California Consolidated Appropriations Act Fisheries Relief Spend Plan
Prepared by the California Department of Fish and Wildlife
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Background

CARES Act, 2020

On May 7, 2020, the Secretary of Commerce announced the allocation of $300 million in fisheries assistance funding provided by the CARES Act to states, Tribes, and territories with coastal and marine fishery participants who had been negatively affected by COVID-19. The State of California was allocated $18,350,586. The National Oceanic and Atmospheric Administration (NOAA) Fisheries used these allocations to make awards to partners, including the Pacific States Marine Fisheries Commission (PSMFC), for distribution to affected parties.

Using the guidelines set forth by the CARES Act and NOAA, the California Department of Fish and Wildlife (CDFW) developed a spend plan for eligibility and claim requirements for the distribution of CARES Fisheries Assistance to California coastal and marine fishery participants who had been negatively affected by COVID-19. This plan distributed available funds based on the price paid for commercial entitlements possessed by eligible applicants and an equal share of any remaining funds among all eligible applicants.

Once the spend plan was approved by NOAA, CDFW worked with PSMFC to mail applications to potentially eligible participants. PSMFC reviewed applications and served as the fiscal agent for the funds. Eligibility was based on, among other things, a greater than 35 percent loss of fishing related income due to COVID-19 between Jan. 1 and June 30, 2020 from commercial fishing, charter businesses, aquaculture operations, and buyers/processor operations in California for marine or anadromous species. The application deadline was set for September 8, 2020 and payment distribution began on October 30, 2020. Payments were distributed to approximately 2,313 applicants.

Consolidated Appropriations Act, 2021

On March 29, 2021, the Secretary of Commerce announced the allocation of an additional $255 million in fisheries assistance funding provided by the Consolidated Appropriations Act of 2021. The purpose of the funding is to support commercial fishing and associated activities previously authorized under Sec. 12005 of the CARES Act. California was allocated $15,315,740 under the Consolidated Appropriations Act.

NOAA Direction and Guidance

NOAA has provided direction on federal requirements for recipients of the relief funds that CDFW must use to revise the prior spend plan. CDFW must adhere to NOAA guidance in addition to requirements set forth by the CARES Act and the Consolidated Appropriations Act.

- Fishery participants eligible to receive funding are limited to commercial fishing businesses, charter/for-hire fishing businesses, qualified aquaculture operations, processors and dealers participating in marine and anadromous fisheries.
- Non-resident commercial harvesters are not eligible for funds unless they are residents of a state that did not receive an allocation.
- Qualified aquaculture operations include privately owned aquaculture businesses growing products in state or federal marine waters of the United States and the hatcheries that supply them. This includes all molluscan shellfish and marine algae. Non-salmonid marine finfish grown in marine waters not covered by USDA are also included.
- All eligible participants must have incurred economic revenue losses greater than 35 percent as compared to the applicable prior five-year average revenue (2015-2019).
- Entities that have been in business less than five years are still eligible for assistance.
- Applicants cannot be made “more than whole” per calendar year as a result of the combination of financial assistance from Consolidated Appropriations Act, 2021, CARES Act, Section 12005, other programs in the CARES Act (e.g., Payment Protection Program, CFAP 2), and their traditional revenue stream as compared to their total average annual revenue from the previous five years.
- Direct payments may not be directed to minors.
- Funds cannot be used to compensate state, local, or tribal governments for lost municipal or government tax revenue.
- Funds must be used to address fishery-related direct or indirect losses or subsistence/cultural/ceremonial impacts.

Overarching Approach for California’s Spend Plan

Direct payments will be made to eligible and qualified individuals and businesses based on COVID-19 related losses scaled to available funds. Eligible applicants must self-certify under penalty of perjury a greater than 35% loss of gross income over a minimum 4-week consecutive timeframe during the 2020 calendar year (Jan 1, 2020 – December 31, 2020) when compared to the same time period averaged across the previous five years (2015 – 2019) due to COVID-19. If total claims exceed available funds, losses will be scaled to level disbursements, maximum caps will be applied, and payments will be made proportional to the adjusted losses (described below). This approach is different than the approach used in the 2020 California CARES fisheries funding that used the price paid for commercial entitlements as the basis for fund disbursement.

Table 1. Summary of proposed distribution of funds

Initial Allocation to CA	**$15,485,930**
Allocation from NOAA	$15,315,740
PSMFC Costs	$70,129
Direct Payments	**$15,245,610**

CDFW is not proposing to recover administrative costs associated with the development of the spend plan or distribution of funds.

Outreach

Due to the large number of potentially qualified applicants and short timeframe, CDFW did not solicit formal public comment on the proposed plan. In lieu of formal public comment, CDFW worked closely with industry leadership across eligible sectors to develop a fair, efficient, and expedient disbursement process consistent with the guidelines provided by NOAA and the Consolidated Appropriations Act.

Eligible Applicants

Consistent with the Consolidated Appropriations Act and based on guidance from NOAA and coordination with PSMFC and other west coast states, eligibility is limited to the following categories:

California Licensees

Commercial Harvesters:

- California Resident Commercial Fishing License
    - Applicants must have filed a 2020 California state tax return or 2020 tax return extension
- California Resident Vessel Permit
    - Applicants must have filed a 2020 California state tax return or 2020 tax return extension
- California non-resident Commercial Fishing License.
    - Non-resident Commercial Fishing License holders must reside in a U.S state or territory that that did not receive fisheries assistance funding under the Consolidated Appropriations Act
- California non-resident Vessel Permit.
    - Non-resident Vessel Permit holders must reside in a U.S state or territory that did not receive fisheries assistance funding under the Consolidated Appropriations Act

Fish Businesses:

Businesses with one of the following California licenses or permits:

- Fish Business (Multifunction)
- Fish Importer
- Fish Processor
- Fish Receiver
- Fish Wholesaler License
- Herring Buyer's Permit
- Fisherman's Retailer

Marine Aquaculturists:

- California Aquaculture Registration Permit for marine or anadromous species
    - Privately owned California aquaculture businesses growing products in state or federal marine waters of the United States and the hatcheries that supply them are eligible for funding, include all molluscan shellfish and marine algae, as well as non-salmonid marine finfish

Applicants must have filed a 2020 California state tax return or 2020 tax return extension.

Commercial Passenger Fishing Vessels (CPFVs):

- California Commercial Passenger Fishing Vessel License
    - CPFV license holders must have submitted logs documenting catch of marine or anadromous species in the loss window. Freshwater species and landlocked anadromous species (e.g., rainbow trout or kokanee salmon, etc.) do not qualify.

Guides:

- California Resident Guide License
    - Guide License holders must have submitted logs documenting marine or anadromous species taken in the loss window. Freshwater species and landlocked anadromous species (e.g., rainbow trout or kokanee salmon, etc.) do not qualify. California Resident Guide License holders must have filed a 2020 California state tax return or 2020 tax return extension
- California Non-resident Guide License.
    - Non-resident Guide License holders must have submitted logs documenting marine or anadromous species taken in the loss window. Freshwater species and landlocked anadromous species (e.g., rainbow trout or kokanee salmon, etc.) do not qualify.

California Residents who fished in states that received fisheries assistance funding under the Consolidated Appropriations Act.

California residents or businesses who filed a 2020 California state tax return (or 2020 tax return extension) who commercially fished for marine or anadromous species in a state with a Consolidated Appropriations Act spend plan that does not include payments for non-resident participants, as further specified below:

Commercial Harvesters:

- Alaska 2020 Commercial Fisheries Entry Commission (CFEC) non-resident Commercial Fishing Permit
- Alaska 2020 CFEC non-resident Commercial Vessel License
- Washington 2020 non-resident commercial license that authorizes fishing for or delivery of food fish or shellfish in Washington.
- Oregon 2020 non-resident Commercial Fishing License
- Oregon 2020 non-resident Commercial Boat License
- Other – California residents that did not make landings in California but landed fish or shellfish into another state or territory under a commercial fishing license and/or commercial vessel permit not listed above if the fishing activity took place in a state that received fisheries assistance under the Consolidated Appropriations act and the activity is not included in another Consolidated Appropriations Act Spend Plan.

Eligible Claims

To make a potentially eligible claim, an individual or business in a qualified sector must have participated in a marine and/or anadromous fishery (or qualified marine aquaculture) during the loss window impacted by COVID-19 in 2020 as well as the prior five years. If the business was not established for five years prior to 2020, applicants must have documented business activity in at least 2019 and must use all years they were in business from 2015-2019 during the loss window in the qualifying sector as their baseline (see below).

Eligible applicants are defined by their social security number or taxpayer identification numbers. Each applicant must submit only one claim that includes all losses on gross income across their qualified permits in all eligible sectors. That is, fisheries/businesses that were not affected by COVID-19 cannot be selectively excluded from calculations, nor can years be selectively excluded from the five-year (2015-2019) baseline, even if designated as a federal fishery disaster. Losses must be attributed to COVID-19 and cannot be due to annual fluctuations or other, non-COVID-19, fisheries management measures (e.g., whale entanglement closures or delays).

Timeframe of Loss Calculation (Loss Window)

Eligible applicants will have the flexibility to calculate their eligible losses during the full or a partial period of the 2020 calendar year (January 1, 2020 – December 31, 2020). Losses claimed over a partial period must be a minimum of any consecutive four-week (28-day) period during the 2020 calendar year (Jan 1, 2020 – Dec 31, 2020). For example, an applicant may wish to use the 6-week time period from June 1 – July 12, 2020 while another applicant may elect to utilize the 9-month timeframe of January 1 – September 30, 2020. The timeframe selected is the applicant's "loss window" that is compared to the same loss window in prior years from which the percent loss is calculated.

Loss Calculation

Upon selection of their loss window, applicants must identify their gross revenue earned during the loss window in 2020 and the prior 5-year average gross revenue for the same loss window during 2015-2019. For example, if a loss window of June 1 – July 12, 2020 is selected, the applicant would combine all eligible gross revenues earned between June 1 – July 12, 2020 (including any 2020 CARES Act funding – see below) to calculate their gross revenue during the 2020 loss window. The applicant would combine all eligible gross revenues earned between June 1 – July 12 from 2015 to 2019 and divide by five to get the average. If the applicant was not in business for all years between 2015 and 2019, the average must be based on the full number of years they were in business with a minimum of at least one year (see below).

The percent loss is calculated by subtracting the 2020 gross revenue plus any previous CARES Act or other COVID relief funding received from the average revenue over the baseline years (2015-2019) and dividing that number by the average revenue. All revenue must be across the same loss window and represent all eligible fisheries and sectors.

Example: 2020 Gross Revenue = $40,000
2020 CARES Act Funding = $10,000
2020 Other Aid/Funding = $14,000
Total Gross Revenue = $64,000

2015-2019 Average Gross Revenue (sum of all years divided by 5) = $100,000

% loss = ($100,000 - $64,000) ÷ $100,000 = 0.36
0.36 x 100 = 36% loss

The reduction in gross revenues incurred during the loss window must be greater than 35% of the 2015-2019 average to qualify.

Applicants without a full five years of revenue history 2015-2019

Applicants without a full five years with which to calculate their 2015-2019 average must use as many years as they have within that timeframe to calculate their baseline average over the loss window.

Applicants for which 2020 was their first year in business do not have a baseline to establish the greater than 35% loss threshold and will not be eligible for assistance.

Other Forms of Assistance

Federal rules require that applicants must demonstrate they will not be made "more than whole" when accounting for direct payments provided under the 2020 CARES Act (PL 116-136) along with any other direct financial assistance received through programs including, but not limited to, the Small Business Administration's Paycheck Protection Program and Economic Injury Disaster Loan/Advance, and the U.S. Department of Agriculture's Coronavirus Food Assistance Program.

Applicants will be required to list all forms of state and federal assistance received in 2020 in their application package. If the calculated loss plus other forms of assistance may make the applicant "more than whole", the applicant must include a "not-to-exceed" award amount to ensure they remain below the "more than whole" threshold.

Disbursement Calculation

The absolute loss for all qualified applicants that certified more than a 35% loss over their loss window will be calculated. If this total exceeds the funds available, then scaling and maximum caps will be applied (described below) and disbursements will be reduced relative to the proportion of funds available compared to the total of adjusted claims.

Scaling to Calculate Adjusted Loss

If total claims exceed available funds, losses will be adjusted according to a marginal rate schedule. This is intended to help level disbursements and reduce the potential influence of a few very large claims on the amount of funding available to the broader applicant pool and promote a more equitable distribution of funds across different business types and sizes. The marginal rate adjustment will be applied to calculate the "adjusted loss" that will be used as the basis for the proportional distribution of funds.

Because both the range and distribution of claimed losses is unknown, the breakpoints for marginal rate adjustments will be based on the quartiles of the distribution of reported losses. Reported losses falling within each quartile will be reduced according to the schedule in Table 2.

Table 2. Marginal rate adjustment schedule with breakpoints set according to the quartiles (Q) of a hypothetical loss-claim distribution.

Percentile of loss-claim distribution	Credit towards adjusted loss calculation
Q1 & Q2: ≤50th (example: <$20,000)	0% reduction, 100% credit
Q3: >50th and ≤75th (example: $20,000-$100,000)	25% reduction, 75% credit (r_3=0.75)
Q4: >75th (example: >$100,000)	50% reduction, 50% credit (r_4=0.50)

When applied to an individual claim, the adjusted loss for each applicant *i* is therefore calculated as:

$$\text{Adjusted loss}_i\ (\$) = \$\text{ loss in Q1 \& Q2} + \$\text{ loss in Q3} * r_3 + \$\text{ loss in Q4} * r_4$$

The adjustment is marginal, meaning that each quartile's adjustment rate applies only to the portion of the unadjusted loss that falls between each quartile break. For example, if the 25th, 50th (median), and 75th percentiles of the entire pool of unadjusted claims are $10,000, $20,000, and $100,000, the adjusted loss for an applicant *A* reporting a loss of $280,000 would be calculated as:

$$\begin{aligned} \text{adjusted loss}_A &= \$20K + (\$100K - 20K) * r_3 + (\$280K - 100K) * r_4 \\ &= \$20K + \$80K * 0.75 + \$180K * 0.50 \\ &= \$170K \end{aligned}$$

Individual *A*'s final payment amount will then be determined as:

$$\text{final payment}_A = \text{allocation} * [\text{adjusted loss}_A / \text{total adjusted losses for all applicants}],$$

where allocation is the total amount of funding available for eligible applicants not subject to maximum payments (described below).

Maximum Payments

If reported losses exceed available funds after the marginal rate adjustment is applied to calculate adjusted losses, maximum payments will be applied as follows:

- No single entity/claimant may receive more than 3% of the total allocation. If the proportional distribution based on adjusted losses results in a calculated payment(s) > 3% of the state allocation, the claimant(s) will receive the maximum amount of $457,368 and the remainder will be added to the pool of funds that will be disbursed proportionally to the remaining claimants.
- The total amount of funds disbursed to California residents (as defined in this spend plan) who fished out-of-state shall not exceed 10% of the total California allocation. Payments for out-of-state applicants will be determined similarly to those for in-state applicants, up to an allocation total of $1,524,561. If the sum of preliminary payment amounts for out-of-state claims exceeds this amount, the claims will be proportionally reduced so the total out-of-state claims does not exceed $1,524,561. The difference will then be applied to the in-state applicants.

If reported losses exceed available funds by only a small amount (e.g., <25%), initial calculations may yield payment amounts greater than reported losses for applicants at the lower end of the loss distribution. These cases will be handled like those above the maximum payment cap, but with payments being set at the original reported loss (i.e., 100% of initial claim) rather than at the 3%/$457,368 cap. Remaining funds made available through this step will be allocated proportionally to remaining claimants. This approach ensures that marginal rate reductions diminish and payments become closer to reported losses as the total loss reported across all applicants approaches the total disbursement to the state.

Application Materials

Application materials and self-certification affidavits will be available to all eligible applicants digitally from PSMFC or, upon request, as hard copy via U.S. post. Applicants will be required to provide documentation and certification necessary to demonstrate eligible losses related to COVID-19 within the requirements of Division M of the Consolidated Appropriations Act, 2021, Sec. 12005 of the CARES Act, federal fund direct payment rules, and California’s approved spend plan.

Application documentation and certification includes the following for each applicant:

- Certification that the individual or entity is a Fishery Participant that is an eligible recipient of assistance under the Consolidated Appropriations Act, 2021, the CARES Act (P.L. 116-136) Section 12005 and the approved California spend plan.
- Certification that funds will be used to address fishery-related direct or indirect losses due to COVID-19
- Certification that the recipient is 18 years of age or older.
- Identification of the timeframe used for losses “loss window” between January 1 – December 31, 2020. The loss window shall be a minimum of consecutive 4-

week (28 day) period or a maximum 12-month period of January 1 – December 21, 2020.

- Certification of gross revenues across all fisheries and qualified sectors participated in during the loss window and baseline years in ocean or coastal waters for marine and/or anadromous species.
  - Individuals or businesses that started within the last five years must have been in business for at least one year prior to January 1, 2020 during the loss window and shall use the annual average revenue of all years in business to establish the baseline from which the greater than 35% loss of revenue is calculated.
  - Loss must be calculated over the loss window used to meet the greater than 35% loss of gross revenue
- Certification of submittal of 2020 California tax return (or 2020 California extension request) demonstrating California residency and certification that the individual/business is only seeking Consolidated Appropriations Act funds in California or description of why non-resident permit holder is eligible and self-certification that the individual/business is only seeking Consolidated Appropriations Act funds in California.
- Certification of timely submittals of all required landing receipts, logbooks, landing fees, aquaculture production reports, or other fishery related documentation required by CDFW pursuant to Title 14 of the California Code of Regulations or California Fish and Game Code and/or other relevant state and federal statutes and regulations demonstrating active involvement in qualifying sectors.
- Certification that the sum of all payments provided under the Consolidated Appropriations Act, 2021, CARES Act, Section 12005, other programs in the CARES Act (e.g., Payment Protection Program, CFAP 2), and traditional revenue, including state unemployment, does not exceed the average calendar year revenue earned across the previous five years for the claimed time period
  - Applicants are required to submit a “more than whole” value of which their payment must be below to keep within this guideline.
- Certification requirements for federal direct payments
- California residents who are claiming losses from fishing in another state must state which permit(s) they are applying under, certify they participated in the eligible sector during the qualifying period, and certify that they were not eligible for and did not receive payments from another state.
- Applicants must **attest** to having documentation/records to support the losses stated on the application and used as the basis for eligibility. All funds are subject to federal audit; therefore, documentation/records must be maintained for at least three years after the close of the primary grant award to PSMFC and made available **upon request** by Pacific States Marine Fisheries Commission, NOAA Fisheries, or the Department of Commerce Office of the Inspector General.

Timeline for Disbursement of Funds

Following approval of the draft plan from NMFS, CDFW will work with PSMFC to notify potentially eligible applicants of the application process via post card mailer and email for those with valid email addresses on file with CDFW. Applicants will be encouraged to submit applications via the electronic submission process established by PSMFC. Hard copy applications will also be accepted. Claimants will have 45 days from the date of mailing of the post card to complete the online application or return forms to PSMFC. Applications received after the published due date will not be reviewed or considered.

If hard copy applications are mailed, applicants will be strongly encouraged to send with tracking and delivery confirmation, to provide proof that documents have been received. Following the close of the 45-day response period, applications will be reviewed.

Reconsideration and Appeals

The Pacific States Marine Fisheries Commission will notify applicants who have not met eligibility requirements, have not provided adequate documentation, or have any clerical errors in their application. These applicants will have 1 week (7 days) to correct any deficiencies and resubmit for review. The second decision on the application will be considered final.

CDFW is not proposing to include an appeal process in the spend plan. Adding provisions for appeals will either delay the disbursement process or require a portion of funds to be set aside for appeals that will decrease the value of disbursements. CDFW will continue to inform prospective applicants via its website and through other public outreach venues that it is important to confirm an up-to-date contact information and availability to receive and respond to communications from PSMFC and/or CDFW.

Late applications will not be accepted. Upon final review of all applications and reconsiderations, final disbursement totals will be calculated and PSMFC will issue relief checks to qualified applicants. PSMFC will maintain up-to-date information on their website and voice recordings regarding the status of payments.

Contacts
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CACares@psmfc.org
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Questions from prospective applicants should be directed to:
CARESfisheriesInfo@wildlife.ca.gov.

Additional information is available at https://wildlife.ca.gov/Regions/Marine/CARES-Act.