

Statement of Testimony

**Lori Steele, Executive Director, West Coast Seafood Processors Association**

Senate Committee on Commerce, Science, and Transportation

Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

*Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act:  
Oversight of Fisheries Management Successes and Challenges*

September 12, 2017

Mr. Chairman, Ranking Member Peters, Members of the Subcommittee, thank you for this opportunity to share my perspective as we move forward reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act (MSA). My name is Lori Steele, and I am the Executive Director of the West Coast Seafood Processors Association (WCSPA). WCSPA represents shoreside processing companies and related businesses located in California, Oregon, Washington, and Alaska. Our member companies also have plants and distribution facilities in Texas, Hawaii, Nevada, Utah, Arizona, and Florida. WCSPA members process the majority of whiting and non-whiting groundfish landed on the West Coast, in addition to sardines, albacore tuna, Dungeness crab, pink shrimp, and other important commercial species. WCSPA processing companies range from literal “mom and pop” operations to some of the largest seafood companies in the United States employing thousands of workers in harvesting, processing, transporting, and distributing seafood across the country and throughout the world.

Prior to working for the seafood industry, I spent 18 years working as a fishery analyst on the New England Fishery Management Council staff, following some earlier experience with the fishing industry in New England. I hold a Master’s Degree in Environmental Management with a special focus on fisheries management, as well as Bachelor of Science Degrees in Marine Science and Biology. My career has allowed me to gain extensive experience with all aspects of the fisheries management process and given me a deep respect for those who work in the seafood industry. I understand the important issues facing the seafood industry in this time of increasing regulatory demands and competing interests for resources. I also understand the need to work proactively and collaboratively with the government and other stakeholders to address the challenges that lie ahead and to ensure success for the U.S. industry in the global marketplace. I am excited and honored to represent the industry as we move forward with reauthorizing this very important law.

A substantial portion of my perspective regarding reauthorization of the Magnuson-Stevens Act comes from my experience working for the New England Fishery Management Council from 1997-2015, the time period covering the last two MSA reauthorizations. I developed several of the federal fishery management plans, subsequent plan amendments, environmental impact statements, and environmental assessments to address the Act’s new mandates to end overfishing, rebuild fish stocks, establish annual catch limits, and ensure accountability for some of New England’s fisheries. During this period, I experienced first-hand many MSA management successes and challenges. – from policy to process, and from administration to

regulation. My work experience instilled in me a great appreciation for the regional fisheries management process established by the MSA. The eight Regional Fishery Management Councils are the cornerstone of this process. We are incredibly fortunate that the original authors of the Act had the foresight to understand the unique challenges associated with managing our Nation's fisheries and to develop a regional approach to fisheries management that encourages collaboration and stakeholder participation.

Based on my prior experience with the New England Council and currently with the seafood industry on the West Coast, I feel confident the next MSA reauthorization can build on lessons learned from our past experiences in order to truly fulfill one of the fundamental and original goals of the MSA, emphasized in National Standard 1, the Act's guiding principle – *to prevent overfishing while achieving, on a continuing basis the optimum yield from each fishery*. From its beginning, the MSA has conserved, protected, rebuilt, and sustained marine resources in the U.S. Exclusive Economic Zone (EEZ). As we move forward with this next reauthorization, we have an opportunity to better conserve, protect, and sustain the people, the economies, the culture, and the communities that rely upon healthy and abundant fisheries.

The 2006 MSA reauthorization focused on ending overfishing immediately, ensuring accountability, rebuilding stocks as quickly as possible, and reducing fishing capacity through limited access programs, all with increased reliance on science in the decision-making process. The standards for conservation, rebuilding, management, and data collection set forth in the MSA apply to all federally-managed stocks. Yet, the juxtaposition of insufficient data for many stocks with requirements to account for scientific uncertainty in the quota setting process has resulted in robust precautionary buffers and yields well below optimum yield, oftentimes at the expense of our seafood industry, our fishing communities and our Nation.

On the West Coast, the conservation successes we have experienced under the MSA are significant and far-reaching— almost all groundfish stocks that were overfished at some point in the last 15 years have been declared rebuilt, most fisheries are 100% monitored and fully accountable, and bycatch has been significantly reduced across all fisheries. Just this year, bocaccio and darkblotched rockfish were both declared rebuilt, well ahead of schedule.

However, the economic challenges that remain in the West Coast groundfish fishery are even more significant than the conservation gains we have made. The non-whiting groundfish fishery, managed under an Individual Fishing Quota (IFQ) program, is truly an economic failure. When the groundfish fishery was rationalized and the IFQ program was implemented in 2011, the industry was promised increased fish harvests, year-round fishing and increased profitability. The IFQ program was projected to benefit both fishermen and processors, enhance industry employment, and provide a consistent supply of groundfish to the American consumer. Instead, we are facing an economic disaster in the West Coast groundfish processing sector. Since 2011, between 20 to 30 percent of the non-whiting groundfish annual catch limits (ACLs) are harvested in any given year. Feast-or-famine delivery of West Coast groundfish under the IFQ program has led to uncertainty, periods of facility shutdowns for shoreside processors and an inability to prosecute our groundfish business plans. Following this, key employees have

left our workforce and moved away from coastal communities to seek more consistent employment elsewhere.

The West Coast groundfish fishery and the management system that supports it are falling far short of meeting National Standard 1. Arguably, the management system is also failing to meet National Standards 5 (efficiency in the utilization of resources, without economic allocation as its sole purpose), 7 (minimize costs and avoid unnecessary duplication), and 8 (account for the importance of fishery resources to fishing communities and provide for sustained participation of those communities).

National Standard 1 clearly sets up the ultimate challenge for fisheries managers – to achieve sustainability in terms of both the health of living marine resources and the well-being of the communities that depend on them. Some see this fundamental goal of the Magnuson-Stevens Act – achieving both biological health and economic prosperity – as a dichotomy; I see it as an absolute necessity and the recipe for success. This goal should be the primary focus of the next MSA reauthorization. Changes can be made in the MSA to provide the Councils with more flexibility to design management systems that better meet the standards set forth in the Act while also better meeting the socioeconomic needs of regional fisheries and fishing communities.

Over the long-term, achieving optimum yield from our fisheries on a consistent basis will require sustaining fishing and processing jobs that can support coastal economies for generations to come. I am certain that we can make significant progress towards this end with some relatively minor adjustments to an already effective and successful fisheries management framework established under the Magnuson-Stevens Act.

In general, we support some of the changes to the Act currently proposed in H.R. 200 and we offer the following specific comments and recommendations for the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard to consider as the Senate begins its MSA reauthorization efforts.

### ***Flexibility in Rebuilding Fish Stocks***

First and foremost, providing more **flexibility** should be the fundamental element of any changes to the requirements set forth in the MSA. The addition of provisions that would increase flexibility with respect to stock rebuilding would improve the ability of Fishery Management Councils to achieve management objectives. Flexibility is absolutely necessary for Councils to address the unique and often-changing circumstances that arise between fish stocks, fishing sectors, fishing communities, and regional ecosystems. If there's one key lesson to be learned from the last two MSA reauthorizations, it is that regional fishery managers benefit from having more tools in the toolbox, and flexible, adaptable options for implementing them.

The current rebuilding requirements and ten-year rebuilding time frame mandated in the MSA are simply too rigid to apply universally to all federally-managed fish stocks. We have learned that in the case of stock rebuilding, one size does not fit all. Mixed stock and multispecies fisheries in particular are incredibly complex to understand and manage; we've experienced this on the East Coast and the West Coast. Stocks within a multispecies complex can have very different life histories and growth rates. Some stocks may be more vulnerable to environmental influences, while others may be more resilient in the face of changing ocean conditions. In New England, factors other than fishing have clearly affected the ability of some fish stocks to recover, perhaps even in the complete absence of fishing. There is little ability to predict and/or control environmental changes that may be key drivers in rebuilding progress for some of these stocks. Yet, the current requirement to adhere to an arbitrarily-defined rebuilding period assumes that current stock size, stock size targets, and rebuilding trajectories can be determined with some degree of certainty, which is clearly not the case.

On the West Coast, more than 90 groundfish stocks are managed under a complicated management system that utilizes an IFQ program to allocate ACLs for more than 30 of these species to the trawl sector. Regulatory constraints imposed by restrictive rebuilding requirements and lack of flexibility in the management system preclude opportunities to fully utilize optimum yield for many stocks. We also face problems with choke species in the groundfish fishery – species with ACLs low enough to constrain the harvest of other target species. Oftentimes, an individual allocation of a choke species to a fisherman will be too small for that fisherman to even utilize it for bycatch when trying to access other important species. As a result, entire fishing trips may be forgone for fear of a “lightning strike” tow of a restricted species, and ultimately, the catch of all species in the multispecies fishery is reduced. This situation is in direct contradiction with National Standard 1 as well as the goals and objectives of the Pacific Fishery Management Council's trawl catch share program.

For all of these reasons, we support increasing flexibility for rebuilding fish stocks to better ensure sustainable fisheries and fishing communities, and to provide the Councils with more avenues for addressing the needs of fishing communities. This can be accomplished in the MSA reauthorization by **eliminating the 10-year time requirement for rebuilding fisheries, replacing it with a biologically-based foundation, and relying on our regional fisheries management process (i.e., the Councils) to determine the optimal path to stock rebuilding.** The 10-year rebuilding requirement has long been considered to be completely arbitrary but was touted by the environmental community as the gold standard. However, the National Academy of Science concluded in their 2013 report titled “Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the U.S.” that the pre-set 10-year rebuilding requirement was indeed arbitrary and harmful, thus ending the debate. It is time to replace this requirement with more scientifically valid metrics.

**We support adding language in the Act to:** allow rebuilding plans to take into account environmental factors and predator/prey relationships; require a schedule for reviewing rebuilding targets and progress being made towards those targets; and allow consideration of alternative rebuilding strategies including harvest control rules and fishing mortality rate

targets. Another helpful provision that would provide flexibility would allow a Regional Council to terminate a rebuilding plan for a stock that was initially determined to be overfished when updated science determines the stock is no longer overfished. Again, these provisions are consistent with the best available science and generally reflect a common sense approach based on the lessons we have learned through the last two MSA reauthorizations.

**We support changing language in Section 304 of the Act from “possible” to “practicable” in terms of rebuilding periods.** This is a relatively minor change that will help us make major strides towards improved implementation of the Act to help protect fishing communities without undermining conservation objectives. The interpretation of the MSA rebuilding requirements and the application of this language have affected West Coast fisheries, highlighted by the 9<sup>th</sup> Circuit Court ruling in *NRDC v. Daley* in 2002. Ruling on this case contesting the harvest levels set for the 2002 West Coast groundfish fishery, the Court said the following:

“Section 1854 contains two significant mandates that constrain the Agency’s options in adopting a rebuilding plan for an overfished species. First, *the time period must be “as short as possible,”* although the Agency may take into account the status and biology of the overfished species and the needs of fishing communities.”

The practical effect of this ruling is that when selecting a rebuilding time frame, catch levels may be set at levels that are barely above economic devastation for fishing communities in order to rebuild in as short a time frame as possible. However, under a more flexible approach, an incremental amount of harvest could be allowed while the species rebuilds, thereby still achieving rebuilt status within a reasonable timeframe. The Pacific Fishery Management Council faced a situation like this in 2013 with rebuilding plans for two rockfish stocks. At that time, allowing 30-mt increase in the ACL of a single rockfish species while achieving rebuilt status in December of that year (vs. January of that same year) would have provided for another few hundred tons of associated rockfish landings. While the dockside landed value of those fish may not have been viewed as significant, the indirect value was enormous: having more incidental species available would have provided additional opportunity for commercial, sport, and tribal harvesters to access abundant stocks of fish that currently go unharvested due to the choke species effect. In turn, local vessels would have had another few weeks on the water, processors would have had longer seasons, consumers would have had more healthy domestic seafood – all without any risk to the status of the rebuilding rockfish species. Yet, the interpretation of the law required selection of a rebuilding time that would be as short as possible, *not* as short as practicable.

Simply changing this terminology in the MSA would provide Councils much needed flexibility and the option to choose between several rebuilding scenarios to achieve specified conservation and management objectives, not just the shortest and most harmful to fishing communities. This change could benefit coastal communities without undermining any conservation and stock rebuilding objectives. The intent of this change is not to allow fisheries

managers unfettered permission to set harvest levels wherever they choose; rather, it would allow them to exercise some reasonable judgment so they could, for example, allow a fish stock to be rebuilt in December rather than January, which were the choices available for canary rockfish in the above example.

**We support modifications to requirements for annual catch limits (ACLs) to allow regional Fishery Management Councils to consider ecosystem changes and the needs of fishing communities when establishing catch limits.** In light of changing environmental conditions, and the role of the environment in fisheries recruitment, these considerations certainly make scientific and common sense.

**We support adding language to allow ACLs for multispecies stocks/complexes to be set for multiple years.** This change would essentially codify NOAA's related recommendations in the National Standard 1 guidelines, as we understand the issue. We believe flexibility should be provided to establish multiyear periods in which an overall catch limit could be set, but annual harvest could fluctuate based on fishing conditions, market conditions, weather, water temperature, or any of the other variables that affect fisheries harvest. If the best available science and the management/monitoring systems can support this approach, we see no reason to specify that harvest levels must be set each and every year.

**We support defining *overfishing* and changing the term *overfished* to *depleted* throughout the Act.** This is a simple yet very important change that more accurately characterizes stock condition, which is most often based on a number of factors, not solely on fishing mortality. The term *overfished* is perceived negatively and can unfairly implicate the industry for stock conditions resulting from other factors like pollution, coastal development, and changing ocean conditions. We also support changes to the Act that would require the Secretary, in the annual *Status of Stocks Report*, to distinguish between stocks that are depleted or approaching a depleted condition due to fishing, and those meeting that definition as a result of other factors. We support the separation and clarification of these terms and the requirement to differentiate sources of mortality when projecting stock status and setting ACLs.

### ***Defining Catch Shares***

**We support adding a comprehensive definition of the term "catch share" to the Act.** H.R. 200 proposes language to define a "catch share" as *any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, processor, representative of a commercial sector, or regional fishery association established in accordance with section 303A(c)(4), or other entity.* Especially important is inclusion of "processors" in this definition. Though this inclusion does not mandate that harvesting shares be awarded to processors, it represents a continual recognition (along with recognition of cooperatives and communities), that in certain high volume fisheries where there is a heavy reliance on shore side processing capacity, investment and marketing capability (such as Atlantic mackerel and pelagic squids, Alaska and Pacific

groundfish), consideration can be given to these critical elements of the infrastructure when allocating fishing privileges.

### ***Fishery Disaster Requests***

**We support requiring timely decisions by the Secretary in circumstances when fishery disasters are requested.** It is unlikely that anyone would argue that the fishery disaster assistance program set forth in the MSA has worked as it was originally intended. Recently on the West Coast, Governor Brown requested a fishery disaster declaration for our California Dungeness crab and Rock crab fisheries. This request was made to the Secretary of Commerce on February 9, 2016 but the Secretary of Commerce announced the official disaster declaration on January 18, 2017, almost a full year after the request was made. We should be able to do better than this for our fishing communities when fishery disasters strike.

**Therefore, we suggest adding language to the Act** requiring the Secretary to make a formal determination within 90-days of receiving an estimate of the economic impacts from the entity making the request. Additionally, the Secretary should be required to publish the estimated cost recovery from a fishery resource disaster no later than 30 days after making the formal determination.

### ***Consistency with Other Laws***

**We strongly support the inclusion of language that will ensure consistent fisheries management under competing federal statutes,** including the National Marine Sanctuaries Act of 1972, the Antiquities Act of 1906, and the Endangered Species Act of 1973 (ESA) – **with specific acknowledgement that the MSA is to be the controlling federal statute.**

If restrictions on the management of fish in the U.S. Exclusive Economic Zone are required to be implemented as a result of an ESA recovery plan – to address fisheries management in a marine monument or national marine sanctuary – the restrictions should be developed and implemented under the authorities, processes, and timelines mandated by the MSA. To be clear, our intent is not to undermine or circumvent these other laws but instead, to apply a proven, successful and public process to manage fisheries. The MSA provides for rigorous scientific analysis and clear documentation of management decisions. The Council process provides significant opportunities for public comment through a number of meetings and public hearings. Following Council decision-making, regulatory actions by NMFS are guided by the Administrative Procedures Act and allow for transparent public participation. The Councils, their advisors, the public, and NMFS have a full set of economic and environmental data available before decisions are made, with trade-offs fully recognized.

Making modifications to fisheries to address overlapping federal statutes through the MSA process will ensure that required regulations are developed through a transparent and public process that encourages stakeholder participation. This approach will also increase efficiency by streamlining our management systems and administrative/regulatory processes. Given current financial constraints, any unnecessary duplication of analyses or extra administrative steps in

management processes must be minimized, and sources of unnecessary cost, delay, and uncertainty must be avoided.

### ***Modernizing Recreational Fisheries Management Act of 2017***

I would also like to briefly address a few issues related to S. 1520, *The Modernizing Recreational Fisheries Management Act of 2017* that was recently referred to the Committee. America's commercial fishermen make their living under the most comprehensive conservation rules in the world. Under the MSA, all seafood harvested in the United States is required to be sustainably managed under strict limits designed to prevent overfishing. While many provisions of the MSA are successful, much of the domestic commercial fishing industry continues to struggle for survival as a result of certain unnecessarily burdensome provisions that should be improved in the current reauthorization process. In light of this present situation, we cannot ignore legislation that would potentially change the MSA in a way that could disadvantage the commercial fishing industry.

First, S.1520 contains provisions that could potentially allow the private recreational angling industry to circumvent the rigorous fisheries management requirements of the MSA that are strictly applied to commercial fishing activities. The section titled "Alternative Fisheries Management" would allow the private recreational angling industry to be managed using undefined "alternative fishery management measures...including extraction rates, fishing mortality targets and harvest control rules," in the absence of accurate estimates of recreational catch and discard mortality. This could subvert the conservation accountability standards set forth in the Act by exempting certain stakeholders from the important accountability measures associated with Federal fisheries management. Any resulting quota mismanagement by the recreational sector that is almost certain to happen would cut directly against commercial and charter stakeholders.

Second, a provision contained in the "Recreational Data Collection" section would allow individual states to receive federal funding and collect recreational harvest data, potentially giving individual states an inordinate amount of control over recreational harvest estimates beyond state waters absent federal oversight. Furthermore, funding for these activities would come from NOAA's Saltonstall-Kennedy Grant Program, a program originally intended by Congress to fund commercial fisheries research and product development that is already underfunded and over-subscribed.

Third, Section 106 of S.1520 would handicap the national Exempted Fishing Permit (EFP) approval process with an overly prescriptive set of requirements that to us appears designed to undermine the process. In 2016 and through this year as well, we struggled mightily with NOAA to implement a critical EFP program to help ease regulatory burdens in our West Coast groundfish fishery – why would we want to make the process even harder and far less nimble? If enacted, this provision will be damaging to commercial fisheries around the nation. EFPs are a critical component to cooperative research, gear development, conservation engineering, and

data collection. The use of EFPs should be encouraged, and we are very concerned that the provisions in this bill do quite the opposite.

Last, and perhaps most disturbing and precedential is the clear intent of this legislation to create and fund an initiative leading to reallocation of quotas from commercial to recreational sectors in the Gulf and South Atlantic regions in the section titled "Process for Allocation Review of Mixed-Use Fisheries." This provision is completely unnecessary as NOAA and the Regional Councils are already charged to examine and address allocation issues on an ongoing basis.

Rather than press for the one-sided and potentially harmful changes embodied in S.1520, we ask this Subcommittee to work with the commercial fishing and seafood industries on legislation that will improve the MSA and continue to ensure the long-term sustainability of our fisheries resources for all stakeholders. We believe that recreational and commercial fishing interests want what is best for their communities, and that proper MSA reform is a necessary component.

Thank you, Mr. Chairman, Ranking Member Peters, and Members of the Subcommittee for holding this hearing today and for your intention to consider important MSA reform during this session of Congress. We look forward to working with this Subcommittee and your staff to support the passage of fair, balanced legislation that will fulfill the intent of the Magnuson-Stevens Act. I am happy to answer any questions that you or other Members of the Subcommittee may have.