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Fishery Disaster Assistance

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SUMMARY

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Fishery Disaster Assistance

The Secretary of Commerce is authorized to provide disaster assistance to the fishing industry when fish populations decline or other disruptions cause economic losses. The criteria for determining whether a commercial fishery failure or fishery resource disaster has occurred are provided in Section 308(b) and Section 308(d) of the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107), and in Sections 312(a) and 315 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C §1861(a) and §1864).

The governor of a state, the Secretary of Commerce, or a representative of a fishing community may initiate a request for assistance. The National Marine Fisheries Service (NMFS), state agencies, and fishing communities compile information needed to make a determination. When all necessary information has been obtained and reviewed, the Secretary of Commerce determines whether a fishery failure or fishery disaster has occurred. In most cases, Congress has appropriated funds to support the fishing industry following the Secretary's determination. NMFS, states, regional commissions, and industry representatives often work together to plan how assistance will be distributed to the fishing industry and allocated among potential projects.

Oceanic conditions, climate, and weather events can affect fishery resources and commercial infrastructure, such as boats, shoreside processing, and ports. Since 1990, the Secretary of Commerce has made 72 fishery disaster determinations and Congress has appropriated nearly $1.15 billion for fishery disaster relief. Recent fishery disaster determinations have been made for salmon fisheries in the Pacific Northwest and Alaska, Dungeness crab fisheries in the Pacific Northwest, the West Coast sardine fishery, and fisheries affected by several hurricanes.

Direct federal financial assistance has been provided to fishermen and fishing communities in the form of grants, job retraining, and low-interest loans. Assistance also supported efforts to prevent or lessen the effects of future disruptions to fisheries. These efforts included fishery data collection, habitat restoration, research, and fishing capacity reduction programs. Whereas some observers support efforts to provide assistance, others contend that disaster assistance programs sometimes fall short of expectations when funds are not disbursed in a timely manner, relief is not integrated with long-term fishery management objectives, and funds do not reach the people who may be in the greatest need of assistance.

In the 116th Congress, similar versions of the Fishery Failures: Urgently Needed Disaster Declarations Act (S. 2346 and H.R. 5548) have been introduced that would make extensive changes to the current law. Both bills would amend Section 312 of the MSA, repeal Section 315 of the MSA, and repeal Section 308 of the IFA. Generally, the legislation would consolidate and clarify fishery disaster provisions in the MSA and the IFA and incorporate some parts of the NMFS agency directive on fishery disasters. Both bills would define terms frequently used when making fishery disaster determinations, clarify procedures and criteria for making fishery disaster determinations, provide guidance for allocating and disbursing funds, and place additional conditions on assistance for fishing capacity reduction programs. On November 13, 2019, S. 2346 was marked up by the Committee on Commerce, Science, and Transportation, and on January 14, 2020, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a hearing that included testimony related to H.R. 5548.

Several additional bills related to fishery disaster assistance have been introduced. The Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 3697) includes a section that would require the Secretary of Commerce to make a fishery disaster determination within 90 days of receiving an estimate of the economic impact of the disaster from the entity making the request. H.R. 3697 also would require the Secretary to publish the estimated cost of recovery from a fishery resource disaster within 30 days of making a determination. Two identical bills (H.R. 3514 and S. 1984) would add the effects of certain duties on seafood markets as a potential cause of a commercial fishery failure under the MSA. The Commercial Fishing and Aquaculture Protection Act of 2019 (S. 2209) would provide assistance to eligible commercial fishermen and aquaculture producers who suffer losses in revenue. No further actions have been taken on any of these bills.

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Introduction

The productivity and profitability of marine fisheries may vary significantly due to natural and anthropogenic causes, such as oceanic conditions, climate, pollution, and weather events. These factors can cause fishery resource declines and fishery closures and can damage commercial infrastructure such as boats, shoreside processing, and ports. Fishery disasters occur when fishermen endure economic hardships resulting from fish population declines or other disruptions to the fishery. The federal government may provide disaster relief to assist the fishing industry when it has been harmed by a fishery disaster.

Statutory Authorities and Different Types of Fishery Disasters[1]

The Secretary of Commerce (Secretary) is authorized to determine that a fishery disaster has occurred under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861(a) and 16 U.S.C. §1864) and the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107). Secretarial determinations are similar but vary according to the underlying cause of the disruption to a fishery.[2]

Commercial Fishery Failure—A commercial fishery failure occurs when revenues from commerce in the fishery decrease due to a fishery resource disaster, such that the decrease causes fishermen to suffer economic hardship.

Fishery Resource Disaster—A fishery resource disaster is a sudden, unexpected, large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource.

- Section 312(a) of the MSA authorizes the Secretary to determine whether a ***commercial fishery failure*** has occurred due to a ***fishery resource disaster***.
- Section 315 of the MSA authorizes the Secretary to determine whether a catastrophic regional disaster has occurred. The cause of the catastrophic regional disaster may be a ***commercial fishery failure*** under Section 312(a) of the MSA or a ***fishery resource disaster*** under Section 308(d) of the IFA.
- Section 308(b) of the IFA authorizes the Secretary to provide assistance when a fishery has been affected by a ***commercial fishery failure*** or serious disruption to future production due to a ***fishery resource disaster*** arising from natural or undetermined causes.
- Section 308(d) of the IFA authorizes the Secretary to initiate projects to alleviate harm determined by the Secretary to have been incurred as a direct result of a ***fishery resource disaster*** arising from a hurricane or other natural disaster.

A governor of a state, the Secretary of Commerce (Secretary), or a representative of a fishing community initiates a request for assistance. The National Marine Fisheries Service (NMFS) at the National Oceanic and Atmospheric Administration (NOAA), state agencies, and fishing communities compile information needed to make a determination. When all necessary information has been obtained, the Secretary makes a determination of whether a fishery disaster or failure has occurred. In most cases, Congress appropriates funds to support the fishing industry following the Secretary's disaster determination. Congress generally appropriates funding in supplemental or annual appropriations as needs arise rather than in anticipation of future needs. NMFS, states, regional commissions, and industry representatives often work together to distribute assistance to the fishing industry and to allocate funding among potential projects.

The federal government and its partners have allocated fishing disaster funds to fisheries of the North Pacific, Western Pacific, Pacific Northwest, Gulf of Mexico, Southeast, and the Northeast regions. Fisheries with multiple commercial fishery failure determinations include the West Coast

[1] National Marine Fisheries Service (NMFS), *Policy on Disaster Assistance under the Magnuson-Stevens Act 312(a) and 315 and Interjurisdictional Fisheries Act 308(b) and 308(d)*, National Marine Fisheries Service Policy 01-122, June 16, 2011. Hereinafter cited as NMFS, *Policy*.

[2] The term *fishery disaster* is used in parts of this report to make general references to commercial fishery failures and fishery resource disasters.

salmon troll fishery, Fraser River sockeye salmon fishery, the Northeast multispecies fishery, Gulf fisheries following hurricanes, New England shellfish fisheries, Alaska salmon fisheries, and the Bering Sea snow crab fishery.

Under the fishing disaster authorities, the federal government has provided direct financial assistance to fishermen and fishing communities in the form of grants, job retraining, and low-interest loans. The federal government has also provided indirect assistance that has included fishery data collection, resource restoration, research, and fishing capacity reduction programs to prevent or lessen the effects of future disruptions to fisheries. Whereas most observers recognize that disaster assistance has provided much-needed assistance to the fishing industry, others contend that disaster assistance programs sometimes fall short of expectations because funds may not be appropriated or disbursed in a timely manner, relief may not be integrated with long-term fishery management objectives, economic estimates of fishery disasters are inconsistent, and funds may not reach the people in the greatest need of assistance.

Disaster Requirements and Procedures

The Department of Commerce provides fishery disaster assistance under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861(a) and 16 U.S.C. §1864) and the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107) (**Table 1**). Assistance may be provided to fisheries managed by states, such as blue crab, and to fisheries under federal management, such as the Northeast multispecies fishery.[3] Differences exist under each law with regard to the allowable causes of a commercial fishery failure or fishery resource disaster and the use of funds. Often fishery disasters have been declared under both laws, which may provide managers with greater latitude when matching relief with different needs of the fishery and its participants.

Magnuson-Stevens Fishery Conservation and Management Act

In 1996, Section 312(a) was added to the MSA to provide fishery disaster relief when a commercial fishery failure occurs as the result of a fishery resource disaster.[4] A *fishery resource disaster* is "a sudden unexpected, large decrease in fish stock biomass or other change that results in a significant loss of access to the fishery resource."[5]

In 2007, NMFS developed a policy directive to provide guidance for the disaster relief process.[6] The process begins at the discretion of the Secretary of Commerce, following the request of the governor of an affected state or at the request of a fishing community representative.[7] The Secretary determines whether a commercial fishery failure has occurred, depending on three factors.

[3] Fisheries under state jurisdiction generally occur in state waters that include internal waters such as Chesapeake Bay or from 0-3 nautical miles (nm) from shore. State jurisdiction off the west coast of Florida and Texas extend to 9 nm from shore. Fisheries under federal jurisdiction generally occur from 3 to 200 nm from shore.

[4] Section 312(a) was added by the Sustainable Fisheries Act of 1996 (P.L. 104-297).

[5] NMFS, *Policy*.

[6] NMFS, *Policy*.

[7] According to NMFS, a fishing community representative may include a tribal representative, city manager, or county executive.

Table 1. Fishery Disaster Causes, Types of Assistance, and Use of Funds

Section	Causes of Commercial Fishery Disruption	Types of Assistance and Use
Section 312(a) of MSA	Commercial fishery failure (due to a fishery resource disaster) as a result of— (1) natural causes (2) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions imposed to protect human health or the marine environment (3) undetermined causes	(1) assessment of the social and economic effects of the failure (2) assistance to the community and fishermen (3) projects to restore the fishery or prevent reoccurrence of a similar failure (4) federal share of assistance cannot be greater than 75%
Section 308(b) of IFA	Commercial fishery failure or a fishery resource disaster arising from— (1) natural causes (2) undetermined causes	(1) restore a fishery affected by a fishery failure (2) prevent a future fishery failure (3) federal share of funding is limited to 75% of costs
Section 308(d) of IFA	Fishery resource disaster arising from— (1) natural disasters such as a hurricane or other natural disaster	(1) direct assistance to fishermen (2) indirect assistance through state agencies, local government, and nonprofit organizations (3) no limit on the federal share of costs
Section 315 of MSA	Catastrophic regional fishery disaster— (1) results in economic losses to coastal or fishing communities (2) affects more than one state or a major fishery managed by a Council or interstate fishery commission (3) is determined by the Secretary to be a commercial fishery failure under §312(a) of MSA or a fishery resource disaster under §308(d) of IFA	(1) activities authorized under either MSA or IFA (2) the Secretary may waive matching requirements if no reasonable means are available for meeting the match and the probable benefit of federal financing outweighs the public interest in imposing the match

Source: National Marine Fisheries Service (NMFS), Policy on Disaster Assistance under the Magnuson-Stevens Act 312(a) and 315 and Interjurisdictional Fisheries Act 308(b) and 308(d), National Marine Fisheries Service Policy 01-122, June 16, 2011.

Notes: MSA = Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1861(a) and 16 U.S.C. §1864). IFA = Interjurisdictional Fisheries Act (16 U.S.C. §4107).

First, there must be a fishery resource disaster resulting from a decrease in fish population biomass or the loss of access to the fishery resource.[8] Second, under the MSA, the cause of the fishery resource disaster must be one of the following:

- natural causes;
- man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions imposed to protect human health or the marine environment; or
- undetermined causes.

Finally, there must be an economic harm resulting from the commercial fishery disaster.

[8] Loss of access to the resource may result from damages to fishing vessels, gear and related infrastructure or fishery closures because of oil spills or toxic algal blooms.

Requests for a commercial fishery failure determination usually contain information describing how the fishery and its users were harmed. The Secretary typically directs the appropriate Regional Administrator for NMFS to collect and analyze information such as landings, stock assessments, number of participants, and revenues. These data are used to determine the magnitude of the disaster and the relationship between underlying causes and the alleged fishery disaster. The magnitude of the disaster may be measured by the percentage decline in landings and revenues, the number of fishermen affected, loss of habitat, and lost or restricted fishing time. Depending on the circumstances, the analysis usually is conducted in consultation with the state(s) and typically includes information and data that the state(s) provide. According to NMFS, a reasonably predictable, foreseeable, and recurrent fishery resource cycle of variations in species distribution or stock abundance does not constitute a fishery resource disaster.[9]

Once it is concluded that a fishery resource disaster has occurred and its cause(s) is covered under the MSA, economic data are reviewed to determine whether a commercial fishery failure exists. The final decision depends on whether a significant number of people engaged in the fishery have suffered economic hardship as a result of the fishery resource disaster. NMFS has developed policy guidance to clarify and interpret the fishery disaster assistance provisions of the MSA and the IFA.[10] The guidance specifies the following thresholds based on the loss of annual revenue compared to average annual revenue over the most recent five-year period:

- Revenue losses greater than 80% will result in the determination of a commercial fishery failure.
- Revenue losses between 35% and 80% will be further evaluated to determine the severity of losses.
- Revenue losses less than 35% will not be eligible for determination of a commercial fishery failure, except where the Secretary determines there are special and unique circumstances that may justify considering and using a lower threshold in making the determination.[11]

Once it is determined that a commercial fishery failure exists, Congress may use the authorization in the MSA to appropriate funds for financial assistance to harvesters and other affected parties.

After funds are appropriated, the affected state, community, or group must develop a spending plan that is evaluated by NMFS regional offices. Funding under the MSA may be used to address a broad variety of needs, including an assessment of the social and economic effects of the failure, assistance to the community, and projects to restore the fishery or prevent reoccurrence of a similar failure. Before releasing funds, the Secretary must also determine that activities would not expand the size and scope of the failure in that fishery or other fisheries, or affect fisheries in other geographic regions. The federal share of assistance carried out under Section 312(a) of the MSA cannot be greater than 75% of the cost of relief activities, while the other 25% is usually provided by the state or other local entity. In some cases, regional fishery commissions administer claims and disburse funds to fishing communities.[12]

[9] NMFS, *Policy*.

[10] NMFS, *Policy*.

[11] NMFS, *Policy*.

[12] For example, the Pacific States Marine Fisheries Commission disbursed funds to fishermen following the Pacific Salmon commercial fishery failure in 2009-2011.

MSA Regional Coastal Disaster Assistance

In 2006, the MSA was amended by adding Section 315—the Regional Coastal Disaster Assistance, Transition, and Recovery Program. A *catastrophic regional fishery disaster* is defined as a natural disaster, such as a hurricane or tsunami, or a regulatory closure to protect human health or the marine environment. A catastrophic regional fishery disaster is an event that

- results in economic losses to the coastal or fishing communities;
- affects more than one state or a major fishery managed by a council or interstate fishery commission;[13] and
- is determined by the Secretary to be a commercial fishery failure under Section 312(a) of MSA or a fishery resource disaster under Section 308(d) of IFA of 1986.

Within two months after a catastrophic regional fishery disaster, the Secretary is required to provide the governor of each participating state with a comprehensive economic and socioeconomic evaluation of the region's fisheries. The evaluation assesses the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and direct, indirect, or environmental impacts of the disaster on the fishery and coastal communities. Subject to the availability of appropriations, the program may provide funds for infrastructure needs, job training assistance, fishing capacity reduction, and other activities authorized under either MSA or IFA. Various fishing groups in the region may be eligible for disaster assistance, including fishermen, charter fishing operators, U.S. fish processors, and owners of related fishery infrastructure.[14] Under the Regional Coastal Disaster Assistance, Transition, and Recovery Program, the Secretary may waive the matching requirements if no reasonable means are available for meeting the match and the probable benefit of 100% federal financing outweighs the public interest in imposing the match. Since it was added to the MSA, determinations under Section 315 have been made only for Hurricane Sandy in 2012; Hurricanes Irma and Maria in 2017; and Gulf of Mexico freshwater flooding in Louisiana, Mississippi, and Alabama in 2019.

Interjurisdictional Fisheries Act

The IFA was enacted in 1986 to provide federal support to states for developing interstate fishery research programs. Under IFA, funds are authorized to provide assistance for a commercial fishery failure (§308(b)) or for a fishery resource disaster (§308(d)). Under Section 308(b), a *commercial fishery failure* is a serious disruption to future production due to a fishery resource disaster arising from natural or undetermined causes. The process of collecting information and

[13] Eight regional Fishery Management Councils are created by the MSA. Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable of fishery resources, provided by state governors. The councils prepare fishery management plans for those fisheries that occur primarily within the federal waters of the Exclusive Economic Zone (3-200 nautical miles from shore). Links to Council websites are at http://www.nmfs.noaa.gov/ole/fishery_mgmt.html.

The three interstate fisheries commissions include the Atlantic States Marine Fisheries Commission, http://www.asmfc.org/; the Gulf States Marine Fisheries Commission, http://www.gsmfc.org/#:links@1; and the Pacific States Marine Fisheries Commission, http://www.psmfc.org/.

[14] Businesses supported by recreational fisheries may be eligible of fishery disaster assistance under Section 312(a) of the MSA if they are part of the affected fishing community. Recreational charter fishing businesses are mentioned explicitly in Section 315 of the MSA.

determining whether a commercial fishery failure has occurred under Section 308(b) of the IFA is similar to requirements of Section 312(a) of the MSA.

In Section 308(d), *fishery resource disasters* are referred to as natural disasters. Instead of assessing the occurrence of a commercial fishery failure, Section 308(d) of the IFA requires demonstration of harm. *Harm* is defined as uninsured damage to fishing vessels, fishing gear, processing facilities, marketability, habitat, or infrastructure. The same thresholds used for MSA fishery failure determinations are used for IFA determinations.[15]

IFA funding under Section 308(b) may be used by states alone or by the Secretary in cooperation with the states. Funding may be provided for any purpose the Secretary determines appropriate to restore a fishery affected by a commercial fishery failure or to prevent a future fishery failure. Under Section 308(b), funds may not be used to charter fishing vessels, and the federal share of funding is limited to 75% of costs. Funding under Section 308(d) of IFA may be used to provide direct assistance to fishermen or to provide assistance indirectly through state agencies, local government, and nonprofit organizations. In contrast to the MSA and Section 308(b) of IFA, there is no limit on the federal share of costs under Section 308(d). Section 308(d) also outlines the conditions under which funding may be used for other activities such as fishing capacity reduction programs. These programs include fishing vessel buybacks, gear reduction, or fishing permit retirement.

Other Potential Sources of Assistance

When businesses suffer economic injuries from a disaster, the Small Business Administration (SBA) may also determine whether a disaster declaration is warranted.[16] For example, when red tide required closure of the Maine shellfish fishery in 2005, SBA evaluated the impact on small businesses and determined a disaster declaration was justified. The declaration makes affected businesses eligible for Economic Injury Disaster Loans.[17] The purpose of the loan program is to provide working capital at low interest rates to assist recovery of businesses harmed by a disaster.

The Economic Development Administration (EDA) provides community grants and revolving loan funds to help distressed communities.[18] EDA has assisted fishing communities through its Public Works Program by funding port and harbor improvements. EDA's Economic Adjustment Program helps communities adjust to economic disruptions through support of business development, planning, and market research. Industries that have been adversely affected by increased imports of similar or competitive goods can seek technical assistance under EDA's Trade Adjustment Assistance Program.

Secretarial Disaster Determinations

Since 1990, the Secretary of Commerce has made 72 different fishery disaster determinations, of which 58 were original determinations and 14 were extensions to existing determinations.[19] In 27

[15] NMFS, *Policy*.

[16] For Small Business Administration purposes, disasters also may be declared by the President, state governor, Secretary of Agriculture, or Secretary of Commerce.

[17] CRS Report RL33243, *Small Business Administration: A Primer on Programs and Funding*, by Robert Jay Dilger and Sean Lowry.

[18] For information on Economic Development Administration programs, see https://www.eda.gov/about/.

[19] National Oceanic and Atmospheric Administration (NOAA) Fisheries, Funding, and Financial Services, *Fishery Disaster Determinations*, at https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations.

cases, the determination of a fishery failure or a fishery disaster was made under both the MSA and the IFA. During this period, Congress has appropriated nearly $1.15 billion for fishery disaster relief. Funds for disaster assistance have been used for a wide variety of purposes and may include direct assistance to fishermen, such as

- compensation;
- community grants;
- training;
- loans and debt refinancing; and
- employment on fishery related projects.

Other forms of indirect fishery-related assistance have included fishing capacity reduction (vessel, permit, and gear buybacks), formation of a fisheries research trust, economic planning grants, and research grants.

Fishery failures are diverse with respect to their causes and scope. Most declarations have resulted from natural events such as hurricanes, floods, changes in ocean conditions, or algal blooms such as red tide. In coastal areas hurricanes may damage fishing industry infrastructure such as vessels, docks, fish houses, and related businesses. Even if the resource remains abundant, harvesting, processing, and transport to markets may not be possible until repairs are undertaken and basic services are restored. In addition to the costs of repairs and the replacement of equipment and gear, lost fishing time also can be costly. Hurricanes also may damage natural resources such as oyster beds by depositing silt and debris. Algal blooms such as red tide are another type of natural event that can render seafood toxic and result in fishery closures. Under these conditions, fishermen may be completely shut down for months until toxin levels in shellfish decline to acceptable levels.

Declines in fishery resource abundance are often caused by several factors, such as natural environmental variations, human effects on the environment (e.g., pollution), and overfishing. For example, salmon fisheries are sensitive to natural changes in oceanic conditions. However, salmon abundance has also been affected where dams, irrigation, grazing, mining, and forestry practices have degraded salmon habitat in the Pacific Northwest. Overfishing by itself may not be used to qualify for a fishery failure determination, because it is usually within the control of fishery managers.[20] However, a fishery failure caused by natural or undetermined causes, criteria that may be considered by the Secretary of Commerce, may be exacerbated by overfishing. In these cases assistance may include efforts to rationalize (decrease) fishing capacity. For example, overfishing contributed to fish population declines in several resource disaster cases, such as the New England multispecies fishery and the Pacific groundfish fishery. In these cases, fish abundance decreased significantly and stock rebuilding has required substantial decreases in harvest. However, it was determined that other factors beyond the control of fishery managers played a role in the fishery failure.[21]

State Role

States are frequently active partners throughout the fishery disaster process, from requesting the Secretary to declare a fishery failure and providing related data to disbursing relief to fishermen and related businesses. The disaster request typically includes a spending plan that addresses the

[20] NMFS, *Policy*.

[21] Letter from Rebecca M. Blank, Acting Secretary of Commerce, to Honorable Deval L. Patrick, Governor of Massachusetts, September 13, 2012.

causes of the disaster. Relief funding is often provided directly to states or through regional commissions, such as the Pacific States Marine Fisheries Commission. For example, in 2007, distribution of Oregon salmon troll fishery relief was planned and coordinated by the state's department of agriculture in cooperation with related agencies and nonprofit organizations such as the Oregon Salmon Commission. In addition to matching funds, state governments may also provide funding when federal funds are not available, although historically such funding has been limited.

Fishing Capacity Reduction Programs

Historically, many U.S. fisheries have been overcapitalized—investments in fishing capacity became greater than that needed to harvest the fishery resource on a sustainable basis. Fishing capacity reduction, often referred to as buyback programs, has been a prominent feature of several disaster relief programs.[22] Capacity reduction is usually accomplished through the direct purchase and permanent retirement of fishing vessels, gear, and/or fishing permits. Programs may be funded by the federal government, by fishermen who remain in the fishery, or by a combination of both. The general objectives of buyback programs are to provide immediate relief to fishermen, decrease the level of fishing effort to improve the profitability of the remaining fishing fleet, and conserve the resource.

The effectiveness of buyback programs in reducing fishing capacity depends on whether the remaining fishermen have the incentive to continue investing in boats and gear. Often there is also "latent" fishing effort—boats and gear with permits to fish that are inactive or only marginally utilized in the fishery. The exit of some vessels may encourage this latent fishing effort (vessels) to reenter the fishery, resulting in little or no net reduction in fishing capacity. Furthermore, the first to accept buybacks may be the least efficient vessels in the fleet. This results in fleet reductions that are relatively modest yet expensive, because only the oldest and least efficient units are taken out of production.

Although capacity reduction programs attempt to provide long-term benefits to those who decide to remain in the fishery, poorly crafted programs may result in little or no benefit at the expense of taxpayers. Although capacity reduction can be a means to ease financial hardship caused by a fishing disaster, lasting benefits may depend on better recognition of the motivations of vessel owners and fishermen.

Selected Fishery Failure Cases

West Coast Salmon Ocean Troll Fishery (Sacramento)

On April 10, 2008, the Pacific Fishery Management Council adopted a complete closure of commercial and sport fisheries off California and most of Oregon in response to the collapse of the Sacramento River fall Chinook salmon run. The minimum conservation goal for Sacramento fall Chinook is 122,000 to 180,000 spawning salmon,[23] while as recently as 2002, 769,868 adults returned to spawn.[24] Even with ocean fishery closures, the 2008 returns of Sacramento fall Chinook were projected to be 59,000 fish and actual returns totaled 65,364 fish.[25] In March 2009,

[22] Capacity reduction is referred to in Section 312(b) of the MSA and Section 308(d) of the IFA.

[23] The number of salmon needed to return to the river to sustain this salmon population.

[24] For Pacific salmon fishery management information, see http://www.pcouncil.org/.

[25] Pacific Fishery Management Council, *Stock Assessment and Fishery Evaluation (SAFE) Documents: Review of the*

NMFS released a report on the causes of the decline of Sacramento fall Chinook. The report identified unfavorable ocean conditions as the primary factor that led to poor survival of juvenile salmon when they entered the ocean in 2005 and 2006. It also found that the stock was more susceptible to poor ocean conditions because of habitat degradation in the freshwater portion of its range.

On May 1, 2008, in response to requests by the governors of California, Oregon, and Washington, the Secretary of Commerce declared a commercial fishery failure for the West Coast salmon troll fishery. Congress provided $170 million in disaster funds in the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) for commercial and recreational members of fishing communities who were affected by the fishery failure. In September 2008, $100 million was released to the Pacific States Marine Fishery Commission for distribution to commercial fishermen, processors, charter boat operators, recreational guides, and other businesses dependent on fishing. The declaration also allowed the SBA to make economic injury loans available to businesses affected by the fishery failure. On April 30, 2009, the Secretary of Commerce notified the governors of California and Oregon that the fishery failure would continue in 2009. Returns of Sacramento fall Chinook salmon remained below levels required for a fishery and the 2009 commercial salmon troll fishery was closed for most of Oregon and all of California. The ocean recreational fisheries were also limited in both states, especially California. The extension of the disaster declaration ensured release of the remaining unspent funds from the original $170 million.

In 2010, revenue from commercial salmon landings in California remained significantly lower than the 2003-2005 average. On September 2, 2010, the Secretary of Commerce continued the fishery failure for California and Oregon commercial salmon fisheries under Section 308(d) of the IFA and 312(a) of the MSA. The availability of SBA economic injury loans was continued, but additional disaster relief was not appropriated by Congress. In 2012, PFMC reported that a total of nearly 286,000 fall Chinook salmon returned to the Sacramento River. This was the first year since 2007 that commercial and recreational ocean landings returned to historical levels off California.

New England Red Tide

Red tide has been a reoccurring problem for shellfish fisheries in northern New England. Blooms of the algae *Alexandrium fundyense*, commonly referred to as red tide, produce a toxin that is ingested and concentrated by shellfish such as clams, mussels, and oysters. When the concentration of the algae is high, shellfish beds must be closed because shellfish may cause paralytic shellfish poisoning, which can be toxic to humans.[26] In 2005, shellfish beds were closed from Canada to Martha's Vineyard, Massachusetts. On June 23, 2005, NOAA announced a commercial fishery failure determination for the region's shellfish fishery. In 2006, $5 million was appropriated in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (P.L. 109-234), to assist fishermen who were affected by the red tide bloom.

During 2008, red tide was also widespread in ocean waters off New England. On November 14, 2008, the Secretary of Commerce determined a commercial fishery failure had occurred because the bloom triggered closures of shellfish fisheries. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329), provided up to $5 million to

2016 Ocean Salmon Fisheries, February 2017, p. 203, at http://www.pcouncil.org/salmon/stock-assessment-and-fishery-evaluation-safe-documents/review-of-2016-ocean-salmon-fisheries/.

[26] In extreme cases, paralytic shellfish poisoning (PSP) can be fatal to humans. PSP also has been implicated in the mortality of certain species of marine mammals.

assist the fishing industry and for research and monitoring related to red tide events. On December 22, 2010, the Secretary of Commerce determined that red tide caused another fishery failure in the Maine shellfish fishery during the 2009 season, but Congress did not appropriate funding for this event.

Gulf of Mexico Fisheries (Hurricanes Katrina and Rita)

In the wake of Hurricanes Katrina and Rita, Gulf of Mexico harvesting and shoreside fishery infrastructure were damaged or in some cases destroyed. On September 9, 2005, the Secretary determined that a fishery failure in the Gulf of Mexico had occurred. On October 4, 2005, the Secretary announced a formal determination of an additional fishery failure in Louisiana and Texas due to the effects of Hurricane Rita.

The immediate effects of the fishery failure were difficult to discern because of the broad geographic area affected by the hurricanes and the substantial damage to infrastructure such as ports, processing, and general access to markets. In 2004, Gulf of Mexico annual landings of major fisheries, including shrimp, finfish, and oysters, totaled 1.476 billion pounds with a dockside value of $669 million.[27] In the areas initially affected by Katrina there were 15 major fishing ports, 177 seafood processing facilities, 1,816 federally permitted fishing vessels, and more than 13,000 state-permitted fishing vessels. Private recreational fishing boats, charter boats, and related infrastructure were also extensively damaged.

In July 2007, NMFS released its *Report to Congress on the Impacts of Hurricanes Katrina, Rita, and Wilma on Alabama, Louisiana, Florida, Mississippi, and Texas Fisheries*. This report described fishery conditions before and after the 2005 hurricane season and also described other factors that affect the fishing industry, such as rising costs and seafood imports. A second report, *Economic Damages to Infrastructure Incurred by Louisiana Fishing Industries Due to Hurricanes Katrina and Rita in 2005*, was also released in July 2007. This report estimated losses to the fishing industry of $582 million in Louisiana and $988 million for the entire Gulf of Mexico.[28] Both reports stressed that estimates should be conditioned on data and methods used in each state, factors influencing fisheries, and uncertainties related to the rate of recovery from storm damage.

On June 15, 2006, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (P.L. 109-234), was enacted. It allocated $128 million to the National Oceanic and Atmospheric Administration (NOAA) "Operations, Research, and Facilities" account for expenses related to Hurricane Katrina.[29] On May 25, 2007, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28), was enacted. Additional funding was allocated to the NOAA "Operations, Research, and Facilities" account totaling $110 million for impacts of Hurricanes Katrina and Rita on the shrimp and fishing industries. The Gulf States Marine Fisheries Commission, through a cooperative agreement with NOAA, administered and coordinated funding of recovery programs through grant agreements with each of the Gulf states. Funds appropriated in 2006 were

[27] U.S. Department of Commerce, National Marine Fisheries Service, *Fisheries of the United States, 2005*, Current Fishery Statistics No. 2005 (Washington, DC: February 2007), p. 6.

[28] R. H. Caffey et al., *Economic Damages to Infrastructure Incurred by Louisiana Fishing Industries Due to Hurricanes Katrina and Rita in 2005*, Report to the U.S. Department of Commerce National Oceanic and Atmospheric Administration, July 2007, pp. 86-88.

[29] The measure included $90 million plus a $38 million transfer from the U.S. Department of Agriculture that was to be used for improving oyster grounds.

used to restore damaged oyster beds, remove debris, restore fishery habitat, and support cooperative research.[30] Funds appropriated in 2007 were used to assist individual commercial fishermen, other fishing industry businesses, and seafood promotion of Gulf fishery products.[31]

California Dungeness and Rock Crab Fishery

In early November 2015, the California Dungeness crab and rock crab fisheries were closed due to a harmful algal bloom along the California coast. The California Office of Environmental Health Hazard Assessment and California Department of Health determined that there were unsafe levels of domoic acid in crab tissue. Domoic acid is a neurotoxin, and when ingested by people it can cause nausea, diarrhea, vomiting, memory loss, seizures, and sometimes death. In response, the California Department of Fish and Game closed commercial and recreational crab fisheries in the affected areas. The closure occurred during the peak months of the fishery from December through January and was persistent, as many areas remained closed through May.

The initial estimate of economic impact based on average commercial landings over the previous five years was $48.3 million for Dungeness crab and $376,000 for rock crab.[32] On February 9, 2016, the California governor requested a commercial fishery failure determination under Section 312(a) of the MSA and a fishery resource disaster under Section 308(d) of the IFA.[33] On January 18, 2017, the Secretary of Commerce found that the Dungeness crab and rock crab fisheries met requirements for a determination under both laws.

In the 114th and 115th Congresses, several bills were introduced in the House and Senate to fund the Dungeness and rock crab fishery failures but no bills were enacted. On February 9, 2018, Congress included $200 million in the Bipartisan Budget Act of 2018 (P.L. 115-123) for fishery resource disasters declared by the Secretary in 2017. Of the total, $25.8 million was allocated to provide assistance to the California Dungeness crab and rock crab fisheries. In August 2018, the draft crab disaster relief spending plan was finalized, dividing total funding among mitigation of future disasters (10%), direct payments (89%), and administration (1%).[34] On May 22, 2019, the Pacific States Marine Fisheries Commission announced that it had received funds to be disbursed to crab fishermen.

Potential Issues for Congress

Commercial fisheries are strongly influenced by environmental conditions that affect the abundance and distribution of fishery resources and fishing infrastructure. These changes often take place suddenly with little or no warning, as in the cases of hurricanes, oil spills, and harmful algal blooms. Disaster relief programs may help businesses that have been harmed by these events and can address these disruptions to fisheries by providing assistance until conditions return to "normal." As Congress continues to debate and respond to fishery disasters, several

[30] Gulf States Marine Fisheries Commission, *Emergency Disaster Recovery Program I*, at http://www.gsmfc.org/edrp-i.php.

[31] Gulf States Marine Fisheries Commission, *Emergency Disaster Recovery Program II*, at http://www.gsmfc.org/edrp-ii.php.

[32] Letter from Edmund G. Brown Jr., Governor of California, to Honorable Penny Pritzker, Secretary, U.S. Department of Commerce, February 9, 2016. Hereinafter cited as Brown, 2016.

[33] Brown, 2016.

[34] California Department of Fish and Wildlife, *Crab Disaster Relief Spending Plan: Building Resilience*, August 29, 2018, at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161007&inline.

issues have emerged related to the nature of commercial fisheries and disaster relief programs, including (1) timing relief to meet crucial needs, (2) relating disaster relief to long-term fisheries management, (3) defining a fishery failure, (4) determining who benefits from relief, and (5) considering other related sectors.

Timing of Relief

The delivery of disaster relief depends on the determination by the Secretary that a fishery failure has occurred and on the appropriation of relief funding by Congress. Historically, approximately half of fishery failure determinations have been made within six months of the initial request and over two-thirds have been made within one year.[35] Information related to the scope of the disaster usually needs to be compiled by the fishing industry, state and local governments, and NMFS. Difficulties in concluding this task can be compounded by the lack of data and readily available economic studies. In cases such as Hurricane Katrina (2005), it was immediately clear that a disaster had occurred and the Secretary made a determination within two weeks of when the hurricane made landfall.[36] In other cases, such as the Long Island, NY, hard shell clam fishery (2009), Northern Mariana Islands fisheries following a super typhoon (2003), and the Florida shark fishery (2008), it took two to three years before the Secretary made a determination (in these cases a determination to deny the requests).

After a fishery failure is declared, funding is dependent on appropriations by Congress. In most cases, Congress has provided funding for declared fishery failures, but the timing of appropriations has varied considerably. For some approved determinations, such as the Dungeness crab and rock crab fisheries, pink salmon in Alaska, Fraser River Sockeye salmon, and Washington coastal salmon, Congress appropriated funds over two years after the time of the Secretary's fishery failure determination.[37] Hurricanes Katrina and Rita fishery disaster funding was appropriated in June 2006, more than nine months after the Gulf fishery failure was declared in September 2005. Many in the industry believed the greatest need occurred immediately after the hurricanes, when fishermen lost fishing opportunities because of damaged infrastructure, vessels, and gear and disrupted markets.[38] Although the full dimensions of the disaster and the level and scope of resource needs remained uncertain, some fishermen thought some basic aid should have been provided to members of the fishing industry immediately after the disaster.

For immediate needs following a fishery failure, some have advocated establishing a disaster fund with annual appropriations that could provide assistance on short notice.[39] For example, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288) provides disaster

[35] NOAA Fisheries, *Fisheries Disaster Determinations*, at https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations.

[36] The Secretary of Commerce made the fishery failure determination before the actual request for a fishery failure was made later in 2006.

[37] Fraser River sockeye salmon fishery failure requests were made by several different tribes in 1999-2000, 2007, 2009, 2013, and 2015 and approved by the Secretary of Commerce. Congress did not appropriate funds for the first determination in 2002. A request for a continuation of the fishery failure in 2007 and 2008 was approved and funded in 2008. A request for a continuation of a fishery failure was made in 2009 and approved in 2011 but not funded. A new fishery failure request in 2013 was approved in 2014 and funded in 2018. An additional fishery failure request in 2015 was approved in 2017 and funded in 2018. Another request was made in 2019, but as of March 2020 the Secretary had not made a fishery failure determination.

[38] William E. Gibson, "Gulf Coast Fishermen Need Federal Aid, Official Says Hurricanes Have Wiped Out Boats, Docks," *South Florida Sun-Sentinel*, December 16, 2005, pp. A-4.

[39] Tim Sloane, *Fulfilling the Promise of the Magnuson-Stevens Act*, Pacific Coast Federation of Fishermen's Associations, March 2016, at http://pcffa.org/wp-content/uploads/2016/05/FN0316_PCFFA.pdf.

assistance to state and local governments. The funds are provided by the Federal Emergency Management Agency in various forms through its Disaster Relief Fund (DRF). The DRF is funded through regular appropriations acts using a formula that includes several factors, including historical disaster costs. Fishery disaster assistance is sometimes included in NOAA's annual appropriations, such as the FY2018 and FY2019 Consolidated Appropriations Acts, but in most years disaster assistance is not included in the agency's appropriations requests or annual appropriations acts passed by Congress.

Others have considered the use of existing agriculture programs to supplement existing fishery disaster assistance. For example, during the 112th Congress, the Senate approved an amendment to S. 3240, the Agriculture Reform, Food, and Jobs Act of 2012 (the 2012 farm bill), which would have made commercial fishermen eligible for emergency loans that are currently available to farmers. Emergency loans assist farmers who have suffered physical or production losses in disaster areas that are declared by the President.[40] However, the amendment was not included in the Agricultural Act of 2014 (P.L. 113-79) when it was passed by Congress.

Long-Term Management Approaches

Often, direct or indirect assistance to the fishing industry is part of a relief program. Some have criticized federal assistance because it can delay the readjustment that may be needed for fisheries with excess harvesting capacity. These critics argue that climatic and/or environmental conditions are often blamed for fish population declines caused by overfishing.

Features of several programs, such as buybacks and training for fishermen in other vocations, focus on concerns related to the need to decrease fishing fleet size. Yet, when relief is provided, even when it includes a buyback program, greater numbers of fishermen and effort may often remain in the fishery than might be sustainable in the long run.[41] Many fisheries managers agree that relief such as vessel buybacks needs to be more closely integrated with ongoing fisheries management objectives.[42] Some have proposed that long-term measures and disaster planning should occur before disasters occur. In this way, more deliberate approaches to build resiliency may be considered and potentially enacted instead of emergency measures that fill short-run needs. Other types of assistance that may provide long-term fishery benefits include habitat restoration and enhancement, marketing and promotion programs, and cooperative research.

Defining Fishery Failures

The general causes of fishery resource disasters that result in determination of a commercial fishery failure are defined by the MSA and IFA. However, specific characteristics of a fishery resource disaster, such as scale, timing, and extent, are not defined in statute. Since Congress did not fully define a fishery failure or fishery resource disaster, the Secretary of Commerce has a large degree of discretion when determining whether a fishery failure has occurred.

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[40] U.S. Department of Agriculture, Farm Service Agency, "Farm Loans," fact sheet, at http://www.fsa.usda.gov/Internet/FSA_File/loans11.pdf.

[41] U.S. Government Accountability Office, *Commercial Fisheries*, GAO/RCED-11-120, June 2000, at https://www.gao.gov/assets/240/230376.pdf.

[42] Eric Thunberg, Andrew Kitts, and John Walden, "A Case Study of New England Groundfish Fishing Capacity Reduction," in *Fisheries Buybacks*, ed. Rita Curtis and Dale Squires (La Jolla, CA: Blackwell Publishing, 2004), pp. 239-249.

The NOAA policy guidance provides specific revenue thresholds for determining whether a commercial fishery failure has occurred.[43] However, unless the revenue decline is greater than 80%, the request for a commercial fishery failure would still be evaluated on a case-by-case basis. Most fish populations vary over time, and frequently it is difficult to determine the relative importance of the factors that cause these variations. Thus, the factors that are responsible for the decline may include causes that are allowable, such as environmental changes, and not allowable, such as overfishing. It might be questioned whether additional criteria can be developed to make fishery failure determinations more consistent.

Who Benefits?

Who benefits from disaster funding is a recurring point of contention.[44] Participants such as fishermen and fish processors may be difficult to identify and directly associate with a fishery failure. Although it is often possible to contact vessel and processing plant owners, industry-related labor such as crew members and fish processing employees may be difficult to track. In some fisheries, crew members are temporary laborers that follow fishing opportunities. Because of the transient nature of employment in the fishing industry and seasonal movement of fishing vessels among regions, labor statistics regarding the employment of fishermen are either difficult to obtain or may not exist. Similar problems may occur in related fishery processing and distribution sectors.

Economic effects of fishery disasters on the local community and region are also difficult to quantify. Services directly related to fishing, such as boat repairs, dock services, and fishing equipment suppliers, as well as other businesses indirectly related to fishing, are likely to be harmed by losses in the fish harvesting and processing sectors. Although general regional impacts can be estimated using economic models, it is often difficult to identify the level of impacts on these businesses because of their dispersed nature and their indirect relationship to fishing. A broader understanding of these community impacts depends on more deliberate and long-term data collection and planning to link community concerns with marine fisheries management. An open question is whether NOAA's efforts to integrate management with social concerns might be applied to increasing fishing community resilience to fishery failures and to improving assistance programs when disasters occur.[45]

Aquaculture, Subsistence, and Recreational Fisheries

Fishery disasters affect other resource users, such as recreational fishermen, subsistence users, and aquaculture facilities, but there is ambiguity regarding the eligibility of these groups for disaster relief. These groups are not considered explicitly in disaster relief sections of either the MSA or the IFA.

Charter boat operators who take paying customers for fishing trips have been included in previous determinations and have benefited from assistance. However, it is unclear whether and how assistance would be provided to businesses that support recreational fishing, such as bait and tackle shops. Some observers could contend that these businesses should be included because they are dependent on fisheries and a part of the coastal community. Congress also might consider

[43] NMFS, *Policy*.

[44] Tom Dempsey, *Dempsey Commentary on Federal Disaster Aid*, Cape Cod Commercial Fishermen's Alliance, June 9, 2014, at http://www.capecodfishermen.org/item/commentary-dempsey-federal-aid.

[45] National Marine Fisheries Service, *Human Dimensions*, Office of Science and Technology, at http://www.st.nmfs.noaa.gov/humandimensions/index.

questions related to whether a disaster could be determined for the decline of a species only sought after by recreational fisherman, such as red drum, and how the losses to these businesses would be quantified.

Subsistence users are affected by resource declines and associated losses to household benefits. These impacts are difficult to assess in economic terms; consequently, it may be difficult to determine the form that relief might take. Furthermore, the term *subsistence*, as it relates to fisheries, is not defined in either the MSA or the IFA.[46] Some observers might contend that different approaches may be needed for cases of subsistence disaster relief.

Aquaculture is broadly defined as the propagation and rearing of aquatic species in controlled or selected environments. Aquaculture operations range from extensive farming where there is only minimal control over the organism's environment to intensive systems where complete control is taken at each stage of the organism's life history.[47] Aquaculture is not addressed or defined in the MSA, but according to NMFS, the act's management authority over all fish within the exclusive economic zone (EEZ) and statutory definitions of *fishery* and *fishing* provide a sound basis for regulating aquaculture in the EEZ.[48] NMFS has included marine aquaculture operations in disaster assistance determinations. For red tide fishery failures, oyster farms were included in the request for assistance with wild shellfish fisheries. However, questions remain regarding the eligibility of losses that are specific to aquaculture, such as salmon cage culture or events that affect only aquaculture and not wild fisheries. Further, a recent court decision cast doubt on whether NMFS has authority to regulate aquaculture under the MSA.[49]

Recent Congressional Actions

Fishery Failures: Urgently Needed Disaster Declarations Act

In the 116th Congress, similar versions of the Fishery Failures: Urgently Needed Disaster Declarations Act (S. 2346 and H.R. 5548) have been introduced that would make extensive changes to current law.[50] Both bills would amend Section 312 of the MSA, repeal Section 315 of the MSA, and repeal Section 308 of the IFA. Generally, the legislation would consolidate and clarify many of the fishery disaster provisions in the MSA and the IFA and incorporate parts of the NMFS agency directive on fishery disasters.

The bills cover the main elements of the current fishery disaster program, including

- definitions of terms, including fishery disaster;

[46] For example, *subsistence* is defined by the state of Alaska as customary and traditional uses of fish and wildlife, and the definition highlights the unique importance of wild resources and the continuing role of subsistence activities in sustaining the way of life in Alaska.

[47] For example, oyster farming may resemble a fishery where the habitat is enhanced by adding substrate (shells) for spat (small oyster) attachment. In other cases, greater control is taken and oysters are raised in cages or trays.

[48] Memorandum from Constance Sathre, Office of the General Counsel, to Lois Schiffer, NOAA General Counsel, June 9, 2011.

[49] In Gulf Fisherman's Association v. National Marine Fisheries Service, the U.S. District Court for the Eastern District of Louisiana held that NOAA Fisheries exceeded its authority under the MSA when it adopted a regulatory scheme for aquaculture operations in the Gulf of Mexico. The court found that the MSA's grant of authority to regulate "fishing" and "harvesting" did not include aquaculture.

[50] Most sections of the marked up version of S. 2346 and the version of H.R. 5548 that was introduced in the House of Representatives are either identical or similar.

- initiation of a fishery resource disaster review;
- the review process, including information required for the review;
- evaluation of requests and criteria for disaster determinations;
- allocation and disbursement of appropriated fishery resource disaster assistance; and
- eligible uses of disaster funds.

The bills also include requirements for the timing of determinations and the disbursement of funds. The marked-up versions of S. 2346 and H.R. 5548 also include subsistence, charter, and recreational users as eligible entities but make no specific references to assistance for aquaculture producers.[51]

Both bills also include sections on the following related topics:

- additional conditions on assistance for fishing capacity reduction programs;
- a report from the Comptroller General on efforts to prepare and adapt U.S. fishery management for the impacts of climate change; and
- reporting and certification under the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. §§1826f and 1826h).

On November 13, 2019, S. 2346 was marked up by the Committee on Commerce, Science, and Transportation, and on January 14, 2020, a hearing was held by the House Natural Resources Subcommittee on Water, Oceans, and Wildlife that included testimony related to H.R. 5548.

Other Bills Introduced in the 116th Congress

Several additional bills related to fishery disaster assistance have been introduced during the 116th Congress, but no action has been taken on any of them since their introduction. A bill that would reauthorize the MSA, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 3697), would make several changes to fishery disaster provisions of the act.[52] Section 401 of the bill would require the Secretary of Commerce to publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes the fishery disaster determination. For requests from a state governor, Section 402 would require the Secretary to make a fishery failure determination within 90 days of receiving an estimate of the economic impact from the entity requesting the relief.

The Commercial Fishing and Aquaculture Protection Act of 2019 (S. 2209) would amend the MSA to provide supplemental revenue assistance to eligible commercial fishermen and aquaculture producers.[53] Assistance could be provided when an eligible loss occurs due to an algal bloom, freshwater intrusion, adverse weather, bird depredation, disease, or another condition determined by the Secretary of Commerce. Eligible losses would be calculated as the difference between gross revenue in the calendar year in which losses occurred and 85% of the

[51] The introduced version of S. 2346 included aquaculture producers.

[52] H.R. 200, which was introduced in the 115th Congress and passed the House, proposed identical amendments to MSA fishery disaster assistance provisions.

[53] An eligible commercial fisherman and farm-raised fish producer are generally described as an individual or entity that assumes production and market risks associated with harvesting fish (fisherman) or production of fish in a controlled environment (farm-raised fish producer) for commerce. The term *fish* would include shellfish, finfish, and other aquatic organisms harvested with the intent of entering commerce.

average gross revenue for the three previous years.[54] The assistance could be provided by the Secretary whether or not a fishery resource disaster determination was made.

Two identical bills (H.R. 3514 and S. 1984) were introduced in response to duties imposed on U.S. seafood products. The bills would add certain duties to the list of potential causes of a commercial fishery failure listed in Section 312 of the MSA. Fishery disaster assistance could be provided if duties are placed by other countries on U.S. seafood products as retaliation for increases in duties imposed by the United States.[55]

Recent Disaster Determinations and Appropriations

Funding of fisheries disaster assistance depends on congressional action, because there is no permanent fund to provide relief after the Secretary of Commerce makes determinations. Usually, funding is appropriated for a number of disasters and allocated among specific fishery disasters by NOAA. For example, P.L. 115-123 funded 10 disasters and P.L. 115-141 funded 7 disasters. In the 116th Congress, fishery disasters have been funded by the Consolidated Appropriations Act, 2019 (P.L. 116-6), and the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20). **Table 2** provides a list of fishery disasters that have that been approved or are under consideration for a determination by the Secretary of Commerce during the 116th Congress. **Table 3** provides a list of disasters that were approved and funded during the 115th Congress.

Table 2. Fishery Disaster Requests 116th Congress
(Funded, Not Yet Funded, and Pending Determination)

Fishery Disaster/Failure	Request and Determination	Funding
Washington Fraser River and Skagit River Salmon Fisheries (Swinomish, Lummi, Upper Skagit Tribes), 2019	Request Letter—December 31, 2019, October 31, 2019, March 5, 2019 Determination—Pending	Awaiting Determination
New York Bay Scallop, 2019	Request Letter—December 6, 2019 Determination—Pending	Awaiting Determination
Washington Chehalis River Spring Chinook Salmon Fishery (Confederate Tribes of the Chehalis Reservation), 2019	Request Letter—August 2, 2019 Determination—Pending	Awaiting Determination
Washington Puget Sound Coho Salmon Fishery (Port Gamble S'Klallam Tribe), 2018	Request Letter—July 1, 2019 Determination—Pending	Awaiting Determination
California Pacific Sardine Fishery, 2017-2019	Request Letter—June 18, 2019 Determination—October 30, 2019	$2,218,904
Gulf of Mexico Freshwater Flooding, 2019 (Louisiana, Mississippi, and Alabama)	Request Letters—May 31, 2019, June 13, 2019, July 10, 2019 Determination—October 30, 2019	Awaiting Funding
Florida Red Tide Events 2015-2019	Request Letter—May 24, 2019 Determination—Pending	Awaiting Determination
California Red Sea Urchin Fishery, 2016-2017	Request Letter—February 28, 2019 Determination—October 30, 2019	$3,329,343
Klamath River Fall Chinook Commercial Fishery, 2018 (Yurok Tribe)	Request Letter—February 11, 2019 Determination—October 30, 2019	$2,226,068

[54] Payment could not exceed 85% of the average gross revenue received during the three previous calendar years.

[55] The bill refers to increases in duties imposed by the United States pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) or Section 301 of the Trade Act of 1974 (19 U.S.C. §2411).

Fishery Disaster/Failure	Request and Determination	Funding
Alaska Sockeye Salmon Fishery, 2018	Request Letter—November 28, 2018 Determination—October 30, 2019	$10,327,039
Hurricane Florence, 2018	Request Letter—November 1, 2018 Determination—December 6, 2018	$7,728,000
Hurricane Michael, 2018	Request Letter—October 23, 2018 Determination—October 31, 2018	$7,812,000
Georgia and South Carolina Penaeid Shrimp, 2018	Request Letter—May 18, 2018, May 29, 2018, July 13, 2018, November 16, 2018 Determination—September 25, 2018	$3,442,913 (GA) $3,938,245 (SC)
Gulf of Alaska Pacific Cod, 2018	Request Letter—March 8, 2018 Determination—September 25, 2018	$24,416,440

Source: NOAA Fisheries, Fishery Disaster Determinations, Accessed April, 6, 2020, at https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations.

Notes: Legislation providing funding for fishery failures that was approved in the 116th Congress and enacted into law includes P.L. 116-6 and P.L. 116-20.

Table 3. Funded Fishery Disaster Requests, 115th Congress

Fishery Disaster/Failure	Request and Determination	Legislation/Funding
Washington Ocean Troll Coho and Chinook Salmon Fisheries, 2016 (Makah Tribe)	Request Letter—March 14, 2018 Determination—September 24, 2018	P.L. 115-141—March 23, 2018 Funding—$1,654,000
Hurricane Harvey, 2017	Request Letter—February 14, 2018 Determination—March 20, 2018	P.L. 115-123—February 29, 2018 Funding—$13,945,263
Washington State Coho Salmon Fisheries, 2016 (Quileute Tribe)	Request Letter—May 4, 2017 Determination—September 24, 2018	P.L. 115-141—March 23, 2018 Funding—$970,000
Hurricanes Irma and Maria 2017 (Florida, U.S. Virgin Islands, and Puerto Rico)	Request Letters—October 2, 2017, October 6, 2017, and November 7, 2017 Determination—February 8, 2018	P.L. 115-123—February 29, 2018 Funding—$66,738,161
California Pacific Sardine Fishery, 2015-2016	Request Letter—September 5, 2017 Determination—September 9, 2018	P.L. 115-141—March 23, 2018 Funding—$1,640,000
Oregon and California Klamath River Fall Chinook Salmon Fishery, 2016-2017 (Hoopa Valley, Yurok, Oregon and California)	Request Letters—March 13, 2017 April 25, 2017, and May 24, 2017 Determination—September 24, 2018	P.L. 115-141—March 23, 2018 Funding—$8,886,000
Washington State Coho and Pink Salmon Fisheries, 2015 (Hoh, Stillaguamish, Nooksack, Muckleshoot, Quileute, Upper Skagit, and Suquamish)	Request Letters—Seven letters from July 27, 2016, to March 8, 2018 Determination—September 24, 2018	P.L. 115-141—March 23, 2018 Funding—$3,856,000
Gulf of Alaska Pink Salmon, 2016	Request Letter—September 19, 2016, September 28, 2016, and October 26, 2016 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$56, 361,332

Fishery Disaster/Failure	Request and Determination	Legislation/Funding
Washington Ocean Salmon Troll Fishery, 2016	Request Letter—September 14, 2016 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$834,401
California Klamath River Chinook Salmon Fishery, 2016 (Yurok Tribe)	Request Letter—July 20, 2016 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$3,864,904
Washington Dungeness Crab Fishery, 2015 (Quileute Tribe)	Request Letter—June 23, 2016 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$1,481,199
Washington South Puget Sound Coho, Chinook, and Chum Salmon Fishery, 2015 (Nisqually, Squaxin Island, Port Gamble S'Klallam, and Jamestown S'Klallam Tribes)	Request Letters—May 9, 2016, June 22, 2016, July 5, 2016, and July 31, 2016 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$13,542,624
California Dungeness Crab and Rock Crab, 2015-2016	Request Letter—February 9, 2016 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$25,797,268
Washington Coastal Salmon, 2015 (Quinault and State of Washington)	Request Letter—September 14, 2016 November 23, 2015 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$14,606,939
Fraser River Sockeye Salmon, 2014 (Elwha, Makah, and Swinomish Tribes)	Request Letters—January 13, 2015, January 20, 2015, and February 25, 2015 Determination—January 18, 2017	P.L. 115-123—February 29, 2018 Funding—$2,827,909
Georgia White Shrimp, 2013	Request Letter—February 10, 2014 Determination Letter—July 24, 2015	P.L. 115-141—March 28, 2018 Funding—$1,062,000
Fraser River Sockeye Salmon, 2013 (Nooksack, Tulalip, Suquamish, Makah, Lower Elwha, Jamestown S'Klallam, Port Gamble S'Klallam, Lummi Nation, and State of Washington)	Request Letter—October 28, 2013 Determination—January 14, 2014	P.L. 115-141—March 28, 2018 Funding—$1,932,000

Source: NOAA Fisheries, Fishery Disaster Determinations, at https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations.

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