

Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Programs: Aquaculture Provisions

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



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This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

The U.S. Department of Agriculture's (USDA) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) is administered by the Farm Service Agency (FSA). The program is meant to cover losses not covered by other USDA disaster assistance programs that were caused by adverse weather or other conditions causing a loss.

General Eligibility Requirements

Eligible Producer: The farmer needs to be an "eligible producer"- which can either be an individual or a legal entity.

- Individuals must either be a U.S. citizen or resident alien, while a legal entity needs to be a corporation, L.L.C., or other business organization under state law.
- The farmer must also be eligible to receive USDA benefits. In particular, the farmer cannot be in violation of conservation provisions restricting the conversion of wetlands or highly erodible lands.

Aquaculture Requirements: For farm-raised fish losses, the farmer must meet additional eligibility rules.

- The facility must be leased or owned by the producer with easily recognized boundaries and a commercial enterprise that is part of a farming operation.
- The producer needs to control the waterbed and provide flood prevention, growing medium, fertilizer or food, and a sufficient amount of quality water; and
- The producer must provide purchased or produced feed to the farm-raised fish.

Income Limit: The farmer needs to have an average adjusted gross income of \$900,000 for the previous three taxable years prior to the current tax year.

- Joint ventures and legal partnerships are excluded from the income limit.
- The 2018 Farm Bill allows the FSA to waive the income cap if it would protect an environmentally sensitive piece of land of special significance.

Claims: The program year for ELAP runs from October 1-September 30. For example, the 2019 program year is from October 1, 2018-September 30, 2019. In order to claim a loss for a program year, the eligible adverse weather event or loss condition must have occurred during that time period.

- *Notice of Loss:* Eligible producers need to file a Notice of Loss with their local FSA office within 30 days of when the loss becomes apparent.
- *Application:* Eligible producers must submit a completed application for ELAP by November 1. For example, for a loss during the 2019 program year, the farmer needs to submit his or her application by November 1, 2019.

Farm-Raised Fish Provisions

For farm-raised fish, ELAP covers two specific types of losses. All other losses are considered to be covered by NAP, and thus, not eligible for ELAP. First, ELAP provides compensation for the loss of feed purchased or harvested for the producer's farm-raised fish. Second, ELAP provides compensation for the death of farm-raised bait fish and game fish.

Eligible Species: To be eligible for ELAP, the farm-raised fish must be an aquatic species, which includes:

- 1) aquatic organisms grown as food for humans;
- 2) fish feed eaten by humans; and
- 3) ornamental fish.

Growing Requirements: The aquaculture species must be intentionally put in, and not simply be indigenous to, a facility in order to be eligible for ELAP. In addition, the producer must plant or seed the species in a way that protects and contains the species, such as in a container, wire basket, net pen, on a rope, or any other similar device.

Eligible Adverse Weather/Loss Conditions: For farm-raised fish, these include, but are not limited to:

- Earthquakes, floods, hurricanes, tidal surges, tornados, and volcanic eruptions;
- For feed losses, excessive wind; and
- For death losses, excessive heat and certain freezes.

	<i>Feed Losses</i>	<i>Death Losses</i>
Eligible Producer Provisions	<ul style="list-style-type: none"> • Aquatic species grown in a controlled environment • Grown/harvested for commercial use in a farming operation • Located in county where eligible adverse weather/loss condition occurred 	<ul style="list-style-type: none"> • Bait or game fish grown in a controlled environment • Grown/harvested for commercial use in a farming operation • Located in county where eligible adverse weather/loss condition occurred
Eligible Losses	<ul style="list-style-type: none"> • Must be intended as feed for eligible farm-raised fish • Loss caused by eligible adverse weather or loss condition • Located in county where eligible adverse weather/loss condition occurred 	<ul style="list-style-type: none"> • Must be bait or game fish • Loss exceeds normal mortality rate • Loss caused by eligible adverse weather or loss condition • Located in county where eligible adverse weather/loss condition occurred

Sources:

- 7 C.F.R. Part 1416.
- FARM SERV. AGENCY, LIVESTOCK DISASTER ASSISTANCE PROGRAMS FOR 2011 AND SUBSEQUENT YEARS 1-0-178 (2011, REVISED 2019), https://www.fsa.usda.gov/Internet/FSA_File/1-ldap_r01_a37.pdf.
- STEPHEN CARPENTER & LINDSAY KUEHN, FARMERS' GUIDE TO DISASTER ASSISTANCE, VOLUME 2: EMERGENCY ASSISTANCE FOR LIVESTOCK, HONEYBEES, AND FARM-RAISED FISH PROGRAM (ELAP) (2019).