



West Coast Seafood Processors Association

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*Serving the shore based seafood processing industry in
California, Oregon and Washington*

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**STATEMENT OF ROD MOORE, EXECUTIVE DIRECTOR
WEST COAST SEAFOOD PROCESSORS ASSOCIATION
BEFORE THE SUBCOMMITTEE ON OCEANS AND FISHERIES
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Madame Chair, members of the Subcommittee, I appreciate the opportunity to present this testimony on behalf of the West Coast Seafood Processors Association (WCSPA). Our Association represents shore-based seafood processors and associated businesses in Washington, Oregon, and California. Collectively, our members process the majority of Pacific groundfish, Dungeness crab, and pink shrimp landed in those States, along with substantial quantities of salmon, sardines, swordfish, albacore tuna, and a variety of other species. Three of our members also operate facilities in Alaska. Most of our member companies are family or individually owned, some for several generations.

Most of my testimony will discuss the effects of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) on the Pacific groundfish fishery, so it may be helpful to understand a bit about that fishery. The Pacific groundfish fishery, which is primarily managed by the Pacific Fishery Management Council under a fishery management plan, comprises some 83 different species, most caught in association with others. The fishery is the largest on the west coast in both volume and value and is the economic mainstay of our coastal fishing communities.

The majority of groundfish landings are by trawl vessels, although there are significant components taken by fixed gear (both hook-and-line and pots) and recreational vessels. A limited entry permit system has been in effect since 1994 and most landings are by limited entry vessels. There is also an "open access" component of the fishery which includes shrimp trawlers that incidentally take groundfish, small hook-and-line vessels, and the small beach-launched dory fleets in Oregon and California. Finally, there is an offshore fleet that harvests Pacific whiting, composed of catcher-processors and motherships that are supplied by smaller trawl vessels.

Under the fishery management plan, harvests are allocated among the different entities, as well as to tribal fisheries in accordance with treaty provisions (some of which are under legal challenge).

Harvest levels are generally set as coast-wide limits, though some species have different limits in the north and the south due to their relative abundance. Most recently, in order to address concerns with population sizes, the several rockfish species have been subdivided based on their normal occurrence by depth: near-shore, shelf, and slope.

Along with overall harvest levels, individual vessel harvests are regulated by cumulative trip limits, which may vary throughout the year and by type of gear used. The current gear restrictions on cumulative limits, which largely were developed by the seafood industry in order to conserve distressed species, impose greater restrictions on the harvest of those species which have been designated as “overfished”.

Now that you know everything about the Pacific groundfish fishery, let me turn to the statute that governs how it operates - the MSFCMA. Before getting into specifics on the Act and its implementation, there are some general principles which we all need to think about.

First, assumptions. Before taking my current job over five years ago, I spent nearly 18 years on the staff of the U.S. House of Representatives, working for Congressman Young of Alaska and the Committee on Merchant Marine and Fisheries. Between January, 1977, and December, 1994, many of the changes to the MSFCMA were my “babies”; I was the House staffer who helped draft them and monitored their implementation. In doing so, I made a number of assumptions about how the language of the law and the intent of Congress would be carried out, just as you and your staff do today. Only after leaving Congress and coming to work for the seafood industry did I discover how wrong I was in many of my assumptions.

Just to give you a small example: when the MSFCMA was passed, it created eight regional councils in recognition of the regional differences in fisheries. We then proceeded to put in place *national* standards, mandatory provisions for *all* fishery management plans, etc. In short, we ignored the fact that we had created a regional system and imposed a one-size-fits-all pattern. So, the Congress talks about doing things via fishery management plan amendment, when in some cases - and Pacific groundfish is a good example here - the fishery management plan is a framework and everything accomplished under the plan is done by regulation. So, we wind up arguing with NMFS, NOAA General Counsel, and the Office of Management and Budget as to whether what we want to do with Pacific groundfish qualifies as a “plan amendment” even though it is being done by regulation. Frustrating as it is, this is only a minor example of making incorrect assumptions.

Second, put your money where your mouth is. The workload imposed on our managing entities - both NMFS and the Councils - and on the seafood industry by statutory requirements is not matched by the resources needed to get the job done. As a result, we are constantly robbing Peter to pay Paul, and pretty soon both of them will go bankrupt. For example, there are numerous requirements for considering environmental, economic, and social impacts of regulations. These are all good things and the Congress has tried to streamline the fishery management process by having all analyses completed by one deadline. Unfortunately, no resources are provided to develop the database on which such analyses depend, or to provide the people to do them. In the NMFS Northwest Region, there are 3 people working full time on all aspects of groundfish management - that's three people to cover the biggest and most valuable fishery on the west coast. Looking at the science side, it's even worse: the

harvest levels for yellowtail rockfish in 2000, for example, are based on 4 to 5 year old data. We have had at least one El Niño, one La Niña, and the beginnings of a major ocean regime shift since those data were collected, and this is one of the *better* examples. We scramble to find boats and money to conduct surveys, we have fewer stock assessment scientists than are listed in the NMFS Table of Organization, and yet our managers and scientists are being asked to produce more and more science. Something has to be done before the system collapses under its own weight.

Third, we need to remember that fish stocks are dynamic and subject to a wide variety of fluctuations in size, location, and productivity. We cannot assume that what is here today will be here tomorrow nor, if it is gone, that human beings were the primary cause. We cannot assume that fish stop at some arbitrary political border in the ocean. We need flexibility in our management. Split-nosed rockfish (known locally as “rosefish”) in central California are a good example. In 1998, huge numbers of rosefish were found; in 1999, the numbers went back to “normal” levels for the same mysterious reason that they bloomed the year previously. How did management respond? In 1998, there was no avenue for raising harvests for that year; instead harvest levels were increased in 1999. So, in 1998, fishermen had to discard rosefish to stay within their legal limits, and in 1999 they couldn’t catch what was allowed because the fish had moved on. Fish - and fishermen - are dynamic; the law and management need to recognize that.

So let’s turn to specifics. The Subcommittee’s letter of invitation asked me to testify specifically on the impacts that the 1996 amendments to the MSFCMA (known collectively as the “Sustainable Fisheries Act”) have had on the west coast fisheries. The following comments are on particular provisions of the Act:

Optimum Yield definition - In the 1996 amendments, the Congress amended the existing definition to prohibit increasing harvest above maximum sustainable yield (MSY) due to social and economic factors. This causes a variety of problems. First, MSY is often unmeasurable; in fact, the Pacific Council uses a proxy for MSY which is a harvest rate that results in a remaining spawning stock biomass of some percentage of what would exist absent any fishing. Our optimum yield is established by applying that harvest rate to the current biomass (as estimated through stock assessments) with necessary reductions if the current biomass is judged to be below 40% of the virgin biomass. In effect, we are taking a number - which may have confidence intervals of as much as 50% - and treating it as a point estimate, then reducing it. We have completely abandoned flexibility. Rather than the iron-clad definition found in current law, we would be far better off stipulating that “optimum” reflect some accepted scientific principle (rather than MSY) as modified to meet appropriate conditions.

Best scientific information available - This is the “science standard” on which many provisions in the Act are based. It is not defined. Like beauty, it often seems to be in the eye of the beholder. For example, several years ago the biomass estimates for Pacific whiting were reduced by 40% based on a single experiment conducted by a single scientist. When we suggested that more work be done before making such a drastic reduction, we were told that the single experiment constituted the best scientific information available and the new technique would be used. The standard needs to be defined; it needs to incorporate a peer-review process, and it needs to take into account anecdotal data. And if the

Subcommittee is interested in a peer-review process that works, I recommend looking at the process used by the Pacific Fishery Management Council which involves scientists, fisheries managers, and industry representatives formally analyzing stock assessments.

Overfishing, the term - Before discussing the *process* used to deal with overfishing, I hope the Subcommittee will think about the term itself. If a fish stock declines for any reason, it is considered “overfished.” Unfortunately, the term implies human - and indeed, harvest related - causes, even though it may simply have been Mother Nature throwing us a curve ball. Since few members of the media and even fewer members of the public have any clear understanding of the legal basis for an overfishing declaration, the seafood industry gets the blame and you in Congress get letters from irate citizens demanding that you do something to curb the excesses of those avaricious fishermen. Pacific Ocean Perch (POP) is a good example. POP have been considered overfished for 20 years because of the current biomass level in relation to virgin biomass. And how do we estimate POP virgin biomass? It is based on harvest reports from Russian trawl vessels that operated off our coast long before the MSFCMA was first enacted, reports whose veracity is highly questionable. In fact, there is speculation that POP were never abundant off the west coast, that what we have is a fringe population whose center is in Southeast Alaska. Yet we get the blame. Perhaps a term such as “distressed fishery” might be more appropriate, a term which takes into account population declines from a variety of sources.

Essential fish habitat - Under current definitions and guidelines, the entire ocean has been declared “essential” for many species, thereby both diluting the effect of this change in the law *and* putting additional burdens on the seafood industry, since the effect of fishing gear on essential fish habitat is about the only thing that gets regulated. We need to look at ways to go after areas that truly are essential.

Conflict of Interest - We are rapidly approaching the point when we will make it impossible for individual fishermen and processors to serve on management councils, a direct contravention of the cooperative management system that was originally envisioned in 1976. Under NMFS’ interpretation of the law, a 10% interest in a fishery triggers a ban on Council member voting. However, what varies is whether the 10% test applies to a fishery as a whole (e.g., the Pacific groundfish fishery) or to a port or region (e.g., the port of Astoria or the lower Columbia River region). It is a fact of life that our fisheries are consolidating and thus getting smaller in many areas. Applying the 10% test to a particular port or region can easily prevent a Council member from voting on most issues. To make matters more confusing, a representative of a group of fishermen or processors can vote more freely on issues than can any of the people he or she represents. We are moving the Councils more to participation by paid representatives and state officials and losing the expertise that can be provided by individual, long-term fishermen and processors. This doesn’t make any sense.

Individual Quotas - The Congress should lift the moratorium on individual quota programs and include language to enable processors to achieve equitable benefits - and bear equitable costs - in any program established. If there are guidelines that need to be created, they should provide flexibility among regions and fisheries. Any fees or other costs recovered should be returned to the fishery or region in which they were collected. Whether or not to establish an IQ program should be a decision made by a particular Council. Please note that under current NMFS interpretations of what constitutes an IQ, our

cumulative trip limit management system would not be allowed. We need to provide flexibility for the Councils to develop management programs that work for their particular fisheries.

Overfishing / rebuilding process - Section 304(e) is a wonderful illustration of the old adage about the road to Hell being paved with good intentions - and here on the west coast we are feeling the burn. First, consider how a stock is determined to be “overfished” - we use point estimates to gauge the status of stocks that may fluctuate widely and we have insufficient data to determine what that status is in reality. Take canary rockfish, an important - and “overfished” - species on the west coast. In 1999, the acceptable biological catch was 1,045 metric tons, a figure derived from a prior stock assessment. In 2000, the ABC is 356 metric tons, based on the most current stock assessment and the species has been designated as “overfished” under the guidelines established by the Sustainable Fisheries Act. I served on the review panel that examined the most recent stock assessment and there are no technical problems with the assessment itself; however, it does make a number of assumptions based on exceedingly sparse data. Nevertheless, we have to ask: did this species crash in the three year time period between assessments? If so, was the crash human caused or environmental? If the latter, can it be rebuilt absent another change in the environment? By using a single point - current biomass in relation to virgin biomass - are we looking at the true picture of this stock, which may fluctuate widely?

Second, are we considering the proper parameters? Overfishing designations are based on current biomass in relation to virgin biomass. The world has changed and is continuing to change. Carrying capacity of the ocean fluctuates. Can we even achieve a stock size above the “overfished” level given contemporary ocean conditions?

Third, once a stock is designated as “overfished” the Council has a relatively short period of time to come up with a rebuilding plan. Given the lack of resources - both human and fiscal - available to NMFS and the Council, especially in this region, all of our efforts will suddenly be directed to preparing rebuilding plans, thereby ignoring other needed science and management efforts. How many stocks suffer (or how many fishermen suffer) when all attention is focused on a handful of stocks?

Fourth, we need to “end” overfishing; not respond to it or address it, but *end* it. If overfishing is a result of long-term oceanographic changes that affect the basic productivity of the stock, how do we accomplish that objective?

Fifth, we have time frames that don't fit biology. Ten years might be a sufficient period when dealing with a fast growing, highly fecund gadoid whose biomass has been depleted by over-harvest, but it doesn't work for a slow growing, long lived rockfish with moderate fecundity that has been depleted by changes in ocean conditions. While there are exceptions for overfishing resulting from environmental changes, trying to convince anyone that Mother Nature caused the problem is extremely difficult, especially given our current state of knowledge.

Sixth, once we embark on a rebuilding program, we really have no way to monitor if we are doing right, doing wrong, or if the fish are just coming back by themselves. Do we prepare a new stock assessment and come up with a new point estimate? Will we be going from famine to feast every three years? Or will we wind up ten years older with no more fish than we have now?

Last, but not least, how do we deal with mixed stock complexes, which is how most fish are caught? Does the overfished species become the tail wagging the dog? This year, the Pacific Fishery

Management Council adopted most of a plan developed by the seafood industry which we think will allow fishermen to maintain access to healthy species while avoiding "overfished" species. This will require a significant investment by the industry in modified gear. But what if one of the other species becomes overfished as well - a possibility according to some scientists. Will we then have to close off large areas of the ocean, tie up boats, shut down processing plants, all to avoid two species? These are very real and very scary questions.

I realize that I have raised a number of questions and what you are looking for is answers. A group of us in the seafood industry from around the country have been working on those answers and we hope to have something for you in the near future.

Observers - Suggestions have been made that the Pacific Fishery Management Council be included in the North Pacific Fisheries Conservation language found in section 313 of the MSFCMA. While we recognize the noble intent in this proposal, as a practical matter section 313 was designed specifically for the North Pacific Fishery Management Council and simply including the Pacific Council would not work. As I mentioned above, we have a large open access fleet and a recreational fleet, both of which can have significant impacts on some species. Neither of these fleets are regulated or permitted by the MSFCMA; they fall under the jurisdiction of the several States. Thus, a change such as has been suggested would put the full burden of paying for and carrying observers on the limited entry trawl, hook-and-line, and pot fleets - the direct opposite of what the Congress tried to do when it enacted section 313 in its original form. If the intent is to try to find an equitable cost sharing method for paying for and carrying observers, new language would have to be developed.

Marine Protected Areas - While I realize that this subject will be addressed by a separate panel, I want to add a few thoughts of my own. WCSPA has testified in favor of looking at MPAs; one of our members served on a Council committee looking at MPAs and my deputy is currently a member of the Council's Marine Reserve Committee. MPAs are not a new concept; in fact, they are an extension of traditional time and area closures long supported by the seafood industry. However, they have their own set of issues. For example, we believe that the size and area of MPAs should be decided by the appropriate council. Second, if an MPA is established, it should be a *true* MPA, closed to all fishing, and not just an excuse to allocate fish among industry sectors. Third, we need to deal with overlapping and conflicting jurisdictions. To give a worst case example, an MPA established 15 miles off the Olympic Peninsula here in Washington would have to untangle the jurisdiction of two countries (the U.S. and Canada, in the case of albacore), one Native American tribe (the Makah tribe), the Pacific Fishery Management Council, and three States (Washington, Oregon, and California, who regulate recreational fisheries and commercial fisheries for crab and shrimp through landings laws). How you would do that if the MPA is controversial boggles the mind. Less complicated but similar examples exist up and down the coast. I leave it to the next panel to determine if they have any answers.

Madame Chair, members of the Subcommittee, this concludes my testimony and I would be happy to answer any questions. I want to thank you for taking the time out of your busy schedules to visit our half of the world. I look forward to working with you and your staff in developing a re-authorization bill for the year 2000.