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Fishery Disaster Assistance

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Fishery Disaster Assistance

Oceanic conditions, climate, human activities, and weather events can affect fishery resources and commercial infrastructure, such as boats, shoreside processing, and ports. Congress authorized the Secretary of Commerce (the Secretary) to provide disaster assistance to the fishing industry when fish populations decline or other disruptions cause economic losses. The governor of a state, the Secretary, or a representative of a fishing community may initiate a request for assistance. The National Marine Fisheries Service (NMFS), state agencies, and fishing communities compile information needed to make a determination. When all necessary information has been obtained and reviewed, the Secretary determines whether a fishery failure or disaster has occurred. In most cases, Congress has appropriated funds to support the fishing industry following the Secretary's determination. Since 1994, the Secretary has made 127 fishery disaster determinations and Congress has appropriated nearly \$1.8 billion for fishery disaster relief. As of 2024, fishery disaster determinations have been made for salmon fisheries in the Pacific Northwest and Alaska, Alaskan crab fisheries, West Coast Dungeness crab fisheries, the New England Atlantic herring fishery, and fisheries affected by several hurricanes and other causes. NMFS, states, interstate marine fisheries commissions, and industry representatives often work together to develop a spend plan for how assistance will be distributed to the fishing industry and allocated among potential projects.

The criteria for the Secretary to determine whether a commercial fishery failure or fishery resource disaster has occurred is provided in Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861(a)). In 2022, through the Fishery Resource Disasters Improvement Act (FRDIA; P.L. 117-328, Division S, Title II), Congress amended Section 312(a) of the MSA and repealed fishery disaster assistance provisions in Section 315 of the MSA (16 U.S.C. §1864, repealed). It also amended Sections 308(b) and 308(d) of the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107, repealed). The FRDIA amendments added prescriptive definitions, timelines, requirements, and revenue thresholds regarding the determination and administration of fishery disaster assistance to MSA Section 312(a). The legislation consolidated and clarified many of the provisions originally in the MSA and the IFA, and it incorporated parts of the NMFS agency directive on fishery disasters.

Direct federal financial assistance may be provided to fishers and fishing communities in the form of grants, direct payments, cooperative agreements, loans, or contracts. In addition to providing direct assistance following an economic loss, assistance may support efforts to prevent or lessen the effects of future disruptions to fisheries; these efforts may include fishery data collection, resource restoration, research, stock enhancement (e.g., through hatcheries), and fishing capacity reduction programs.

Whereas some observers support efforts to provide assistance, others contend that disaster assistance programs sometimes fall short of expectations when funds are not disbursed in a timely manner, relief is not integrated with long-term fishery management objectives, and funds do not reach the people who may be in the greatest need of assistance. Stakeholders and experts also have raised concerns about the effectiveness of current fishery disaster assistance approaches in the context of climate change and in consideration of future disasters.

Many in Congress have shown consistent interest in fishery disaster assistance. In addition to the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), which provided support to fishers affected by the Coronavirus Disease 2019 (COVID-19) pandemic, several bills were introduced during the 116th-118th Congresses related to fishery disaster assistance. These bills included similar versions of the Fishery Failures: Urgently Needed Disaster Declarations Act (H.R. 5548/S. 2346) introduced in the 116th Congress that would have made extensive changes to the fishery disaster assistance process. Additionally, two identical bills in the 116th Congress (H.R. 3514/S. 1984) would have added the effects of certain duties on seafood markets as a potential cause of a commercial fishery failure under the MSA. Furthermore, the Commercial Fishing and Aquaculture Protection Act of 2019 (S. 2209), also introduced in the 116th Congress, would have provided assistance to eligible commercial fishers and aquaculture producers that suffer losses in revenue. In the 117th Congress, previous versions of the FRDIA were introduced (H.R. 5453/S. 2923), and proposed refinements to the fishery disaster assistance process also were included in two separate bills (H.R. 59 and H.R. 4690), each of which would have comprehensively amended the MSA. H.R. 5103/S. 4262, introduced in the 118th Congress, would require the White House Office of Management and Budget (OMB) to approve a spend plan for fishery disaster assistance within 30 days (or to deny a spend plan within 15 days) after the date that the Secretary submits the plan for approval. As of June 2024, these two bills have been referred to their respective committees of jurisdiction.

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Introduction

Marine ecosystems and their living marine resources may be subject to multiple environmental stressors, which can affect the coastal communities that depend on them. Natural stressors, including hurricanes, harmful algal blooms, marine heatwaves, and other phenomena, are anticipated to continue and possibly increase in their frequency and magnitude during forthcoming years, with potential effects to marine fisheries.¹ Additionally, human effects on marine environments—such as pollution, introduced species, and contributions to regional warming through greenhouse gas emissions—may compound natural stressors, with additional consequences to marine fisheries.² Furthermore, natural environmental variability in oceanic, climatic, and weather conditions may adversely impact marine fisheries.³ Thus, fishing communities continue to be vulnerable to these phenomena, with potential economic impacts to fishers, processors, retailers, and other stakeholders.

Fishery disasters occur when fishers endure economic hardships resulting from fish population declines or other disruptions to the fishery.⁴ Marine fisheries' productivity and profitability may vary due to multiple stressors and causes.⁵ These stressors can result in unexpected fishery resource declines; lead to fishery closures; and damage commercial infrastructure such as boats, shoreside processing facilities, and ports and marinas.⁶ The federal government may provide

¹ As examples, Alex Sen Gupta et al., “Drivers and Impacts of the Most Extreme Marine Heatwaves Events,” *Scientific Reports*, vol. 10, no. 1 (2020), 19359, pp. 1-15; Joao Morim et al., “Global-Scale Changes to Extreme Ocean Wave Events Due to Anthropogenic Warming,” *Environmental Research Letters*, vol. 16, no. 7 (2021), 074056, pp. 1-9 (hereinafter Morim et al., “Global-Scale Changes”); Mark L. Wells et al., “Harmful Algal Blooms and Climate Change: Learning from the Past and Present to Forecast the Future,” *Harmful Algae*, vol. 49 (2015), pp. 68-93 (hereinafter Wells et al., “Harmful Algal Blooms and Climate Change”); Karthik Balaguru et al., “Increased U.S. Coastal Hurricane Risk Under Climate Change,” *Science Advances*, vol. 9, no. 14 (2023), eadf0259, pp. 1-11; Stephen Jewson, “Interpretation of the Knutson et al. (2020) Hurricane Projections, the Impact on Annual Maximum Wind-speed, and the Role of Uncertainty,” *Stochastic Environmental Research and Risk Assessment*, vol. 36, no. 7 (2022), pp. 1885-1901.

² As examples, Md. Shahidul Islam and Masaru Tanaka, “Impacts of Pollution on Coastal and Marine Ecosystems Including Coastal and Marine Fisheries and Approach for Management: A Review and Synthesis,” *Marine Pollution Bulletin*, vol. 48, no. 7-8 (2004), pp. 624-649; Sabrina J. Lovell, Susan F. Stone, and Linda Fernandez, “The Economic Impacts of Aquatic Invasive Species,” *Agricultural and Resource Economics Review*, vol. 35, no. 1 (2006), pp. 195-208; Morim et al., “Global-Scale Changes.”

³ For example, Martin Lindegren et al., “Climate, Fishing, and Fluctuations of Sardine and Anchovy in the California Current,” *Proceedings of the National Academy of Sciences*, vol. 110, no. 33 (2013), pp. 13672-13677; Maria José Juan-Jordá et al., “Groundfish Species Associations with Distinct Oceanographic Habitats in the Northern California Current,” *Fisheries Oceanography*, vol. 18, no. 1 (2009), pp. 1-19.

⁴ The term *fishery disaster* is used in parts of this report to make general references to commercial fishery failures and fishery resource disasters. Although the term *commercial fishery failure* is no longer included in statute, the concept is still applied when determining whether a fishery resource disaster has occurred. 50 C.F.R. §253.50 defines *commercial fishery failure* as “a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either: (1) the inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or (2) compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster;” National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), “Frequent Questions: Fishery Disaster Assistance,” <https://www.fisheries.noaa.gov/national/resources-fishing/frequent-questions-fishery-disaster-assistance> (hereinafter NOAA, NMFS, “Frequent Questions: Fishery Disaster Assistance”).

⁵ Friedemann Keyl and Matthias Wolff, “Environmental Variability and Fisheries: What Can Models Do?,” *Review in Fish Biology and Fisheries*, vol. 18 (2008), pp. 273-299; Anthony R. Marshak and Jason S. Link, “Primary Production Ultimately Limits Fisheries Economic Performance,” *Scientific Reports*, vol. 11, no. 1 (2021), 12154, pp. 1-10.

⁶ Shaun S. Killen et al., “Consequences for Fisheries in a Multi-Stressor World,” in *Fish Physiology, Conservation Physiology for the Anthropocene—Issues and Applications*, eds. Nann A. Figue et al., vol. 39, Part B (Cambridge, (continued...))

disaster relief to assist fishers, fishing communities, and the fishing industry when they have been harmed by a fishery disaster.⁷

Statutory Authorities for a Fishery Resource Disaster

Congress authorized the Secretary of Commerce (the Secretary) to determine whether a fishery disaster has occurred, including “the existence, extent, and beginning and end dates,” under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861a(a)). Secretarial determinations are similar but vary according to the underlying cause of the disruption to a fishery.

Fishery Resource Disaster—A *fishery resource disaster*, as defined under 16 U.S.C. §1861a(a)(1)(C), is a disaster that is determined by the Secretary in accordance with this subsection and (i) is an unexpected large decrease in 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 loss or negative subsistence impact 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 chapter.

- MSA Section 312(a)(2)(A) authorizes the Secretary to determine the existence, extent, and beginning and end dates of a fishery resource disaster.
- MSA Section 312(a)(2)(B) states that “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, Indian Tribe, or interstate marine fisheries commission” or by the Secretary in cooperation with those affected entities.
- MSA Section 312(a)(2)(C) states that requirements for the Secretary (i.e., review initiation, review process, prescribed timelines, and criteria for determinations) under MSA Section 312(a)(3)-(5) as amended through the Fishery Resource Disasters Improvement Act (FRDIA; P.L. 117-328, Division S, Title II), are to take effect only with respect to fishery resource disaster requests submitted after December 29, 2022.

Prior to the FRDIA amendments, MSA Section 315 (16 U.S.C. §1864, repealed) and Section 308(b) and 308(d) of the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107, repealed) included provisions with respect to a Secretary-determined *catastrophic regional fishery disaster* or a Secretary-determined *commercial fishery failure*. Repealed provisions in the IFA also authorized the Secretary to initiate projects to alleviate harm determined by the Secretary to have been incurred as a direct result of a fishery resource disaster arising from a hurricane or other natural disaster. Although the FRDIA repealed these provisions, they are still in effect for any outstanding fishery disaster requests received prior to December 29, 2022.

Sources: National Marine Fisheries Service (NMFS), *Policy on Disaster Assistance Under the Magnuson-Stevens Act 312(a) and 315 and Interjurisdictional Fisheries Act 308(b) and 308(d)*, NMFS Policy 01-122, December 2021.

Notes: NMFS, in its policy on disaster assistance, defines a *commercial fishery failure* as “an occurrence when commerce in or revenues from commerce in the fishery materially decreases or is markedly weakened due to a fishery resource disaster, such that those engaged in the fishery suffer severe economic hardship.” The MSA, under 16 U.S.C. §1864(d) (repealed), defined a *catastrophic regional fishery disaster* as “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.” MSA Section 315 (repealed) also authorized the Secretary to establish a regional economic transition program to provide disaster relief assistance to fishers, charter fishing operations, U.S. processors, and owners of related infrastructure affected by a catastrophic regional fishery disaster.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861(a)) allows for a governor of a state, an official resolution of an Indian tribe, or any other comparable elected or politically appointed representative of a fishing community, as determined by the Secretary of Commerce (the Secretary), to request a review to determine whether a fishery

MA: Academic Press, 2022), pp. 175-207; NOAA, NMFS, “Fishery Disaster Determinations,” <https://www.fisheries.noaa.gov/national/funding-financial-services/fishery-disaster-determinations> (hereinafter NOAA, NMFS, “Fishery Disaster Determinations”).

⁷ NOAA, NMFS, “Frequent Questions: Fishery Disaster Assistance”; 16 U.S.C. §1861a(a).

resource disaster occurred.⁸ Congress, through the MSA, also authorizes the Secretary to initiate a review independently.⁹ The National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), state agencies or tribes, and fishing communities compile the information (e.g., biological, economic) needed to make a determination.¹⁰ When all necessary information has been obtained,¹¹ the Secretary determines whether a fishery disaster or failure has occurred using information provided by the requester or collected and analyzed by the Secretary.

In most cases, Congress has appropriated funds to support the fishing industry following a secretarial disaster determination.¹² Congress generally has appropriated funding in supplemental or annual appropriations as needs arise rather than in anticipation of future needs.¹³ NMFS, states, regional commissions, and industry representatives often work together to distribute assistance to the fishing industry and to allocate funding among potential projects.¹⁴

Under its fishery resource disaster authorities, the federal government may provide direct financial assistance to fishers and fishing communities in the form of grants, direct payments, cooperative agreements, loans, or contracts.¹⁵ The federal government also may provide indirect assistance that includes fishery data collection, resource restoration, research, stock enhancement (e.g., through hatcheries), and fishing capacity reduction programs to prevent or lessen the effects of future disruptions to fisheries.¹⁶ NMFS and its partners have allocated fishing disaster funds to fisheries of the North Pacific (i.e., Alaska), Western Pacific (i.e., Hawaii and U.S. Pacific Island territories), West Coast, Gulf of Mexico, U.S. Caribbean, South Atlantic, and Northeast regions.¹⁷ Examples of fisheries with multiple commercial fishery failure or fishery resource disaster determinations include the Fraser River sockeye salmon fishery, Northeast multispecies groundfish fishery, California red sea urchin fishery, miscellaneous Gulf of Mexico fisheries

⁸ 16 U.S.C. §1861a(a)(3)(A)(i).

⁹ 16 U.S.C. §1861a(a)(3)(D).

¹⁰ NOAA, NMFS, "Frequent Questions: Fishery Disaster Assistance"; 16 U.S.C. §1861a(a)(3)(B)-(C).

¹¹ The Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861(a)), under 16 U.S.C. §1861a(a)(3)(B), states that a complete request for a fishery resource disaster determination shall include identification about all presumed affected fish stocks; whether the fishery is federal, nonfederal, or both; geographic boundaries of the fishery; preliminary information on causes of the fishery resource disaster (if known); and information demonstrating an "unexpected large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource," significant 12-month revenue loss or negative subsistence impact for the affected fishery, including 12-month revenue loss for specific fishery sectors if applicable and available, and information on lost resource tax revenues assessed by local communities (e.g., raw fish tax), if applicable.

¹² For example, the Bipartisan Budget Act of 2018 (P.L. 115-123) appropriated \$200 million for "mitigating the effects of commercial fishery failures and fishery resource disasters declared by the Secretary of Commerce (Secretary) in calendar year 2017," as well as those directly resulting from Hurricanes Harvey, Irma, or Maria, as declared by the Secretary; NOAA, NMFS, "Fishery Disaster Determinations."

¹³ NOAA, NMFS, "Fishery Disaster Determinations"; in some recent years, Congress has appropriated fishery disaster assistance funds to remain available until expended and without reference to specific determinations or events, such as \$300 million "for necessary expenses associated with the mitigation of fishery disasters" in the Consolidated Appropriations Act, 2023 (P.L. 117-328).

¹⁴ For example, Pacific States Marine Fisheries Commission (PSMFC), "Fisheries Relief," <https://relief.psmfc.org/future-disaster-relief/> (hereinafter PSMFC, "Fisheries Relief"); NOAA, NMFS, "Frequent Questions: Fishery Disaster Assistance"; 16 U.S.C. §1861a(a)(2)(B).

¹⁵ 16 U.S.C. §1861a(a)(6)(F)(ii); NOAA, NMFS, "Frequent Questions: Fishery Disaster Assistance"; NOAA, NMFS, *Policy on Disaster Assistance Under the Magnuson-Stevens Act 312(a) and 315 and Interjurisdictional Fisheries Act 308(b) and 308(d)*, NMFS Policy 01-122, December 2021 (hereinafter NMFS, Policy 01-122).

¹⁶ 16 U.S.C. §1861a(a)(6)(F)(iii)(I).

¹⁷ NOAA, NMFS, "Fishery Disaster Determinations."

following hurricanes, New England shellfish fisheries, South Atlantic shrimp fisheries, Alaska salmon fisheries, and the Bering Sea snow crab fishery.¹⁸

Although many observers posit that disaster assistance has provided much-needed aid to the fishing industry, others—including some Members of Congress—contend that disaster assistance programs sometimes fall short of expectations. They note that funds may not be appropriated or disbursed in a timely manner, relief may not be integrated with long-term fishery management objectives, economic estimates of fishery disasters are inconsistent, and funds may not reach the people in the greatest need of assistance.¹⁹ Stakeholders and experts also have raised concerns regarding anticipated future fisheries disasters that may be associated with climate change or other environmental stressors and the ability to provide continued relief to affected fishing communities.²⁰

Disaster Requirements and Procedures

The Department of Commerce provides fishery disaster assistance pursuant to the MSA, including amendments to the process in MSA through the Fishery Resource Disasters Improvement Act (FRDIA; P.L. 117-328, Division S, Title II). Assistance may be provided to state-managed fisheries, such as blue crab, and to fisheries under federal management, such as the Northeast multispecies fishery.²¹ Differences exist under the law with regard to the allowable causes of a fishery resource disaster and the use of funds (see “Amendments to the Magnuson-Stevens Fishery Conservation and Management Act,” below, for more information). Until the 2022 amendments of the FRDIA, fishery disasters had been declared under the MSA and sections of the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107, repealed) to provide managers with greater latitude when matching relief with different needs of the fishery and its participants.²² More information about these repealed statutes is included in the **Appendix**. As stipulated in the MSA, NMFS continues to review any outstanding fishery disaster requests received prior to these amendments under the two statutes and in accordance with its fishery disaster policy.²³ Any fishery disaster requests received post-FRDIA (i.e., after December 29, 2022) are reviewed under the amended MSA provisions.

¹⁸ Ibid.

¹⁹ As examples, see Kirsten Dobroth, “Disaster Requests for Bering Sea Crabbers Highlight Difficulty of Getting Timely Relief to Fishermen,” KTOO, November 21, 2022, <https://www.ktoo.org/2022/11/21/bering-sea-crab-disaster-relief/>; Nathan Strout, “U.S. Senate Republicans Demand More Clarity on NOAA Fishery Disaster Determinations,” *Seafood Source*, January 5, 2024, <https://www.seafoodsource.com/news/supply-trade/senator-republicans-demand-more-clarity-on-noaa-s-fishery-disaster-determinations> (hereinafter Strout, “U.S. Senate Republicans Demand More Clarity”).

²⁰ As examples, see Lyall Bellquist et al., “The Rise in Climate Change-Induced Federal Fishery Disasters in the United States,” *Peer J*, vol. 9 (2021), e11186, pp. 1-22 (hereinafter Bellquist et al., “Rise in Climate Change-Induced Federal Fishery Disasters”); Grant Stringer, “Struggling Salmon Fishermen Getting Federal Help in Oregon and Along West Coast, But It May Be Too Late,” OPB, October 23, 2023, <https://www.opb.org/article/2023/10/23/struggling-salmon-fishermen-federal-relief-oregon-west-coast-but-too-late/> (hereinafter Stringer, “Struggling Salmon Fishermen”).

²¹ Fisheries under state jurisdiction generally occur in state waters that include internal waters, such as the Chesapeake Bay, or from 0 to 3 nautical miles (nm) from shore. State jurisdiction off the west coast of Florida, Texas, and Puerto Rico extends to 9 nm from shore. Fisheries under federal jurisdiction generally occur from 3 to 200 nm from shore. The Northeast multispecies fishery includes 13 species of groundfish. New England Fishery Management Council, “Northeast Multispecies (Groundfish),” <https://www.nefmc.org/management-plans/northeast-multispecies>.

²² NOAA, NMFS, “Frequent Questions: Fishery Disaster Assistance”; NMFS, Policy 01-122.

²³ 16 U.S.C. §1861a(a)(2)(C); NOAA, NMFS, “Fishery Resource Disaster Assistance,” <https://www.fisheries.noaa.gov/national/funding-financial-services/fishery-resource-disaster-assistance>.

Amendments to the Magnuson-Stevens Fishery Conservation and Management Act

In 1996, Congress amended the MSA and added Section 312(a) to provide fishery disaster relief when a commercial fishery failure occurs as the result of a fishery resource disaster (**Table 1**).²⁴ A *fishery resource disaster* is a disaster that is determined by the Secretary and is “an unexpected, large decrease in fish stock biomass or other change that results in a 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 loss or negative subsistence impact due to an allowable cause.”²⁵ NMFS has administered fishery disaster assistance since the 1996 amendments and developed a policy directive in 2007 to provide guidance for the disaster relief process.²⁶ NMFS updated the policy in 2021.²⁷ In 2022, Congress amended the MSA to include additional provisions and specific timelines regarding the fishery disaster assistance process.²⁸

²⁴ MSA Section 312(a), codified as 16 U.S.C. §1861a, was added by the Sustainable Fisheries Act of 1996 (P.L. 104-297). The term *commercial fishery failure* was removed from statute through the 2022 amendments in the Fishery Resource Disasters Improvement Act (P.L. 117-328, Division S, Title II).

²⁵ 16 U.S.C. §1861a(a)(1)(C). The MSA definition for *fishery resource disaster* also states that the term 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 chapter”; NMFS, Policy 01-122; 16 U.S.C. §1861(a)(1)(A) defines an *allowable cause* as “a natural cause, discrete anthropogenic cause, or undetermined cause, including a cause that occurred not more than five years prior to the date of a request for a fishery resource disaster determination that affected such applicable fishery.”

²⁶ NOAA, NMFS, “Fishery Disaster Determinations;” NMFS, Policy 01-122.

²⁷ NMFS, Policy 01-122.

²⁸ 16 U.S.C. §1861a(a)(4); 16 U.S.C. §1861a(a)(6)(B), (D), (F)(i).

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

Section	Causes of Fishery Resource Disaster	Types of Assistance and Use
Active Statute		
MSA Section 312(a)	<p>Fishery resource disaster as a result of one of the following:</p> <ul style="list-style-type: none"> a natural cause a discrete anthropogenic (i.e., man-made) cause that could not be addressed or prevented by fishery management measures and is beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions imposed to protect human health or the marine environment a combination of a natural cause and an anthropogenic cause an undetermined cause 	<ul style="list-style-type: none"> restoration of the fishery affected by such a disaster prevention of a similar disaster in the future assistance to the community and fishers, including direct assistance to a person, fishing community, or business to alleviate economic loss or negative impacts to subsistence or Indian tribe ceremonial fishing opportunity habitat conservation, restoration, and other activities, including scientific research, which reduce adverse impacts to the fishery or improve understanding of the affected species or its ecosystem collection of fishery information or other activities that improve management of fishing effort development, repair, or improvement of fishery-related public infrastructure hatcheries and stock enhancement to help rebuild or offset fishing pressure on the affected stock
Repealed Statutes		
IFA Section 308(b)	Commercial fishery failure or a fishery resource disaster arising from natural causes or undetermined causes	<ul style="list-style-type: none"> restore a fishery affected by a fishery failure prevent a future fishery failure limit federal share of funding to 75% of costs
IFA Section 308(d)	Fishery resource disaster arising from natural disasters, such as a hurricane or other natural disaster	<ul style="list-style-type: none"> direct assistance to fishers indirect assistance through state agencies, local government, and nonprofit organizations no limit on the federal share of costs
MSA Section 315	<p>Catastrophic regional fishery disaster</p> <ul style="list-style-type: none"> results in economic losses to coastal or fishing communities affects more than one state or a major fishery managed by a council or interstate fishery commission is determined by the Secretary of Commerce to be a commercial fishery failure under MSA §312(a) or a fishery resource disaster under IFA §308(d) 	<ul style="list-style-type: none"> activities authorized under either the MSA or the IFA the Secretary of Commerce may waive matching requirements if no reasonable means are available for meeting the match and the probable benefit of federal financing outweighs the public interest in imposing the match

Sources: 16 U.S.C. §1861(a); National Marine Fisheries Service (NMFS), *Policy on Disaster Assistance Under the Magnuson-Stevens Act 312(a) and 315 and Interjurisdictional Fisheries Act 308(b) and 308(d)*, NMFS Policy 01-122, June 16, 2011.

Notes: IFA = Interjurisdictional Fisheries Act (16 U.S.C. §4107, repealed); MSA = Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1861(a) and 16 U.S.C. §1864, repealed). As of December 2023, NMFS still applies the MSA and IFA statutes to all requests for determination received prior to the enactment of the Fishery Resource Disasters Improvement Act (FRDIA; P.L. 117-328, Division S, Title II). The types of assistance and use under the MSA also apply to displaced fishery employees (i.e., individuals who are, or were, employed in a commercial, charter, or Indian tribe fishery for which the Secretary of Commerce has determined that a fishery resource disaster has occurred).

The fishery disaster determination process begins at the Secretary of Commerce’s discretion, following the request of the governor of an affected state, an official resolution of an Indian tribe, or the request of a comparable elected or politically appointed representative.²⁹ The Secretary determines whether a fishery resource disaster has occurred, depending on three factors. First, there must be a fishery resource disaster, as per the definition under statute.³⁰ Second, under the MSA, the cause of the fishery resource disaster must be a natural cause,³¹ an *anthropogenic* (i.e., man-made) cause,³² a combination of a natural cause and an anthropogenic cause,³³ or an undetermined cause (**Table 1**).³⁴ Finally, there must be significant revenue loss or negative subsistence impact from the commercial fishery disaster.³⁵ Any allowable cause for a fishery disaster determination is to have occurred not more than five years prior to the date of a request for determination.³⁶ Furthermore, any fishery subject to *overfishing* in any of the three years prior to the date of determination is not eligible for fishery disaster assistance unless the Secretary determines overfishing was not a contributing factor to the fishery resource disaster.³⁷

The Secretary may initiate—or be asked to initiate by request—a review to determine whether a fishery resource disaster has occurred in response to presumed effects of a particular event or allowable cause on a given fishery.³⁸ The MSA requires that a complete request for a fishery resource disaster include information describing the fishery and how it and its users were harmed.³⁹ A request for determination may occur no later than (1) one year after the date of the

²⁹ 16 U.S.C. §1861a(a)(3)(A)(i); According to NMFS, examples of an elected or politically appointed representative of an affected fishing community include a mayor, official tribal representative, city manager, or county executive. NMFS, Policy 01-122.

³⁰ 16 U.S.C. §1861a(a)(1)(C). Loss of access to the resource may result from damages to fishing vessels, gear, and related infrastructure or from fishery closures because of a human-related event (e.g., oil spill) or a natural event (e.g., weather events, toxic algal blooms).

³¹ The MSA, under 16 U.S.C. §1861a(a)(1)(E), defines a *natural cause* as a weather, climatic, hazard, or biology-related event. Examples of natural events (i.e., natural causes) listed in statute include a hurricane, flood, harmful algal bloom, tsunami, hypoxic event, drought, marine heatwave, disease, or El Niño effect on water temperature. The term does not include normal or cyclical variations in a species distribution or stock abundance.

³² 16 U.S.C. §1861a(a)(1)(B).

³³ 16 U.S.C. §1861a(a)(5)(A).

³⁴ *Ibid.*

³⁵ 16 U.S.C. §1861a(a)(1)(C).

³⁶ 16 U.S.C. §1861a(a)(1)(A) defines an *allowable cause* as “a natural cause, discrete anthropogenic cause, or undetermined cause, including a cause that occurred not more than five years prior to the date of a request for a fishery resource disaster determination that affected such applicable fishery.”

³⁷ 16 U.S.C. §1861a(a)(5)(C). The MSA, under 16 U.S.C. §1802(34), defines *overfishing* as “a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.” The MSA does not define *maximum sustainable yield* (MSY). Some experts define MSY as the highest possible annual catch that can be continuously taken from a stock under existing environmental conditions that still allows the population to sustain itself and keeps the stock at the level producing the maximum growth of its population. See Athanassios C. Tsikliras and Rainer Froese, “Maximum Sustainable Yield,” in *Encyclopedia of Ecology*, 2nd ed., ed. Brian D. Fath (Towson, MD: Elsevier, 2019), pp. 108-115.

³⁸ 16 U.S.C. §1861a(a)(3)(A)(i); 16 U.S.C. §1861a(a)(3)(D).

³⁹ 16 U.S.C. §1861a(a)(3)(B).

conclusion of the fishing season; (2) two years after the date of the conclusion of the fishing season, in the case of a distinct cause that occurs during more than one consecutive fishing season; or (3) in the case of a complete fishing closure, one year after the date of determination for that closure by the Secretary.⁴⁰ The Secretary typically directs the appropriate Regional Administrator for NMFS to collect and analyze information such as fishery characteristics; stock assessments; fishery surveys; estimates of mortality and economic information such as landings data, revenue, number of participants, and employments; and additional information relevant to the fishery, as included in the MSA.⁴¹ These data are used to determine the magnitude of the disaster and the relationship between underlying causes and the alleged fishery disaster.⁴² The magnitude of the disaster may be measured by the percentage decline in landings and revenues, the number of fishers affected, loss of habitat, and lost or restricted fishing time.⁴³ Depending on the circumstances, NMFS scientists typically conduct the analysis in consultation with the state(s) using information and data provided by the state(s).⁴⁴ According to the MSA and NMFS, a reasonably predictable, foreseeable, and recurrent fishery resource cycle of variations in species distribution or stock abundance does not constitute a fishery resource disaster.⁴⁵

The MSA, as amended by FRDIA, establishes specific timelines for the Secretary to complete certain actions when making a determination regarding a fishery resource disaster. The Secretary is to provide an interim response to a request for determination within 20 days after receipt of the fishery resource disaster request.⁴⁶ The Secretary is to complete the review within 120 days after receipt of a complete request and to notify the requester of the determination within 14 days after conclusion of the review.⁴⁷ If funds are available, the Secretary is to notify the public and affected fishing communities of their availability within 14 days after the date of appropriation or determination of a disaster.⁴⁸ The Secretary also may extend the notification deadline by 90 days to evaluate and make determinations on eligible requests.⁴⁹

The MSA states that the Secretary is to apply 12-month revenue loss thresholds for determining whether a fishery resource disaster has occurred.⁵⁰ As covered under the MSA and NMFS policy, the Secretary is to review economic data to determine whether a commercial fishery failure exists.⁵¹ The final decision depends on whether a significant number of people engaged in the fishery have suffered economic hardship as a result of the fishery resource disaster.⁵² The MSA

⁴⁰ 16 U.S.C. §1861a(a)(3)(A)(ii).

⁴¹ 16 U.S.C. §1861a(a)(4)(B). The MSA states that the Secretary shall complete a review using the best scientific information available, in consultation with the affected fishing communities, states, or Indian tribes, of (1) the information provided by the requester and any additional information relevant to the fishery and (2) the available economic information; NMFS, Policy 01-122.

⁴² NMFS, Policy 01-122.

⁴³ NMFS, Policy 01-122, pp. 7-8; 16 U.S.C. §1861a(a)(4)(B)(i).

⁴⁴ 16 U.S.C. §1861a(a)(4)(B)(i); NMFS, Policy 01-122.

⁴⁵ The statute also states that reductions in fishing opportunities resulting from conservation and management measures taken pursuant to the MSA do not apply. 16 U.S.C. §1861a(a)(1)(C)(ii); NMFS, Policy 01-122.

⁴⁶ 16 U.S.C. §1861a(a)(4)(A).

⁴⁷ 16 U.S.C. §1861a(a)(4)(B)(ii); 16 U.S.C. §1861a(a)(4)(D).

⁴⁸ The statute, under 16 U.S.C. §1861a(a)(6)(B)(i), states that the Secretary of Commerce shall notify the public and representatives of affected fishing communities of the availability of funds after “whichever occurs later.”

⁴⁹ 16 U.S.C. §1861a(a)(6)(B)(ii).

⁵⁰ 16 U.S.C. §1861a(a)(5)(B).

⁵¹ 16 U.S.C. §1861a(a)(4)(D).

⁵² NMFS has developed policy guidance to clarify and interpret the fishery disaster assistance provisions of the MSA and the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107, repealed), as applicable. NMFS, Policy 01-122.

and the guidance specify the following thresholds based on the loss of annual fishing revenue (revenue loss for the fishery is based on fishing revenue “for the 12 months during which the fishery resource disaster occurred,” which typically is compared with average annual fishing revenue over the most recent five-year period):⁵³

- Revenue losses greater than 80% will result in the determination of a commercial fishery failure.
- Revenue losses from 35% to 80% will be further evaluated to determine the severity of losses.
- Revenue losses less than 35% will not be eligible for determination of a commercial fishery failure, except where the Secretary determines there are special and unique circumstances that may justify considering and using a lower threshold in making the determination.⁵⁴

Congress may use the authorization in the MSA to appropriate funds for financial assistance to harvesters and other affected parties either after the Secretary determines that a fishery resource disaster occurred or for future anticipated disasters.⁵⁵ After funds are appropriated, the affected state, community, or group must develop a spending plan that is evaluated by NMFS regional offices and the White House Office of Management and Budget (OMB).⁵⁶ The MSA states that funds are to be made available to affected parties within 90 days after the date that the Secretary receives a complete spend plan.⁵⁷

Funding for a fishery resource disaster under the MSA may be used to address a broad variety of needs, including an assessment of the social and economic effects of the failure, assistance to the community, and projects to restore the fishery or prevent reoccurrence. Fishers and fishing communities may receive direct assistance in the form of grants, direct payments, cooperative agreements, loans, or contracts.⁵⁸ The federal government also may provide indirect assistance where funds may be used for fishery data collection, habitat and resource restoration, research, and fishing capacity reduction programs (e.g., vessel, permit, and gear buybacks),⁵⁹ among other uses.⁶⁰ Displaced fishery employees affected by the fishery resource disaster may carry out these types of efforts where appropriate.⁶¹ Other forms of past indirect fishery-related assistance have

⁵³ The MSA, under 16 U.S.C. §1861a(a)(1)(F), states that *12-month revenue loss* means the percent reduction, as applicable, in commercial, charter, headboat, or processor revenue for the affected fishery during which the fishery resource disaster occurred, when compared to average annual revenue in the most recent five years when no fishery resource disaster occurred or equivalent for stocks with cyclical life histories.” 50 C.F.R. §622.2 defines a *headboat* as “a vessel that holds a valid Certificate of Inspection (COI) issued by the U.S. Coast Guard to carry more than six passengers for hire.”

⁵⁴ 16 U.S.C. §1861a(a)(5)(B)(i)(I)-(III); NMFS, Policy 01-122.

⁵⁵ 16 U.S.C. §1861a(a)(6)(B).

⁵⁶ 16 U.S.C. §1861a(a)(6)(D); NMFS, Policy 01-122.

⁵⁷ 16 U.S.C. §1861a(a)(6)(F)(i).

⁵⁸ 16 U.S.C. §1861a(a)(6)(F)(ii); NOAA, NMFS, “Frequent Questions: Fishery Disaster Assistance”; NMFS, Policy 01-122.

⁵⁹ The MSA, under 16 U.S.C. §1861a(a)(7)(C)(i), states that no fishery disaster assistance funds “may be used as part of a fishing capacity reduction program in a fishery unless the Secretary [of Commerce] determines that adequate conservation and management measures are in place in such fishery.”

⁶⁰ Additional authorized uses include preventing or lessening the effects of future disruptions to fisheries; developing, repairing, or improving fishery-related public infrastructure; and conducting stock enhancement efforts (e.g., through hatcheries) that help rebuild the affected stock or offset fishing pressure on that stock. 16 U.S.C. §1861a(a)(6)(F)(iii)(I).

⁶¹ 16 U.S.C. §1861a(a)(6)(F)(iii)(II).

included the formation of a fisheries research trust, economic planning grants, and research grants.⁶²

In most circumstances, the federal share of assistance carried out under MSA Section 312(a) cannot be greater than 75% of the cost of relief activities; the other 25% is usually provided by the state or other local entity.⁶³ The MSA allows for certain exceptions of these nonfederal share requirements (i.e., assistance to subsistence or tribal fisheries or direct assistance to affected parties to alleviate economic losses).⁶⁴ The Secretary also may waive the nonfederal share requirements if he or she determines that no reasonable means are available for the recipient to meet the nonfederal share requirement or that 100% federal financing is in the public's best interest.⁶⁵ In some cases, interstate marine fishery commissions administer claims and disburse funds to fishing communities.⁶⁶ The MSA also includes limitations on federal and state administrative expenses related to these efforts.⁶⁷

Other Potential Sources of Assistance

When businesses suffer economic injuries from a disaster, the Small Business Administration (SBA) also may determine whether a disaster declaration is warranted.⁶⁸ For example, when a red tide algae bloom required closure of the Maine shellfish fishery in 2005, SBA evaluated the impact on small businesses and determined a disaster declaration was justified. The declaration makes affected businesses eligible for Economic Injury Disaster Loans.⁶⁹ The loan program's purpose is to provide working capital at low interest rates to assist businesses harmed by a disaster in their recovery.⁷⁰

The Economic Development Administration (EDA) provides community grants and revolving loan funds to help distressed communities.⁷¹ EDA has assisted fishing communities through its Public Works Program by funding port and harbor improvements. EDA's Economic Adjustment Assistance Program helps communities adjust to economic disruptions through support of business development, planning, and market research. Industries that have been adversely

⁶² NMFS, Policy 01-122.

⁶³ 16 U.S.C. §1861a(a)(7)(A); NMFS, Policy 01-122.

⁶⁴ 16 U.S.C. §1861a(a)(6)(F)(iii)(I)(ee); 16 U.S.C. §1861a(a)(7)(A)(iii).

⁶⁵ 16 U.S.C. §1861a(a)(7)(A)(ii).

⁶⁶ For example, the PSMFC administered the application and payment process to fishers and in support of the California Salmon Council following the 2016-2017 Klamath River fall Chinook salmon disaster. California Salmon Council, Pacific Coast Federation of Fishermen's Associations, California Fisheries and Seafood Institute, Nor-Cal Guides and Sportsmen's Association, and California Department of Fish and Wildlife, *2016-2017 Klamath River Fall Chinook Salmon Disaster Relief Spend Plan*, CA KRFC 16-17 Disaster Spend Plan, August 6, 2020, pp. 1-8, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=182816&inline>.

⁶⁷ The MSA sets limits that up to 3% of the available funds may be used for administrative expenses by NOAA and up to 5% of the available funds may be used for administrative expenses by states, Indian tribes, or interstate marine fisheries commissions. 16 U.S.C. §1861a(a)(7)(B)(i)-(ii).

⁶⁸ NOAA, NMFS, "Frequent Questions: Fishery Disaster Assistance"; For Small Business Administration purposes, disasters also may be declared by the President, state governor, Secretary of Agriculture, or Secretary of Commerce.

⁶⁹ CRS Report RL33243, *Small Business Administration: A Primer on Programs and Funding*, by Robert Jay Dilger, R. Corinne Blackford, and Anthony A. Cilluffo.

⁷⁰ Additional information regarding the Small Business Administration is included in CRS Report R47631, *Federal Disaster Assistance for Businesses: Summaries and Policy Options*, coordinated by Julie M. Lawhorn and Bruce R. Lindsay.

⁷¹ For information on Economic Development Administration (EDA) programs, see <https://www.eda.gov/about/>. Information about the EDA and its programs is also included in CRS Report R47631, *Federal Disaster Assistance for Businesses: Summaries and Policy Options*, coordinated by Julie M. Lawhorn and Bruce R. Lindsay.

affected by increased imports of similar or competitive goods (e.g., foreign shrimp) can seek technical assistance under EDA’s Trade Adjustment Assistance Program.⁷²

Additionally, small fishing-related businesses may qualify for certain federal grants available through the U.S. Department of Labor or the Federal Emergency Management Agency (FEMA). These grants, together with those from the EDA and SBA loans, may help address economic injury and physical damage.⁷³

Secretarial Disaster Determinations

Since 1994, the Secretary of Commerce has made 135 different fishery disaster determinations, of which 121 were original determinations and 14 were continuations to existing determinations.⁷⁴ Since fishery disaster assistance began, the Secretary has issued determinations valuing approximately \$1.73 billion (approximately \$2.4 billion in 2024 USD) and Congress has appropriated nearly \$1.8 billion (approximately \$2.45 billion in 2024 USD) for fishery disaster relief.⁷⁵ Approximately 35% of the 135 different fishery disaster determinations (47 cases) were made under both the MSA and the IFA. The Secretary has denied 20 requests for fishery disaster assistance since 1994. As of July 2024, nine disaster requests were pending determination.

Most relief funds have gone to the West Coast and Alaska regions, particularly for salmon fisheries (**Table 2, Figure 1**). The Gulf of Mexico region received substantive amounts of fishery disaster relief during the 2000s and 2010s, primarily in response to fishery disasters associated with hurricanes. Relief funds also have been provided for New England and Alaskan groundfish fisheries and for non-species-specific regional fisheries collectively (e.g., for Florida, Puerto Rico, and U.S. Virgin Islands fisheries in response to Hurricanes Irma and Maria in 2017). In recent years (i.e., 2020-2024), approximately 82% of all fisheries disaster funds have gone to Alaska to address salmon, Bering Sea crab, and groundfish (e.g., Pacific cod) fisheries.

Table 2. Total Fishery Resource Disaster Funding per Decade and Region
(in millions of dollars; 2024 USD)

Region	Totals by Decade				Total
	1990s	2000s	2010s	2020s	
Alaska	\$150.2	\$25.5	\$208.3	\$324.0	\$708.0
Gulf of Mexico	\$34.6	\$403.3	\$195.5	\$30.9	\$664.3
West Coast	\$90.4	\$344.1	\$147.3	\$38.4	\$620.2
New England	\$141.0	\$13.8	\$57.2	—	\$212.0

⁷² EDA, “Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance,” 87 *Federal Register* 19474, April 4, 2022.

⁷³ NOAA, NMFS, “Frequent Questions: Fishery Disaster Assistance.”

⁷⁴ Three requests for determination were withdrawn predetermination (i.e., one from the State of Virginia [2010] and two from the State of Louisiana [2010, 2013]). NOAA, NMFS, “Fishery Resource Disaster Determinations,” accessed May 31, 2024, <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations>.

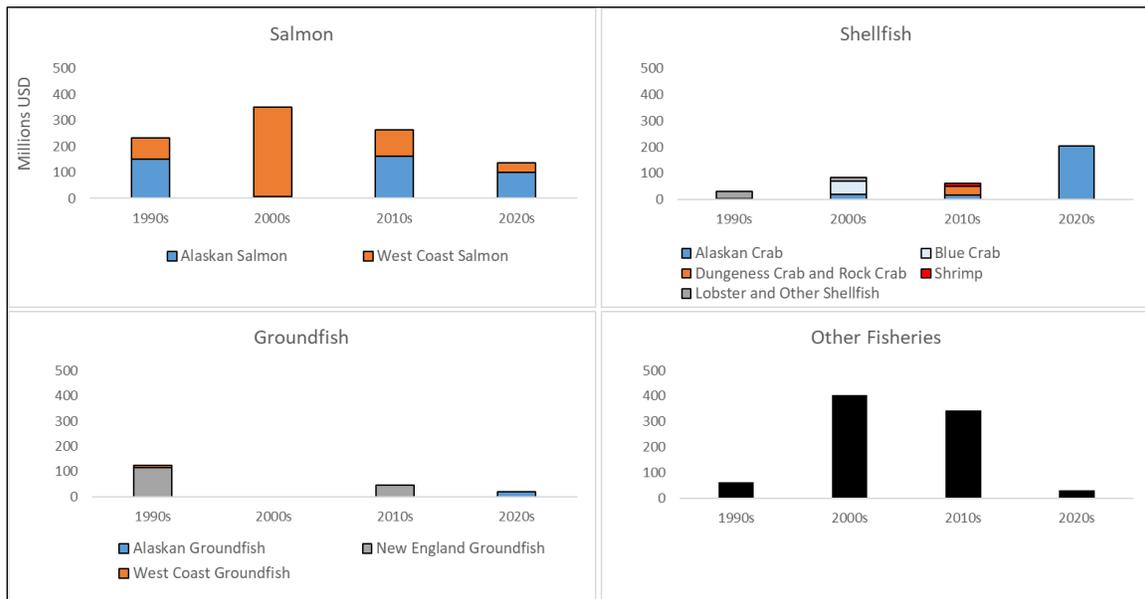
⁷⁵ This value does not include funds that Congress appropriated in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) or the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (P.L. 116-260, Division M), for the Secretary of Commerce to provide assistance to tribal, subsistence, commercial, and charter fishery participants affected by the Coronavirus Disease 2019 (COVID-19). Those funds were available until September 30, 2021, and were not associated with any specific fishery resource disasters determined by the Secretary.

Region	Totals by Decade				Total
	1990s	2000s	2010s	2020s	
South Atlantic	\$40.5	\$8.5	\$76.3	—	\$125.3
Mid-Atlantic	—	\$43.0	\$11.6	—	\$54.6
U.S. Caribbean	—	—	\$27.8	—	\$27.8
Western Pacific	—	\$1.4	—	—	\$1.4
Total	\$456.7	\$839.6	\$724.0	\$393.3	\$2,413.6

Sources: CRS, using data from National Oceanic and Atmospheric Administration, National Marine Fisheries Service, “Fishery Disaster Determinations,” <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations>; Florida Fish and Wildlife Conservation Commission, “Hurricane Irma Fisheries Disaster Funding,” <https://myfwc.com/conservation/special-initiatives/irma/>; U.S. Bureau of Labor Statistics, “Databases, Tables & Calculators by Subject – Consumer Price Index for All Urban Consumers (CPI-U),” https://data.bls.gov/timeseries/CUUR0000SA0?years_option=all_years.

Notes: Values are shown through July 10, 2024. CRS calculated totals for each federally managed region and by decade. Some determinations were made for multiple years, including 2019 and 2020 together; those values were included for the 2020s decade. These values are adjusted for inflation using the Consumer Price Index and expressed as 2024 USD.

Figure I. Total Fishery Resource Disaster Funding per Decade and Fishery Grouping
(in millions of dollars; 2024 USD)



Source: CRS, using data from National Oceanic and Atmospheric Administration, National Marine Fisheries Service, “Fishery Disaster Determinations,” <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations>; U.S. Bureau of Labor Statistics, “Databases, Tables & Calculators by Subject – Consumer Price Index for All Urban Consumers (CPI-U),” https://data.bls.gov/timeseries/CUUR0000SA0?years_option=all_years.

Notes: Values are shown through July 10, 2024. CRS calculated totals for each federally managed fishery grouping by decade. Some determinations were made for multiple years, including 2019 and 2020 together; those values were included for the 2020s decade. “Other fisheries” include disaster funding for unspecified species, miscellaneous fisheries, and other finfish or invertebrate species (e.g., Atlantic herring, Pacific sardine, red sea urchin). These values are adjusted for inflation using the Consumer Price Index and expressed as 2024 USD.

Fishery resource disasters are diverse with respect to their causes and scope. Most declarations have resulted from natural events such as hurricanes, floods, changes in ocean conditions, or algal blooms such as red tide.⁷⁶ Additionally, 1 declaration resulted from human-associated causes (i.e., the 2010 Deepwater Horizon oil spill) and 23 declarations resulted from unknown causes.⁷⁷ In coastal areas, hurricanes may damage fishing industry infrastructure, which may include vessels, docks, fish houses, and related businesses. Even if the fishery resource remains abundant, harvesting, processing, and transport to markets may not be possible until repairs are undertaken and basic services are restored. In addition to the costs of repairs and the replacement of equipment and gear, lost fishing time can be costly.

Hurricanes also may damage natural resources such as oyster beds by depositing silt and debris or introducing large amounts of freshwater, affecting oyster survival and recruitment.⁷⁸ Algal blooms, such as red tide, can render seafood toxic and may result in fishery closures.⁷⁹ Under these conditions, fisheries may be completely shut down for months until toxin levels in shellfish decline to acceptable levels.⁸⁰

Declines in fishery resource abundance often are caused by multiple factors, such as natural environmental variations, human effects on the environment (e.g., pollution), and overfishing.⁸¹ For example, salmon fisheries are sensitive to natural changes in oceanic conditions.⁸² However, salmon abundance in the Pacific Northwest also has been affected where dams, irrigation, grazing, mining, and forestry practices have degraded salmon habitat.⁸³ Overfishing by itself may not be used to qualify for a fishery failure determination, because it is usually within the control

⁷⁶ NOAA, NMFS, “Fishery Disaster Determinations.”

⁷⁷ Ibid.

⁷⁸ Michael G. Haby, Russell J. Miget, and Lawrence L. Falconer, *Hurricane Damage Sustained by the Oyster Industry and the Oyster Reefs Across the Galveston Bay System with Recovery Recommendations*, Texas AgriLife Extension Service, Sea Grant College Program, The Texas A&M University System, TAMU-SG-09-201, June 2009, pp. 1-51, <https://repository.library.noaa.gov/view/noaa/43584>; Meghan J. Martinez et al., “Dynamics of Restored and Natural Oyster Reefs After a Hurricane,” *Frontiers in Ecology and Evolution*, vol. 10 (2022), 791739, pp. 1-9.

⁷⁹ R. H. Pierce and M. S. Henry, “Harmful Algal Toxins of the Florida Red Tide (*Karenia brevis*): Natural Chemical Stressors in South Florida Coastal Ecosystems,” *Ecotoxicology*, vol. 17 (2008), pp. 623-631; Di Jin, Eric Thunberg, and Porter Hoagland, “Economic Impact of the 2005 Red Tide Event on Commercial Shellfish Fisheries in New England,” *Ocean and Coastal Management*, vol. 51, no. 5 (2008), pp. 420-429 (hereinafter Jin, Thunberg, and Hoagland, “Economic Impact of the 2005 Red Tide Event”).

⁸⁰ Letter from Rick Perry, Governor of Texas, to the Honorable John E. Bryson, Secretary of Commerce, March 26, 2012, https://media.fisheries.noaa.gov/dam-migration/57_tx_redtide_request_noaa-sf.pdf.

⁸¹ Matthew G. Burgess, Stephen Polansky, and David Tilman, “Predicting Overfishing and Extinction Threats in Multispecies Fisheries,” *Proceedings of the National Academy of Sciences*, vol. 110, no. 40 (2013), pp. 15943-15948; Nancy N. Rabalais, “Human Impacts on Fisheries Across the Land-Sea Interface,” *Proceedings of the National Academy of Sciences*, vol. 112, no. 26 (2015), pp. 7892-7893; R. G. Halliday and A. T. Pinhorn, “The Roles of Fishing and Environmental Change in the Decline of Northwest Atlantic Groundfish Populations in the Early 1990s,” *Fisheries Research*, vol. 97, no. 3 (2009), pp. 163-182.

⁸² Steven R. Hare, Nathan J. Mantua, and Robert C. Francis, “Inverse Production Regimes: Alaska and West Coast Pacific Salmon,” *Fisheries*, vol. 24, no. 1 (1999), pp. 6-14; Lisa G. Crozier et al., “Climate Vulnerability Assessment for Pacific Salmon and Steelhead in the California Current Large Marine Ecosystem,” *PLoS One*, vol. 14, no. 7 (2019), e0217711, pp. 1-49.

⁸³ Pacific Fishery Management Council (PFMC), *Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California as Revised Through Amendment 23*, December 2022, pp. 1-84, <https://www.pcouncil.org/documents/2022/12/pacific-coast-salmon-fmp.pdf/>; PFMC, *Pacific Coast Fishery Ecosystem Plan for the U.S. Portion of the California Current Large Marine Ecosystem*, March 2022, pp. 1-143, <https://www.pcouncil.org/documents/2022/04/pacific-coast-fishery-ecosystem-plan-march-2022.pdf/>.

of fishery managers (e.g., through setting annual catch limits and accountability measures).⁸⁴ However, a fishery resource disaster caused by natural or undetermined causes—criteria that may be considered by the Secretary—may be exacerbated by overfishing.⁸⁵ In these cases, assistance may include efforts to rationalize (decrease) fishing capacity.⁸⁶ For example, overfishing contributed to fish population declines in several resource disaster cases, such as the New England multispecies fishery and the Pacific groundfish fishery.⁸⁷ In these two cases, fish abundance decreased significantly and stock rebuilding has required substantial decreases in harvest.⁸⁸ However, the Secretary determined that other factors beyond the control of fishery managers played a role in these fishery resource disaster cases.⁸⁹

State Role

States are frequently active partners throughout the fishery disaster process, often requesting the Secretary to declare a fishery failure, providing related data, and disbursing relief to fishers and related businesses.⁹⁰ Under MSA, a disaster request is to include a spend plan that would address the causes of the disaster and may include additional details (e.g., statement of work, budget information).⁹¹ Relief funding is often provided directly to states or through regional commissions, such as the Pacific States Marine Fisheries Commission (PSMFC) or the Gulf States Marine Fisheries Commission, which may work to develop a spend plan and grant submission for NOAA.⁹² For example, the PSMFC has collected information about West Coast or Alaskan licensed fishers for inclusion in a spend plan or grant application following specific disaster determinations and may coordinate the mailing of relief checks to affected parties.⁹³ In another example, in 2008, the Oregon Department of Agriculture—in cooperation with related agencies and nonprofit organizations, such as the Oregon Salmon Commission—planned and

⁸⁴ 16 U.S.C. §1861a(a)(5)(C); NMFS, Policy 01-122; NOAA, NMFS, “Frequent Questions: Annual Catch Limit Monitoring,” <https://www.fisheries.noaa.gov/southeast/sustainable-fisheries/frequent-questions-annual-catch-limit-monitoring>; For more information about fishery management, see CRS Report R47645, *U.S. Regional Fishery Management Councils*, by Anthony R. Marshak.

⁸⁵ Bellquist et al., “Rise in Climate Change-Induced Federal Fishery Disasters.”

⁸⁶ 16 U.S.C. §1861a(a)(7)(C); 16 U.S.C. §1861a(b).

⁸⁷ NOAA, NMFS, “Fishery Disaster Determinations”; Michael J. Fogarty and Steven A. Murawski, “Large-Scale Disturbance and the Structure of Marine Systems: Fishery Impacts on Georges Bank,” *Ecological Applications*, vol. 8, no. sp1 (1998), pp. S6-S22; Matthew Richards, *From Disaster to Sustainability: The Story of the Pacific Groundfish Fishery*, Capstone Report, Utah State University, 2017, pp. 1-24 (hereinafter Richards, *From Disaster to Sustainability*).

⁸⁸ Carrie A. Holt and Andre E. Punt, “Incorporating Climate Information into Rebuilding Plans for Overfished Groundfish Species of the U.S. West Coast,” *Fisheries Research*, vol. 100, no. 1 (2009), pp. 57-67; NOAA, NMFS, *Status of Stocks 2022: Annual Report to Congress on the Status of U.S. Fisheries*, April 2023, pp. 1-12, <https://www.fisheries.noaa.gov/s3/2023-04/2022-Status-of-Stocks-RtC-041423-0.pdf>.

⁸⁹ As examples, see Letter from Rebecca M. Blank, Acting Secretary of Commerce, to the Honorable Deval L. Patrick, Governor of Massachusetts, September 13, 2012; U.S. Department of Commerce, “Commerce Secretary Daley Announces West Coast Groundfish Fishery Failure,” press release, January 19, 2000, https://media.fisheries.noaa.gov/dam-migration/13_west_groundfish_press_noaa-sf.pdf; NOAA, NMFS, “Fishery Disaster Determinations.”

⁹⁰ 16 U.S.C. §1861a(a); NMFS, Policy 01-122.

⁹¹ 16 U.S.C. §1861a(a)(6)(D); NMFS, Policy 01-122.

⁹² PSMFC, “Fisheries Relief”; Gulf States Marine Fisheries Commission (GSMFC), “Fisheries Disaster Recovery Program,” <https://www.gsmfc.org/fdrp> (hereinafter GSMFC, “Fisheries Disaster Recovery Program”); NOAA, NMFS, “Frequent Questions: Fishery Disaster Assistance.”

⁹³ A state agency, such as the Alaska Department of Fish and Game, also may develop spend plans for a determined fishery resource disaster to be incorporated into grant applications by the PSMFC to NOAA. PSMFC, “Fisheries Relief.”

coordinated the distribution of Oregon salmon troll fishery relief.⁹⁴ In addition to matching funds, state governments may provide disaster relief funding, although historically such funding has been limited.⁹⁵

Fishing Capacity Reduction Programs

Historically, many U.S. fisheries have been overcapitalized—investments in fishing capacity became greater than that needed to harvest the fishery resource on a sustainable basis. Fishing capacity reduction, often referred to as *buyback programs*, has been a prominent feature of several disaster relief programs and is included in the MSA as an eligible use of fishery disaster assistance for a commercial fishery.⁹⁶ If fishery disaster assistance funds are used as part of a capacity reduction program, the Secretary is to have determined that “adequate conservation and management measures are in place” for the fishery.⁹⁷ Capacity reduction is usually accomplished through the direct purchase and permanent retirement of fishing vessels, gear, and/or fishing permits.⁹⁸ Programs may be funded by the federal government, by fishers who remain in the fishery, or by a combination of both.⁹⁹ The general objectives of buyback programs are to provide immediate relief to fishers, decrease the level of fishing effort to improve the profitability of the remaining fishing fleet, and conserve the resource.¹⁰⁰

The MSA requires certain conditions with respect to a vessel under a fishing capacity reduction program when providing fishery disaster assistance. These conditions include that the Secretary shall prohibit use of the vessel for fishing in any waters and that the vessel is to be either scrapped; donated for purposes of research, education, or training; or used for another non-fishing purpose provided that the vessel cannot reenter any fishery anywhere in the world.¹⁰¹

Although capacity reduction programs attempt to provide long-term benefits to those who decide to remain in the fishery, experts note that poorly crafted programs may result in little or no benefit at the expense of taxpayers.¹⁰² Buyback programs’ effectiveness in reducing fishing capacity can depend on whether the remaining fishers have an incentive to continue investing in boats and gear. Often there is also *latent* fishing effort—boats and gear with permits to fish that are inactive or only marginally utilized in the fishery. The exit of some vessels via a buyback program may encourage inactive or marginally utilized vessels to reenter the fishery more actively, offsetting

⁹⁴ James Holman, “Oregon’s Legislative E-Board Approves Salmon Disaster Money,” *Oregonlive.com*, June 27, 2008, https://www.oregonlive.com/breakingnews/2008/06/oregons_legislative_eboard_app.html.

⁹⁵ *Ibid.*

⁹⁶ Capacity reduction is referred to in Sections 312(a) and (b) of the MSA, under 16 U.S.C. §1861a(a), (b) and 16 U.S.C. §1861a(a)(6)(F)(iii)(I)(cc). Eligible uses for capacity reduction also may include 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.

⁹⁷ 16 U.S.C. §1861a(a)(7)(C)(i).

⁹⁸ 16 U.S.C. §1861a(b)(2).

⁹⁹ 50 C.F.R. §§600.1000-600.1017.

¹⁰⁰ *Ibid.*; NOAA, NMFS, “Fishing Capacity Reduction Programs,” <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishing-capacity-reduction-programs>.

¹⁰¹ 16 U.S.C. §1861a(a)(7)(C)(ii).

¹⁰² Sherry L. Larkin et al., “Buyback Programs for Capacity Reduction in the U.S. Atlantic Shark Fishery,” *Journal of Agricultural and Applied Economics*, vol. 36, no. 2 (2004), pp. 317-332 (hereinafter Larkin et al., “Buyback Programs for Capacity Reduction”); Theodore Groves and Dale Squires, “Lessons from Fisheries Buybacks,” in *Fisheries Buybacks*, eds. Rita Curtis and Dale Squires (Ames, IA: Blackwell Publishing, 2007), pp. 15-54 (hereinafter Groves and Squires, “Lessons from Fisheries Buybacks”); Rögvaldur Hannesson, “Do Buyback Programs Make Sense?,” in *Fisheries Buybacks*, eds. Rita Curtis and Dale Squires (Ames, IA: Blackwell Publishing, 2007), pp. 55-66 (hereinafter Hannesson, “Do Buyback Programs Make Sense?”).

any reduction in fishing capacity from the buyback program. Furthermore, the first to accept buybacks may be the least efficient vessels in the fleet. These factors can result in fleet reductions that are relatively modest yet expensive, because only the oldest and least efficient units are taken out of production. Although capacity reduction can be a means to ease financial hardship caused by a fishing disaster, lasting benefits may depend on better recognition of the motivations of vessel owners and fishers.¹⁰³

Selected Case Studies of Fishery Disasters

Circumstances regarding particular fishery disaster determinations may differ according to the cause of a given disaster, the specific fishery or fisheries affected, and management actions preceding or following the disaster, among other factors. The below examples include information regarding singular or recurrent fishery disaster determinations by the Secretary for selected regions and fisheries.

Alaskan Crab Fisheries

The Secretary has issued recurrent multiyear fishery disaster declarations for Alaskan red king crab, snow crab, and tanner crab fisheries since 2000.¹⁰⁴ Initially, fishery disaster declarations for Alaskan snow crab were issued for the 2000-2003 and 2005-2008 fishing seasons, which were attributed to natural disasters of unknown causes. Since the 2019 fishing season, annual fishery disaster determinations for Alaskan crab fisheries have followed, including specific determinations for Norton Sound red king crab (2019-2021) and Bering Sea tanner crab (2019-2020) and for Bering Sea crab fisheries in general (2021-2023). Cumulatively, all Alaskan crab disaster declarations have totaled approximately \$239.4 million (in 2024 USD). The Secretary has attributed all of these disaster events to natural causes. On April 29, 2024, the Secretary issued a disaster declaration for the 2023-2024 Alaskan Bering Sea snow crab fishery following a December 2023 request from the governor. A dollar amount for this declaration is still to be determined.

Related to the 2021-2023 determinations for Bering Sea crab fisheries, Alaskan snow crab harvest declined by 88% between the 2020-2021 and 2021-2022 fishing seasons.¹⁰⁵ This decline in landings coincided with a decline in the Bering Sea snow crab population of 10 billion individuals from 2018 to 2021, which experts attributed to a marine heatwave that led to mass crab starvation and mortality.¹⁰⁶ Given this decline and the overfished status of Alaskan snow crab, the Alaska Department of Fish and Game, in consultation with the NPFMC and NOAA, closed the snow crab fishery for the fishing years 2022-2024.¹⁰⁷ Additionally, continued low abundance of Alaskan tanner crab and red king crab was observed during this period.¹⁰⁸ On

¹⁰³ Groves and Squires, “Lessons from Fisheries Buybacks;” Hannesson, “Do Buyback Programs Make Sense?”; Larkin et al., “Buyback Programs for Capacity Reduction.”

¹⁰⁴ NOAA, NMFS, “Fishery Disaster Determinations.

¹⁰⁵ Hal Bernton, “Alaska Snow Crab Harvest Slashed by Nearly 90% After Population Crash in a Warming Bering Sea,” *Seattle Times*, October 9, 2021, <https://www.seattletimes.com/seattle-news/environment/alaska-snow-crab-harvest-slashed-by-nearly-90-after-population-crash-in-a-warming-bering-sea/>.

¹⁰⁶ Cody S. Szuwalski et al., “The Collapse of Eastern Bering Sea Snow Crab,” *Science*, vol. 382, no. 6668 (2023), pp. 306-310.

¹⁰⁷ Alaska Department of Fish and Game (ADFG), *2022/23 Bering Sea Snow Crab Season Closed*, October 10, 2022, <https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1441272349.pdf>; ADFG, *2023/24 Bering Sea Snow Crab Season Closed*, October 6, 2023.

¹⁰⁸ Letter from Mike Dunleavy, Governor of Alaska, to the Honorable Gina Raimondo, Secretary of Commerce, March (continued...)

December 16, 2022, in response to a request from the governor of Alaska, the Secretary declared a fishery resource disaster for Alaska Bering Sea crab fisheries (2021-2022 season) of approximately \$94.6 million.¹⁰⁹ On the same date, the Secretary additionally declared a disaster for Alaska Bering Sea crab fisheries (2022-2023 season) of approximately \$96.7 million.¹¹⁰ According to the Alaska Department of Fish and Game and the PSMFC, final drafts of spend plans for both disaster declarations were forwarded to the PSMFC for administration on January 10, 2024.¹¹¹ If NOAA approves the grant, the PSMFC would be set to begin the fund distribution process.

Pacific Tribal and Non-tribal Salmon Fisheries

Since 1994, the Secretary of Commerce has issued multiple fishery disaster declarations for West Coast and Alaskan tribal and non-tribal salmon fisheries totaling approximately \$984.2 million (in 2024 USD).¹¹² All Pacific salmon disaster declarations have been due to natural causes (e.g., drought, poor ocean conditions) or a natural disaster of unknown causes. Based on 2024 USD amounts, approximately 43% of all Pacific salmon disaster relief funds have gone to Alaskan salmon fisheries since 1994; during the same period, approximately 14% of funds have gone to California salmon fisheries and approximately 8% have gone to Washington salmon fisheries. Nearly one-third of all Pacific salmon disaster relief funds have been appropriated for fishing disasters that affected all three West Coast states jointly. The remainder have been appropriated for Oregon salmon fisheries or for Oregon and California salmon fisheries jointly (approximately 2%).

The majority of Pacific salmon disaster relief funds have been appropriated for non-tribal salmon fisheries. The greatest amounts for tribal fisheries—that is, amounts not combined with relief funds to the state—have gone solely to Washington tribal salmon fisheries since 2009 (approximately \$48.9 million from 2009-2024 in 2024 USD) and solely to California tribal salmon fisheries since 2016 (approximately \$21.8 million from 2016-2023 in 2024 USD). In some cases, the Secretary has issued joint disaster declarations for both tribal and non-tribal fisheries, totaling approximately \$28.2 million (in 2024 USD) for Alaskan salmon fisheries and nearly \$285 million (in 2024 USD) for West Coast fisheries since 1994.

Among Pacific coast subregions, the Secretary most frequently has issued fishery disaster declarations for tribal and non-tribal salmon fisheries occurring in the Klamath and Fraser Rivers.¹¹³ The Secretary issued the first of the Klamath River declarations, at \$60.4 million, on July 6, 2006, for the 2005-2006 California and Oregon salmon fishing seasons. Subsequently, the Secretary declared a fishing disaster on January 18, 2017, for the Yurok Tribe Klamath River

3, 2022, https://media.fisheries.noaa.gov/2022-05/116_Dunleavy%20Bering%20Sea%20Crab.pdf; Letter from Mike Dunleavy, Governor of Alaska, to the Honorable Gina Raimondo, Secretary of Commerce, October 21, 2022, <https://www.fisheries.noaa.gov/s3/2022-10/Bering-Sea-Bristol-Bay-Crab-Fishery-Disaster-Declaration-Request-1-.pdf>.

¹⁰⁹ NOAA, “Secretary of Commerce approves disaster declarations in AK and WA,” <https://www.noaa.gov/news-release/secretary-of-commerce-approves-disaster-declarations-in-ak-and-wa>; NOAA, NMFS, “Fishery Disaster Determinations.”

¹¹⁰ NOAA, “Secretary of Commerce approves disaster declarations in AK and WA,” <https://www.noaa.gov/news-release/secretary-of-commerce-approves-disaster-declarations-in-ak-and-wa>; NOAA, NMFS, “Fishery Disaster Determinations.”

¹¹¹ PSMFC, “Fisheries Relief”; ADFG, “2021/22 and 2022/23 Bristol Bay Red King Crab and Bering Sea Snow Crab Fisheries,” https://www.adfg.alaska.gov/index.cfm?adfg=fishing.2021_2022_2022_2023_bristolbay_kingcrab_beringsea_snowcrab.

¹¹² NOAA, NMFS, “Fishery Disaster Determinations.”

¹¹³ *Ibid.*

Chinook salmon fishery during the 2016 fishing season; the Secretary also issued annual disaster declarations for this tribal fishery during the Yurok Tribe 2018-2022 fishing seasons. These declarations for the Yurok Tribe specifically have totaled approximately \$21.8 million (in 2024 USD). Additionally, the Secretary issued a disaster declaration on September 24, 2018, for the Oregon and California Klamath River fall-run Chinook salmon fishery during the 2016-2017 fishing seasons to the Yurok and Hoopa Tribes, and the states of Oregon and California, at approximately \$8.9 million.

For tribal and non-tribal fisheries in the Fraser River, the Secretary first issued disaster declarations for Fraser River sockeye salmon on November 13, 2002, corresponding to the 1999-2001 fishing seasons for the Lummi Nation and the State of Washington.¹¹⁴ These declarations were followed by a disaster declaration continuation applied to the 2007 sockeye salmon fishing season for the Lummi Nation and the State of Washington and extending to the Makah Tribe, Lower Elwha Klallam Tribe, Tulalip Tribes, and Swinomish Tribal Community. On May 27, 2011, the Secretary issued a further continuation of the Fraser River sockeye salmon disaster for the 2009 Lummi Nation fishing season. The Secretary also issued a separate disaster declaration for that fishery on January 14, 2014, as applied to the 2013 fishing season for eight separate tribes and the State of Washington. Since then, the Secretary has issued additional disaster declarations for Fraser River tribal salmon fisheries (i.e., for the Lummi Nation; Elwha, Makah, and Swinomish Tribes; and the Port Gamble S'Klallam Tribe) during the 2014-2019 fishing seasons totaling approximately \$21.6 million (in 2024 USD). Collectively, declarations including the Fraser River have totaled approximately \$26.3 million (in 2024 USD) for tribal and non-tribal salmon fisheries.

New England and Gulf of Mexico (Red Tide Events)

Red tide has been a recurring problem for shellfish fisheries in northern New England.¹¹⁵ Blooms of the algae *Alexandrium fundyense*, commonly referred to as *red tide*, produce a toxin that is ingested by and concentrated in the tissues of shellfish such as clams, mussels, and oysters.¹¹⁶ When the concentration of the algae is high, shellfish beds must be closed because shellfish may cause paralytic shellfish poisoning, which can be toxic to humans when ingested.¹¹⁷ In 2005, shellfish bed closures spanned from Canada to Martha's Vineyard, MA, as a result of a red tide bloom, partially attributed to the aftermath of May 2005 northeaster storms.¹¹⁸ On June 23, 2005, NOAA announced a commercial fishery failure determination for the New England region's shellfish fishery.¹¹⁹ In 2006, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (P.L. 109-234), appropriated funds related to the consequences from hurricanes of the 2005 season, from which NOAA allocated \$4 million to assist fishers affected by the red tide bloom.

¹¹⁴ Ibid.

¹¹⁵ Jin, Thunberg, and Hoagland, "Economic Impact of the 2005 Red Tide Event."

¹¹⁶ CRS Report R46921, *Marine Harmful Algal Blooms (HABs): Background, Statutory Authorities, and Issues for Congress*, by Eva Lipiec.

¹¹⁷ In extreme cases, paralytic shellfish poisoning can be fatal to humans. It also has been implicated in the mortality of certain species of marine mammals.

¹¹⁸ Jin, Thunberg, and Hoagland, "Economic Impact of the 2005 Red Tide Event."

¹¹⁹ NOAA, NMFS, "Fishery Disaster Determinations."

During 2008, a red tide event impacted a widespread area of ocean waters off New England.¹²⁰ On November 14, 2008, the Secretary determined a commercial fishery failure had occurred because the bloom triggered closures of shellfish fisheries.¹²¹ The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329), provided up to \$5 million to assist the fishing industry and for research and monitoring related to red tide events. On December 22, 2010, the Secretary determined that red tide caused another fishery failure in the Maine shellfish fishery during the 2009 season, but Congress did not appropriate funding for this event.¹²²

More recently, large-scale blooms of the toxic algae *Karenia brevis*, also commonly referred to as red tide, have affected Texas oyster fisheries and multiple Florida fisheries (i.e., mullet, red grouper, and stone crab).¹²³ During the 2011 season, Texas commercial oyster fisheries were closed due to red tide.¹²⁴ According to a March 26, 2012, request letter, estimated ex-vessel losses to commercial oyster fishers directly were in excess of \$8 million,¹²⁵ with greater than 1,800 families along the Texas coast estimated to have been affected by the closure. The Secretary denied the request for a fishery disaster declaration on October 5, 2012, due to revenue losses not exceeding the 35% threshold (refer to “Amendments to the Magnuson-Stevens Fishery Conservation and Management Act,” above).¹²⁶ Similarly, following the 2018-2019 Florida red tide events, the Secretary denied a request for a fishery disaster declaration on August 10, 2021, because the revenue losses did not meet the required minimum threshold.¹²⁷

California Dungeness and Rock Crab Fishery (Harmful Algal Blooms)

In early November 2015, the California Dungeness crab and rock crab fisheries were closed due to a harmful algal bloom along the California coast.¹²⁸ The California Office of Environmental Health Hazard Assessment and the California Department of Health determined there were unsafe levels of domoic acid in crab tissue.¹²⁹ Domoic acid is a neurotoxin, and when ingested by

¹²⁰ D. J. McGillicuddy Jr. et al., “A Red Tide of *Alexandrium fundyense* in the Gulf of Maine,” *Deep Sea Research Part II: Topical Studies in Oceanography*, vol. 103 (2014), pp. 174-184; *Foster’s Daily Democrat*, “NOAA: \$5m in Aid for Red Tide in New England Waters,” November 18, 2008, <https://www.fosters.com/story/news/local/2008/11/18/noaa-5m-in-aid-for/52192438007/>.

¹²¹ NOAA, NMFS, “Fishery Disaster Determinations.”

¹²² *Ibid.*

¹²³ Sarah A. Tominack et al., “An Assessment of Trends in the Frequency and Duration of *Karenia brevis* Red Tide Blooms on the South Texas Coast (Western Gulf of Mexico),” *PLoS One*, vol. 15, no. 9 (2020), e0239309, pp. 1-17; Donald M. Anderson et al., “Marine Harmful Algal Blooms (HABs) in the United States: History, Current Status, and Future Trends,” *Harmful Algae*, vol. 102 (2021), 101975, pp. 1-37.

¹²⁴ Letter from Rick Perry, Governor of Texas, to the Honorable John E. Byron, Secretary of Commerce, March 26, 2012, https://media.fisheries.noaa.gov/dam-migration/57_tx_redtide_request_noaa-sf.pdf.

¹²⁵ *Ibid.*; According to the letter, these loss numbers did not take into account post-harvesting processing losses incurred by Texas shellfish dealers.

¹²⁶ Letter from Samuel D. Rauch III, NOAA Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, to the Honorable Rick Perry, Governor of Texas, October 5, 2012, https://media.fisheries.noaa.gov/dam-migration/57_tx_redtide_determination_noaa-sf.pdf.

¹²⁷ Letter from Gina M. Raimondo, Secretary of Commerce, to the Honorable Ron DeSantis, Governor of Florida, August 10, 2021, <https://media.fisheries.noaa.gov/2021-08/Hon.%20Ron%20DeSantis%20disaster%20req%20letter.pdf>.

¹²⁸ Stephanie K. Moore et al., “Harmful Algal Blooms and Coastal Communities: Socioeconomic Impacts and Actions Taken to Cope with the 2015 U.S. West Coast Domoic Acid Event,” *Harmful Algae*, vol. 96 (2020), 101799, pp. 1-12.

¹²⁹ Stephanie Gallman, “California Health Officials Issue Warning Against Crab Consumption,” CNN, November 4, 2015, <https://www.cnn.com/2015/11/04/health/california-crab-warning/index.html>.

humans it can cause nausea, diarrhea, vomiting, memory loss, seizures, and sometimes death.¹³⁰ In response, the California Department of Fish and Game closed commercial and recreational crab fisheries in the affected areas.¹³¹ The closure occurred during the peak months of the fishery from December through January and was persistent, as many areas remained closed through June 2016.¹³²

The initial estimate of the economic impact of the harmful algal bloom based on average commercial landings over the previous five years was \$48.3 million for Dungeness crab and \$376,000 for rock crab.¹³³ On February 9, 2016, the California governor requested a commercial fishery failure determination.¹³⁴ On January 18, 2017, the Secretary of Commerce found that the Dungeness crab and rock crab fisheries met requirements for a commercial fishery failure under both the MSA and the IFA.¹³⁵

On February 9, 2018, Congress included \$200 million in the Bipartisan Budget Act of 2018 (P.L. 115-123) for fishery resource disasters declared by the Secretary in 2017. Of the total, \$25.8 million was allocated to provide assistance to the California Dungeness crab and rock crab fisheries affected by harmful algal blooms. In August 2018, the draft crab disaster relief spending plan was finalized, dividing total funding among mitigation of future disasters (10%), direct payments (89%), and administration (1%).¹³⁶ On May 22, 2019, the Pacific States Marine Fisheries Commission announced it had received funds to be disbursed to crab fishers.¹³⁷

Issues for Congress

Commercial fisheries are strongly influenced by environmental conditions that affect the abundance and distribution of fishery resources and fishing infrastructure. Changes in these conditions often take place suddenly with little or no warning, such as in the cases of severe storms, oil spills, and harmful algal blooms. Disaster relief programs may help businesses that have been harmed by these events and can address disruptions to fisheries by providing assistance until conditions return to normal. As Congress continues to debate and respond to fishery disasters, several issues have emerged related to the nature of commercial fisheries and disaster relief programs, including (1) timing relief to meet crucial needs, (2) relating disaster relief to long-term fisheries management, (3) considering future fishery resource disasters as related to climate change, (4) determining who benefits from relief, and (5) considering other related sectors.

¹³⁰ California Office of Environmental Health Hazard Assessment, “Domoic Acid (a marine biotoxin) in Fish and Shellfish,” July 15, 2019, <https://oehha.ca.gov/fish/general-info/domoic-acid-marine-biotoxin-fish-and-shellfish>.

¹³¹ California Ocean Protection Council, “Commercial Dungeness Crab Season Opener Delayed and Commercial Rock Crab Season Closed,” <https://opc.ca.gov/2015/11/commercial-dungeness-crab-season-opener-delayed-and-commercial-rock-crab-season-closed/>.

¹³² Letter from Edmund G. Brown Jr., Governor of California, to the Honorable Penny Pritzker, Secretary, U.S. Department of Commerce, February 9, 2016.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ NOAA, NMFS, “Fishery Disaster Determinations.”

¹³⁶ California Department of Fish and Wildlife, *Crab Disaster Relief Spending Plan: Building Resilience*, August 29, 2018, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161007&inline>.

¹³⁷ Noah Oppenheim, Executive Director, Pacific Coast Federation of Fishermen’s Associations, “Re: Fishery Disaster Assistance Update and Next Steps,” May 22, 2019, <https://drive.google.com/file/d/1kYpwlrDSM5m0HlAgJu8xvgs6NA1d3QUY/view?fbclid=IwAR1tZb0PnYtNMI25hrFWPYZprkvftM6I4oVdhjJoolL84apZUZ6gVZUG6PQ>.

Timing of Relief

The delivery of disaster relief depends on the Secretary’s determination that a fishery failure has occurred and on Congress’s appropriation of relief funding. Additionally, both the Secretary and OMB must approve a complete spend plan before funds can be disbursed to affected parties. Given these required procedures, stakeholders have expressed concerns regarding the amount of time it can take for affected parties to receive relief funds following a request for a determination.

Historically, approximately one-third of fishery disaster determinations have been made within six months of the initial request and approximately 55% have been made within one year.¹³⁸ The remaining 45% of determinations have taken anywhere from 1 year to 3½ years post-request.¹³⁹ Information related to the scope of the disaster usually needs to be compiled by the fishing industry, state and local governments, and NMFS (refer to **Table 1** and the section on the “Amendments to the Magnuson-Stevens Fishery Conservation and Management Act,” above). Difficulties in concluding this task can be compounded by the lack of data and readily available economic studies. In cases such as Hurricane Katrina (2005) or Hurricane Michael (2018), it was immediately clear that a disaster had occurred and the Secretary made a determination within one to two weeks of each hurricane’s landfall.¹⁴⁰ In other fishery disaster cases—such as those at the Long Island, NY, hard shell clam fishery (2008); Northern Mariana Islands fisheries following a super typhoon (2003); and the Florida shark fishery (2008)—it took two to three years before the Secretary made a determination (in these cases, a determination to deny the requests).¹⁴¹ Provisions allowing for faster determinations or funding in the case of a catastrophic regional fishery disaster were repealed in the FRDIA.

In January 2009, NOAA proposed regulations to govern requests for determinations of fishery resource disasters in accordance with the 2006 amendments to the MSA.¹⁴² Sections 600.1503 and 600.1505 of the proposed rule included a proposed evaluation process for a “fast track” determination in cases “where an 80% decline in revenues is substantiated;” in these cases, the Secretary would “send the requester a positive determination within 30 days of receiving evidence substantiating a decrease of 80%.” The proposed rule continued, “In the instance of a ‘standard track’ determination, the Secretary will send the requester a letter of positive or negative determination as soon as practicable.” NOAA elected to issue an internal policy for fishery disaster assistance instead and withdrew the proposed rule in May 2013.¹⁴³ Thus, no “fast track” option was implemented and determinations and their associated appropriations could be subject to delay. Amendments through the FRDIA include specific timelines for reviews, but the availability of appropriated funds and time to final approval of a completed spend plan also may create delays in finalizing relief payments.

After the Secretary declares a fishery resource disaster, funding is dependent on appropriations by Congress. In most cases, Congress has provided funding for declared disasters, but the timing of appropriations has varied considerably. For some approved determinations, such as the Dungeness crab and rock crab fisheries, pink salmon in Alaska, Fraser River Sockeye salmon,

¹³⁸ NOAA, NMFS, “Fishery Disaster Determinations.”

¹³⁹ *Ibid.*

¹⁴⁰ For Hurricane Katrina, the Secretary of Commerce made the fishery failure determination before the actual request for a fishery failure was made later in 2006. NOAA, NMFS, “Fishery Disaster Determinations.”

¹⁴¹ *Ibid.*

¹⁴² NOAA, NMFS, “Magnuson-Stevens Act Provisions; Interjurisdictional Fisheries Act; Disaster Assistance Programs; Fisheries Assistance Programs,” 74 *Federal Register* 2467-2478, January 15, 2009.

¹⁴³ NOAA, NMFS, “Magnuson-Stevens Act Provisions; Interjurisdictional Fisheries Act; Disaster Assistance Programs; Fisheries Assistance Programs,” 78 *Federal Register* 32364, May 30, 2013.

and Washington coastal salmon, Congress appropriated funds more than two years after the Secretary's determination.¹⁴⁴ Hurricanes Katrina and Rita fishery disaster funding was appropriated more than nine months after the Gulf fishery disaster was declared in September 2005, although many in the industry believed the greatest need occurred immediately after the hurricanes, when fishers lost fishing opportunities because of disrupted markets and damaged infrastructure, vessels, and gear.¹⁴⁵ Although the full dimensions of the disaster and the level and scope of resource needs remained uncertain immediately after the disaster, some fishers thought some basic aid should have been provided to members of the fishing industry at that time.

Fishers have expressed frustrations about ongoing expenses or economic hardships before relief payments are made and a reluctance to consider certain other funding sources during the interim, such as SBA loans.¹⁴⁶ Other fishers have communicated an unawareness of other relief opportunities beyond NMFS's fishery disaster assistance.¹⁴⁷ Still others have noted that the amounts ultimately received through a disaster declaration may be less than what was initially requested or anticipated.¹⁴⁸ Additionally, tribal and subsistence fishers have raised concerns about the adequacy and timeliness of disaster funds for tribal fisheries and of the vulnerability of their fisheries to future disasters.¹⁴⁹ In more recent examples, particularly for the higher volume of West Coast and Alaskan fishery disasters, some of that assistance was covered through \$300 million in supplemental appropriations in the Consolidated Appropriations Act, 2023 (P.L. 117-328). However, according to the Alaska Department of Fish and Game and the Pacific States Marine Fisheries Commission, funding for 18 declarations over the period of 2018-2023 were still awaiting disbursement as of May 2024.¹⁵⁰

For immediate needs following a fishery failure, some have advocated establishing a disaster fund with annual appropriations that could provide more immediate assistance.¹⁵¹ For example, the

¹⁴⁴ For example, Fraser River sockeye salmon fishery failure requests were made by several different tribes in 1999-2000, 2007, 2009, 2013, and 2015 and were approved by the Secretary of Commerce. Congress did not appropriate funds for the first determination in 2002. A request for a continuation of the fishery failure in 2007 and 2008 was approved and funded in 2008. A request for a continuation of the fishery failure was made in 2009 and approved in 2011 but not funded. A new fishery failure request in 2013 was approved in 2014 and funded in 2018. An additional fishery failure request in 2015 was approved in 2017 and funded in 2018. Another two requests were made in 2019, but determinations were not made until September 2022. PSFMC, "Fisheries Relief"; NOAA, NMFS, "Fishery Disaster Determinations."

¹⁴⁵ William E. Gibson, "Gulf Coast Fishermen Need Federal Aid, Official Says Hurricanes Have Wiped Out Boats, Docks," *South Florida Sun-Sentinel*, December 16, 2005, p. A-4.

¹⁴⁶ For example, in interviews conducted with Texas fishers following Hurricane Harvey, multiple fishers expressed concerns regarding the "cumbersome" process and interest rates associated with these loans. Texas Parks and Wildlife, *Hurricane Harvey Fisheries Damage Assessment—Preliminary Results for Texas*, August 9, 2018, pp. 1-4, <https://www.fisheries.noaa.gov/resource/document/hurricane-harvey-fisheries-damage-assessment-preliminary-results-texas>.

¹⁴⁷ NOAA, NMFS, *Non-NOAA Federal Grant or Loan Programs for Fishermen or Cooperatives*, December 2013, pp. 1-9, <https://media.fisheries.noaa.gov/dam-migration/non-noaa-grant-loan-programs-fishermen.pdf>.

¹⁴⁸ For example, see Nor-Cal Guides and Sportsmen's Association, "Coalition Group Is Calling on the Federal Government to Immediately and Fully Fund the State's Request for Disaster Assistance Funding for the Closure of the 2023 Salmon Season," press release, February 6, 2024, <https://ncgasa.org/2024/02/06/coalition-group-is-calling-on-the-federal-government-to-immediately-and-fully-fund-the-states-request-for-disaster-assistance-funding-for-the-closure-of-the-2023-salmon-season/>.

¹⁴⁹ Anna Rose MacArthur, "Yukon and Kuskokwim River Residents Tell State to Send Salmon Fishery Disaster Money Directly to Subsistence Users," KYUK, May 13, 2022, <https://www.kyuk.org/hunting-fishing/2022-05-13/yukon-and-kuskokwim-river-residents-tell-state-to-send-fishery-disaster-money-to-subsi>.

¹⁵⁰ PSFMC, "Fisheries Relief."

¹⁵¹ Tim Sloane, *Fulfilling the Promise of the Magnuson-Stevens Act*, Pacific Coast Federation of Fishermen's Associations, March 2016.

Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288) provides disaster assistance to state and local governments. FEMA provides the funds in various forms through its Disaster Relief Fund (DRF). The DRF is funded through regular appropriations acts using a formula that includes several factors, including historical disaster costs. Fishery disaster assistance is sometimes included in NOAA's annual appropriations, such as the FY2018, FY2019, and FY2023 Consolidated Appropriations Acts, but in many years disaster assistance is not included in the agency's appropriations requests or annual appropriations acts passed by Congress.¹⁵² Congress may consider whether creating a stepwise approach for issuing fishery disaster assistance to affected parties may be feasible using available information for a given affected fishery (e.g., revenue amounts from previous years, number of permitted individuals, annual catch limits for a given fishing season) rather than awaiting all information from the sector before the determination process begins. Furthermore, some stakeholders have expressed concerns about potential delays in determinations or assistance resulting from a lapse in appropriations. The Department of Commerce does not include the fishery disaster assistance program in its Lapse in Appropriations Contingency Plan.¹⁵³

Others have considered the use of existing agriculture programs to supplement existing fishery disaster assistance. For example, during the 112th Congress, the Senate approved an amendment to S. 3240, the Agriculture Reform, Food, and Jobs Act of 2012 (the 2012 farm bill), which would have made commercial fishers eligible for emergency loans that are currently available to farmers. Emergency loans assist farmers who have suffered physical or production losses in disaster areas that are declared by the President.¹⁵⁴ However, the amendment was not included in the Agricultural Act of 2014 (P.L. 113-79) when it was passed by Congress, nor has it been considered in subsequent Congresses. Some experts and fishers also have communicated that there are greater economic opportunities to assist the agricultural sector than the fishing industry.¹⁵⁵

Some Members of Congress have proposed enhancing the transparency and traceability of fishery disaster assistance. In a December 21, 2023, letter to the NOAA Assistant Administrator for Fisheries, four Senators asked the agency to create an online tracking system to allow policymakers and stakeholders to follow all steps of disaster assistance requests through NOAA's and OMB's decisionmaking processes.¹⁵⁶ Some Senators also offered that substantive replies to any applicants or stakeholders requesting updates on the status of their request could be provided instead of an online tracker.¹⁵⁷ Bills introduced in the 118th Congress (H.R. 5103/S. 4262) would require the Director of OMB to approve a spend plan for fishery disaster assistance within 30 days (or deny a spend plan within 15 days) after the date that the Secretary submits the plan for approval.¹⁵⁸ Some, such as the Atlantic States Marine Fisheries Commission, have expressed their

¹⁵² P.L. 115-141; P.L. 116-6; P.L. 117-328.

¹⁵³ U.S. Department of Commerce, *Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations*, September 27, 2023, pp. 1-45, <https://www.commerce.gov/sites/default/files/2023-09/DOC-Lapse-Plan-2023.pdf>.

¹⁵⁴ U.S. Department of Agriculture, Farm Service Agency, "Farm Loans," fact sheet, http://www.fsa.usda.gov/Internet/FSA_File/loans11.pdf.

¹⁵⁵ As examples, Yereth Rosen, "To Encourage More Young Fishermen, Look to Farm Programs as Models, New Study Argues," Alaska Public Media, August 23, 2022, <https://alaskapublic.org/2022/08/23/to-encourage-more-young-fishermen-look-to-farm-programs-as-models-new-study-argues/>; Marysia Szymkowiak and Melissa Rhodes-Reese, "A Livelihoods Assessment of New Entrants Within the U.S. Fisheries Agriculture Continuum," *Journal of Rural Studies*, vol. 95 (2022), pp. 15-25.

¹⁵⁶ Strout, "U.S. Senate Republicans Demand More Clarity."

¹⁵⁷ *Ibid.*

¹⁵⁸ The proposal also would require the Director of the Office of Management and Budget to approve a spend plan resubmitted by the Secretary of Commerce within 15 days of its resubmission.

support of H.R. 5103, while also recommending that the process remain intra-agency.¹⁵⁹ As of July 2024, these bills have been referred to their respective committees of jurisdiction.

Long-Term Management Approaches

Often, direct or indirect assistance to the fishing industry is part of a relief program. Some have criticized federal assistance because it can delay the readjustment (i.e., decrease in fishing) that may be needed for fisheries with excess harvesting capacity.¹⁶⁰ These critics argue that climatic and/or environmental conditions are often blamed for fish population declines that may have been caused by overfishing.¹⁶¹

Features of several programs, such as buybacks and training for fishers in other vocations, focus on concerns related to a need identified by managers to decrease fishing fleet size. Yet, when relief is provided—even when it includes a buyback program—greater numbers of fishers and more effort may remain in the fishery than might be sustainable in the long run.¹⁶² Many fisheries managers agree that relief, such as vessel buybacks, needs to be more closely integrated with ongoing fisheries management objectives.¹⁶³ Other types of assistance that may provide long-term fishery benefits include habitat restoration and enhancement, marketing and promotion programs, and cooperative research.

Some have proposed that long-term measures and disaster planning should take place before disasters occur. In this way, more deliberate approaches to build resiliency may be considered and potentially enacted instead of emergency measures that fill short-run needs. Furthermore, stakeholders have pushed regulatory agencies, such as the U.S. Army Corps of Engineers (USACE), to consider fisheries concerns in decisionmaking or water management processes.¹⁶⁴ For example, on October 30, 2019, the Secretary declared a fishery disaster following the 2019 opening of the Mississippi Bonnet-Carre spillway to divert floodwater from New Orleans.¹⁶⁵ The influx of freshwater from the opening to the Gulf affected Louisiana, Mississippi, and Alabama fisheries and led to a U.S. District Court finding that USACE is to consult with NOAA on

¹⁵⁹ Atlantic States Marine Fisheries Commission (ASMFC), Testimony of ASMFC Executive Director Robert E. Beal on H.R. 5103, the Fishery Improvement to Streamline untimely regulatory Hurdles post Emergency Situation Act, October 25, 2023, https://naturalresources.house.gov/uploadedfiles/testimony_beal.pdf; House Committee on Natural Resources, “Legislative Hearing on H.R. 520 , H.R. 2990 , H.R. 5103, H.R. 5504, H.R. 5509, H.R. 5874 and H.R. ___(Rep. Graves) | Water, Wildlife and Fisheries Subcommittee,” <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415000>.

¹⁶⁰ Richards, *From Disaster to Sustainability*.

¹⁶¹ Bellquist et al., “Rise in Climate Change-Induced Federal Fishery Disasters.”

¹⁶² U.S. Government Accountability Office, *Commercial Fisheries*, GAO/RCED-11-120, June 2000, <https://www.gao.gov/assets/240/230376.pdf>.

¹⁶³ Eric Thunberg, Andrew Kitts, and John Walden, “A Case Study of New England Groundfish Fishing Capacity Reduction,” in *Fisheries Buybacks*, eds. Rita Curtis and Dale Squires (Ames, IA: Blackwell Publishing, 2004), pp. 239-249.

¹⁶⁴ Kevin McGill, “Judge: Corps Must Discuss Spillway Use with Fisheries Agency,” Associated Press, January 19, 2023, <https://apnews.com/article/animals-new-orleans-mississippi-river-climate-and-environment-0018bee5a1e654650ea52a603e870d0a> (hereinafter McGill, “Judge: Corps Must Discuss Spillway Use”); Nathan Strout, “Mississippi Accepting Applications for Relief for 2019 Bonnet Carre Spillway Disaster,” *Seafood Source*, August 14, 2023, <https://www.seafoodsource.com/news/environment-sustainability/mississippi-accepting-applications-for-relief-for-2019-bonnet-carre-spillway-disaster>.

¹⁶⁵ NOAA, NMFS, “Fishery Disaster Determinations - 89. Gulf of Mexico Freshwater Flooding (Louisiana, Mississippi, and Alabama) 2019,” [https://www.fisheries.noaa.gov/national/funding-financial-services/fishery-disaster-determinations#89.-gulf-of-mexico-freshwater-flooding-\(louisiana,-mississippi,-and-alabama\)-2019](https://www.fisheries.noaa.gov/national/funding-financial-services/fishery-disaster-determinations#89.-gulf-of-mexico-freshwater-flooding-(louisiana,-mississippi,-and-alabama)-2019).

subsequent openings of the spillway.¹⁶⁶ USACE has disputed this requirement and appealed the ruling in March 2023.¹⁶⁷ A further decision is pending.

Fishery Resource Disasters and Climate Change

Stakeholders, some Members of Congress, and other parties have raised concerns about the impacts of climate change to fisheries resources. Climate change is anticipated to intensify multiple stressors that may affect fishery populations, such as warming events, hurricanes, harmful algal blooms, invasive species, and other phenomena.¹⁶⁸ Recurrent poor harvests and fisheries closures have been observed in recent years (e.g., Alaskan snow crab, Pacific cod), with associated fishery disaster determinations for those periods identified as being due to natural causes.¹⁶⁹ Some experts and stakeholders have characterized the current fishery disaster approach as being only a reactive one and have raised concerns about whether NMFS is considering proactive approaches to address climate change impacts to fisheries and future fishery disaster relief (e.g., prioritizing particular regions or fisheries, considering future vulnerabilities).¹⁷⁰ Furthermore, stakeholders express concerns about future climate-related catastrophic events and that the FRDIA repealed the ability for the Secretary to issue quick-turnaround determinations in response to catastrophic events.¹⁷¹ Some also note that wealthier fishers typically have greater financial resources to adapt their fishing practices in response to climate-related effects on fisheries compared with small vessel owners (e.g., abilities to cover fuel expenses associated with fishing at greater distances, to afford multiple fishing permits, or to modify their vessels to diversify fishing gears and targeted species in response to change).¹⁷² Some organizations, such as the California Ocean Science Trust, have organized symposia and workshops to consider the future of fishery disaster assistance in light of climate change.¹⁷³ NMFS also has carried out climate vulnerability assessments in several of its regions for fisheries species and fishing

¹⁶⁶ McGill, “Judge: Corps Must Discuss Spillway Use.”

¹⁶⁷ Associated Press, “Corps of Engineers Appeals Ruling on Spillway Openings,” March 22, 2023.

¹⁶⁸ Wells et al., “Harmful Algal Blooms and Climate Change”; Kevin J.E. Walsh et al., “Tropical Cyclones and Climate Change,” *Wiley Interdisciplinary Reviews: Climate Change*, vol. 7, no. 1 (2016), pp. 65-89; Phillip Williamson and Valeria A. Guinder, “Effect of Climate Change on Marine Ecosystems,” in *The Impacts of Climate Change: A Comprehensive Study of Physical, Biophysical, Social, and Political Issues*, ed. Trevor M. Letcher (Cambridge, MA: Elsevier, 2021), pp. 115-176; Matthew Collins et al., *Extremes, Abrupt Changes and Managing Risks*, Intergovernmental Panel on Climate Change (IPCC), IPCC Special Report on the Ocean and Cryosphere in a Changing Climate, 2019, pp. 589-655, https://www.ipcc.ch/site/assets/uploads/sites/3/2019/11/10_SROCC_Ch06_FINAL.pdf.

¹⁶⁹ NOAA, NMFS, “Fishery Disaster Determinations.”

¹⁷⁰ Bellquist et al., “Rise in Climate Change-Induced Federal Fishery Disasters”; Stringer, “Struggling Salmon Fishermen”; Yereth Rosen, “Disaster Aid has Arrived, but Western Alaska’s Salmon and Crab Problems Continue,” *Alaska Beacon*, May 20, 2023, <https://alaskabeacon.com/2023/05/20/disaster-aid-has-arrived-but-western-alaskas-salmon-and-crab-problems-are-continuing/>.

¹⁷¹ The MSA, under 16 U.S.C. §1861a(a)(5)(D), currently allows an exception for the Secretary of Commerce to determine that a fishery resource disaster has occurred when substantial economic impacts to the affected fishery and fishing community have been subject to a disaster declaration under another statutory authority (e.g., natural disaster or direct consequences of a federal action taken to prevent, or in response to, a natural disaster for purposes of protecting life and safety); Andrew Shipley, “Post Ian Federal Fishing Disaster Decision Delayed,” Fox 4 Southwest Florida, March 30, 2023.

¹⁷² Timothy J. Cline, Daniel E. Schindler, and Ray Hilborn, “Fisheries Portfolio Diversification and Turnover Buffer Alaskan Fishing Communities from Abrupt Resource and Market Changes,” *Nature Communications*, vol. 8, no. 1 (2017), 14042, pp. 1-7; California Ocean Science Trust and University of California-Davis, California Ocean Science Trust, “Symposium: The Role of Federal Fishery Disaster Assistance in a Climate Change-Driven World,” May 2, 2024, <https://fisherydisasterssymposium.rsvpify.com/?securityToken=uWtfvvgTjnoxTQOjABOOSotZfUfRLe> (hereinafter California Ocean Science Trust, “Symposium”).

¹⁷³ California Ocean Science Trust, “Symposium.”

communities.¹⁷⁴ That information may be useful for prioritizing particular species, locations, and coastal communities with respect to current and future disaster assistance needs, such as in approaches for agricultural disaster assistance. Congress may consider future directives to NMFS for fishery disaster assistance, such as prioritization exercises, engagements with stakeholders, or scenario planning accounting for regional vulnerabilities to future fishery resource disasters. Congress also may consider whether permitting flexibilities for vulnerable species or in particular regions may be warranted, including considerations for different vessel sizes.

Who Benefits?

Who benefits from disaster funding is a recurring point of contention.¹⁷⁵ Participants such as fishers and fish processors may be difficult to identify and directly associate with a fishery disaster. Although it is often possible to contact vessel and processing plant owners or licensed fishers, industry-related labor such as crew members and fish processing employees may be difficult to track. Because of the transient nature of employment in the fishing industry and seasonal movement of fishing vessels among regions, labor statistics regarding the employment of fishers are either difficult to obtain or may not exist. For example, in some fisheries, crew members may be temporary laborers who follow fishing opportunities. Similar problems may occur in related fishery processing and distribution sectors.

Economic effects of fishery disasters on the local community and region also are difficult to quantify. Services directly related to fishing, such as boat repairs, dock services, and fishing equipment suppliers, as well as other businesses indirectly related to fishing are likely to be harmed by losses in the fish harvesting and processing sectors. Although general regional impacts can be estimated using economic models, it may be difficult to identify the level of impacts on these businesses because of their dispersed nature and their indirect relationship to fishing. A broader understanding of these community impacts depends on more deliberate, long-term data collection and planning to link community concerns with marine fisheries management.

In addition, stakeholders have raised concerns about the effectiveness and administration of disaster funding for serving beneficiaries. For example, the New Jersey Office of the State Comptroller found that approximately \$7 million (i.e., 49%) of federal COVID-19 funds paid to New Jersey fisheries may have been improper because their administration did not meet program guidelines (e.g., awards were made without necessary documentation) or because fisheries received more funds than their actual losses in 2020.¹⁷⁶ Given these administrative concerns, an open question is whether NOAA's efforts to integrate management with social dimensions might be applied to increasing fishing community resilience to fishery failures and to improving assistance programs when disasters occur.¹⁷⁷ Congress may consider whether NOAA's increased engagement with the fishing community may be warranted through workshops or other fora to evaluate stakeholders' perspectives on the effectiveness of the disaster assistance process. In past explanatory statements for appropriations (e.g., for FY2014), Congress has directed the

¹⁷⁴ NOAA, NMFS, "Climate Vulnerability Assessments," <https://www.fisheries.noaa.gov/national/climate/climate-vulnerability-assessments>.

¹⁷⁵ Tom Dempsey, *Dempsey Commentary on Federal Disaster Aid*, Cape Cod Commercial Fishermen's Alliance, June 9, 2014.

¹⁷⁶ Elise Young, "Improper Covid Aid Flowed to Fishery Businesses, Official Finds," *New York Times*, June 20, 2023.

¹⁷⁷ NOAA, NMFS, *Human Dimensions*, Office of Science and Technology, <https://www.fisheries.noaa.gov/about/office-science-and-technology>.

Department of Commerce to “continue to work with states and tribes in the future with respect to fishery disaster determinations.”¹⁷⁸

Aquaculture, Subsistence, and Recreational Fisheries

Fishery disasters affect other resource users not mentioned above, such as recreational fishers, subsistence users, and aquaculture facilities, but there is some ambiguity regarding these groups’ eligibility for disaster relief. Aquaculture producers are not considered explicitly in disaster relief sections of the MSA,¹⁷⁹ but the legislation does make reference to recreational fishers and subsistence users.

Aquaculture is broadly defined as the propagation and rearing of aquatic species in controlled or selected environments.¹⁸⁰ Aquaculture operations range from extensive farming where there is only minimal control over the organism’s environment to intensive systems where complete control is taken at each stage of the organism’s life history.¹⁸¹ Aquaculture is not addressed or defined in the MSA, but, according to NMFS, the act’s management authority over all fish within the exclusive economic zone (EEZ) and statutory definitions of *fishery* and *fishing* provide a sound basis for regulating aquaculture in the EEZ.¹⁸² NMFS has considered marine aquaculture operations in disaster assistance determinations. For example, in red tide fishery failures, references to shellfish farms were included in the request for assistance with wild shellfish fisheries.¹⁸³ However, questions remain regarding the eligibility of losses that are specific to aquaculture, such as salmon cage culture (i.e., salmon farmed and submerged at sea),¹⁸⁴ or events that affect only aquaculture and not wild fisheries. Further, a 2018 court decision found that NMFS does not have authority to regulate aquaculture under the MSA.¹⁸⁵ The U.S. Court of Appeals for the 5th Circuit affirmed the lower court in 2020, confirming the invalidity of any regulation of aquaculture by NMFS under the MSA.¹⁸⁶

Challenges also exist when accounting for recreational fisheries in fishery disaster determinations. Charter boat operators that take paying customers for fishing trips have been

¹⁷⁸ “Explanatory Statement, submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014,” House of Representatives, *Congressional Record*, vol. 160, part No. 9 - Book II (January 15, 2014), p. H510.

¹⁷⁹ The MSA, under 16 U.S.C. §1861a(a)(6)(C)(iv), states that the Secretary may consider aquaculture operations’ revenue loss as a factor when determining the allocation of appropriations for a fishery resource disaster.

¹⁸⁰ 16 U.S.C. §2802; the definition also includes “ocean ranching” with certain exceptions for Pacific salmon.

¹⁸¹ For example, oyster farming may resemble a fishery where the habitat is enhanced by adding substrate (shells) for spat (small oyster) attachment. In other cases, greater control is taken and oysters are raised in cages or trays.

¹⁸² Memorandum from Constance Sathre, Office of the General Counsel, to Lois Schiffer, NOAA General Counsel, June 9, 2011.

¹⁸³ For example, see letter from Deval L. Patrick, Governor of Massachusetts, and Thomas P. Murray, Lieutenant Governor of Massachusetts, to the Honorable Carlos M. Gutierrez, Secretary of Commerce, September 4, 2008, https://media.fisheries.noaa.gov/dam-migration/40_ne_redtide_request_noaa-sf.pdf.

¹⁸⁴ Fletcher Warren-Myers et al., “Full Production Cycle, Commercial Scale Culture of Salmon in Submerged Sea-Cages with Air Domes Reduces Lice Infestation, but Creates Production and Welfare Challenges,” *Aquaculture*, vol. 548 (2022), 737570, pp. 1-12.

¹⁸⁵ In *Gulf Fisherman’s Association v. National Marine Fisheries Service*, the U.S. District Court for the Eastern District of Louisiana held that NOAA Fisheries exceeded its authority under the MSA when it adopted a regulatory scheme for aquaculture operations in the Gulf of Mexico. The court found that the MSA’s grant of authority to regulate “fishing” and “harvesting” did not include aquaculture. *Gulf Fishermens Association v. National Marine Fisheries Service*, 341 F.Supp.3d 632, 635 (E.D. LA 2018).

¹⁸⁶ *Gulf Fishermens Association v. National Marine Fisheries Service*, 968 F.3d 454 (5th Cir. 2020).

included in previous determinations and have benefited from assistance. However, it is unclear whether and how assistance would be provided to other businesses that support recreational fishing, such as bait and tackle shops. Some observers could contend that these businesses should benefit from disaster assistance because they depend on fisheries and are part of the coastal community. Congress also might consider questions related to whether a disaster could be determined for the decline of a species sought only by recreational fisherman, such as red drum, and how losses to these businesses would be quantified. Following the FRDIA amendments, the MSA specifies that 12-month revenue loss for charter and headboat fisheries may be included as part of a complete request for a fishery resource determination.¹⁸⁷ The MSA, post-FRDIA amendments, also states that economic information regarding the charter sector shall be considered by the Secretary to ensure financial coverage for charter businesses.¹⁸⁸

Subsistence users are affected by resource declines and associated losses to household benefits. These impacts may be difficult to assess in economic terms; consequently, it may be challenging to determine the form that relief might take. Furthermore, the term *subsistence*, as it relates to fisheries, is not defined in the MSA or IFA.¹⁸⁹ Some observers might contend that different approaches may be needed for cases of subsistence disaster relief than for commercial or recreational fisheries. Following the FRDIA amendments, the MSA includes eligibility for subsistence users and their fisheries for disaster assistance and stipulates that a fishery resource disaster includes negative subsistence impact due to an allowable cause.¹⁹⁰ However, *negative subsistence impact* is not defined in the MSA.¹⁹¹

Congressional Actions in the 116th-118th Congresses

Recent Congresses (i.e., 116th-118th) have taken several actions with respect to fishery disaster assistance. These actions include passing amendments to the fishery disaster assistance process through the FRDIA, in addition to appropriating funds in support of fishery resource disasters through legislation such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) and in appropriations. Examples of recent legislation and legislative proposals are included below.

Fishery Resource Disasters Improvement Act

The 117th Congress amended fishery disaster assistance provisions in the MSA and repealed them from the IFA by enacting the FRDIA. The act amended Section 312 of the MSA, repealed Section 315 of the MSA, and repealed Section 308 of the IFA. Additionally, the amendments to Section 312 of the MSA added prescriptive definitions, timelines, requirements, and revenue thresholds regarding the determination and administration of fishery disaster assistance (see “Amendments to the Magnuson-Stevens Fishery Conservation and Management Act”). Generally, the legislation

¹⁸⁷ 16 U.S.C. §1861a(a)(1)(F); 16 U.S.C. §1861a(a)(4)(B)(i)(II)(dd); see footnote 53 for the definition of headboat.

¹⁸⁸ 16 U.S.C. §1861a(a)(5)(B)(ii).

¹⁸⁹ For example, *subsistence* is defined by the State of Alaska as customary and traditional uses of fish and wildlife, and the definition highlights the unique importance of wild resources and the continuing role of subsistence activities in sustaining the way of life in Alaska. The Alaska National Interest Lands Conservation Act (P.L. 96-487), under 16 U.S.C. §3113, includes a similar definition for subsistence.

¹⁹⁰ 16 U.S.C. §1861a(a)(1)(C); 16 U.S.C. §1861a(a)(3)(B)(v)(II)(bb); 16 U.S.C. §1861a(a)(4)(B)(i)(II)(dd); 16 U.S.C. §1861a(a)(5)(B)(iii); 16 U.S.C. §1861a(a)(6).

¹⁹¹ CRS Report R47511, *Subsistence Uses of Resources in Alaska: An Overview of Federal Management*, by Mark K. DeSantis and Erin H. Ward.

consolidated and clarified many of the fishery disaster provisions originally in the MSA and IFA and incorporated parts of the NMFS agency directive on fishery disasters.

Other Bills Introduced in the 116th–118th Congresses

In addition to the FRDIA, Congress saw several other bills related to fishery disaster assistance introduced during the 116th-118th Congresses. Prior to passage of the FRDIA, bills seeking amendments to the fishery disaster assistance process were introduced in the 117th Congress (H.R. 5453/S. 2923), and these bills proposed similar prescriptive language to the FRDIA and repeals of sections from the MSA and the IFA. Refinements to the process also were proposed during the 117th Congress in two separate bills (H.R. 59, H.R. 4690) that each would have comprehensively amended the MSA. Furthermore, in the 116th Congress, similar versions of the Fishery Failures: Urgently Needed Disaster Declarations Act (S. 2346 and H.R. 5548) were introduced that proposed similar extensive changes to the MSA and the IFA.¹⁹²

Several bills introduced during the 116th Congress also sought to amend the MSA with respect to fishery disaster assistance. The Pandemic Fishery Disaster Response Act (H.R. 7167) would have amended the MSA to add a pandemic as a potential cause of a fishery resource disaster. The Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 3697) proposed comprehensive amendments to the MSA and would have made several changes to fishery disaster provisions.¹⁹³ Section 401 of the bill would have required the Secretary to publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the date of the fishery disaster determination. For requests from a state governor, Section 402 would have required the Secretary to make a fishery failure determination within 90 days of receiving an estimate of the economic impact from the entity requesting the relief.

The Commercial Fishing and Aquaculture Protection Act of 2019 (S. 2209), also introduced in the 116th Congress, would have amended the MSA to provide supplemental revenue assistance to eligible commercial fishers and aquaculture producers.¹⁹⁴ The bill specified that assistance could be provided when an eligible loss specifically occurred due to an algal bloom, freshwater intrusion, adverse weather, bird depredation, disease, or other condition determined by the Secretary. Presently, aquaculture producers are not listed as a specific entity for disaster assistance in the FRDIA amendments. However, as noted above, the Secretary may consider aquaculture operations revenue loss when determining the allocation of appropriations for a fishery resource disaster.

Two identical bills (H.R. 3514 and S. 1984) were introduced in the 116th Congress in response to duties imposed on U.S. seafood products. The bills would have added certain duties to the list of potential causes of a commercial fishery failure listed in Section 312 of the MSA. The bills would have allowed that fishery disaster assistance could be provided if duties were placed by other countries on U.S. seafood products as retaliation for increases in duties imposed by the United States.¹⁹⁵

¹⁹² Most sections of the marked-up version of S. 2346 and the version of H.R. 5548 are either identical or similar.

¹⁹³ H.R. 200, which was introduced in the 115th Congress and passed by the House, proposed identical amendments to the MSA fishery disaster assistance provisions.

¹⁹⁴ An eligible commercial fisher and farm-raised fish producer generally are described as an individual or entity that assumes production and market risks associated with harvesting fish (fisher) or production of fish in a controlled environment (farm-raised fish producer) for commerce. The term *fish* would include shellfish, finfish, and other aquatic organisms harvested with the intent of entering commerce.

¹⁹⁵ The bill refers to increases in duties imposed by the United States pursuant to §232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) or §301 of the Trade Act of 1974 (19 U.S.C. §2411).

Disaster Determinations and Appropriations

Funding of fishery disaster assistance depends on congressional action because there is no permanent fund to provide relief. For example, Congress appropriated \$300 million through the CARES Act for the Secretary to provide emergency assistance to tribal, subsistence, commercial, and charter fishery participants, processors, or other fishery-related businesses—and aquaculture businesses not otherwise eligible for assistance—for losses related to COVID-19.¹⁹⁶ The Consolidated Appropriations Act, 2021 (P.L. 116-260), provided an additional \$300 million in COVID-19-related relief to those parties.¹⁹⁷

Usually, funding is appropriated for a number of disasters after the Secretary makes determinations and allocated among specific fishery disasters by NOAA. Alternatively, a certain amount may be appropriated for unspecified disasters to remain available until expended. For example, in 2021, Congress appropriated \$200 million for fishery disasters, including those associated with 2020 and 2021 hurricanes, to remain available until expended through the Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43). The Consolidated Appropriations Act, 2023 (P.L. 117-328), included \$300 million in supplemental funding for necessary expenses associated with the mitigation of fishery disasters, to remain available until expended. **Table 3** provides a list of fishery disasters that have that been approved or are under consideration for a determination by the Secretary during the 118th Congress.

In the 116th Congress, fishery disasters were funded by the Consolidated Appropriations Act, 2019 (P.L. 116-6), and the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20). For specific fishery disasters, the Bipartisan Budget Act of 2018 (P.L. 115-123) funded 10 disasters and the Consolidated Appropriations Act, 2018 (P.L. 115-141), funded 7 disasters.

Table 3. Fishery Disaster Requests Submitted During the 118th Congress
(funded and pending determination)

Fishery Disaster	Request and Determination Dates	Time to Determination	Funding Amount
California Sacramento River Fall Chinook and Klamath River Fall Chinook Salmon Fisheries	Request Letter: April 12, 2024 Determination: Pending	—	Awaiting Determination
Smith River Chinook Salmon Fishery, 2023/2024 (Tolowa Dee'ni' Nation)	Request Letter: January 16, 2024 Determination: Pending	—	Awaiting Determination
Upper Cook Inlet East Side Setnet Salmon Fishery, 2023 (Alaska)	Request Letter: January 8, 2024 Determination: May 24, 2024	137 days	Awaiting Determination

¹⁹⁶ The CARES Act provided these funds to remain available through September 30, 2021, in support of parties that incurred as a direct or indirect result of the COVID-19 pandemic (1) economic revenue losses greater than 35%, as compared with the prior five-year average revenue, or (2) any negative impacts to subsistence, cultural, or ceremonial fisheries. The act stipulates that “fishery participants” include tribes, persons, fishing communities, aquaculture businesses not otherwise eligible for assistance under Part 1416 of Title 7 of the *Code of Federal Regulations* for losses related to COVID-19, processors, or other fishery-related businesses.

¹⁹⁷ The Consolidated Appropriations Act, 2021 (P.L. 116-260), Division M, stipulated that of the \$300 million, \$30 million shall be for Coronavirus-related fishing impacts to tribal fishery participants and \$15 million shall be for all Coronavirus-related impacts to non-tribal commercial, aquaculture, process, and charter fishery participants in states bordering the Great Lakes.

Fishery Disaster	Request and Determination Dates	Time to Determination	Funding Amount
Chignik Salmon Fishery, 2022 (Alaska)	Request Letter: January 8, 2024 Determination: May 24, 2024	137 days	Awaiting Determination
Bering Sea Snow Crab Fishery, 2023/2024 (Alaska)	Request Letter: December 8, 2023 Determination: April 29, 2024	143 days	Awaiting Determination
Louisiana Shrimp Fisheries, 2023	Request Letter: October 18, 2023 Determination: Pending	—	Awaiting Determination
Upper Cook Inlet East Side Setnet, 2021/2022, and Nelson Lagoon Salmon Fishery, 2022 (Alaska)	Request Letter: October 12, 2023 Determination: April 8, 2024	179 days	Upper Cook Inlet Awaiting Determination; Nelson Lagoon Denied
Alabama Shrimp Fisheries, 2023	Request Letter: October 18, 2023 Determination: Pending	—	Awaiting Determination
Kuskokwim River Chinook, Chum, and Coho Salmon Fisheries, 2022 (Alaska)	Request Letter: September 15, 2023 Determination: April 8, 2024	206 days	Awaiting Determination
Florida Hurricane Idalia, 2023	Request Letter: September 6, 2023 Determination: Pending	—	Awaiting Determination
Klamath River Fall Chinook Salmon, 2022 (Yurok Tribe; West Coast)	Request Letter: July 11, 2023 Determination: September 26, 2023	77 days	\$4,300,000
Klamath River and Ocean Salmon, 2023 (Reighini Rancheria Tribe; West Coast)	Request Letter: May 17, 2023 Determination: Pending	—	Awaiting Determination
Puget Sound Coho and Fall Chum Salmon Fisheries, 2021 (Port Gamble S'Kallam Tribe; West Coast)	Request Letter: May 17, 2023 Determination: April 8, 2024	327 days	Awaiting Determination
Oregon Ocean Commercial Salmon Fisheries, 2023	Request Letter: April 17, 2023 Determination: May 24, 2024	403 days	\$403,978
California Sacramento River Fall Chinook, Klamath River Fall Chinook, Ocean, and Inland Salmon Fisheries 2023	Request Letter: April 6, 2023 Determination: October 30, 2023	207 days	\$20,600,000
Klamath River Fall Chinook Salmon Fishery, 2021 (Yurok Tribe; West Coast)	Request Letter: March 22, 2023 Determination: September 26, 2023	188 days	\$8,200,000

Fishery Disaster	Request and Determination Dates	Time to Determination	Funding Amount
Maryland Chesapeake Bay, 2023	Request Letter: March 15, 2023 Determination: December 12, 2023	272 days	Denied

Sources: National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), “Fishery Disaster Determinations,” accessed July 10, 2024, <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations>; NOAA, NMFS, “Fishery Resource Disaster Assistance,” <https://www.fisheries.noaa.gov/national/funding-financial-services/fishery-resource-disaster-assistance>.

Notes: Legislation providing funding for fishery disasters that were submitted during the 118th Congress and enacted into law includes the Disaster Relief Supplemental Appropriations Act in the 117th Congress (P.L. 117-328, Division N, Title II). All determinations made during the 118th Congress (i.e., the request was received after December 29, 2022) in accordance with the Fishery Resource Disasters Improvement Act (P.L. 117-328) were subject to provisions included in Division S, Title II, of P.L. 117-328 in the 117th Congress.

Appendix. Repealed Programs and Provisions Related to Fishery Disaster Assistance

The 2022 Fishery Resource Disasters Improvement Act (FRDIA; P.L. 117-328, Division S, Title II) amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861a(a)) and repealed the following programs and provisions, which were included under Section 315 of the MSA and Section 308(b) and 308(d) of the Interjurisdictional Fisheries Act (IFA; 16 U.S.C. §4107, repealed).¹⁹⁸ The 2022 FRDIA amendments also incorporated elements of those repealed IFA sections under Section 312(a) of the MSA.

Repealed Regional Coastal Disaster Assistance Program

In 2006, the MSA was amended by adding Section 315, the Regional Coastal Disaster Assistance, Transition, and Recovery Program (repealed in 2022). Under the 2006 amendments, a *catastrophic regional fishery disaster* was defined in statute as a natural disaster, such as a hurricane or tsunami, or a regulatory closure to protect human health or the marine environment. As of 2022, the term is no longer included in the MSA. A catastrophic regional fishery disaster meant an event that

- resulted in economic losses to the coastal or fishing communities;
- affected more than one state or a major fishery managed by a fishery management council or interstate marine fisheries commission;¹⁹⁹ and
- was determined by the Secretary of Commerce (the Secretary) to be a commercial fishery failure under Section 312(a) of the MSA or a fishery resource disaster under Section 308(d), repealed, of the IFA.

Within two months after a catastrophic regional fishery disaster, the Secretary was required to provide the governor of each participating state with a comprehensive economic and socioeconomic evaluation of the region's fisheries. The evaluation was to assess the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and direct, indirect, or environmental impacts of the disaster on the fishery and coastal communities. Subject to the availability of appropriations, the program could provide funds for infrastructure needs, job training assistance, fishing capacity reduction, and other activities authorized under either the MSA or the IFA. Various fishing groups in the region could be eligible for disaster assistance, including fishers, charter fishing operators, U.S. fish processors, and owners of related fishery infrastructure.²⁰⁰ Under the Regional Coastal Disaster Assistance, Transition, and Recovery Program, the Secretary could waive the matching requirements if no

¹⁹⁸ 16 U.S.C. §4107, repealed; U.S.C. §1864(d), repealed.

¹⁹⁹ The Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §1861a(a)) created eight regional Fishery Management Councils. Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable of fishery resources provided by state governors. The councils prepare fishery management plans for those fisheries that occur primarily within the federal waters of the exclusive economic zone (3-200 nautical miles from shore). Further information about Fishery Management Councils is available in CRS Report R47645, *U.S. Regional Fishery Management Councils*, by Anthony R. Marshak.

The three interstate marine fisheries commissions are the Atlantic States Marine Fisheries Commission (<http://www.asmfmc.org/>); the Gulf States Marine Fisheries Commission (<http://www.gsmfc.org/>); and the Pacific States Marine Fisheries Commission (<http://www.psmfc.org/>).

²⁰⁰ Businesses supported by recreational fisheries may be eligible for fishery disaster assistance under §312(a) of the MSA if they are part of the affected fishing community. Recreational charter fishing businesses are mentioned explicitly in §315 of the MSA.

reasonable means were available for meeting the match and the probable benefit of 100% federal financing outweighed the public interest in imposing the match. During the time that these provisions were included under the MSA, determinations under Section 315 were made only for Hurricane Sandy in 2012; Hurricanes Irma and Maria in 2017; and Gulf of Mexico freshwater flooding in Louisiana, Mississippi, and Alabama in 2019. The FRDIA amendments repealed these provisions and programs.

Repealed Provisions in the Interjurisdictional Fisheries Act

The IFA was enacted in 1986 to provide federal support to states for the development of interstate fishery research programs. Under the IFA, until the 2022 FRDIA amendments, funds were authorized to provide assistance for a commercial fishery failure (§308(b), repealed) or for a fishery resource disaster (§308(d), repealed). Under Section 308(b), a *commercial fishery failure* was defined as a serious disruption to future production due to a fishery resource disaster arising from natural or undetermined causes. The process of collecting information and determining whether a commercial fishery failure had occurred under the IFA was similar to the current process. Although the term *commercial fishery failure* is no longer defined in statute, the Secretary still applies the concept to fishery resource disaster determinations.²⁰¹

Section 308(d) of the IFA referred to *fishery resource disasters* as natural disasters. Instead of assessing the occurrence of a commercial fishery failure, Section 308(d) of the IFA required demonstration of harm. *Harm* was defined as uninsured damage to fishing vessels, fishing gear, processing facilities, marketability, habitat, or infrastructure. The same thresholds used for MSA fishery failure determinations were applied to IFA determinations.²⁰²

IFA funding under Section 308(b) could be used by states alone or by the Secretary in cooperation with the states. Funding could be provided for any purpose the Secretary determined appropriate to restore a fishery affected by a commercial fishery failure or to prevent a future fishery failure. Under Section 308(b), funds could not be used to charter fishing vessels and the federal share of funding was limited to 75% of costs. Funding under Section 308(d) of the IFA could be used to provide direct assistance to fishers or to provide assistance indirectly through state agencies, local government, and nonprofit organizations. In contrast to the MSA and Section 308(b) of the IFA, there was no limit on the federal share of costs under Section 308(d). Section 308(d) also outlined the conditions under which funding could be used for other activities, such as fishing capacity reduction programs; these programs include fishing vessel buybacks, gear reduction, or fishing permit retirement. The FRDIA amendments repealed these provisions, but they are still considered in requests for determinations made pre-FRDIA.

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²⁰¹ NMFS, Policy 01-122.

²⁰² Ibid.

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