

**TESTIMONY OF CHRIS OLIVER
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**ON
FISHERY DISASTERS
BEFORE THE**

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
U.S. SENATE**

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Good afternoon, Chairman Wicker, Ranking Member Cantwell, and Members of the Committee. My name is Chris Oliver and I am the Assistant Administrator for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). Fisheries are an essential part of coastal economies. They provide jobs for fishermen, fish processors, and related maritime support industries. U.S. commercial and recreational saltwater fishing generated \$212 billion in sales and supported 1.7 million jobs in 2016.

I appreciate the opportunity to discuss our fishery disaster programs and opportunities to improve them to ensure they are as effective as possible. Fishery disaster assistance is administered by the Department of Commerce through NMFS. Two statutes, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Interjurisdictional Fisheries Act, provide the authority and requirements for fishery disaster assistance. Under both statutes, a request for a fishery disaster determination is generally made by the Governor of a State, Tribal leader, or by an executive representative of an affected fishing community, although the Secretary of Commerce may also initiate a review at his or her own discretion. The Secretary determines whether the circumstances are consistent with relevant statutes and warrant a fishery disaster determination. If the Secretary determines that a commercial fishery failure due to a fishery resource disaster has occurred, that determination provides a basis for Congress to appropriate funds for disaster assistance. Those funds are administered by the Department of Commerce.

Since fisheries depend on the productivity of the environment, there are natural variations in the number of fish caught each year and in the revenue generated by the fishery. However, fisheries are also subject to a number of factors that can cause sudden and unexpected losses, leading to serious economic impact for fishers and their communities. NMFS's *Policy on Disaster Assistance under the Magnuson Stevens Act 312(a) and 315 and the Interjurisdictional Fisheries Act 308(b) and 308(d)* (Fishery Disaster Policy) lays out a consistent process across all our statutory authorities for addressing fishery disasters.

Changes in the ocean and coastal environment, hurricanes and other storms, and unprecedented freshwater runoff events are resulting in significant impacts to a number of our fisheries around

the country. The Members of this Committee are well aware that many of our coastal communities are being seriously impacted, ranging from fisheries in the Gulf of Mexico to Alaska to the West Coast. Over the course of this Administration, the Secretary of Commerce has determined multiple fishery disasters and is in the process of awarding approximately \$220 million in disaster assistance to those impacted communities. Approximately \$185M is already in use on the ground and we continue to work with the recipients to award remaining grants as quickly as possible. In addition, fishery disasters were declared in association with Hurricane Michael for Florida and Hurricane Florence for North Carolina in late 2018.

Finally, we have an additional 12 requests for disaster determinations that are pending, including: 2018 Pacific Cod in the Gulf of Alaska, 2018 Chignik Sockeye Salmon in the Gulf of Alaska, 2018 Penaeid Shrimp Fisheries in Georgia and South Carolina, 2018 Yurok Tribe Klamath River Fall Chinook Salmon Fishery in California, 2016 and 2017 Northern California Red Sea Urchin, 2017-2019 Pacific Sardine in California, the State of Florida due to red tide events between 2015 and 2018, Louisiana, Mississippi, and Alabama for impacts to multiple fisheries in the northern Gulf of Mexico, the 2018 Port Gamble Coho Fishery from the Port Gamble S'Klallam Tribe (WA) and for the 2019 Chehalis River Salmon from the Chehalis Reservation (WA). In FY19, Congress appropriated an additional \$165 million in disaster assistance that we are working to allocate across numerous pending and previously unfunded, positively-determined disasters.

Today I will describe the role of NMFS, the Department of Commerce, and the Administration in determining the occurrence of a fishery disaster and in awarding appropriated funds to affected entities.

Fishery Disaster Determinations

The process for making a fishery disaster determination has three main steps. First, an eligible entity, such as a Governor or Tribal leader, requests a determination from the Secretary of Commerce. Second, NMFS conducts an analysis of the request. Third, the Secretary makes a determination.

NMFS' analysis of a request for a fishery disaster determination is based on a three-prong test that must be met to make a fishery disaster determination in accordance with statutory requirements. First, there must be a "fishery resource disaster" as defined by the Magnuson-Stevens Act or the Interjurisdictional Fisheries Act. A fishery resource disaster means a sudden, unexpected, large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource, which could include loss of fishing vessels and gear, for a substantial period of time.

Second, there must be an "allowable cause" for a fishery resource disaster under the statutes. Allowable causes for a fishery resource disaster under the Magnuson-Stevens Act are natural causes; undetermined causes; or man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (e.g., those imposed as a result of judicial action) imposed to protect human health or the marine environment. For the Interjurisdictional Fisheries Act, the allowable causes are natural causes or undetermined causes.

Third, there must be economic impact stemming from the alleged disaster that has caused a commercial fishery failure. NMFS compares the fishery's annual commercial revenue during the disaster to the average annual commercial revenue in the most recent five years. Typically, revenue loss greater than 80% will automatically meet the economic criteria of a commercial fishery failure. Revenue losses less than 35% will not constitute a commercial fishery failure, except in extenuating circumstances. Revenue losses between 35% and 80% require further evaluation to determine if the economic impacts were, for example, outside the normal range of variability. The same percentage thresholds also apply to determining whether "harm" or "serious disruption" to the fishery occurred per the terms of the Interjurisdictional Act. To demonstrate that a commercial fishery failure occurred, we must, with very few exceptions, such as natural disasters, have actual commercial revenue data. This data, such as landings and ex-vessel value, is generally not available until after the close of the fishing year. While we can begin analyzing parts of a fishery disaster request quickly, we cannot complete our full analysis without this commercial revenue data.

In exceptional circumstances, communities can anticipate economic impacts based on projections about the consequence of a disaster and make disaster requests prior to the end of the fishing season. This could be due to closures to protect human health or because of unanticipated circumstances that prevent fishers from harvesting their allocated catch (e.g., harmful algal blooms). However, it is usually more straightforward to determine if there has been a commercial fishery failure after economic impacts of a fishery resource disaster are known.

The Secretary notifies the requester once a decision has been reached regarding the fishery disaster determination request.

Disaster Assistance

There is no standing fund for fishery disaster relief. Instead, Congress appropriates funds for fishery disaster assistance on a case-by-case basis. In the last five years, Congress has passed four appropriations bills that address fishery disasters. The appropriations language varies and can sometimes determine the universe of eligible fishery disasters and provide other guidance. If an appropriation covers more than one disaster, NOAA will allocate the funds based on direction in the appropriation and in accordance with relevant statutes.

Under both the Magnuson-Stevens Act and Interjurisdictional Fisheries Act, if Congress appropriates funds for a fishery disaster, the Secretary may provide disaster assistance in the form of a grant, cooperative agreement, loan, or contract, following Congressional guidance and the appropriate administrative processes. In the last ten years, NMFS has used the federal grant process as the most efficient mechanism to provide fishery disaster relief. The specific conditions and requirements of the grants are informed by the appropriations language and the Federal assistance authorities used to disburse the funding.

NOAA applies the most expeditious method to obligate and manage the funds. In some cases, it is more efficient to award funds through an entity such as one of the Interstate Marine Fisheries Commissions. In other cases, the most efficient approach is to award funds directly to states. Typically, the awardee provides NMFS with a spend plan and project narrative for NOAA

review. The spend plan allows the entity receiving the funds to articulate what projects it intends to use the funding for, such as rebuilding shoreside infrastructure, gear replacement, habitat restoration or other activities. Spend plans allow NMFS to ensure that the funds are being used in a manner that protects the taxpayer and consistent with the Congressional intent. Where applicable, NOAA also reviews spend plans to ensure they take into account other disaster resources that are available. NMFS also requires regular reports from the grantee to further ensure fiscal accountability.

While the initial fishery disaster determination is based solely on the impacts to commercial fisheries, appropriated funds can be used more broadly to assist communities affected by the commercial fishery failure, including recreational fishing businesses, shoreside processors, and other fishing related businesses. Under the Magnuson-Stevens Act, the Secretary is authorized to make sums available to be used by the affected State or fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activities that the Secretary determines are appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Rebuilding fishing infrastructure, such as piers and boat launches, restoring habitat, state-run vessel and permit buybacks, and job retraining are some examples of activities that restore the fishery or prevent a similar failure in the future and that assist an affected fishing community.

Improving the Disaster Determination Process and Assistance Program

Under its Fishery Disaster Policy, NMFS has worked to ensure fishery disaster determinations are evaluated under the current provisions of the Magnuson-Stevens and Interjurisdictional Fisheries Acts in a consistent and timely manner. Additionally, NMFS strives to ensure disaster assistance is allocated in as effective and timely a manner as possible. However, we see the potential for improvements in both processes. Most importantly, the current processes for determining whether a disaster has occurred and providing funding to the affected entities simply take too long. It can take up to 2 years for disaster determinations to be made and as much as an additional year until funding, if appropriated, is disbursed to the affected fishing communities. Therefore, NMFS is developing regulations on our fishery disaster process and will be seeking input from stakeholders as well as the wider public on ways we can streamline and improve our work. Such a rulemaking could address – within current statutory limits – topics that have the potential to improve current processes. For example, setting target deadlines for the review and analysis of disaster related information would help set stakeholder expectations as well as drive the process. Clearly articulating specific information requirements that must be submitted before NMFS can initiate consideration of a disaster determination request would ensure NMFS has the information required to make a decision and avoid potential lengthy delays in requesting and receiving additional needed information. Providing additional guidance on the potential uses for disaster funding would aid in grant applications being approved quicker.

Similarly, Congress has recognized that statutory improvements or clarifications to the determination process associated with fishery disasters and providing assistance may be needed. Legislation, such as the bill introduced by Senator Wicker, is important and will help continue our conversation on how to address issues in this critical area in fisheries.

Senator Wicker's bill (S. 2346, Fishery Failures: Urgently Needed Disaster Declarations Act) provides an overarching framework, with specific deadlines and requirements. Many of its provisions are consistent with or expand upon the elements included in our current Fishery Disaster Policy. Generally, the Administration supports the approach taken in this bill to address some of the concerns I have identified above. In particular, establishing deadlines for key steps in the process and providing clarity on what is needed to be submitted to request a disaster are helpful. How fisheries disaster assistance funds can be used to incentivize fishery resiliency and cost effectively ensure the long-term economic and environmental stability of the respective fishery is one aspect of the bill we would like to discuss further.

The Administration looks forward to working closely with Congress to ensure any enacted legislation provides timely and efficient processes, accurately identifies instances where disaster determinations are warranted, and guides the allocation of resources to ensure funds are spent in a cost-effective manner that will aid in the recovery of our fisheries.

This concludes my testimony. Thank you again for the opportunity to testify before your Subcommittee today. I understand the importance of fishery disaster funds to affected fishing communities and that these funds are critical to help them recover from the disaster and prevent similar fishery failures in the future. I would be happy to answer any questions you may have.