



Atlantic States Marine Fisheries Commission

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Sustainable and Cooperative Management of Atlantic Coastal Fisheries

Testimony of ASMFC Executive Director Robert E. Beal on H.R. 5103, the Fishery Improvement to Streamline untimely regulatory Hurdles post Emergency Situation Act.

10/25/2023

Chairman Bentz, Ranking Member Huffman, and members of the subcommittee,

Thank you for the opportunity to testify on H.R. 5103, the Fishery Improvement to Streamline untimely regulatory Hurdles post Emergency Situation Act, or the FISHES Act, introduced by Representative Donalds.

My name is Bob Beal, I am the Executive Director of the Atlantic States Marine Fisheries Commission, which I will refer to as "ASMFC". ASMFC is a Compact of the 15 Atlantic coastal states which manages nearshore migratory marine fisheries occupying multiple states' waters from zero to three miles offshore. In 1942, the 77th United States Congress approved ASMFC's Compact and in doing so, recognized the need to manage our fisheries as a shared, collective resource for all public benefit. We were granted management authority in 1984 and 1993 through the Atlantic Striped Bass Conservation Act¹ and the Atlantic Coastal Fisheries Cooperative Management Act². Today, the Commission manages 27 of the East Coast's most productive, economically important, and iconic fisheries, nine of which are cooperatively managed with our federal partners at NOAA Fisheries.

Our member states are supportive of any effort to accelerate the distribution of disaster assistance to fishery participants. Timely distribution of fishery disaster funding is critical to maintaining the economic viability of fisheries that are an essential part of coastal communities. These fisheries provide subsistence for countless individuals and are the keystones of economies in many rural locations. In addition to direct assistance to fishery participants and their communities, disaster assistance can be used to prevent future failures and restore affected fisheries.

Fisheries can be a fragile resource. The stocks we manage are impacted by numerous natural and man-made events beyond our control that cause population declines. The impacts of those declines have a ripple effect beyond just those on the boats. Closures and decreases in access to fisheries caused by events such as oil spills, hurricanes, and fishery failures have impacts on vessel owners, crews, processing facilities, ports, tourism, and restaurants. There are numerous examples of this economic keystone failing, and participants not receiving assistance until years later. This timeline stands in contrast to much faster assistance programs for other industries such as in agriculture.

¹ 16 U.S.C. § 5151

² 16 U.S.C. § 5101

Since the fisheries disaster program was initiated there have been 136 disaster requests submitted to the Secretary of Commerce. Of those requests, 103 have been approved, 16 denied, two partially approved, three withdrawn, one undetermined, and 11 pending. Of the pending requests, the Hurricane Sally disaster request was submitted nearly 3 years ago with no determination (NOAA Fisheries, 2023). This Secretarial determination period can vary from a couple of months to multiple years with no timing requirements in statute.

In 1996 Congress amended the Magnuson-Stevens Fishery Conservation and Management Act³ (or MSA) to develop a process for giving ad hoc assistance to commercial fishery participants, tribal subsistence fishery participants, charter boats, headboats, and processors, who have experienced significant economic losses due to unforeseen events. The MSA states that to provide assistance, a disaster declaration must be requested by an eligible entity, there needs to be a positive determination, and declines must be due to an allowable cause. All of those terms are defined by NOAA below.

“A request for a fishery resource disaster determination is generally made by the Governor of a State, an official resolution of an Indian Tribe, or other comparable elected or politically appointed representative as determined by the Secretary of Commerce (Secretary). The Secretary may also initiate a review at their own discretion” (National Oceanic and Atmospheric Association, 2023)

“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” (Kelly Denit, NOAA Fisheries, 2021)

“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.” (Kelly Denit, NOAA Fisheries, 2021)

At the end of the 117th Congress, the Fisheries Resource Disasters Improvement Act⁴, or FReDI, was passed. Amendments made to MSA through this act put timelines on NOAA to distribute funding to stakeholders after appropriation from Congress. FReDI also eliminated an alternative avenue for fisheries disaster determination by removing section 308 from the Interjurisdictional Fisheries Act.

Here is a step-by-step timeline of the improved process:

1. An eligible entity (e.g Governor, Tribal representative, or other qualified applicant) requests a fishery disaster determination from the Secretary of Commerce.

³ 16 U.S.C. § 1861

⁴ 16 U.S.C. § 1861a(a)

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 can appropriate funds for fishery disaster relief on an ad hoc basis.
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. (Kelly Denit, NOAA Fisheries, 2021)
 - a. Within 14 days, NOAA coordinates with OMB to determine the allocation of funds
 - b. Within 120 days, States create and submit spend plans to NOAA
 - c. Within 90 days, NOAA approves the spend plan and submits it to OMB for approval
 - d. OMB approves the spend plan (with no timing requirement)
 - e. State receives approval to spend funds in accordance with their approved spend plan

Relief funding is often disbursed through the interstate fisheries commissions, including ASMFC. When we are asked to distribute funds to affected stakeholders, we work as quickly as possible to do so. The Fisheries Resource Disasters Improvement Act made significant improvements in the timeline for disaster relief distribution, however, it did not explicitly state that OMB must also comply with the new timelines. In the past, OMB has taken up to a year to approve spend plans, proving to be a significant gap in the law.

Comparisons between fisheries disaster support systems and those for the agriculture industry are, surprisingly, apples to oranges. Both industries are the bedrock of rural economies and both experience production and economic losses in similar ways. The difference in support stems from key infrastructure differences. Farmers get assistance through insurance, direct payments, low-interest loans, and cost-share programs, all of which are underdeveloped or non-existent for fisheries. (Stubbs, 2023) These systems are especially needed in the time immediately after a disaster has occurred.

The FISHES Act is a step forward in addressing regulatory hurdles for fisheries. FISHES puts a 30-day decision requirement on OMB to deny/approve a State's spend plan. OMB must work within NOAA's broader 90-day spend plan approval timeline to comply.

The 2019 Atlantic herring disaster impacted the greater Atlantic region after there were low levels of reproduction. The stock was not overfished nor experiencing overfishing. The positive disaster determination came in late 2021 and funds finally reached the hands of those impacted in 2023, four years after the disaster had occurred. This had dire consequences for individuals and businesses participating in the herring fishery.

Our member States have shared personal anecdotes about the impacts delays after the herring disaster had on their communities. In summation, we've heard about:

- Multiple entities defaulting on loans (vessel owners and dealers)
- Crew layoffs
- Crew needing to find work elsewhere, moving to the West Coast to do so
- Companies 150 years old and family operations closing their doors

The worst part about the delays is that often the assistance only reaches stakeholders after they've left their industry, sold their boat, or in some cases, passed away. Our stakeholders need better support mechanisms, and any effort that can be made toward this end goal is appreciated. This includes efforts made to remove or put restrictions on OMB's role in the process.

Climate Change is resulting in increased uncertainty with natural disasters becoming more and more common. It's also leading to substantial changes in fisheries distribution and productivity. These climate-induced changes are likely to increase the frequency of fishery disasters and the need for effective disaster assistance programs. To better predict and reduce the fishery disasters resulting from climate change, fishery managers will rely on a robust fishery data collection and analysis program. Congress will need to provide resources to the states and NOAA Fisheries to support effective fisheries monitoring programs.

Also, the rapid development of offshore wind projects along the Atlantic coast will have impacts on fisheries that are not yet fully understood. The cumulative impacts of fisheries displacement and the potential changes to larval disbursement, caused by development, could create a future need for fishery disaster support.

Our stakeholders can't wait years for lifelines. The FISHERIES Act would help shorten this timeline in an effort to make the relief funds relevant to the stakeholders who have suffered. By imposing a strict timeline on the Office of Management and Budget, acknowledging their role in the delays, and adding transparency to the process, this bill is a step forward in improving the process and timing of distributing assistance to those impacted by fisheries disasters. This bill would help fishery participants weather fishery disasters, retain fishery infrastructure, and increase the likelihood of sustained economic viability of a centuries-old way of life in our country.

For these reasons, ASMFC is supportive of the bill. Thank you again for your time. I welcome any questions you have.