

116TH CONGRESS
1ST SESSION

S. 2346

To improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2019

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishery Failures: Ur-
5 gently Needed Disaster Declarations Act”.

6 **SEC. 2. FISHERY RESOURCE DISASTER RELIEF.**

7 (a) DEFINITIONS.—In this Act:

8 (1) ALLOWABLE CAUSE.—The term “allowable
9 cause” means a natural cause, man-made cause, or
10 undetermined cause.

1 (2) FISHERY.—The term “fishery” has the
2 meaning given the term in section 3(13) of the Mag-
3 nuson-Stevens Fishery Conservation and Manage-
4 ment Act (16 U.S.C. 1802(13)).

5 (3) FISHERY RESOURCE DISASTER.—The term
6 “fishery resource disaster” means a disaster that is
7 determined by the Secretary in accordance with this
8 Act and—

9 (A) is a sudden, unexpected, and large de-
10 crease in fish stock biomass or other change
11 that results in significant loss of access to the
12 fishery resource, which may include loss of fish-
13 ing vessels and gear for a substantial period of
14 time that results in revenue or subsistence loss
15 and is due to an allowable cause; and

16 (B) does not include reasonably predict-
17 able, foreseeable, and recurrent fishery resource
18 cycle of variations in species distribution or
19 stock abundance.

20 (4) FISHING COMMUNITY.—The term “fishing
21 community” means a community that is substan-
22 tially dependent on, or substantially engaged in, the
23 harvest or processing of fishery resources to meet
24 social and economic needs, and includes fishing ves-
25 sel owners, operators, crew, aquaculture operators,

1 and United States fish processors that are based in
2 such community.

3 (5) INDIAN TRIBE.—The term “Indian tribe”
4 has the meaning given such term in section 102 of
5 the Federally Recognized Indian Tribe List Act of
6 1994 (25 U.S.C. 5130), and the term “tribal”
7 means of or pertaining to such an Indian tribe.

8 (6) MAN-MADE CAUSE.—The term “man-made
9 cause” means—

10 (A) a discrete anthropogenic event, such as
11 an oil spill or spillway opening, that could not
12 have been addressed or prevented by fishery
13 management measures; and

14 (B) that is otherwise beyond the control of
15 fishery managers to mitigate through conserva-
16 tion and management measures, including regu-
17 latory restrictions imposed as a result of judi-
18 cial action or to protect human health or ma-
19 rine animals, plants, or habitats.

20 (7) NATURAL CAUSE.—The term “natural
21 cause”—

22 (A) means a weather or biology-related
23 event, such as—

24 (i) a hurricane;

25 (ii) a flood;

- 1 (iii) a drought;
- 2 (iv) El Niño effects on water tempera-
- 3 ture; or
- 4 (v) disease; and

5 (B) does not mean a normal or cyclical
6 variation in a species distribution or stock
7 abundance.

8 (8) OVERFISHING.—The term “overfishing”
9 means a rate or level of fishing mortality that jeop-
10 ardizes the capacity of a fishery to produce the max-
11 imum sustainable yield on a continuing basis.

12 (9) SECRETARY.—The term “Secretary” means
13 the Secretary of Commerce.

14 (10) 12-MONTH REVENUE LOSS.—The term
15 “12-month revenue loss” means the percentage re-
16 duction in commercial, charter, and headboat rev-
17 enue for the 12 months during the fishery resource
18 disaster period when compared to average annual
19 revenue in the most recent 5-year period or equiva-
20 lent for stocks with cyclical life histories.

21 (11) UNDETERMINED CAUSE.—The term “un-
22 determined cause” means a cause in which the cur-
23 rent state of knowledge does not allow the Secretary
24 to identify the exact cause, and there is no current

1 conclusive evidence supporting a possible cause of
2 the fishery resource disaster.

3 (b) GENERAL AUTHORITY.—

4 (1) IN GENERAL.—The Secretary shall have the
5 authority to determine the existence, extent, and be-
6 ginning and end dates of a fishery resource disaster
7 under this Act in accordance with this Act.

8 (2) AVAILABILITY OF FUNDS.—After the Sec-
9 retary determines that a fishery resource disaster
10 has occurred, the Secretary is authorized to make
11 sums available, from funds appropriated under sub-
12 section (i) and from any supplemental appropria-
13 tions that are available, to be used by the affected
14 State, tribal government, or interstate marine fish-
15 eries commission, or by the Secretary in cooperation
16 with the affected State, tribal government, or inter-
17 state marine fisheries commission.

18 (c) INITIATION OF A FISHERY RESOURCE DISASTER
19 REVIEW.—

20 (1) ELIGIBLE REQUESTERS.—Not later than 1
21 year after the occurrence of a potential fishery re-
22 source disaster, a request for a fishery resource dis-
23 aster determination may be submitted to the Sec-
24 retary, if the Secretary has not independently deter-

1 mined that a fishery resource disaster has occurred,
2 by—

3 (A) the Governor of an affected State;

4 (B) an official tribal resolution; or

5 (C) any other comparable elected or politi-
6 cally appointed representative as determined by
7 the Secretary.

8 (2) REQUIRED INFORMATION.—A complete re-
9 quest for a fishery resource disaster determination
10 under paragraph (1) shall include—

11 (A) identification of all presumed affected
12 fish stocks;

13 (B) identification of the fishery as Federal,
14 non-Federal, or both;

15 (C) the geographical boundaries of the
16 fishery;

17 (D) information on causes of the fishery
18 resource disaster, if known; and

19 (E) information needed to support a find-
20 ing of a fishery resource disaster, including—

21 (i) information demonstrating the oc-
22 currence of a sudden, unexpected, large de-
23 crease in fish stock biomass or other
24 change that results in significant loss of
25 access to the fishery resource, which could

1 include the loss of fishing vessels and gear,
 2 for a substantial period of time; and

3 (ii) 12-month revenue loss for the af-
 4 fected fishery, or if a fishery resource dis-
 5 aster has occurred at any time in the pre-
 6 vious 5-year period, an appropriate time
 7 frame as determined by the Secretary.

8 (d) REVIEW PROCESS.—

9 (1) INTERIM RESPONSE.—Not later than 10
 10 days after receipt of a request under subsection (c),
 11 the Secretary shall provide an interim response to
 12 the individual that—

13 (A) acknowledges receipt of the request;

14 (B) provides a regional contact within the
 15 National Oceanographic and Atmospheric Ad-
 16 ministration;

17 (C) outlines the process and timeline by
 18 which a request shall be considered; and

19 (D) requests additional information con-
 20 cerning the fishery resource disaster, if the
 21 original request is considered incomplete.

22 (2) EVALUATION OF REQUESTS.—

23 (A) IN GENERAL.—The Secretary shall
 24 complete a review, within the time frame de-
 25 scribed in subparagraph (B), using the best sci-

entific information available, in consultation
with the affected States, of—

(i) the information provided by the requester and any additional information relevant to the fishery, which may include—

(I) fishery characteristics;

(II) stock assessments;

(III) the most recent fishery independent surveys and other fishery resource assessments and surveys conducted by Federal or State officials;

(IV) estimates of mortality; and

(V) overall effects; and

(ii) the available economic information, which may include an analysis of—

(I) landings data;

(II) revenue;

(III) the number of participants involved;

(IV) the number and type of jobs and persons impacted, which may include—

(aa) fishermen;

(bb) charter fishing operators;

- 1 (cc) subsistence users;
- 2 (dd) United States fish proc-
- 3 essors; and
- 4 (ee) an owner of a related
- 5 fishery infrastructure or business
- 6 affected by the disaster;
- 7 (V) an impacted business, Tribe,
- 8 or other entity;
- 9 (VI) the availability of hazard in-
- 10 surance to address financial losses due
- 11 to a disaster;
- 12 (VII) other forms of disaster as-
- 13 sistance made available to the fishery,
- 14 including prior awards of disaster as-
- 15 sistance;
- 16 (VIII) the length of time the re-
- 17 source, or access to the resource, has
- 18 been restricted;
- 19 (IX) status of recovery from pre-
- 20 vious fishery resource disasters; and
- 21 (X) other appropriate indicators
- 22 to an affected fishery, as determined
- 23 by the National Marine Fisheries
- 24 Service.

1 (B) TIME FRAME.—The Secretary shall
 2 complete the review described in subparagraph
 3 (A), if the fishing season, applicable to the fish-
 4 ery—

- 5 (i) has concluded or there is no de-
 6 fined fishing season applicable to the fish-
 7 ery, not later than 120 days after the Sec-
 8 retary receives a complete request for a
 9 fishery resource disaster determination; or
 10 (ii) has not concluded, not later than
 11 120 days after the conclusion of the fish-
 12 ing season.

13 (3) FISHERY RESOURCE DISASTER DETERMINA-
 14 TION.—The Secretary shall make the determination
 15 of a fishery resource disaster based on the criteria
 16 for determinations listed in subsection (e).

17 (4) NOTIFICATION.—Not later than 14 days
 18 after the conclusion of the review under this sub-
 19 section, the Secretary shall notify the requestor and
 20 the Governor of the affected State or tribal rep-
 21 resentative of the determination of the Secretary.

22 (e) CRITERIA FOR DETERMINATIONS.—

23 (1) IN GENERAL.—The Secretary shall make a
 24 determination about whether a fishery resource dis-
 25 aster has occurred, based on the revenue loss thresh-

olds under paragraph (2), and, if a fishery resource disaster has occurred, whether the fishery resource disaster was due to—

(A) a natural cause;

(B) a man-made cause; or

(C) an undetermined cause.

(2) REVENUE LOSS THRESHOLDS.—

(A) IN GENERAL.—The Secretary shall apply the following 12-month revenue loss thresholds in determining whether a fishery resource disaster has occurred:

(i) Losses greater than 80 percent shall result in a positive determination that a fishery resource disaster has occurred.

(ii) Losses between 35 percent and 80 percent shall be evaluated to determine whether a fishery resource disaster has occurred, based on the information provided or analyzed under subsection (d)(2).

(iii) Losses less than 35 percent shall not be eligible for a determination that a fishery resource disaster has occurred, except where the Secretary determines there are extenuating circumstances that justify

1 using a lower threshold in making the de-
2 termination.

3 (B) SUBSISTENCE USES AND AQUA-
4 CULTURE OPERATIONS.—In making a deter-
5 mination of whether a fishery resource disaster
6 has occurred, the Secretary may consider rev-
7 enue loss from aquaculture operations and loss
8 of subsistence opportunity, where appropriate.

9 (3) INELIGIBLE FISHERIES.—A fishery subject
10 to overfishing in any of the 3 years preceding the
11 date of a determination under this section is not eli-
12 gible for a determination of whether a fishery re-
13 source disaster has occurred unless the Secretary de-
14 termines that overfishing was not a contributing fac-
15 tor to the fishery resource disaster.

16 (4) EXCEPTIONAL CIRCUMSTANCES.—In an ex-
17 ceptional circumstance where substantial economic
18 impacts to the affected fishery and fishing commu-
19 nity have been subject to a disaster declaration
20 under another statutory authority, such as in the
21 case of a natural disaster or from the direct con-
22 sequences of a Federal action taken to prevent, or
23 in response to, a natural disaster for purposes of
24 protecting life and safety, the Secretary may deter-
25 mine a fishery resource disaster has occurred with-

1 out a request or without conducting the required
2 analyses in paragraphs (1) and (2).

3 (f) DISBURSAL OF APPROPRIATED FUNDS.—

4 (1) AUTHORIZATION.—The Secretary shall allo-
5 cate funds available under subsection (i) for fishery
6 resource disasters.

7 (2) ALLOCATION OF APPROPRIATED FISHERY
8 RESOURCE DISASTER ASSISTANCE.—

9 (A) NOTIFICATION OF FUNDING AVAIL-
10 ABILITY.—When there are appropriated funds
11 for one or more fishery resource disasters, the
12 Secretary shall notify the public and any fishery
13 with a positive disaster determination that is
14 unfunded of the allocation not more than 14
15 days after the date of the appropriation or the
16 determination of a fishery resource disaster,
17 whichever occurs later.

18 (B) EXTENSION OF DEADLINE.—The Sec-
19 retary may extend the deadline under subpara-
20 graph (A) by 90 days to evaluate and make de-
21 terminations on eligible requests.

22 (3) CONSIDERATIONS.—In determining the allo-
23 cation of appropriations for more than 1 fishery re-
24 source disaster, the Secretary shall consider com-

mercials and charter or headboat revenue losses and
may consider the following factors:

(A) Direct economic impacts.

(B) Uninsured losses.

(C) Losses of subsistence opportunity.

(D) Aquaculture operations revenue loss.

(E) Direct revenue losses to a fishing community.

(F) Other economic impacts.

(4) SPEND PLANS.—To receive an allocation from funds available under subsection (i), a requestor with an affirmative fishery resource disaster determination shall submit a spend plan to the Secretary, not more than 180 days after receiving notification that funds are available, that shall include the following information, if applicable:

(A) Objectives and outcomes, with an emphasis on addressing the factors contributing to the fishery resource disaster and minimizing future uninsured losses, if applicable.

(B) Statement of work.

(C) Budget details.

(5) DISBURSAL OF FUNDS.—

(A) AVAILABILITY.—Funds shall be available for disbursement not later than 90 days

1 after the date the Secretary receives a complete
2 spend plan under paragraph (4).

3 (B) METHOD.—The Secretary may provide
4 an allocation of funds under this section in the
5 form of a grant, direct payment, cooperative
6 agreement, loan, or contract.

7 (C) ELIGIBLE USES.—

8 (i) IN GENERAL.—Funds allocated for
9 fishery resources disasters under this sec-
10 tion shall prioritize the following uses,
11 which are not in order of priority:

12 (I) Habitat conservation and res-
13 toration and other activities that re-
14 duce adverse impacts to the fishery.

15 (II) The collection of fishery in-
16 formation and other activities that im-
17 prove management of the affected
18 fishery.

19 (III) Capacity reduction and
20 other activities that improve manage-
21 ment of fishing effort.

22 (IV) Developing, repairing, or
23 improving fishery-related public infra-
24 structure.

1 (V) Job training and economic
2 transition programs.

3 (VI) Public information cam-
4 paigns on the recovery of the fishery,
5 including marketing.

6 (VII) For any purpose that the
7 Secretary determines is appropriate to
8 restore the fishery affected by such a
9 disaster or to prevent a similar dis-
10 aster in the future.

11 (VIII) Direct assistance to a per-
12 son, fishing community, or a business
13 to alleviate economic loss incurred as
14 a direct result of a fishery resource
15 disaster, particularly when affected by
16 a circumstance described in subsection
17 (e)(4).

18 (IX) Other activities that recover
19 or improve management of the af-
20 fected fishery, as determined by the
21 Secretary.

22 (ii) DISPLACED FISHERY EMPLOY-
23 EES.—Where appropriate, individuals car-
24 rying out the activities described in sub-
25 clauses (I) through (VI) of clause (i) shall

1 be individuals who are, or were, employed
 2 in a fishery for which the Secretary has de-
 3 termined that a fishery resource disaster
 4 has occurred.

5 (g) LIMITATIONS.—

6 (1) FEDERAL SHARE.—

7 (A) IN GENERAL.—Except as provided in
 8 subparagraphs (B) and (C), the Federal share
 9 of the cost of any activity carried out under the
 10 authority of this section shall not exceed 75
 11 percent of the cost of that activity.

12 (B) WAIVER.—The Secretary may waive
 13 the non-Federal share requirements of this sec-
 14 tion, if the Secretary determines that—

15 (i) no reasonable means are available
 16 through which the recipient of the Federal
 17 share can meet the non-Federal share re-
 18 quirement; and

19 (ii) the probable benefit of 100 per-
 20 cent Federal financing outweighs the pub-
 21 lic interest in imposition of the non-Fed-
 22 eral share requirement.

23 (C) EXCEPTION.—The Federal share of di-
 24 rect assistance as described in subsection
 25 (f)(5)(C)(i)(VIII) shall be equal to 100 percent.

1 (2) LIMITATIONS ON ADMINISTRATIVE EX-
2 PENSES.—

3 (A) FEDERAL.—Not more than 3 percent
4 of the funds available under this section may be
5 used for administrative expenses by the Na-
6 tional Oceanographic and Atmospheric Admin-
7 istration.

8 (B) STATE OR TRIBAL GOVERNMENTS.—Of
9 the funds remaining after the use described in
10 subparagraph (B), not more than 5 percent
11 may be used by States, tribal governments, or
12 interstate marine fisheries commissions for ad-
13 ministrative expenses.

14 (3) FISHING CAPACITY REDUCTION PRO-
15 GRAM.—

16 (A) IN GENERAL.—No funds available
17 under this section may be used as part of a
18 fishing capacity reduction program in a fishery
19 unless the Secretary determines that adequate
20 conservation and management measures are in
21 place in such fishery.

22 (B) ASSISTANCE CONDITIONS.—As a con-
23 dition of providing assistance under this section
24 with respect to a vessel under a fishing capacity
25 reduction program, the Secretary shall—

1 (i) prohibit the vessel from being used
2 for fishing; and

3 (ii) require that the vessel be—

4 (I) scrapped or otherwise dis-
5 posed of in a manner approved by the
6 Secretary;

7 (II) donated to a nonprofit orga-
8 nization and thereafter used only for
9 purposes of research, education, or
10 training; or

11 (III) used for another non-fishing
12 purpose provided the Secretary deter-
13 mines that adequate measures are in
14 place to ensure that the vessel cannot
15 reenter any fishery anywhere in the
16 world.

17 (4) NO FISHERY ENDORSEMENT.—

18 (A) IN GENERAL.—A vessel that is prohib-
19 ited from fishing under paragraph (3)(B)(i)
20 shall not be eligible for a fishery endorsement
21 under section 12113(a) of title 46, United
22 States Code.

23 (B) NONEFFECTIVE.—A fishery endorse-
24 ment for a vessel described in subparagraph (A)
25 shall not be effective.

1 (C) NO SALE.—A vessel described in sub-
2 paragraph (A) shall not sold to a foreign owner
3 or reflagged.

4 (5) DIRECT ASSISTANCE ELIGIBILITY.—Eligi-
5 bility for direct assistance under this section to a
6 person or business shall be limited to a person or
7 business that has less than \$2,000,000 in net reve-
8 nues annually from commercial fishing, as deter-
9 mined by the Secretary.

10 (h) PUBLIC INFORMATION ON DATA COLLECTION.—
11 The Secretary shall make available and update as appro-
12 priate, information on data collection and submittal best
13 practices for the information described in subsection
14 (d)(2).

15 (i) AUTHORIZATION OF APPROPRIATIONS.—

16 (1) AUTHORIZATION.—There are authorized to
17 be appropriated to carry out this section such sums
18 as may be necessary.

19 (2) AVAILABILITY OF FUNDS.—Amounts appro-
20 priated under this section shall remain available
21 until expended.

22 (3) TAX EXEMPT STATUS.—The Fisheries Dis-
23 asters Fund appropriated under this Act shall be a
24 tax exempt fund.

1 (4) SUPPLEMENTAL APPROPRIATIONS.—The
 2 Secretary may use any supplemental appropriations
 3 that are available to carry out this section.

4 **SEC. 3. MAGNUSON-STEVENSON FISHERY CONSERVATION AND**
 5 **MANAGEMENT ACT.**

6 (a) IN GENERAL.—The Magnuson-Stevens Fishery
 7 Conservation and Management Act (16 U.S.C. 1801 et
 8 seq.) is amended—

9 (1) in section 307(1)(R), by striking “section
 10 312(b)(2)” and inserting “section 312(a)(2)”; and

11 (2) in section 312—

12 (A) by striking subsection (a);

13 (B) by redesignating subsections (b)
 14 through (e) as subsections (a) through (d), re-
 15 spectively;

16 (C) in subsection (b), as redesignated by
 17 clause (ii)—

18 (i) in paragraph (1)(C), by striking
 19 “subsection (d)” and inserting “subsection
 20 (c)”; and

21 (ii) in paragraph (2), by striking
 22 “subsection (d)” and inserting “subsection
 23 (c)”.

1 (b) REPEAL.—Section 315 of the Magnuson-Stevens
2 Fishery Conservation and Management Act (16 U.S.C.
3 1864) is repealed.

4 **SEC. 4. INTERJURISDICTIONAL FISHERIES ACT OF 1986.**

5 (a) REPEAL.—Section 308 of the Interjurisdictional
6 Fisheries Act of 1986 (16 U.S.C. 4107) is repealed.

7 (b) TECHNICAL EDIT.—Section 3(k)(1) of the Small
8 Business Act (15 U.S.C. 632(k)(1)) is amended by strik-
9 ing “(as determined by the Secretary of Commerce under
10 section 308(b) of the Interjurisdictional Fisheries Act of
11 1986)” and inserting “(as determined by the Secretary of
12 Commerce under the Fishery Failures: Urgently Needed
13 Disaster Declarations Act)”.

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