

FISHERY RESOURCE DISASTERS IMPROVEMENT ACT

NOVEMBER 16, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany S. 2923]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 2923) to improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fishery Resource Disasters Improvement Act”.

SEC. 2. FISHERY RESOURCE DISASTER RELIEF.

Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) is amended to read as follows:

“(a) FISHERY RESOURCE DISASTER RELIEF.—

“(1) DEFINITIONS.—In this subsection:

“(A) ALLOWABLE CAUSE.—The term ‘allowable cause’ means a natural cause, discrete anthropogenic cause, or undetermined cause.

“(B) ANTHROPOGENIC CAUSE.—The term ‘anthropogenic cause’ means an anthropogenic event, such as an oil spill or spillway opening—

“(i) that could not have been addressed or prevented by fishery management measures; and

“(ii) 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.

“(C) FISHERY RESOURCE DISASTER.—The term ‘fishery resource disaster’ means a disaster that is determined by the Secretary in accordance with this subsection and—

“(i) is an unexpected 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 pe-

riod of time and results in significant revenue or subsistence loss due to an allowable cause; and

“(ii) does not include—

“(I) reasonably predictable, foreseeable, and recurrent fishery cyclical variations in species distribution or stock abundance; or

“(II) reductions in fishing opportunities resulting from conservation and management measures taken pursuant to this Act.

“(D) 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.

“(E) NATURAL CAUSE.—The term ‘natural cause’—

“(i) means a weather, climatic, hazard, or biology-related event, such as—

“(I) a hurricane;

“(II) a flood;

“(III) a harmful algal bloom;

“(IV) a tsunami;

“(V) a hypoxic zone;

“(VI) a drought;

“(VII) El Niño effects on water temperature;

“(VIII) a marine heat wave; or

“(IX) disease; and

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

“(F) 12-MONTH REVENUE LOSS.—The term ‘12-month revenue loss’ means the percentage reduction, as applicable, in commercial, charter, headboat, or processor revenue for the 12 months during which the fishery resource disaster occurred, when compared to average annual revenue in the most recent 5 years when no fishery resource disaster occurred or equivalent for stocks with cyclical life histories.

“(G) 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.

“(2) GENERAL AUTHORITY.—

“(A) IN GENERAL.—The Secretary shall have the authority to determine the existence, extent, and beginning and end dates of a fishery resource disaster under this subsection in accordance with this subsection.

“(B) AVAILABILITY OF FUNDS.—After the Secretary determines that a fishery resource disaster has occurred, the Secretary is authorized to make sums available, from funds appropriated for such purposes, to be used by the affected State, Tribal government, or interstate marine fisheries commission, or by the Secretary in cooperation with the affected State, Tribal government, or interstate marine fisheries commission.

“(C) SAVINGS CLAUSE.—The requirements under this subsection shall take effect only with respect to requests for a fishery resource disaster determination submitted after the date of enactment of the Fishery Resource Disasters Improvement Act.

“(3) INITIATION OF A FISHERY RESOURCE DISASTER REVIEW.—

“(A) ELIGIBLE REQUESTERS.—Not later than 1 year after the date of the conclusion of the fishing season, a request for a fishery resource disaster determination may be submitted to the Secretary, if the Secretary has not independently determined that a fishery resource disaster has occurred, by—

“(i) the Governor of an affected State;

“(ii) an official Tribal resolution; or

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

“(B) REQUIRED INFORMATION.—A complete request for a fishery resource disaster determination under subparagraph (A) shall include—

“(i) identification of all presumed affected fish stocks;

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

“(iii) the geographical boundaries of the fishery;

“(iv) preliminary information on causes of the fishery resource disaster, if known; and

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

“(I) information demonstrating the occurrence of an 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;

“(II) 12-month revenue loss or subsistence loss for the affected fishery, or if a fishery resource disaster has occurred at any time in the previous 5-year period, the most recent 5 years when no fishery resource disaster occurred;

“(III) if applicable, information on lost resource tax revenues assessed by local communities, such as a raw fish tax and local sourcing requirements; and

“(IV) if applicable and available, information on 12-month revenue loss for charter, headboat, or processors related to the information provided under subclause (I), subject to section 402(b).

“(C) ASSISTANCE.—The Secretary may provide data and analysis assistance to an eligible requester described in paragraph (1), if—

“(i) the assistance is so requested;

“(ii) the Secretary is in possession of the required information described in subparagraph (B); and

“(iii) the data is not available to the requester, in carrying out the complete request under subparagraph (B).

“(D) INITIATION OF REVIEW.—The Secretary shall have the discretion to initiate a fishery resource disaster review without a request.

“(4) REVIEW PROCESS.—

“(A) INTERIM RESPONSE.—Not later than 20 days after receipt of a request under paragraph (3), the Secretary shall provide an interim response to the individual that—

“(i) acknowledges receipt of the request;

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

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

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

“(B) EVALUATION OF REQUESTS.—

“(i) IN GENERAL.—The Secretary shall complete a review, within the time frame described in clause (ii), using the best scientific information available, in consultation with the affected fishing communities, States, or Tribes, of—

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

“(aa) fishery characteristics;

“(bb) stock assessments;

“(cc) the most recent fishery independent surveys and other fishery resource assessments and surveys conducted by Federal, State, or Tribal officials;

“(dd) estimates of mortality; and

“(ee) overall effects; and

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

“(aa) landings data;

“(bb) revenue;

“(cc) the number of participants involved;

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

“(AA) fishers;

“(BB) charter fishing operators;

“(CC) subsistence users;

“(DD) United States fish processors; and

“(EE) an owner of a related fishery infrastructure or business affected by the disaster, such as a marina operator, recreational fishing equipment retailer, or charter, headboat, or tender vessel owner, operator, or crew;

“(ee) an impacted Indian Tribe;

“(ff) other forms of disaster assistance made available to the fishery, including prior awards of disaster assistance for the same event;

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

“(hh) status of recovery from previous fishery resource disasters;

“(ii) lost resource tax revenues assessed by local communities, such as a raw fish tax; and

“(jj) other appropriate indicators to an affected fishery, as determined by the National Marine Fisheries Service.

“(ii) TIME FRAME.—The Secretary shall complete the review described in clause (i), 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;

“(II) has not concluded, not later than 120 days after the conclusion of the fishing season; or

“(III) is expected to be closed for the entire fishing season, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination.

“(C) FISHERY RESOURCE DISASTER DETERMINATION.—The Secretary shall make the determination of a fishery resource disaster based on the criteria for determinations listed in paragraph (5).

“(D) NOTIFICATION.—Not later than 14 days after the conclusion of the review under this paragraph, the Secretary shall notify the requester and the Governor of the affected State or Tribal representative of the determination of the Secretary.

“(5) CRITERIA FOR DETERMINATIONS.—

“(A) IN GENERAL.—The Secretary shall make a determination about whether a fishery resource disaster has occurred, and, if a fishery resource disaster has occurred, whether the fishery resource disaster was due to—

“(i) a natural cause;

“(ii) an anthropogenic cause;

“(iii) a combination of a natural cause and an anthropogenic cause;

or

“(iv) an undetermined cause.

“(B) CHARTER FISHING.—In making a determination of whether a fishery resource disaster has occurred, the Secretary shall consider the economic impacts to the charter fishing industry to ensure financial coverage for charter fishing businesses.

“(C) SUBSISTENCE LOSS.—In considering subsistence loss, the Secretary shall evaluate the severity of loss to the fishing community.

“(D) INELIGIBLE FISHERIES.—A fishery subject to overfishing in any of the 3 years preceding the date of a determination under this subsection is not eligible for a determination of whether a fishery resource disaster has occurred unless the Secretary determines that overfishing was not a contributing factor to the fishery resource disaster.

“(E) EXCEPTIONAL CIRCUMSTANCES.—In an exceptional circumstance where substantial economic impacts to the affected fishery and fishing community have been subject to a disaster declaration under another statutory authority, such as in the case of a natural disaster or from the direct consequences of a Federal action taken to prevent, or in response to, a natural disaster for purposes of protecting life and safety, the Secretary may determine a fishery resource disaster has occurred without a request.

“(6) DISBURSAL OF APPROPRIATED FUNDS.—

“(A) AUTHORIZATION.—The Secretary shall allocate funds available under paragraph (9) for fishery resource disasters.

“(B) ALLOCATION OF APPROPRIATED FISHERY RESOURCE DISASTER ASSISTANCE.—

“(i) NOTIFICATION OF FUNDING AVAILABILITY.—When there are appropriated funds for 1 or more fishery resource disasters, the Secretary shall notify—

“(I) the public; and

“(II) representatives of affected fishing communities with a positive disaster determination that is unfunded;

of the availability of funds, not more than 14 days after the date of the appropriation or the determination of a fishery resource disaster, whichever occurs later.

“(ii) EXTENSION OF DEADLINE.—The Secretary may extend the deadline under clause (i) by 90 days to evaluate and make determinations on eligible requests.

“(C) CONSIDERATIONS.—In determining the allocation of appropriations for a fishery resource disaster, the Secretary shall consider commercial, charter, headboat, or seafood processing revenue losses and may consider the following factors:

- “(i) Direct economic impacts.
- “(ii) Uninsured losses.
- “(iii) Losses of subsistence and Tribal ceremonial fishing opportunity.
- “(iv) Losses of recreational fishing opportunity.
- “(v) Aquaculture operations revenue loss.
- “(vi) Direct revenue losses to a fishing community.
- “(vii) Treaty obligations.
- “(viii) Other economic impacts.

“(D) SPEND PLANS.—To receive an allocation from funds available under paragraph (9), a requester with an affirmative fishery resource disaster determination shall submit a spend plan to the Secretary, not more than 120 days after receiving notification that funds are available, that shall include the following information, if applicable:

- “(i) Objectives and outcomes, with an emphasis on addressing the factors contributing to the fishery resource disaster and minimizing future uninsured losses, if applicable.
- “(ii) Statement of work.
- “(iii) Budget details.

“(E) REGIONAL CONTACT.—If so requested, the Secretary shall provide a regional contact within the National Oceanic and Atmospheric Administration to facilitate review of spend plans and disbursement of funds.

“(F) DISBURSAL OF FUNDS.—

- “(i) AVAILABILITY.—Funds shall be made available to grantees not later than 90 days after the date the Secretary receives a complete spend plan.
- “(ii) METHOD.—The Secretary may provide an allocation of funds under this subsection in the form of a grant, direct payment, cooperative agreement, loan, or contract.
- “(iii) ELIGIBLE USES.—

“(I) IN GENERAL.—Funds allocated for fishery resources disasters under this subsection shall restore the fishery affected by such a disaster, prevent a similar disaster in the future, or assist the affected fishing community, and shall prioritize the following uses, which are not in order of priority:

- “(aa) Habitat conservation and restoration and other activities, including scientific research, that reduce adverse impacts to the fishery or improve understanding of the affected species or its ecosystem.
- “(bb) The collection of fishery information and other activities that improve management of the affected fishery.
- “(cc) In a commercial fishery, capacity reduction and other activities that improve management of fishing effort, including funds to offset budgetary costs to refinance a Federal fishing capacity reduction loan or to repay the principal of a Federal fishing capacity reduction loan.
- “(dd) Developing, repairing, or improving fishery-related public infrastructure.
- “(ee) Direct assistance to a person, fishing community (including assistance for lost fisheries resource levies), 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 paragraph (5)(D).
- “(ff) Hatcheries and stock enhancement to help rebuild the affected stock or offset fishing pressure on the affected stock.

“(II) DISPLACED FISHERY EMPLOYEES.—Where appropriate, individuals carrying out the activities described in items (aa) through (dd) of subclause (I) shall be individuals who are, or were, employed in a commercial, charter, or Tribal fishery for which the Secretary has determined that a fishery resource disaster has occurred.

“(7) LIMITATIONS.—

“(A) FEDERAL SHARE.—

- “(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the Federal share of the cost of any activity carried out under the authority

of this subsection shall not exceed 75 percent of the cost of that activity.

“(ii) WAIVER.—The Secretary may waive the non-Federal share requirements of this subsection, 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 requirement; and

“(II) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the non-Federal share requirement.

“(iii) EXCEPTION.—The Federal share shall be equal to 100 percent in the case of—

“(I) direct assistance as described in paragraph (6)(F)(iii)(I)(ee);

or

“(II) assistance to subsistence or Tribal fisheries.

“(B) LIMITATIONS ON ADMINISTRATIVE EXPENSES.—

“(i) FEDERAL.—Not more than 3 percent of the funds available under this subsection may be used for administrative expenses by the National Oceanographic and Atmospheric Administration.

“(ii) STATE OR TRIBAL GOVERNMENTS.—Of the funds remaining after the use described in clause (i), not more than 5 percent may be used by States, Tribal governments, or interstate marine fisheries commissions for administrative expenses.

“(C) FISHING CAPACITY REDUCTION PROGRAM.—

“(i) IN GENERAL.—No funds available under this subsection 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.

“(ii) ASSISTANCE CONDITIONS.—As a condition of providing assistance under this subsection with respect to a vessel under a fishing capacity reduction program, the Secretary shall—

“(I) prohibit the vessel from being used for fishing in Federal, State, or international waters; and

“(II) require that the vessel be—

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

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

“(cc) 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.

“(D) NO FISHERY ENDORSEMENT.—

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

“(ii) NONEFFECTIVE.—A fishery endorsement for a vessel described in clause (i) shall not be effective.

“(iii) NO SALE.—A vessel described in clause (i) shall not be sold to a foreign owner or reflagged.

“(8) PUBLIC INFORMATION ON DATA COLLECTION.—The Secretary shall make available and update as appropriate, information on data collection and submittal best practices for the information described in paragraph (4)(B).

“(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$377,000,000 for the period of fiscal years 2021 through 2026.”

SEC. 3. MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT.

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

(1) by striking section 315 (16 U.S.C. 1864); and

(2) by striking the item relating to section 315 in the table of contents.

(b) REPORT.—Section 113(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (16 U.S.C. 460ss note) is amended—

(1) in the paragraph heading, by striking “ANNUAL REPORT” and inserting “REPORT”;

(2) in the matter preceding subparagraph (A), by striking “Not later than 2 years after the date of enactment of this Act, and annually thereafter” and in-

serting “Not later than 2 years after the date of enactment of the Fishery Resource Disasters Improvement Act, and biennially thereafter”; and

(3) in subparagraph (D), by striking “the calendar” and all that follows through “recommendations” and inserting “the National Research Council’s most recent recommendations”.

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 Resource Disasters Improvement Act)”.

SEC. 5. BUDGET REQUESTS; REPORTS.

(a) BUDGET REQUEST.—In the budget justification materials submitted to Congress in support of the budget of the Department of Commerce for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), the Secretary of Commerce shall include a separate statement of the amount requested to be appropriated for that fiscal year for outstanding unfunded fishery resource disasters.

(b) DRIFTNET ACT AMENDMENTS OF 1990 REPORT AND BYCATCH REDUCTION AGREEMENTS.—

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

(A) in section 202(h), by striking paragraph (3); and

(B) in section 206—

(i) by striking subsections (e) and (f); and

(ii) by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.

(2) BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE.—Section 607 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h) is amended—

(A) by inserting “(a) IN GENERAL.—” before “The Secretary” and indenting appropriately; and

(B) by adding at the end the following:

“(b) ADDITIONAL INFORMATION.—In addition to the information described in paragraphs (1) through (5) of subsection (a), the report shall include—

“(1) a description of the actions taken to carry out the provisions of section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1826), including—

“(A) an evaluation of the progress of those efforts, the impacts on living marine resources, including available observer data, and specific plans for further action;

“(B) a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

“(C) a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes; and

“(2) a description of the actions taken to carry out the provisions of section 202(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1822(h)).

“(c) CERTIFICATION.—If, at any time, the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (b)(1)(C), due to large scale drift net fishing, the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1978(a)).”.

PURPOSE OF THE BILL

The purpose of S. 2923 is to improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service.

BACKGROUND AND NEED FOR LEGISLATION

Fisheries are critical to the United States coastal economy. The productivity and profitability of marine fisheries vary drastically in response to natural and anthropogenic factors, such as pollution, environmental conditions, climatic changes, and severe weather events. While some factors such as natural variability and cyclical variations in fish stocks are generally predictable, other factors can impede fishery access or cause unanticipated and sudden losses to fish stocks. Such fishery resource disaster events cause substantial economic losses for domestic fishers and coastal communities.¹

Fishery disaster assistance authorities and regulations are managed under the Magnuson-Stevens Fishery Conservation and Management Act and the Interjurisdictional Fisheries Act. Following a fishery disaster determined by the Secretary of Commerce, Congress may appropriate funds or provide fishery participants with grants, job retraining, employment, or low-interest loans. Disaster assistance has also historically included proactive action to lessen or prevent future disruptions to fisheries, including fishery resource restoration, data collection or research, and fishing capacity reduction programs. However, the current system for fishery disaster relief has raised concerns regarding its ability to meet crucial needs. Ambiguous procedural deadlines, unclear definitions of allowable use cases, and lengthy funding approval and disbursement processes associated with the current system hinder the program's effectiveness and delay relief to struggling fishers and fishing communities.

The Fishery Resource Disasters Improvement Act (introduced in identical form as H.R. 5453 and S. 2923) addresses shortcomings in the current fisheries disaster relief system within the National Marine Fisheries Service (NMFS). Specifically, the bill clarifies the declaration process for fishery resource disasters, expedites review processes by specifying NMFS actions timelines, improves fund dispersal processes efficiency, and specifies assistance eligibility for recreational, charter, and tribal fishers. The bill also clarifies eligible uses for relief funds, including habitat conservation or restoration to reduce adverse impacts on a fishery. Lastly, the bill promotes employment opportunities for fishery employees displaced by resource disaster events by prioritizing hiring these displaced workers for fishery rebuilding activities supported by disaster relief funds.

COMMITTEE ACTION

H.R. 5453 was introduced on September 30, 2021, by Representative Jared Huffman (D-CA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife.

S. 2923, an identical companion bill, was introduced on September 30, 2021, by U.S. Senator Roger F. Wicker (R-MS). That same day, the bill, without referral to committee, was considered by the full Senate and passed without amendment by voice vote. On October 1, 2021, the House received the engrossed bill. On No-

¹*Fishery Disaster Assistance*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-assistance> (last updated Apr. 8, 2020).

November 16, 2021, the bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On November 16, 2021, the Subcommittee held a hearing on H.R. 4690, which is a larger bill that includes the text of H.R. 5453/S. 2923. On November 17, 2021, the Natural Resources Committee met to consider S. 2923. The Subcommittee was discharged by unanimous consent. Rep. Garret Graves (R-LA) offered an amendment designated Graves #1 revised. The amendment was agreed to by voice vote. Rep. Graves offered an amendment designated Graves #2. The amendment was withdrawn. No other amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by voice vote.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Oceans, and Wildlife held on November 16, 2021.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, as well as clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 9, 2022.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2923, the Fishery Resource Disasters Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2923, Fishery Resource Disasters Improvement Act			
As ordered reported by the House Committee on Natural Resources on November 17, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	342	377
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2923 would authorize the appropriation of \$377 million over the 2021–2026 period for the Fisheries Disaster Assistance program administered by the National Oceanic and Atmospheric Administration (NOAA). The Congress provided \$300 million for that program in 2021, which is the most recent appropriation for the program. Under current law, NOAA may provide financial assistance to commercial fisheries that experience economic hardship because of natural or manmade disasters. S. 2923 would explicitly define terms that are used to determine if a fishery is eligible for assistance. The bill also would require NOAA to adhere to a faster application review process and to fulfill additional reporting requirements.

Using information from NOAA, CBO expects that implementing S. 2923 would not substantially change the way the program is administered under current law. The bill does not authorize specific amounts for any year in the period; for this estimate, we have shown the entire amount in fiscal year 2022. Based on historical spending patterns, CBO estimates that NOAA would spend \$342 million over the 2022–2027 period and \$35 million after 2027 to assist fisheries, assuming appropriation of the authorized amount.

The costs of the legislation, detailed in Table 1, fall within budget function 370 (commerce and housing credit).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2923

	By fiscal year, millions of dollars—						
	2022	2023	2024	2025	2026	2027	2022–2027
Authorization ^a	377	0	0	0	0	0	377
Estimated Outlays	*	30	151	75	45	41	342

* = between zero and \$500,000.

^aThe bill would authorize the appropriation of \$377 million over the 2021–2026 period but does not authorize specific amounts for any year in the period. For this estimate, CBO has shown the entire authorized amount in 2022.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, this bill contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139. The Fisheries Disaster Relief (CFDA No. 11.477) reauthorized by this bill is related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. § 6104: Interjurisdictional Fisheries Act of 1986 (CFDA No. 11.407) and Unallied Industry Projects (CFDA No. 11.452).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Magnuson-Stevens Fishery Conservation and Management Act".

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Sec. 2. Findings, purposes, and policy.

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TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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[Sec. 315. Regional Coastal Disaster Assistance, Transition, and Recovery Program.]

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TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

* * * * *

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

- (a) **NEGOTIATIONS.**—The Secretary of State—
 - (1) shall renegotiate treaties as provided for in subsection (b);
 - (2) shall negotiate governing international fishery agreements described in section 201(c);
 - (3) may negotiate boundary agreements as provided for in subsection (d);
 - (4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—
 - (A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and
 - (B) which provide for the conservation and management of anadromous species and highly migratory species; and
 - (5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.
- (b) **TREATY RENEGOTIATION.**—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.
- (c) **INTERNATIONAL FISHERY AGREEMENTS.**—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—
 - (1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976; by the United States unless it is in accordance with the provisions of section 201(c) or section 204(e).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

(3) REPORTS.—The Secretary of State shall report to the Congress—

(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

(f) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as

may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

(h) BYCATCH REDUCTION AGREEMENTS.—

(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

(2) An international agreement negotiated under this subsection shall be—

(A) consistent with the policies and purposes of this Act; and

(B) subject to approval by Congress under section 203.

[(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection.]

* * * * *

SEC. 206. LARGE-SCALE DRIFTNET FISHING.

(a) **SHORT TITLE.**—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the “Driftnet Act Amendments of 1990”.

(b) **FINDINGS.**—The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world’s oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world’s oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44–225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific

through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44–225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) INTERNATIONAL AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive eco-

conomic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

[(e) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

[(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

[(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

[(3) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

[(4) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

[(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(4), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).]

[(g)] (e) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Num-

bered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

[(h)] (f) DEFINITION.—As used in this section, the term “living marine resources” includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

* * * * *

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

* * * * *

SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

[(a) FISHERIES DISASTER RELIEF.—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

[(A) natural causes;

[(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

[(C) undetermined causes.

[(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

[(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

[(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 2007 through 2013.]

(a) FISHERY RESOURCE DISASTER RELIEF.—

(1) DEFINITIONS.—In this subsection:

(A) ALLOWABLE CAUSE.—The term “allowable cause” means a natural cause, discrete anthropogenic cause, or undetermined cause.

(B) ANTHROPOGENIC CAUSE.—The term “anthropogenic cause” means an anthropogenic event, such as an oil spill or spillway opening—

(i) that could not have been addressed or prevented by fishery management measures; and

(ii) 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.

(C) *FISHERY RESOURCE DISASTER*.—The term “fishery resource disaster” means a disaster that is determined by the Secretary in accordance with this subsection and—

(i) is an unexpected 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 and results in significant revenue or subsistence loss due to an allowable cause; and

(ii) does not include—

(I) reasonably predictable, foreseeable, and recurrent fishery cyclical variations in species distribution or stock abundance; or

(II) reductions in fishing opportunities resulting from conservation and management measures taken pursuant to this Act.

(D) *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.

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

(i) means a weather, climatic, hazard, or biology-related event, such as—

(I) a hurricane;

(II) a flood;

(III) a harmful algal bloom;

(IV) a tsunami;

(V) a hypoxic zone;

(VI) a drought;

(VII) El Niño effects on water temperature;

(VIII) a marine heat wave; or

(IX) disease; and

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

(F) *12-MONTH REVENUE LOSS*.—The term “12-month revenue loss” means the percentage reduction, as applicable, in commercial, charter, headboat, or processor revenue for the 12 months during which the fishery resource disaster occurred, when compared to average annual revenue in the most recent 5 years when no fishery resource disaster occurred or equivalent for stocks with cyclical life histories.

(G) *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.

(2) *GENERAL AUTHORITY*.—

(A) *IN GENERAL*.—The Secretary shall have the authority to determine the existence, extent, and beginning and end

dates of a fishery resource disaster under this subsection in accordance with this subsection.

(B) AVAILABILITY OF FUNDS.—After the Secretary determines that a fishery resource disaster has occurred, the Secretary is authorized to make sums available, from funds appropriated for such purposes, to be used by the affected State, Tribal government, or interstate marine fisheries commission, or by the Secretary in cooperation with the affected State, Tribal government, or interstate marine fisheries commission.

(C) SAVINGS CLAUSE.—The requirements under this subsection shall take effect only with respect to requests for a fishery resource disaster determination submitted after the date of enactment of the Fishery Resource Disasters Improvement Act.

(3) INITIATION OF A FISHERY RESOURCE DISASTER REVIEW.—

(A) ELIGIBLE REQUESTERS.—Not later than 1 year after the date of the conclusion of the fishing season, a request for a fishery resource disaster determination may be submitted to the Secretary, if the Secretary has not independently determined that a fishery resource disaster has occurred, by—

- (i) the Governor of an affected State;*
- (ii) an official Tribal resolution; or*
- (iii) any other comparable elected or politically appointed representative as determined by the Secretary.*

(B) REQUIRED INFORMATION.—A complete request for a fishery resource disaster determination under subparagraph (A) shall include—

- (i) identification of all presumed affected fish stocks;*
- (ii) identification of the fishery as Federal, non-Federal, or both;*
- (iii) the geographical boundaries of the fishery;*
- (iv) preliminary information on causes of the fishery resource disaster, if known; and*
- (v) information needed to support a finding of a fishery resource disaster, including—*

(I) information demonstrating the occurrence of an 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;

(II) 12-month revenue loss or subsistence loss for the affected fishery, or if a fishery resource disaster has occurred at any time in the previous 5-year period, the most recent 5 years when no fishery resource disaster occurred;

(III) if applicable, information on lost resource tax revenues assessed by local communities, such as a raw fish tax and local sourcing requirements; and

(IV) if applicable and available, information on 12-month revenue loss for charter, headboat, or

processors related to the information provided under subclause (I), subject to section 402(b).

(C) ASSISTANCE.—The Secretary may provide data and analysis assistance to an eligible requester described in paragraph (1), if—

- (i) the assistance is so requested;*
- (ii) the Secretary is in possession of the required information described in subparagraph (B); and*
- (iii) the data is not available to the requester, in carrying out the complete request under subparagraph (B).*

(D) INITIATION OF REVIEW.—The Secretary shall have the discretion to initiate a fishery resource disaster review without a request.

(4) REVIEW PROCESS.—

(A) INTERIM RESPONSE.—Not later than 20 days after receipt of a request under paragraph (3), the Secretary shall provide an interim response to the individual that—

- (i) acknowledges receipt of the request;*
- (ii) provides a regional contact within the National Oceanographic and Atmospheric Administration;*
- (iii) outlines the process and timeline by which a request shall be considered; and*
- (iv) requests additional information concerning the fishery resource disaster, if the original request is considered incomplete.*

(B) EVALUATION OF REQUESTS.—

(i) IN GENERAL.—The Secretary shall complete a review, within the time frame described in clause (ii), using the best scientific information available, in consultation with the affected fishing communities, States, or Tribes, of—

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

- (aa) fishery characteristics;*
- (bb) stock assessments;*
- (cc) the most recent fishery independent surveys and other fishery resource assessments and surveys conducted by Federal, State, or Tribal officials;*
- (dd) estimates of mortality; and*
- (ee) overall effects; and*

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

- (aa) landings data;*
- (bb) revenue;*
- (cc) the number of participants involved;*
- (dd) the number and type of jobs and persons impacted, which may include—*
 - (AA) fishers;*
 - (BB) charter fishing operators;*
 - (CC) subsistence users;*
 - (DD) United States fish processors; and*
 - (EE) an owner of a related fishery infrastructure or business affected by the dis-*

aster, such as a marina operator, recreational fishing equipment retailer, or charter, headboat, or tender vessel owner, operator, or crew;

(ee) an impacted Indian Tribe;

(ff) other forms of disaster assistance made available to the fishery, including prior awards of disaster assistance for the same event;

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

(hh) status of recovery from previous fishery resource disasters;

(ii) lost resource tax revenues assessed by local communities, such as a raw fish tax; and

(jj) other appropriate indicators to an affected fishery, as determined by the National Marine Fisheries Service.

(i) *TIME FRAME.*—The Secretary shall complete the review described in clause (i), 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;

(II) has not concluded, not later than 120 days after the conclusion of the fishing season; or

(III) is expected to be closed for the entire fishing season, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination.

(C) *FISHERY RESOURCE DISASTER DETERMINATION.*—The Secretary shall make the determination of a fishery resource disaster based on the criteria for determinations listed in paragraph (5).

(D) *NOTIFICATION.*—Not later than 14 days after the conclusion of the review under this paragraph, the Secretary shall notify the requester and the Governor of the affected State or Tribal representative of the determination of the Secretary.

(5) *CRITERIA FOR DETERMINATIONS.*—

(A) *IN GENERAL.*—The Secretary shall make a determination about whether a fishery resource disaster has occurred, and, if a fishery resource disaster has occurred, whether the fishery resource disaster was due to—

(i) a natural cause;

(ii) an anthropogenic cause;

(iii) a combination of a natural cause and an anthropogenic cause; or

(iv) an undetermined cause.

(B) *CHARTER FISHING.*—In making a determination of whether a fishery resource disaster has occurred, the Secretary shall consider the economic impacts to the charter fishing industry to ensure financial coverage for charter fishing businesses.

(C) *SUBSISTENCE LOSS.*—In considering subsistence loss, the Secretary shall evaluate the severity of loss to the fishing community.

(D) *INELIGIBLE FISHERIES.*—A fishery subject to overfishing in any of the 3 years preceding the date of a determination under this subsection is not eligible for a determination of whether a fishery resource disaster has occurred unless the Secretary determines that overfishing was not a contributing factor to the fishery resource disaster.

(E) *EXCEPTIONAL CIRCUMSTANCES.*—In an exceptional circumstance where substantial economic impacts to the affected fishery and fishing community have been subject to a disaster declaration under another statutory authority, such as in the case of a natural disaster or from the direct consequences of a Federal action taken to prevent, or in response to, a natural disaster for purposes of protecting life and safety, the Secretary may determine a fishery resource disaster has occurred without a request.

(6) *DISBURSAL OF APPROPRIATED FUNDS.*—

(A) *AUTHORIZATION.*—The Secretary shall allocate funds available under paragraph (9) for fishery resource disasters.

(B) *ALLOCATION OF APPROPRIATED FISHERY RESOURCE DISASTER ASSISTANCE.*—

(i) *NOTIFICATION OF FUNDING AVAILABILITY.*—When there are appropriated funds for 1 or more fishery resource disasters, the Secretary shall notify—

(I) the public; and

(II) representatives of affected fishing communities with a positive disaster determination that is unfunded;

of the availability of funds, not more than 14 days after the date of the appropriation or the determination of a fishery resource disaster, whichever occurs later.

(ii) *EXTENSION OF DEADLINE.*—The Secretary may extend the deadline under clause (i) by 90 days to evaluate and make determinations on eligible requests.

(C) *CONSIDERATIONS.*—In determining the allocation of appropriations for a fishery resource disaster, the Secretary shall consider commercial, charter, headboat, or seafood processing revenue losses and may consider the following factors:

(i) Direct economic impacts.

(ii) Uninsured losses.

(iii) Losses of subsistence and Tribal ceremonial fishing opportunity.

(iv) Losses of recreational fishing opportunity.

(v) Aquaculture operations revenue loss.

(vi) Direct revenue losses to a fishing community.

(vii) Treaty obligations.

(viii) Other economic impacts.

(D) *SPEND PLANS.*—To receive an allocation from funds available under paragraph (9), a requester with an affirmative fishery resource disaster determination shall submit a spend plan to the Secretary, not more than 120 days after

receiving notification that funds are available, that shall include the following information, if applicable:

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

(ii) Statement of work.

(iii) Budget details.

(E) REGIONAL CONTACT.—If so requested, the Secretary shall provide a regional contact within the National Oceanic and Atmospheric Administration to facilitate review of spend plans and disbursement of funds.

(F) DISBURSAL OF FUNDS.—

(i) AVAILABILITY.—Funds shall be made available to grantees not later than 90 days after the date the Secretary receives a complete spend plan.

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

(iii) ELIGIBLE USES.—

(I) IN GENERAL.—Funds allocated for fishery resources disasters under this subsection shall restore the fishery affected by such a disaster, prevent a similar disaster in the future, or assist the affected fishing community, and shall prioritize the following uses, which are not in order of priority:

(aa) Habitat conservation and restoration and other activities, including scientific research, that reduce adverse impacts to the fishery or improve understanding of the affected species or its ecosystem.

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

(cc) In a commercial fishery, capacity reduction and other activities that improve management of fishing effort, including funds to offset budgetary costs to refinance a Federal fishing capacity reduction loan or to repay the principal of a Federal fishing capacity reduction loan.

(dd) Developing, repairing, or improving fishery-related public infrastructure.

(ee) Direct assistance to a person, fishing community (including assistance for lost fisheries resource levies), 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 paragraph (5)(D).

(ff) Hatcheries and stock enhancement to help rebuild the affected stock or offset fishing pressure on the affected stock.

(II) *DISPLACED FISHERY EMPLOYEES.*—Where appropriate, individuals carrying out the activities described in items (aa) through (dd) of subclause (I) shall be individuals who are, or were, employed in a commercial, charter, or Tribal fishery for which the Secretary has determined that a fishery resource disaster has occurred.

(7) *LIMITATIONS.*—

(A) *FEDERAL SHARE.*—

(i) *IN GENERAL.*—Except as provided in clauses (ii) and (iii), the Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(ii) *WAIVER.*—The Secretary may waive the non-Federal share requirements of this subsection, 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 requirement; and

(II) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the non-Federal share requirement.

(iii) *EXCEPTION.*—The Federal share shall be equal to 100 percent in the case of—

(I) direct assistance as described in paragraph (6)(F)(iii)(I)(ee); or

(II) assistance to subsistence or Tribal fisheries.

(B) *LIMITATIONS ON ADMINISTRATIVE EXPENSES.*—

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

(ii) *STATE OR TRIBAL GOVERNMENTS.*—Of the funds remaining after the use described in clause (i), not more than 5 percent may be used by States, Tribal governments, or interstate marine fisheries commissions for administrative expenses.

(C) *FISHING CAPACITY REDUCTION PROGRAM.*—

(i) *IN GENERAL.*—No funds available under this subsection 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.

(ii) *ASSISTANCE CONDITIONS.*—As a condition of providing assistance under this subsection with respect to a vessel under a fishing capacity reduction program, the Secretary shall—

(I) prohibit the vessel from being used for fishing in Federal, State, or international waters; and

(II) require that the vessel be—

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

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

(cc) 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.

(D) *NO FISHERY ENDORSEMENT.*—

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

(ii) *NONEFFECTIVE.*—A fishery endorsement for a vessel described in clause (i) shall not be effective.

(iii) *NO SALE.*—A vessel described in clause (i) shall not be sold to a foreign owner or reflagged.

(8) *PUBLIC INFORMATION ON DATA COLLECTION.*—The Secretary shall make available and update as appropriate, information on data collection and submittal best practices for the information described in paragraph (4)(B).

(9) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to carry out this subsection \$377,000,000 for the period of fiscal years 2021 through 2026.

(b) *FISHING CAPACITY REDUCTION PROGRAM.*—(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program (referred to in this section as the “program”) in a fishery if the Secretary determines that the program—

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and, in the instance of a program involving an industry fee system, prospectively capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

(A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future

limited access system permit in the fishery for which the program is established or in any other fishery and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

(5) PAYMENT CONDITION.—The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas.

(6) REPORT.—

(A) IN GENERAL.—Subject to the availability of funds, the Secretary shall, within 12 months after the date of the enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 submit to the Congress a report—

(i) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;

(ii) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and

(iii) potential sources of funding for such measures.

(B) BASIS FOR RECOMMENDATIONS.—The Secretary shall base the recommendations made with respect to a fishery on—

(i) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and

(ii) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or on the high seas.

(c) PROGRAM FUNDING.—(1) The program may be funded by any combination of amounts—

(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish, unless the Secretary determines that such fees should be collected from the seller; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(e) IMPLEMENTATION PLAN.—

(1) FRAMEWORK REGULATIONS.—The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.

(2) PROGRAM REGULATIONS.—The Secretary shall implement each program under this section by promulgating regulations

that, together with the framework regulations, establish each program and control its implementation.

(3) HARVESTER PROPONENTS' IMPLEMENTATION PLAN.—The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—

(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—

- (i) the requirements of this section;
- (ii) the requirements of the framework regulations;
- (iii) the characteristics of the fishery and affected fishing communities;
- (iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;
- (v) the general needs and desires of harvesters in the fishery;
- (vi) the need to minimize program costs; and
- (vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

(B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

(4) PARTICIPATION CONTRACTS.—The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract non-performance) be consistent with the framework and implementing regulations and all other applicable law.

(5) REDUCTION AUCTIONS.—Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

(6) BID INVITATIONS.—Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

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[SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

[(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

[(b) PROGRAM COMPONENTS.—

[(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

[(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;

[(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

[(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

[(D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

[(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

[(3) STATE PARTICIPATION OBLIGATION.—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

[(4) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

[(A) no reasonable means are available through which applicants can meet the matching requirement; and

[(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

[(5) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

[(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region’s fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

[(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term “catastrophic regional fishery disaster” means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

[(1) results in economic losses to coastal or fishing communities;

[(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

[(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).]

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MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT OF 2006

* * * * *

TITLE I—CONSERVATION AND MANAGEMENT

* * * * *

SEC. 113. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

(a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

* * * * *

(b) SALMON PLAN AND STUDY.—

(1) RECOVERY PLAN.—Not later than 6 months after the date of enactment of this Act, the Secretary of Commerce shall complete a recovery plan for Klamath River Coho salmon and make it available to the public.

(2) **[ANNUAL REPORT] REPORT.**—**[Not later than 2 years after the date of enactment of this Act, and annually thereafter] Not later than 2 years after the date of enactment of the Fishery Resource Disasters Improvement Act, and biennially thereafter,** the Secretary of Commerce shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on—

(A) the actions taken under the recovery plan and other law relating to recovery of Klamath River Coho salmon, and how those actions are specifically contributing to its recovery;

(B) the progress made on the restoration of salmon spawning habitat, including water conditions as they relate to salmon health and recovery, with emphasis on the Klamath River and its tributaries below Iron Gate Dam;

(C) the status of other Klamath River anadromous fish populations, particularly Chinook salmon; and

(D) the actions taken by the Secretary to address **[the calendar year 2003 National Research Council recommendations] the National Research Council's most recent recommendations** regarding monitoring and research on Klamath River Basin salmon stocks.

(c) **OREGON AND CALIFORNIA SALMON FISHERY.**—Federally recognized Indian tribes and small businesses, including fishermen, fish processors, and related businesses serving the fishing industry, adversely affected by Federal closures and fishing restrictions in the Oregon and California 2006 fall Chinook salmon fishery are eligible to receive direct assistance under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) and section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)). The Secretary may use no more than 4 percent of any monetary assistance to pay for administrative costs.

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INTERJURISDICTIONAL FISHERIES ACT OF 1986

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TITLE III—INTERJURISDICTIONAL FISHERIES

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[SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

[(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for apportionment to carry out the purposes of this title \$5,000,000 for each of fiscal years 2007 through 2010, and \$2,500,000 for each of fiscal years 2011 and 2012.

[(b) ADDITIONAL APPROPRIATIONS.—In addition to the amounts authorized in subsection (a), there are authorized to be appropriated to the Department of Commerce \$65,000,000 for each of the

fiscal years 1994 and 1995, which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this title; except that—

【(1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future; and

【(2) the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels; and

【(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.

Amounts appropriated under this subsection shall remain available until expended.

【(c) DEVELOPMENT OF MANAGEMENT PLANS.—In addition to the amounts authorized under subsections (a) and (b), there are authorized to be appropriated to the Department of Commerce \$900,000 for each of fiscal years 2007 through 2012, to support the efforts of the following interstate commissions to develop interstate fishery management plans for interjurisdictional fishery resources:

【(1) The commission established by the Atlantic States Marine Fisheries Compact, as consented to and approved by Public Law 77-539 (56 Stat. 267), approved May 4, 1942.

【(2) The commission established by the Pacific Marine Fisheries Compact, as consented to and approved by Public Law 80-232 (61 Stat. 419), approved July 24, 1947.

【(3) The commission established by the Gulf States Marine Fisheries Compact, as consented to and approved by Public Law 81-66 (63 Stat. 70), approved May 19, 1949.

【(d) ASSISTANCE TO COMMERCIAL FISHERMEN.—(1) In addition to the amounts authorized under subsections (a), (b), and (c), there are authorized to be appropriated to the Department of Commerce \$65,000,000 for fiscal year 1992 to enable the Secretary to help persons engaged in commercial fisheries, either by providing assistance directly to those persons or by providing assistance indirectly through States and local government agencies and nonprofit organizations, for projects or other measures to alleviate harm determined by the Secretary to have been incurred as a direct result of a fishery resource disaster arising from Hurricane Hugo, Hurricane Andrew, Hurricane Iniki, or any other natural disaster. Amounts appropriated under this subsection shall remain available until expended.

【(2) The Secretary shall determine the extent, and the beginning and ending dates, of any fishery resource disaster under this subsection.

【(3) Eligibility for direct assistance to a person under this subsection shall be limited to any person that has less than \$2,000,000

in net revenues annually from commercial fishing, as determined by the Secretary.

[(4)(A) Assistance may not be provided under this subsection 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 that fishery.

[(B) As a condition of awarding assistance 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; or

[(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.

[(C) A vessel that is prohibited from fishing under subparagraph (B) shall not be eligible for a fishery endorsement under section 12108(a) of title 46, United States Code, and any such endorsement for the vessel shall not be effective.

[(5) The Secretary shall establish, after notice and opportunity for public comment, appropriate limitations, terms, and conditions for receiving assistance under this subsection.

[(6) As used in this subsection, the term “person” means any individual or any corporation, partnership, trust, association, or other nongovernmental entity.

[(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides—

[(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

[(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total days at sea weighted by the maximum potential fishing capacity of the fleet;

[(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

[(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.]

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SMALL BUSINESS ACT

* * * * *

SEC. 3. DEFINITIONS.

(a) SMALL BUSINESS CONCERNS.—

(1) **IN GENERAL.**—For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

(2) ESTABLISHMENT OF SIZE STANDARDS.—

(A) **IN GENERAL.**—In addition to the criteria specified in paragraph (1) and subject to the requirements specified under subparagraph (C), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

(B) **ADDITIONAL CRITERIA.**—The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) **REQUIREMENTS.**—Unless specifically authorized by statute, no Federal department or agency (including the Administration when acting pursuant to subparagraph (A)) may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 24 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 5 years;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years; or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) **VARIATION BY INDUSTRY AND CONSIDERATION OF OTHER FACTORS.**—When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4) **EXCLUSION OF CERTAIN SECURITY EXPENSES FROM CONSIDERATION FOR PURPOSE OF SMALL BUSINESS SIZE STANDARDS.**—

(A) DETERMINATION REQUIRED.—Not later than 30 days after the date of enactment of this paragraph, the Administrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

(B) ACTION REQUIRED.—Not later than 60 days after the date of enactment of this paragraph, the Administrator shall either—

(i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or

(ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) QUALIFIED AREAS.—In this paragraph, the term “qualified area” means—

(i) Iraq,

(ii) Afghanistan, and

(iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of the Internal Revenue Code of 1986, at the time of performance of the relevant Federal contract or subcontract.

(5) ALTERNATIVE SIZE STANDARD.—

(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and

(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) PROPOSED RULEMAKING.—In conducting rulemaking to revise, modify or establish size standards pursuant to this sec-

tion, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

(A) a detailed description of the industry for which the new size standard is proposed;

(B) an analysis of the competitive environment for that industry;

(C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and

(D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) COMMON SIZE STANDARDS.—In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) NUMBER OF SIZE STANDARDS.—The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(9) PETITIONS FOR RECONSIDERATION OF SIZE STANDARDS.—

(A) IN GENERAL.—A person may file a petition for reconsideration with the Office of Hearings and Appeals (as established under section 5(i)) of a size standard revised, modified, or established by the Administrator pursuant to this subsection.

(B) TIME LIMIT.—A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

(C) PROCESS FOR AGENCY REVIEW.—The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) JUDICIAL REVIEW.—The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E) RULES OR GUIDANCE.—The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size

standards revised, modified, or established in a Federal Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

(b) For purposes of this Act, any reference to an agency or department of the United States, and the term “Federal agency,” shall have the meaning given the term “agency” by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

(c)(1) For purposes of this Act, a qualified employee trust shall be eligible for any loan guarantee under section 7(a) with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this Act, the term “qualified employee trust” means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1954)—

(i) which is maintained by such concern, and

(ii) which provides that each participant is entitled to direct the plan trustee as to the manner of how to vote the qualified employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1986), which are allocated to the account of such participant with respect to a corporate matter which (by law or charter) must be decided by a vote conducted in accordance with section 409(e) of the Internal Revenue Code of 1986; and

(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator of which enters into an agreement with the Administrator which is binding on the trust and no such small business concern and which provides that—

(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern.

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant’s account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employee of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1954).

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 7(a), such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d) For purposes of section 7 of this Act, the term “qualified Indian tribe” means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern.

(e) For purposes of section 7 of this Act, the term “public or private organization for the handicapped” means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not insure in whole or in part to the benefit of any shareholder or other individual;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f) For purposes of section 7 of this Act, the term “handicapped individual” means an individual—

(1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or

(2) who is a service-disabled veteran.

(g) For purposes of section 7 of this Act, the term “energy measures” includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination equipment;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial co-generation of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) The term “credit elsewhere” means—

(1) for the purposes of this Act (except as used in section 7(b)), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources, considering factors associated with conventional lending practices, including—

(A) the business industry in which the loan applicant operates;

(B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;

(C) the adequacy of the collateral available to secure the requested loan;

(D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and

(E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

(2) for the purposes of section 7(b), the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.

(i) For purposes of section 7 of this Act, the term “homeowners” includes owners and lessees of residential property and also includes personal property.

(j) For the purposes of this Act, the term “small agricultural cooperative” means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k)(1) For the purposes of this Act, the term “disaster” means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters [(as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986)] *(as determined by the Secretary of Commerce under the Fishery Resource Disasters Improvement Act)*, ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(2) For purposes of section 7(b)(2), the term “disaster” includes—

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C) ice storms and blizzards.

(l) For purposes of this Act—

(1) the term “computer crime” means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) DEFINITIONS RELATING TO CONTRACTING.—In this Act:

(1) PRIME CONTRACT.—The term “prime contract” has the meaning given such term in section 8701(4) of title 41, United States Code.

(2) PRIME CONTRACTOR.—The term “prime contractor” has the meaning given such term in section 8701(5) of title 41, United States Code.

(3) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified acquisition threshold” has the meaning given such term in section 134 of title 41, United States Code.

(4) MICRO-PURCHASE THRESHOLD.—The term “micro-purchase threshold” has the meaning given such term in section 1902 of title 41, United States Code.

(5) TOTAL PURCHASES AND CONTRACTS FOR PROPERTY AND SERVICES.—The term “total purchases and contracts for property and services” shall mean total number and total dollar amount of contracts and orders for property and services.

(n) For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned busi-

ness, at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—In this Act:

(1) BUNDLED CONTRACT.—The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

(A) the diversity, size, or specialized nature of the elements of the performance specified;

(B) the aggregate dollar value of the anticipated award;

(C) the geographical dispersion of the contract performance sites; or

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) SEPARATE SMALLER CONTRACT.—The term “separate smaller contract”, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—In this Act, the term “qualified HUBZone small business concern” has the meaning given such term in section 31(b).

(q) DEFINITIONS RELATING TO VETERANS.—In this Act, the following definitions apply:

(1) SERVICE-DISABLED VETERAN.—The term “service-disabled veteran” means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” means any of the following:

(A) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and

(ii) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(B) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans with a disability

that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or

(ii) in the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

(C)(i) During the time period described in clause (ii), a small business concern that was a small business concern described in subparagraph (A) or (B) immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, if—

(I) the surviving spouse of the deceased veteran acquires such veteran's ownership interest in such concern;

(II) such veteran had a service-connected disability (as defined in section 101(16) of title 38, United States Code); and

(III) immediately prior to the death of such veteran, and during the period described in clause (ii), the small business concern is included in the database described in section 36.

(ii) The time period described in this clause is the time period beginning on the date of the veteran's death and ending on the earlier of—

(I) the date on which the surviving spouse remarries;

(II) the date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(III) the date that—

(aa) in the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, is 10 years after the date of the death of the veteran; or

(bb) in the case of a surviving spouse of a veteran with a service-connected disability rated as less than 100 percent disabling who does not die as a result of a service-connected disability, is 3 years after the date of the death of the veteran.

(3) **SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.**—The term “small business concern owned and controlled by veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) **VETERAN.**—The term “veteran” has the meaning given the term in section 101(2) of title 38, United States Code.

(5) RELIEF FROM TIME LIMITATIONS.—

(A) IN GENERAL.—Any time limitation on any qualification, certification, or period of participation imposed under this Act on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10, United States Code, on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) DURATION.—Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM ACT OF 1990.—The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(6) ESOP.—The term “ESOP” has the meaning given the term “employee stock ownership plan” in section 4975(e)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)).

(7) SURVIVING SPOUSE.—The term “surviving spouse” has the meaning given such term in section 101(3) of title 38, United States Code.

(F) DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.—As used in section 23 of this Act:

(1) SMALL BUSINESS LENDING COMPANY.—The term “small business lending company” means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) NON-FEDERALLY REGULATED LENDER.—The term “non-Federally regulated lender” means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 7;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(S) MAJOR DISASTER.—In this Act, the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(t) **SMALL BUSINESS DEVELOPMENT CENTER.**—In this Act, the term “small business development center” means a small business development center described in section 21.

(u) **REGION OF THE ADMINISTRATION.**—In this Act, the term “region of the Administration” means the geographic area served by a regional office of the Administration established under section 4(a).

(v) **MULTIPLE AWARD CONTRACT.**—In this Act, the term “multiple award contract” means—

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) **PRESUMPTION.**—

(1) **IN GENERAL.**—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) **DEEMED CERTIFICATIONS.**—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) **CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.**—

(A) **IN GENERAL.**—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) **CONTENT OF CERTIFICATIONS.**—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the

signature of an authorized official on the same page on which the certification is contained.

(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) ANNUAL CERTIFICATION.—

(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) AQUACULTURE BUSINESS DISASTER ASSISTANCE.—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.

(aa) VENTURE CAPITAL OPERATING COMPANY.—In this Act, the term “venture capital operating company” means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) HEDGE FUND.—In this Act, the term “hedge fund” has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(cc) PRIVATE EQUITY FIRM.—In this Act, the term “private equity firm” has the meaning given the term “private equity fund” in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(dd) DEFINITIONS PERTAINING TO SUBCONTRACTING.—In this Act:

(1) SUBCONTRACT.—The term “subcontract” means a legally binding agreement between a contractor that is already under contract to another party to perform work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) **FIRST TIER SUBCONTRACTOR.**—The term “first tier subcontractor” means a subcontractor who has a subcontract directly with the prime contractor.

(3) **AT ANY TIER.**—The term “at any tier” means any subcontractor other than a subcontractor who is a first tier subcontractor.

(ee) **PUERTO RICO BUSINESS.**—In this Act, the term “Puerto Rico business” means a small business concern that has its principal office located in the Commonwealth of Puerto Rico.

(ff) **COVERED TERRITORY BUSINESS.**—In this Act, the term “covered territory business” means a small business concern that has its principal office located in one of the following:

- (1) The United States Virgin Islands.
- (2) American Samoa.
- (3) Guam.
- (4) The Northern Mariana Islands.

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**HIGH SEAS DRIFTNET FISHING MORATORIUM
PROTECTION ACT**

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TITLE VI—DRIFTNET MORATORIUM

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SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE.

(a) *IN GENERAL.*—The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, and every 2 years thereafter, on June 1 of that year a report that includes—

(1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

(2) a list of nations that have been identified under section 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to section 609 or 610;

(3) a description of efforts taken by nations on those lists to comply take appropriate corrective action consistent with sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;

(4) progress at the international level, consistent with section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and

(5) steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices

on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

(b) *ADDITIONAL INFORMATION.*—*In addition to the information described in paragraphs (1) through (5) of subsection (a), the report shall include—*

(1) *a description of the actions taken to carry out the provisions of section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1826), including—*

(A) *an evaluation of the progress of those efforts, the impacts on living marine resources, including available observer data, and specific plans for further action;*

(B) *a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and*

(C) *a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes; and*

(2) *a description of the actions taken to carry out the provisions of section 202(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1822(h)).*

(c) *CERTIFICATION.*—*If, at any time, the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (b)(1)(C), due to large scale drift net fishing, the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).*

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SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

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