AMENDMENT NO.    Calendar No.    
Purpose: In the nature of a substitute. 


S. 2346 

To improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service, and for other purposes. 

Referred to the Committee on ______ and ordered to be printed 

Ordered to lie on the table and to be printed 

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _______. 

Viz: 

1 Strike all after the enacting clause and insert the following: 

2  

3 SECTION 1. SHORT TITLE. 

4 This Act may be cited as the “Fishery Failures: Urgently Needed Disaster Declarations Act”. 

5 SEC. 2. FISHERY RESOURCE DISASTER RELIEF. 

6 Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) is amended to read as follows: 

7 “(a) FISHERY RESOURCE DISASTER RELIEF. — 

8 “(1) DEFINITIONS.—In this subsection:
“(A) ALLOWABLE CAUSE.—The term ‘allowable cause’ means a natural cause, discrete anthropogenic cause, or undetermined cause.

“(B) ANTHROPOGENIC CAUSE.—The term ‘anthropogenic cause’ means an anthropogenic event, such as an oil spill or spillway opening—

“(i) that could not have been addressed or prevented by fishery management measures; and

“(ii) that is otherwise beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions imposed as a result of judicial action or to protect human health or marine animals, plants, or habitats.

“(C) FISHERY RESOURCE DISASTER.—The term ‘fishery resource disaster’ means a disaster that is determined by the Secretary in accordance with this subsection and—

“(i) is a sudden, unexpected, and large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource, which may include loss of fishing vessels and gear
for a substantial period of time that results in significant revenue or subsistence loss and is due to an allowable cause; and

"(ii) does not include reasonably predictable, foreseeable, and recurrent fishery resource cycle of variations in species distribution or stock abundance.

"(D) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130), and the term 'Tribal' means of or pertaining to such an Indian tribe.

"(E) NATURAL CAUSE.—The term 'natural cause'—

"(i) means a weather, climatic, hazard, or biology-related event, such as—

"(I) a hurricane;

"(II) a flood;

"(III) a harmful algal bloom;

"(IV) a hypoxic zone;

"(V) a drought;

"(VI) El Niño effects on water temperature; or

"(VII) disease; and
“(ii) does not mean a normal or cyclical variation in a species distribution or stock abundance.

“(F) 12-MONTH REVENUE LOSS.—The term ‘12-month revenue loss’ means the percentage reduction in commercial, headboat, and processor revenue for the 12 months during the fishery resource disaster period that is due to the fishery resource disaster, when compared to average annual revenue in the most recent 5-year period or equivalent for stocks with cyclical life histories.

“(G) UNDETERMINED CAUSE.—The term ‘undetermined cause’ means a cause in which the current state of knowledge does not allow the Secretary to identify the exact cause, and there is no current conclusive evidence supporting a possible cause of the fishery resource disaster.

“(2) GENERAL AUTHORITY.—

“(A) IN GENERAL.—The Secretary shall have the authority to determine the existence, extent, and beginning and end dates of a fishery resource disaster under this subsection in accordance with this subsection.
“(B) Availability of Funds.—After the Secretary determines that a fishery resource disaster has occurred, the Secretary is authorized to make sums available, from funds appropriated under paragraph (9) and from any supplemental appropriations that are available, to be used by the affected State, or by the Secretary in cooperation with the affected State.

“(C) Savings Clause.—The requirements under this subsection shall take effect only with respect to requests for a fishery resource disaster determination submitted after the date of enactment of the Fishery Failures: Urgently Needed Disaster Declarations Act.

“(3) Initiation of a Fishery Resource Disaster Review.—

“(A) Eligible Requesters.—Not later than 1 year after the date of the conclusion of the fishing season, a request for a fishery resource disaster determination may be submitted to the Secretary, if the Secretary has not independently determined that a fishery resource disaster has occurred, by—

“(i) the Governor of an affected State;

“(ii) an official Tribal resolution; or
“(iii) any other comparable elected or politically appointed representative as determined by the Secretary.

“(B) REQUIRED INFORMATION.—A complete request for a fishery resource disaster determination under subparagraph (A) shall include—

“(i) identification of all presumed affected fish stocks;

“(ii) identification of the fishery as Federal, non-Federal, or both;

“(iii) the geographical boundaries of the fishery;

“(iv) preliminary information on causes of the fishery resource disaster, if known; and

“(v) information needed to support a finding of a fishery resource disaster, including—

“(I) information demonstrating the occurrence of 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
the loss of fishing vessels and gear, for a substantial period of time;

“(II) 12-month revenue loss or subsistence loss for the affected Federal fishery, or if a fishery resource disaster has occurred at any time in the previous 5-year period, an appropriate time frame as determined by the Secretary;

“(III) if applicable, information on lost resource tax revenues assessed by local communities, such as a raw fish tax; and

“(IV) if applicable, information on 12-month revenue loss for processors related to the information provided under subclause (I), subject to section 402(b).

“(4) REVIEW PROCESS.—

“(A) INTERIM RESPONSE.—Not later than 20 days after receipt of a request under paragraph (3), the Secretary shall provide an interim response to the individual that—

“(i) acknowledges receipt of the request;
“(ii) provides a regional contact within the National Oceanographic and Atmospheric Administration;

“(iii) outlines the process and timeline by which a request shall be considered; and

“(iv) requests additional information concerning the fishery resource disaster, if the original request is considered incomplete.

“(B) EVALUATION OF REQUESTS.—

“(i) IN GENERAL.—The Secretary shall complete a review, within the time frame described in clause (ii), using the best scientific information available, in consultation with the affected fishing communities, States, or Tribes, of—

“(I) the information provided by the requester and any additional information relevant to the fishery, which may include—

“(aa) fishery characteristics;

“(bb) stock assessments;

“(cc) the most recent fishery independent surveys and other fishery resource assessments and
surveys conducted by Federal, State, or Tribal officials;

“(dd) estimates of mortality;

and

“(ee) overall effects; and

“(II) the available economic information, which may include an analysis of——

“(aa) landings data;

“(bb) revenue;

“(cc) the number of participants involved;

“(dd) the number and type of jobs and persons impacted, which may include——

“(AA) fishers;

“(BB) subsistence users;

“(CC) United States fish processors; and

“(DD) an owner of a related fishery infrastructure or business affected by the disaster, such as a marina operator, recreational fishing
equipment retailer, or char-
ter, headboat, or tender ves-
sel owner, operator, or crew;
“(ee) an impacted Indian
tribe;
“(ff) an impacted business
or other entity;
“(gg) the availability of haz-
ard insurance to address finan-
cial losses due to a disaster;
“(hh) other forms of disas-
ter assistance made available to
the fishery, including prior
awards of disaster assistance for
the same event;
“(ii) the length of time the
resource, or access to the re-
source, has been restricted;
“(jj) status of recovery from
previous fishery resource disas-
ters;
“(kk) lost resource tax reve-
nues assessed by local commu-
nities, such as a raw fish tax;
and
"(ii) other appropriate indicators to an affected fishery, as determined by the National Marine Fisheries Service.

"(ii) TIME FRAME.—The Secretary shall complete the review described in clause (i), if the fishing season, applicable to the fishery—

"(I) has concluded or there is no defined fishing season applicable to the fishery, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination;

"(II) has not concluded, not later than 120 days after the conclusion of the fishing season; or

"(III) has not been opened, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination.

"(C) FISHERY RESOURCE DISASTER DETERMINATION.—The Secretary shall make the determination of a fishery resource disaster
based on the criteria for determinations listed in paragraph (5).

"(D) NOTIFICATION.—Not later than 14 days after the conclusion of the review under this paragraph, the Secretary shall notify the requestor and the Governor of the affected State of the determination of the Secretary.

"(5) CRITERIA FOR DETERMINATIONS.—

"(A) IN GENERAL.—The Secretary shall make a determination about whether a fishery resource disaster has occurred, based on the revenue loss thresholds under subparagraph (B), and, if a fishery resource disaster has occurred, whether the fishery resource disaster was due to—

"(i) a natural cause;

"(ii) an anthropogenic cause; or

"(iii) an undetermined cause.

"(B) REVENUE LOSS THRESHOLDS.—

"(i) IN GENERAL.—The Secretary shall apply the following 12-month revenue loss thresholds in determining whether a fishery resource disaster has occurred:

"(I) Losses greater than 80 percent shall result in a positive deter-
mination that a fishery resource disaster has occurred.

“(II) Losses between 35 percent and 80 percent shall be evaluated to determine whether a fishery resource disaster has occurred, based on the information provided or analyzed under paragraph (4)(B).

“(III) Losses less than 35 percent shall not be eligible for a determination that a fishery resource disaster has occurred, except where the Secretary determines there are extenuating circumstances that justify using a lower threshold in making the determination.

“(ii) Subsistence uses and aquaculture operations.—In making a determination of whether a fishery resource disaster has occurred, the Secretary may consider revenue loss from aquaculture operations and loss of subsistence opportunity, where appropriate.

“(C) Ineligible fisheries.—A fishery subject to overfishing in any of the 3 years pre-
ceding the date of a determination under this subsection is not eligible for a determination of whether a fishery resource disaster has occurred unless—

“(i) the Secretary determines that overfishing was not a contributing factor to the fishery resource disaster; or

“(ii) the—

“(I) regional council in question is taking action to address overfishing; and

“(II) requester of a determination of a fishery resource disaster—

“(aa) has a plan to use fishery resource disaster funding to address the underlying causes of overfishing; and

“(bb) has submitted a plan that doesn’t reward or exacerbate overfishing.

“(D) EXCEPTIONAL CIRCUMSTANCES.—In an exceptional circumstance where substantial economic impacts to the affected fishery and fishing community have been subject to a disaster declaration under another statutory au-
authority, such as in the case of a natural disaster or from the direct consequences of a Federal action taken to prevent, or in response to, a natural disaster for purposes of protecting life and safety, the Secretary may determine a fishery resource disaster has occurred without a request or without conducting the required analyses in subparagraphs (A) and (B).

"(6) DISBURSAL OF APPROPRIATED FUNDS.—

"(A) AUTHORIZATION.—The Secretary shall allocate funds available under paragraph (9) for fishery resource disasters.

"(B) ALLOCATION OF APPROPRIATED FISHERY RESOURCE DISASTER ASSISTANCE.—

"(i) NOTIFICATION OF FUNDING AVAILABILITY.—When there are appropriated funds for 1 or more fishery resource disasters, the Secretary shall notify the public and representatives of affected fishing communities with a positive disaster determination that is unfunded of the allocation under paragraph (2)(B) not more than 14 days after the date of the appropriation or the determination of a
fishery resource disaster, whichever occurs later.

“(ii) EXTENSION OF DEADLINE.—The Secretary may extend the deadline under clause (i) by 90 days to evaluate and make determinations on eligible requests.

“(C) CONSIDERATIONS.—In determining the allocation of appropriations for a fishery resource disaster, the Secretary shall consider commercial, headboat, or seafood processing revenue losses and may consider the following factors:

“(i) Direct economic impacts.

“(ii) Uninsured losses.

“(iii) Losses of subsistence fishing.

“(iv) Losses of recreational fishing opportunity.

“(v) Aquaculture operations revenue loss.

“(vi) Direct revenue losses to a fishing community.

“(vii) Treaty obligations.

“(viii) Other economic impacts.

“(D) SPEND PLANS.—To receive an allocation from funds available under paragraph (9),
a requestor with an affirmative fishery resource
disaster determination shall submit a spend
plan to the Secretary, not more than 120 days
after receiving notification that funds are avail-
able, that shall include the following informa-
tion, if applicable:

“(i) Objectives and outcomes, with an
emphasis on addressing the factors con-
tributing to the fishery resource disaster
and minimizing future uninsured losses, if
applicable.

“(ii) Statement of work.

“(iii) Budget details.

“(E) REGIONAL CONTACT.—The Secretary
shall provide a regional contact within the Na-
tional Oceanic and Atmospheric Administration
to facilitate review of spend plans and disbursal
of funds.

“(F) DISBURSAL OF FUNDS.—

“(i) AVAILABILITY.—Funds shall be
disbursed not later than 90 days after the
date the Secretary receives a complete
spend plan under subparagraph (D).

“(ii) METHOD.—The Secretary may
provide an allocation of funds under this
subsection in the form of a grant, direct payment, cooperative agreement, loan, or contract.

"(iii) ELIGIBLE USES.—

"(I) IN GENERAL.—Funds allocated for fishery resources disasters under this subsection shall prioritize the following uses, which are not in order of priority:

"(aa) Habitat conservation and restoration and other activities, including scientific research, that reduce adverse impacts to the fishery.

"(bb) The collection of fishery information and other activities that improve management of the affected fishery.

"(cc) In a commercial fishery, capacity reduction and other activities that improve management of fishing effort, including funds to offset budgetary costs to refinance a Federal fishing capacity reduction loan or to repay
the principal of a Federal fishing
capacity reduction loan.

"(dd) Developing, repairing,
or improving fishery-related pub-
lic infrastructure.

"(ee) Job training and eco-
nomic transition programs.

"(ff) Public information
campaigns on the recovery of the
fishery, including marketing.

"(gg) For any purpose that
the Secretary determines is ap-
propriate to restore the fishery
affected by such a disaster or to
prevent a similar disaster in the
future.

"(hh) Direct assistance to a
person, fishing community (in-
cluding assistance for lost fish-
eries resource levies), or a busi-
ness to alleviate economic loss in-
curred as a direct result of a
fishery resource disaster, particu-
larly when affected by a cir-
cumstance described in para-

graph (5)(D).

"(ii) Appropriate economic
and other incentives to encourage
commercial fisherman to return
to the fishery once it has recov-
ered from the disaster.

"(jj) Hatcheries and stock
enhancement to help rebuild the
affected stock or offset fishing
pressure on the affected stock.

"(kk) Other activities that
recover or improve management
of the affected fishery, as deter-
mined by the Secretary.

"(II) DISPLACED FISHERY EM-
PLOYEES.—Where appropriate, indi-
viduals carrying out the activities de-
scribed in items (aa) through (ff) of
subclause (I) shall be individuals who
are, or were, employed in a fishery for
which the Secretary has determined
that a fishery resource disaster has
occurred.

"(7) LIMITATIONS.—
"(A) Federal share.—

"(i) In general.—Except as provided in clauses (ii) and (iii), 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.

"(ii) Waiver.—The Secretary may waive the non-Federal share requirements of this subsection, if the Secretary determines that—

"(I) no reasonable means are available through which the recipient of the Federal share can meet the non-Federal share requirement; and

"(II) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the non-Federal share requirement.

"(iii) Exception.—The Federal share of direct assistance as described in paragraph (6)(F)(iii)(I)(hh) shall be equal to 100 percent.

"(B) Limitations on administrative expenses.—
“(i) FEDERAL.—Not more than 3 percent of the funds available under this subsection may be used for administrative expenses by the National Oceanographic and Atmospheric Administration.

“(ii) STATE OR TRIBAL GOVERNMENTS.—Of the funds remaining after the use described in clause (i), not more than 5 percent may be used by States, Tribal governments, or interstate marine fisheries commissions for administrative expenses.

“(C) FISHING CAPACITY REDUCTION PROGRAM.—

“(i) IN GENERAL.—No funds available under this subsection may be used 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 such fishery.

“(ii) ASSISTANCE CONDITIONS.—As a condition of providing assistance under this subsection 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—

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

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

“(cc) 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 anywhere in the world.

“(D) NO FISHERY ENDORSEMENT.—

“(i) In general.—A vessel that is prohibited from fishing under subparagraph (C)(ii)(I) shall not be eligible for a fishery endorsement under section 12113(a) of title 46, United States Code.
“(ii) NONEFFECTIVE.—A fishery endorsement for a vessel described in clause (i) shall not be effective.

“(iii) NO SALE.—A vessel described in clause (i) shall not sold to a foreign owner or reflagged.

“(8) PUBLIC INFORMATION ON DATA COLLECTION.—The Secretary shall make available and update as appropriate, information on data collection and submittal best practices for the information described in paragraph (4)(B).

“(9) AUTHORIZATION OF APPROPRIATIONS.—

“(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary.

“(B) AVAILABILITY OF FUNDS.—Amounts appropriated under this subsection shall remain available until expended.

“(C) TAX EXEMPT STATUS.—The Fisheries Disasters Fund appropriated under this subsection shall be a tax exempt fund.

“(D) SUPPLEMENTAL APPROPRIATIONS.—The Secretary may use any supplemental appropriations that are available to carry out this subsection.”.
SEC. 3. MAGNUSON- STEVENS FISHERY CONSERVATION AND
MANAGEMENT ACT.

(a) REPEAL.—Section 315 of the Magnuson-Stevens
Fishery Conservation and Management Act (16 U.S.C.
1864) is repealed.

(b) REPORT.—Section 113(b)(2) of the Magnuson-
Stevens Fishery Conservation and Management Reauthor-
ization Act of 2006 (16 U.S.C. 460ss note) is amended—

(1) in the paragraph heading, by striking “AN-
NUAL REPORT” and inserting “REPORT”;

(2) in the matter preceding subparagraph (A),
by striking “Not later than 2 years after the date
of enactment of this Act, and annually thereafter”
and inserting “Not later than 2 years after the date
of enactment of the Fishery Failures: Urgently
Needed Disaster Declarations Act, and biennially
thereafter”; and

(3) in subparagraph (D), by striking “the cal-
endar year 2003” and inserting “the most recent”.

SEC. 4. INTERJURISDICTIONAL FISHERIES ACT OF 1986.

(a) REPEAL.—Section 308 of the Interjurisdictional

(b) TECHNICAL EDIT.—Section 3(k)(1) of the Small
Business Act (15 U.S.C. 632(k)(1)) is amended by strik-
ing “(as determined by the Secretary of Commerce under
section 308(b) of the Interjurisdictional Fisheries Act of
1 1986)’ and inserting ‘(as determined by the Secretary of
2 Commerce under the Fishery Failures: Urgently Needed
3 Disaster Declarations Act)’.

4 SEC. 5. BUDGET REQUESTS; REPORTS.
5 (a) BUDGET REQUEST.—In the budget justification
6 materials submitted to Congress in support of the budget
7 of the Department of Commerce for each fiscal year (as
8 submitted with the budget of the President under section
9 1105(a) of title 31, United States Code), the Secretary
10 of Commerce shall include a separate statement of the
11 amount requested to be appropriated for that fiscal year
12 for outstanding unfunded fishery resource disasters.
13 (b) DRIFTNET ACT AMENDMENTS OF 1990 REPORT
14 AND BYCATCH REDUCTION AGREEMENTS.—
15 (1) IN GENERAL.—The Magnuson-Stevens
16 Fishery Conservation and Management Act (16
17 U.S.C. 1801 et seq.) is amended—
18 (A) in section 202(h), by striking para-
19 graph (3); and
20 (B) in section 206—
21 (i) by striking subsections (e) and (f);
22 and
23 (ii) by redesignating subsections (g)
24 and (h) as subsections (e) and (f), respec-
25
(2) Biennial report on international compliance.—Section 607 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h) is amended—

(A) by inserting "(a) In General.—" before "The Secretary" and indenting appropriately; and

(B) by adding at the end the following:

"(b) Additional Information.—In addition to the information described in paragraphs (1) through (5) of subsection (a), the report shall include—

"(1) a description of the actions taken to carry out the provisions of section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1826), including—

"(A) an evaluation of the progress of those efforts, the impacts on living marine resources, including available observer data, and specific plans for further action;

"(B) a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

"(2)
“(C) a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes; and

“(2) a description of the actions taken to carry out the provisions of section 202(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1822(h)).

“(e) CERTIFICATION.—If, at any time, the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (b)(1)(C), due to large scale drift net fishing, the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1978(a)).”