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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fishery Failures: Urgently Needed Disaster Declarations Act”.

SEC. 2. FISHERY RESOURCE DISASTER RELIEF.

(a) DEFINITIONS.—In this Act:

(1) ALLOWABLE CAUSE.—The term “allowable cause” means a natural cause, man-made cause, or undetermined cause.
(2) **Fishery.**—The term “fishery” has the meaning given the term in section 3(13) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(13)).

(3) **Fishery resource disaster.**—The term “fishery resource disaster” means a disaster that is determined by the Secretary in accordance with this Act and—

(A) is a sudden, unexpected, and large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource, which may include loss of fishing vessels and gear for a substantial period of time that results in revenue or subsistence loss and is due to an allowable cause; and

(B) does not include reasonably predictable, foreseeable, and recurrent fishery resource cycle of variations in species distribution or stock abundance.

(4) **Fishing community.**—The term “fishing community” means a community that is substantially dependent on, or substantially engaged in, the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, crew, aquaculture operators,
and United States fish processors that are based in such community.

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

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

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

(B) that is otherwise beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions imposed as a result of judicial action or to protect human health or marine animals, plants, or habitats.

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

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

(i) a hurricane;

(ii) a flood;
(iii) a drought;

(iv) El Niño effects on water temperature; or

(v) disease; and

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

(8) OVERFISHING.—The term “overfishing” means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

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

(10) 12-MONTH REVENUE LOSS.—The term “12-month revenue loss” means the percentage reduction in commercial, charter, and headboat revenue for the 12 months during the fishery resource disaster period when compared to average annual revenue in the most recent 5-year period or equivalent for stocks with cyclical life histories.

(11) UNDETERMINED CAUSE.—The term “undetermined cause” means a cause in which the current state of knowledge does not allow the Secretary to identify the exact cause, and there is no current
conclusive evidence supporting a possible cause of
the fishery resource disaster.

(b) General Authority.—

(1) In general.—The Secretary shall have the
authority to determine the existence, extent, and be-
inning and end dates of a fishery resource disaster
under this Act in accordance with this Act.

(2) Availability of funds.—After the Sec-
retary determines that a fishery resource disaster
has occurred, the Secretary is authorized to make
sums available, from funds appropriated under sub-
section (i) and from any supplemental appropria-
tions that are available, to be used by the affected
State, tribal government, or interstate marine fish-
eries commission, or by the Secretary in cooperation
with the affected State, tribal government, or inter-
state marine fisheries commission.

(c) Initiation of a Fishery Resource Disaster
Review.—

(1) Eligible requesters.—Not later than 1
year after the occurrence of a potential fishery re-
source disaster, a request for a fishery resource dis-
aster determination may be submitted to the Sec-
retary, if the Secretary has not independently deter-
mined that a fishery resource disaster has occurred, by—

(A) the Governor of an affected State;

(B) an official tribal resolution; or

(C) any other comparable elected or politically appointed representative as determined by the Secretary.

(2) REQUIRED INFORMATION.—A complete request for a fishery resource disaster determination under paragraph (1) shall include—

(A) identification of all presumed affected fish stocks;

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

(C) the geographical boundaries of the fishery;

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

(E) information needed to support a finding of a fishery resource disaster, including—

(i) information demonstrating the occurrence of a sudden, unexpected, large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource, which could
include the loss of fishing vessels and gear, for a substantial period of time; and

(ii) 12-month revenue loss for the affected fishery, or if a fishery resource disaster has occurred at any time in the previous 5-year period, an appropriate time frame as determined by the Secretary.

(d) Review Process.—

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

(A) acknowledges receipt of the request;

(B) provides a regional contact within the National Oceanographic and Atmospheric Administration;

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

(D) requests additional information concerning the fishery resource disaster, if the original request is considered incomplete.

(2) Evaluation of Requests.—

(A) In General.—The Secretary shall complete a review, within the time frame described 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;
(ee) subsistence users;
(dd) United States fish processors; and

(ee) an owner of a related fishery infrastructure or business affected by the disaster;

(V) an impacted business, Tribe, or other entity;

(VI) the availability of hazard insurance to address financial losses due to a disaster;

(VII) other forms of disaster assistance made available to the fishery, including prior awards of disaster assistance;

(VIII) the length of time the resource, or access to the resource, has been restricted;

(IX) status of recovery from previous fishery resource disasters; and

(X) other appropriate indicators to an affected fishery, as determined by the National Marine Fisheries Service.
(B) TIME FRAME.—The Secretary shall complete the review described in subparagraph (A), if the fishing season, applicable to the fishery—

(i) has concluded or there is no defined fishing season applicable to the fishery, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination; or

(ii) has not concluded, not later than 120 days after the conclusion of the fishing season.

(3) FISHERY RESOURCE DISASTER DETERMINATION.—The Secretary shall make the determination of a fishery resource disaster based on the criteria for determinations listed in subsection (e).

(4) NOTIFICATION.—Not later than 14 days after the conclusion of the review under this subsection, the Secretary shall notify the requestor and the Governor of the affected State or tribal representative of the determination of the Secretary.

(e) CRITERIA FOR DETERMINATIONS.—

(1) IN GENERAL.—The Secretary shall make a determination about whether a fishery resource disaster 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
using a lower threshold in making the de-
termination.

(B) SUBSISTENCE USES AND AQUACULTURE OPERATIONS.—In making a deter-
mination of whether a fishery resource disaster
has occurred, the Secretary may consider rev-
ene loss from aquaculture operations and loss
of subsistence opportunity, where appropriate.

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

(4) EXCEPTIONAL CIRCUMSTANCES.—In an ex-
ceptional circumstance where substantial economic
impacts to the affected fishery and fishing commu-
nity have been subject to a disaster declaration
under another statutory authority, such as in the
case of a natural disaster or from the direct con-
sequences of a Federal action taken to prevent, or
in response to, a natural disaster for purposes of
protecting life and safety, the Secretary may deter-
mine a fishery resource disaster has occurred with-
out a request or without conducting the required analyses in paragraphs (1) and (2).

(f) Disbursement of Appropriated Funds.—

(1) Authorization.—The Secretary shall allocate funds available under subsection (i) for fishery resource disasters.

(2) Allocation of Appropriated Fishery Resource Disaster Assistance.—

(A) Notification of Funding Availability.—When there are appropriated funds for one or more fishery resource disasters, the Secretary shall notify the public and any fishery with a positive disaster determination that is unfunded of the allocation not more than 14 days after the date of the appropriation or the determination of a fishery resource disaster, whichever occurs later.

(B) Extension of Deadline.—The Secretary may extend the deadline under subparagraph (A) by 90 days to evaluate and make determinations on eligible requests.

(3) Considerations.—In determining the allocation of appropriations for more than 1 fishery resource disaster, the Secretary shall consider com-
commercial 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
after the date the Secretary receives a complete spend plan under paragraph (4).

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

(C) Eligible uses.—

(i) In general.—Funds allocated for fishery resources disasters under this section shall prioritize the following uses, which are not in order of priority:

(I) Habitat conservation and restoration and other activities that reduce adverse impacts to the fishery.

(II) The collection of fishery information and other activities that improve management of the affected fishery.

(III) Capacity reduction and other activities that improve management of fishing effort.

(IV) Developing, repairing, or improving fishery-related public infrastructure.
(V) Job training and economic transition programs.

(VI) Public information campaigns on the recovery of the fishery, including marketing.

(VII) For any purpose that the Secretary determines is appropriate to restore the fishery affected by such a disaster or to prevent a similar disaster in the future.

(VIII) Direct assistance to a person, fishing community, or a business to alleviate economic loss incurred as a direct result of a fishery resource disaster, particularly when affected by a circumstance described in subsection (e)(4).

(IX) Other activities that recover or improve management of the affected fishery, as determined by the Secretary.

(ii) DISPLACED FISHERY EMPLOYEES.—Where appropriate, individuals carrying out the activities described in subsections (I) through (VI) of clause (i) shall
be individuals who are, or were, employed
in a fishery for which the Secretary has de-
termined that a fishery resource disaster
has occurred.

(g) LIMITATIONS.—

(1) FEDERAL SHARE.—

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

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

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

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

(C) EXCEPTION.—The Federal share of di-
rect assistance as described in subsection
(f)(5)(C)(i)(VIII) shall be equal to 100 percent.
(2) **Limitations on Administrative Expenses.**—

(A) **Federal.**—Not more than 3 percent of the funds available under this section may be used for administrative expenses by the National Oceanographic and Atmospheric Administration.

(B) **State or Tribal Governments.**—Of the funds remaining after the use described in subparagraph (B), not more than 5 percent may be used by States, tribal governments, or interstate marine fisheries commissions for administrative expenses.

(3) **Fishing Capacity Reduction Program.**—

(A) **In General.**—No funds available under this section may be used as part of a fishing capacity reduction program in a fishery unless the Secretary determines that adequate conservation and management measures are in place in such fishery.

(B) **Assistance Conditions.**—As a condition of providing assistance under this section with respect to a vessel under a fishing capacity reduction program, the Secretary shall—
(i) prohibit the vessel from being used for fishing; and

(ii) require that the vessel be—

(I) scrapped or otherwise disposed of in a manner approved by the Secretary;

(II) donated to a nonprofit organization and thereafter used only for purposes of research, education, or training; or

(III) used for another non-fishing purpose provided the Secretary determines that adequate measures are in place to ensure that the vessel cannot reenter any fishery anywhere in the world.

(4) NO FISHERY ENDORSEMENT.—

(A) IN GENERAL.—A vessel that is prohibited from fishing under paragraph (3)(B)(i) shall not be eligible for a fishery endorsement under section 12113(a) of title 46, United States Code.

(B) NO EFFECTIVE.—A fishery endorsement for a vessel described in subparagraph (A) shall not be effective.
(C) NO SALE.—A vessel described in sub-
paragraph (A) shall not sold to a foreign owner
or reflagged.

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

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

(i) AUTHORIZATION OF APPROPRIATIONS.—

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

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

(3) TAX EXEMPT STATUS.—The Fisheries Dis-
asters Fund appropriated under this Act shall be a
tax exempt fund.
(4) **Supplemental Appropriations.**—The Secretary may use any supplemental appropriations that are available to carry out this section.

**SEC. 3. MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.**

(a) **In General.**—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended—

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

(2) in section 312—

(A) by striking subsection (a);

(B) by redesignating subsections (b) through (e) as subsections (a) through (d), respectively;

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

(i) in paragraph (1)(C), by striking “subsection (d)” and inserting “subsection (e)”;

(ii) in paragraph (2), by striking “subsection (d)” and inserting “subsection (e)”.


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

SEC. 4. INTERJURISDICTIONAL FISHERIES ACT OF 1986.

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

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

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