

**WRITTEN TESTIMONY OF
DR. REBECCA LENT
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**ON
ILLEGAL, UNREPORTED AND UNREGULATED FISHING AND THE
CONSERVATION OF SHARKS**

**BEFORE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES**

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Introduction

Good morning, I am Rebecca Lent, Director of the Office of International Affairs for the National Marine Fisheries Service (NMFS) at the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. Thank you, Chairwoman Bordallo, Representative Brown, and members of the Committee for the opportunity to discuss the importance of shark conservation and the many challenges of international fisheries management. My testimony will focus on NOAA's activities in four areas:

- Progress in implementing the international provisions of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).
- Multilateral work with Regional Fishery Management Organizations.
- Law enforcement capabilities and international fishery enforcement challenges.
- Efforts to conserve sharks in U.S. waters and internationally.

International Provisions of the Reauthorized Magnuson-Stevens Act

Congress passed, and the President signed into law, the reauthorized Magnuson-Stevens Act in January 2007. The Act contains several new provisions that will significantly shape fisheries management, including reinforcing NOAA's mandate to work with our partners at the Department of State, the U.S. Coast Guard, and other agencies to address international stewardship of living marine resources. Fulfilling this mandate is a high priority for NOAA.

Illegal, Unreported, or Unregulated (IUU) fishing is estimated to generate \$4 to \$9 billion in gross revenues each year. This can undermine our domestic fishery management practices, and has implications for sustainable international fisheries that benefit the world's marine ecosystems, the U.S. fishing industry, and the American seafood consumer.

The Magnuson-Stevens Act requires the Secretary of Commerce to produce a biennial report, which identifies nations whose vessels are engaged, or have been engaged, in IUU fishing activities or bycatch of protected living marine resources. The United States is then directed to consult with and encourage “identified” nations to take appropriate corrective action to address the IUU fishing and bycatch activities outlined in the report. If the nations do not take steps to address the problems, the Secretary of Commerce must issue a negative certification for such nations. Subsequently, the United States may prohibit the importation of certain fish and fish products from negatively certified nations and take other measures against such nations. The Secretary of Commerce is currently developing rulemaking on the procedures for identifying and certifying nations under this Act.

Update on Magnuson-Stevens Act Implementation and Outreach

NOAA has been working to implement the international provisions of the Magnuson-Stevens Act to help combat IUU fishing. The first step NOAA completed was in promulgating a final rule to define IUU fishing that mirrors the definition as articulated in the international provisions of the Magnuson-Stevens Act. In January 2008, in preparation for the first biennial report due to Congress in January 2009, NOAA produced a status report regarding progress made toward implementing the international provisions of the Magnuson-Stevens Act since its enactment.

NOAA is also soliciting information from the public, other nations, and appropriate federal agencies to identify nations whose vessels are engaged in IUU fishing or bycatch of protected species. NOAA has developed an internal process for the compilation, review, and analysis of all appropriate information and will collaborate with federal partners, including Coast Guard and the Department of State, in verifying the information gathered. Wherever possible, consultations will be conducted with identified nations to promote corrective action. We will continue to keep the Committee apprised of progress toward implementing these international provisions of the Magnuson-Stevens Act.

The United States is currently seeking to strengthen international efforts to address IUU fishing by adopting multilateral measures or negotiating new agreements or protocols. With substantial U.S. involvement, international fishery management organizations have taken action toward adopting and sharing IUU vessel lists, using fishery observers, and promoting and using centralized vessel monitoring systems (VMS). The United States has also worked with these international organizations to adopt trade tracking and catch documentation schemes to prevent trade in illegally caught fish.

Although meaningful progress has been made within the Regional Fishery Management Organizations (RFMOs) with respect to combating IUU fishing, many challenges remain. Most RFMOs operate on the basis of catch data that are woefully incomplete. Systems such as observer programs and VMS would improve data collection, but these systems have not been adopted universally. In some cases, RFMO members have the capacity to provide complete data, but still fail to do so. Meanwhile, some developing country

RFMO members lack the capability and resources to collect and share this information, and the world has been slow to respond with assistance that could improve international fisheries management.

Recognizing these gaps, through the Magnuson-Stevens Act, Congress authorized NOAA to cooperate and provide assistance to other countries to help them improve fisheries management, address IUU fishing, and reduce bycatch. The Agency is enthusiastic about this new authority and its potential to address gaps in data management and enforcement capacity. In cooperation with federal partners, NOAA has hosted and supported workshops on techniques and tools to strengthen enforcement, mitigate incidental take of marine resources, and respond to marine mammal strandings. NOAA has also provided assistance to developing countries to improve their monitoring, control, and surveillance capabilities, and has sought to promote the development of effective fisheries observer programs in other countries.

One example is the Coral Triangle Initiative, which is progressing with the support of NOAA and the Department of State. In this initiative, Indonesia, Malaysia, Philippines, Papua New Guinea, Solomon Islands, and Timor-Leste are cooperating in a wide range of marine projects, including sustainable fisheries, IUU fishing, fishing overcapacity, and destructive fishing practices.

The FY 2009 President's budget request includes a total request of \$2.6 million for activities to combat IUU fishing. Included in the request is an increase of \$1.1 million to support the Magnuson-Stevens Act requirement to strengthen international fisheries enforcement. This increase will provide for additional infrastructure and personnel to monitor U.S. IUU imports and support partnerships with other federal agencies and countries involved in IUU.

Multilateral Work with RFMOs

The Magnuson-Stevens Act calls upon NOAA to work multilaterally to address international fisheries management and enforcement for shared target fish stocks and protected species, and in most cases, this is done through bilateral or multilateral organizations. This collaboration ranges from a two-country (bilateral) agreement (such as the one establishing the International Pacific Halibut Commission) to complex, multinational RFMOs (e.g., the three tuna RFMOs of which the United States is a member). NOAA is taking a leadership role in a number of RFMOs that are key to combating IUU fishing in the multilateral context.

RFMOs have adopted an array of measures to address IUU fishing and bycatch. For example,

- As part of efforts to deter IUU fishing activities, several RFMOs have adopted catch/trade documentation schemes. These schemes monitor international trade, identify the origin of imports, determine whether imports caught in the respective Convention Area are consistent with conservation measures, and provide catch data for stock assessments.

- Compliance regimes and sanctions, including reduced quotas for overfishing, have been adopted by various RFMOs.
- Some RFMOs have adopted multilateral trade-related measures, such as import prohibitions, to deter IUU fishing.
- As a tool to combat IUU fishing activities, an increasing number of RFMOs have adopted procedures for listing vessels that have engaged in IUU fishing. These lists have been created to attach certain penalties to vessels, including restriction on port access and unloading prohibitions. The United States has played a leading role in ensuring that such lists are compiled transparently and provide due process to listed vessels.
- The United States has also taken a leadership role in adopting measures to reduce bycatch of seabirds and sea turtles in RFMOs, and has worked effectively outside of RFMOs by participating in the activities of the Agreement on the Conservation of Albatrosses and Petrels and by taking a leadership role in negotiating the Inter-American Convention for the Protection and Conservation of Sea Turtles (the only binding international sea turtle treaty).

Despite the adoption of these measures by RFMOs, some countries still do not comply with these international obligations. In some cases, non-compliance is due to a lack of infrastructure and/or funding; in other cases the reasons are not clear. The United States consistently works via the RFMOs to address issues of non-compliance. However, consensus to take measures against another member of a RFMO can be difficult, particularly since that member can participate in the discussions and, if the RFMO operates by consensus, prevent any action. This is one of the biggest challenges the United States faces with regard to multilateral action against IUU fishing. NOAA, with partners at the Department of State, continues to work to improve the effectiveness of RFMOs in this regard. Recent efforts to conduct performance reviews of RFMOs, particularly those being conducted by independent experts, will help identify structural and other changes that may be needed. Centralized reporting requirements, such as for VMS, can also improve RFMOs' ability to respond to issues of non-compliance.

Vulnerable Marine Ecosystems

In 2006 a Presidential directive called upon the Departments of State and Commerce to work with other countries to establish new RFMOs, or other cooperative institutional arrangements, to protect ecosystems in high seas areas where no competent RFMO exists, including calling on all nations to protect vulnerable marine ecosystems by prohibiting their vessels from engaging in destructive fishing practices on the high seas. To that end, NOAA has been actively participating in discussions on the establishment of new management arrangements for non-highly migratory species in the high seas areas of both the South Pacific and the Northwest Pacific. These arrangements will fill a gap in the international fisheries management regime and help ensure the long-term conservation and sustainable use of fishery resources.

The United States government is also involved in technical consultations with other nations at the Food and Agriculture Organization (FAO) to develop new Technical

Guidelines for the Management of Deep-sea Fisheries in the High Seas. These guidelines are anticipated to include standards and criteria for identifying vulnerable marine ecosystems and significant adverse impacts due to fishing on vulnerable marine ecosystems in the high seas, as well as other elements to govern the management of deep sea fisheries on the high seas.

Modernization of Inter-American-Tropical-Tuna-Commission Convention

In 2003, the Inter-American Tropical Tuna Commission (IATTC) adopted and signed a new treaty known as the Antigua Convention to provide the Commission with a comprehensive mandate that incorporates modern standards for international fisheries management in the Inter-American region. NOAA strongly agrees with the Department of State in urging quick Congressional action on implementing legislation for the Antigua Convention.

Law Enforcement Capabilities and International Fishery Enforcement Challenges

A critical aspect of international fisheries management is effective law enforcement. NOAA's Office for Law Enforcement includes 148 sworn federal agents. The Agents work closely with international, federal, and state law enforcement partners to detect, apprehend, and prosecute those involved in the illegal importation of IUU products into the United States and its territories and to stop the global trade of IUU fisheries products. These efforts include NOAA's coordination with the U.S. Coast Guard sea and air patrols in the North Pacific Ocean to detect illegal large-scale high seas driftnet fishing. The Office for Law Enforcement also works closely with Customs and Border Protection to detect illegal fisheries products being imported into the United States.

NOAA's Office for Law Enforcement is routinely engaged in international investigations targeting unscrupulous multi-national business operations engaged in the international trade of IUU fish and fish products, as well as trafficking in protected living marine resources. Such efforts typically involve the application of the Lacey Act, and have resulted in blocking importation of illegally harvested and processed marine products trafficked on a global scale.

Despite these efforts, several gaps in our enforcement capabilities hamper our ability to effectively combat IUU fishing:

- Under many statutes, civil penalty limits hinder the Office for Law Enforcement's ability to deter illegal importation of fish products into the United States. Increasing the civil penalties to a level beyond a "cost of doing business" is essential to addressing illegal imports. Additionally, allowing the option of criminal prosecution of substantive violations will significantly enhance the deterrent effect of enforcement actions.
- Enhanced sharing of data and information among and between governments and regional fishery management organizations would strengthen NOAA's ability to work collaboratively with other governments to track IUU products and conduct joint enforcement operations.

- The authority to inspect conveyances, facilities, and records involving the trade of fish and fish products would aid the U.S. Government's ability to respond to the global trade in IUU products. Additional tools, such as administrative subpoena authority, would also significantly enhance the U.S. Government's ability to investigate the legality of fish and fish products in international trade.

Leadership of the International Monitoring, Control and Surveillance Network

To facilitate cooperation of law enforcement across borders, in 2001, the United States joined other countries to establish the voluntary International Monitoring, Control and Surveillance Network, which works multilaterally to exchange fisheries and enforcement information, including information related to IUU fishing. The Network allows fisheries law enforcement professionals to share information and experiences as they monitor the increasingly complex harvesting and marketing of fish around the world. The rise in illegal activities that has accompanied globalization underscores the need for this type of information sharing across borders.

In 2006, the High Seas Task Force project on global IUU fishing recommended enhancement of the Network as a key initiative to combat IUU fishing. NOAA has taken the lead to improve the Network by implementing an enhancement project and continuing to serve as Chair of the Network. Funding for the enhancement has been provided by several partners, including Australia, Canada, New Zealand, and the United Kingdom.

International Trade Data System Project

An important tool that will help NOAA detect IUU products being imported into the United States is the International Trade Data System currently under development by the Department of Homeland Security. The system is an integrated, government-wide system for the electronic collection, use, and dissemination of trade data. The Safe Ports Act of 2006 made the system mandatory for all federal agencies that have a role in determining the admissibility of imports to the United States market, and NOAA has taken steps to become a participating government agency in this system. Currently, the Office for Law Enforcement is not informed of permitting, documentation, and reporting violations until long after they occur, which makes investigation and forfeiture of product difficult or impossible. This system will allow screening and targeting of inbound shipments, potentially on a pre-arrival basis. NOAA staff will then be in a position to approve entries or to place holds on shipments when permits/documentation are missing. Close interagency coordination will ensure effective and consistent application of import regulations as well as detection of potential IUU shipments of fish and fish products.

Efforts to Conserve Sharks in U.S. Waters and Internationally

The United States continues to be a leader in calling on the international community to improve shark conservation and management efforts, end the practice of shark finning, and reduce the bycatch of sharks in international fisheries. Shark finning in this context

is the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea. The reauthorized Magnuson-Stevens Act and the Shark Finning Prohibition Act of 2000 (SFPA) contain many mandates relating to shark conservation and management both in U.S. waters and internationally.

Domestic Shark Conservation and Management

Progressive leadership on domestic shark conservation and management is in the nation's best interests for the purposes of long-term sustainability of harvests and the financial health of our fisheries sector, and is a necessary foundation for the nation's leadership role within the international community.

In the United States, development of shark fishery management plans is performed by the regional fishery management councils, with the exception of management plans for Atlantic highly migratory species including Atlantic sharks, billfish, and tuna. Since 1990, management of these species in federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea has been under the direct authority of the Secretary of Commerce.

With this authority NOAA finalized an Environmental Impact Statement (EIS) on April 11, 2008, which analyzes ways to improve enforcement of the prohibition on shark finning in Atlantic coast shark fisheries, to end overfishing, and to rebuild shark stocks/populations. The preferred alternative identified in the EIS would amend the existing Atlantic Highly Migratory Species Fishery Management Plan to require that fishermen keep shark fins naturally attached to the shark carcasses until they are unloaded from the fishing vessel. For Atlantic coast shark fisheries, the proposed requirement would improve the ability of law enforcement personnel to correctly identify shark species and thus significantly improve the enforceability of regulations aimed at shark conservation.

NOAA's Office for Law Enforcement investigates violations of the SFPA and its implementing regulations. The majority of these violations have been detected, investigated, and prosecuted in the Southeast and Pacific Islands Enforcement Divisions. Violations have included illegal shark finning, possession of prohibited shark species, and unauthorized offloading of shark fins into U.S. ports. There is not currently a regulatory proposal to adopt a "fins attached" requirement similar to what has been proposed for Atlantic sharks for Pacific coast shark species. Absent this requirement, NOAA's Office for Law Enforcement and U.S. Coast Guard personnel rely in part on the SFPA requirement that the total weight of shark fins landed not exceed 5 percent of the total landed shark weight. NOAA looks forward to working with the Committee to continue to explore ways to improve enforcement of shark conservation measures off both the Atlantic and Pacific coasts.

International Shark Conservation and Management

Since 2000, many of NOAA's international efforts in shark conservation have been guided by the SFPA. The SFPA banned the practice of shark finning in U.S. fisheries and established a rebuttable presumption that any vessel landing shark fins with a total weight greater than 5 percent of the total weight of the shark carcasses is in violation of the finning prohibition. The SFPA called upon the Secretary of Commerce, acting through the Secretary of State, to pursue international bans on shark finning and to seek comparable measures for shark conservation in the fisheries management organizations of which the United States is a member. As a result of U.S. leadership on shark conservation, finning bans have been adopted by IATTC, the International Commission for the Conservation of Atlantic Tunas, the Western and Central Pacific Fisheries Commission, and the Northwest Atlantic Fisheries Organization. Also, the United States has successfully advocated for measures at the Commission for the Conservation of Antarctic Marine Living Resources to prevent exploitation of sharks.

The SFPA also called upon the Departments of Commerce and State to work together to urge governments to prepare and submit National Plans of Action for the Conservation and Management of Sharks, as set forth in the FAO's International Plan of Action for the Conservation and Management of Sharks. Unfortunately, despite repeated calls to action, nations have been slow to develop and implement national plans of action. Of the 20 top shark fishing nations and entities, only Taiwan, Mexico, the United States, Japan, and Malaysia have adopted plans covering sharks, and the European Commission released a draft plan of action for comment in December 2007. (A detailed accounting of the efforts NOAA is undertaking for sharks on both the domestic and international fronts pursuant to the SFPA can be found in the annual Shark Finning Report to Congress, delivered to Congress on January 15, 2008.)

To encourage other fishing nations in their duties regarding shark conservation, NOAA and the Department of State played an important role in developing language for the 2007 United Nations General Assembly's annual Sustainable Fisheries Resolution. This Resolution contains a strong mandate for improved global shark conservation and management. It calls upon states to urgently adopt measures to implement the FAO International Plan of Action for the Conservation and Management of Sharks and to implement measures such as limits on catch or fishing effort; collection and regular reporting of data on shark harvest, discards, and landings; comprehensive stock assessments of sharks; and reductions of shark by-catch and by-catch mortality. Where scientific information is uncertain or inadequate, nations are called upon to not increase fishing effort in directed shark fisheries until measures have been established to ensure the long-term conservation, management, and sustainable use of shark stocks and to prevent further declines of vulnerable or threatened shark stocks. Nations are directed to take immediate action to improve compliance with existing RFMO conservation and management measures for sharks—particularly those measures banning or restricting finning—and to consider, as appropriate, requiring sharks be landed with fins naturally attached.

As reflected in the 2007 Resolution, some of the bigger international challenges lie in improving fisheries management through the collection of species-specific catch and

bycatch data, conducting regular and comprehensive stock assessments, and implementing management measures sufficient to provide for the long-term sustainability of shark populations.

The existing international provisions of the Magnuson-Stevens Act provide NOAA with some effective tools to help achieve conservation and management goals for sharks in international fisheries. However, some developing or recently developed nations lack the institutional or financial capacity to effectively implement and enforce appropriate vessel and port-based shark conservation and management measures. For international shark conservation and management efforts to succeed over the long term, each fishing nation must be able to collect and report fisheries data, implement effective domestic regulatory programs, and enforce regulations once they are in force. So, although enforcement actions and trade sanctions may help attain shark conservation goals, offers of technical and financial assistance to build administrative, regulatory, and enforcement capacity may provide the greatest return in terms of conservation value for living marine resources, including sharks.

NOAA thanks this Subcommittee for its efforts regarding H. R. 5741, the Shark Conservation Act of 2008. The bill highlights your interest and commitment to shark conservation, and your willingness to ensure that NOAA and other relevant agencies have the tools they need to continue to pursue effective shark conservation, management, and enforcement. NOAA is carefully reviewing the Shark Conservation Act of 2008 and we hope to work with you further to ensure we fully understand the intent of the bill and to refine the language to ensure the mandates can be properly enforced.

Conclusion

In conclusion, NOAA is working to implement the international provisions of the reauthorized Magnuson-Stevens Act and is vigorously engaged through various RFMOs to combat IUU fishing. With the tools and support this Congress has supplied for this complex endeavor, NOAA will create the incentives for sustainable international fisheries management to benefit the world's marine ecosystems, the U.S. fishing industry, and the American seafood consumer.

Chairwoman Bordallo, Representative Brown, and members of the Committee, this concludes my statement. The Department of Commerce and NOAA look forward to working with you, the public, the fishing industry, and our international counterparts on these important fisheries issues. I will be happy to answer any questions.