Commercial Fishery Disaster Assistance

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Summary

Disaster relief may be provided by the federal government to assist the fishing industry when it is affected by a commercial fishery failure. A commercial fishery failure occurs when fishermen endure economic hardships resulting from fish population declines or other disruptions to the fishery. The Department of Commerce can provide disaster assistance under Sections 308(b) and 308(d) of the Interjurisdictional Fisheries Act (16 U.S.C. § 4107), as amended, and Sections 312(a) and 315 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C § 1861). The National Marine Fisheries Service plays a central role in determining whether a commercial fishery failure has occurred and in allocating federal funding to states and affected fishing communities. Congress plays a pivotal role by appropriating funds and providing oversight of the process.

Fisheries are subject to environmental variability that may affect the fishery resource and/or commercial infrastructure such as boats, shoreside processing, and ports. Since 1994, federal fishery failures have been declared on 29 occasions and nearly $827 million in federal funding has been appropriated for fishery disaster relief. Funds have been allocated to fisheries of the North Pacific, Pacific Northwest, Gulf of Mexico, and the East Coast. Recent cases include Gulf of Mexico fisheries, the Chesapeake Bay soft shell blue crab fishery, the West Coast salmon troll fishery, New England shellfish fisheries, Puget Sound sockeye salmon fisheries, and the Yukon River Chinook salmon fishery. The most recent fishery failure was declared because of harm to Gulf of Mexico fisheries from the Deepwater Horizon oil spill.

Direct federal financial assistance has been provided to fishermen and fishing communities in the form of grants, job retraining, employment, and low interest loans. Assistance has also included fishery data collection, resource restoration, research, and fishing capacity reduction programs to prevent or lessen the effects of future disruptions to fisheries. However, critics contend that disaster assistance programs often fall short of expectations because sometimes funds are not disbursed in a timely manner, ambiguities complicate the definition of a fishery failure, relief may not be integrated with long-term fishery management objectives, and funds may not reach the people who are in the greatest need of assistance. The National Oceanic and Atmospheric Administration recently proposed regulations to clarify and interpret the fishery disaster assistance provisions of the Magnuson-Stevens Fishery Conservation and Management Act and the Interjurisdictional Fisheries Act.

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Direct financial assistance has been provided to fishermen and fishing communities in the form of grants, job retraining, employment, and low interest loans. Assistance has also included fishery data collection, resource restoration, research, and fishing capacity reduction programs to prevent or lessen the effects of future disruptions to fisheries. Several issues related to fishery disaster relief include timing relief disbursements to meet critical needs, integrating relief with long-term management objectives, defining and declaring a fishery failure, and reaching people who may be in the greatest need of relief. The National Oceanic and Atmospheric Administration recently proposed regulations to clarify and interpret the fishery disaster assistance provisions of MSFCMA and IFA.

Program Requirements and Procedures

The Department of Commerce can provide disaster assistance under either the MSFCMA or the IFA.[1] Differences exist under each law with regard to the causes of a fishery failure, and the use of funds (see **Table 1**). Several recent fishery failures have been declared under both laws, providing program managers greater latitude in matching relief with the needs of recipients.

[1] See the National Oceanic and Atmospheric Administration, Fishery Disaster Assistance website at http://www.nmfs.noaa.gov/mb/financial_services/disaster.htm.

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

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

MSFCMA

In 1996, MSFCMA was amended to include a new section focusing on a transition to sustainable fisheries. This section includes Subsection 312(a) to provide fishery disaster relief when commercial fishery failures occur, especially for those fisheries in need of stock rebuilding. Under Section 312(a), the process is started at the discretion of the Secretary of Commerce, at the request of the governor of an affected state, or at the request of a fishing community representative. The Secretary determines whether a commercial fishery failure has occurred depending on three factors. First, there must be a fishery resource disaster resulting from a decrease in fish population biomass or the loss of fishing vessels, gear, or related infrastructure. Second, the cause of the fishery resource disaster must be one of the following:

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

Finally, there much be an economic impact resulting from the commercial fishery disaster. Requests usually contain information describing the alleged fishery failure. Although guidelines for handling requests are not codified in rule, the Secretary typically directs the appropriate Regional Administrator for NMFS to collect and analyze required information such as the

historical context, the biological and economic magnitude of the disaster, and the relationship between underlying causes and the alleged fishery disaster.[2] Depending on the circumstances, the analysis should be conducted in consultation with state(s) and should consider supporting information and data that the state(s) provide. The Secretary uses the information to determine whether or not a fishery resource disaster has occurred. The cause of the disaster must also be determined to assess eligibility under different sections of the MSFCMA and the IFA. Once it is concluded that a fishery resource disaster has occurred, fishery socioeconomic data are reviewed to determine whether a commercial fishery failure exists. The decision depends on whether a significant number of people engaged in the fishery have suffered severe economic hardship as a result of the fishery resource disaster. Once it is determined that a commercial fishery failure exists, Congress may use the authorization in the MSFCMA to appropriate funds for financial assistance to harvesters and other affected parties.

After funds are appropriated, the affected state, community, or group develops a spending plan that is evaluated by NMFS regional offices. Funding under the MSFCMA may be used to address a broad variety of needs including assessment of the social and economic effects of the failure, assistance to the community, and projects to restore the fishery or prevent reoccurrence of a similar failure. Before releasing funds, the Secretary must also determine that activities would not expand the size and scope of the failure in that fishery, other fisheries, or affect fisheries in other geographic regions. The federal share of assistance carried out under Section 312(a) of the MSFCMA cannot be greater than 75% of the cost of relief activities.

IFA

The IFA was enacted in 1986 to distribute federal funds to states for developing interstate fishery research programs. Under IFA, funds are authorized to provide assistance for a commercial fishery failure in Section 308(b) or harm caused according to Section 308(d). Under Section 308(b), the causes of a commercial fishery failure or serious disruption to future production due to a fishery resource disaster include natural and undetermined causes. In Section 308(d), fishery resource disasters are referred to as natural disasters. The definition of a fishery resource disaster appears to be broader under the MSFCMA because human-related causes are also included. Otherwise, the process of collecting information and determining whether a fishery resource disaster and corresponding commercial fishery failure have occurred is similar under Section 308(b) of the IFA. Instead of assessing the occurrence of a commercial fishery failure, Section 308(d) of the IFA requires demonstration of harm. Harm is defined as uninsured damage to fishing vessels, fishing gear, processing facilities, marketability, habitat, or infrastructure.

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

[2] NMFS Procedures and Guidance for Disaster Assistance Under Magnuson-Stevens Act Section 312(a) and Interjurisdictional Fisheries Act Sections 308(b) and 308(d) can be found at http://www.nmfs.noaa.gov/directives/.

capacity reduction programs. These programs include fishing vessel buybacks, gear reduction, or fishing permit retirement. Funding under both MSFCMA and IFA is usually appropriated by Congress as needs arise, rather than in anticipation of future needs.

MSFCMA Regional Coastal Disaster Assistance

In 2006, MSFCMA was amended by adding Section 315 the Regional Coastal Disaster Assistance, Transition, and Recovery Program. When a catastrophic regional fishery disaster occurs, the Secretary may establish a regional program to provide immediate disaster relief assistance to fishermen, charter fishing operators, U.S. fish processors, and owners of related fishery infrastructure. A catastrophic regional fishery disaster is defined as a natural disaster, such as a hurricane or tsunami, or a regulatory closure to protect human health or the marine environment. A catastrophic regional fishery disaster is an event that:

- results in economic losses to the coastal or fishing communities;
- affects more than one state or a major fishery managed by a Council[3] or interstate fishery commission; and
- is determined by the Secretary to be a commercial fishery failure under Section 312(a) of MSFCMA or as a fishery resource disaster under Section 308(d) of IFA of 1986.

Within two months after a catastrophic regional fishery disaster, the Secretary is required to provide the governor of each participating state with a comprehensive economic and socioeconomic evaluation of the region's fisheries. The evaluation would 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 would provide funds for infrastructure needs, job training assistance, fishing capacity reduction, and for other activities authorized under either MSFCMA or IFA. Under the Regional Coastal Disaster Assistance, Transition, and Recovery Program, the Secretary may waive the matching requirements if no reasonable means are available for meeting the match, and the probable benefit of 100% federal financing outweighs the public interest in imposing the match.

Other Potential Sources of Assistance

When businesses suffer economic injuries from a disaster, the Small Business Administration (SBA) may also determine whether a disaster declaration is warranted.[4] For example, when red tide required closure of the Maine shellfish fishery in 2005, SBA evaluated the impact on small businesses and determined a disaster declaration was justified. The declaration makes affected

[3] Eight regional Fishery Management Councils were created by the Fishery Conservation and Management Act, later renamed the Magnuson Fishery Conservation and Management Act and more recently the Magnuson-Stevens Fishery Conservation and Management Act. 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 (FMPs) for those fisheries that occur primarily within the federal waters of the Exclusive Economic Zone (3-200 nautical miles from shore). Links to individual Council websites are available at http://www.nmfs.noaa.gov/.

[4] For SBA purposes, disasters may also be declared by the President, state governor, Secretary of Agriculture, or Secretary of Commerce.

businesses eligible for Economic Injury Disaster Loans.[5] The purpose of the loan program is to provide working capital at low interest rates to assist recovery of businesses harmed by a disaster.

The Economic Development Administration (EDA) provides community grants and revolving loan funds to help distressed communities.[6] EDA has assisted fishing communities through its Public Works Program by funding port and harbor improvements. EDA's Economic Adjustment Program helps communities adjust to economic disruptions through support of business development, planning, and market research. Industries that have been adversely affected by increased imports of similar or competitive goods can seek technical assistance under EDA's Trade Adjustment Assistance Program.

Fishery Disaster Declarations

Since 1994, the Secretary of Commerce has declared 28 fishery resource disasters. During this period Congress has appropriated nearly $827 million for fishery disaster relief. **Table 2** provides a list of fishery disasters and funds appropriated by Congress for each.

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. In coastal areas hurricanes may damage fishing industry infrastructure such as vessels, docks, fish houses, and related businesses. Even if the resource remains abundant, harvesting, processing, and transport to markets may not be possible until repairs are undertaken and basic services are restored. In addition to the costs of repairs and the replacement of equipment and gear, lost fishing time also can be costly. The fishery resource also may be directly affected if, in addition to damaged infrastructure, hurricanes cause damage to oyster beds from silt and debris. Algal blooms such as red tide are another type of natural event that can render seafood toxic and result in fishery closures. Under these conditions, fishermen may be completely shut down for months until toxin levels in shellfish decline to acceptable levels.

Declines in fishery resource abundance may result from several factors, such as natural environmental variations, human effects on the environment, and overfishing. Salmon fisheries are sensitive to natural changes in oceanic conditions. Salmon abundance has also been affected where dams, irrigation, grazing, mining, and forestry practices have degraded salmon habitat, especially for salmon populations in the Pacific Northwest. Overfishing by itself is not an acceptable cause of a fishery resource disaster because it is not beyond the control of fishery managers.[7] However, a fishery resource disaster of natural or undetermined causes may be exacerbated by overfishing. In these cases assistance may include efforts to rationalize (decrease) fishing capacity. Overfishing has also contributed to fish population declines in several resource disaster cases such as the New England multispecies fishery and the Pacific groundfish fishery. In these cases, fish abundance decreased significantly and stock rebuilding has required substantial decreases in harvest.

[5] For information concerning SBA Economic Injury Disaster Loans, see http://www.sba.gov/services/disasterassistance/index.html. Also see CRS Report RL33243, *Small Business Administration Reauthorization: A Primer on Programs*, by N. Eric Weiss.

[6] For information on EDA programs, see http://www.eda.gov/AboutEDA/Programs.xml.

[7] National Marine Fisheries Service, Procedures Guidance for Disaster Assistance Under Magnuson-Stevens Act 312(a) and Interjurisdictional Fisheries Act 308(b) and 308(d), National Marine Fisheries Service Instruction [31-108-01], May 8, 2007, p. 10, https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/31-108-01.pdf.

Table 2. Fishery Failure Declarations Since 1994

Fishery or Region	Authority	Declared	Appropriation
New England Multispecies I	IFA 308(b)	3/18/94	$86.8 million[a]
Northwest Salmon Fisheries I	IFA 308(d)	5/26/94	$12 million
Gulf of Mexico Hurricanes	IFA 308(d)	8/2/95	$15 million
New England Multispecies II	IFA 308(d)	8/12/95	$26 million
Northwest Salmon Fisheries II	IFA 308(d)	8/2/95	$13 million
Bristol Bay/Kuskokwim River (AK)	MSA 312(a)	11/5/97	$7 million
Gulf of Mexico Flooding Events	MSA 312(a)	8/7/98	$3.5 million
Northwest Salmon Fisheries III	MSA 312(a)	8/7/98	$3.5 million
Bristol Bay/Kuskokwim River (AK)	MSA 312(a)	9/9/98	$50 million
Florida Trap Fisheries	MSA 312(a)	9/20/99	$4.8 million
North Carolina Fisheries	MSA 312(a)	9/22/99	$6 million
Long Island Sound Lobster	MSA 312(a)	2/4/00	$13.9 million
West Coast Groundfish Fisheries	MSA 312(a)	2/4/00	$5 million
Bering Sea Alaska Snow Crab	MSA 312(a)	5/11/00	$10 million
Alaska Salmon (Norton Sound)	IFA 308(b) MSA 312(a)	8/4/00	$15 million $7.5 million
Fraser River/Lummi Indian Salmon	MSA 312(a)	11/13/02	None to date
Georgia Blue Crab	MSA 312(a)	5/8/03	None to date
Red Tide (Massachusetts)	MSA 312(a)	6/16/05	$2.5 million
Red Tide (Maine)	MSA 312(a)	6/23/05	$2 million
Gulf of Mexico Fisheries (Katrina and Rita)[b]	MSA 312(a) IFA 308(d)	9/9/05 10/4/05	$128 million $110 million
Klamath river Basin (Salmon)	IFA 308(b) MSA 312(a)	8/10/06	$60.4 million
Sacramento River (Chinook troll salmon)	IFA 308(b) MSA 312(a)	5/1/08	$170 million
Gulf of Mexico (Gustav and Ike)	IFA 308(d)	9/17/08	$47 million
Chesapeake Bay Blue Crab (MD and VA)	MSA 312(a)	9/23/08	$20 million
Red Tide (Maine, NH, and Mass.)	MSA 312(a)	11/14/08	$5 million
Puget Sound Sockeye Salmon	MSA 312(a)	11/14/08	$2 million
Sacramento River (Chinook troll salmon)	IFA 308(b) MSA 312(a)	4/30/09	$53 million
Yukon River, AK (Chinook salmon)	MSA 312(a)	1/15/10	None to date
Gulf of Mexico (Deepwater Horizon oil spill)	MSA 312(a)	5/24/10	None to date

Source: Adapted from the NOAA, Office of Management and Budget, Fishery Disaster Assistance Web page, http://www.nmfs.noaa.gov/mb/financial_services/disaster.htm.

a. Funding was appropriated on several different occasions from 1994 to 1999.

b. Fishery failures for both hurricanes were declared under § 312(a) of the MSFCMA and § 308(d) of the IFA.

Funds for disaster assistance have been used for a wide variety of purposes, and may include direct assistance to fishermen such as:

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

Other forms of indirect fishery-related assistance have included fishing capacity reduction (vessel, permit, and gear buybacks), formation of a fisheries research trust, economic planning grants, and research grants. **Table 3** summarizes funding and activities by fishery or disaster event for fishing disaster declarations.

Table 3. Assistance Provided for Commercial Fishery Resource Disasters by Fishery Disaster and Year of Appropriation

New England Multispecies **1994—$30 million.** Assistance: fishing industry grants that included employment for fishermen (training, new business opportunities, aquaculture, marketing, and by-catch reduction), demonstration buyback program, loan program, and family assistance centers. **1995—$25 million.** Assistance: vessel buyback, administration, and fisherman health program. **1999—$6.8 million.** Continuation from 1994 failure with assistance that included compensation for lost fishing time and cooperative research. **2000—$25 million.** Continuation from 1994 failure with assistance that included permit buyback and cooperative research. **2001—$1 million.** Continuation from 1995 of the fisherman health program. **2008—$13.4 million.** (Disaster not declared.) Assistance: funding for fishermen, fishing businesses, and a health insurance program.
Pacific Northwest Salmon **1994—$12 million.** Assistance: fishing permit buyback, habitat restoration jobs, and data collection jobs. **1995—$13 million.** Assistance: fishing permit buyback, habitat restoration jobs, and data collection jobs. **1998—$3.5 million.** Assistance: fishing buyback program. **2007—$60.4 million.** (Klamath River-related.) Assistance: direct payments to fishermen for business expenses. **2008—$170 million.** Assistance: direct payments to commercial and recreational charter fishermen. **2009—$53.1 million.** (Remainder of $170 appropriated by Congress in 2008.) Assistance: direct payments to commercial and recreational charter fishermen.
Gulf of Mexico Hurricanes **1995—$15 million.** (Hurricanes and tropical storms 1992-1995.) Assistance: compensation to fishermen, Gulf states for research and habitat restoration (inshore license buyback TX and cooperative research LA). **2006—$128 million.** Assistance: rehabilitating oyster beds and shrimp grounds, reseeding, rehabilitating, and storing oyster reefs, and cooperative research and monitoring. **2007—$110 million.** Assistance similar to 2006 funding. **2008—$47 million.** Assistance: restore damaged oyster reefs, removal of storm debris, rebuilding of processing houses, docks, ice houses, and other parts of fishery related infrastructure.
Alaska Salmon **1998—$7 million** (Bristol Bay/Kuskokwim River.) Assistance: community grants, loan program, economic planning grants, and fisheries research, education, and training grants. **1999—$50 million** (Bristol Bay/Kuskokwim River/Yukon River.) Assistance: emergency assistance to affected families, direct loans, community development activities. **2000—$15 million** (Norton Sound/Kuskokwim/Yukon River.) Assistance: economic development and loans. **2001—$7.5 million** (Norton Sound/Kuskokwim/Yukon River.) Assistance: economic development and loans.

Gulf of Mexico Flooding 1997—$3.5 million. Assistance: research and data collection.
Florida Trap Fishery **2000—$ 4.8 million.** Assistance: direct assistance to fishermen, buyback trap certificates, retrieve lost traps and debris, and research ongoing trap reduction program.
North Carolina Fisheries **2000—$6 million.** Assistance: direct economic relief to seafood dealers, charter and head boats and commercial fishing piers, research and resource assessment, and mitigation of oyster losses by enhancing habitat.
Long Island Sound Lobster Fishery **2000—$13.9 million.** Assistance: economic compensation, trap tag buyback, job training, small business development, interest subsidy loans, and research on causes of the disaster.
West Coast Groundfish Fisheries **2000—$5 million.** Assistance: compensation to individuals, provided direct sustaining aid to fishermen, and assistance to resource dependent communities.
Bering Sea Alaska Snow Crab **2000—$10 million.** Assistance: community and economic development, Bering Sea ecosystem research, and cooperative research.
Red Tide (Massachusetts and Maine) **2006—$5 million.** Assistance: pay compensation to individuals and improve management of future outbreaks (research and monitoring). **2008—$5 million.** Assistance similar to 2006.
Chesapeake Bay Blue Crab (Maryland and Virginia) **2008—$20 million.** Assistance: habitat improvement, employing watermen, industry projects and diversification, and research and monitoring.
Georgia Blue Crab Declaration made in 2003 but no funding has been provided.
Fraser River/Lummi Indian Fishery (Sockeye salmon) Declaration made in 2002 but no funding has been provided. **2008—$2 million.** Assistance: relief for tribal and non-tribal fishermen.

Source: Adapted from the National Oceanic and Atmospheric Administration, Office of Management and Budget, Fishery Disaster Assistance Web page, http://www.nmfs.noaa.gov/mb/financial_services/disaster.htm.

State Role

States are frequently an active partner throughout the process, from requesting the Secretary of Commerce to declare a fishery failure and providing related data to disbursing relief to fishermen and related businesses. Relief funding is often provided directly to states, or in cases of regional disasters through regional commissions such as the Pacific States Marine Fisheries Commission. For example, in 2007, distribution of Oregon salmon troll fishery relief was planned and coordinated by the state's department of agriculture in cooperation with related agencies and nonprofit organizations such as the Oregon Salmon Commission. In addition to matching funds, state government may also provide funding when federal funds are not available, although historically such funding has been limited.

Fishing Capacity Reduction Programs

Many U.S. fisheries are overcapitalized—investments in fishing capacity are greater than that needed to harvest the fishery resource on a sustainable basis. When fishery resources decline precipitously, as in the case of a fishery failure, effects on the fishing industry are likely to be

greater when there is excess fishing capacity operating in the fishery. First, when excess fishing capacity exists, overfishing often occurs and management goals are likely to involve rebuilding of fish populations. During rebuilding, the fishery is likely to be highly regulated with relatively low allowable harvests. Second, since many fisheries are already overcapitalized and fully exploited, there are few alternative fishing opportunities. Finally, the financial effects of any fishery failure are likely to be greater when there is overcapacity because of the larger number and/or size of vessels and associated crew participating in the fishery.

Fishing capacity reduction, often referred to as buyback programs, has been a prominent feature of several disaster relief programs. Capacity reduction is usually accomplished through the direct purchase of fishing vessels, gear, and/or fishing permits.[8] Capacity reduction is discussed in Section 312(b) of the MSFCMA and Section 308(d) of the IFA.

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

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

Recent Actions by NOAA and Congress

The following summaries include fishery disaster declarations since 2006. The most recent appropriation for fishery disaster assistance was $75 million included in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329). These funds are being used for fishery resource disasters declared by the Secretary of Commerce during 2008. Recipients of this funding include the Gulf of Mexico fishing industry, the Chesapeake Bay soft shell blue crab fishery, New England shellfish fisheries, and Puget Sound sockeye salmon fisheries. The most recent fishery failure was declared because of harm to Gulf of Mexico fisheries from the Deepwater Horizon oil spill.

West Coast Salmon Ocean Troll Fishery (Klamath)

On July 6, 2006, a fishery failure was declared for the West Coast ocean troll salmon fishery. Chinook salmon stocks that spawn in California and Oregon rivers intermingle in the ocean and

[8] See CRS Report 97-441, *Commercial Fishing: Economic Aid and Capacity Reduction*, by Andrew G. Read and Eugene H. Buck.

are harvested together off the coasts of these states. Klamath River fall Chinook salmon is a key stock with respect to both landings and regulation of the fishery.[9]

The ocean troll salmon fishing season between Cape Falcon, Oregon, and Point Sur, California, was strictly limited during the 2006 season.[10] From 2001 to 2005, drought conditions in the upper Klamath Basin resulted in very low flow conditions in the Klamath River and its tributaries. Low flows likely contributed to substantial mortality of juvenile and adult Chinook salmon by creating an environment in which they become more susceptible to endemic diseases. In 2004 and 2005, returns of Klamath River fall Chinook fell below 35,000, the regulatory floor set for any one year, and in 2006, the run size was projected to be approximately 25,000. As a result of the anticipated low spawning return, the Pacific Fishery Management Council (PFMC) recommended, and NOAA issued, a Temporary Rule for Emergency Action to strictly curtail the troll salmon fishery off Oregon and California from May 1, 2006, to August 31, 2006. Although a complete closure of the fishery was avoided, landings decreased in 2006 by 81% when compared to the average of the preceding five years.

The governors of Oregon and California requested action based on the 2006 forecast of Klamath River fall Chinook salmon returns and the actions taken in the spring of 2006 by the PFMC and NMFS. Since the PFMC developed the 2006 season regulations in the spring of 2006, the likely effects of the curtailed fishery were anticipated before the actual losses were realized. Fishermen and others associated with the fishing industry were concerned that aid to fishing communities might be delayed. On July 6, 2006, the Secretary of Commerce declared a commercial fishery failure under Section 308(b) of the IFA, and on August 10, 2006, under Section 312(a) of the MSFCMA. Fishing industry concerns increased during the fall of 2006 and spring of 2007 when no federal funding was provided. In May 2007, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, (P.L. 110-28) allocated $60.4 million to the NOAA "Operations, Research, and Facilities" account to be distributed among eligible recipients affected by the commercial fishery failure. Assistance was distributed by the Pacific States Marine Fisheries Commission to Oregon and California fishermen and Indian tribes that rely on salmon. Oregon salmon troll fishery landings and revenue improved only slightly during the 2007 season. In 2008, the ocean fishery was limited by low Chinook salmon returns to the Sacramento River.

New England Multispecies Fishery

In 2007, the governors of Maine, Massachusetts, and Rhode Island requested that the Secretary of Commerce declare a commercial fishery failure for the Northeast Multispecies (groundfish) fishery. They cited economic hardships endured by New England fishermen because of restrictive fishery regulations for groundfish species such as cod. In October 2007, NMFS responded that revenue declines in Maine and Massachusetts were not sufficient to warrant a commercial fishery failure. NMFS cited increases in 14 of 18 groundfish stocks in the most recent stock assessment

[9] The conservation objectives under the Pacific Fishery Management Council's (PFMC) Pacific Coast Salmon Fishery Management Plan require returns of 33-34% of potential adult natural spawners and no fewer than 35,000 naturally spawning adults to the Klamath River. When the stock is projected to fall below this level, PFMC is required to recommend a closure of the salmon fisheries within its jurisdiction that harvest Klamath River fall Chinook salmon.

[10] From 2001 to 2005, the dressed weight of Oregon and California troll salmon landings averaged 8.025 million pounds, but in 2006 landings dropped to 1.529 million pounds. For West coast troll salmon fishery statistics, see http://www.pcouncil.org/salmon/salbluebook/salbluebook.html.

and total fishery revenue increases for some ports during the previous year. Industry representatives responded that a disaster was declared 13 years ago when fish landings were more than twice as high as in 2007. The actual biological and economic impacts cited by NMFS and industry sources differ depending on the time period used, species considered, and fishing port.

On December 4, 2007, the Senate agreed to S.Res. 376, expressing the sense of the Senate that the Secretary of Commerce should declare a commercial fishery failure for the groundfish fishery for Massachusetts, Maine, New Hampshire, and Rhode Island and immediately propose regulations to implement Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act. The Secretary did not change his decision. However, the omnibus spending bill passed on December 17, 2007, included $13.4 million in the NOAA budget for the Massachusetts multispecies fishery. The funding was provided to lessen the economic impacts associated with New England Fishery Management Council's Framework 42 of Amendment 13 to the Multispecies Fishery Management Plan.[11] In August 2008, Massachusetts Governor Patrick announced the disbursement of $11.3 million to Massachusetts fishermen and fishing businesses, $750,000 for crew members, $630,000 for a health insurance program for crew members, and $700,000 to cover administrative fees. Concerns have been raised because fishermen in New Hampshire and Maine who face similar economic hardships are not eligible for Massachusetts funding.

West Coast Salmon Ocean Troll Fishery (Sacramento)

On April 10, 2008, the Pacific Fishery Management Council adopted a complete closure of commercial and sport fisheries off California and most of Oregon in response to the collapse of the Sacramento River fall Chinook salmon run. The minimum conservation goal for Sacramento fall Chinook is 122,000 to 180,000 spawning salmon,[12] while as recently as 2002, 775,000 adults returned to spawn.[13] Even with ocean fishery closures, the 2008 returns of Sacramento fall Chinook were projected to be 54,000 fish. In March 2009, NMFS released a report on the causes of the decline of Sacramento fall Chinook. The report identified unfavorable ocean conditions as the primary factor that led to poor survival of juvenile salmon when they entered the ocean in 2005 and 2006. It also found that the stock was more susceptible to poor ocean conditions because of habitat degradation in the freshwater portion of its range.

On May 1, 2008, in response to requests by the governors of California, Oregon, and Washington, the Secretary of Commerce declared a commercial fishery failure for the West Coast salmon fishery. Congress provided $170 million in disaster funds in the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) for commercial and recreational members of fishing communities who were affected by the fishery failure. In September 2008, $100 million was released to the Pacific States Marine Fishery Commission for distribution to commercial fishermen, processors, charter boat operators, recreational guides, and other businesses dependent on fishing. On April 30, 2009, the Secretary of Commerce notified the governors of California and Oregon that the fishery failure would continue in 2009. Returns of Sacramento fall Chinook salmon remained below levels required for a fishery and the 2009 commercial salmon troll fishery was closed for most of

[11] The primary purpose of Framework 42 of Amendment 13 to the Multispecies Fishery Management Plan is to establish a biennial adjustment process to review the fishery periodically and recommend changes to management measures necessary to end overfishing and rebuild stocks.

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

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

Oregon and all of California. The ocean recreational fisheries were also limited in both states, especially California. The extension of the disaster declaration ensured release of the remaining $70 million in unspent funds from the original $170 million provided in 2008.

Gulf of Mexico Fisheries (Hurricanes Gustav and Ike)

On September 17, 2008, Commerce Secretary Gutierrez determined that Hurricanes Gustav and Ike had caused a fishery resource disaster in the Gulf of Mexico. The determination was made pursuant to Section 308(d) of the Interjurisdictional Fisheries Act. Commercial harvests in the affected areas of Louisiana and Texas consist mostly of shrimp, finfish, and oysters. In November 2008, NOAA announced that Louisiana had become eligible for up to $40 million and that Texas had become eligible for up to $7 million in fishery disaster aid for restoring damaged oyster reefs, removing storm debris, and rebuilding fishing infrastructure destroyed by the hurricanes.

Chesapeake Bay Blue Crab

On September 23, 2008, Secretary Gutierrez determined that the soft shell blue crab fishery[14] of the Chesapeake Bay had undergone a commercial fishery failure under § 312(a) of the MSFCMA. The blue crab population has declined since the 1990s, with a 41% decline in the value of soft shell blue crab landings in Maryland and Virginia. Although the cause is uncertain, factors contributing to the blue crab population decline are likely to include deteriorating water quality, loss of habitat, and overfishing.[15] Maryland and Virginia adopted new commercial and recreational regulations starting in 2008 to shorten the season in both states, limit the harvest of female crabs in Maryland, and close the winter dredge fishery in Virginia. The fishery failure determination was made in response to requests by the governors of Virginia and Maryland based on the decline of the resource and the importance of this fishery to Chesapeake Bay communities and the regional economy. The federal government has allocated $10 million of disaster relief to each state. Funds have been used for assistance to the fishing industry, habitat restoration, and developing permit buyback programs.

New England Red Tide, Puget Sound Sockeye Salmon, and Yukon River Chinook Salmon

On November 14, 2008, the Secretary of Commerce determined a commercial fishery failure had occurred in Maine, New Hampshire, and Massachusetts because a red tide bloom required closure of shellfish fisheries. Blooms of the algae *Alexandrium fundyense*, commonly referred to as red tide, produce a toxin that is ingested and concentrated by shellfish such as clams, mussels, and oysters. When the concentration of the algae is high, shellfish beds must be closed because shellfish become toxic and can cause paralytic shellfish poisoning. During 2008, red tide was widespread in ocean waters off the three states. A total of $5 million was allocated among the three states, with $2 million for Massachusetts and Maine and $1 million for New Hampshire.

On November 14, 2008, the Secretary of Commerce determined a commercial fishery failure had occurred for sockeye salmon fisheries in Puget Sound and the Northern Pacific coast of

[14] Blue crab are harvested at three stages—as hard crab, as peeler crabs (just prior to molting), and as soft shell crabs (immediately after molting).

[15] See http://www.dnr.state.md.us/fisheries/regulations/bluecrabproposedregulations.html

Washington. Northwest Native American tribes and non-tribal fishermen have been harmed by declines in sockeye salmon runs and harvests. A total of $2 million has been provided for tribal and non-tribal fishing communities.

On January 15, 2010, the Secretary of Commerce determined a commercial fishery failure had occurred for the Yukon River Chinook salmon commercial fishery. Harvests have been restricted because of the low number of Chinook salmon that returned to the Yukon River in 2008 and 2009. In 2008, the commercial fishery harvest was 87% below the recent five-year average, and in 2009 there was no commercial season and limited subsistence fishing. The Supplemental Appropriations Act, 2010 (H.R. 4899), includes $5 million for fishery failures declared by the Secretary of Commerce in January 2010.

Gulf of Mexico Oil Spill

As of July 28, 2010, the area closed to fishing in the Gulf of Mexico because of the continuing Deepwater Horizon oil spill was 57,539 square miles, or approximately 24% of Gulf of Mexico federal waters.[16] The spill has harmed commercial and recreational fishing and related businesses that have been unable to land or process seafood. On May 24, 2010, the Secretary of Commerce determined that the ongoing oil spill had caused a fishery failure in the states of Louisiana, Mississippi, and Alabama. On June 2, 2010, the Secretary added Florida to the earlier determination. Both determinations were made under Section 312(a) of the MSFCMA, which would require a 25% funding match from states that receive assistance. The Administration requested $15 million in supplemental funding to address the fishery failure and $5 million in economic development assistance through the Economic Development Administration. In addition, the Administration is requesting unemployment coverage for this disaster, and the Small Business Administration is offering economic injury disaster loans.[17] On July 27, 2010, the Supplemental Appropriations Act, 2010 (H.R. 4899), was cleared for the White House and now awaits the signature of the President. The bill includes a total of $28 million for fishery disaster assistance and $5 million for economic development assistance.

Injury claims for compensation from BP have been the main source of relief to Gulf fishermen who have been economically harmed by the spill. The claims process has been developed by BP to fulfill obligations as a responsible party under the Oil Pollution Act of 1990 (P.L. 101-380). Claims can be made by any business that can show it has been harmed by the spill. According to BP, interim payments are based on one month of income and will be adjusted with additional documentation.[18] Claimants will continue to receive payments for as long as they are unable to earn a living because of injury to natural resources caused by the spill.[19] BP has established 36 claims offices in the Gulf states affected by the spill.[20] As of July 28, 2010, BP has received over 133,000 claims, made at least one payment to 37,200 claimants, and paid a total of $256 million.[21] Of this total, nearly $84.5 million has been paid to fishermen, seafood processors, and

[16] See, http://www.noaanews.noaa.gov/stories2010/20100607_closure.html.

[17] For more information related to disaster assistance, CRS Report RL34146, *FEMA's Disaster Declaration Process: A Primer*, by Francis X. McCarthy.

[18] U.S. Congress, House Committee on the Judiciary, *Testimony of Darryl White, Vice President, Resources, BP America*, 111th Cong., 2nd sess., May 27, 2010. Hereinafter cited as, BP 2010.

[19] BP 2010.

[20] See http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7064024.

[21] See http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7064024.

charter boat owners.[22] Additional claims also have been paid to individuals such as deck hands and seafood processors, and to businesses related to the fishing industry. Some members of the fishing industry have expressed concerns that the processing of claims has been slow, some individual payments have been inadequate, and recent years may not be representative of potential earnings in 2010. Perhaps the greatest concern of fishermen is the damage to fisheries resources and uncertainty related to the extent and duration of these effects on their livelihood.

BP also has employed vessel captains and crew through the Vessels of Opportunity Program. The program is designed to provide local boat operators with the opportunity to assist with response activities such as transporting supplies, assisting with wildlife rescue, and deploying booms. Only captains and employees who have completed training and meet other conditions may participate in the program. Qualifying for the program does not guarantee employment.

As of July 27, 2010, the Small Business Administration had approved 195 economic injury assistance loans totaling $17 million for small businesses affected by the oil spill. SBA also has granted deferments on 707 existing SBA disaster loans that total $3.7 million each month.[23]

Recent Administrative Actions by NMFS

On January 15, 2009, NMFS proposed regulations for fishery disaster provisions of § 312(a) and § 315 of the MSFCMA and § 308(b) and § 308(d) of the IFA.[24] The regulations are being developed to clarify these statutes to ensure consistency and to facilitate the processing of requests. NMFS is proposing to establish definitions and characteristics of commercial fishery failures, fishery resource disasters, serious disruptions affecting future production, and harm incurred by fishermen. For example, specific percentage revenue decreases are proposed for commercial fishery failures, and percentage biomass decreases are proposed for serious disruptions affecting future production. The regulations would also establish requirements for initiating NMFS review and the administrative process for processing applications.

Issues for Congress

Commercial fisheries are strongly influenced by environmental conditions that may affect industry infrastructure or the abundance and distribution of the fishery resource. These changes often take place suddenly, as in the case of hurricanes, oil spills, and harmful algal blooms within a fishing season with little or no warning. For example, significant portions of federal and state waters in the Gulf of Mexico were closed within the first month of the Deepwater Horizon oil spill. Disaster relief programs may help save businesses that have been harmed by these events and can address severe economic fluctuations by providing assistance until conditions return to "normal." Several concerns have emerged that relate to the nature of commercial fisheries and disaster relief programs, including (1) timing relief to meet crucial needs, (2) relating disaster relief to long-term fisheries management, (3) defining a fishery failure, and (4) determining the beneficiaries of relief.

[22] See http://www.bp.com/sectiongenericarticle.do?categoryId=9034294&contentId=7063267.

[23] SBA totals include all businesses affected by the spill including those related to the fishing industry. See http://www.deepwaterhorizonresponse.com/go/doc/2931/624543/.

[24] National Oceanic and Atmospheric Administration, "Magnuson-Stevens Act Provisions; Interjurisdictional Fisheries Act; Disaster Assistance Programs; Fisheries Assistance Programs," 74 *Federal Register* 2467-2478, January 15, 2009.

Timing of Relief

The timeliness of disaster relief is a concern because relief funds are seldom appropriated in anticipation of disasters. First, information regarding the scope of the disaster usually needs to be compiled by the fishing industry, state and local governments, and NMFS. Difficulties in concluding this task can be compounded by the lack of data and readily available economic studies. In cases such as Hurricane Katrina, it was immediately clear that a disaster had occurred, and the Secretary made a determination within two weeks of the landfall of Hurricane Katrina. Although the full dimensions of the disaster and the level and scope of resource needs remained uncertain for months after the disaster, many have asserted that some basic aid should have been provided to members of the fishing industry immediately after the disaster. Similarly, the full extent of damages from the Deepwater Horizon spill is unknown, but closures have already harmed commercial and recreational fishing and related businesses.

For the West Coast troll salmon fishery in 2006, immediate questions revolved around whether a resource disaster would occur. Background information, fishery landings, and economic data were needed for the Secretary to make a determination. Managers and participants were aware of the impending fishery closure before regulations were adopted because the poor condition of the Klamath River Chinook salmon stock was well documented. Even after regulations were adopted, some questioned whether a fishery failure could be declared before the season started and the fishing industry had actually been harmed.

After a fishery failure is declared, funding is dependent on appropriations by Congress. Given the timing of appropriations bills and congressional schedules, it can be difficult to appropriate funding in a timely manner. Hurricane Katrina and Hurricane Rita fishery disaster funding was appropriated in June 2006, more than nine months after the Gulf fishery failure was declared in September 2005. Many in the industry asserted that the greatest need occurred immediately after the hurricanes, when infrastructure, vessels, gear, and markets were lost to fishermen and other industry participants. The West Coast troll salmon fishery was declared a fishery failure in the summer of 2006, but funding was not appropriated until May 2007. Many who work in the Gulf fishing industry are concerned that compensation from BP may not be sufficient or reach them in time to sustain their businesses. Fishery failure determinations have been made for four states in the Gulf of Mexico, and in July 2010, funds for disaster relief to supplement claims or to provide other assistance were approved by Congress.

In the short term, many fishing industry participants believe that the most pressing concern should involve getting relief to those individuals and businesses most directly and immediately affected by the fishery failure. For these needs, some have advocated establishing a disaster fund with funding appropriated in advance that could provide assistance on short notice.

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 delays the inevitable readjustment that may be needed for fisheries with excess harvesting capacity. Critics argue that climatic and/or environmental conditions are blamed for fish population declines caused by overfishing. Most fish populations vary over time, and frequently it is difficult to determine the relative importance of the factors that cause these variations.

Features of several programs such as buybacks, fisherman training, and cooperative data collection focus on concerns related to the need for readjustments in fishing fleet size. Yet, when relief is provided, even when it includes a buyback program, greater numbers of fishermen and effort usually remain in the fishery than would be sustainable in the long-run. Many fisheries managers agree that relief such as vessel buybacks needs to be more closely integrated with ongoing fisheries management objectives.

Defining Fishery Failures

The general causes of fishery resource disasters that result in commercial fishery failures are defined by the MSFCMA and IFA. However, specific characteristics of a fishery resource disaster such as scale, timing, and extent are not defined. Since there is no set definition of a fishery failure or fishery resource disaster, the Secretary of Commerce has a large degree of discretion when determining whether a fishery failure has occurred.

For example, in 2007 the governors of Maine, Massachusetts, and Rhode Island requested the Secretary of Commerce to declare a fishery failure for the Northeast Multispecies (groundfish) fishery. There appears to be general agreement that Northeast fishermen have faced continuing hardships during the last several years, but disagreement centers on the primary cause of the decline and whether this disruption rises to the level of a commercial fishery failure. These ambiguities appear to be one of the reasons that NMFS solicited the public for information related to fishery resource disasters during 2008 and proposed regulations in January 2009.

Who Benefits?

Who benefits from disaster funding is a reoccurring point of contention. Participants such as fishermen and fish processors may be widely dispersed and difficult to locate and track. Although it is often possible to contact vessel and processing plant owners, industry-related labor such as crew members and fish processing employees may be difficult to track. In some fisheries, crew members are temporary laborers that follow fishing opportunities.[25] Because of the transient nature of employment in the fishing industry and seasonal movement of fishing vessels among regions, labor statistics regarding the employment of fishermen are either difficult to obtain or may not exist. Similar problems may occur in related fishery processing and distribution sectors. Some have voiced the need for better labor statistics that can assist in forecasting and planning for the effects of different fisheries programs, including disaster relief.

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

[25] For more information, see CRS Report RS21312, *How Many Commercial Fishermen?*, by Eugene H. Buck.

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