

110TH CONGRESS
1ST SESSION

H. R. 3840

To prohibit commercial fishing of Atlantic menhaden for reduction purposes in inland, State, and Federal waters along the Atlantic coast of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2007

Mr. SAXTON (for himself and Mr. GILCHREST) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To prohibit commercial fishing of Atlantic menhaden for reduction purposes in inland, State, and Federal waters along the Atlantic coast of the United States, 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 Menhaden
5 Conservation Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Atlantic menhaden are a key piece of the
2 Atlantic ecosystem, from Florida to Maine.

3 (2) Serving as a vital link in the food chain, At-
4 lantic menhaden are a primary source of food for
5 striped bass, bluefish, weakfish, Spanish mackerel,
6 seals, and whales, and are favored by seabirds like
7 loons and ospreys.

8 (3) Atlantic menhaden help maintain water
9 quality by feeding on plankton and decaying plants.
10 In aggregate in the Chesapeake Bay, these valuable
11 living resources have the ability to filter a volume of
12 water equal to the entire bay in less than one day.

13 (4) The Chesapeake Bay, the biggest estuary in
14 North America, is a prime Atlantic menhaden nurs-
15 ery ground for the whole east coast, yet populations
16 there are at historic lows. Juvenile fish are especially
17 low, which is a key indicator of a dwindling popu-
18 lation.

19 (5) The Chesapeake Bay is also a major spawn-
20 ing ground for striped bass, which are popular with
21 anglers. Many striped bass in the bay are suffering
22 from malnutrition and disease, and the declining At-
23 lantic menhaden population may be a big factor.

1 (6) Industrial harvests of Atlantic menhaden
2 for reduction purposes are the primary source of
3 fishing mortality.

4 (7) In 2006, Addendum III to the Interstate
5 Fishery Management Plan for Atlantic menhaden
6 established a precautionary cap on harvesting of At-
7 lantic menhaden. However, there is no scientific
8 basis to establish whether the level of harvest al-
9 lowed by such plan is sustainable.

10 (8) More research and studies are needed to de-
11 termine the health of Atlantic menhaden popu-
12 lations, but the danger signs clearly point to the
13 need for protection measures now for what is often
14 called the most important fish in the sea.

15 **SEC. 3. DEFINITIONS.**

16 As used in this Act:

17 (1) The term “Atlantic menhaden” means
18 members of stocks or populations of the species
19 *Brevoortia tyrannus*.

20 (2) The term “coastal State” means—

21 (A) Pennsylvania and each State of the
22 United States bordering on the Atlantic Ocean
23 north of the State of South Carolina;

24 (B) the District of Columbia; and

1 (C) the Potomac River Fisheries Commis-
2 sion established by the Potomac River Compact
3 of 1958.

4 (3) The term “coastal waters” means—

5 (A) for each coastal State referred to in
6 paragraph (2)(A)—

7 (i) all waters, whether salt or fresh, of
8 the coastal State shoreward of the baseline
9 from which the territorial sea of the
10 United States is measured; and

11 (ii) the waters of the coastal State
12 seaward from the baseline referred to in
13 clause (i) to the inner boundary of the ex-
14 clusive economic zone;

15 (B) for the District of Columbia, those wa-
16 ters within its jurisdiction; and

17 (C) for the Potomac River Fisheries Com-
18 mission, those waters of the Potomac River
19 within the boundaries established by the Poto-
20 mac River Compact of 1958.

21 (4) The term “Commission” means the Atlantic
22 States Marine Fisheries Commission established
23 under the interstate compact consented to and ap-
24 proved by the Congress in Public Laws 77–539 and
25 81–721.

1 (5) The term “exclusive economic zone” has the
2 meaning given such term in section 3(6) of the Mag-
3 nuson Act (16 U.S.C. 1802(6)).

4 (6) The term “fishing” means—

5 (A) the commercial catching, taking, or
6 harvesting of Atlantic menhaden for reduction
7 purposes, except when incidental to harvesting
8 that occurs in the course of commercial or rec-
9 reational fish-catching activities directed at a
10 species other than Atlantic menhaden;

11 (B) the attempted commercial catching,
12 taking, or harvesting of Atlantic menhaden for
13 reduction purposes; and

14 (C) any operation at sea in support of, or
15 in preparation for, any activity described in
16 subparagraph (A) or (B).

17 The term does not include any scientific research au-
18 thorized by the Federal Government or by any State
19 government.

20 (7) The term “fishing for Atlantic menhaden
21 for reduction purposes” means fishing that harvests
22 Atlantic menhaden that are reduced to meal and oil.

23 (8) The term “Magnuson Act” means the Mag-
24 nuson-Stevens Fishery Conservation and Manage-
25 ment Act (16 U.S.C. 1801 et seq.).

1 (9) The term “moratorium area” means the
2 coastal waters with respect to which a moratorium
3 is in effect under section 5.

4 (10) The term “moratorium period” means,
5 with respect to the coastal waters of a coastal State,
6 the period beginning on the date of the enactment
7 of this Act and ending on the day on which the
8 Commission notifies the Secretaries that such State
9 has taken appropriate remedial action with respect
10 to those matters that were the case of the morato-
11 rium being declared.

12 (11) The term “Plan” means a plan for man-
13 aging Atlantic menhaden, or an amendment to such
14 plan, that—

15 (A) is prepared and adopted by the Com-
16 mission;

17 (B) establishes a scientifically determined
18 limit on total allowable landings of Atlantic
19 menhaden; and

20 (C) takes account of the role of Atlantic
21 menhaden in the ecosystem.

22 (12) The term “Secretaries” means the Sec-
23 retary of Commerce and the Secretary of the Inte-
24 rior or their designees.

1 (13) The term “Secretary” means the Secretary
2 of Commerce or a designee of the Secretary of Com-
3 merce.

4 **SEC. 4. MONITORING OF IMPLEMENTATION AND ENFORCE-**
5 **MENT BY COASTAL STATES.**

6 (a) DETERMINATION.—During December of each fis-
7 cal year, and at any other time it determines it to be nec-
8 essary, the Commission shall determine—

9 (1) whether each coastal State has adopted all
10 regulatory measures necessary to fully implement
11 the Plan in its coastal waters; and

12 (2) whether the enforcement of the Plan by
13 each coastal State is satisfactory.

14 (b) SATISFACTORY STATE ENFORCEMENT.—For
15 purposes of subsection (a)(2), enforcement by a coastal
16 State shall not be considered satisfactory by the Commis-
17 sion if, in its view, the enforcement is being carried out
18 in such a manner that the implementation of the Plan
19 within the coastal waters of the State is being, or will like-
20 ly be, substantially and adversely affected.

21 (c) NOTIFICATION OF SECRETARIES.—The Commis-
22 sion shall immediately notify the Secretaries of each af-
23 firmative determination made by it under subsection (a).

1 **SEC. 5. MORATORIUM.**

2 (a) ESTABLISHMENT OF MORATORIUM.—There is
3 hereby established for the coastal waters of each coastal
4 State a moratorium on commercial fishing for Atlantic
5 menhaden for reduction purposes.

6 (b) TERMINATION OF MORATORIUM.—Upon receiv-
7 ing notice from the Commission under section 4(c) of an
8 affirmative determination regarding a coastal State, the
9 Secretaries—

10 (1) within 30 days after receiving the notifica-
11 tion and after carefully considering and reviewing
12 the comments of the Commission and of that coastal
13 State, shall determine jointly whether that coastal
14 State is in compliance with the Plan; and

15 (2) shall terminate the moratorium under sub-
16 section (a) with respect to coastal waters of that
17 coastal State, if—

18 (A) a scientifically determined total allow-
19 able catch limit has been established under the
20 Plan for commercial fishing for Atlantic menha-
21 den for reduction purposes; and

22 (B) the Secretaries determine that the
23 State is in compliance with the Plan.

24 (c) PROHIBITED ACTS DURING MORATORIUM.—Dur-
25 ing a moratorium period, it is unlawful for any person—

1 (1) to engage in fishing within the moratorium
2 area;

3 (2) to land, or attempt to land, Atlantic menha-
4 den that are caught, taken, or harvested in violation
5 of paragraph (1);

6 (3) to land lawfully harvested Atlantic menha-
7 den within the boundaries of a coastal State when
8 a moratorium is in effect under subsection (a) for
9 coastal waters of that State; or

10 (4) to fail to return to the water Atlantic men-
11 haden with respect to which the moratorium applies
12 that are caught incidental to harvesting that occurs
13 in the course of commercial or recreational fish-
14 catching activities, regardless of the physical condi-
15 tion of the menhaden when caught.

16 (d) CIVIL PENALTIES.—

17 (1) CIVIL PENALTY.—Any person who commits
18 any act that is unlawful under subsection (bc) shall
19 be liable to the United States for a civil penalty as
20 provided by section 308 of the Magnuson Act (16
21 U.S.C. 1858).

22 (2) CIVIL FORFEITURES.—

23 (A) IN GENERAL.—Any vessel (including
24 its gear, equipment, appurtenances, stores, and
25 cargo) used, and any fish (or the fair market

1 value thereof) taken or retained, in any manner,
2 in connection with, or as the result of, the com-
3 mission of any act that is unlawful under sub-
4 section (c) shall be subject to forfeiture to the
5 United States as provided in section 310 of the
6 Magnuson Act (16 U.S.C. 1860).

7 (B) DISPOSAL OF FISH.—Any fish seized
8 pursuant to this Act may be disposed of pursu-
9 ant to the order of a court of competent juris-
10 diction, or, if perishable, in a manner prescribed
11 in regulations.

12 (e) REGULATIONS.—The Secretaries may issue regu-
13 lations to implement this section.

14 **SEC. 6. CONTINUING STUDIES OF MENHADEN POPU-**
15 **LATIONS.**

16 (a) IN GENERAL.—For the purposes of carrying out
17 this Act, the Secretaries shall conduct continuing, com-
18 prehensive studies of Atlantic menhaden stocks. These
19 studies shall include, but shall not be limited to, the fol-
20 lowing:

21 (1) Annual stock assessments, using fishery-de-
22 pendent and fishery-independent data, for the pur-
23 poses of extending the long-term population record.

24 (2) Investigations of the causes of fluctuations
25 in Atlantic menhaden populations.

1 (3) Investigations of the role of Atlantic menha-
2 den on water quality and other environmental fac-
3 tors, and the contribution of Atlantic menhaden to
4 the recruitment, spawning potential, mortality, and
5 abundance of Atlantic striped bass populations, in-
6 cluding the Delaware River population.

7 (4) Investigations of—

8 (A) the interactions between Atlantic men-
9 haden and other fish, including bluefish, Atlan-
10 tic striped bass, mackerel, and other forage fish
11 or possible competitors, and stock assessments
12 of these species, to the extent appropriate; and

13 (B) the effects of interspecies predation
14 and competition on the recruitment, spawning
15 potential, mortality, and abundance of Atlantic
16 menhaden.

17 (b) SOCIO-ECONOMIC STUDY.—The Secretaries, in
18 consultation with the Atlantic States Marine Fisheries
19 Commission, shall conduct a study of the socioeconomic
20 benefits of the Atlantic menhaden resource. The Secre-
21 taries shall issue a report to the Congress concerning the
22 findings of this study no later than September 30, 2008.

23 (c) REPORTS.—The Secretaries shall make biennial
24 reports to the Congress and to the Commission concerning
25 the progress and findings of studies conducted under sub-

1 section (a) and shall make those reports public. Such re-
2 ports shall, to the extent appropriate, contain rec-
3 ommendations of actions which could be taken to encour-
4 age the sustainable management of Atlantic menhaden.

5 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERA-**
6 **TIVE AGREEMENTS.**

7 (a) AUTHORIZATION.—For each of fiscal years 2008,
8 2009, and 2010, there are authorized to be appropriated
9 to carry out this Act—

10 (1) \$800,000 to the Secretary of Commerce;

11 and

12 (2) \$250,000 to the Secretary of the Interior.

13 (b) COOPERATIVE AGREEMENTS.—The Secretaries
14 may enter into cooperative agreements with the Atlantic
15 States Marine Fisheries Commission or with States, for
16 the purpose of using amounts appropriated pursuant to
17 this section to provide financial assistance for carrying out
18 the purposes of this Act.

19 **SEC. 8. PUBLIC PARTICIPATION IN PREPARATION OF MAN-**
20 **AGEMENT PLANS AND AMENDMENTS.**

21 (a) STANDARDS AND PROCEDURES.—In order to en-
22 sure the opportunity for public participation in the prepa-
23 ration of management plans and amendments to manage-
24 ment plans for Atlantic menhaden, the Commission shall
25 prepare such plans and amendments in accordance with

1 the standards and procedures established under section
2 805(a)(2) of the Atlantic Coastal Fisheries Cooperative
3 Management Act.

4 (b) APPLICATION.—Subsection (a) shall apply to all
5 management plans for Atlantic menhaden, and amend-
6 ments to such plans, adopted by the Commission.

7 **SEC. 9. PROHIBITION ON COMMERCIAL HARVESTING OF**
8 **ATLANTIC MENHADEN IN EXCLUSIVE ECO-**
9 **NOMIC ZONE.**

10 (a) PROHIBITION.—It is unlawful to engage in, or to
11 attempt to engage in, the commercial harvesting of Atlan-
12 tic menhaden for reduction purposes in the exclusive eco-
13 nomic zone established by Proclamation Number 5030,
14 dated March 10, 1983.

15 (b) PENALTY.—

16 (1) IN GENERAL.—Any person who is found by
17 the Secretary after notice and an opportunity for a
18 hearing in accordance with section 554 of title 5,
19 United States Code, to have committed an act that
20 is unlawful under subsection (a), is liable to the
21 United States for a civil penalty. The amount of the
22 civil penalty may not exceed \$1,000 for each viola-
23 tion. Each day of continuing violation constitutes a
24 separate offense. The amount of the civil penalty
25 shall be assessed by the Secretary of Commerce by

1 written notice. In determining the amount of the
2 penalty, the Secretary shall take into account the
3 nature, circumstances, extent, and gravity of the
4 prohibited act committed and, with respect to the vi-
5 olator, the degree of culpability, any history of prior
6 violations, ability to pay, and such other matters as
7 justice may require.

8 (2) REVIEW; FAILURE TO PAY; COMPROMISE;
9 SUBPOENAS.—Subsections (b) through (e) of section
10 308 of the Magnuson Act (16 U.S.C. 1858(b)–(e));
11 relating to review of civil penalties; acting upon fail-
12 ure to pay assessment, compromise, and subpoenas)
13 shall apply to penalties assessed under paragraph
14 (1) to the same extent and in the same manner as
15 if those penalties were assessed under subsection (a)
16 of such section 308.

17 (c) CIVIL FORFEITURES.—

18 (1) IN GENERAL.—Any vessel (including its
19 gear, equipment, appurtenances, stores, and cargo)
20 used, and any fish (or the fair market value thereof)
21 taken or retained, in any manner, in connection
22 with, or the result of, the commission of any act that
23 is unlawful under subsection (a), is subject to for-
24 feiture to the United States. All or part of the vessel
25 may, and all such fish (or the fair market value

1 thereof) shall, be forfeited to the United States
2 under a civil proceeding described in paragraph (2).
3 The district courts of the United States have juris-
4 diction over proceedings under this subsection.

5 (2) JUDGMENT; PROCEDURE; REBUTTABLE
6 PRESUMPTIONS.—Subsections (c) through (e) of sec-
7 tion 310 of the Magnuson Act (16 U.S.C. 1860(c)–
8 (e); relating to judgment, procedure, and rebuttable
9 presumptions) shall apply with respect to pro-
10 ceedings for forfeiture commenced under this sub-
11 section to the same extent and in the same manner
12 as if the proceeding were commenced under sub-
13 section (a) of such section 310.

14 (d) CONSEQUENTIAL EFFECTS ON EXISTING LAW.—
15 The Atlantic States Marine Fisheries Commission shall
16 promptly take action to amend the Plan to take into ac-
17 count the prohibition established under this section on the
18 commercial harvesting of Atlantic menhaden for reduction
19 purposes.

20 **SEC. 10. ENFORCEMENT.**

21 A person authorized by the Secretary or the Sec-
22 retary of the department in which the Coast Guard is op-
23 erating may take any action to enforce a moratorium de-
24 clared under section 5(a), or to enforce the prohibition in
25 section 9, that an officer authorized under section 311 of

1 the Magnuson Act (16 U.S.C. 1861) may take to enforce
2 that Act. The Secretary may, by agreement, on a reim-
3 bursable basis or otherwise, utilize the personnel, services,
4 equipment (including aircraft and vessels), and facilities
5 of any other Federal department or agency and of any
6 agency of a State in carrying out that enforcement.

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