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***NMFS Management and Budget
Disaster Assistance***

***Procedures Guidance for Disaster Assistance Under Magnuson-Stevens Act 312(a)
and
Interjurisdictional Fisheries Act 308(b) and 308(d)***

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SUMMARY OF REVISIONS:

Policy and Procedures Guidance for Fishery Disaster Assistance

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1. **Background.** The Department of Commerce can provide disaster assistance under either Sections 312(a) or 315 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. § 1861)¹, as amended, or Sections 308(b) or 308(d) of the Interjurisdictional Fisheries Act (IFA) (16 U.S.C. § 4107)². This document outlines procedures for administering fishery disaster assistance under these two laws.

The basic authority of MSA Section 312(a) states that the Secretary of Commerce, at the Secretary's discretion or upon request of a governor or an official of a fishing community, "shall determine whether there is a commercial fishery failure due to a fishery resource disaster." Upon making such a determination, the Secretary is authorized to make funds available "for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure." For assistance to be provided under Section 312(a) of the MSA, a commercial fishery failure must be shown to have occurred due to a fishery resource disaster of natural or undetermined causes or man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment. Also under MSA Section 312(a), the federal share of the cost of any activity cannot exceed 75 percent.

IFA Section 308(b) authorizes the Secretary of Commerce to provide grants or cooperative agreements to states determined to have been affected by a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes. Subpart C of 50 CFR Part 253.23(a)(1)³ contains provisions for 308(b) assistance and states that the federal share of the cost of any activity cannot exceed 75 percent. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted and has determined that a commercial fishery failure due to a fishery resource disaster arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology.⁴

IFA Section 308(d) enables the Secretary to help persons engaged in commercial fisheries by initiating projects or other measures to alleviate harm determined by the Secretary to have been incurred as a direct result of a fishery resource disaster arising from a hurricane or other natural disaster. Eligibility for direct assistance to a person under this subsection shall be limited to any person that has less than \$2,000,000 in net revenues annually from commercial fishing, as determined by the Secretary. Subpart C of 50 CFR Part 253.23(2)⁵ contains provisions for 308(d) assistance and states that funds provided under Section 308(d) must undergo formal notice and opportunity for public comment on the appropriate limitations, terms, and conditions for awarding assistance. There is no matching requirement for recipients under Section 308(d).

¹ http://www.law.cornell.edu/uscode/html/uscode16/usc_sec_16_00001861---a000-.html

² http://www.law.cornell.edu/uscode/html/uscode16/usc_sec_16_00004107---000-.html

³ http://www.access.gpo.gov/nara/cfr/waisidx_02/50cfr253_02.html

⁴ http://www.access.gpo.gov/nara/cfr/waisidx_02/50cfr253_02.html

⁵ http://www.access.gpo.gov/nara/cfr/waisidx_02/50cfr253_02.html

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (PL 109-479) Section 315, authorizes the Secretary to establish a regional economic transition program to provide disaster relief assistance to fishermen, charter fishing operations, United States processors, and owners of related fishery infrastructure affected by a “catastrophic regional fishery disaster,” as defined in the bill. Subject to the availability of appropriations, the regional economic transition program must provide funds or other economic assistance for disbursement to affected entities in meeting immediate regional shoreside infrastructure needs, financial assistance and job training, fishing capacity reduction, and other activities authorized under MSA 312(a) or IFA 308(d). The bill also allows waiver of non-Federal matching requirements if the Secretary determines no reasonable means are available for applicants to meet the matching requirement and that the probable benefit of 100% Federal financing outweighs the public interest of imposing a matching requirement.

2. **Purpose.** To specify procedures for administering disaster assistance pursuant to MSA 312(a) and IFA 308(b) and 308(d).

3. **Authority.** Under the National Oceanic and Atmospheric Administration (NOAA) Organization Handbook, Transmittal Number 61, dated February 28, 2006⁶, the Secretary has delegated to the Undersecretary/NOAA Administrator, who then re-delegated to the Assistant Administrator for Fisheries, NOAA, the authority under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801-1882⁷ and the Interjurisdictional Fisheries Act 16 U.S.C. § 4101-4107⁸ to determine fishery resource disasters.

4. **Definitions.** For purposes of this document:

4.1. **Assistant Administrator (AA)** – Assistant Administrator of the National Marine Fisheries Service (NMFS).

4.2. **Buyback** – A payment to a permit holder that reflects the economic value of a permit or vessel endorsement by paying them to surrender their permits and/or cancel the fishery endorsement on the vessels and/or scrap the vessels, thus providing long-term fishing capacity reduction in a fishery.

4.3. **Commercial Fishery** – Defined to mean the same as “commercial fishing” in the MSA, which is “fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade.”

4.4. **Commercial Fishery Failure** – A commercial fishery failure occurs when commerce in or

⁶ <http://www.corporateservices.noaa.gov/~ames/transmittals/pdfs/trans61.pdf>

⁷ <http://www.nmfs.noaa.gov/sfa/magact/>

⁸ http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_61.html

revenues from commerce in the fishery (i.e. the fishery dependent on the fishery resource subject to a fishery resource disaster) materially decreases or is markedly weakened in a way that can be logically traced to the disaster, such that those engaged in the fishery suffer severe economic hardship. The degree to which revenues decrease will vary among fisheries. A commercial fishery failure must be determined on a case-by-case basis, and cannot be defined universally. Such analysis may include information provided by fishery stock assessments, landings data, and revenues.

4.5. Cost Share – That portion of a project or program costs *not* borne by the federal government.

4.6. Decision Memorandum – A document noting recommendations or determinations of legal compliance for the Assistant Administrator’s concurrence. A Decision Memorandum provides a discussion of relevant facts, background and significant legal, policy and science issues related to an upcoming action. It is prepared with a signature block at the conclusion of the document for the AA to indicate concurrence or non-concurrence on the specific action.

4.7. Federal Share – The percentage or amount of federal participation. The percentage of the net cost (i.e. total cost less any income derived from implementation of a proposed project) for an activity borne by the federal government, represents the federal share of the cost of the activity. For example, if the total net cost of a program is \$1,586,228 and the federal share amount is \$1,189,671, the federal share is 75 percent. ($1,189,671 \div 1,586,228$).

4.8. Fishery – Defined to mean “one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks”, as defined in the MSA.

4.9. Fishery Resource – Defined in the MSA as “any fishery, any stock of fish, any species of fish, and any habitat of fish.” Defined in the IFA as “finfish, mollusks, crustaceans, and any other form of marine animal or plant life, other than marine mammals and birds.”

4.10. Fishery Resource Disaster – Occurs when a sudden circumstance greatly affects or materially damages a fishery resource. For example, a loss of 20 percent or more of spawning habitat or refugia may be great and material to one fish stock but not to another. However, damage or loss of spawning habitat or refugia is a factor that NMFS may consider in determining whether a disaster occurred. The degree or severity of that damage or loss must be determined on a case-by-case basis and cannot be defined universally. A reasonably predictable, foreseeable, and recurrent fishery resource cycle of variations in species distribution or stock abundance does not constitute a fishery resource disaster. However, executive or judicial actions implemented to protect human health or the marine environment may constitute a fishery resource disaster.

4.11. Fishing Community – Defined in the MSA as “a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, crew and United States fish processors that are based in such community.” NMFS further defines “fishing

community” for purposes of section 312(a) to specifically include the area(s) and/or participants of the fishery in which the effects of a commercial fishery failure are most highly concentrated and most severely felt, including the actual commercial fish harvesters and processors, both capital and labor.

4.12. Harm – Uninsured physical damage or economic loss to fishing vessels, fishing gear, processing facilities, habitat, marketability or infrastructure (i.e. port facilities for landing or unloading catch) suffered as a direct result of a fishery resource disaster. Such harm will be measured in economic terms.

4.13. Issues Advisory – A document outlining relevant facts, background and significant legal, policy and science issues related to an upcoming action. Unlike a Decision Memorandum, there should be no final recommendations or determinations of legal compliance contained within the document. However, it should list the advantages and disadvantages of available alternatives and may include a preferred alternative.

4.14. Local Economy – The structure of life in a community based on the production, distribution, and consumption of goods and services.

4.15. Man-Made Causes – Causes due to some human event or activity (e.g., oil spill) that could not have been prevented or addressed by fishery management measures and that are otherwise beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment. Causes determined under this category apply only to MSA 312(a), and not to IFA 308(b) and IFA 308(d). Executive or judicial actions that provide for environmental and/or resource conservation do not constitute “man-made” causes, except where imposed to protect human health or the marine environment.

4.16. Natural Causes – A weather-, climate-, or biology-related event (e.g., hurricane, flood, drought, El Niño effects on water temperature, disease, but does not include normal or cyclical variations in species distribution or stock abundance, etc.). Causes determined under this category apply to MSA 312(a), IFA 308(b), and IFA 308(d).

4.17. Non-Federal Share - The percentage or amount of recipient participation. The percentage of the net cost (i.e., total cost less any income derived from implementation of a proposed project) for an activity borne by the recipient, represents the non-federal share of the cost of the activity. For example, if the total net cost of a program is \$1,586,228 and the federal share amount is \$1,189,671, the non-federal share is 25 percent. $([1,586,228 - 1,189,671] \div 1,586,228)$.

4.18. Undetermined Causes – Causes in which the current state of knowledge does not allow us to identify the exact cause or causes. Causes determined under this category apply to both MSA 312(a) and IFA 308(b), but not to IFA 308(d).

5. **Determining Eligibility for Disaster Relief.** Before an assistance activity can be funded, the Assistant Administrator must determine that the activity meets all of the requirements of either the MSA or IFA. This process typically begins when the governor of the affected state or a representative of the affected fishing community (i.e. mayor, city manager, county executive, etc.) makes a request to the Secretary of Commerce. The Secretary or Assistant Administrator may also initiate a review at their own discretion.

5.1 **Fishery Resource Disaster Evaluation.** The following tasks are involved in evaluating whether a disaster has occurred:

5.1.1 **Initiating an Evaluation Request.** The initial request for a disaster assistance evaluation is typically received from either the governor of the affected state, a representative of the affected fishing community (i.e. mayor, city manager, county executive, etc.) or at the discretion of the Secretary of Commerce (or his/her delegate) and is logged and tracked as controlled correspondence by the Correspondence Unit in NMFS Headquarters (HQ). NMFS may also make an internal recommendation to the Assistant Administrator for a disaster assistance evaluation based on relevant facts or data.

5.1.2 **Providing an Interim Response.** If the evaluation request was initiated by an external source, an interim response to the requesting party should be prepared immediately by NMFS HQ (F/MB5), thanking the individual for his or her letter and stating that the Secretary (or his/her delegate) will carefully consider the request. The response should indicate that NMFS will review the request, the basis for it, and that the requesting party will be notified as soon as a decision is made. Periodic status updates should be provided to the requesting party (or parties) in order to avoid any long protracted period of time with no communication. A responsible regional contact will be designated in the interim response, after consultation with the NMFS Region(s). If the incoming request does not provide sufficient information regarding the situation, the interim response will include a request for additional information concerning the fishery resource disaster or the commercial fishery failure. If the initial request does not designate a follow-up contact in the affected state or fishing community, the interim response from NMFS HQ should request that such a contact be designated by the governor or official from the requesting fishing community.

5.1.3 **Conducting the Evaluation.** The appropriate NMFS Region(s) may consult with and request assistance from the appropriate NOAA Science Center(s) to conduct a scientific review of the available economic and biological information which may include fishery characteristics, stock assessment, estimates of mortality, and overall effects in order to assess the existence of a fishery resource disaster and the cause(s) of the disaster. The review should be conducted in consultation with the affected state(s), and should consider such information and supporting data as the state(s) provide. Disaster Determinations are made on a case-by-case basis, applying the terms defined above in Section 4.

5.1.4 **Conclusion.** After evaluating all available data, if it is found that all elements of a Fishery Resource Disaster as defined in Section 4.10 are met and if the available biological and economic information indicates that the overall health or value of the fishery resource has been greatly affected or materially damaged, a Fishery Resource Disaster will be determined. The extent, and the beginning and ending dates, of any fishery resource disaster determined under

IFA 308(d) must be identified.

5.2 Cause. If the available biological and economic information supports a fishery resource disaster determination, the cause of the disaster must also be determined to allow for an assessment of eligibility under MSA 312(a) for man-made, natural, or undetermined causes, under IFA 308(b) for natural or undetermined causes, and under IFA 308(d) for natural causes.

5.3. Evaluation of a Commercial Fishery Failure or Harm Incurred. A Commercial Fishery Failure must be determined in order to provide assistance under either MSA 312(a) or IFA 308(b). A determination of Harm incurred must be made in order to provide assistance under 308(d). The following tasks are involved in evaluating whether a Commercial Fishery Failure has occurred or whether Harm has been incurred:

5.3.1 Conducting the Evaluation. In consultation with the affected state jurisdiction and/or fishing community, the NMFS Region(s) may consult with and request assistance from the appropriate NMFS Science Center(s) to conduct a review of the available sociocultural and economic information to determine the existence of a commercial fishery failure. Indicators appropriate to an affected fishery should be developed on a case-by-case basis, and may be the same or similar as those described in the Scientific Review. Some characteristics of available information which may be considered in a review may include:

- a. Fishery characteristics (size and value; number of participants; environmental, economic and sociocultural behaviors; and landings data).
- b. 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).
- c. Number of participants involved by vessel category, port, etc.
- d. Length of time the resource (or access to it) will be restricted. This is important for determining the type of assistance. For example, longer-lasting failures may justify retraining or loans to provide assistance until recovery can take place, etc.
- e. Spillover effects on related industries including reduced sales and employment by industry, port, etc. Cases where effects are wide ranging may benefit from aid to the fishing community.
- f. Documented decline in the resource.

In addition, the NMFS Region(s) will examine the severity of the effects by considering the number of fishermen, processors, and other businesses of the community affected by such failure.

5.3.2 Commercial Fishery Failure Determination. If the available economic information indicates that a significant number of those engaged in the commercial fishery have suffered as a

result of circumstances which greatly affects or materially damages one or more of the species or any part of the habitat that compromises the fishery resource upon which a commercial fishery is based, the commercial fishery will be deemed to have failed.

The Assistant Administrator may make a “determination that there is a commercial fishery failure due to a fishery resource disaster as a result of natural causes, man-made causes beyond the control of fishery managers to mitigate through conservation and management measures which could not have been prevented or addressed by fishery management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment or undetermined causes.” The results from completing the tasks specified in Sections 5.2.1 through 5.2.2 above should demonstrate that a commercial fishery failure as defined in Section 4.4 above has occurred. MSA 312(a) and IFA 308(b) are involved in determining commercial fishery failures rather than declaring fishery resource disasters. However, for a fishery failure to exist, a fishery resource disaster must first be determined under MSA 312(a) or IFA 308(b).

5.3.3 Overfishing. Overfishing by itself is not an acceptable cause of a fishery resource disaster under either MSA 312(a) or IFA 308(b), because overfishing is not considered to be beyond the control of fishery managers to mitigate. However, overfishing may exacerbate a fisheries resource disaster of natural or undetermined causes or causes beyond the control of fisheries managers to mitigate. Where overfishing is a factor in a commercial fishery failure, assistance may include efforts to rationalize fishing capacity. Under MSA 303(c)(3), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any individual fishing quota program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council. Overfishing is also not an acceptable cause of a fishery resource disaster under IFA 308(d) because 308(d) disasters are limited by statutory language to disasters arising from hurricanes or other natural disasters.

5.3.4 Other Forms of Assistance. In addition to assistance provisions identified in MSA 312(a), IFA 308(b), and IFA 308(d), appropriate assistance may also include buybacks of fishing permits or vessels, which may be appropriate for any overcapitalized fishery experiencing a commercial fishery failure. Prior to using buybacks as a mechanism to provide assistance, the presence of latent (inactive) permits must be assessed. The assessment should determine whether the presence of latent permits will defeat the purposes of MSA 312(a) and whether or not buyback programs should allow any latent permits.

Where a local economy is substantially dependent on fishing for a specific stock, a commercial failure due to a fishery resource disaster will necessarily have more severe impacts than those with a diversified economy, due to the lack of alternative fishing or nonfishing employment opportunities. Appropriate assistance in this situation may include developing and improving infrastructure or retraining, with the ultimate goal of making such areas less dependent on a specific fishery or on fishing in general.

5.4 Determination of Harm Incurred. Unlike IFA 308(b) which requires the determination of a commercial fishery failure as a prerequisite to providing disaster assistance, IFA 308(d)

requires the determination of harm “incurred as a direct result of a fishery resource disaster arising from a hurricane or other natural disaster.” Once the Assistant Administrator (AA) makes a determination of harm incurred under those circumstances the AA is authorized to provide disaster assistance to the people engaged in commercial fisheries by initiating projects or other measures to alleviate that harm. Projects or measures receiving disaster assistance must be designed to offset the harm incurred and may not be used in any manner that may increase the likelihood that such harm will reoccur in the event of another hurricane or natural disaster. Proof of harm incurred before any financial aid under 308(d) is distributed should be quantifiable and objective. Such proof may include validated unreimbursed insurance claims, tax records, or other validated evidence of economic harm.

5.5. NOAA Tasks for Determining a Commercial Fishery Failure. The following tasks and roles are involved in determining whether a commercial fishery failure due to a fishery resource disaster has occurred:

5.5.1 Advisory Role. F/MB5 and F/SF3 will advise the lead Region in the development and review of the Issues Advisory, Decision Memorandum and accompanying analysis.

5.5.2 Issues Advisory. The responsible NMFS Region prepares the Issues Advisory as defined in Section 4.13 above, for the attention of the Assistant Administrator for Fisheries. The completed Issues Advisory should be sent to the Disaster Assistance Liaison (F/MB5) at NMFS HQ, who will handle coordination of the clearance through F/SF3 and legal counsel (GCF).

5.5.3 Decision Memorandum. Once the Assistant Administrator has acknowledged the Issues Advisory, the responsible NMFS Region prepares a Decision Memorandum as defined in Section 4.6 above, with a recommendation for determining (or not determining) a commercial fishery failure based on a fishery resource disaster. The responsible NMFS Region will prepare any supporting analysis. The completed Decision Memorandum should be sent to the Disaster Assistance Liaison (F/MB5) at NMFS HQ, who will handle coordination of the clearance through F/SF3 and GCF.

5.5.4 Communication. The Secretary of Commerce (or his/her delegate) informs the affected state or community of his or her determination under MSA 312(a) and/or IFA 308(b) or IFA 308(d). If more information is required to reach a decision, a written communication should be sent to the affected state or community requesting additional information. If a request for a disaster determination is denied, the Secretary of Commerce (or his/her delegate) should inform the affected state or community of the reasons for denial in a written communication to the affected state or community. All correspondence related to an affirmative determination should address the following topics:

5.5.4.1 Funding. With regard to needed funding, communications should emphasize that a congressional appropriation is a pre-requisite for the Secretary to make such funds available for use by the affected states or fishing communities.

5.5.4.2 Federal Share. Communication should explain any limitations to the federal share or cost sharing requirements, based on the authority under which the determination is made.

5.5.4.3 Relief Under MSA 312(a). If a determination of a Commercial Fishery Failure due to a Fishery Resource Disaster is made under MSA 312(a), the communication should state that any relief provided may be used to “assess the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by the failure” as defined in MSA 312(a). Further, any relief provided shall not expand the size or scope of the failure in that or any other fishery.

5.5.4.4 Relief Under IFA 308(b). If a determination of a Commercial Fishery Failure due to a Fishery Resource Disaster arising from natural or undetermined causes as defined in Sections 4.16 and 4.18, is made under IFA 308(b), the communication should state that any relief provided may be used “to restore the fishery affected by such a failure or to prevent a similar failure in the future”. Funds cannot be used to “assess the economic and social effects of the commercial fishery failure” under IFA 308(b).

5.5.4.5 Relief Under IFA 308(d). Relief under IFA 308(d) may be used to provide assistance for projects or other measures to alleviate harm as determined by the Secretary to have been incurred or for fishing capacity reduction when the Secretary determines that adequate conservation and management measures are in place for the affected fishery. Funds cannot be used to “assess the economic and social effects of the commercial fishery failure” under IFA 308(d).

The success of efforts to “restore the fishery” or “prevent a similar failure in the future” cannot be absolutely assured. Project outcomes are not always predictable, and goals may not be fully realized with limited funds; nevertheless, proposals should demonstrate that the activity will at least move toward achieving one or both of these goals in the fishery.

5.5.4.6 NOAA Activities. Where possible, provide information on any NOAA activities outside the scope of either MSA 312(a) or IFA 308(b) and IFA 308(d) that are currently assisting or will assist the affected fishery (e.g., stock rebuilding plans, habitat restoration, and vessel loan programs).

5.5.4.7 Other Potential Sources of Assistance. Known potential sources of assistance outside the purview of NOAA should also be indicated on the communication.

6. **Disaster Assistance**. Once appropriations are authorized by Congress, the affected state, community, or group needs to develop a spending plan, which the NMFS Region will need to evaluate. Components of the spending plan may include design, results, project management, evaluation and consistency. The following tasks are involved:

6.1. Availability of Funds. Once funds are available for disaster assistance, the NMFS Region informs the affected state or community through publication of a Federal Funding Opportunity (FFO) in Grants-on-Line.

6.2. Project Plan Communication. The NMFS Region asks the affected state or community to

develop a plan for using the funds in accordance with any direction from NMFS. The spending plan development process should include input from members of the affected fishing community. The affected fishing community may be involved through various means, including surveys, “town hall” meetings, and participation of organizations that represent the fishing community. NMFS also has the option to publish the proposed assistance program in the *Federal Register* for comment. For determinations made under IFA 308(d), publication of the proposed assistance program in the *Federal Register* is a requirement.

6.3. Project Plan Submission. The affected state or community should develop a project plan describing the activity proposed and funds requested, and submit it to the appropriate NMFS Region for review. Under MSA 312(a) and IFA 308(b), the submission must provide for cost share (cash or in-kind services) such that the federal share of the total project costs does not exceed 75 percent. Assistance provided under provisions of the IFA 308(d) does not require a cost share or match by the affected state or community, but is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

6.4. Initial Screening and Administrative Review. NOAA’s Federal Program Officer (FPO) assigned to the specific award receives the grant and/or contract application and determines whether the requested assistance application is in compliance with all existing guidelines, regulations, and legislation. In this initial screening, the FPO performs a cursory review of the materials submitted to ensure that they are complete and that the applicant is an entity eligible for consideration.

6.5. Technical Review. Before accepting a grant and/or contract application for the assistance funds, NMFS will conduct a review of the proposed spending plan as outlined in Section 6.6 below. NMFS will also review the proposed assistance plan in terms of any other applicable requirements such as the National Environmental Policy Act (NEPA). NEPA requires federal agencies to examine the impacts of major federal actions (e.g., plan, project, or program that may be fully or partially funded, regulated, conducted, or approved by a federal agency) significantly affecting the quality of the human environment and to prepare a detailed impact statement. For more specific details, refer to the NEPA handbook located at http://www.nepa.noaa.gov/NEPA_HANDBOOK.pdf

6.6. Evaluation of Spending Plan. The following tasks are involved in evaluating the state or affected community’s spending plan:

6.6.1 Proposal Evaluation. The NMFS Region reviews the proposal for criteria which may include: (1) the soundness of design; (2) the possibilities of securing productive results; (3) the minimization of duplication with other projects; (4) the organization and management of the project; (5) the methods proposed for monitoring and evaluating the success or failure of the project; (6) the consistency of the project with the enabling legislation; and (7) other such criteria that the Secretary may prescribe. The Region also evaluates whether the required cost share is met, and the reasonableness of any in-kind activities proposed as cost sharing. Consideration should also be given to the effectiveness of earlier or similar programs (if any) within the subject fishery. The design for research projects must be coordinated with the relevant Science Center.

6.6.2 Proposal Requirements. The following requirements must be addressed in any proposal submitted for consideration:

6.6.2.1 Restoration of Fishery. The NMFS Region determines that the proposed activity will contribute to the restoration of the fishery and/or prevent a future failure and/or assist the affected fishing community.

6.6.2.2 Expansion of Commercial Fishery Failure. The NMFS Region determines that the proposed activity will not expand the size or scope of the commercial fishery failure, taking into account information on the fishery (e.g., limited entry).

6.6.2.3 Other Requirements. Depending on the proposed activity, other requirements (e.g., NEPA) may need to be satisfied before funds are awarded. These will be identified by the NMFS Region in cooperation with F/MB5, F/SF3 and GCF. The Region will then incorporate the needed determinations into the memoranda described below.

6.6.3 Sufficient Documentation. If the proposal does not include sufficient documentation to make the determinations as outlined in sections 6.6.2.1 through 6.6.2.3 above, the NMFS Region will advise the submitter of this finding and request more supporting information, if available.

6.6.4 Issues Advisory. The Regional Administrator sends an “Issues Advisory” (defined in section 4.13 above) to the Assistant Administrator to indicate an upcoming action, provide background, and identify any issues in the upcoming action, including any initial determinations made in 6.6.2.1 – 6.6.2.3 above. The completed Issues Advisory should be sent to the Disaster Assistance Liaison (F/MB5) at NMFS HQ, who will handle coordination of the clearance through F/SF and GCF.

6.6.5 Decision Memorandum. Once the Assistant Administrator has acknowledged the Issues Advisory, the Region prepares a Decision Memorandum (defined in section 4.6 above) presenting the background of the situation, making a recommendation as to NMFS’ response to the request, and addressing any review comments as needed, for the Assistant Administrator’s concurrence. A relevant analysis of the situation (e.g., the magnitude of the problem, historical perspective, etc.) should accompany the Decision Memorandum as well as any determinations of consistency with the applicable federal law. The Region submits the completed Decision Memorandum to the Disaster Assistance Liaison (F/MB5) at NMFS HQ for clearance and routing through F/SF and GCF to the Assistant Administrator.

6.7 Financial Assistance Awards. For financial assistance awards, a copy of the cleared Decision Memorandum should be included with the application package the NMFS Region submits to NOAA Grants for processing of the award. All NEPA requirements must be met before any award can be distributed.

6.7.1 Award Conditions. NOAA makes awards to applicants who are competently managed, responsible, capable, and committed to achieving the objectives of the award(s) they receive. Federal assistance awards are subject to all federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award, Department of Commerce and NOAA regulations, policies and procedures applicable to federal financial assistance awards,

and terms and conditions of the awards.

6.7.2 Provision for Appeals. For spending plans involving a disbursement of funds to affected industry participants, a provision for appeals (to be evaluated by the grantee) should be part of the decision-making process leading to such disbursements.

6.7.3 Monitoring and Evaluation of Awards. It shall be the duty of the responsible NMFS Region to carry out the actual implementation, management, evaluation and monitoring of recipient performance for any financial assistance award grants related to disaster assistance. Please refer to NOAA Grants Online Training⁹ for more information related to the DOC Grants process, which includes Quick Reference Guides and User Manuals.

⁹ http://www.corporateservices.noaa.gov/~grantsonline/gol_training.html