



**West Coast Seafood Processors Association**  
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June 1, 2017

Michael Nerney  
Maritime Marketing Manager  
Port of San Francisco  
Pier 1  
San Francisco, CA 94111

**Re: Retail Fish Sales from Fishing Vessels At Fishermen's Wharf**

Dear Mr. Nerney:

The West Coast Seafood Processors Association (WCSPA) represents shore-based seafood processors located throughout California, Oregon and Washington. Our members process most of the fish and shellfish delivered to West Coast shoreside plants and provide healthy, sustainable seafood to consumers throughout the United States. WCSPA members employ hundreds of workers from coastal communities that depend on fishing and seafood infrastructure.

Recently, several of our members with facilities in the Port of San Francisco asked me to comment on a Port of San Francisco proposal to allow fishing vessels to sell fish retail at Fishermen's Wharf. While I do not know the details of this particular proposal, I must raise significant concerns regarding this type of sale arrangement. I am providing the following comments to assist the Port in making decisions regarding the allowance of retail sales from vessels.

Competition – Our members compete among themselves and with other businesses throughout the world in selling seafood. We are not averse to competition, nor do we try to legislate the removal of our competitors. At the same time, we believe that competition should occur on a level playing field, free of subsidies, special exemptions, etc. If, for example, a retail sales plan led to the export to other areas of unprocessed fish, our members who have made investments in employment, processing and unloading facilities in the community through purchase of goods and services (including water and power), and in the Port through payment of fees and taxes would have to question the Port's commitment to maintaining a viable fisheries economy. To the extent that special treatment reduces the positive economic impact existing seafood processors have on the Port or City of San Francisco, the Port needs to consider whether such special treatment is a net benefit.

Public Health – Seafood processors must not only meet the requirements of local and state health codes, but must also comply with federal regulations requiring certification by the Food and Drug Administration (FDA) that their facilities meet Hazard Analysis Critical Control Point (HACCP)

standards. These regulations are designed to protect public health. Of particular concern to FDA is the proper handling of scombroid species, including mackerel, swordfish, and tuna. Histamine poisoning as a result of the production of scombrototoxin in improperly handled fish has been identified by FDA as one of the most serious public health problems related to seafood consumption. The Port should consider whether the proposal requires HACCP certification of the vessels engaged in retail sale, whether local and state health codes will be met, and whether public health will be adequately protected.

Public/Worker Safety – While the Occupational Safety and Health Administration (OSHA) generally does not have responsibility for regulating safety on vessels, their authority may extend to vessels used as retail sales facilities or to docks and other areas used for such purposes. Fishermen need to be cautious that, by engaging in retail sales, they do not bring themselves under more restrictive and costly OSHA requirements. Similarly, the Port needs to ensure that by allowing retail sales at the docks or on vessels, it does not bring itself under OSHA regulation.

Consumer Protection – The California Department of Weights and Measures requires seafood processors and retail establishments to have certified scales. Fishermen should be aware of this requirement as well as the need to obtain additional certification from weighmasters to complete their state-required fish tickets. If scales are to be supplied by the Port, then the Port should make sure it takes steps to comply with weight and measure regulations.

Fisheries Conservation and Management – Conservation and management of Pacific groundfish and Pacific salmon are based on data obtained from landing receipts (fish tickets). Funding for California fish and wildlife programs is calculated in part on fees paid based on landings. Without timely and accurate reporting of landings, fisheries conservation, and management can suffer.

Unfortunately, direct retail sale of live Pacific groundfish has resulted in considerable under-reporting. This places the conservation burden on the backs of those honest fishermen and processors who accurately report their landings. Furthermore, it ultimately affects everyone in the seafood industry and in coastal communities by requiring precautionary reductions in harvest. To further complicate matters, a fisherman who lands undersized fish or fish in excess of a limit is considered in violation of fisheries regulations. However, if that fish is purchased before the violation is detected, the purchaser - in this case, perhaps the retail consumer - may share in that violation.

In the interest of fisheries conservation and protection of consumers, the Port should consider how reporting of landings for retail sale is going to be handled, including who will be required to complete and file state fish tickets and how questions of violations will be answered.

Insurance – Generally, compensation for injuries on board fishing vessels is covered by the Jones Act and general maritime law. Vessels owners purchase insurance to cover their liability. The issue of liability may be clouded if the injury occurs while the vessel is at a dock and being used as a retail establishment, especially if the injury arose from the retail sale rather than the normal operation of the vessel. More complications may arise if a customer is injured: *Is liability covered by the vessel's insurance or by the Port's insurance? If a crew member is injured on the dock, is his injury covered by the vessel or by the Port?* Businesses that lease land or facilities from the Port need to provide proof

of adequate insurance coverage; *will that same standard be used for vessels engaged in retail sale? If not, how will the Port protect itself from injury suits, including any that may result from the mis-handling of seafood?* Fishermen need to be aware of the extent of their exposure to liability; the Port should also seek guidance from its insurance carrier.

Liability and Litigation – We live in a highly litigious society. Some of the issues listed above may lead to litigation. Under the theory of seeking redress from the "deep pocket" the Port may find itself being sued for injuries, damages, etc., in cases where there is little hope of recovery from a small fishing operation. The Port should consult with its legal counsel to determine the extent of legal exposure and how it might be reduced. Fishermen involved in retail sale should do the same.

The Port must consider and address these important issues before implementing a retail sales program. The Port should seek legal and insurance consultation and also advise fishermen who intend to engage in retail sales to seek appropriate legal and insurance counsel. The last thing the Port of San Francisco needs is to have a well-intentioned program turn into a legal and financial nightmare.

Thank you for your consideration of our comments. Please contact me if you would like to discuss this issue further.

Sincerely,

A handwritten signature in cursive script that reads "Lori L. Steele". The signature is written in dark ink and is positioned above the printed name and title.

Lori Steele  
Executive Director