Testimony of

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Before the

United States House of Representatives
Committee on Resources
Subcommittee on Fisheries Conservation, Wildlife and Oceans

April 16, 2008

Good Morning my name is Bob Hayes and I am the general counsel for the Coastal Conservation Association (CCA). In addition, for the last seven years I have served as a Commissioner to the International Convention for the Conservation of Atlantic Tunas (ICCAT). I am appearing here today in my role as general counsel and not as a spokesperson for either my fellow Commissioners or the Administration.

Today there are three distinct areas that need better compliance. First, is traditional IUU fishing. Second, is Regional Fishery Management Organizations need to take the concept of enforcement against their own members seriously, and the third is the one the Shark fining bill addresses, which is transparency in the national implementation of adopted conservation measures. I will address each of these areas and make recommendations for improving the United States effectiveness. Before doing that I would like to tell you a little bit about CCA.

The Coastal Conservation Association is the leading marine recreational fishing group in the United States. Formed by a small group of sport fishermen in Houston in 1977, CCA has grown to a seventeen-state operation with over 100,000 members. Each of our states operates somewhat independently, focusing on issues in the state that are important to marine recreational fishermen. However, like so much in fisheries management, conservation issues encompass a regional and national perspective; therefore, CCA learned long ago that federal and international fisheries management were just as important to the local marine recreational fishermen as the conservation of the local fish population.

CCA pursues conservation policies set by our state and national Boards of Directors. These boards are made up of active volunteers concerned about the health of the nation's fisheries. CCA has been active in a number of conservation issues in the last 30 years, including: all of the east and Gulf coast net bans; gamefish status for redfish, speckled trout, tarpon, striped bass, river shad, marlins, spearfish and sailfish; and the reduction of bycatch through the use of closed areas and technology. We have also pushed for the improvement of the management system through the restructuring of state and federal management systems, the elimination of conflicts of interests by decision-makers, and the active involvement of our membership in the management process. CCA members fish for sharks, billfish, swordfish and tunas all of which are managed by ICCAT in the Atlantic Ocean and all of which are threatened by IUU fishing.

In 2002 and again in 2003, I testified before this committee about my concerns for the need for international controls for IUU fishing. At the time there was no FAO guidance on IUU fishing and no real ICCAT measures to combat it. Most importantly, there was an imperfect understanding of the real threat from IUU fishing. Beginning in the mid ‘90s there was a general view that somewhere out

in the ocean there was a fleet of pirate ships catching fish and selling them in some sort of black market. The world has been chasing this fleet of pirate vessels harvesting on the high seas for the last 15 years. These vessels are not registered in countries that are part of any regional conservation regime and for the most part don't comply with any of the conservation recommendations. These vessels are predominately longliners built in the '60s and '70s as part of the Japanese longline fleet. Japan, wishing to right size its overcapitalized longline fleet, sold these vessels in the early '90s and the chase began. These vessels harvest tunas and swordfish on the high seas without encumbrances.

ICCAT has taken a number of measures to address pirate ship IUU fishing. In 2003, ICCAT adopted two measures to essentially license all largescale vessels fishing in the ICCAT area. The so-called "positive list" and "negative list" require that in order to import product (swordfish and bluefin tuna) the harvesting vessels must be registered with the ICCAT secretariat (positive list), or conversely, identified on a list as an IUU vessel (negative list). In addition, in 2004, ICCAT adopted a comprehensive trade measure. This measure provides for the imposition of trade sanctions in the event a country is identified as having failed to comply with an ICCAT adopted conservation measure. Much of the language and design of sections 607-609 of the MSA is drawn from this comprehensive trade measure. As of today most international fisheries organizations have adopted these ICCAT measures in some form. Since the trade measures recommendation has never been used, there is a considerable doubt as to how effective or broadly interpreted it could be.

In addition, in 2006, ICCAT took the unprecedented step of imposing severe sanctions against Taiwan for misidentifying the ocean of origin for some 30,000 mt of bigeye tuna. Taiwan was asked to institute a scrapping program for 10% of their longline fleet, pay back the overages and strictly adhere to ICCAT measures or lose their status as a cooperating country. The penalty would have converted their fleets into an IUU fleet and placed them on every black list. Taiwan went out of their way to comply.

The much rumored but yet to be verified, shark fleet built to avoid the international IUU requirements has been very hard to document. However, ICCAT did put a measure in place to ban all shark finning in the Atlantic Ocean no matter what size the vessel. In recent years, it has attempted but failed to apply all of its other IUU measures to smaller boats by changing the size of the vessels to which the rules apply to 15 rather than 24 meters. All of this is intended to affect the traditional pirate issue.

A far more menacing problem has come along, overharvest and exploitation by member countries. There is no better example of the problem than the management by ICCAT of bluefin tuna. Bluefin tuna in the Atlantic have been managed by ICCAT since the early '70s. In the early '80s, the U.S. frustrated by the poor management of the Mediterranean portion of the harvest and faced with

a continued decline in the western Atlantic proposed a two stock theory. One stock spawned in the Mediterranean (eastern stock) and the other in the Gulf of Mexico (the western stock). The simple concept allowed managers to manage the western stock separately under the premises it could be rebuilt no matter what the Mediterranean catch was.

About 10 years ago, tagging studies began to suggest that the two stocks mixed and fish from both stocks were being caught throughout the Atlantic. About the same time, BFT fish farms were introduced in the Mediterranean resulting in significant increases in harvest. ICCAT in an effort to get its hands around all this ignored the mixing studies and continued to manage the stocks separately. The rebuilding plan for the west has been a complete failure, with the U.S. unable to catch its quota for the last 3 years. Significant reductions in quota in the western Atlantic for 2008-2009 will be followed by even greater ones in 2010. For the eastern stock, catches may have exceeded the scientific advice by almost 400% for at least the last 5 years, maybe longer. The ICCAT adopted quota has been 50 to 100% in excess of the scientific advice for the same period. In 2006, ICCAT approved a “rebuilding plan for Eastern Bluefin Tuna” that included a quota of 32,000 mt, which was 14,000 mt higher than the scientific advice and forgave suspected overages over the previous 4 years of some 70.000 mt.

Since the mid ‘90s, ICCAT has put in any number of requirements for harvest quota overage paybacks and carry forward requirements for country harvest quota underages. In every instance when these requirements have been attempted to be applied, ICCAT has found a way to avoid them. The message is clear, as long as you tell us you are in compliance, you are and where there is over whelming evidence you are not, we will ignore it or accommodate you if the vessels are from a country that is a member. The essential problem is the member countries, which are more than willing to apply broad sanctions on countries not a party to the convention, are more than willing to ignore violations of the members.

The net effect of ICCAT’s inaction on bluefin tuna has been a collapse of the U.S. fishery, which is highly dependent on healthy Mediterranean spawned fish.

The last scenario is the one addressed by HR 5741, namely how does an RFMO know that its conservation measures are being adhered to by the member states? In the Untied States the concept that an ICCAT approved conservation measure would not be implemented is ludicrous. The US normally over implements, so that even the spirit of the measure is the subject of domestic regulation. This is not true of other member countries. When the Taiwanese (a non member country) reported to ICCAT how their scrapping operation was going, they brought a movie, press accounts and copies of domestic legislation to support their allegations. The US State Department confirmed all of it with one of their employees in Taiwan. When the EU (a member) reported on the

implementation of a minimum size for BFT, they simply announced they had done it. No one verified it despite three members of the US delegation having witnessed the sale of undersized fish in France on the same day. This year when Libya (a member country) was asked why they had not reported their BFT catch for 2007, they asked what their quota was, and then they responded that that was their catch. No one questioned it or attempted to verify it despite press reports to the contrary. There are hundreds of examples of this kind of response.

ICCAT and I suspect every other RFMO has no way or desire to question the response of one of its members. The net result is that all of the data submissions are voluntary as to the quality of the data, all of domestic implementation is voluntary as is all of the enforcement.

So where do we go from here.

All three of the scenarios I describe have to be considered as addressable by IUU measures. All IUU measures have to be enforceable through the imposition of trade measures including the embargo of all related fishery products from the offending country. The US must consider the failure of any member country to impose trade measures as an IUU act. And lastly, we as a country have to take these violations seriously and act on them.

We have enough measures in place to take care of the originally perceived problem of the pirate fleet. The Driftnet provisions and the international measures in the MSA address most of the problems of this fleet. Soon enough these measures will be extended to smaller vessels and even the sub24meter fleets will be covered. What these fleets have learned is that to avoid enforcement they need to be flagged in countries that are members of RFMOs. Then, it is business as usual.

Congress and the Administration need to shift their thinking. The real threat to international resources is not pirate ships, its fishing being conducted under the auspices of the RFMOs. This year all of the RFMOs are doing a self review to determine their effectiveness. The ICCAT review is underway now. It is inconceivable to me that it will not criticize ICCAT for its failure to ensure compliance with its own measures. I also would suspect it will criticize ICCAT for the failure to conform its harvest measures to its scientific advice. (Although, I should point out the US and ICCAT have followed the scientific advice for western bluefin only to watch the US fishery collapse.)

All of the international measures now in place depend on the integrity of the nation states to implement them. Not every nation has the same view of its obligation, as the United States does. Congress should pass legislation that requires the State Department to verify the implementation of every RFMO

measure by member states. Congress could do this with a simple earmark asking the State Department to report back to the Committee no later than a year from today on the compliance by member states of every measure. Then under the existing system, RFMOs would be given an opportunity to rectify the implementation problem and once they had failed to do it, the US could identify the country and eventually impose market measures. All of this may sound daunting, but it is the process now in place.

If Congress wants to make the system work, there must be legislation requiring the US to initiate an international agreement for market controls to ensure compliance with RFMO measures. We have had similar agreements for textiles, coffee and listed species. For the most part, the application of market controls produces discipline in the exploitation of natural resources. I suggested something similar to this to this Committee in 2002 and 2003. Since the problem is a little more acute and right off our coast maybe the time has come to take this approach.

Thank you for allowing me to testify here today and I'd be happy to answer any questions.