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U.S. DEPARTMENT OF COMMERCE**

**FIELD HEARING ON
“EFFECTS OF WATER FLOWS ON APALACHICOLA BAY: SHORT AND LONG
TERM PERSPECTIVES”**

**BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

AUGUST 13, 2013

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify before you today on the *Effects of Water Flows on Apalachicola Bay: Short and Long Term Perspectives*. My name is Emily Menashes and I am the Acting Director of the Office of Sustainable Fisheries for the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS). NMFS is dedicated to the stewardship of living marine resources through science-based conservation and management.

The Secretary of Commerce is authorized under the *Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)* and the *Interjurisdictional Fisheries Act* to issue fisheries disaster declarations, which enable Congress to provide fisheries disaster assistance to affected States. In this testimony, I will outline the process for issuing a disaster declaration under the *Magnuson-Stevens Act* and the *Interjurisdictional Fisheries Act* and the NMFS Disaster Assistance Policy. Last, I will highlight the status of the pending request for fisheries disaster assistance by the State of Florida to declare a commercial fishery failure for Florida's oyster harvesting areas in the Gulf of Mexico.

NOAA Fisheries Disaster Assistance Authorities and Process

Fisheries are an essential part of coastal economies. They provide jobs for fishermen, fish processors, and related maritime support industries. Many coastal communities are economically

dependent on fisheries. Because fisheries depend on the productivity of the environment, there are natural variations in the amount 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. These factors include hurricanes and typhoons that can destroy fishing grounds and fishing infrastructure, oil spills, harmful algal blooms, and others, both natural and man-made, such as overfishing, that cause a commercial fishery to incur harm or fail.

A fishery disaster refers to a commercial fishery failure, a catastrophic regional fishery disaster, significant harm incurred, or a serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes, or, under the *Magnuson-Stevens Act*, man-made causes beyond the control of fishery managers to mitigate through conservation and management measures. Two statutes, the *Magnuson-Stevens Act*, Sections 312(a) and 315, and the *Interjurisdictional Fisheries Act*, Sections 308(b) and 308(d), provide the authority and requirements for fishery disaster determinations.

Under the *Magnuson-Stevens Act*, Sections 312(a) and 315, the Secretary may provide disaster assistance for assessing the economic and social effects of a commercial fishery failure, for activities to restore the fishery or prevent a similar failure in the future, and for assisting fishing communities. In order to receive assistance under Section 315 of the *Magnuson-Stevens Act*, a positive *Magnuson-Stevens Act* 312(a) determination is also needed. Under the *Interjurisdictional Fisheries Act*, Section 308(b), the Secretary may provide assistance to restore the fishery affected by the disaster. Also, under the *Interjurisdictional Fisheries Act*, Section 308(d), the Secretary may provide disaster assistance to persons and projects to alleviate harm incurred as a result of a fishery resource disaster.

Under both statutes, a request for a fishery disaster determination is generally made by the Governor of a State, or by an elected or duly appointed representative on an affected fishing community, although the Secretary of Commerce may also initiate a review at his or her own discretion. In general, the process for conducting a fishery disaster determination is:

- An eligible entity requests a fishery disaster determination from the Secretary of Commerce.
- NMFS conducts an evaluation to determine whether the circumstances are consistent with relevant statutes and whether a qualifying fishery disaster occurred.
- The Secretary makes a determination based on the evaluation and notifies the requester of the determination.
- Congress may appropriate funds for fishery disaster relief.
- If Congress appropriates funds, NMFS works with the affected entities to distribute the funds consistent with the statutory requirements and conditions of the appropriation.

Three requirements must be met in order for the Secretary to make a positive fishery disaster determination:

1. There must be a fishery resource disaster as defined by the *Magnuson-Stevens Act*, or the *Interjurisdictional Fisheries Act*.
2. The cause for the fishery resource disaster must be an allowable cause under the *Magnuson-Stevens Act*, or the *Interjurisdictional Fisheries Act*.
3. There must be economic impact stemming from the fishery resource disaster that supports a determination of a commercial fishery failure under the *Magnuson-Stevens Act* 312(a) and the *Interjurisdictional Fisheries Act* 308(b), a serious disruption affecting future production due to a fishery resource under the *Interjurisdictional Fisheries Act* 308(b) or harm incurred under the *Interjurisdictional Fisheries Act* 308(d).

For all three requirements, NMFS will review the best scientific information available to evaluate if the requirements have been met and will coordinate with the affected State or community to consider information and supporting data that the State or community provides.

To address the first requirement, whether a fishery resource disaster occurred, NMFS evaluates whether there is 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.

For the second requirement, NMFS evaluates whether there is an allowable cause under the *Magnuson-Stevens Act* or *Interjurisdictional Fisheries Act*. Under Section 312(a) of the *Magnuson-Stevens Act*, allowable causes are natural causes, undetermined causes, or man-made causes beyond the control of fishery managers to mitigate through conservation and management measures. Regulatory or judicial actions do not constitute “man-made” causes, except where imposed to protect human health or the marine environment. Additionally, under Section 312(a) of the *Magnuson-Stevens Act*, the contribution of overfishing to a fishery resource disaster or subsequent commercial fishery failure must be considered in the context of the governing statutory requirements and other factors contributing to the disaster or fishery failure. There is a presumption against a finding of a fishery resource disaster when overfishing is occurring in a fishery. However, the fact that overfishing occurred or is occurring does not preclude a determination that a fishery disaster occurred, if other factors are more central to the disaster.

Under Section 308(b) of the *Interjurisdictional Fisheries Act*, the allowable causes are natural or undetermined causes. Under the *Interjurisdictional Fisheries Act*, Section 308(d), the Secretary must determine that harm was incurred as a direct result of a fishery resource disaster arising from a hurricane or other natural disaster.

For the third requirement, particularly in the case of whether a commercial fishery failure has occurred, NMFS evaluates whether the commerce in or revenues from the fishery materially decreased or markedly weakened due to a fishery resource disaster, such that those engaged in the fishery suffered severe economic hardship. The types of economic, social, and cultural information that NMFS considers when determining whether there was a commercial fishery failure occurred include:

- Fishery characteristics (size and value; number of participants; environmental, economic and sociocultural behaviors; whether jobs are full- or part-time; and landings data).
- Percent decline in landings, economic impact, revenues, or net revenues by vessel category, port, etc. This should represent the proportion of the affected fishery resource compared to the commercial fishery as a whole (not just for the affected fishery resource).
- Number of participants involved by vessel category, port, etc.
- Length of time the resource (or access to it) will be restricted.
- Documented decline in the resource.
- Other relevant information.

The NMFS Disaster Assistance Policy identifies thresholds to determine if there was a commercial fishery failure, based on the loss of 12-month revenue compared to average annual revenue in the most recent 5-year period:

- Revenue losses greater than 80 percent will result in a determination of a commercial fishery failure.
- Revenue losses between 35 percent and 80 percent will be evaluated further (e.g., to determine if economic impacts are severe).
- Revenue losses less than 35 percent 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.

Often the request for a fishery disaster determination does not contain all the data required to make an immediate determination, and in those cases NMFS will work with the affected State or community to obtain the data, which often takes some time. Thus, the more information an initial request includes regarding a potential disaster, the better able NMFS is to respond quickly to a request.

The Secretary will notify the requester of the final determination of whether a fishery disaster has occurred. Under both the *Magnuson-Stevens Act* and the *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.

Florida Oyster Disaster Assistance Request

In letters dated September 6, 2012, and November 7, 2012, Governor Rick Scott of Florida asked Acting U.S. Department of Commerce Secretary Rebecca Blank to declare a commercial fishery failure for Florida's oyster harvesting areas in the Gulf of Mexico. Those letters stated that oyster populations on Apalachicola Bay's primary oyster producing reefs were in poor condition and identified the lack of freshwater flow from the Apalachicola River and associated increases in water salinity as the primary cause of the decline. The Governor provided a report from Florida's Department of Agriculture and Consumer Services and indicated that additional landings and revenue data were forthcoming.

The Florida Fish and Wildlife Conservation Commission followed up with draft documentation in April 2013. NMFS reviewed the draft documentation in the context of our Disaster Assistance Policy and provided the Commission comments and questions on April 23, 2013. The Commission indicated it would provide a revised report in early May 2013, but is still working to finalize the report. NMFS' Southeast Region is in close communication with Commission leadership about the status of the report. We have been advised the report is complete, undergoing interagency review within the state, and will be delivered to us shortly.

Also in late April 2013, Florida Sea Grant released a report entitled *Apalachicola Bay: Oyster Situation Report*, which contains relevant data for the disaster assistance request. The report summarizes efforts conducted through the University of Florida Oyster Recovery Team, in collaboration with various stakeholders, to describe conditions in Apalachicola Bay prior to and after the collapse of the oyster fishery. The report characterizes conditions in the Bay, reviews possible causes for the fishery collapse, and outlines a plan for future monitoring, research and fishery management.

Conclusion

NOAA will continue to work closely with the State on this issue. Thank you for the opportunity to discuss NMFS' disaster determination process and the request from the State of Florida to declare a commercial fishery failure for Florida's oyster harvesting areas in the Gulf of Mexico. I am happy to answer any questions you may have.