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STRIPED BASS ACT OF 1995

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REPORT

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 776



DECEMBER 7, 1995.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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## STRIPED BASS ACT OF 1995

DECEMBER 7, 1995.—Ordered to be printed

Mr. PRESSLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 776]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 776) "A Bill to reauthorize the Atlantic Striped Bass Conservation Act and the Anadromous Fish Conservation Act, and for other purposes", having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

S. 776 reauthorizes and amends the Atlantic Striped Bass Conservation Act (Striped Bass Act), extending the authorization of appropriations through fiscal year (FY) 1998 and incorporating provisions of the Anadromous Fish Conservation Act (AFCA) relating to Atlantic striped bass research.

#### BACKGROUND AND NEEDS

Striped bass are anadromous fish which live in marine waters during their adult lives and migrate to freshwater river systems to spawn. Atlantic striped bass are found in coastal waters from North Carolina to Maine. They are migratory, moving along the coast primarily within the three-mile zone which is subject to state fishery management.

Because striped bass pass through the jurisdiction of several states, conservation efforts must be well coordinated to be successful.

Although striped bass populations have fluctuated dramatically in the past, the population decline that began in the 1970's raised serious concern about the fishery because commercial striped bass harvests had dropped from 15 million pounds in 1973 to 3.5 million

pounds in 1983. In 1979, Congress responded to the severe decline of striped bass populations by authorizing an emergency striped bass study under section 7 of the AFCA (16 U.S.C. 757g). This legislation called for the establishment of a Federal study of the striped bass fishery, including the causes of the striped bass decline and development of recommendations for remedial action. The results of that study indicated that, while habitat degradation played a role, overfishing was the primary cause of the decrease in striped bass numbers. Over the past 16 years, this study has provided the scientific data for management of the Atlantic striped bass fishery. The authorization of appropriations for the study expired at the end of FY 1994.

In 1981, the Atlantic States Marine Fisheries Commission (Commission) adopted an interstate fishery management plan for Atlantic striped bass to reduce harvest pressure on the species. In 1984, Congress enacted the Striped Bass Act to promote a coordinated Federal-state partnership for striped bass management by requiring that the states fully comply with the striped bass fishery management plan developed by the Commission.

If a state is found to be out of compliance with the Commission's management plan, the Secretaries of Commerce and the Interior are to implement jointly a Federal moratorium on striped bass fishing in that state. The Striped Bass Act was authorized in 1986, 1988, and 1991.

Current law authorizing appropriations of such sums as may be necessary or appropriate to carry out the Act expired on September 30, 1994.

As a result of the Federal-state partnership created under the Striped Bass Act, the Commission declared striped bass stocks recovered as of January 1, 1995 and adopted a new amendment to the interstate management plan that took effect May 9, 1995.

The amendment allows recreational anglers to fish year around and to keep two fish a day. Similarly, commercial harvest quotas are increased substantially. However, sustaining this recovery will require continued cooperation of all states in a conservative management regime.

#### LEGISLATIVE HISTORY

Senator Chafee introduced S. 776 on May 9, 1995. The bill is cosponsored by Senator Kerry. A hearing on the programs of the National Oceanic and Atmospheric Administration, including fisheries programs, was held by the Committee on August 2, 1995. On November 9, 1995, in open executive session the Committee, without objection, adopted an amendment in the nature of a substitute, and ordered the bill reported.

#### SUMMARY OF MAJOR PROVISIONS

S. 776, as reported, would: reauthorize appropriations through FY 1998 for the Striped Bass Act; transfer provisions dealing with striped bass research from the AFCA to the Striped Bass Act and expand the scope of such research to include an examination of the Delaware River striped bass population; clarify the process to en-

sure public participation in management decisions for the striped bass fishery; and makes a number of technical amendments.

ESTIMATED COST

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 28, 1995.*

Hon. LARRY PRESSLER,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 776, the Striped Bass Conservation Act Amendments of 1995.

Enacting S. 776 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 776.
  2. Bill title: The Striped Bass Conservation Act Amendments of 1995.
  3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 9, 1995.
  4. Bill purpose: S. 776 would authorize the appropriation of whatever sums are necessary for programs carried out under the Atlantic Striped Bass Conservation Act for each of fiscal years 1995 through 1998. The bill also would authorize the appropriation of \$1 million for each of those years for striped bass studies carried out under the Anadromous Fish Conservation Act.
  5. Estimated cost to the Federal Government: Assuming appropriation of the amounts authorized for striped bass population studies, CBO estimates that implementing S. 776 would cost the federal government about \$6 million over the 1996–2000 period. Based on information provided by the Departments of Commerce and the Interior, CBO estimates that the agencies would need around \$1 million per year for activities authorized by the Atlantic Striped Bass Conservation Act, primarily for the comprehensive annual surveys required by section 6 of that act.
- Fiscal year 1995 appropriations totaled \$0.55 million for the two acts, including \$0.25 million to the National Marine Fisheries Service and \$0.30 million to the National Biological Survey. These agencies have not yet received a 1996 appropriation. The following table summarizes the estimated budgetary impact of S. 776.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Projected spending under current law:						
Estimated Budget Authority <sup>1</sup> .....	0.5					
Estimated Outlays .....	0.4	0.1				
Proposed changes:						
Estimated Authorization Level .....		2.0	2.0	2.0		
Estimated Outlays .....		1.0	2.0	2.0	1.0	
Projected spending under S. 776:						
Estimated Authorization level <sup>1</sup> .....	0.5	2.0	2.0	2.0		
Estimated Outlays .....	0.4	1.1	2.0	2.0	1.0	

<sup>1</sup> The 1995 level is the amount appropriated for that year.

The costs of this bill fall within budget function 300.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On April 6, 1995, CBO provided a cost estimate for H.R. 1139, the Striped Bass Conservation Act Amendments of 1995, as ordered reported by the House Committee on Resources on April 5, 1995. The two bills are similar, but S. 776 would authorize appropriations for carrying out the Atlantic Striped Bass Conservation Act through fiscal year 1998, rather than 1996, as in H.R. 1139. The CBO cost estimate for S. 776 reflects the additional two years of funding authorization.

10. Estimate prepared by: Deborah Reis and Rachel Forward.

12. Estimate approved by: Robert A. Sunshine (Paul N. Van de Water, Assistant Director for Budget Analysis).

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation as reported.

S. 776, as reported, amends the Striped Bass Act and section 7 of the AFCA.

The amendments will have no effect on the number of individuals regulated or on the personal privacy of such persons.

Any additional amount of paperwork or regulatory requirements resulting from this legislation would be minimal.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section identifies this bill as the Striped Bass Conservation Act Amendments of 1995.

##### *Section 2. Reauthorization*

This section would amend section 7(a) of the Striped Bass Act to extend the authorization of appropriations through FY 1998.

##### *Section 3. Technical and conforming amendments*

This section would amend the Striped Bass Act by making a technical and conforming amendment to section 4(a)(1) and repealing inoperative sections 8 and 10.

*Section 4. Public participation in preparation of plans and amendments to plans for Atlantic striped bass*

This section would create a new section 8 under the Striped Bass Act to clarify that the process to ensure adequate opportunity for public participation established under the Atlantic Coastal Cooperative Management Act would apply to any management decision for Atlantic striped bass.

This process requires at least four public hearings and procedures for the submission of written comments.

*Section 5. Transfer of existing provision to Atlantic Striped Bass Conservation Act*

This section designates as section 9 of the Striped Bass Act an existing provision of law dealing with the regulation of Atlantic striped bass in the exclusive economic zone. This provision currently is included as a separate note in the U.S. Code rather than as a part of the Striped Bass Act.

*Section 6. Extension of authorization for striped bass population studies; transfer of provision to Atlantic Striped Bass Conservation Act*

Subsection (a) of this section would add a new section 10 to the Striped Bass Act incorporating the striped bass study called for under the AFCA. New section 10 also would expand the study scope to examine the effects of water quality and other habitat changes on the recruitment, spawning potential, mortality rates, and abundance of the Delaware River population of striped bass and would reauthorize for each of the fiscal years through FY 1998, up to \$1,000,000 to carry out the study.

Subsection (b) would make a conforming amendment to strike section 7 of the AFCA.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

**ATLANTIC STRIPED BASS CONSERVATION ACT**

**SEC. 4. COMMISSION FUNCTIONS.**

(a) **MONITORING OF IMPLEMENTATION AND ENFORCEMENT.**—

(1) During December [of fiscal year 1987, and of each fiscal year thereafter,] *of each fiscal year*, and at any other time it deems necessary, the Commission shall determine:

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

(B) whether the enforcement of the Plan by each coastal State is satisfactory. 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 its coastal

waters is being, or will likely be, substantially and adversely affected.

(2) The Commission shall immediately notify the Secretaries of each negative determination made by it under this subsection.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE AGREEMENTS.**

(a) AUTHORIZATION.—[For each of fiscal years 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994,] *For each of fiscal years 1995 through 1998, there are authorized to be appropriated such sums as may be necessary or appropriate to carry out this Act.*

**[SEC. 8. SECRETARIAL STUDY.**

**[**Within six months of the date of enactment of this Act, the Secretaries shall review the existing Plan and shall report to the Commission, the Chairman of the House Committee on Merchant Marine and Fisheries, the Chairman of the Senate Committee on Commerce, Science and Transportation and the Chairman of the Senate Committee on Environment and Public Works on the adequacy of the Plan to achieve the purposes of this Act. Such report shall include recommendations for additional measures that may need to be taken and include recommendations concerning specific State actions regarding the management and conservation of striped bass.**]**

**SEC. 8. PUBLIC PARTICIPATION IN PREPARATION OF PLANS AND AMENDMENTS TO PLANS FOR ATLANTIC STRIPED BASS.**

*The Commission shall use the procedures developed pursuant to section 805(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5104(a) et seq.) to ensure an adequate opportunity for public participation in the preparation of any plan for the management of Atlantic Striped Bass and any amendment to such a plan (including any amendment to the Interstate Fisheries Management Plan for Striped Bass, dated October 1, 1981).*

**SEC. 9. [REPEALED].**

**SEC. 9. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.**

(a) *REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.*—The Secretary of Commerce shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—

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

(2) achieve conservation and management goals for the Atlantic striped bass resource.

(b) *CONSULTATION; PERIODIC REVIEW OF REGULATIONS.*—In preparing regulations under subsection (a), 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), and

if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

(c) *FISHERY MANAGEMENT PLAN ON STRIPED BASS.*—

(1) *The appropriate Regional Fishery Management Councils may prepare a fishery management plan on Atlantic striped bass, which if approved and implemented by the Secretary shall supersede any regulations promulgated under subsection (a). Such plan shall—*

(A) *meet the requirements of sections 301 and 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 and 1853);*

(B) *apply to all fishing for Atlantic striped bass within the exclusive economic zone; and*

(C) *ensure the effectiveness of the Plan of the Atlantic States Marine Fisheries Commission defined under section 3(7) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note).*

(2) *The Secretary shall review such fishery management plan pursuant to section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) and shall approve the plan if it meets the requirements of paragraph (1) and other provisions of this section. The Secretary shall implement the plan by promulgating regulations in accordance with section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855). No regulation promulgated under subsection (a) shall have force and effect during any period in which regulations implementing such plan are in effect.*

(d) *APPLICABILITY OF MAGNUSON ACT PROVISIONS.*—*The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management 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) or (c) of this section as if such regulations or plan were issued under the Magnuson Fishery Conservation and Management Act.*

**[SEC. 10. MISCELLANEOUS PROVISIONS.**

(a) [Executed].

[(b) There are authorized to be appropriated to the Department of Commerce, \$200,000 for each of fiscal years 1986 and 1987, and the amount that is appropriated under this authority for each such year shall be apportioned equally by the Secretary between the States of Maryland and Virginia for use by each of them for the propagation, in existing hatchery facilities of that State, of striped bass for the replenishment of the Chesapeake Bay stock: (1) if that State, for each such fiscal year, expends an equal amount of State moneys for the propagation of such stock in its hatchery facilities; and (2) if the Secretary considers that that State is in full compliance with the Plan.]

(c) [Executed].

**SEC. 10. STRIPED BASS STUDIES.**

(a) *SCOPE OF STUDIES.*—*The Secretaries shall cooperate with States and other non-Federal interests in conducting scientific stud-*

ies of the anadromous stocks of Atlantic striped bass. These studies shall include, but not be limited to—

(1) estimates of recruitment, spawning potential, mortality rates, stock composition of coastal fisheries, and other population parameters;

(2) investigations of factors affecting abundance of striped bass, including analyses of the extent and causes of mortality at successive life stages;

(3) monitoring population abundance and age and sex composition of striped bass stocks based on fishery-dependent and fishery-independent data; and

(4) the effects of water quality and other habitat changes on the recruitment, spawning potential, mortality rates, and population abundance of the Delaware River striped bass population.

(b) *ANNUAL REPORTS TO CONGRESS.*—The Secretaries shall make annual reports to the Congress concerning the progress and findings of the studies conducted pursuant to subsection (a) of this section. Such reports shall, where appropriate, contain recommendations of actions which could be taken to improve the population of striped bass.

(c) *IMPLEMENTATION OF CONDUCT OF STUDIES.*—For purposes of conducting the studies required by this section, the Secretaries may enter into agreements with States and other non-Federal interests in accordance with the provisions of the first section of the Anadromous Fish Conservation Act (16 U.S.C. 757a) or they may carry out such studies directly, as they deem appropriate: Provided, That any agreement entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) *FUNDING OF STUDIES.*—There are authorized to be appropriated for the purposes of carrying out the studies described in subsection (a) of this section not to exceed \$1,000,000 for each of the fiscal years 1995, 1996, 1997, and 1998. Funds authorized to be appropriated by this subsection are in addition to any funds authorized by section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) which may be used for projects involving or affecting striped bass.

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## TITLE 16, UNITED STATES CODE— CONSERVATION

### [CHAPTER 9A. PRESERVATION OF FISHERY RESOURCES

#### [§ 757g. Striped bass population studies

[(a) *CONDUCT OF STUDIES WITH STATES AND OTHER NON-FEDERAL INTERESTS; SCOPE OF STUDIES.*—The Secretary shall cooperate with States and other non-Federal interests in conducting scientific studies of the anadromous stocks of Atlantic striped bass. These studies shall include, but not be limited to—

[(1) estimates of recruitment, spawning potential, mortality rates, stock composition of coastal fisheries, and other population parameters;

[(2) investigations of factors affecting abundance of striped bass, including analyses of the extent and causes of mortality at successive life stages; and

[(3) monitoring population abundance and age and sex composition of striped bass stocks on fishery-dependent and fishery-independent data.

[(b) ANNUAL REPORTS TO CONGRESS; RESPECTING PROGRESS AND FINDINGS OF STUDIES; REPORT RECOMMENDATIONS.—The Secretary shall make annual reports to the Congress concerning the progress and findings of the studies conducted pursuant to subsection (a) of this section. Such reports shall, where appropriate, contain recommendations of actions which could be taken to improve the population of striped bass.

[(c) IMPLEMENTATION OF CONDUCT OF STUDIES.—For purposes of conducting the studies required by this section, the Secretary may enter into agreements with States and other non-Federal interests in accordance with the provisions of the first section of this Act [16 U.S.C. 757a] or he may carry out such studies directly, as he deems appropriate: Provided, That any agreement entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

[(d) FUNDING OF STUDIES.—There are authorized to be appropriated for the purposes of carrying out the studies described in subsection (a) of this section not to exceed \$1,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994. Funds authorized to be appropriated by this subsection are in addition to any funds authorized by section 4 [16 U.S.C. 757d] which may be used for projects involving or affecting striped bass.]

PUBLIC LAW 100-589

**[SEC. 6. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.**

[(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—The Secretary of Commerce shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—

[(1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

[(2) achieve conservation and management goals for the Atlantic striped bass resource.

[(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), 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),

and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

[(c) Repealed].

[(d) APPLICABILITY OF MAGNUSON ACT PROVISIONS.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management 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) or (c) of this section as if such regulations or plan were issued under the Magnuson Fishery Conservation and Management Act.

[(e) DEFINITION.—As used in this section, the term “exclusive economic zone” has the meaning given such term in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6)).]

(f) [Repealed].

