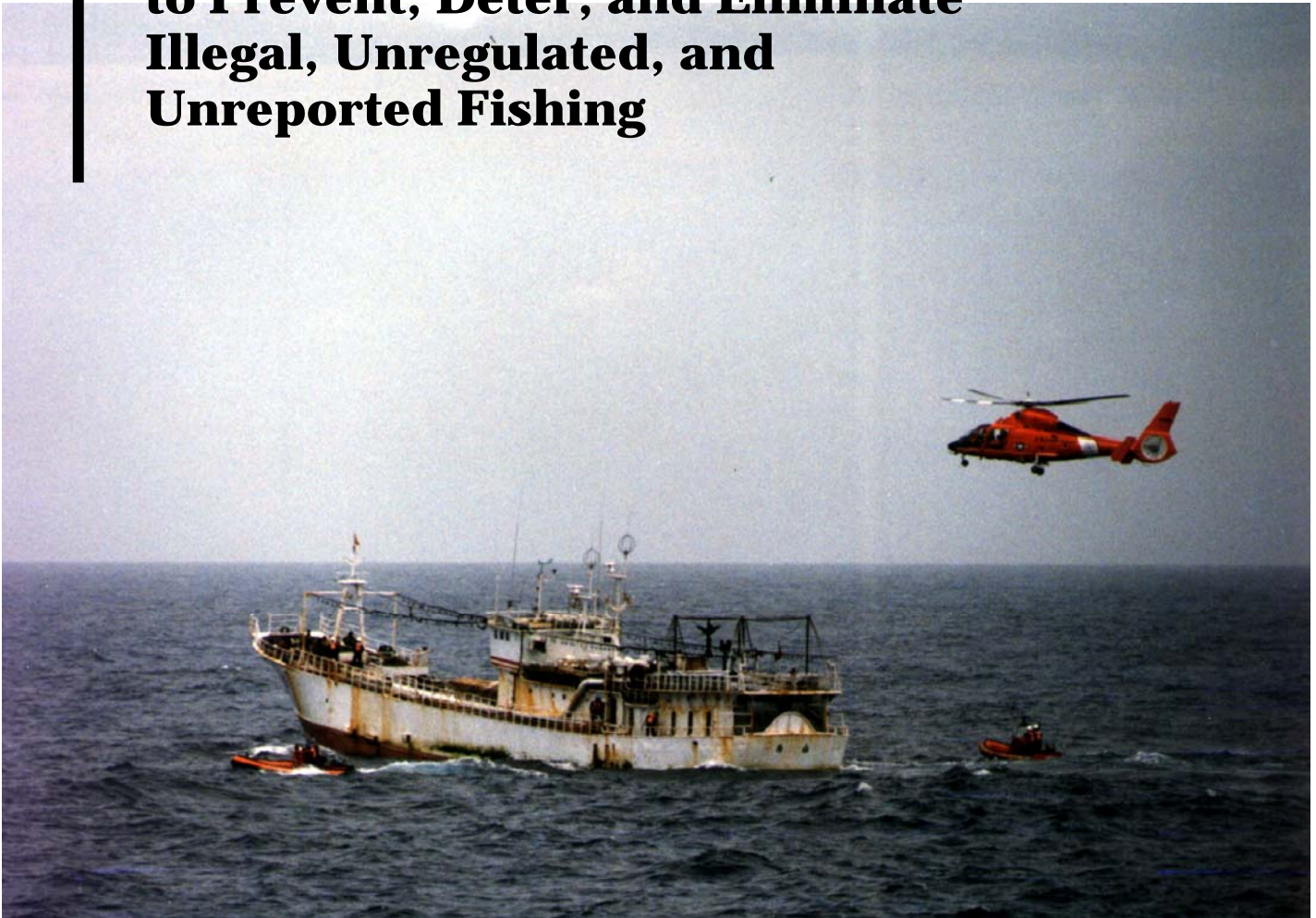


**National Plan of Action  
of the United States of America  
to Prevent, Deter, and Eliminate  
Illegal, Unregulated, and  
Unreported Fishing**



**Coordinated by the U.S. Department of State**

**in conjunction with  
the National Oceanic and Atmospheric Administration  
the National Marine Fisheries Service  
the U.S. Coast Guard  
the Office of the U.S. Trade Representative  
the U.S. Fish and Wildlife Service  
and the U.S. Customs Service**

U.S. NATIONAL PLAN OF ACTION  
TO PREVENT, DETER, AND ELIMINATE  
ILLEGAL, UNREGULATED, AND UNREPORTED FISHING

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## 1 INTRODUCTION

The United States and other members of the international community have experienced a growing incidence of fishing activity that does not respect applicable laws and regulations, including fishing rules adopted at the national and international levels. Examples of such activity include reflagging of fishing vessels to evade controls, fishing in areas of national jurisdiction without authorization by the coastal State, failure to report (or misreporting) catches, etc. Such irresponsible fishing activity directly undermines efforts to manage fisheries properly and impedes progress toward the goal of sustainable fisheries.

The term “illegal, unreported and unregulated fishing” – or IUU fishing – has emerged to describe a wide range of such activity. IUU fishing can occur in all capture fisheries, whether they are conducted within areas under national jurisdiction or on the high seas. IUU fishing poses a direct and significant threat to effective conservation and management of fish stocks, causing multiple adverse consequences for fisheries and for the people who depend on them in the pursuit of their legitimate livelihoods.

Under the auspices of the Food and Agriculture Organization of the United Nations (FAO), a concerted effort was undertaken to develop a comprehensive “toolbox” of measures that States could take, both individually and collectively, to address the problems of IUU fishing. This effort culminated with the adoption in 2001 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA).<sup>1</sup>

As its title suggests, the objective of the IPOA is to prevent, deter and eliminate IUU fishing. The principles to guide the pursuit of this objective include: (1) broad participation and coordination among States, as well as representatives from industry, fishing communities and non-governmental organizations; (2) the phasing in of action to implement the IPOA on the earliest possible timetable; (3) the use of a comprehensive and integrated approach, so as to address all impacts of IUU fishing; (4) the maintenance of consistency with the conservation and long-term sustainable use of fish stocks and the protection of the environment; (5) transparency; and (6) non-discrimination in form or in fact against any State or its fishing vessels.

The IPOA is voluntary. However, like the FAO Code of Conduct For Responsible Fisheries, certain parts of the IPOA are based on relevant rules of international law, as reflected in the 1982 UN Convention on the Law of the Sea and other pertinent instruments. The IPOA also contains provisions that may be, or have already been, given binding effect by means of other legal instruments, including certain global, regional and sub-regional instruments.

The IPOA calls upon all States to develop and adopt national plans of action to achieve the objectives of the IPOA and to give full effect to its provisions as an integral part of their fisheries management programs and budgets.

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<sup>1</sup> The text of the IPOA-IUU is available on the website of the FAO Fisheries Department: <http://www.fao.org/DOCREP/003/y1224e/y1224e00.HTM>.

The U.S. National Plan of Action is organized along the same lines as the IPOA, including sections on All State Responsibilities, Flag State Responsibilities, Coastal State Measures, Port State Measures, Internationally Agreed Market State Measures, Measures to be Implemented Through Regional Fisheries Management Organizations and Special Requirements of Developing States. Although IUU fishing may occur in all fisheries, this plan focuses on marine fisheries. As envisioned in the IPOA, the United States intends to review the implementation of this National Plan of Action at least every four years after its adoption.

## **2 OVERVIEW**

IUU fishing poses a direct and significant threat to effective conservation and management of many fish stocks, causing multiple adverse consequences for fisheries and for the people who depend on them in the pursuit of their legitimate livelihoods.

By frustrating fishery management objectives, IUU fishing can contribute to the overfishing of fish stocks, impair efforts to rebuild such stocks, and, in principle, even lead to the collapse of a fishery. This, in turn, may result in lost economic and social opportunities, both short-term and long-term, and may diminish food security. Left unchecked, IUU fishing can significantly diminish the benefits of effective fisheries management.

Those who conduct IUU fishing are also unlikely to observe rules designed to protect the marine environment from the harmful effects of some fishing activity, including, for example, restrictions on the harvest of juvenile fish, gear restrictions established to minimize waste and bycatch of non-target species, and prohibitions on fishing in known spawning areas. To avoid detection, IUU fishers often violate certain basic safety requirements, such as keeping navigation lights lit at night, which puts other users of the oceans at risk. Operators of IUU vessels also tend to deny to crew members fundamental rights concerning the terms and conditions of their labor, including those concerning wages, safety standards and other living and working conditions. Other rules that can be flouted by IUU fishers include those associated with food safety and aquatic animal health, potentially putting consumers and fish populations at risk in IUU fish importing countries.

In addition to its detrimental economic, social, environmental and safety consequences, the unfairness of IUU fishing raises serious concerns. By definition, IUU fishing is either an expressly illegal activity or, at a minimum, an activity undertaken with little regard for applicable standards. IUU fishers gain an unjust advantage over legitimate fishers, i.e., those who operate in accordance with those standards. In this sense, IUU fishers are “free riders” who benefit unfairly from the sacrifices made by others for the sake of proper fisheries conservation and management. This situation undermines the morale of legitimate fishers and encourages them to disregard the rules as well. IUU fishing may promote additional IUU fishing, creating a downward cycle of management failure.

As this National Plan of Action demonstrates, the United States has been – and will continue to be – among the leaders of the international community in efforts to address IUU fishing. The United States contributed actively to the development of the IPOA and to measures

adopted in various regional fisheries management organizations (RFMOs) on this topic. At the national level, U.S. laws and regulations to combat IUU fishing are among the strongest, most comprehensive and best enforced in the world.

Still, much remains to be done to address problems of IUU fishing. Although the precise amount of IUU fishing is difficult to quantify, available evidence suggests that, as a worldwide phenomenon, it is increasing.

One inherent difficulty is the question of defining the terms “illegal fishing,” “unreported fishing,” and “unregulated fishing.” This National Plan of Action adopts the definition of these terms set forth in the IPOA:

- Illegal fishing refers to activities:
  - conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
  - conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
  - in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
- Unreported fishing refers to fishing activities:
  - which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
  - undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.
- Unregulated fishing refers to fishing activities:
  - in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
  - in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

Notwithstanding the above, certain unregulated fishing may take place in a manner that is not in violation of applicable international law, and may not require the application of measures envisaged under the IPOA.

### **3 ALL STATE RESPONSIBILITIES**

The United States is generally in compliance with relevant international rules and standards regarding the conservation and management of living marine resources. Although the United States is not a party to the 1982 United Nations Convention on the Law of the Sea, we regard its provisions relating to the conservation and management of living marine resources as reflecting customary international law.

The United States is party to most of the significant international agreements in this field. The United States was among the first to ratify the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement), which entered into force on December 11, 2001. The United States has also deposited an instrument of acceptance of the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement), which has not yet entered into force. However, the United States has fully implemented the FAO Compliance Agreement since 1996. The United States has actively encouraged other States to become party to both instruments and to implement them fully.

In addition, the United States is party to many of the international agreements that have created RFMOs and, accordingly, is a member of many RFMOs.<sup>2</sup> In addition, the United States has made significant contributions to the development and implementation of many of the non-binding instruments in this field, including the FAO Code of Conduct for Responsible Fisheries, the FAO International Plans of Action on fisheries and UN General Assembly Resolution 46/215, which created a moratorium on the use of large-scale driftnets on the high seas.<sup>3</sup>

The United States intends to continue to take a proactive stance in the implementation of these international instruments and the development of any necessary new international instruments.

#### **3.1 Legislation**

A chart summarizing all relevant U.S. domestic legislation is annexed to this NPOA. The chart also includes proposals for new legislation or amendments to existing legislation that may

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<sup>2</sup> For example, the United States is a member of the Inter-American Tropical Tuna Commission, the International Commission for the Conservation of Atlantic Tunas, the Northwest Atlantic Fisheries Organization, the North Pacific Anadromous Fish Commission, North Atlantic Salmon Conservation Organization, and the Commission for the Conservation of Antarctic Marine Living Resources, among others.

<sup>3</sup> See [www.nmfs.noaa.gov/sfa/international/index.htm](http://www.nmfs.noaa.gov/sfa/international/index.htm)

be necessary or desirable to implement the IPOA. Recommendation contained in this NPOA, particularly as they relate to possible changes in U.S. Law or the allocation of federal resources, will be considered in accordance with the Administration's overall program of management and budget and, as appropriate, with Congress.

### **3.2 State Control over Nationals**

The IPOA calls upon each State to take measures to ensure that its nationals do not engage in or support IUU fishing. Relevant situations include (1) a national of one State owns or controls a fishing vessel registered in another State that engages in IUU fishing; (2) a national of one State is employed as a master or crew member of a fishing vessel registered in another State that engages in IUU fishing; and (3) nationals of one State knowingly import IUU-caught fish or fish products from another State.

The U.S. Lacey Act makes it unlawful for any person subject to U.S. jurisdiction to "import, export, transport, sell, receive, acquire, possess or purchase any fish ... taken, possessed or sold in violation of any ... foreign ... law, treaty or regulation."<sup>4</sup> The United States has used the Lacey Act successfully to prosecute U.S. nationals who engage in certain forms of IUU fishing.<sup>5</sup> Such prosecutions occur only where there is some "nexus" between the activity in question and the United States, e.g., where the fish or fish products are landed, brought, or introduced into any place subject to the jurisdiction of the United States.

The Lacey Act explicitly covers acts in violation of any treaty. Certain other U.S. laws also make it unlawful for U.S. nationals (and other persons subject to U.S. jurisdiction) to engage in fishing activity in violation of conservation and management measures adopted by RFMOs.<sup>6</sup> It may be possible to strengthen the Lacey Act or the other fisheries-related statutes to broaden the available tools to even more effectively tackle fishing contrary to RFMO rules.

The United States could also improve its ability to identify U.S. nationals who own or control foreign fishing vessels that are engaged in IUU fishing. The International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control, and Surveillance Activities (MCS Network)<sup>7</sup> and other forms of international cooperation offer the most promising means for exchanging information that could lead to the identification of such persons.

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<sup>4</sup> 16 U.S.C. 3371 et seq. Note that the Lacey Act prohibitions do not apply to, inter alia, any activity regulated by a fishery management plan in effect under the Magnuson-Stevens Fishery Conservation and Management Act or certain highly-migratory fisheries (see § 3377).

<sup>5</sup> A recent case, involving both foreign nationals and U.S. nationals who were illegally importing large quantities of Honduran spiny lobster into the United States, was prosecuted criminally under the Lacey Act and resulted in some of the longest jail terms ever given under that statute. (See *U.S. vs. McNabb, et. al.*)

<sup>6</sup> See, e.g., Atlantic Tunas Convention Act (16 U.S.C. 971), North Pacific Anadromous Stocks Act of 1992 (Title VII of P.L. 102-567), etc.

<sup>7</sup> See Section 3.6, "Acquisition, Storage, Dissemination of MCS Data," for additional information on the MCS Network.

Although a limited number of U.S. fishing vessels have reflagged in recent years, available evidence does not indicate that such vessels have engaged in any significant amount of IUU fishing. As a general matter, U.S. laws and regulations do not offer a direct means to prevent U.S. nationals from reflagging fishing vessels, but the American Fisheries Act of 1998 does prevent the return of large class fishing vessels to U.S. registry once they have been reflagged.<sup>8</sup> The U.S. Government typically becomes aware of such transactions only after they have occurred.

### **3.3 Vessels without Nationality**

The IPOA calls on States to take measures consistent with international law in relation to vessels without nationality that are involved in IUU fishing on the high seas. The system of rules established for the high seas, and international agreements managing the fishery resources found there, are meaningless unless vessels lawfully sail under the flag of a recognized state or entity. According to both international and U.S. law, all vessels must have a nationality. By defining “vessels subject to the jurisdiction of the United States” to include stateless vessels, whether those not properly flying the flag of any state or those assimilated to stateless status, U.S. law allows the United States to take enforcement action against vessels without nationality.

Two key pieces of legislation extend this general principle specifically to IUU fishing. First, under the Magnuson-Stevens Fishery Conservation and Management Act,<sup>9</sup> the United States may seize and prosecute stateless vessels engaging in large-scale high seas driftnet fishing in contravention of UN General Assembly Resolution 46/215.<sup>10</sup> The United States has exercised this authority on several occasions, most recently in 1999, by seizing the high seas driftnet vessel YING FA after the People’s Republic of China refuted its registration.

The High Seas Fishing Compliance Act<sup>11</sup> gives the United States even broader tools for acting against stateless IUU vessels. Under the Act, the United States can prosecute vessels without nationality found on the high seas violating any international conservation and management measure recognized by the United States.

The United States also supports efforts to prevent vessels from becoming stateless during their transfer to a new flag. With U.S. support, the International Maritime Organization approved Assembly Resolution 923 that urges the originating flag State to receive confirmation from the new flag State that the owners have completed all administrative procedures and that the vessel is ready to be registered with the new flag State before releasing the old registration.

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<sup>8</sup> 46 U.S.C. 12102(c)(6) addresses reflagging of certain vessels over 165 feet or 750 gross tons.

<sup>9</sup> 16 U.S.C. 1801 et. seq. (hereinafter Magnuson-Stevens Act).

<sup>10</sup> 16 U.S.C. 1857 (1)(M) prohibits the use of a “fishing vessel of the United States” to engage in large-scale driftnet fishing beyond the EEZ of any nation; once a stateless vessel is assimilated to U.S. nationality, it falls subject to this prohibition.

<sup>11</sup> 16 U.S.C. 5501.



### **3.4 Sanctions**

The IPOA provides that sanctions should be of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. The legislative chart at Appendix 1 summarizes the current levels of sanctions available under U.S. law for IUU fishing violations and includes recommendations to increase penalty levels or add permit sanctions where appropriate.

The United States apprehends and prosecutes foreign flag vessels that engage in IUU fishing within waters under the jurisdiction of the United States and through appropriate international authorities. The cases described below are examples of such sanctions.

In September 1994, the Honduran-flagged, Korean owned, F/V HAENG BOK #309 was determined to have made three incursions into the U.S. EEZ, and it complied promptly with U.S. Coast Guard attempts to conduct a boarding. The case was settled for a civil penalty of \$1.12m and the company was required to put Vessel Monitoring Systems (VMS) on their entire fleet of 19 longliners for a period of five years.

The Polish flag vessel ADMIRAL ARCISZEWSKI was detected fishing 1000 yards within the U.S. Exclusive Economic Zone (EEZ) on June 14, 1996. This was the vessel's second offense. The case was settled for \$750,000, plus \$10,276 for U.S. Coast Guard costs.

The South Korean flag vessel KUM KANG SAN was detected fishing 500 yards within the U.S. EEZ on September 6, 2000, and it complied promptly with U.S. Coast Guard attempts to conduct a boarding. The case was settled for \$300,000 plus \$16,415.29 in costs.

In July 1997, the unflagged F/V CAO YU #6025 was detected conducting large scale driftnet fishing, and the vessel failed to cooperate with the U.S. Coast Guard boarding attempts, resulting in a forced boarding of the vessel. The vessel was forfeited to the United States along with its entire catch of 120 mt of albacore tuna, for an estimated total loss to the unknown owner of \$435,000.

The South Korean flag vessel MAN JOEK was detected fishing 400 yards within the U.S. EEZ on November 10, 2001, and it complied promptly with U.S. Coast Guard attempts to conduct a boarding. The case was settled for \$250,000.

### **3.5 Economic Incentives**

The IPOA provides that to the greatest extent possible under their domestic laws, States should not confer economic support including subsidies to companies, vessels, or persons involved in IUU fishing. The United States fishing industry is not subsidized to the extent of the fishing industries of other nations. The United States does maintain some modest loan guarantee and tax deferral programs, as well as some government support for applied research, which may convey some advantage to U.S. industry. These initiatives do not, in the view of the United States, contribute to IUU fishing.

### **3.6 Monitoring, Control and Surveillance**

At the heart of the IPOA are its measures on monitoring, control, and surveillance (MCS). The IPOA calls for a comprehensive tracking of fishing activities, development of control schemes, vessel and owner documentation, implementation of VMS and observer programs, training of officials involved in MCS, meaningful and effective MCS operations, promotion of industry knowledge and cooperation, outreach to national judiciaries, establishment of systems for acquisition, storage, and dissemination of MCS data, consideration of privacy and confidentiality requirements, and implementation of internationally agreed procedures for boarding and inspection regimes, where applicable.

#### **Planning and Funding MCS Activities**

The IPOA calls upon all States to plan, fund and undertake MCS operations in a manner that will maximize their ability to prevent, deter, and eliminate IUU fishing. Within the U.S. Government, a number of federal agencies have responsibility for MCS functions, including the National Oceanic and Atmospheric Administration (NOAA), U.S. Coast Guard, Customs, the Immigration and Naturalization Service, the Fish and Wildlife Service, the Department of Justice, the Department of State, and others.

The United States has recently taken significant steps to update its fishery MCS program. Since 2000, the United States has more than doubled the budget for the National Marine Fisheries Service (NMFS) Office for Law Enforcement, expanding federal-state law enforcement partnerships and funding a national VMS program. This increased support has enhanced U.S. capacity to monitor fishing operations and landings, and to oversee the passage of fishery products through commerce at unprecedented levels.

Over the past twenty years, the U.S. Coast Guard's role in fisheries law enforcement has shifted from monitoring foreign fishing activity in waters under the jurisdiction of the United States to ensuring compliance by U.S. fishing vessels while minimizing illegal incursions of foreign vessels into U.S. waters.

#### **Schemes for Access to Fishery Resources**

The IPOA calls upon all States to develop and implement schemes for access to waters and resources, including authorization schemes for vessels. The U.S. Government, usually working in conjunction with the Regional Fisheries Management Councils established pursuant to the Magnuson-Stevens Act, evaluates the need to bring fisheries under federal management. Various management approaches, including many that utilize access limitations, are currently in effect. Over-utilization in many fisheries has resulted in the need to reduce fishing capacity.

## **Vessel and Gear Marking**

All vessels and fixed gear being utilized in the U.S. commercial fishing industry are required to be marked so that they can be readily identified. Some examples of gear identification would include lobster trap tags, permit numbers on gear buoy markers, and requirements on placement and size of vessel identification numbers. There is no single standard method of marking gear or vessels since there are so many different types of vessels and gear use in the U.S. industry.

## **VMS**

The IPOA encourages the use of Vessel Monitoring Systems (VMS), in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS aboard. VMS systems are proliferating worldwide. These systems provide outstanding compliance without intrusive at-sea boardings, enhance safety at sea, and provide new tools to managers for real time catch reporting. To date, NMFS's Office for Law Enforcement has actual or pending arrangements for the monitoring of nearly 2,500 fishing vessels in both domestic and international fisheries.

Domestically, the United States first used VMS in the Hawaiian pelagic longline fishery in 1994. VMS monitors approximately 130 longliners, deterring them from fishing in large closed areas established to reduce localized overfishing, and minimizing conflicts with endangered species. VMS is also required in certain fisheries in New England and Alaska. Currently NMFS and the U.S. Coast Guard are working on implementing a National Vessel Monitoring System (N-VMS). N-VMS will not require VMS on all vessels. It will, however, consolidate all VMS information into one database and promote near real-time transmission of this data to on-the-water assets.

## **Observer Programs**

The IPOA also encourages use of observer programs. NMFS deploys approximately 500 observers who monitor more than 42,000 fishing days in more than 20 fisheries annually. Observers are generally used to collect data for monitoring catch, discards, and incidental takes of protected species such as marine mammals, seabirds and sea turtles. In some fisheries, observers may also be used to monitor compliance with regulations. Observers are, however, recruited as biological technicians to perform primary activities that are scientifically oriented. In any event, before observers could be given a broader role that included as a significant objective the monitoring of compliance with relevant rules, they would need to be given different training.

## **Training**

The IPOA calls upon all States to provide training and education to all persons involved in MCS operations. The NMFS Office for Law Enforcement trains its officers and special agents at the Federal Law Enforcement Training Center. Required core training for all includes

satisfactory completion of the Marine Law Enforcement Training Program, NMFS Basic Training Program, and either Criminal Investigator Training Program (agents) or Natural Resource Police Training Program (officers). In addition to these core requirements, all commissioned personnel are required to participate in annual in-service training sessions. Training opportunities are also extended to state personnel.

In addition to the other training, NOAA's enforcement attorneys also meet at least once per year to receive specialized MCS training. Legal updates for attorneys and federal MCS personnel are done as needed. This is also done in the regions and on a nationwide basis. Periodic educational programs are held for the benefit of the Administrative Law Judges, federal prosecutors, and investigative personnel to help them better appreciate the issues involved in MCS.

The U.S. Coast Guard requires core training for all boarding officers and boarding team members that includes satisfactory completion of either a boarding officer or boarding team member course, or completion of personal qualification standards. To supplement these core requirements, the U.S. Coast Guard maintains and operates five regionally based fisheries training centers. These centers allow for the provision of vital and up-to-date fishery enforcement training to personnel of the U.S. Coast Guard and other fisheries enforcement agencies.

### **Industry Knowledge and Cooperation**

The IPOA encourages all States to promote industry knowledge and understanding of the need for, and their cooperative participation in, MCS activities to prevent, deter, and eliminate IUU fishing and to undertake general programs to educate the general public about these issues. A variety of methods are used to provide outreach to industry to increase understanding of the requirements and need for them. This is done at trade shows, targeted educational sessions for industry groups, public affairs work, news releases, and with a toll-free number to report activities that merit investigation. The Fishery Management Councils maintain enforcement committees where MCS professionals and council members focus on enforcement activities and their integration into fisheries management plans and approaches.

In international negotiations where industry and public interest groups are stakeholders, U.S. delegations often include representatives from groups, allowing diverse interests to have a voice and participate firsthand in the process.

NOAA has also implemented direct outreach efforts in certain fisheries to educate fishermen on enforcement issues. In particular, the NMFS Office of Law Enforcement and the NOAA General Counsel for Enforcement and Litigation use the opportunity provided by federally mandated skipper education workshops.

Advisory groups representing relevant constituent interests generally support U.S. participation in a large number of regional fishery management organizations and arrangements. These groups have been active in identifying and addressing IUU fishing problems.

## **Judicial Systems**

The IPOA encourages all States to promote knowledge and understanding of MCS issues within national judicial systems. NOAA has also been active in promoting and sharing information within national judicial systems as called for by the IPOA. A good example of sharing this type of information involves the first known case worldwide relying exclusively on VMS evidence to be decided by a court of law.<sup>12</sup> The decision and other information on the case were immediately shared with national representatives on the MCS Network and other interested countries and widely distributed on the Internet. As VMS proliferates, information sharing is essential, as judges around the globe will face similar issues within the context of their legal structures.

## **Acquisition, Storage, Dissemination of MCS Data**

The International Monitoring, Control, and Surveillance Network for Fisheries-Related Activities (MCS Network) is a newly-established worldwide network of MCS professionals. Participating countries agree to cooperate and coordinate in the direct exchange of information and experiences. This includes a wide range of MCS-related data. The MCS Network is designed to support countries in satisfying their obligations from international agreements as well as in performing their domestic MCS functions. Terms of Reference, which provide the Network's basic structure, detail the types of information to be shared, including information called for by the FAO Compliance Agreement on vessels, permits and authorizations, catch and landing data as well as contact information, legal and legislative materials and other relevant information. This information resides in the MCS Network website which can be accessed at [www.imcsnet.org](http://www.imcsnet.org). The United States is a founding member and believes this Network is a significant tool in the fight to reduce IUU fishing. Countries that are already members of the Network are actively involved in recruitment of additional countries, as a broad-base membership is desirable. An MCS conference is anticipated for late 2004.

## **Boarding and Inspection Schemes**

The IPOA calls upon all States to ensure effective implementation of national and, where appropriate, internationally agreed boarding and inspection regimes consistent with international law. The U.S. Government participates actively in numerous international fisheries organizations and continually seeks to promote MCS mechanisms and regimes that are consistent with international as well as domestic laws.

The United States is already party to several international agreements that provide for the boarding and inspection of foreign vessels fishing on the high seas, under certain conditions and subject to certain limitations. Those regimes are the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, and a scheme established under the

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<sup>12</sup> See NOAA case *In the Matter of Lobsters, Inc. and Mr. Lawrence M. Yacubian*.

auspices of the Northwest Atlantic Fisheries Organization. In addition, the United States is among those States that have signed the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which provides for a similar scheme. Under the Magnuson-Stevens Act, the United States has full authority to board and inspect all vessels fishing in waters under the jurisdiction of the United States, as well U.S. vessels fishing on the high seas.

### **3.7 Publicity**

The IPOA calls upon States to publicize widely, including through cooperation with other States, full details of IUU fishing and actions taken to eliminate it, in a manner consistent with any applicable confidentiality requirements. The United States will publicize the results of IUU fishing cases to include: countries involved, and in general for violations and resulting convictions in order to deter IUU violations and support compliance with international agreements and domestic fishing laws. This information will be distributed through a variety of means including posting on the websites of various federal agencies, including the U.S. Coast Guard and NOAA, and press releases to international and national media venues.

### **3.8 Cooperation between States**

The IPOA calls upon States to coordinate their activities and to cooperate directly, and as appropriate through relevant regional fisheries management organizations, in preventing, deterring and eliminating IUU fishing.

Combating IUU fishing at the global level is very important, but efforts undertaken at the bilateral and regional level are often particularly effective. The United States has various bilateral cooperative enforcement agreements. In addition to more general arrangements such as mutual legal assistance treaties, which can be useful in fisheries cases, the United States maintains several fisheries-specific agreements. While most of these involve neighboring coastal States, and are discussed in greater detail in Section 5, several are worth noting here.

Since 1991, the United States has maintained a Memorandum of Understanding (MOU) with the People's Republic of China that facilitates joint enforcement of the high seas driftnet moratorium in the North Pacific. The MOU allows boarding of vessels of one Party suspected of large-scale high seas driftnet (HSDN) fishing by enforcement officials of the other Party. The MOU also provides for officials of the People's Republic of China to embark on U.S. Coast Guard cutters engaging in high seas driftnet patrols. For the last several years, in addition to deploying on cutters on an as-needed basis, PRC officials have taken part in U.S. Coast Guard fisheries law enforcement training in Kodiak, AK and in U.S. Coast Guard HSDN surveillance flights.

Since 1993, there has also been extensive multilateral cooperation in research and enforcement through the North Pacific Anadromous Fish Commission. This group has been instrumental in the near elimination of HSDN fishing in the North Pacific. Russia, Japan, the United States, and Canada are all party to this agreement. Since its inception, this Commission

has always shared information on enforcement efforts in this region, and this has culminated in the last several years with the creation of an enforcement coordinating body that meets before the major HSDN threat season to discuss lessons learned from the past year and to plan for the optimal utilization of limited patrol assets during the upcoming season. In addition to this meeting, members of the coordinating body maintain regular discussions during the season to share information regarding ongoing investigations and HSDN sightings.

Another initiative to promote cooperation in the North Pacific began in 2000. The North Pacific Heads of Coast Guard Agencies consists of heads of the Coast Guards or equivalent agencies from the United States, Russia, Japan, Canada, Korea, and the People's Republic of China. In less than three years, this has grown into a key forum to discuss issues of mutual interest, including maritime security, maritime smuggling, combined operations, and fisheries enforcement. In 2002, a fisheries working group was created. The group will develop best-practice guidelines for international fisheries enforcement and focus on operational partnering.

More recently, the American Institute in Taiwan and the Taipei Educational and Cultural Representative Office in the United States also concluded a Memorandum of Understanding on fisheries cooperation and aquaculture. Through this MOU, Taiwan agreed to be bound by the tenets of the 1995 UN Fish Stocks Agreement and the FAO Compliance Agreement, and to cooperate on implementation of the FAO Code of Conduct for Responsible Fisheries and all recent FAO International Plans of Action. This MOU is a significant action against IUU fishing, by providing a framework through which the world's sixth largest fishing fleet pledges to operate in keeping with international fisheries conservation and management rules.

The United States should look at expanding its use of mutually beneficial agreements of this nature to induce States who may be the source of IUU fishing to hew to international fisheries law and abide by global conservation and management regimes.

**Recommendations:**

- Consider increasing penalty levels or add permit sanctions where appropriate under Magnuson-Stevens Act, Lacey Act, and other fisheries legislation.
- Consider increasing implementation and use of VMS systems, including a U.S. National VMS System as soon as possible.
- Assess and develop additional nationwide policies with regard to appropriate utilization and release of VMS data.
- Coordinate with international partners to ensure VMS requirements put into place are consistent with regional and international standards.
- Consider providing increased observer coverage in previously unobserved fisheries or increase coverage to provide improved statistical validity.

- Investigate co-locating NMFS special agents at the U.S. Coast Guard fishery training centers to improve fisheries training.
- Pursue shiprider agreements and/or enforcement officer exchanges with critical fishing nations.
- Investigate exchange of enforcement technicians to facilitate data transfer.
- Fully participate in the International MCS Network to support NPOA objectives.
- Develop routine contact lists of law enforcement personnel authorized to exchange MCS information.
- Modernize NOAA's enforcement data tracking system.
- Consider strengthening measures available in the Lacey Act, Magnuson Stevens Act, and other fisheries legislation to prosecute fishing in violation of RFMO conservation and management measures.
- Publicize the results of IUU fishing cases.
- Consider broadening existing regional specialized, multi-discipline import task forces to monitor imports, to enhance the investigative capacity of the United States to track transactions in IUU-caught fish involving U.S. nationals.

#### **4 FLAG STATE RESPONSIBILITIES**

The United States is responsible under international law to control the fishing activities of U.S. flagged vessels. Control of fishing vessels can be implemented by: (1) fishing vessel registration; (2) record of fishing vessels; and (3) authorization to fish. The following sections discuss current and recommended actions to control U.S. flagged fishing vessels.

##### **4.1 Fishing Vessel Registration**

The IPOA-IUU calls upon each flag State to ensure, before it registers a fishing vessel (grants nationality to a vessel), that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing.

All vessels of five net tons or greater that are owned by a U.S. citizen or corporation are required by under U.S. law to be federally documented through the U.S. Coast Guard's National Vessel Documentation Center (NVDC) if the vessels are to be used in the fishery trade.<sup>13</sup> Fishing vessels less than five net tons may not be federally documented, but are otherwise

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<sup>13</sup> 46 Code of Federal Regulations 67.7.



registered by individual states of the United States. Authorization for U.S. vessels to fish in U.S. federally managed fisheries or upon the high seas is a responsibility of NMFS.

The IPOA-IUU recommends that, where different governmental agencies are responsible for registering vessels and providing authorization to fish, those agencies should coordinate functions and improve communication. Currently, a system does not exist where NMFS shares information on a vessel's past fishing activity to the U.S. Coast Guard's NVDC as criteria for issuance of federal documentation or to individual states as criteria for state registration. However, Section 401 of the Magnuson-Stevens Act directs the Secretary of Commerce, in cooperation with several other officials and organizations, to "develop recommendations for implementation of a standardized fishing vessel registration and information management system on a regional basis." NMFS is developing a National Fishing Vessel Registration and Fisheries Information System, which would be a cooperative federal-state partnership.

The IPOA-IUU calls upon flag States to deter vessels from reflagging for the purposes of non-compliance with international conservation and management measures. Flag-hopping is characterized as the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions adopted at a national, regional or global level or facilitating non-compliance with such measures or provisions. The NVDC requires proof of U.S. citizenship for the owner, proof that the vessel was built in the United States, and evidence of removal from the previous flag prior to issuing a federal document with fisheries endorsement. This review by NVDC prevents vessels from jumping flags repeatedly, and may provide the opportunity for review of historical flagging of vessels.

The IPOA calls upon all States involved in a chartering arrangement to take measures to ensure that chartered vessels do not engage in IUU fishing. Vessel owners and operators can often take advantage of chartering arrangements to engage in IUU fishing because the States involved in the arrangement may each believe that the other is primarily responsible for regulating the activity of such vessels.

The United States participates in a number of regional fishery management organizations that are developing rules to prevent vessels involved in chartering arrangements from being used for IUU fishing. The International Commission for the Conservation of Atlantic Tunas (ICCAT), for example, adopted measures to increase transparency of chartering arrangements and to formalize requirements for data reporting and control and enforcement. In the ICCAT context, U.S. regulations require U.S. vessels to receive permits from, and report catches to, NMFS. The United States has the authority to issue exempted fishing permits to certain U.S. vessels involved in chartering operations for ICCAT species and to link reporting requirements so that we could collect the same information that the foreign chartering partner receives.

The Northwest Atlantic Fisheries Organization (NAFO) has a pilot program allowing the use of national fishing privileges by chartered vessels flying the flag of another NAFO member. Catches made using such arrangements are assigned to the NAFO member that received the fishing privileges. All MCS responsibilities remain with the flag State.

Consideration should be given to a thorough review of U.S. permitting regulations with the Maritime Administration to ensure that they provide a sound basis for addressing all situations in which U.S. nationals or vessels are involved in chartering arrangements.

#### **4.2 Record of Fishing Vessels**

The IPOA-IUU calls upon each flag State to maintain a record of fishing vessels entitled to fly its flag. This provision covers both vessels authorized to fish on the high seas and authorized to fish in its EEZ. The United States already records all information suggested in the IPOA-IUU for federally documented fishing vessels, with the exception of photographs of the vessel at time of documentation and history of non-compliance of the vessel. For instance, the National Vessel Documentation Center database tracks ownership and encumbrances (mortgages, liens, etc.) for all fishing vessels. However, the United States does not maintain a central database of fishing vessels registered by individual states of the United States.

For details concerning the U.S. Coast Guard's National Vessel Documentation Center, please refer to Section 4.1, above.

#### **4.3 Authorization to Fish**

The IPOA calls upon flag States to adopt measures to ensure that no vessel be allowed to fish unless authorized. Many provisions of the Magnuson-Stevens Act and other fishery laws of the United States prohibit unauthorized fishing by both U.S. and foreign flag vessels in waters under the jurisdiction of the United States and provide for the basis for imposing penalties for such fishing.

Although the United States requires permits for most major commercial fisheries, we do not require permits in all its fisheries. In those domestic, federal fisheries where permits are required, there is no unified permitting or authorization scheme for domestic vessels. The schemes often use a multitude of different processes and eligibility criteria and have varying durations, which can result in confusion in the application and renewal processes. Violation history is checked, but is not a disqualification for future permits unless past penalties have not been paid. In fisheries where permits are required, U.S. vessels are required to have their permits on board.

The IPOA-IUU calls upon flag States to ensure that each of the vessels entitled to fly its flag fishing in waters outside its sovereignty or jurisdiction holds a valid authorization to fish issued by that flag State. Where a coastal State issues an authorization to fish to a vessel, that coastal State should ensure that no fishing in its waters occurs without an authorization to fish issued by the flag State of the vessel.

The United States has limited foreign fishing in its waters. Although the United States does not require flag-state authorization for foreign vessels fishing in waters under the jurisdiction of the United States, we do require observers and other measures to ensure

compliance. However, while the U.S. Government asks for a compliance history of foreign fishing vessels, responses are not investigated.

As noted above, the United States has implemented the FAO Compliance Agreement, requiring all U.S. vessels fishing on the high seas to possess a permit and conditioning such permits on observation of all internationally agreed conservation and management measures recognized by the United States. Permit holders are required to fish in accordance with the provisions of these agreements and U.S. regulations.<sup>14</sup>

The IPOA also calls upon flag States to ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. Flag States should ensure that, to the greatest extent possible, all of their fishing, transport and support vessels involved in transshipment at sea have a prior authorization to transship issued by the Flag State, and report to them a variety of information relating to transshipments.

The IPOA calls upon coastal States to ensure that at-sea transshipment and processing of fish and fish products in coastal State waters are authorized by that coastal State, or conducted in conformity with appropriate management regulations.

The Magnuson-Stevens Act lays out a process for, and various prohibitions on, transshipment activities by both U.S. and foreign vessels. NMFS, however, does not completely regulate transport and support vessels. Transshipments between U.S. fisheries go largely unchecked, and are prohibited only in a few isolated fisheries.

In waters off Alaska, for example, U.S. catcher-processor vessels transship thousands of tons of processed fisheries products to foreign-flagged cargo vessels each year. Although these transshipments are limited to certain locations in internal waters, and must be reported afterwards, there is no prior authorization or notification required.

ICCAT rules allow at-sea transshipments to take place only between ICCAT members themselves or between ICCAT members and cooperating non-parties. U.S. regulations of highly migratory species do not allow U.S. vessels to participate in at-sea transshipments.

U.S. law generally prohibits foreign fishing vessels and carrier vessels that act as “mother ships” to fishing vessels at sea from landing their catch in U.S. ports. American Samoa, Guam, and the U.S. Virgin Islands are exempt from this law, so foreign cargo vessels that accept at-sea transshipments of fish species and foreign flagged fishing vessels can land product in these U.S. ports.

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<sup>14</sup> 50 Code of Federal Regulations 300.

## Recommendations:

- Examine the possibility of linkages between the U.S. Coast Guard's registration process and NMFS's fishery permit process.
- Consider withholding issuance of documentation, registration and/or fishing permits to vessels that have a history of IUU fishing, unless change in ownership and control of the vessel has been verified.
- Consider establishment of a national registration process for small fishing vessels, less than five tons.
- Consider establishing a database of photographs for documented fishing vessels.
- Consider consolidating information on state-registered fishing vessels into a national database.
- Consider developing unified permitting and renewal scheme for U.S. vessels. Permits are issued differently in each of six different regional NMFS offices.
- More thoroughly investigate compliance history of foreign vessels applying to fish in waters under the jurisdiction of the United States.
- Improve logbook data requirements in accordance with paragraph 47.2 of the IPOA-IUU.
- Develop a mechanism to share violation histories on IUU vessels with other States.
- Review the existing process on transshipment activities and determine where improvements are possible, e.g., prior notification.

## 5 COASTAL STATE MEASURES

The IPOA calls upon coastal States to take measures to prevent, deter, and eliminate IUU fishing in waters under their national jurisdiction. Most issues relating to U.S. measures in this regard are covered in previous sections.

As part of its MCS program for regulating fishing activity in the U.S. EEZ, the United States requires VMS in a number of fisheries and is considering VMS requirements for additional fisheries. The U.S. Coast Guard and state enforcement officials routinely patrol the U.S. EEZ as well to monitor fishing activity, and the U.S. Coast Guard is the lead federal agency responsible for at-sea fisheries enforcement. Specially trained NMFS special agents and officers are also engaged in the detection of fishing violations.

No vessel may participate in a federally managed, commercial permitted fishery in waters under the jurisdiction of the United States without a valid authorization to fish. However, vessels may participate in some other fisheries in the United States without express

authorization, including certain open access fisheries and others that do not fall under the umbrella of a Federal or state fishery management plan.

U.S. law requires vessel operators to maintain logbooks for some but not all fisheries. In light of the fact that logbooks can offer important evidence relating to IUU fishing, consideration should be given to expanding the range of fisheries in which logbooks are required.

The IPOA calls upon coastal States to avoid licensing a vessel to fish in its waters with a history of IUU fishing.

As noted above, the United States requires express authorization to fish in most, but not all, federally managed fisheries. The existence of prior convictions for illegal fishing does not preclude an applicant from obtaining a permit. However, if a prior fine for such a violation is unpaid or if a permit sanction exists, the new permit will be denied until the prior penalty is paid or the permit sanction is served. Under the Magnuson-Stevens Act, the transfer of a vessel to a new owner does not extinguish the prior or existing permit sanctions, although the change in ownership may be taken into account in considering whether to issue a new permit.

U.S. vessels wishing to fish on the high seas must obtain a NMFS permit. NMFS checks for prior U.S. fisheries violations before issuing such permits. The existence of such violations is taken into account in determining whether to issue a permit, but is not an absolute bar.

## **5.1 Cooperation with Neighboring Coastal States**

The United States is party to a number of bilateral and multilateral agreements designed to foster cooperation in fisheries enforcement. A U.S.-Canadian bilateral enforcement agreement, for example, calls for the imposition of equivalent penalties to be imposed on vessels of either State that fish illegally in waters of the other State. This has eliminated the need for “hot pursuit” and lengthy at-sea enforcement incidents along maritime boundaries on both the Atlantic and Pacific coasts of the U.S. and Canada. Annual meetings held pursuant to this agreement provide opportunities to share information about specific cases that have arisen and to discuss ways to improve coordination overall. U.S. and Canadian fisheries enforcement officials also meet regularly on a more informal basis to consider specific situations, including the handling of fisheries enforcement matters in sensitive boundary areas.

In general, the United States believes that its cooperation with Canada in combating IUU fishing in our respective waters has been quite successful. The one way in which such cooperation could and should be improved would be to resolve disputes involving the location of maritime boundaries in areas where fishing takes place, including in Dixon Entrance (between Southeast Alaska and British Columbia) and near Machias Seal Island (between Maine and New Brunswick).

The United States and Mexico also cooperate on fisheries enforcement matters, but do not yet have a formal agreement in this field. Fisheries enforcement officials share information regularly on an informal basis, particularly with respect to pending investigations concerning

alleged illegal fishing by vessels of one State in waters of the other State. The two States have also been attempting to make more routine the handling of cases involving small Mexican vessels (*lanchas*) operating in the Gulf of Mexico that cross into waters under the jurisdiction of the United States and fish illegally. An effort is also underway to develop a U.S.-Mexico fisheries enforcement agreement modeled on the U.S.-Canada and U.S.-Russia agreements.

The United States has engaged in ad hoc efforts to cooperate with neighboring coastal States in the Caribbean region on fisheries enforcement matters. Such efforts could be expanded and made more regular.

The United States and Russia have developed a broad and growing cooperative relationship on fisheries enforcement matters in the Bering Sea and North Pacific Ocean, under the umbrella of a 1988 Agreement on Mutual Fisheries Relations. Particular attention has focused in recent years in deterring and penalizing incursions by Russian and third-party vessels across the U.S.-Russia maritime boundary line in this region. Since 2002, two meetings of fisheries law experts have taken place between Russia and the United States. The United States is continuing to explore ways to strengthen this relationship even further.

## **5.2 Fishing by Foreign Vessels in Waters under the Jurisdiction of the United States**

The Magnuson-Stevens Act provides the legal framework under which foreign fishing vessels may operate in the U.S. EEZ. Generally speaking, no foreign vessel may fish in the U.S. EEZ unless the flag State has concluded a “Governing International Fishery Agreement” (GIFA) with the United States.<sup>15</sup> At the present time, only a small number of States have GIFAs in force with the United States.

Vessels of flag States that have GIFAs in force are eligible to receive allocations of surplus fish stocks for direct harvesting in the U.S. EEZ. Those vessels may also participate in certain types of “joint venture” fishing operations in partnership with U.S. companies. With the exception of 2001, there have been no surplus stocks available for direct harvesting by foreign vessels since the early 1990s. A small amount of “joint venture” fishing does take place each year.

GIFAs contain a number of provisions designed to prevent IUU fishing by foreign vessels operating in the U.S. EEZ, including mandatory reporting, use of observers and VMS in certain situations and a number of other controls. Given the low level of foreign fishing in the U.S. EEZ in recent years, and the high level of U.S. monitoring required of those operations, the United States is confident that no IUU fishing is taking place by foreign vessels authorized to fish in waters under the jurisdiction of the United States.

If unauthorized foreign fishing in waters under the jurisdiction of the United States is detected, the vessel will typically be seized and brought into a U.S. port where prosecution will

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<sup>15</sup> The Magnuson-Stevens Act contains a few limited exceptions to this rule. For example, a 1981 treaty between the United States and Canada permits vessels of each State fishing for albacore tuna to operate in the EEZ of the other State (Pacific Coast Albacore Tuna Vessels and Port Privileges, May 26, 1981, U.S.-Canada, 33 U.S.T. 615).

occur, including high monetary fines and possible vessel and catch seizure. In certain instances, the evidence of the violation will be given to the vessel's flag state so that it may prosecute the offense rather than U.S. authorities.

### **Recommendations:**

- Pursue a fisheries enforcement agreement with Mexico.
- Consider expanding advance notice of arrival requirements to foreign fishing vessels seeking access to U.S. ports.

## **6 PORT STATE MEASURES**

The IPOA calls upon States to regulate access to their ports in such a way as to prevent, deter and eliminate IUU fishing.<sup>16</sup> U.S. law generally prohibits foreign vessels from landing or transshipping fish in U.S. ports. The primary exception to this rule concerns ports in U.S. territories in the Pacific Ocean.<sup>17</sup> With respect to those ports, at least, the provisions of the IPOA are relevant to the United States.

The IPOA calls upon port States to require vessels seeking access to their ports to provide advance notice of entry into port, a copy of their authorization to fish and details of their fishing trip, in order to determine whether the vessel may have engaged in or supported IUU fishing.

The U.S. Coast Guard requires an Advanced Notice of Arrival (ANOVA) 96 hours prior to entry into U.S. ports for all vessels greater than 300 gross tons. This requirement does not presently capture most fishing vessels, as they are usually less than 300 gross tons. It would be desirable to extend this requirement to cover fishing vessels, or at least to cover foreign fishing vessels seeking access to U.S. ports. Given that at least some foreign fishing vessels below 300 gross tons land or transship fish in U.S. ports, it would also be desirable to extend the ANOVA system to cover them as well. Finally, it would be desirable to require all foreign fishing vessels seeking access to U.S. ports to provide a copy of their authorization to fish, details of their fishing trip and quantities of fish on board.

The United States does not currently require foreign fishing vessels seeking access to U.S. ports to have a logbook on board. A logbook helps establish where the vessel has been, and where and when it was fishing. This sort of evidence is critical in certain types of cases involving IUU fishing, especially in the absence of universal VMS requirements. Accordingly,

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<sup>16</sup> The IPOA generally considers "port access" to mean admission for foreign fishing vessels to ports or offshore terminals for the purpose of, *inter alia*, refueling, resupplying, transshipping and landing. The IPOA further notes that, in accordance with international law, a port State should grant port access to vessels for reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress.

<sup>17</sup> The 1981 U.S.-Canada treaty on albacore fishing allows Canadian vessels to land albacore tuna in certain designated U.S. ports in Washington and Oregon (Pacific Coast Albacore Tuna Vessels and Port Privileges, Annex B, May 26, 1981, U.S.-Canada, 33 U.S.T. 615).

the United States should consider adopting this requirement, so that the absence or destruction of a logbook will be a violation.

The IPOA calls upon each port State, where it has clear evidence that a vessel granted access to one of its ports has engaged in IUU fishing, not to allow the vessel to land or transship fish in its ports. The port State should also report the matter to the flag State of the vessel. Similarly, if inspection of a foreign vessel in port gives reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should report the matter to the flag State and, where appropriate, to the relevant RFMO. In such circumstances, the port State may take additional action against the vessel with the consent of, or upon the request of, the flag State.

If the United States has sufficient evidence of IUU fishing in waters *within U.S. jurisdiction* by a foreign flag vessel and the vessel evades apprehension initially, the vessel would be arrested if it subsequently entered a U.S. port. The United States would notify the flag State. If the fisheries violation involved a stock that is within the purview of a RFMO, the United States might also inform the RFMO as well, depending on the circumstances.

If a foreign vessel is suspected of IUU fishing in waters *beyond U.S. jurisdiction* and subsequently seeks access to a U.S. port, the United States would first determine whether the elements of the Lacey Act have been met.<sup>18</sup> If so, the United States would ask the other State(s) involved<sup>19</sup> to investigate the matter and to see if they would support a U.S. prosecution. International cooperation through various means, such as the MCS Network and Interpol, may also come into play, as United States works with other States in documenting and prosecuting cases against IUU fishers who cross jurisdictional lines.

The United States generally informs flag States of the outcome of U.S. prosecutions in such cases. This information is typically passed through diplomatic channels.

The IPOA encourages port States to inspect foreign fishing vessels in their ports, to collect certain information in the course of such inspections and to share that information with the flag State and, where appropriate, a relevant RFMO.

NMFS boards some foreign vessels in U.S. ports to examine and verify fish landings, but the number of such inspections could be increased and the system for determining which vessels to inspect could be improved. Both actions would require additional resources.

In the field of marine safety, the U.S. Coast Guard administers a program that could serve as a model for a more robust system of targeting and boarding foreign fishing vessels in U.S. ports for the purpose of determining compliance with fisheries conservation regulations. The

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<sup>18</sup> As discussed above, the Lacey Act makes it unlawful for a person subject to U.S. jurisdiction (which would include a foreign fishing vessel in U.S. port) to have harvested or transported fish in violation of another State's law or in violation of a treaty.

<sup>19</sup> Those other States would include the flag State and could include one or more coastal States, if there is evidence that the vessel engaged in IUU fishing in waters subject to the jurisdiction of other coastal States.



Port State Control program, which covers commercial vessels greater than 300 gross tons, begins with the ANOA. Upon receipt of an ANOA, the U.S. Coast Guard assesses the vessel's owner, flag, classification society, vessel type and history to determine their boarding priority. Vessels are assigned points in each of these categories and are boarded and inspected for compliance with vessel safety standards according to their priority. NMFS could develop a similar targeting system to determine which foreign fishing vessels are likely to have engaged in IUU fishing and therefore which ones should be a higher priority for inspection.

The IPOA calls upon States to establish and publicize a national strategy and procedures for port State control of vessels involved in fishing and related activities.

As discussed above, there are very few U.S. ports in which foreign vessels can land or transship fish. Accordingly, it may not be necessary for the United States to establish a "national" strategy and procedures for port State control in this context. However, it may be desirable for the United States to develop a more coordinated approach to ensure that foreign vessels do not land or transship IUU-caught fish in those ports that are open to them. A more coordinated approach would include extension of the ANOA requirements to cover such vessels and strengthening of the scheme for inspecting such vessels upon arrival in port.

### **Coordination among Port States**

The IPOA suggests a number of ways in which port States might better coordinate their activities to combat IUU fishing.

The United States would certainly support efforts by port States to coordinate their activities in combating IUU fishing. However, because so few U.S. ports are open to foreign vessels for landing or transshipping fish, the involvement of the United States in such efforts may not be very great. One exception to this might involve the Central and Western Pacific region. Foreign vessels are permitted to land or transship fish in several U.S. ports in this region. The United States should actively promote the development of coordinated port State controls to combat IUU fishing in this region, including through the Central and Western Pacific Fisheries Commission that is in the process of being established.

Although the United States is not a major port State for fisheries in other regions, we are interested in pursuing the possibility of developing agreements for those regions on port State measures. Ideally, such agreements would involve members of any RFMO as well as non-members whose ports are known to be used for landing or transshipping fish regulated by the RFMO.

The United States believes that RFMOs could also formalize their co-operation on this issue. Such cooperation would be essential in areas where IUU fishing is the concern of two or more RFMOs. For example, the conservation and management of fish resources in the Atlantic Ocean is the responsibility of several RFMOs, which are already cooperating and exchanging information regarding IUU fishing in their respective convention areas. A comprehensive port

State system would mean that IUU fishing within the area of responsibility of one RFMO should trigger action by port States that are members of other RFMOs.

A regional system of port State measures could also entail common procedures for inspection, qualification requirements for inspection officers and agreed consequences for vessels found to be in non-compliance. Possible common elements could also include, in addition to denial of port access and/or landing and transshipment of catch, denial of requests for fishing access to coastal State waters and denial of requests for vessel registration.

**Recommendations:**

- Consider adopting requirement for foreign fishing vessels seeking access to U.S. ports to have a logbook on board.
- Strengthen the scheme for inspecting foreign vessels landing or transshipping fish upon arrival in port.
- Consider requiring all foreign fishing vessels seeking access to U.S. ports to provide a copy of their authorization to fish, details of their fishing trip, and quantities of fish on board.
- Support continued work in FAO on the development of binding agreements on port State measures as contained in the report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing held in Rome in November 2002.

**7 INTERNATIONALLY AGREED MARKET-RELATED MEASURES**

The IPOA recognizes that the denial of market access to products harvested by IUU fishers can be an effective tool in combating IUU fishing, provided that such measures are agreed internationally and are implemented in accordance rules relating to international trade, particularly rules of the World Trade Organization.

As a matter of policy, the United States considers the use of trade restrictive measures to be an extraordinary action. When considered necessary, the United States prefers measures that are developed and implemented multilaterally over those that are developed or used unilaterally. In some situations, however, it may be necessary for a State to adopt trade restrictive measures on a unilateral basis, in accordance with WTO rules.

The United States recognizes that the most effective trade measures to combat IUU fishing are likely to be those that are developed and implemented under the auspices of multilateral organizations with well-defined conservation goals articulated as first principles. The United States has actively participated in the establishment of such measures (including import prohibitions, landing restrictions, and catch certification and trade documentation schemes) through our membership in various RFMOs. As discussed more fully below, the

United States believes that RFMOs should expand the use of such measures to combat IUU fishing. In addition, the trade tracking and certification mechanisms under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) offer another effective means to deter IUU fishing involving endangered or threatened marine species.

## **7.1 Catch Documentation and Certification Schemes through RFMOs**

The United States fully implements a range of measures adopted for this purpose by RFMOs. For example, we prohibit the importation of certain tuna and tuna-like species from specific States in accordance with recommendations adopted by ICCAT. We also require imports of certain fish and fish products to be accompanied by documents mandated by RFMOs such as ICCAT and CCAMLR.

The IPOA calls upon States to cooperate, including through relevant global and regional fisheries management organizations, to adopt appropriate multilaterally agreed trade-related measures, consistent with the WTO, that may be necessary to prevent, deter and eliminate IUU fishing for specific fish stocks or species. Such measures may include documentation schemes and certification requirements.

The United States has taken the lead in promoting the use of catch documentation and certification schemes in a number of RFMOs such as CCAMLR, ICCAT, and the IATTC. CCAMLR and IATTC have adopted catch certification programs and ICCAT has adopted statistical document programs for several species. These programs are under continuous review in an effort to improve their effectiveness.

The IPOA provides that certification and documentation requirements should be standardized to the extent feasible, and electronic schemes developed where possible, to ensure their effectiveness, reduce opportunities for fraud, and avoid unnecessary burdens on trade.

The United States actively supports this goal and has been working with FAO, certain RFMOs and other States to achieve it. The United States considers the implementation of harmonized electronic catch certification and documentation schemes tailored to fit the needs and requirements of each RFMO to be the most effective way to accomplish this objective. For example, the United States is working with other members of CCAMLR is moving towards converting its documentation scheme for toothfish to an electronic format. Meanwhile, CCAMLR is developing ways to make its forms more efficient and comprehensive.

## **7.2 Consideration of General U.S. Certification Program for Fish and Fish Products**

To combat IUU fishing more broadly, the United States might consider a certification requirement crafted in such a way so as not to be excessively burdensome to industry. Under such a scheme, all imports of fish or fish products would be considered legal if the flag State could certify that the fish has been harvested in accordance with their own fisheries management regime/requirement; or from an area governed by a RFMO or other regional body; or on the high seas in accordance with international standards. If, however, it has been harvested outside of

existing regulations, then it should not be certified as legal and appropriate action should be taken.

The IPOA calls on States to take steps to improve the transparency of their markets to allow the traceability of fish and fish products.

The U.S. seafood market is among the most transparent in the world. However, given the size of that market, it is difficult to conceive of a workable system that would allow people to trace every fish and fish product from the moment of its harvest until the moment of final sale. Still, it may be possible to allow for the tracking of additional fish and fish products through the U.S. market, including through the development of additional catch documentation schemes. Where feasible, of course, such schemes should be standardized.

### **7.3 Post-Harvest Practices: Law Enforcement, Education, and Outreach**

The IPOA calls upon States to take measures to ensure that their importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, other services suppliers and the public are aware of the detrimental effects of doing business with vessels identified as engaged in IUU fishing and should consider measures to deter such business. Such measures could include, to the extent possible under national law, legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing. Similarly, the IPOA calls upon States to ensure that their fishers are aware of the detrimental effects of doing business with importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers and other services suppliers identified as doing business with vessels identified as engaged in IUU fishing.

As noted above, the U.S. Lacey Act makes it unlawful for persons subject to U.S. jurisdiction (which would include many persons involved in the transactions covered by this provision of the IPOA) to engage in many of these transactions if the fish or fish product was harvested in violation of another State's law or in violation of a treaty.

The United States has not provided "administrative guidance" to its fisheries sector in the way that some countries have done and is not likely to do so in the future. Furthermore, the use of so-called "black lists," especially those created unilaterally, raises issues of due process. However, it may be possible to implement the sort of public education and business restrictions envisioned by the IPOA through multilateral lists compiled by RFMOs. "White lists" are less problematic.

The United States could do more in terms of outreach and education. Consideration should be given how best to publicize information on offenders and to share information on illegal activity. Fish trade shows may provide additional opportunities to raise awareness of relevant U.S. industry representatives of the problems of doing business with IUU fishers. The United States Government could also work in partnership with industry organizations and the environmental community to the same end.

#### **7.4 Trade Data Collection and Standardization of Certification Schemes**

The IPOA calls upon States to work towards using the Harmonized Commodity Description and Coding System for fish and fisheries products in order to help promote the implementation of the IPOA. The United States is currently using this system.

In a number of instances unregulated and unreported fisheries are also unidentified fisheries. In this regard, the United States joined with other States in March 2002 at the FAO in developing a draft Strategy for the Improvement of Reporting on Status and Trends in Commercial Fisheries. One element of this draft strategy is to expand the customs codes into products and fisheries not currently covered by codes and then to expand the depth and breadth of FAO's reporting on these fisheries, such as those for sharks or coral reef species, that currently operate without any tracking of volumes and movement of trade. The United States is a supporter of this strategy and will work for its adoption and implementation at FAO.

#### **7.5 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

CITES provides another potential tool to combat IUU fishing. The United States has been a leader in encouraging closer cooperation between the FAO and CITES to improve the applicability of CITES provisions to commercial fisheries and supports the early development of an MOU between the two organizations to formalize cooperation.

For species listed on Appendix II of CITES, international trade is regulated but not banned. Before a significant number of commercially harvested fish species could be successfully listed on CITES Appendix II, a number of technical issues need to be resolved. The United States nevertheless believes that the listing of some commercially harvested fish species on Appendix II could help to prevent IUU fishing for those species. One example is queen conch, a species for which there is no multilateral mechanism yet in place to regulate its harvest. With respect to species covered by RFMOs, an Appendix II listing has the possibility to complement RFMO efforts through addressing issues such as non-member fishing (CITES currently has 160 parties) and through its potential for multilateral trade action on States found out of compliance with CITES provisions. CITES also has the ability to address IUU fishing for non-listed species through resolutions and discussion papers.

This proposed MOU between FAO and CITES should result in FAO discussing a number of these Appendix II technical issues and providing advice to CITES on their resolution. FAO-CITES cooperation should also facilitate the transfer of fisheries expertise to CITES Parties as they consider listing proposals for commercially exploited aquatic species. The United States would also like to see greater cooperation between FAO and CITES lead to increased law enforcement capacity from both organizations in line with the MCS provisions of the IPOA. As a tool for tracking trade and as a legally binding instrument, CITES Appendix II can be useful in accurately cataloguing and deterring IUU fishing. The United States thinks that CITES could be used under certain circumstances as an effective adjunct to traditional fisheries management

regimes. CITES cannot replace fisheries management, but can be an effective tool to control and track and regulate trade.

## **7.6 Subsidies and IUU Fishing**

The Johannesburg Plan of Implementation of the World Summit on Sustainable Development makes an explicit link between subsidies to the fishing sector and IUU fishing and calls upon States to eliminate those subsidies through the process currently underway in the WTO. A number of organizations including the WTO, OECD, FAO, and APEC are looking at subsidies, and the United States is actively participating within each of these to reduce harmful subsidies in the fisheries sector. In particular, the OECD Committee on Fisheries is initiating a new three-year work program that will look at the role of subsidies in IUU fishing.

### **Recommendations:**

- RFMOs should expand the use of market-related measures to combat IUU fishing, including new import prohibitions, landing restrictions, and catch certification and trade documentation schemes.
- Consider whether other RFMOs might usefully adopt similar catch documentation or certification schemes similar to those in use in ICCAT, IATTC and CCAMLR.
- Work within RFMOs to ensure that any such new schemes are standardized, to the extent possible, to aid efficiency and transparency.
- Urge other governments, at the bilateral, regional and global levels, to take all steps necessary, consistent with international law, to prevent fish caught by IUU vessels being traded or imported into their territories.
- To fight IUU fishing more broadly, the United States might consider a general certification requirement for fish and fish products crafted in such a way so as not to be excessively burdensome
- Develop a plan, with the input of all stakeholders, on education and outreach to raise awareness with U.S. industry and the public on the consequences of doing business with IUU fishers.
- Consider expansion of specificity of customs codes used within the Harmonized Commodity Description and Coding System for stocks identified as being subject to significant IUU trade (e.g. sharks and coral reef fish species) and forwarding of any improved information on these stocks to FAO for inclusion in its reporting.
- Support adoption and implementation of the Draft Strategy for the Improvement of Reporting on Status and Trends in Commercial Fisheries at FAO as a tool to identify IUU fishing activities.

- Support the utilization of CITES as another vehicle to address IUU fishing, especially through the development of an MOU between FAO and CITES, and provide financial and technical assistance to its implementation.
- Urge the OECD, in its new three-year work program to follow up on the call in the WSSD Plan of Implementation to eliminate subsidies contributing to IUU fishing through identification of what subsidies are most likely to contribute to such activities.

## **8 IMPLEMENTATION OF IPOA THROUGH RFMOS**

The IPOA calls upon States to ensure compliance with and enforcement of policies and measures having a bearing on IUU fishing that are adopted by any relevant RFMOs by which they are bound. States should cooperate in the establishment of such organizations in regions where none currently exist.

The United States is a member of numerous RFMOs and works actively to ensure that individuals and vessels subject to U.S. jurisdiction comply with measures adopted by those organizations. In addition, the United States was a leading force in the negotiation of new fisheries conservation and management agreements for highly migratory species in the central and western Pacific (WCPFC) and other fisheries resources in the Southeast Atlantic (SEAFO).

Some RFMOs have made great strides in recent years to address IUU fishing, several of which are discussed above. Other descriptions can be found on the websites of the various RFMOs or FAO publications.<sup>20</sup> The United States nevertheless believes that RFMOs can do more to combat IUU fishing. In the coming years, the United States will continue to pursue additional initiatives within the RFMOs of which it is a member to combat IUU more effectively. We believe that aggressive and appropriate guidelines have been set forth in the 1995 UN Fish Stocks Agreement. We believe that all RFMOs and their member nations should carefully consider the relevant provisions of this agreement and work towards prompt incorporation of these provisions into each of the world's RFMOs.

## **9 SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES**

The United States strongly supports the call in the IPOA for States to cooperate to support training and capacity building to developing countries so that they can more fully meet their commitments under the IPOA and obligations under international law. The United States is involved in a number of multilateral programs designed to carry out this charge and will seek more opportunities in the future.

Working with FAO, the United States has been able to donate the initial funds for a project under FAO's FishCODE program, entitled "Support for the Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated

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<sup>20</sup> See, e.g., FAO Technical Guidelines for Responsible Fisheries, *Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2002).

Fishing (IUU Fishing).” FishCODE is a new approach to organizing extra-budgetary contributions to FAO designed to implement the 1995 FAO Code of Conduct for Responsible Fisheries and its associated international plans of action, including the IPOA on IUU fishing. Some of the initial funds provided by the United States have already been used to support the publication of FAO Guidelines on implementation of the IPOA. The remaining funds will be used to promote MCS capacity building activities, host a conference on flag of convenience and port of convenience issues, and promote regional cooperation in the Pacific through work with the Asia Pacific Economic Cooperation (APEC).

As a Party to the 1995 UN Fish Stocks Agreement, the United States is committed to meeting its obligations in Part VII of the Agreement to provide assistance to developing States. When fully implemented, Part VII provisions, calling for many of the same capacity building activities as those in the IPOA, will have a significant impact on IUU fishing activities in States Parties to the Agreement. To further implementation of Part VII, the United States joined with other States Parties, at an informal meeting held in New York, 30-31 July 2002, in calling for the establishment of a voluntary trust fund at the global level that will facilitate the implementation of the Agreement for developing States Parties. The 2003 UN General Assembly Resolution on the UN Fish Stocks Agreement commits the UN General Assembly to establish the fund and urges parties at their next informal consultations to develop detailed terms of reference for such a fund.

The United States has taken an active role in regional fora seeking to address the problem of IUU fishing and facilitate implementation of the IPOA. Meeting in Seoul, Korea in April 2002, Ministers of the 21 APEC economies jointly declared their intention to eliminate IUU fishing activities from the APEC region.

We are also working regionally and bilaterally to improve fisheries MCS activities. In April 2002, the United States conducted a fisheries enforcement workshop for States in the Western Indian Ocean Region. U.S. law enforcement officials conduct training activities on both a bilateral and regional basis that provide training on at sea enforcement, shore-based enforcement, and the development of legal regimes that contribute to capacity building in developing countries. For other activities undertaken by the United States specific to the recommendations in Paragraph 86, please see the relevant section of the NPOA.

One thing that has become clear in discussions in APEC, at the UN and elsewhere is that there are a number of activities underway to assist developing countries in meeting their global, regional, and bilateral fisheries obligations. These efforts can be duplicative and at the same time leave important activities unfinished. The United States commits to seek out opportunities to coordinate donor efforts to ensure the maximization of benefit from scarce assistance resources. Greater cooperation is needed if we are to effectively implement the ideas in paragraphs 85 and 86 of the IPOA.

In particular, the United States commits to work with the World Bank, the Global Environment Facility, other international financial institutions, and interested private sector donors, to increase donor funds in support of the IPOA. IUU fishers are a threat to the economic



development and food security of coastal communities. The United States believes that projects that include components for the reduction of IUU fishing activity will have direct consequences for long-term poverty alleviation in many developing countries.

**Recommendations:**

- Work with other States Parties to the UN Fish Stocks Agreement to establish a voluntary trust fund to support developing States Parties to the Agreement and provide a substantial initial contribution to the fund.
- Support efforts in RFMOs and on a bilateral basis to assist developing countries in meeting their fisheries obligations.
- Expand U.S. participation in regional and sub-regional fisheries organizations and arrangements based predominantly in developing countries (such as IOTC, WECAFC and CECAF) with the aim of identifying opportunities and synergies for new and ongoing cooperation activities.
- In support of the Seoul Oceans Declaration, the United States commits to develop a project proposal for the APEC Fisheries Working Group for funding in 2005 that will build capacity in developing economies.
- Conduct follow-up from East African Fisheries Enforcement Workshop and hold a second regional workshop for South East Asia and the Pacific Islands.
- Engage World Bank, Global Environment Facility, and other donor organizations to identify priority areas for new programs in fisheries and ensure that where projects are already in development, they will be developed according to sustainable fisheries practices.
- Within the context of zero nominal growth, seek a reallocation of FAO regular budgetary resources to the Fisheries Department to allow greater responsiveness and broader coverage from FAO in implementing the IPOA.

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Statutory Approach	Enforcement Authority	Regulated Species	Geographic Application	Scope of Liability	Penalty Levels	Sufficiency of Penalty	Comments	Recommendations
<b>1. Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 - 1627)</b>								
Consumer marketing statute.	Secretary of Agriculture is authorized to inspect, grade and certify agricultural products. §1622(9h). Secretary may cooperate with other branches of government in carrying out his duties. §1624.	None specified	U.S. interstate commerce jurisdiction (no geographic limitation specified).	All persons, natural and juridical (individual, partnership, corporation, association or any other legal entity subject to the laws of the U.S.), for misrepresentation of inspection.	\$1,000 or imprisonment for one year, or both.		Not clear how inspection under the Act relates to ability to deter/prevent IUU fishing under the IPOA.	It may be useful to apply a similar port inspection requirement to establish origin of all fish products being imported to/transported through the U.S., if such a requirement does not already exist under another statute.
<b>2. American Fisheries Act of 1998 (Pub. Law 105 - 277)</b>								
Fisheries regulation statute.	Forfeiture of all fish taken in violation of regulations. §212.	Pollock	Bering Sea and Aleutian Islands Management Area.	Owners of vessels holding an official fisheries endorsement (through agent or representative) for falsification or concealment of a material fact; false statement or representation with respect to the eligibility of the vessel.	\$130,000 for each day of fishing.	Amount of monetary penalty seems sufficient.	Eligibility requirements for a fishery endorsement: at least 75% of the aggregate interest in owner entities must be owned and controlled by citizens of the U.S. Does not apply to vessels engaged in fisheries in the EEZ under the authority of the Western Pacific Management Council established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852(a)(1)(H)) or to a purse seine vessel engaged in tuna fishing in the Pacific Ocean outside the U.S. EEZ or pursuant to the South Pacific Regional Fisheries Treaty. Particular attention shall be paid to enforcing the citizenship requirements for vessels measuring over 10 feet in registered length, especially in contexts of ownership/interest transfer and borrowing in all forms (specific exemptions addressed in the Act). 46 U.S.C. §	Consider non-monetary penalties, perhaps including loss or suspension of endorsement.

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							12102(c).	
3. Anadromous Fish Products Act (16 U.S.C. 1822 note, Section 801(f))								
Fish products import regulation statute.	Secretary of Treasury, pursuant to direction from the President and following certification by Secretary of Commerce, may direct that all unlawfully taken anadromous fish products brought into the U.S., or their monetary value be forfeited. §1978(e)(2). Secretary of Treasury is responsible for enforcement generally.	All anadromous stocks	U.S. interstate commerce jurisdiction (no geographic limitation specified).	All persons, natural or juridical engaging in unlawful import of illegally caught fish.	\$12,000 for first violation; \$27,000 for each subsequent violation.			It may be useful to incorporate port state provisions comparable to those contained in the IPOA (paras. 51-58) into the statute (requiring all vessels entering into a U.S. port to carry logs documenting where fish were caught), and appropriate enforcement authorization if such does not already exist.
4. Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 - 2444)								
Treaty implementation statute (Convention for the Conservation of Antarctic Marine Living Resources).	Authorized officer may search any person, place, vehicle, vessel, etc. reasonably suspected of involvement in harvesting of marine living resources in violation of the Convention. Evidence, marine living resources, equipment and vessels so engaged may be seized and are subject to forfeiture. Enforcement rests jointly with the Secretary of Commerce and the Secretary of the Department in which the Coast Guard is operating.	All Antarctic marine living resources.	U.S. federal jurisdiction (over acts committed in Antarctic region).	Any person engaged in harvesting of marine living resources in Antarctica.	Civil: Up to \$6,000 for acts prohibited by §2435, and up to \$12,000 for acts knowingly committed. Criminal: Only for non-harvest violations – \$50,000 or imprisonment for up to 10 years, or both, for each “offense” committed - defined as violation of §2435 (4), (5), (6) or (7).	Monetary penalties seem too low.	The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, is authorized to decide on behalf of the U.S. whether to accept a conservation measure adopted by the commission and to notify the Commission of any such decision. 16 U.S.C. § 2434(a)(1). The Secretary of State, with the concurrence of the Secretary, the Director of the National Science Foundation and the Secretary of the department in which the Coast Guard is operating, is authorized to the establishment of a system of observation/inspection, and to interim arrangements pending establishment of such	Consider increasing monetary penalties from \$6K/\$12K to an amount that would have greater impact. Because few U.S. flag vessels are engaged in harvest of species regulated under the Act, the vast majority of species are imported into the U.S. Importers are permitted. Permit sanction should be considered for importers who import illegally-caught. Maximum penalty should be increased to \$200,000 if maximum penalty is increased under Magnuson-Stevens Act.

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							a system. 16 U.S.C. § 2434(b).	
6. Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5103(b))								
Fisheries conservation and management statute.	In the absence of an approved and implemented fisheries management plan under the Magnuson-Stevens Act, Secretary of Commerce may issue and enforce regulations to govern fishing in the EEZ in a manner consistent with a national coastal fisheries management plan and § 301 of the Magnuson Act.	All fisheries resources potentially within scope of Secretary's authority.	U.S. EEZ defined in the statute as extending from 3NM (extending from the seaward boundary of each of the coastal states) to 200NM from the baseline from which the territorial sea is measured. 16 U.S.C. § 5102(6).	All persons subject to liability provisions of Magnuson-Stevens Act.	Follows the regime in Sections 307-311 of the Magnuson-Stevens Act (16 U.S.C. §1857-61) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement.		Statute empowers the executive to comply with the IPOA in the U.S. EEZ.	Enforcement of the Atlantic Coastal Fisheries Cooperative Management Act follows the regime established by the Magnuson-Stevens Act.
7. Atlantic Salmon Convention Act of 1982 (16 U.S.C. 3601 - 3608)								
Treaty implementation statute (Convention for the Conservation of Salmon in the North Atlantic Ocean).	Any vessel used, and any fish (or the value thereof) taken or retained in any manner, in connection with or as the result of the commission of an act which is unlawful under this shall be subject to civil forfeiture under §310 of the Magnuson-Stevens Act (16 U.S.C. §1860). Enforcement rests with Secretary of Commerce, in cooperation with the Secretary of the Treasury and the Secretary of the Department in which the USCG is operating.	North Atlantic Salmon	U.S. federal jurisdiction (over acts committed in the Atlantic Ocean north of 36 degrees north latitude).	Any person, or any vessel, subject to the jurisdiction of the U.S. that conducts directed fishing for salmon in waters seaward of twelve miles from the baselines from which the breadths of territorial seas are measured in waters of the Atlantic Ocean north of 36 degrees north latitude; or violates any provision of the Convention or this chapter, or any regulation promulgated thereunder. § 3606(a).	Follows the civil penalty regime under §308 and §309 of the Magnuson-Stevens Act (16 U.S.C. § 1858 - 1859).			Effectively implements treaty provisions. Not clear, however, why additional restrictions on directed North Atlantic salmon fisheries within the U.S. territorial sea are not regulated.
8. Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note)								
Fisheries	Moratorium on fishing	Atlantic	U.S. federal	All persons subject to the	Violators of the		Atlantic Striped Bass	Moratorium applies only to

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conservation and management statute.	of Atlantic Striped Bass within state coastal waters if that state has failed to implement the conservation plan adopted by the Marine Fisheries Commission. This moratorium may be enforced through the use of all powers available to authorized officers under §311 (b) of the Magnuson-Stevens Act (16 U.S.C. § 1861(b)). Enforcement authority rests jointly with Secretaries of Commerce and Interior.	Striped Bass.	jurisdiction (Atlantic states, territories and possessions).	jurisdiction of the United States.	moratorium shall be subject to penalties set out under §308 of the Magnuson-Stevens Act (16 U.S.C. §1858) (The civil penalty shall not exceed \$130,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The Secretary or his designee shall assess the amount of the penalty by written notice).		Conservation Act, formerly set out as a note here, was subsequently reclassified to sections 5151 to 5158 of this title (16 U.S.C. § 1851 note). This statute is implemented under the Atlantic Coastal Fisheries Cooperative Management Act.	waters subject to state jurisdiction (3NM). Not clear whether measures protecting Atlantic Striped bass within federal jurisdiction exist. Enforcement of the Atlantic Coastal Fisheries Cooperative Management Act follows the regime established by the Magnuson-Stevens Act.
9. Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 - 971k)								
Fisheries and import regulation statute; Treaty implementation statute (International Convention for the Conservation of Atlantic Tunas 1966).	Any person authorized to enforce the provisions of this chapter and the regulations issued thereunder may board any vessel subject to the jurisdiction of the U.S. and inspect such vessel and its catch. If such inspection results in the reasonable belief that the vessel or any person on board is engaging in operations in violation of this chapter, such person may be arrested.	Atlantic highly migratory species (defined by regulation or Magnuson Act §1802(20).		Any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the U.S. engaging in fishing in violation of any regulation adopted pursuant to section 971d of this title; or any person engaging in shipping, transport, purchase, sale, offer for sale, import, export, or having possession or control of any fish which he should have known were taken or retained contrary to the recommendation of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to § 971d.	Civil penalty up to \$130,000. Each day of a continuing violation shall constitute a separate offense. All fish taken or retained in violation of the Statute or regulations thereunder may be seized and disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.		Enforcement may be reciprocal with other treaty parties except that, where any agreement provides for arrest or seizure of persons or vessels under U.S. jurisdiction, it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a U.S. enforcement officer or another authorized U.S. official. § 971f(a).	Regulations implemented pursuant to the statute will determine effectiveness.

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10. Authorized Law Enforcement Activities (14 U.S.C. 89)								
Authorizes the USCG to go on board any vessel subject to the jurisdiction or operation of any law of the U.S.	Authorizes the USCG to make inquiries, examinations, inspections, searches, seizures, and arrests for the prevention, detection, and suppression of violations of laws of the U.S.	N/A	High seas and waters subject to the jurisdiction of the United States.					Continuing enforcement will have the effect of deterring IUU fishing.
11. Certificate of Legal Origin for Anadromous Fish Products (16 U.S.C. 1822 note)								
Use of "certificates of legal origin" by multilateral or bilateral agreement to ensure lawful harvest	Secretary of Commerce issues regulations to implement agreements with nations that import or export anadromous fish or fish products to prohibit international trade in anadromous fish or fish products unless they are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested.	Anadromous Fish	Fish harvested within the waters of any nation having anadromous fish populations or on the high seas	Any nation trading in unlawfully taken anadromous fish; fisherman on U.S. vessels harvesting anadromous fish	Certification under the Pelly Amendment (22 U.S.C. § 1978) that can result in import prohibitions on States trading in unlawfully taken anadromous fish or anadromous fish products.	No provision for penalty to US fishers who harvest without certificates.	It is unclear from the face of the statute whether any agreements have been negotiated under the Act or whether the agencies have issued regulations implementing its provisions. Other and different penalty provisions or enforcement authorities may be part of the regulations or treaty provisions.	Para. 66 of the IPOA specifies that unilateral trade-related measures should be avoided and sanctions should be used only in exceptional circumstances. It may be preferable to establish in agreements negotiated under the Act a multilateral tribunal or other means of adjudicating trade in non-certified fish.
12. Civil Asset Forfeiture Reform Act of 2000 (Pub. L. 106-185, 114 Stat. 202 (2000))								
Reforms civil forfeitures and puts in place greater protections for personal property.	Investigation reports must be completed and forwarded to NOAA General Counsel for Enforcement (GCEL) within 30 days from the date of seizure. In any case in which is not forwarded within 30 days from the seizure date, an explanation for the delay must be provided GCEL. After 50 days, the money <i>may</i> be returned to the respondent(s) if there is no reasonable explanation for the	N/A	N/A	N/A	N/A			To resolve outstanding issue regarding innocent owner defense, knowledge should be imputed to owners in violations involving possession under the doctrine of respondeat superior.

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	delay. Seized property or money <i>will</i> be returned in cases that are forwarded after 60 days. A claimant may file a claim at any time before the deadline set forth by the Agency.							
13. Communications Assistance for Law Enforcement Act (103 P.L. 414, 108 Stat. 4279, 47 U.S.C. 1001)								
Requires the cooperation of telecommunications carriers in the interception of wire, oral, or electronic communications.	Enforcement is by the federal court issuing the surveillance order under 18 U.S.C. §2516.	N/A	None specified.	Any telecommunications common carrier (47 U.S.C. §153) subject to the jurisdiction of the U.S. as well as any supplier of services or equipment (subject to the jurisdiction of the U.S.) that may be required to enable the compliance of the carrier.	Civil penalty up to \$10K per day or violation.	The civil penalty amounts provided seem sufficient.	Amends title 18 to make clear a telecommunications carrier's responsibility to cooperate in the interception of communications for law enforcement purposes.	U.S. law currently is sufficient in this area.
14. Crimes and Criminal Procedure, Wire and Electronic Communications and Interception of Oral Communications (18 U.S.C. 2510)								
Establishes procedure for obtaining judicial authorization to intercept wire, oral or electronic communications and establishes conditions on the use of such intercepted communications.	Authorizes the Attorney General or his/her designee to authorize application by a federal enforcement agency to a federal judge for authorization to conduct interception pursuant to a federal investigation.	N/A	Applies to all interstate or foreign communications as well as all communications affecting interstate or foreign commerce.	N/A	N/A			U.S. law currently is sufficient in this area.
15. Dolphin Protection Consumer Information Act (16 U.S.C. 1385)								
Consumer product labeling statute	Civil penalties, equitable relief	Tuna and Dolphins	The Eastern Tropical Pacific Ocean and other tuna fisheries in which an association between dolphins and tuna exists	Any producer, importer, exporter, distributor, or seller of any tuna product exported from or offered for sale in the U.S. Vessel captains, Designees of the Secretary,	1) up to \$10,000 per violation (according to 15 U.S.C. § 45); 2) Civil penalties not to exceed	\$10,000 penalty for first set of liable parties may not be sufficient to effectively prevent, deter	This Act appears to involve IUU fishing only to the extent that the liable parties are involved in internationally-banned activities, such as driftnet fishing on the	The Act could more fully provide for publicity of fishers, and associated corporate interests, that violate its provisions. See, IPOA, Para. 32. Statute does a good job of making liable parties throughout the

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				representatives of the Inter-American Tropical Tuna Commission, and authorized representatives of participating nations.	\$120,000.	and eliminate IUU fishing.	high seas, or fishing into contravention of the international Dolphin Conservation Program.	production and distribution chain.
16. Driftnet Impact Monitoring, Assessment and Control Act (16 U.S.C. 1822 note (Section 4001 et seq.))								
Research, exchange of information, and cooperative enforcement	Through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce negotiates with foreign governments conducting, or authorizing its nationals to conduct, driftnet fishing that results in the taking of US marine resources in the high seas of the North Pacific Ocean, for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels.	Fish, shellfish, marine mammals, seabirds, and other forms of marine life or waterfowl found in, or which breed within, areas subject to the jurisdiction of the U.S., including fish that spawn in the fresh or estuarine waters of the U.S.	The North Pacific Ocean, including the Bering Sea, outside the EEZ of any nation.	Driftnet fishers operating in the North Pacific.	If negotiations do not result in a satisfactory agreement, certification under the Pelly Amendment (22 U.S.C. § 1978) that can result in import prohibitions of fish products from the offending country for such duration as the President determines appropriate.	No specific provision for penalty to U.S. fishers who use driftnets irresponsibly.	It is unclear from the face of the statute whether any agreements have been negotiated under the Act or whether the agencies have issued regulations implementing its provisions. Other and different penalty provisions or enforcement authorities may be part of the regulations or treaty provisions.	Para. 66 of the IPOA specifies that unilateral trade-related measures should be avoided and sanctions should be used only in exceptional circumstances. It would be preferable to establish in agreements negotiated under the Act a multilateral tribunal or other means of adjudicating disputes involving the use of driftnets.
17. Eastern Pacific Tuna Licensing Act of 1984 (16 U.S.C. 972 - 972h)								
Domestic implementation of multilateral conservation agreements	Civil penalties, search warrants, power of search without a warrant, arrest, seizure, forfeiture.	Certain "designated species of tuna," as defined at 16 U.S.C. § 972.	The "Agreement Area" of the Eastern Pacific, as defined at 16 U.S.C. § 972(2) (creating a perimeter using a set of longitudinal coordinates).	Any person subject to the jurisdiction of the U.S., or any vessel subject to the jurisdiction of the U.S. Any person in possession of the regulated species if taken in violation of the Act.	Civil monetary penalties up to \$130,000.	Penalty of \$6,000 seems unlikely to deter violations and seems low in view of the fundamental obstruction to effective	The Act provides that a fisher whose harvest has been seized may provide a bond or other stipulation for the value of the harvest so that he may sell the harvest on the market. The bond or stipulation must be approved by a	A loophole in the statute appears to be the ability of a fisher to refuse boarding by U.S. enforcement agents. The fisher may know that the on-board harvest is in violation of the Act and would carry a penalty of up to \$30,000. Not allowing the agents to board carries only



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						enforcement of refusal to allow an inspection of a vessel.	judge of the district court.	a \$6,000 penalty, and the penalty is not increased for subsequent violations.
18. Electronic Signatures in Global and National Commerce Act (106 P.L. 229, 114 Stat. 264)								
Facilitates the use of electronic records and signatures in foreign commerce.	N/A	N/A	None specified.	N/A	N/A		It is difficult to see the direct relevance of this Act on IUU fishing except inasmuch as it might require the Secretary to accept reports in electronic form.	U.S. law currently is sufficient in this area.
19. Endangered Species Act of 1973 (16 U.S.C. 1531 - 1544)								
Conservation and protection of endangered and threatened species and their ecosystems; treaty implementation statute (Convention on International Trade in Endangered Species of Wild Fauna and Flora).	Enforcement tools include: reward for information leading to enforcement action; search and arrest warrants; power to inspect items during importation or exportation; power to arrest upon reasonable grounds if violation committed within presence or view; seizure; forfeiture of fish, wildlife, and plants possessed in violation of Act, forfeiture of equipment upon conviction (16 U.S.C. § 1540). Regulation of international trade in protected species pursuant to CITES.	Any threatened or endangered species, as defined at 16 U.S.C. §1532.	No geographic limitation (prohibitions on taking apply to the "territorial sea" and the "high seas," 16 U.S.C. § 1538(B-C)).	Any person subject to the jurisdiction of the U.S. who trades in, possesses or distributes protected species. Exceptions by permit for Alaska natives; provisions for re-introduction of protected species.	Civil Penalties: up to \$30,000. Criminal violations: up to \$100,000 or up to one year imprisonment (maximum not available for all violations). Revocation of permits, licenses and agreements also available.	Penalties may be insufficient to deter illegal taking of protected species unless coupled with other statutes.	The agencies are authorized to charge reasonable fees for permits, certificates, and the costs of seizing and holding fish forfeited under the chapter. This seems as though it should also be included under the other authorities. Also, the Act contains a provision allowing more strict provisions of the MMPA to take precedence. Such provisions might be useful in other statutes in which there are overlapping jurisdictions.	One hole may be that takings are prohibited on only the "territorial sea" and on the "high seas." This may exclude the area of the coastal sea between the end of the territorial sea, which UNCLOS establishes at 12 nm, and the boundary of the EEZ at 200 nm.
20. Fur Seal Act Amendments of 1983 (16 U.S.C. 1151 - 1175)								
Treaty implementation statute (Interim Convention on the Conservation of North Pacific Fur	Boarding and inspection authority in U.S. waters or the high seas; arrest, search, and seizure authority with reasonable cause to believe violation is occurring; extradition of seized vessel and	Northern Pacific Fur Seal	Northern Pacific Ocean, including the Bering, Okhotsk, and Japan Seas.	Any person or vessel subject to the jurisdiction of the U.S. for the taking, or activities connected with such taking, of fur seals in violation of the Act; also, for refusal to allow boarding and inspection by authorized	Criminal fines and imprisonment for knowing violations of the Act: up to \$20,000 and/or imprisonment	Penalties may be insufficient to deter illegal taking of protected species.	The Act authorizes Commerce, the Treasury, the Coast Guard, and even state officers to enforce its provision as federal law enforcement agents.	Consider increasing penalty amounts.

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Seals, as amended).	arrested person; authority for enforcement agents to testify against violators in foreign judicial proceedings at the request of foreign authorities; forfeiture of U.S. vessel and fur seals if used or taken in violation of the Act; authorization to issue warrants for probable cause.			officials. Exceptions by permit for Alaska natives.	for up to one year. Civil penalties for violations: up to \$11,000 per violation.			
<b>21. High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1362, 1371, 1852, 1862, 1826a-c, 1861 note, 46 U.S.C. app. 1707a, 2110 note)</b>								
Implementa-tion of multilateral moratorium through denial of port privileges and trade sanctions levied on non-conforming nations	Secretary of Commerce Denial of port privileges, denial of entry to U.S. waters, and imposition of trade sanctions.	All species affected by large-scale high seas driftnet fishing. All fish and wildlife, or products of these species, exported by nations that engage in such fishing.	The high seas (area beyond the EEZ of any nation).	Large-scale driftnet fishers with vessels under the jurisdiction of the U.S. or fishers with vessels under the jurisdiction of nations found to be using large-scale driftnets on the high seas. The nationals of non-conforming nations may also be made unable to export fish and wildlife to the U.S.	Penalties include the denial of port privileges and the denial of entry into U.S. waters. Possibility of trade sanctions on non-conforming nations.	Neither civil nor criminal penalties can be imposed on foreign vessels that are denied entry into U.S. waters. Thus, under the current law, it appears difficult to conceive of how the penalties could be made harsher.	Title IV of the Act includes amendments to the Magnuson Act and the MMPA. Summaries of those provisions are not included here; they have been left for discussion in the context of those Acts. Title V of the Act involves the repeal of a recreational boat tax and the creation of an automated tariff filing and information system. These statutes appear unrelated to fisheries conservation and have not been summarized here.	16 U.S.C. § 1826a authorizes "additional sanctions" to be used if the first sanctions provoke retaliation or are insufficient. It is unclear how the additional sanctions provide any different/more penalty than those at § 1826a. A more effective penalty might authorize the seizure and forfeiture of large-scale, foreign driftnet boats that enter U.S. waters or ports. No such provision is currently included in this Act.
<b>22. High Seas Fishing Compliance Act (16 U.S.C. 5501 - 5509)</b>								
Treaty Implemen-tation statute (Agreement to Promote Compliance with Interna-tional Con-servation and Management Measures by Fishing Vessels on	Enforcement tools include: rebuttable presumption that all living marine resources found on board a seized vessel were taken or retained violation of the Act; coordination with other agencies; grant of exclusive jurisdiction to U.S. district courts; authority to arrest with	All living marine resources commercially exploited on the high seas.	The high seas (area beyond the EEZ of any nation).	Any person subject to the jurisdiction of the U.S. for fishing without a permit, fishing in contravention of conservation measures or permit conditions, obstructing justice, or possessing or trading any living marine resource taken in violation of the Act. The owner or operator of a vessel that has been used in the	Civil Penalties: A) Not to exceed \$115,000 per violation (with the vessel used in commission of the offense liable in rem); B) Revocation, suspension, denial, or imposition of	The penalty provisions seem entirely adequate as long as they are not circumvented through the discretionary issuance of "citations," which apparently	Permit sanctions attach to the vessel so that they continue in force even after sale. § 5507(b)(3). The Secretary is granted the authority to conduct hearings, including issue subpoenas, and provision is made for judicial review and the collection of penalties.	Care should be taken to ensure that, in the interest of expediency, citations do not come to replace monetary penalties.

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the High Seas)	reasonable cause with or, under certain circumstances, without a warrant; authority to board, search, and inspect any high seas fishing vessel; authority to sell any seized marine living resource as long as proceeds are deposited with the court; authority to execute any warrant; authority to exercise "any other lawful authority;" discretion to issue citations in lieu of other actions.			commission of the above acts, or any person who has not paid assessed penalties, fines, or fees for any permit issued under any U.S. fisheries resource statute. Prohibitions apply to stateless vessels assimilated to U.S. nationality.	additional conditions or restrictions of a permit under the Act; Criminal penalties available for violations involving obstruction of justice, and threatening or assaulting an officer.	carry no monetary penalty, under § 5506(d).		
23. Lacey Act Amendments of 1981 (16 U.S.C. 3371 - 3378)								
Use of trade and possession prohibitions to hamper black markets in protected species	Civil penalties; criminal fines; imprisonment; revocation of permit; forfeiture and seizure of vessel, including its fishing gear, furniture, appurtenances, stores, and cargo if possessed, retained, or used in violation of Act (other than an act for which a citation is a sufficient sanction); rebuttable presumption that all living marine resources found on board a seized vessel are taken or retained violation of the Act; provision for sharing of enforcement tools between agencies; grant of exclusive jurisdiction to the U.S. district courts; authority to arrest with reasonable cause; authority to board, search, and inspect any high seas fishing vessel ; authority to sell any seized marine living resource as long as	Any fish or wildlife species regulated under any U.S. law, treaty, or regulation, or any Indian tribal law, or any State or foreign law. Exceptions for fisheries in U.S. waters subject to a Fishery Management Plan under the Magnuson-Stevens Act.	No geographic limitation (but specifically including the high seas and other areas of the "special maritime and territorial jurisdiction of the U.S." as defined at 18 U.S.C. § 7).	Any natural or juridical person subject to the jurisdiction of the U.S. for: 1) trade (including the offer or provision, or acceptance of guiding, outfitting, or other services or a hunting or fishing license for consideration) in any subject species taken, possessed, transported, or sold in violation of federal law, Indian tribal law, or state laws if in interstate or foreign commerce; 2) to possess within the special maritime and territorial jurisdiction of the U.S. any fish, wildlife, or plant taken in violation of the same laws; 3) to import or export or transport in interstate commerce fish or wildlife unless the container has been properly marked; 4) to falsely identify any fish, wildlife, or plant traded in foreign or interstate commerce	Civil Penalties: For knowing violations of Sec. 1 or Sec. 4: Up to \$12,000 for each violation. Criminal Sanctions: up to \$20,000 and/or imprisonment for not more than 5 years. Suspension or revocation of license or permit also available.	Civil and criminal penalties available may be insufficient to deter IUU fishing, depending on the type of violation.		The Lacey Act may be underutilized at this time. Increased enforcement would have the effect of deterring IUU fishing.

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	proceeds are deposited with the court; authority to execute any warrant; authority to exercise "any other lawful authority;" discretion to issue citations in lieu of other actions.							
24. Law Enforcement as a Primary Duty (14 U.S.C. 2)								
Requires the USCG to enforce or assist in the enforcement of all applicable federal laws of the U.S.		N/A	High seas and waters subject to the jurisdiction of the United States.		N/A			Continuing enforcement will have the effect of deterring IUU fishing.
25. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 - 1882)								
Fisheries conservation and management statute	The Secretary of Commerce is authorized to promulgate regulations implementing the Act and enforce the Act and any implementing regulations. The U.S. shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species.	The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf, and the anadromous species which spawn in United States rivers or estuaries.	Within the EEZ and beyond the EEZ as to anadromous fish stocks and the fishery resources on the continental shelf.	There is a very broad range of prohibitions under the Act and any person subject to the laws of the U.S. comes within the scope of liability.	Civil penalties up to \$130,000.	Monetary penalties seem too low considering the depleted condition of many of the species managed under the Act. Higher monetary penalties are needed to serve as a more effective deterrent.		Consider increase of civil penalties to \$200,000.
26. Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 - 1407)								
Marine mammal and marine mammal products conservation.	The Secretary may, by agreement, use the resources of another federal agency to enforce the Act and may also designate officers and employees of a state or U.S. possession to enforce the Act,	Marine mammals, and marine mammal products.	The territorial sea of the U.S. Also areas referred to as Eastern Special Areas, in the article of agreement between the U.S. and the Union of the Soviet Socialist Republics on the	Any person or vessel subject, to the jurisdiction of the U.S. on high seas, or on lands. (Including any port or harbor) To take or import marine mammals or marine mammal products. Also any transport, purchase, sell, export, or offer to do	Civil penalty: \$11,000 - \$12,000. Criminal penalty (knowing violations): up to \$20,000 and/or imprisonment for not more	Civil monetary penalties are insufficient.		Increased penalties are necessary for the Act to serve as an effective deterrent.

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	allowing them to function as federal law enforcement agents for this purpose.		maritime boundary. U.S.C. 1362(15).	so of any marine mammal or marine mammal products.	than one year. Any person involved in unlawful importation may be made to abandon the mammal or product. 16 U.S.C. 13759(a)(1).			
27. National Marine Sanctuaries Act (16 U.S.C. 1431 - 1439)								
Regulation and conservation of national sanctuaries.	Secretary of Commerce must conduct enforcement activities to carry out the Act. A person authorized to enforce the Act may board, search, inspect or seize a vessel, equipment, stores and cargo suspected of being used to violate the Act, and seize unlawfully taken sanctuary resources.	Species that depend upon these marine areas to survive and propagate.	Those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the U.S exercises jurisdiction, including the EEZ.	Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the U.S. for an amount equal to the sum of: 1. The amount of response costs and damages resulting from the destruction, loss, or injury and, 2. Interest on that amount calculated in the manner described under section 2705 of title 33. Also any vessel used to destroy, cause loss, or injure any sanctuary, shall be liable for response costs and damages.	Any person who violates will receive a civil penalty between \$109,000 - \$119,000. 16 U.S.C 1437(c)(1)	Civil monetary penalties seem sufficient.		Presumably patrolling and monitoring for illegal activity within the sanctuaries has the effect of deterring IUU fishing, at least within those areas.
28. National Security Act of 1947 (50 U.S.C. 401)								
Provides a comprehensive, coordinated program for national security.	Authorizes intelligence agencies to assist federal enforcement agencies with the collection of information outside the U.S. regarding individuals who are non-U.S. persons.	N/A	Outside U.S.	N/A	N/A			U.S. law currently is sufficient in this area.
29. North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 - 5012)								
Treaty implementation statute (Convention for the Conservation of Anadromous	The Secretary of Commerce is responsible for administering provisions of the convention, the Act and any regulations issued. With the	Fish of the particular Anadromous Stock of the North Pacific Ocean.	The waters of the North Pacific Ocean and its adjacent seas, north of 33 degrees North Latitude, beyond the EEZ.	Any person or fishing vessel subject to the jurisdiction of the U.S. to: fish for anadromous fish in the convention area; retain on board or fail to return immediately to the	Civil penalty: \$108,000-\$120,000. Each day of a continuing violation shall constitute a			Continuing enforcement of the Act will have the effect of deterring IUU fishing.

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Stocks in the North Pacific Ocean).	Secretary of Transportation, the Secretary is responsible for coordinating the participation of the U.S. in the commission.			sea any anadromous fish taken incidentally in a fishery directed at non-anadromous fish in the convention area. Ship, transport, offer for sale, sell, purchase etc, of any anadromous fish taken or retained in violation of the convention.	separate offense. Criminal penalty: a fine under title 18, or imprisonment for up to 10 year (for injury to an officer) months, or both.			
30. Northern Pacific Halibut Act of 1982 (16 U.S.C. 773 - 773k)								
Treaty implementation statute (Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea).	Any fishing vessel used and any fish taken in connection with the commission of a prohibited act are subject to forfeiture to the U.S. upon application to the Attorney General. The Act is enforceable by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating.	Halibut	The maritime areas off the West coast of the U.S. and Canada described in Article I of the convention, and the EEZ.	It is unlawful for a person to violate the convention or the act and regulations or to resist or interfere with an enforcement officer in the conduct of a search, inspection or lawful detention. It is also unlawful for a foreign fishing vessel to fish for halibut in the EEZ or special areas, unless authorized. Any vessel engaged in catching, processing or transporting fish in convention waters, or a vessel outfitted to engage in an activity described above, and a vessel in normal support of a vessel described above.	Civil penalty between \$27,500 - \$30,000. Each day of a continuing violation shall constitute a separate offense. Criminal penalty of not more than \$50,000 or imprisonment for not more than 6 months, or both. Other criminal penalties available for non-fishing violations.	Civil monetary penalties seem a bit low.		Consider increase in penalty amounts.
31. Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 - 5612)								
Treaty implementation statute (Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries)	The Secretary appoints up to three members of the general council and the commission. The Secretary of State and the Secretary must jointly establish a consultative committee to advise on issues related to the convention.	N/A	Northwest Atlantic Fisheries	Any person or vessel to: Violate a regulation under the act or a measure binding on the U.S. under the convention; refuse to permit an officer to board a vessel to conduct a search or inspection etc, which interfere with, or delay an arrest for violation of the Act.	Civil penalty: \$108,000 - \$120,000, and/or permit sanction. Violations of paragraph 2-4, or 6 of subsection (a) of 16 U.S.C. §5606 shall be punishable under 16 U.S.C. §1859(b).	Civil monetary penalties seem sufficient.		Continuing enforcement of the Act will have the effect of deterring IUU fishing.

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<b>32. Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 - 3644)</b>								
Treaty implementation statute (Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon).	The U.S. Secretary of State is authorized to: receive and transmit reports and other communications of and, to the commission panel. The Secretary of Commerce shall inform the state.	Pacific Salmon	Between the U.S. and Canada, the U.S. and the EEZ.	Any person or vessel subject to the jurisdiction of the U.S. who violates the Act, its implementing regulations, or a Fraser River panel regulation. A vessel used in the commission of a prohibited act shall be subject to forfeiture.	Civil penalty up to \$130,000. Criminal penalties of up to \$200,000 or imprisonment of up to 10 years.	Civil monetary penalties seem sufficient.		Continuing enforcement of the Act will have the effect of deterring IUU fishing.
<b>33. Pelly Amendment to the Fisherman's Protective Act of 1967 (22 U.S.C. 1978)</b>								
Implementation of bilateral and multilateral conservation programs through certification and trade sanctions on offending nations.	Secretary of Commerce monitors and investigates fishing activity by foreign nationals and certifies countries whose nationals' fisheries activities diminish the effectiveness of an international fishery conservation program. Secretary of the Treasury enforces compliance with import bans by U.S. nationals.	All stocks subject to an international fisheries conservation program.	All waters subject to an international fisheries conservation program.	President may direct the Secretary of the Treasury to prohibit importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the WTO or multilateral trade agreements. It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any products prohibited by the Secretary of the Treasury pursuant to this section.	Trade sanctions on certified nations. Any person violating the provisions of this section shall be fined not more than \$10,000 for the first violation, and not more than \$25,000 for each subsequent violation. All products brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.	Unilateral trade sanction authority used only as a last resort. Civil penalties seem sufficient.		Para. 66 of the IPOA specifies that unilateral trade-related measures should be avoided and sanctions should be used only in exceptional circumstances. A first step is to establish and utilize multilateral trade-based compliance regimes within each of the international fisheries conservation organizations and arrangements.
<b>34. South Pacific Tuna Act of 1988 (16 U.S.C. 973-973r)</b>								
Treaty implementation statute (Treaty on Fisheries between the Governments	An officer authorized by the secretary, or the secretary of the department in which the Coast Guard operates.	Tuna	All waters in the treaty area except, waters subject to U.S. jurisdiction in accordance with international law, waters within	Any person or vessel to violate the Act or any of its regulations; use a vessel for fishing in violation of an applicable national law; violate terms and conditions of a fishing	Civil penalties: \$290,000-\$325,000. Criminal penalties: \$50,000-\$100,000 and	Civil monetary penalties seem sufficient.		Continuing enforcement of the Act will have the effect of deterring IUU fishing.

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of Certain Pacific Island States and the United States of America).			closed areas, and waters within limited areas closed to fishing.	arrangement entered into under the treaty.	imprisonment from 6 months to 10 years.			
35. Sponge Act (16 U.S.C. 781 et seq.)								
Conservation of commercial sea sponges (Inactive)	The Secretary and/or his or her designee is authorized to make arrests and seize vessels and sponges.	Sponges	Gulf of Mexico or the Straits of Florida outside of State territorial limits	Any citizen of the U.S., or person owing duty of obedience to the laws of the United States, or any boat or vessel of the United States, or person belonging to or on any such boat or vessel.	Monetary fine of not more than \$500. Such fine shall be a lien against the vessel or boat on which the offense is committed.	Penalty amounts seem too low to serve as effective deterrent.		Increased penalties should be considered if illegal harvest is adversely impacting the species.
36. Stopping Vessels (14 U.S.C. 637)								
Guidance on use of force	Authorizes the USCG to stop vessels, including the firing of a warning signal and disabling fire at a vessel that does not stop, from a CG vessel or aircraft, or a DoD vessel with CG LEDET personnel embarked.	N/A	High seas and waters subject to the jurisdiction of the U.S.		N/A			Continuing enforcement will have the effect of deterring IUU fishing.
37. Tuna Conventions Act of 1950 (16 U.S.C. 951 - 961)								
Treaty implementation statute (Convention for the Establishment of an Inter-American Tropical Tuna Commission and Convention for the Establishment of an International Commission for the Scientific	The joint responsibility of the U.S. Coast Guard, the Department of the Interior and the Bureau of Customs.	Tuna and related species	N/A – No specific location.	Any person who knowingly ships, transports, purchases, sells,... etc. fish taken or retained in violation of the Act; fails to make, keep, or furnish catch returns, or other reports as required.	Civil penalty up to \$130,000 (16 U.S.C. §957)	Monetary penalties seem sufficient.		Continuing enforcement of the Act will have the effect of deterring IUU fishing.



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Investigation of Tuna).								
38. Whaling Convention Act of 1949 (16 U.S.C. 916 - 916I)								
Treaty Implementation statute (International Convention for the Regulation of Whaling).	Authorized enforcement officer or employee of the Dept. of Commerce, Coast Guard, U.S. Marshall, etc.	Whales	None specified.	Any person, subject to U.S. jurisdiction to engage in whaling in violation of the convention.	Except as to violations of Sec. 916c(a)(3), fines up to \$10,000 or imprisonment of not more than one year or both.	Monetary penalty amounts may be too low.	Not sure how big of a problem IUU fishing is with regard to whales. Whaling is among the most highly regulated activities involving harvest of living marine resources. The greatest threat to many whale species may be accidental takes (e.g., vessel strikes) .	If illegal whaling is a problem, penalty amounts should be increased. If most illegal taking of whales is inadvertent, higher penalties might encourage greater care.