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Mr. Chairman, Members of the Committee:

My name is Lisa Speer. I am Director of the Water and Oceans Program at the Natural Resources Defense Council (NRDC), a national conservation organization dedicated to protecting natural resources and public health. My work over the last 10 years at NRDC has focused on the conservation and management of fisheries and the marine environment in areas beyond national jurisdiction.¹ We welcome the opportunity to testify today on issues related to international fisheries management and enforcement.

I would like first to thank Senators Inouye and Stevens for their outstanding leadership on fisheries issues. For more than two decades, Senators Stevens and Inouye have led the way in promoting sound fisheries management both here in the United States and beyond our borders. Their decades-long bipartisan cooperation has yielded extraordinary results, including the 1991 UN moratorium on large scale driftnets on the high seas, the groundbreaking, legally binding conservation provisions of the UN Agreement on Straddling and Highly Migratory Fish Stocks (“Fish Stocks Agreement”), the FAO International Plan of Action (IPOA) on illegal, unreported and unregulated (IUU) fishing, the 2006 UN General Assembly Resolution 61/105 on unregulated fishing, and a host of other key agreements, instruments and resolutions. The oceans, and the planet, owe them an enormous debt.

Overview of international fisheries

There is no longer any doubt that we are rapidly reaching, and in many cases have exceeded, the limits of ocean ecosystems and the fisheries they support. According to the UN Food and Agriculture Organization (FAO), roughly seventy-five percent of the world’s marine fish populations are fully fished, overfished, or depleted. Sea turtles, marine mammals and seabirds are threatened by incidental catch in fishing gear, as are many species of commercial and non-commercially important fish. Destructive fishing practices such as unregulated bottom fishing damages the habitat on which marine life, including important commercial fish species, depend. Overcapacity and subsidies – on the order of \$10-15 billion annually -- continue to propel short term overexploitation at the expense of long term sustainability.

The depletion of the seas has enormous implications for the human environment as well as the natural one. Globally, over a billion people get a major portion of their protein

¹ This testimony uses the terms “high seas” and “areas beyond national jurisdiction” interchangeably, recognizing that they are not completely congruent in aerial coverage.

from the sea. Marine fisheries employ roughly 20 million people worldwide, many from developing countries where fishing provides a critical source of income as well as food.

Climate change and acidification of the oceans lends new urgency to these pervasive problems. Scientists believe that healthy, diverse marine ecosystems are the best insurance against the profound changes in store as the planet warms and the oceans acidify. Like people, the healthier our oceans and fisheries are, the better able they will be to cope with potentially devastating changes.

Increasing pressure on the high seas

Faced with declining stocks in nearshore coastal waters, fishermen now venture far out into previously untouched areas of the deep sea, home to exceptionally vulnerable species and habitats. According to FAO, the catch of oceanic species typically found on the high seas has tripled since the mid-1970s. And the pressure is growing. Just last week the chief of the Russian State Committee for Fisheries announced a plan to expand the Russian open ocean fish catch by *50 times* current levels, from 30,000 tons to 1.5 million tons by the end of next year.² While the amount may represent wishful thinking, the direction is unmistakable and is shared by other high seas fishing nations.

Conservation and management of high seas fisheries is important to the United States for several reasons. Many high seas fish stocks, such as tuna, swordfish and squid, are important to US fishermen and consumers. Mismanagement, illegal fishing, unregulated fishing and the use of damaging fishing practices harms those stocks, damages marine wildlife and destroys important ocean habitat. In addition, poor or absent management of high seas fishing puts US fishermen, who must comply with the requirements of the Magnuson-Stevens Act and other statutes, at a serious competitive disadvantage against unregulated or poorly regulated foreign fleets.

For these and other reasons, the US has an important interest in the governance of high seas fishing. Unfortunately, the international regime governing such fishing has not kept pace with the expansion of fleets and technology, as discussed below.

Gaps in international fisheries governance

Gaps in fisheries governance include geographical, implementation and enforcement gaps.

- a. Geographical gaps

RFMO/As with authority to manage highly migratory species such as tuna and swordfish cover most of the world's oceans. This is not the case for other high seas fisheries,

² Kazinform, March 22, 2008

including those for sharks, many non-tuna or tuna-like pelagic species, and non-straddling deep sea fish. The remainder of this testimony focuses on the latter category.

Prompted by Senate Resolution 610, introduced by Senators Stevens and Inouye in September, 2006, and a following directive by President Bush, the United Nations General Assembly passed a resolution in December 2006 to address the gaps in bottom fisheries governance. UNGA Resolution 61/105 calls on States to establish new RFMOs and to adopt interim measures to regulate bottom fisheries and protect vulnerable marine ecosystems on the high seas by December 31, 2008.

Important progress in implementing Resolution 61/105 has been made in South Pacific, where parties negotiating a new South Pacific RFMO have adopted strong interim measures and have made steady headway in negotiating treaty text. We are grateful for the leadership role played by the United States in the development of interim measures.

The South Pacific, along with CCAMLR, stands out among RFMO/As with competence to regulate bottom fisheries. Most other RFMOs lag far behind these two regions in implementing Resolution 61/105. Of particular concern is the direction of negotiations in the Northwest Pacific, and the lack of any meaningful progress toward establishing a management regime in the Northeast Pacific.

The Northwest Pacific

Negotiations to establish a new RFMO/A in the North West Pacific began in 2006 and involve the US, Korea, Japan and Russia. The parties agreed on interim measures for the management of bottom fisheries on the high seas of the region in February 2007, and agreed to a further set of measures to implement the February 2007 agreement in October 2007. While good progress has been made on interim measures, a key issue with regard to observer coverage was not resolved, and several important issues were left open pending the development of the FAO Guidelines on implementing key elements of UNGA Resolution 61/105. These include the definition of vulnerable marine ecosystems and significant adverse effects.

Of much greater concern is the draft convention text prepared by Japan. In our view, the current draft of the convention text does not meet the most basic requirements of modern international fisheries agreements, including the UN Fish Stocks Agreement, the FAO Code of Conduct, the FAO Compliance Agreement, and other international instruments. Nor does it impose requirements anywhere close to those required here in the United States under the Magnuson-Stevens Act.³

³ The major areas in which the draft convention text falls short in our view include its weak or absent provisions on transparency, new fishing in the absence of a management plan, registry of vessels and vessel owners, port state duties, capacity controls, flag state obligations, transshipment, boarding and inspection procedures, decision making, performance reviews, conservation and management measures for target and non-target species, implementation of the precautionary approach, observer coverage, and data sharing.

US approval of this draft in anything like its current form would send a very negative message to the rest of the world about our commitment to improving implementation of high seas fisheries management principles and instruments, in particular the commitment to the effective implementation of the 1995 UN Fish Stocks Agreement. We trust the US will do everything necessary to strengthen the draft so that foreign vessels operating on the high seas in the Pacific are subject to standards at least as stringent as those in place in the US under the Magnuson-Stevens Fishery Conservation and Management Act. If the other participants to the negotiations do not agree to dramatically strengthen the draft text, we recommend the US withdraw from the negotiations.

The Northeast Pacific

As the noose tightens around unregulated fishing across the globe, the Northeast Pacific is one of a dwindling number of places left where high seas bottom fishing can proceed unregulated, unmanaged, and unreported. At the moment, there does not appear to be much high seas bottom fishing taking place in the Northeast Pacific. But there is no doubt that will change as fisheries become depleted or subject to tighter regulation elsewhere. The Northeast Pacific should not be permitted to become a haven for foreign fleets seeking to prosecute fisheries without controls, oversight or enforcement.

For many reasons, we believe a single RFMO covering bottom fishing on the high seas of the entire North Pacific would be an ideal outcome. One possibility is to extend the Northwest Pacific agreement to the east and south so that it covers the entire North Pacific. Unfortunately however, as discussed above the draft Northwest Pacific agreement does not come close to meeting the standards set in either the Magnuson Stevens Act or the Fish Stocks Agreement. Unless that agreement is fundamentally revised and improved, we do not support expanding its coverage to include the Northeast Pacific.

If strengthening the NW Pacific agreement is not possible, we believe the US should pursue a new agreement for the Northeast Pacific without delay. It is far easier to negotiate strong conservation, management and enforcement measures before foreign fisheries become entrenched and stocks are depleted. Deep sea fish stocks are typically slow growing and easily overfished, and the history of overfishing and depletion in high seas seamount fisheries throughout the Pacific is sobering. Therefore, recognizing that negotiating a new agreement is a large and costly undertaking, we nevertheless recommend the US move quickly to close this gap.

The Arctic

Fish distribution and abundance in the Arctic is changing as the ocean warms, and fishing conditions are becoming more favorable. But our scientific understanding of evolving fish population dynamics in the region, and the impact of fishing on the broader

ecosystem, remains extremely limited. The North Pacific Fishery Management Council recently adopted precautionary restrictions on Arctic commercial fishing to allow scientists to better understand the changing dynamics of the region, and to permit managers to develop an informed fishery management plan to ensure sustainability of any future fishery.

We applaud this precautionary approach, and support a similar approach for transboundary, migratory and straddling fish stocks that may be subject to fishing by other Arctic nations. The Arctic fisheries resolution (S.J. Res 17), introduced by Senator Stevens and passed by the Senate last summer, promotes the idea of a new international fisheries management organization/s for the region to manage shared Arctic stocks. We urge the US to promote restrictions on commercial fishing of shared stocks along the lines of what the North Pacific Council adopted for domestic Arctic fisheries.

Finally, negotiating an agreement for the Arctic should be a top priority for the United States. We cannot afford delay given the very rapid changes taking place in the Arctic marine environment and the clear intent of some Arctic nations to increase fishing capacity.

Other regions

Deep sea fisheries remain unregulated in a number of other high seas areas, including the northern Indian Ocean, central Atlantic (south of the NAFO and NEAFC areas), and the south west Atlantic. In at least some of these areas unregulated bottom fishing targeting seamounts is occurring. In addition, some RFMOs have yet to make satisfactory progress toward meeting the mandates of UN Resolution 61/105. The US can play a helpful role within NAFO, which is holding an extraordinary meeting in May to discuss needed measures in this regard.

In 2009, the UN General Assembly will review progress towards meeting the requirements of Resolution 61/105. The results of the review will lay the groundwork for further international action to fill the holes in high seas fisheries governance. We strongly urge the United States to play an active role in organizing the review with the goal of ensuring that it is conducted in a timely and meaningful manner.

b. Performance gaps

The performance of RFMOs in meeting the mandates of the Fish Stocks Agreement and other relevant instruments varies tremendously. Without accountability or oversight, there is little incentive for RFMOs to improve their performance. We have therefore supported efforts by the United States and others to initiate regular reviews of RFMO performance.

The United States has been a leader in developing and beginning to apply criteria for such reviews. However to date these reviews have largely been self-audits. While those audits have yielded helpful information, we believe it is important for RFMOs to be reviewed by an independent body without a stake in the outcome. Just as few corporations permit employees to review themselves, or schools allow students to grade themselves, we believe RFMOs would benefit from regular outside review. Such reviews would help improve performance, harmonize approaches to fisheries conservation and management and provide for greater exchange of strategies, methodologies and regulatory approaches among RFMOs.

c. Enforcement Gaps: Illegal, Unreported and Unregulated (IUU) Fishing

FAO reports that IUU fishing activities are increasing, and now accounts for some 30% of the catch in some important fisheries. IUU fishing contributes to overfishing, habitat destruction, harmful bycatch, and deprives legitimate fishermen of harvest opportunities. Some estimates put the worldwide value of illicit catches at least as high as \$10 billion per year.⁴

There are a host of important initiatives under way to address IUU fishing, including those mandated by the 2006 reauthorization of the Magnuson-Stevens Act, and Section 113 of the 2007 Omnibus Appropriations Bill (HR 2764), both of which came about as the result of leadership by this Committee.

Four international initiatives stand out as important elements of an international solution to IUU fishing.

1) A global record of fishing vessels

One of the greatest obstacles faced by fisheries enforcement authorities is the ability of IUU fishing vessels to rapidly change names, ownership, and flag to evade enforcement.

Work is now underway under the auspices of FAO to develop a global record of fishing vessels with unique identifiers that stay with the vessel forever, regardless of changes in ownership, flag, or type of fishing. Such identifiers would greatly facilitate MCS, and go a long way to prevent and deter IUU.⁵ Combined with other measures, such as those envisioned in the draft Port State Agreement and an expanded MCS network, have the potential to foil efforts to avoid enforcement through renaming, reflagging and changing ownership of vessels. The estimated cost is \$2.5m for the development phase of the global record and \$600,000 per year for maintenance; an option for the US to consider is contributing to this effort financially.

⁴ Closing the Net: Stopping Illegal Fishing on the High Seas, HSTF March 2006 at 3.

⁵ Report of the Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels, Rome, Italy, 25-28 February, 2008.

2) Centralized, tamper-proof VMS

The 2006 UNGA Fisheries Resolution (para 49) urges flag states to require VMS on all vessels fishing on the high seas as soon as practicable and in the case of large-scale fishing vessels no later than December 2008. One option the US could consider is to either prohibit importation of fish caught by such large scale vessels without VMS after December 2008. Another option would be to subject all such vessels to inspection once they enter US ports.

3) Port State Agreement

Port state measures are aimed at vessels engaged in IUU fishing that seek to avoid applicable conservation and management measures by landing catches outside the region in which the fish was caught and where officials have little or no knowledge about the fish landed or applicable management measures. The US is leading negotiations to develop a binding Port State agreement. The current draft Agreement, which will be finalized next year, would require parties to deny use of their ports for landing, transshipping or processing of fish if a foreign vessel:

- has been fishing in an RFMO area when that vessel's flag state is not a member of that RFMO (note the port state does not need to be a member of the relevant RFMO);
- has been sighted engaged in or supporting IUU fishing activities
- is included in an RFMO IUU vessel list, or
- has not been authorized to fish in the area by the competent RFMO or coastal state.

The Agreement relies on advance notification of detailed information by vessels seeking to land fish, including the vessel's authorization to fish, its transshipment records, relevant regional RFMO, and other information. It is up to the Port State to verify this information. One option for the US to consider is pressing for mandatory flag State verification of a vessels' information (as drafted the agreement allows verification through the flag State but does not require it). Repeated failures by a flag State to provide verification could provide grounds for action against that State, which may in turn provide an effective tool against flag of convenience States and thus have a broader impact on IUU fishing.

4) EU-type catch documentation

The European Commission has proposed a new catch certification scheme that focuses on the fish rather than on the vessel as in the Port State Agreement. The proposal, which will be considered for approval by the European Council this June, aims to track fish "from the net to the plate." Under this proposal, all fisheries products imported into the EU, whether fresh, frozen or processed, would be required to have validated catch certificates provided by the flag state that certifies the products are legal and that the vessel concerned holds the necessary

licenses and quotas. This would facilitate verification that fish have been caught legally, even if they pass through a number of territories or processing before arriving in the EU market.

One area worth considering is whether such an approach could work in the US. Attacking IUU from both ends – the vessel and the catch – may be more effective at blocking IUU products from entering the US market. Considering that the EU and the US represent two of the three largest seafood markets in the world, this approach has the potential to make a major dent in IUU fishing.

Conclusions and Recommendations

The magnitude of the problems facing high seas fisheries calls for a major initiative to chart a new course. As a major fishing nation, as a leader on these issues, and as one of the world's largest consumers of seafood, the US is in an important position to lead such an effort. We recommend such an initiative include the following elements.

1. The US should accede to the United Nations Convention on the Law of the Sea;
2. Continued vigorous advocacy at the WTO to reduce and eventually eliminate the estimated \$10-12 billion annual subsidies for fishing that fuel overcapacity and overfishing;
3. Fill governance gaps for species and areas that are currently unregulated, with a particular focus on the north Pacific and the Arctic;
4. Address performance gaps through institution of regular independent review of RFMO performance against internationally accepted criteria;
5. Play an active role in the UNGA 2009 review of the implementation of UNGA Resolution 61/105 regarding unregulated bottom fisheries with the goal of ensuring that it is conducted in a timely and meaningful manner;
6. Provide financial and political support for the establishment of a global record of fishing vessels with unique identifiers;
7. Consider import or other restrictions on large scale vessels without VMS after December 31, 2008
8. Consider an EU-type catch documentation scheme;
9. Consider pressing for mandatory flag state verification of information provided by foreign vessels under the draft Port State agreement;

10. Lead by example: encourage NMFS to a) promptly issue proposed revisions to the current National Standard 1 guidelines to ensure that overfishing does not occur and that overfished stocks are rebuilt as required by the MSRA, and b) effectively implement the MSRA's provisions on rebuilding, which if properly implemented would create tens of thousands of additional jobs, increase catch levels by 64%, and add more than \$1 billion to the US economy.⁶

In closing, we again thank you and your staffs for your leadership on both domestic and international fisheries. We look forward to working with you to address the challenges ahead. Thank you for the opportunity to testify.

⁶ Pew Oceans Commission. 2003. America's Living Oceans: Charting a Course for Sea Change. pg. 46.