the Commis-
22 sion under section 4(b), the Secretary, in consultation with
23 the Secretary of the Interior, shall review the Commission's
24 determination of noncompliance and determine whether—

1 (1) *the State has failed to implement and enforce*
2 *the interstate fishery management plan in question;*

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

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

11 (b) *COMMENTS.—In making a determination under*
12 *subsection (a), the Secretary shall—*

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

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

21 (c) *DECLARATION OF MORATORIUM.—On determining*
22 *under subsection (a) that a State has failed to implement*
23 *and enforce an interstate fishery management plan, the Sec-*
24 *retary shall declare a moratorium on fishing for the species*
25 *covered by the plan within the waters of that State. The*

1 *Secretary shall establish the effective date of the moratorium*
2 *to commence at any time within 6 months following the*
3 *declaration.*

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

10 *(e) REGULATIONS.—*

11 *(1) IN GENERAL.—The Secretary shall prescribe*
12 *regulations necessary to implement this Act.*

13 *(2) CONTENT.—These regulations—*

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

18 *(B) shall allow for the retention of fish that*
19 *are subject to a moratorium declared under sub-*
20 *section (c) and unavoidably taken as incidental*
21 *catch in fisheries directed toward 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 ves-
3 sel; 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 fish
7 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 subject
11 to a moratorium within waters of the State subject to
12 the moratorium;

13 (2) land, attempt to land, or possess fish that are
14 caught, taken, or harvested in violation of the morato-
15 rium, this Act, or any regulation promulgated under
16 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 mor-
24 atorium, any fish subject to a moratorium, regardless
25 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 this*
7 *Act;*

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

10 (8) *ship, transport, offer for sale, sell, purchase,*
11 *import, or have custody, control, or possession of, fish*
12 *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, know-*
15 *ing that person has committed any act prohibited by*
16 *this section.*

17 (g) *PENALTIES.—*

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

1 (2) *CRIMINAL PENALTIES.*—A person violating
2 subsection (f)(5), (6), (7), or (9) is guilty of an offense
3 punishable under subsections (a)(1) and (b) of section
4 309 of the Magnuson Fishery Conservation and Man-
5 agement 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 in
9 connection with an act unlawful under subsection (f),
10 and any fish (or the fair market value thereof) taken
11 or retained, in any manner, in connection with, or
12 the result of, the commission of an act prohibited
13 under subsection (f), shall be subject to forfeiture to
14 the United States as provided in section 310 of the
15 Magnuson Fishery Conservation and Management Act
16 (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 of
19 a court of competent jurisdiction or, if perishable, in
20 a manner provided by regulation prescribed by the
21 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 is
25 operating, as provided in section 311 of the Magnuson Fish-

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

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

8 *The Secretaries may provide financial assistance to the*
9 *Commission and to the States to carry out their respective*
10 *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 species*
19 *of fish that move among, or are broadly distributed*
20 *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 waters*
25 *of the exclusive economic zone;*

1 (2) “Commission” means the Atlantic States Ma-
2 rine 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 Man-
7 agement Councils established under section 302 of the
8 Magnuson Fishery Conservation and Management Act
9 (16 U.S.C. 1852) with jurisdiction over fisheries in
10 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 Conserva-
18 tion and Management Act (16 U.S.C. 1801 et seq.);

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

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

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

4 (9) “implement and enforce” means the enact-
5 ment or adoption of 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, regu-
10 lations, 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 the
20 enactment of this Act;

21 (11) “Secretaries” means the Secretary of Com-
22 merce and the Secretary of the Interior;

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

1 (13) “State” means each of Maine, New Hamp-
2 shire, Massachusetts, Rhode Island, Connecticut, New
3 York, New Jersey, Pennsylvania, Delaware, Mary-
4 land, Virginia, North Carolina, South Carolina,
5 Georgia, Florida, the District of Columbia, and the
6 Potomac River Fisheries Commission.

7 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated to the Sec-
9 retaries for the purposes of carrying out the provisions of
10 this Act \$2,000,000 for each of the fiscal years 1994, 1995,
11 and 1996.