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

IN THE SENATE OF THE UNITED STATES

Mr. WICKER (for himself and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

1. Be it enacted by the Senate and House of Representa-
2. tives of the United States of America in Congress assembled,
3. SECTION 1. SHORT TITLE.
4. This Act may be cited as the “Fishery Resource Dis-
5. asters Improvement Act”.
6. SEC. 2. FISHERY RESOURCE DISASTER RELIEF.
7. Section 312(a) of the Magnuson-Stevens Fishery
8. Conservation and Management Act (16 U.S.C. 1861a(a))
9. is amended to read as follows:
“(a) **Fishery Resource Disaster Relief.**—

“(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 an unexpected 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 and results in significant
revenue or subsistence loss due to an al-
lowable cause; and

"(ii) does not include—

"(I) reasonably predictable, fore-
seeable, and recurrent fishery cyclical
variations in species distribution or
stock abundance; or

"(II) reductions in fishing oppor-
tunities resulting from conservation
and management measures taken pur-
suant to this Act.

"(D) INDIAN TRIBE.—The term ‘Indian
Tribe’ has the meaning given such term in sec-
tion 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, haz-
ard, or biology-related event, such as—

"(I) a hurricane;
“(II) a flood;
“(III) a harmful algal bloom;
“(IV) a tsunami;
“(V) a hypoxic zone;
“(VI) a drought;
“(VII) El Niño effects on water temperature;
“(VIII) a marine heat wave; or
“(IX) 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, as applicable, in commercial, charter, headboat, or processor revenue for the 12 months during which the fishery resource disaster occurred, when compared to average annual revenue in the most recent 5 years when no fishery resource disaster occurred 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 for such purposes, to be used by the affected State, Tribal government, or interstate marine fisheries commission, or by the Secretary in cooperation with the affected State, Tribal government, or interstate marine fisheries commission.

"(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 Resource Disasters Improvement Act.
“(3) INITIATION OF A FISHERY RESOURCE DISASTERS 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 an 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 fishery, or if a fishery resource disaster has occurred at any time in the previous 5-year period, the most recent 5 years when no fishery resource disaster occurred;

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

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

“(C) ASSISTANCE.—The Secretary may provide data and analysis assistance to an eligible requester described in paragraph (1), if—

“(i) the assistance is so requested;

“(ii) the Secretary is in possession of the required information described in subparagraph (B); and

“(iii) the data is not available to the requester, in carrying out the complete request under subparagraph (B).

“(D) INITIATION OF REVIEW.—The Secretary shall have the discretion to initiate a fishery resource disaster review without a request.

“(E) REVIEW PROCESS.—

“(A) INTERIM RESPONSE.—Not later than 20 days after receipt of a request under para-
9

graph (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;
10

"(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 in-
formation, which may include an anal-
alysis of—

"(aa) landings data;

"(bb) revenue;

"(cc) the number of partici-
pants involved;

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

"(AA) fishers;

"(BB) charter fishing
operators;

"(CC) subsistence
users;
“(DD) United States fish processors; and

“(EE) an owner of a related fishery infrastructure or business affected by the disaster, such as a marina operator, recreational fishing equipment retailer, or charter, headboat, or tender vessel owner, operator, or crew;

“(ee) an impacted Indian Tribe;

“(ff) other forms of disaster assistance made available to the fishery, including prior awards of disaster assistance for the same event;

“(gg) the length of time the resource, or access to the resource, has been restricted;

“(hh) status of recovery from previous fishery resource disasters;

“(ii) lost resource tax revenues assessed by local commu-
nities, such as a raw fish tax; and

"(jj) 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) is expected to be closed for the entire fishing season, 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 requester and the Governor of the affected State or Tribal representative 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;

"(iii) a combination of a natural cause and an anthropogenic cause; or

"(iv) an undetermined cause.

"(B) Revenue Loss Thresholds.—
“(i) IN GENERAL.—Based on the information provided or analyzed under paragraph (4)(B), 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 may result in a positive determination that a fishery resource disaster has occurred, based on the information provided or analyzed under paragraph (4)(B).

“(II) Losses between 35 percent and 80 percent shall be evaluated to determine whether economic impacts are severe enough to declare that a fishery resource disaster has occurred.

“(III) Losses less than 35 percent shall not be eligible for a determination that a fishery resource disaster has occurred.

“(ii) CHARTER FISHING.—In making a determination of whether a fishery resource disaster has occurred, the Secretary shall consider the economic impacts to the
charter fishing industry to ensure financial
coverage for charter fishing businesses.

"(iii) SUBSISTENCE LOSS.—In consider-
ering subsistence loss, the Secretary shall
evaluate the severity of loss to the fishing
community instead of applying the revenue
loss thresholds described in clause (i).

"(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 the Secretary determines that overfishing
was not a contributing factor to the fishery re-
source disaster.

"(D) EXCEPTIONAL CIRCUMSTANCES.—In
an exceptional circumstance where substantial
economic impacts to the affected fishery and
fishing community have been subject to a dis-
aster declaration under another statutory au-
thority, 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 fish-

ery resource disaster has occurred without a re-
quest.

“(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 appro-
priated funds for 1 or more fishery re-
source disasters, the Secretary shall no-
tify—

“(I) the public; and

“(II) representatives of affected
fishing communities with a positive
disaster determination that is un-
funded;

of the availability of funds, 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 re-
source disaster, the Secretary shall consider
commercial, charter, headboat, or seafood proc-
essing revenue losses and may consider the fol-
lowing factors:

"(i) Direct economic impacts.

"(ii) Uninsured losses.

"(iii) Losses of subsistence and Tribal
ceremonial fishing opportunity.

"(iv) Losses of recreational fishing op-
portunity.

"(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 alloca-
tion from funds available under paragraph (9),
a requester 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 available, that shall include the following information, if applicable:

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

"(ii) Statement of work.

"(iii) Budget details.

"(E) REGIONAL CONTACT.—If so requested, the Secretary shall provide a regional contact within the National Oceanic and Atmospheric Administration to facilitate review of spend plans and disbursal of funds.

"(F) DISBURSAL OF FUNDS.—

"(i) AVAILABILITY.—Funds shall be made available to grantees not later than 90 days after the date the Secretary receives a complete spend plan.

"(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 restore the fishery affected by such a disaster, prevent a similar disaster in the future, or assist the affected fishing community, and 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 or improve understanding of the affected species or its ecosystem.

"(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 ca-
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) 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).

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

"(II) DISPLACED FISHERY EM-
PLOYEES.—Where appropriate, indi-
viduals carrying out the activities de-
scribed in items (aa) through (dd) of subclause (I) shall be individuals who are, or were, employed in a commercial, charter, or Tribal 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 shall be equal to 100 percent in the case of—

"(I) direct assistance as described in paragraph (6)(F)(iii)(I)(ee); or

"(II) assistance to subsistence or Tribal fisheries.

"(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 in Federal, State, or international waters; 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 be 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.—There are authorized to be appropriated to carry out this subsection $377,000,000 for the period of fiscal years 2021 through 2026."
1 SEC. 3. MAGNUSON-STEVEN'S FISHERY CONSERVATION AND
2 MANAGEMENT ACT.
3  (a) REPEAL.—Section 315 of the Magnuson-Stevens
4 Fishery Conservation and Management Act (16 U.S.C.
5 1864) is repealed.
6  (b) REPORT.—Section 113(b)(2) of the Magnuson-
7 Stevens Fishery Conservation and Management Reauthor-
8 ization Act of 2006 (16 U.S.C. 460ss note) is amended—
9 (1) in the paragraph heading, by striking “AN-
10 NUAL REPORT” and inserting “REPORT”;
11 (2) in the matter preceding subparagraph (A),
12 by striking “Not later than 2 years after the date
13 of enactment of this Act, and annually thereafter”
14 and inserting “Not later than 2 years after the date
15 of enactment of the Fishery Resource Disasters Im-
16 provement Act, and biennially thereafter”; and
17 (3) in subparagraph (D), by striking “the cal-
18 endar year 2003” and inserting “the most recent”.
19
21  (a) REPEAL.—Section 308 of the Interjurisdictional
23  (b) TECHNICAL EDIT.—Section 3(k)(1) of the Small
24 Business Act (15 U.S.C. 632(k)(1)) is amended by strik-
25 ing “(as determined by the Secretary of Commerce under
26 section 308(b) of the Interjurisdictional Fisheries Act of
27 1986)” and inserting “(as determined by the Secretary of
Commerce under the Fishery Resource Disasters Improvement Act)".

SEC. 5. BUDGET REQUESTS; REPORTS.

(a) BUDGET REQUEST.—In the budget justification materials submitted to Congress in support of the budget of the Department of Commerce for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), the Secretary of Commerce shall include a separate statement of the amount requested to be appropriated for that fiscal year for outstanding unfunded fishery resource disasters.

(b) DRIFTNET ACT AMENDMENTS OF 1990 REPORT AND BYCATCH REDUCTION AGREEMENTS.—

(1) IN GENERAL.—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended—

(A) in section 202(h), by striking paragraph (3); and

(B) in section 206—

(i) by striking subsections (e) and (f); and

(ii) by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.
(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
“(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)).”