

***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 31-108***

***May 8, 2007***

***NATIONAL MARINE FISHERIES SERVICE, Office of Sustainable Fisheries***

***POLICY ON DISASTER ASSISTANCE UNDER MAGNUSON-STEVENSON ACT 312(a)  
AND 315 AND INTERJURISDICTIONAL FISHERIES ACT 308(b) AND 308(d)***

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This action replaces the original May 8, 2007 policy in the NMFS Policy Directive System with the revised policy that was approved on June 16, 2011. This revised policy has been available on the web on the NMFS Disaster page since June 2011.



March 21, 2014

Signed: Eileen Sobeck

Date

NOAA Assistant Administrator for Fisheries

## I. Introduction

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, that cause a commercial fishery to incur harm or fail.

Fishery disaster assistance is administered by NOAA's National Marine Fisheries Service within the Department of Commerce. Two statutes, the Magnuson-Stevens Fishery Conservation and Management 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, or by a 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 fishery disaster has occurred, Congress may appropriate funds for disaster assistance, which are administered by the Secretary.

The purpose of this document is to provide guidance for evaluating requests for fisheries disaster relief under the provisions of Section 312(a) and 315 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)<sup>1</sup>, as amended, and Sections 308(b) and 308(d) of the Interjurisdictional Fisheries Act (IFA)<sup>2</sup>.

## II. Background

The Secretary is authorized under both the MSA and IFA to provide fishery disaster assistance. In general, fishery disaster requests are reviewed similarly under both statutes, although there are some differences in what the two statutes authorize. Under MSA Sections 312(a)<sup>3</sup> and 315<sup>4</sup>, the Secretary

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<sup>1</sup> 16 U.S.C. § 1861.

<sup>2</sup> 16 U.S.C. § 4107.

<sup>3</sup> MSA Section 312(a) states that the Secretary of Commerce, at his or her 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."

<sup>4</sup> MSA 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 as "a natural disaster, including hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment . . .". 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 shore side infrastructure needs, financial assistance and job training, fishing capacity reduction, and other activities authorized under MSA 312(a) or IFA 308(d). The statute also allows waiver of non-Federal matching requirements if 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 MSA, a positive MSA 312(a) determination is needed. The more detailed aspects of administering fisheries disaster relief under MSA 315 are not addressed in this document. Under IFA Section 308(b)5, the Secretary may provide disaster assistance to restore the fishery affected by the disaster. And, under IFA Section 308(d)6, the Secretary may provide disaster assistance to persons and projects to alleviate harm incurred as a result of a fishery resource disaster. This document outlines the process for making fishery disaster determinations under both the MSA and IFA.

## **A. Overview**

The entire fisheries disaster relief process – from request to disbursement of appropriated funds – proceeds according to the following five general steps:

1. An eligible entity requests a fishery disaster determination from the Secretary of Commerce.
2. The National Marine Fisheries Service conducts an evaluation to determine whether a qualifying fishery disaster has occurred.
3. The Secretary makes a determination based upon the evaluation, and notifies the requestor of the determination.
4. If the determination is positive, Congress may appropriate funds for fishery disaster relief. The fishery may also qualify for other forms of Federal assistance.
5. If Congress appropriates fishery disaster relief funds, NOAA works with the affected parties to distribute the funds consistent with the statutory requirements and conditions of the appropriation.

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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

<sup>5</sup> 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. 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.

<sup>6</sup> 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.

This document is focused on further explaining the process that the Secretary follows under steps 2 and 3 above, specifically when evaluating a request and making a determination for fishery disaster relief.

Three requirements, which are discussed in more detail in this document, 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 MSA or IFA;
2. The cause for the fishery resource disaster must be an **allowable cause** under the MSA or IFA; and
3. There must be economic impact stemming from the fishery resource disaster that supports a determination of a **commercial fishery failure** under MSA 312(a) and IFA 308(b) or **harm incurred** under IFA 308(d).

## **B. Definitions**

For purposes of this document:

Assistant Administrator means the Assistant Administrator of the National Marine Fisheries Service (NMFS).

Buyback means a payment to a permit holder that reflects the economic value of a permit or vessel endorsement by paying the permit holder to surrender his or her permit and/or cancel the fishery endorsement on the vessel and/or scrap the vessel, thus providing long-term fishing capacity reduction in a fishery.

Commercial Fishery means 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, as defined in the MSA.

Commercial Fishery Failure means an occurrence when commerce in or revenues from commerce in the fishery materially decreases or is markedly weakened due to a fishery resource disaster, such that those engaged in the fishery suffer severe economic hardship..

Fishery means 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.

Fishery Disaster means a general term that 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, consistent with MSA and IFA.

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

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.

Fishing Community means, as defined in the MSA, 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. For purposes of section 312(a), this term specifically includes 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.

Harm means an 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.

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

Man-Made Causes means a 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.

Natural Causes means 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.).

Overfishing means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

Secretary means the Secretary of Commerce or his or her designee. The Assistant Administrator of the National Marine Fisheries Service is delegated the responsibility for leading the review.

Serious Disruption Affecting Future Production means an unexpected sudden and precipitous decrease in the harvestable biomass or spawning stock size of a fish stock that causes loss of access to the fishery for a substantial period of time in a specific area.

Undetermined Causes means causes in which the current state of knowledge does not allow the Secretary to identify the exact cause or causes, and there is no current conclusive evidence supporting any one of the possible causes of the fishery disaster.

### **III. Initiating a Request for Fisheries Disaster Relief**

#### **A. Eligible Entities**

Pursuant to the MSA and IFA, the Governor of an affected State, or an elected or politically appointed representative of an affected fishing community (e.g., mayor, official tribal representative, city manager, county executive, etc.) may submit a request for fisheries disaster relief. The Secretary may also initiate a review at his or her own discretion.

#### **B. Interim Response**

When an eligible entity requests fisheries disaster relief, the Secretary will provide an interim response that acknowledges receipt of the request, provides a regional contact, states that the Secretary will carefully consider the request and its basis, and that the requesting party will be notified when a determination is made. If the request does not provide sufficient information regarding the situation, the Secretary may request additional information concerning the fishery disaster.

### **IV. Evaluating a Request for a Fishery Disaster Determination**

#### **A. Fishery Resource Disaster Evaluation**

Upon receipt of a request for a fishery disaster determination, the Secretary will conduct a review of the best scientific information. Such review may include an analysis of the following factors: 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.

Fishery resource disaster determinations are made on a case-by-case basis. For example, damage to or loss of spawning habitat or refugia is a factor that the National Marine Fisheries Service may consider in determining whether a disaster occurred. A loss of 20 percent or more of spawning habitat or refugia may be material to one fish stock but not to another. A reasonably predictable, foreseeable, and recurrent fishery resource cycle of variations in species distribution or stock abundance does not constitute a fishery resource disaster.

#### **B. Allowable Causes**

To provide disaster assistance under MSA 312(a) or IFA 308(b), the Secretary must also determine the existence of a commercial fishery failure due to a fishery resource disaster that arises from an allowable cause under MSA 312(a) or IFA 308(b) and (d).

Under MSA 312(a), the allowable causes for a fishery resource disaster 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 (including those imposed as a result of judicial action) imposed to protect human health or the marine environment. Regulatory or judicial actions do not constitute “man-made” causes, except where imposed to protect human health or the marine environment.

Under IFA 308(b), the allowable causes for a fishery resource disaster are natural or undetermined causes. Under IFA 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.

**C. Consideration of Commercial Fishery Failure, Serious Disruption Affecting Future Production, or Harm**

In consultation with the affected State jurisdiction and/or fishing community, the Assistant Administrator of the National Marine Fisheries Service will conduct a review of the available socio-cultural and economic information to determine the existence of a commercial fishery failure, a serious disruption affecting future production, or harm incurred. Such analysis may include information provided by fishery stock assessments, landings data, and revenues. Indicators appropriate to an affected fishery should be developed on a case-by-case basis, and may be the same as or similar to those described in the scientific review. Some characteristics of available information which may be considered in a review may 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.

**1. Determination of a Commercial Fishery Failure**

If the available economic information indicates that, because of a fishery resource disaster, a significant number of those engaged in the commercial fishery have suffered revenue declines that greatly affect or materially damage their businesses, the commercial fishery will be deemed to have failed. Sub-units of a fishery or sub-regions may be defined for the purpose of this evaluation. The following thresholds are to be applied in making the determination, 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% will result in a determination of a commercial fishery failure.
- Revenue losses between 35% and 80% will be evaluated further (e.g., to determine if economic impacts are severe).
- Revenue losses less than 35% will not be eligible for determination of a commercial fishery failure, except where the Secretary determines there are special and unique circumstances that may justify considering and using a lower threshold in making the determination.

## **2. Determination of Serious Disruption Affecting Future Production**

IFA 308(b) also allows a determination of a serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes. If available scientific information indicates that there has been an unexpected sudden and precipitous decrease in the harvestable biomass or spawning stock size of a fish stock that causes a significant number of persons to lose access to the fishery for a substantial period of time in a specific area, a serious disruption affecting future production will be deemed to have occurred. The Secretary will consider, among other things, most recent trawl surveys and other fishery resource surveys conducted by the National Marine Fisheries Service and/or state officials, as well as most recent stock assessments and other indicators of future production from the fishery.

The same percentage thresholds used to evaluate revenue losses for a commercial fishery failure determination will be applied in making this determination, based on estimated decrease in harvestable biomass or spawning stock size of the fish targeted by the fishery (which is dependent on the fishery resource subject to a fishery resource disaster) compared to the most recent 5-year period.

## **3. Determination of Harm**

IFA 308(d) requires the determination of harm should be made if the fishermen have uninsured losses suffered as a direct result of a fishery resource 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. The same percentage thresholds used to evaluate revenue losses for a commercial fishery failure determination will be applied in making this determination.

### **D. Consideration of Overfishing**

Overfishing is within the control of fishery managers to mitigate through conservation and management measures and in general will not be an allowable cause for a fishery resource disaster. How and whether overfishing is considered depends on the statute under which the disaster assistance is requested. Under IFA 308(b) or 308(d), disaster determinations are limited by statutory language to disasters resulting from hurricanes, natural, or undetermined causes, and therefore overfishing cannot be the cause under the IFA. Under MSA 312(a), 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. The remainder of this section discusses how overfishing will be considered under MSA 312(a). 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. Where overfishing is present, the presumption against a finding of a fishery resource disaster can be overcome, at the Secretary's discretion, by meeting all of the criteria below, which reflect both statutory and policy priorities and are designed to assure that the fishery achieves long term sustainability.

- There is a demonstrated strong willingness in the fishery to change management to address the

underlying causes of overfishing. The strongest evidence would be final action by the Regional Fishery Management Council (for Federal fisheries) or other appropriate management authority on a significant new direction for fishery management such that fishing practices contributing to overfishing are not allowed; and

- The requester submitted a specific plan for the use of disaster funds to address the underlying causes of overfishing and improve future management. This may include specific research proposals on improving the selectivity of fishing practices, cooperative research efforts, and pilot management studies, and
- The requester submitted a plan for ensuring that the disbursement of any disaster funds made available to individuals/businesses will not exacerbate overfishing now or in the future, or reward activities that contributed to overfishing, but will be used to assist in maintaining a rationalized fishing fleet during the transition period to more sustainable management.

## **V. Making a Determination**

At the conclusion of the evaluation, the Secretary will determine whether the evidence supports a determination of a commercial fishery failure due to a fishery resource disaster caused by specific circumstances as required by the MSA or IFA. For actions under IFA 308(d), the extent, and the beginning and ending dates, of any fishery resource disaster determined must be identified. The Secretary will notify the requestor of the determination. The notification letter will specify if overfishing has occurred in the fishery and is a contributing factor to the disaster.

## **VI. Forms of Financial Assistance**

If the Secretary determines that a commercial fishery failure due to a fishery resource disaster occurred, Congress may appropriate funds for assistance. There is no standing fund from which to provide fishery disaster relief. Under both the MSA and IFA, 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. Under MSA 312(a)(3) and IFA 308(b)(3), the Federal share of the cost of any activity shall not exceed 75 percent. In addition, if the Secretary determines there is a fishery resource disaster, then fishing-related businesses may qualify for certain Small Business Administration (SBA) loans, which can, in certain cases, help address economic injury and physical damage.

A disaster request should include a spending plan that, to the extent practicable, addresses the causes of the disaster. Disaster funding should not contribute to the continuation of overfishing or any of its causes. Developing and implementing strategies to improve environmental and economic performance (including utilizing more selective harvesting strategies and gear), improve fishery information, protect and restore habitat, as well as capacity reduction and catch share programs are tools available to address problems of overcapacity and economic inefficiency in fisheries, and could be a component of the fishery disaster assistance.

Factors identified in Section IV.C to determine if there was a commercial fishery failure, serious disruption affecting future production, or harm may bear on the assistance provided if Congress appropriates funds. The Secretary may also examine the severity of the effects by considering impacts

on fishermen, processors, and other businesses of the community affected by the failure, serious disruption, or harm. Further, the availability of hazard insurance to address financial losses due to a disaster (e.g. hurricane, tsunami, earthquake, etc.) and whether uninsured losses were previously mitigated with disaster assistance may be consideration in determining economic losses for purposes of disaster assistance under MSA and IFA.

Where a local economy is substantially dependent on fishing for a specific stock, a commercial failure due to a fishery resource disaster may have more severe impacts than in diversified economies, 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. Also, longer lasting failures may justify job retraining programs or loans to provide assistance until recovery can take place.

Under IFA 308(d), once the Secretary makes a determination of significant harm incurred, the Secretary is authorized to provide disaster assistance if Congress appropriates funds for the disaster, to the people engaged in commercial fisheries by initiating projects or other measures to alleviate that harm. Projects or measures funded with federal 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. Activities funded by federal fishery disaster assistance provided under MSA or IFA should take into account harm mitigated by other means such as insurance or other governmental assistance.

In addition to the types of assistance identified in MSA 312(a), IFA 308(b), and IFA 308(d), buybacks of fishing permits or vessels under MSA authorities may be appropriate options for an overcapitalized fishery experiencing a commercial fishery failure. Buybacks under MSA 312(b) are voluntary in nature, and as there is no standing fund for buybacks, funds must be appropriated for such a purpose. Prior to using buybacks as a mechanism to provide assistance, the Secretary would assess whether latent (inactive) permits are present in the fishery and how latent permits should be addressed as part of any buyback program.

**Appendix – Statutory Language**

**MSA Section 312 TRANSITION TO SUSTAINABLE FISHERIES**

**(a) FISHERIES DISASTER RELIEF**

(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) natural causes;

(B) 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; or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, 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 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. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

**MSA Section 315 REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM**

(a) **IN GENERAL.**—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

(b) **PROGRAM COMPONENTS.**—

(1) **IN GENERAL.**—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;

(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

(D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

(2) **JOB TRAINING.**—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

(3) **STATE PARTICIPATION OBLIGATION.**—The participation by a State in the program shall be

conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

(4) **NO MATCHING REQUIRED.**—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

(A) no reasonable means are available through which applicants can meet the matching requirement; and

(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

(5) **NET REVENUE LIMIT INAPPLICABLE.**—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

(c) **REGIONAL IMPACT EVALUATION.**—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region’s fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

(d) **CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.**—In this section the term ‘catastrophic regional fishery disaster’ means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

(1) results in economic losses to coastal or fishing communities;

(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

### **IFA 308 (b) Additional appropriations**

In addition to the amounts authorized in subsection (a) of this section, there are authorized to be appropriated to the Department of Commerce \$65,000,000 for each of the fiscal years 1994 and 1995, which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this chapter; except that—

(1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future;

(2) the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels; and

(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.

Amounts appropriated under this subsection shall remain available until expended.

**IFA 308(d) Assistance to commercial fishermen**

(1) In addition to the amounts authorized under subsections (a), (b), and (c) of this section, there are authorized to be appropriated to the Department of Commerce \$65,000,000 for fiscal year 1992 to enable the Secretary to help persons engaged in commercial fisheries, either by providing assistance directly to those persons or by providing assistance indirectly through States and local government agencies and nonprofit organizations, for 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 Hurricane Hugo, Hurricane Andrew, Hurricane Iniki, or any other natural disaster. Amounts appropriated under this subsection shall remain available until expended.

(2) The Secretary shall determine the extent, and the beginning and ending dates, of any fishery resource disaster under this subsection.

(3) 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.

(4)

(A) Assistance may not be provided under this subsection as part of a fishing capacity reduction program in a fishery unless the Secretary determines that adequate conservation and management measures are in place in that fishery.

(B) As a condition of awarding assistance with respect to a vessel under a fishing capacity reduction program, the Secretary shall—

(i) prohibit the vessel from being used for fishing; and

(ii) require that the vessel be—

(I) scrapped or otherwise disposed of in a manner approved by the Secretary; or

(II) donated to a nonprofit organization and thereafter used only for purposes of research, education, or training; or

(III) used for another non-fishing purpose provided the Secretary determines that adequate measures are in place to ensure that the vessel cannot reenter any fishery.

(C) A vessel that is prohibited from fishing under subparagraph (B) shall not be eligible for a fishery endorsement under section 12113 (a) of title 46 and any such endorsement for the vessel shall not be effective.

(5) The Secretary shall establish, after notice and opportunity for public comment, appropriate limitations, terms, and conditions for receiving assistance under this subsection.

(6) As used in this subsection, the term “person” means any individual or any corporation, partnership, trust, association, or other nongovernmental entity.

(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides—

(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total days at sea weighted by the maximum potential fishing capacity of the fleet;

(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.