Testimony
Of Robert E. Dooley
President, United Catcher Boats

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Oversight Hearing: The Reauthorization of the Magnuson Stevens Fishery Conservation & Management Act
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Chairman Hastings, Ranking Member Markey, and Members of the Committee; thank you for the opportunity to testify before you today regarding the Magnuson Stevens Fishery Conservation and Management Act. My name is Bob Dooley. I am the President of United Catcher Boats and co-owner of a commercial fishing operation with my brother John.

John and I have lived in Half Moon Bay, CA our entire lives and have been commercial fishermen for over 40 years. Our families have been active in commercial fishing and it's supporting businesses on the West Coast for over 70 years. Over the course of our careers we have owned and operated several vessels. To this day we operate 2 vessels in the Bering Sea Pollock, Cod and West Coast Pacific Whiting fisheries and one in the state-managed Dungeness Crab fishery.

United Catcher Boats (UCB) is a trade association of 70 commercial fishing vessels that participate in the Alaskan Pollock, Alaskan crab, and West Coast groundfish fisheries. Our vessels are called catcher boats because that is all we do – we catch fish and deliver our catch "in the round" to processing facilities. We do not process the fish, even minimally. UCB is deeply committed to science-based management of fishery resources.

I would like to begin my testimony by stating that overall, the Magnuson Stevens Fishery Conservation & Management Act (MSA) is an excellent law. Under it, the North Pacific Fishery Management Council has been able to manage robust, valuable, and healthy fish stocks. However, it is the nature of congressional testimony that it focus not on those aspects of the law that work well but on those that need improvement or outright change. To that end, my testimony will focus on the following issues:

- National Standard #1 Guidelines
- Catch Shares
- Accountability Measures
- State-Federal Fishery Management Plan Coordination & Consistency
- Bycatch
- Cooperative Management.

Overarching all of the following comments is a desire for a "Standard of Reasonableness" for implementation of the requirements of the MSA. Many of our concerns do not stem from the legislative language itself but from NOAA Fisheries and the Councils interpretation and application thereof. However, if the agency and the councils cannot apply a "Standard of Reasonableness" then Congress needs to amend the MSA to clarify the intent behind its various provisions.

National Standard #1 Guidelines

National Standard #1 states that Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. UCB strongly supports this national standard. We must prevent overfishing. We also must achieve optimum yield from each fishery.

It is important to remember that the fundamental objective of fisheries conservation and management is the production of food and economic value on a long-term sustainable basis. This is the reason that NOAA Fisheries, the Regional Fishery Management Councils, and the MSA itself exist. If not, we can simply replace all of it with one line of federal law prohibiting commercial fishing. Such a law would certainly prevent overfishing. Needless to say, it would not produce optimum yield.

National Standard #1 (NS1) is well written. Achieving optimum yield is an equal objective to the prevention of overfishing. Unfortunately, the Guidelines for implementation of NS1 issued by NOAA Fisheries do not allow this balanced approach. Under the Guidelines, overfishing is certainly prevented but optimum yield is essentially impossible to achieve. The emphasis on ending and preventing overfishing over the past decade has essentially resulted in "underfishing" in several fisheries. This is not consistent with NS1.

Fisheries are now subject to a literal array of harvest targets. There is an Overfishing Limit (OFL), Allowable Biological Catch (ABC), Maximum Sustainable Yield (MSY), Optimum Yield (OY), Total Allowable Catch (TAC), an Annual Catch Limit (ACL), and a Maximum Fishing Mortality Threshold (MFMT). This array is not only confusing; it is often contradictory, and needlessly inefficient.

The fisheries management process needs to recognize that Maximum Sustainable Yield (MSY) and Optimum Yield (OY) are long-term averages, not yearly mandates. The MSA needs to be amended to make this principal explicit.

Fish don't have calendars. Yet all of these harvest targets are applied as if they are annual limits when in reality several are better defined as and should be applied as long-term averages. We are not suggesting that a fishery be allowed to exceed the OFL year after year and never address the issue. Rather, we are suggesting that the targets of Maximum Sustained Yield (MSY) and Optimum Yield (OY) be understood as dynamic in nature, subject to fluctuation, and objectives to be achieved on average over the years.

Rollovers, or overages and underages of catch targets can be and should be allowed to carry over from year to year so long as the prevention of overfishing and the long-term achievement of OY occur.

In addition, the rigidness of ACLs is undermining improvements in fisheries science and fishing practices. In the North Pacific, the OFL for pollock is 2.550 million metric tons and the ACL is 1.247 million mt. Yet when the industry applies for an Experimental Fishing Permit (EFP) to test salmon and halibut excluders, NOAA Fisheries has recently determined that it cannot allow the EFP-caught fish to exceed the ACL. Harvesting fish under this permit is research and catch volumes associated with that research would not pose a risk of overfishing occurring. Furthermore, the stock assessment author counts the research removals as mortality so it is accounted for in the stock assessment. For years this practice was widely regarded as acceptable and sustainable, but recently the agency has taken a hard line approach and interpreted these ACLs as hard caps even when catch is nowhere near the overfishing level. The unfortunate and ironic result has been an unnecessary reduction in research to spur fishery innovations that would improve and advance sustainable fishing practices.

We all recognize that there is uncertainty in fisheries science. Fishermen know about uncertainty all too well. We recognize that the weaker the science is to base fisheries management on, the more conservative such management needs to be. What is needed is a reasonable application of this precautionary approach.

Under the NS1 Guidelines, the only way to address scientific uncertainty is to further reduce the allowable harvest below levels that would generate optimum yield. This virtually guarantees that the Magnuson-Stevens Act goal of "attaining optimum yield" will not be met. Such an outcome is not necessary because there are several other management options available to address uncertainty.

For example, when closed areas are established for habitat protection, for bycatch reduction, or any similar goal they can, in certain circumstances, have the added effect of protecting a sub-population of a fish stock within that area. This helps ensure that the long-term goal of attaining optimum yield is achieved, and by definition is a hedge against uncertainty. However, when these types of protections are put in place no credit is given to their role in addressing uncertainty. The agency insists that catch reductions are the only viable tool for addressing uncertainty.

Identical to the need for reasonableness and flexibility in the application of NS1 harvest caps is the need for such when establishing rebuilding targets and timelines for overfished stocks. There is nothing scientific about the arbitrary ten-year rebuilding period required by the MSA.

Let me be clear. Overfished stocks need to be rebuilt. Even if NS1 did not call for the prevention of overfishing, the achievement of OY itself requires overfished stocks to be rebuilt so that food production and economic benefits can be realized. There is no magic timeline, however. Instead of an arbitrary fixed rebuilding period of ten years, rebuilding timelines should be allowed to be established by the Regional Fishery Management Council consistent with the biology of the fish stock, the needs of fishing communities, and the NS1 requirements to prevent overfishing and achieve optimum yield on a continuing basis.

A reasonable application of NS1 to rebuilding would not allow overfished stocks to remain so indefinitely. A perpetually overfished stock that is not rebuilding is fundamentally inconsistent with the NS1 standard of achieving OY.

With reasonableness and flexibility, Optimum Yield itself becomes a powerful conservation mandate. Overfished stocks cannot provide OY. Ongoing overfishing undermines achieving OY on a continuous basis. Understood as the long-term production of optimum levels of food production and economic benefits from a fishery, optimum yield is essentially a call for sustainability.

Catch Shares

UCB firmly believes that catch shares should be available to the regional fishery management councils as one among many conservation and management tools. UCB members are very familiar with the benefits of catch share programs, participating in American Fisheries Act Pollock cooperative and the Alaskan crab IFQ program, both of which were approved by Congress, as well as the west coast groundfish catch share program. Our catch share programs have provided incredible conservation and economic benefits. For example, west coast groundfish went from a $38 million fishery before catch shares to a $54 million fishery with dramatically reduced bycatch and discards under catch shares. In the whiting fleet, for example, bycatch of canary rockfish was reduced by 79 percent, and for Pacific Ocean perch, the reduction was 96 percent.

As I stated in my April 2010 testimony before the Subcommittee on Insular Affairs, Oceans and Wildlife of this Committee, catch shares should be initiated and driven by the participants in the fishery. The west coast groundfish catch share program was developed from the ground up with full participation of all stakeholders in the fishery from Southern California to Northern Washington. It was not an example of NOAA Headquarters in Washington, DC trying to impose catch shares on the fishery. The PFMC established a special stakeholders committee that included a very broad membership including fishermen, processors, NGOs and community representatives. Out of this open process came a preferred option for an IFQ-based system for the shoreside fisheries and a Co-op-based system for the offshore Whiting fisheries.

The MSA provides sufficient guidance to the Councils on the development and implementation of catch share programs. Additional requirements are not needed at this time. Within the existing framework, the Councils have the ability to develop catch share programs on fishery-by-fishery basis so they address the particular objectives and needs of the fishery. Important to note is under current MSA law, the Councils may chose not

to develop catch share programs. In particular, UCB does not support proposals to include sunset provisions or similar catch share terminations in the MSA. Such time restrictions undermine the very utility of catch share programs by removing the certainty that catch shares provide fishermen. This certainty empowers fishermen to make better operational decisions resulting in improved conservation and economic outcomes. Long-term investment stability directly leads to improved safety-at-sea conditions for vessels.

Multi-species catch share programs like the west coast trawl IQ program require proper measures to insure that hoarding of small allocations of constraining species do not thwart the intentions of the program. Measures such as fishermen-based risk pools, cooperative associations, and an emphasis on allowing fishermen to transfer quota during the season are important components to a well-designed catch share program.

Accountability

UCB members have long participated in federal fishery observer programs. We recognize the value and utility of such programs. Observers collect valuable fisheries data and help ensure compliance with conservation and management measures. **Accountability assures sustainability but needs affordability.** Observers in combination with ongoing technology advances such as electronic-monitoring systems (EM) are important components of good fisheries management but they need to be cost-effective. In the North Pacific, the industry bears the full cost of observers and always has. In West Coast groundfish we soon will. Other regions should do the same.

Since we pay for the cost of observer programs, we are extremely sensitive to the costs associated with them. Such industry expenditures should be included in the cost recovery calculations for catch share programs.

In most fisheries, 100% Human observer coverage is not necessary to ensure good data collection or compliance with regulations. A statistical subsample of fishing activity would suffice. Greater than 100% coverage is simply superfluous. For example, in the west coast groundfish trawl fishery, observers are placed on mothership catcher vessels even though fish never touch the deck of the vessel. These fishing vessels mid-water trawl for whiting, pull up the net but leave the codend in the water from where it is directly transferred to the mothership, where there is an observer onboard. There is literally nothing for the observers on these vessels to observe.

We need to transition away from physically present observers to potentially more cost effective electronic monitoring systems. Electronic Monitoring might not be potentially more cost effective because some NOAA Fisheries personnel want to design and implement EM systems that collect all conceivable forms of data. They are designing Cadillacs when all we need are reliable Chevys. Such elaborate EM systems will reduce if not eliminate the potential cost savings. Electronic monitoring systems should be designed and implemented in response to a specific problem statement that clearly identifies the data needed to ensure accountability. For example, in a full retention fishery an EM system that can identify the species of fish being discarded is superfluous since any discard is a violation of the fishery management plan. A high-tech camera is not needed to discern if a discard event has occurred.

Finally, commercial fishermen are not the only fishery participants that need to be held accountable. In many fisheries, charter and recreational fishing activities and harvest have a dramatic impact on fish stocks. These catches and their compliance with conservation and management measures need to be held much more accountable than is current practice. Tools such as VMS, AIS, check-in/check-out requirements, logbook accounting and perhaps observer coverage should be considered.

State-Federal FMP Coordination & Consistency

As you know, the MSA governs fisheries outside of state waters and inside the U.S. Exclusive Economic Zone (EEZ). Of course, fish do not recognize these boundaries. Many fish stocks managed under the MSA are also managed by various States within their waters. In some cases, the State management plans can be contradictory or even undermine the conservation and management objectives of the federal FMP. Uncontrolled fishing effort within state waters can lead to the overcapitalization of a federally rationalized fishery. Effective coordination between state and federal fishery managers is required. For example, the Bering Sea crab fisheries are jointly managed under a 'framework' arrangement between the State of Alaska and the federal government. This agreement clearly details the jurisdiction, authority and responsibility of each government and the result is a successful management program that governs stock assessment, effort control, harvest record keeping and also a newly established catch share program for the crab industry.

UCB believes State fishery management plans for stocks of fish predominantly managed by the federal regional fishery management councils should be subject to review and approval by the Secretary of Commerce for compatibility with the federal FMP. States should be required to meet or exceed the conservation and management standards of the federal FMP. States that have no fisheries management for a federally managed stock should be required to develop one or have the federal FMP reach into state waters.

UCB also believes that went a designated fish stock is fully utilized by a developed fishery and the federal management of such fishery is well defined, the states should not be allowed to establish a new fishery that utilizes the same fish stock. This leads to 'leakage' in management and can result in overfishing of the fish stock or overcapitalization of the fishing fleet. One stock of concern we have in Alaska is Pacific Cod.

Bycatch

National Standard #9 requires bycatch and the mortality thereof to be minimized to the extent practicable. In many cases this is more of an allocation issue than a conservation issues.

Nonetheless, UCB supports the principal of minimizing bycatch. Again, however, a standard of reasonableness needs to be applied. In the North Pacific, many bycatch limits are set as hard numerical caps that have no relationship to natural variability of the fish stock. When stocks are low, the numerical cap may provide very little benefit. When stocks are high, the cap may be overly constraining and if exceeded may have little or no

impact on stock. UCB supports proper bycatch management programs in order to insure the conservation of all fish stocks. However, these measures need to be reasonable and also allow input into the design and management by fishermen.

Cooperative Management

As previously mentioned, UCB believes strongly in science-based fisheries management. We recognize that the better the data the more robust the fisheries management. There are many instances were industry supports the collection of fisheries data: industry-funded observers, industry-funded surveys, Experimental Fishing Permits, and industry-charter work for fisheries scientists. We believe such cooperative work should be incentivized and encouraged. The costs of such activities should be included as a credit when calculating cost recovery for catch share programs. Retention of catch and the calculation of such outside of ACLs should also be allowed. UCB has been on the forefront of cooperative management with the federal fishery managers. Examples of our efforts include the development of a salmon excluder for the mid-water pollock trawl fleet, funding and deploying trawl catcher vessels to assist in stock assessment survey work, and the collaboration of fishery data for federal and state research scientists. This is one area of focus that needs further development and can lead to cost savings for the federal government.

Conclusion

UCB believes the MSA is a strong and largely well-crafted and implemented piece of legislation with a proud history of 40 years of fishery governance. With changes to the law to address the issues outlined in this testimony, we believe it will ensure robust and sustainable U.S. fisheries that help feed the nation and promote economic stability for decades to come. As the Congress once again proceeds with its work to reauthorize the MSA, we look forward to the opportunity to provide meaningful ideas and suggestions for you to consider. Stakeholder participation is one of the founding principles of the original Magnuson Act and has proven to be useful over the past 4 decades of fishery management.