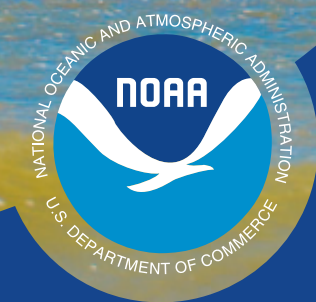


January 2013

# IMPROVING INTERNATIONAL FISHERIES MANAGEMENT

## REPORT TO CONGRESS

Pursuant to Section 403(a) of  
the Magnuson-Stevens Fishery  
Conservation and Management  
Reauthorization Act of 2006



**NOAA**  
**FISHERIES**

# **Improving International Fisheries Management**

*Report to Congress Pursuant to Section 403(a) of the  
Magnuson-Stevens Fishery Conservation and Management  
Reauthorization Act of 2006*

**January 2013**

**U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230**

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## Executive Summary

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), in amending the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), called attention to the need for international cooperation to address fishing activities that have a deleterious effect on sustainable fisheries worldwide. Congress directed the Executive Branch to strengthen its leadership in improving international fisheries management and enforcement, particularly with regard to illegal, unreported, and unregulated (IUU) fishing, and to fishing practices such as bycatch that may undermine the sustainability of living marine resources. The Shark Conservation Act of 2010 (SCA) amended the Moratorium Protection Act to add a third focus: directed and incidental catch of sharks, especially the practice of finning, in areas beyond national jurisdiction. The Moratorium Protection Act requires the Secretary of Commerce to identify nations whose fishing vessels were engaged in these activities, and to consult with those nations on improving their fisheries management and enforcement practices.

In its 2011 Report to Congress, the National Marine Fisheries Service (NMFS), a line office of the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce, identified six nations as having engaged in IUU fishing during the preceding 2 years: Colombia, Ecuador, Italy, Panama, Portugal, and Venezuela. This report details the consultations with those nations over the past 2 years. It also contains NMFS' certification decisions for those six nations; each was found to have taken appropriate corrective actions and is receiving a positive certification. A positive certification means that a nation has provided documentary evidence that appropriate corrective action has been taken to address the IUU fishing activities for which it was identified. A negative certification means that a nation has not taken sufficient steps to warrant receipt of a positive certification.

In this report, NMFS also identifies 10 nations as having been engaged in IUU fishing based on violations of international conservation and management measures (CMMs) during 2011 and/or 2012: Colombia, Ecuador, Ghana, Italy, Mexico, Panama, the Republic of Korea, Spain, Tanzania, and Venezuela. NMFS considered five other nations and fishing entities for identification for IUU fishing during the reporting period, but consultations indicate corrective actions have already been taken to address the fishing activities of concern, or the allegations of IUU fishing activities were refuted.

NMFS is identifying one nation, Mexico, for fishing activities involving the bycatch of protected living marine resources (PLMRs). No other nations are identified for PLMR bycatch or for shark catch on the high seas, due primarily to the restrictive timeframes and other limitations in the statute.

In addition, the report updates domestic, regional, and global efforts to combat IUU fishing, minimize bycatch of protected species, and conserve sharks. Among the most important developments during the past 2 years are the following:

- The Convention on the Conservation and Management of the High Seas Fishery Resources of the South Pacific Ocean entered into force on August 24, 2012. The organization it created has management authority over all fisheries not covered under

existing international management instruments, with a particular focus on pelagic fisheries for species such as jack mackerel and bottom fisheries for species such as orange roughy. The United States is a signatory to the Convention, and is working on ratifying the agreement.

- The Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean was open for signature in April 2012; it will enter into force when four parties have deposited their instruments of ratification. The Convention establishes a management framework for all fisheries not already covered under existing international management instruments, with a particular focus on bottom fisheries, across the high seas areas of the North Pacific.
- On October 22, 2012, NMFS released the *International Marine Mammal Action Plan* to fulfill the United States' international obligations to protect and conserve marine mammals, reduce the impacts of human activities on marine mammals, and ensure that the agency's efforts are coordinated in a strategic fashion. The Action Plan includes seven strategic priorities to improve research and understanding of marine mammal biology, advance the conservation and management of marine mammals globally, and increase cooperation and collaboration with national and international partners.
- On September 27, 2012, the United States signed the Memorandum of Understanding (MOU) for the Conservation of Cetaceans and their Habitats in the Pacific Islands Region, an international framework under the Convention on Migratory Species (CMS). Earlier in September, the third meeting for signatories to the MOU adopted a Whale and Dolphin Action Plan for 2013–2017, and adopted a recovery plan for humpback whales for the same time period.
- NMFS has taken initial steps to implement the SCA by publishing a final rule in January 2013, covering identification and certification processes, and by collecting information on certain shark fishing practices and activities through solicitation of public input, consultation with other nations, and review of information available from regional fisheries management organizations (RFMOs).

## List of Acronyms

<u>Acronym</u>	<u>Full Name</u>
ACAP	Agreement on the Conservation of Albatrosses and Petrels
AIDCP	Agreement on the International Dolphin Conservation Program
APEC	Asia-Pacific Economic Cooperation
ARAP	Aquatic Resources Authority of Panama
AUNAP	National Authority of Aquaculture and Fisheries (Colombia)
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CDS	Catch documentation schemes
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLAV	Combined list of authorized vessels (tuna RFMOs)
CMM	Conservation and management measure
CMS	Convention on Migratory Species
COFI	Committee on Fisheries of the FAO
CoP16	Sixteenth Conference of the Parties (CITES)
CPC	Contracting parties and cooperating non-contracting parties, entities, or fishing entities (ICCAT); parties, cooperating non-parties, or fishing entities (IATTC)
DMLs	Dolphin mortality limits (AIDCP)
DAS	Deputy Assistant Secretary
DOS	United States Department of State
EC	European Commission
EEZ	Exclusive Economic Zone
ESA	Endangered Species Act
EPO	Eastern Pacific Ocean
ETP	Eastern Tropical Pacific
EU	European Union
FAO	United Nations Food and Agriculture Organization
FWG	Fisheries Crime Working Group (INTERPOL)
IAC	Inter-American Convention for the Protection and Conservation of Sea Turtles
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
INCODER	Colombian Institute for Rural Development
INSOPESCA	Ministry of the Popular Power for Agriculture and Lands, Socialist Institute of Fisheries and Aquaculture (Venezuela)
IOTC	Indian Ocean Tuna Commission
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate IUU Fishing

IUU	Illegal, unreported, and unregulated (fishing)
MCS	Monitoring, control, and surveillance
MMPA	Marine Mammal Protection Act
MOU	Memorandum of understanding
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North East Atlantic Fisheries Commission
NGO	Non-governmental organization
NMFS	National Marine Fisheries Service (a NOAA line office)
NOAA	National Oceanic and Atmospheric Administration (an agency of the Department of Commerce)
NPAFC	North Pacific Anadromous Fisheries Commission
NPFC	North Pacific Fisheries Commission
OFWG	Oceans and Fisheries Working Group (APEC)
PLMRs	Protected living marine resources
RFMO	Regional fisheries management organization/arrangement
SCA	Shark Conservation Act of 2010
SCRS	Standing Committee on Research and Statistics (ICCAT)
SEAFO	South East Atlantic Fisheries Organization
SPRFMO	South Pacific Regional Fisheries Management Organization
TED	Turtle excluder device
UN	United Nations
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly
USCG	United States Coast Guard
VME	Vulnerable marine ecosystem
VMS	Vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission
WTO	World Trade Organization



## I. Introduction and Background

In 2006, Congress recognized the need for international cooperation to address some of the most significant issues affecting international fisheries today: illegal, unreported, and unregulated (IUU) fishing and fishing practices that may undermine the sustainability of living marine resources. Enacted early in 2011, the Shark Conservation Act (SCA) (Pub. L. 111-348) focused on the need for enhanced international action to conserve and protect sharks. The statutory provisions aimed at eliciting international cooperation on these issues are codified as part of the Moratorium Protection Act, 16 U.S.C. 1826d-k.

Central to that statutory scheme is the requirement that the Secretary of Commerce, in biennial reports, identify nations whose fishing vessels are engaged in certain IUU fishing, bycatch, and shark fishing practices; describe U.S. consultations with the identified nations to urge appropriate actions; and certify whether such actions subsequent to identification have adequately addressed the offending activities.

In addition, the Moratorium Protection Act directs the Secretary of Commerce, in consultation with the Secretary of State and in cooperation with relevant regional fishery management councils and any relevant advisory committees, to take certain actions to improve the effectiveness of international fishery management organizations in conserving and managing stocks under their jurisdiction. These actions include urging those organizations of which the United States is a member to:

- Incorporate multilateral market-related measures against member or non-member governments whose vessels engage in IUU fishing.
- Seek adoption of lists that identify fishing vessels and vessel owners engaged in IUU fishing.
- Seek adoption of a centralized vessel monitoring system (VMS).
- Increase use of observers and technologies to monitor compliance with conservation and management measures.
- Seek adoption of stronger port State controls in all nations.
- *Adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea.*<sup>1</sup>
- Adopt and expand the use of market-related measures to combat IUU fishing, including import prohibitions, landing restrictions, and catch documentation schemes.

The Secretary is also to urge other nations to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in IUU fishing from being traded or imported into their nations or territories.<sup>2</sup>

The Moratorium Protection Act requires the Secretary of Commerce to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international fishery

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<sup>1</sup> The SCA, Pub. L. 111-348, added the language in italics.

<sup>2</sup> See 16 U.S.C. 1826i.

management agreements. The Act calls on the Secretary, to the greatest extent possible based on availability of funds, to provide assistance to nations whose vessels are involved in bycatch of protected living marine resources (PLMRs) to address such activities.<sup>3</sup>

The amended Act directs the Secretaries of Commerce and State to seek to enter into international agreements for shark conservation, including measures to prohibit removal of any fins and discarding the carcass at sea, that are comparable to U.S. measures, taking into account different conditions.<sup>4</sup>

The Secretary of Commerce submitted the first Biennial Report to Congress in January 2009, and the second Biennial Report in January 2011. Those reports and the current one survey efforts by the United States to strengthen its leadership toward improving international fisheries management and enforcement, particularly with regard to IUU fishing, bycatch of PLMRs, and certain shark fishing practices. They also describe progress in the international arena to deal with these issues. They address the status of international living marine resources and contain information on actions taken to assist other nations in achieving sustainable fisheries and minimizing bycatch and discards.

As the legislation emphasizes the importance of addressing IUU fishing, PLMR bycatch, and certain shark fishing practices, the sections below provide background information on those activities and a brief discussion of other U.S. statutes that are useful in managing U.S. fisheries responsibly and in addressing unacceptable practices in international fisheries.

#### **A. Illegal, Unreported, and Unregulated (IUU) Fishing**

The international community uses the term “IUU fishing” to describe activity that does not comply with national, regional, or global fisheries conservation and management obligations, wherever such fishing occurs. Unregulated or unreported fishing may also occur in international waters where no management authority or regulation is in place.<sup>5</sup>

IUU fishing activity affects fisheries of all types – from small scale to industrial. Shipment, processing, landing, sale, and distribution of IUU fish and fish products perpetuate the financial

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<sup>3</sup> See 16 U.S.C. 1826k(d).

<sup>4</sup> See 16 U.S.C. 1826i(3).

<sup>5</sup> The MSRA’s use of the term is more circumscribed and complicated; see Part II.A for definitional details. Section 402 of the MSRA contains a finding that international cooperation is necessary to address “illegal, unreported, **and** unregulated fishing” (emphasis added). On the other hand, Section 403 of the MSRA, which establishes the standards for identification and certification of nations whose vessels engage in IUU fishing, uses a disjunctive formulation of the term, referring to nations whose vessels are engaged in “illegal, unreported, **or** unregulated fishing” (emphasis added). The FAO and other international bodies generally employ the conjunctive formulation of the term in publications, plans of action, and related materials. In this report, we use the acronym “IUU fishing” without indicating whether the conjunctive or disjunctive formulation is intended, but with the understanding that where identification and certification determinations are at issue under the MSRA, the term is to be understood and employed in the disjunctive. We do not intend any particular legal meaning or consequence to flow from the use of the term in this report.

reward from illegal harvests. IUU fishing thwarts attempts by nations and international organizations to manage fisheries in a responsible manner. It also affects the ability of governments to support sustainable livelihoods of fishermen and, more broadly, to achieve food security.

Because IUU fishing activities are generally carried out covertly, monitoring and detection are difficult. This renders quantification of the problem elusive.<sup>6</sup> The United Nations Food and Agriculture Organization (FAO) considers IUU fishing a serious threat to fisheries, especially those of high value that are already overfished; marine habitats, including vulnerable marine ecosystems (VMEs); and food security and the economies of developing nations.<sup>7</sup> IUU fishing activities have widespread economic and social consequences, including depriving legitimate fishermen of harvest opportunities. IUU fishing also deprives fisheries managers of information critical to accurate stock assessments. It exacerbates the problem of discards and bycatch because vessels engaged in illegal activity are likely to engage in unsustainable fishing practices and use non-selective gear.

IUU fishing activities tend to be dynamic, adaptable, highly mobile, and increasingly sophisticated as IUU fisheries continue to find and exploit weak links in the international fisheries regulatory system. The use of flags of convenience, as well as ports of convenience, facilitates the scope and extent of IUU fishing activities.

Since IUU fishing activities are complex, a broad range of governments and entities must be involved to combat them. These include flag States, coastal States, port States, market States, international and intergovernmental organizations, the fishing industry, non-governmental organizations (NGOs), financial institutions, insurers, and consumers. Congress recognizes the importance of active U.S. involvement in international efforts to combat IUU fishing through activities such as adoption of IUU vessel lists; stronger port State controls; improved monitoring, control, and surveillance (MCS); implementation of market-related measures to help ensure compliance; and capacity-building assistance. The United States is a member of or has substantial interests in numerous international fisheries and related agreements and organizations (see Annex 1 for a list of those most relevant to this report). A discussion of the international actions the United States and its international partners are continuing to take concerning IUU fishing is provided in this report. The National Oceanic and Atmospheric Administration (NOAA) plan and priorities for combatting IUU fishing in 2012 appear in a document entitled *Leveling the Playing Field* – available online at [http://www.nmfs.noaa.gov/ia/iuu/level\\_play\\_field.pdf](http://www.nmfs.noaa.gov/ia/iuu/level_play_field.pdf).

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<sup>6</sup> Estimates of the annual value of IUU-harvested fish range from 9 to 25 billion USD. MRAG and Fisheries Ecosystems Restoration Research, Fisheries Centre, University of British Columbia, “The Global Extent of Illegal Fishing,” April 2008, p. 1.

<sup>7</sup> The FAO cites indications that IUU fishing is moderating in some areas (e.g., the northeast Atlantic Ocean) as successful policies and measures take hold. It remains widespread, however, in the EEZs of coastal States and on the high seas. FAO, “The State of World Fisheries and Aquaculture,” Rome, 2012, p. 94.

Part III of this report contains certification decisions about the six nations identified in 2011 as engaged in IUU fishing, and identifies ten nations as having been engaged in IUU fishing or bycatch activities in 2011 and/or 2012.

## **B. Bycatch of Protected Living Marine Resources (PLMRs)**

The bycatch of PLMRs, such as incidentally caught or entangled sea turtles, sharks, dolphins, and other marine mammals, is also a serious issue in international fisheries. Bycatch of PLMRs limits the ability of the United States and other nations to conserve these resources. Fisheries bycatch can lead to injury or mortality of protected species, and can also have significant negative consequences for marine ecosystems and biodiversity. The National Marine Fisheries Service (NMFS) has developed a list of PLMRs, available online at [http://www.nmfs.noaa.gov/ia/iuu/msra\\_page/msra.html](http://www.nmfs.noaa.gov/ia/iuu/msra_page/msra.html).

In enacting the MSRA, Congress recognized the importance of U.S. leadership in establishing international measures to end or reduce the bycatch of PLMRs. The United States is party to a number of international agreements related to the protection of living marine resources, as well as to many global, regional, and bilateral fisheries agreements (see Annex 1). This report, in Part VII, describes recent actions the United States has taken in these forums and bilaterally to pursue strengthened bycatch reduction measures comparable to those of the United States.

**Marine Mammals.** To fulfill the United States' international obligations to protect and conserve marine mammals, reduce the impacts of human activities on marine mammals, and ensure that these activities are coordinated in a strategic fashion across the agency, NMFS developed the *International Marine Mammal Action Plan*, made available to the public on October 22, 2012. The document is available online at <http://www.nmfs.noaa.gov/ia/reports/immmap.pdf>.

The Action Plan includes seven strategic priorities to improve research and understanding of marine mammal biology, advance the conservation and management of marine mammals globally, and increase cooperation and collaboration with national and international partners:

1. Reduce the bycatch of marine mammals in international and foreign fisheries to sustainable levels.
2. Improve our understanding of climate change impacts on marine mammals.
3. Reduce the threat of prey depletion by considering predator/prey relationships under an ecosystem approach to fishery management.
4. Reduce the threat of marine debris to marine mammals by decreasing the loss of marine debris – including derelict fishing gear – into the ocean.
5. Reduce the number of vessel strikes in international and foreign waters.
6. Prevent habitat loss, degradation, and disturbance through marine spatial planning and marine protected area designation.
7. Improve our understanding of and response to the occurrence of disease and die-offs in marine mammal populations.

Over the course of the next 5 years, NMFS will be discussing and identifying ways to effectively execute the activities within the Action Plan, by reaching out to advisory panels; Federal, domestic, and international partners; conservation and scientific groups; and industry.

**Seabirds.** Although the statutory definition of PLMRs does not include seabirds, they are an international living marine resource for which conservation is an issue of growing global concern, and an issue on which NMFS has been actively involved internationally.<sup>8</sup> Section 316 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) highlights the need for the Secretary of Commerce to work cooperatively with the Secretary of the Interior and industry, and within international organizations, to seek ways to mitigate seabird bycatch. Annex 3 to this report highlights recent efforts to protect this international living marine resource.

### **C. Shark Conservation and Protection**

Sharks are an ancient and highly diverse group of fish that present an array of issues and challenges for fisheries conservation and management due to their biological and ecological characteristics and lack of general data reported on the catch of each species. Most sharks are apex predators. Many shark species are characterized by relatively slow growth, late maturity, and low reproductive rates, which can make them particularly vulnerable to overexploitation and slow to recover once stocks are depleted. As exploitation rates for some shark species and particularly the demand for fins have increased, concern has grown regarding the status of many shark stocks and the sustainability of their exploitation in world fisheries.

The United States continues to be a leader in promoting shark conservation and management globally through ongoing consultations regarding the development of international agreements consistent with the Shark Finning Prohibition Act of 2000, Pub. L. 106-557, and the SCA. The United States is committed to working bilaterally and multilaterally to promote shark conservation and management and to prevent shark finning, so that legal and sustainable fisheries are not disadvantaged by these activities. For example, within the regional fisheries management organization (RFMO) context, the United States has focused on efforts to improve data collection for sharks, develop species-specific conservation and management measures (CMMs), and review compliance with agreed measures.

### **D. Other U.S. Statutes that Address IUU Fishing, PLMR Bycatch, and Shark Conservation**

In addition to the statutes already mentioned, the United States has numerous legal tools to address IUU fishing, shark conservation, and PLMR bycatch, both domestically and internationally. These include the MSA, Lacey Act, Pelly Amendment to the Fishermen's Protective Act of 1967, Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and International Dolphin Conservation and Protection Act. Regulations under other statutes, such as the Atlantic Tunas Convention Act, ensure that U.S. fishermen are subject to the

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<sup>8</sup> Bycatch of seabirds could not serve as the basis for identification of a nation under the PLMR provisions of the MSRA, but violations of seabird measures of RFMOs to which the United States is a party could serve as the basis for identification under the Act's IUU fishing provisions.

conservation measures adopted under international agreements to which the United States is a party, whether within or outside the U.S. Exclusive Economic Zone (EEZ). See Annex 2 for summaries of statutes and recent enforcement cases with an international nexus.

Under the MSA, comprehensive regulations govern all of the major fisheries in the EEZ, out to 200 miles from U.S. coasts. In the U.S. Atlantic EEZ (including the Gulf of Mexico and Caribbean Sea), NMFS directly manages sharks and other highly migratory species, except for spiny dogfish, which are jointly managed by the Mid-Atlantic and New England Fishery Management Councils. In the U.S. Pacific EEZ, three regional fishery management councils – Pacific, North Pacific, and Western Pacific – are responsible for developing fishery management plans for these species. The MSA requires the Secretaries of State and Commerce to seek to secure international agreements with standards and measures for bycatch reduction comparable to those applicable to U.S. fishermen.<sup>9</sup>

The SCA prohibits any person subject to U.S. jurisdiction from removing any of the fins from a shark (including the tail) at sea, having custody of a shark fin not naturally attached to the carcass aboard a fishing vessel, or transferring or landing any such fin.<sup>10</sup> In addition, it prohibits landing a shark carcass without its fins naturally attached. NMFS is developing a separate rulemaking for domestic fisheries to implement these prohibitions.

U.S. law and policy establish a number of domestic requirements designed to reduce bycatch and other harmful effects of fishing activities on PLMRs by vessels subject to U.S. jurisdiction. U.S. fishermen are subject to requirements concerning the taking of marine mammals under the MMPA, and fishing and related actions that affect species listed as endangered or threatened under the ESA.<sup>11</sup> In addition, the MMPA requires the Secretary of Commerce, working through the Secretary of State, to initiate negotiations for development of bilateral or multilateral agreements with other nations for the protection and conservation of marine mammals.

The International Dolphin Conservation Program Act and the Pelly Amendment to the Fishermen's Protective Act call for nations to comply or act in a manner consistent with international fisheries management measures, and provide for various types of trade-restrictive measures against nations whose vessels engage in activities that undermine the effectiveness of international fisheries conservation measures or otherwise engage in prohibited activities.<sup>12</sup> Section 101(a)(2) of the MMPA requires the banning of imports of commercial fish caught with

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<sup>9</sup> See 16 U.S.C. 1822(h).

<sup>10</sup> The prohibition does not apply to individuals engaged in commercial fishing for smooth dogfish, under certain conditions and circumstances. The new shark legislation necessitated a re-evaluation of Federal management measures for this fishery, which had been scheduled to take effect in April 2012. NMFS plans to publish a rule for that fishery to implement the SCA amendments and any requirements stemming from a consultation under Section 7 of the ESA.

<sup>11</sup> See 16 U.S.C. 1361 *et seq.* and 16 U.S.C. 1531 *et seq.*

<sup>12</sup> See 16 U.S.C. 1441 *et seq.* and 22 U.S.C. 1978.

technology that results in the incidental kill or serious injury of ocean mammals in excess of U.S. standards.<sup>13</sup>

An important enforcement tool is the Lacey Act, which prohibits interstate and foreign trafficking in fish or wildlife taken in violation of domestic or foreign law (see Annex 2).<sup>14</sup> The Act also prohibits the import, export, transport, sale, possession, or purchase of any fish or wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law. The Lacey Act provides for both civil and criminal sanctions.

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<sup>13</sup> See 16 U.S.C. 1371(a)(2). The 2011 Biennial Report (at page 44) describes a NMFS advance notice of proposed rulemaking to implement that provision with regard to the import of swordfish and other fish and fish products. NMFS expects to publish the proposed rule in 2013.

<sup>14</sup> See 16 U.S.C. 3371-3378.

## II. Provisions for Identification and Certification

To implement the identification and certification provisions of the Moratorium Protection Act for IUU fishing and bycatch of protected species, NMFS published a final rule establishing procedures on January 12, 2011.<sup>15</sup> NMFS amended these procedures to implement the identification and certification provisions of the SCA through a final rule, which will publish in January 2013. Those procedures are described below for each of the types of identifications.

The identification of nations having fishing vessels engaged in IUU fishing activities, bycatch of PLMRs, or certain shark fishing practices is deemed to be an identification under the High Seas Driftnet Fisheries Enforcement Act. If an identified nation takes appropriate actions to address such activities, it receives a positive certification. If it receives a negative certification, sanctions under that statute may be applied, including prohibitions on importation of certain fish and fish products into the United States, denial of port privileges, and other measures, under specified circumstances. The final rule describes how recommendations will be made and any sanctions implemented, in the event a nation receives a negative certification.

### A. IUU Fishing

Section 609(a) of the Moratorium Protection Act requires the Secretary of Commerce to identify a nation whose vessels are engaged, or have been engaged in the preceding 2 years, in IUU fishing, taking into account where the relevant international organization has failed to implement effective measures to end IUU fishing, or where no international fishery management organization with a mandate to regulate the fishing activity exists.

As Section 609(a) refers to activities of “vessels,” a nation must have more than one vessel engaged in IUU activities during the “preceding two years” from the date of submission of the biennial report to Congress. Information concerning activities outside that time period cannot form the basis for an identification decision. In addition, activities conducted during the relevant time period that are not discovered or reported before the end of the year preceding submission of the Report to Congress cannot form the basis for an identification.

Section 609(e)(3) of the Moratorium Protection Act requires the Secretary of Commerce to publish a regulatory definition of “illegal, unreported, or unregulated fishing,” including certain minimum elements. The initial regulatory definition published in 2007 was exactly the same as those minimum elements, but in January 2011 NMFS amended the definition by adding the italicized text below, to make it more consistent with United Nations General Assembly (UNGA) Resolution 61/105 on sustainable fisheries. The IUU fishing definition codified at 50 CFR § 300.201 includes:

- fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including *but not limited to* catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

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<sup>15</sup> The Moratorium Protection Act’s identification and certification procedures are codified at 50 CFR § 300.200 *et seq.*



- overfishing of fish stocks shared by the United States, for which there are no applicable international conservation and management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and
- fishing activity that has *a significant* adverse impact on seamounts, hydrothermal vents, cold water corals *and other vulnerable marine ecosystems* located beyond *any* national jurisdiction, for which there are no applicable conservation or management measures, *including those* in areas with no applicable international fishery management or agreement.

Also in January 2011, the SCA amended the definitional guidelines in the Moratorium Protection Act to add “shark conservation measures” to the first element of the definition, consistent with the new legislation’s focus on encouraging other nations to join the United States in protecting sharks, including by prohibiting the practice of finning. On July 10, 2012 (77 Fed. Reg. 40553), NMFS published a proposed rule that would add that phrase to paragraph (1) of the definition in 50 CFR § 300.201. In the proposed rule, NMFS offered other amendments to the IUU fishing definition, and clarified the agency’s intention to apply the definition more broadly than in the past. For example, NMFS will consider a nation’s actions or inactions, such as failure to comply with applicable data reporting requirements, in determining whether to identify the nation as having been engaged in IUU fishing. NMFS will also consider identifying nations that are non-members to an international fishery management agreement but whose fishing activities undermine conservation of the resources managed under that agreement. Another basis for identification will be fishing by foreign-flag vessels in U.S. waters without authorization by the United States. NMFS believes that these activities, which jeopardize the ability of the United States to manage its fisheries sustainably and unfairly disadvantage U.S. fishermen, fall within the statutory guidelines for the definition of IUU fishing. NMFS will publish a final rule that includes these changes in January 2013.

At the beginning of the identification process under the current regulations, NMFS gathers from many sources information that it believes could support a determination that a nation’s vessels have been engaged in IUU fishing. NMFS then seeks corroboration or refutation from that nation and encourages it to take action to address the activity. In deciding whether to make such an identification, NMFS considers whether the nation is implementing and enforcing measures comparable to those implemented by the United States to address the pertinent activity. The 2011 final rule describes the types of measures that a nation might take to prevent, deter, and eliminate IUU fishing activities.

The regulations also detail the notification and consultation process. After NMFS provides a preliminary positive or negative certification to a nation identified for having vessels engaged in IUU fishing, an identified nation has the opportunity to respond with additional information before the final certification is issued. The rule lists factors NMFS considers, including corrective actions by the identified nation, the effectiveness of those actions in addressing and deterring IUU fishing, and whether measures comparable to those of the United States have been implemented and are being effectively enforced.

## **B. Bycatch of PLMRs**

Section 610(a)(1) of the Moratorium Protection Act requires the Secretary to identify a nation for bycatch activities if:

- fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource, or beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;
- the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and
- the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions.

The first prong of Section 610(a) thus contains an even tighter timeframe for identification than the comparable provision for IUU fishing in Section 609(a) – just the preceding calendar year – and shares the restriction that an identification cannot be based on the activities of a single vessel.

The current regulations define “bycatch” to mean “the incidental or discarded catch of protected living marine resources or entanglement of such resources with fishing gear” (50 CFR § 300.201). For purposes of the Moratorium Protection Act (Section 610(e)), the term “PLMR”:

- includes non-target fish, sea turtles, or marine mammals that are protected under U.S. law or international agreement, including the MMPA, ESA, Shark Finning Prohibition Act, and Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), but
- does not include species, except sharks, managed under the MSA, the Atlantic Tunas Convention Act, or any international fishery management agreement.

In evaluating information on bycatch of PLMRs, NMFS takes into account the extent of the bycatch and its impact on the sustainability of the PLMR, as well as actions taken by the nation to address the bycatch, information refuting the allegations, and participation in cooperative research designed to address bycatch. The current regulations include the types of measures nations and international bodies could take that would be effective in ending or reducing bycatch. NMFS examines whether an international organization exists that can regulate the fishery in which the bycatch occurred and whether it has adopted measures that could end or reduce PLMR bycatch, as well as the nation’s relationship to that body and its implementation of measures addressing bycatch.

A similar notification and communication process applies prior to identification for PLMR bycatch activities as for IUU fishing. Within 60 days of submission of the biennial report identifying a nation for such activities, NMFS will initiate consultations for the purpose of

entering into bilateral and multilateral treaties, and will also seek agreements through the appropriate international organizations to protect PLMRs from the activities upon which the identification was based. Again, there is a preliminary certification process and opportunity for the identified nation to respond before the final positive or negative certification is made. The current regulations set forth the factors NMFS will consider in making the determination.

### **C. Shark Conservation and Protection**

In the 2006 legislation, shark conservation fell implicitly within the definition of “IUU fishing” (which included all violations of RFMO measures, including those geared toward shark conservation), and explicitly within the PLMR definition. As mentioned above, the SCA amended the guidelines for defining IUU fishing to specify that violation of shark conservation measures is included. That Act also requires the Secretary of Commerce to identify a nation whose vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices on the high seas that target or incidentally catch sharks, and the nation has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

Under the final rule to implement the above provisions, which will publish in January 2013, NMFS will take into account all relevant matters, including the history, nature, circumstances, extent, and gravity of the fishing activities that target or incidentally catch sharks in areas beyond any national jurisdiction, when determining whether to identify nations for these activities. The notification and consultation procedures, as well as those for certification of an identified nation, are very similar to those for IUU fishing and bycatch activities.

The SCA required that the Secretary of Commerce begin making identifications no later than January 4, 2012. NMFS solicited information from the public on such activities in areas beyond any national jurisdiction in the Federal Register notice cited in Part III. NMFS has also started collecting and analyzing information that could help the agency determine which nations may have vessels engaging in fishing activities or practices on the high seas that target or incidentally catch sharks and may have a regulatory program for the conservation of sharks that is comparable to that of the United States.

### III. Identification and Certification under Sections 609 and 610

#### A. Identifications

##### 1. The Identification Process

The Secretary of Commerce has delegated authority to identify nations under the Moratorium Protection Act to the NOAA Assistant Administrator for Fisheries. In preparation for development of the list of nations that are recommended for identification, NMFS published a Federal Register notice soliciting information on IUU fishing, PLMR bycatch activities, and shark fishing on the high seas (77 Fed. Reg. 19226, March 30, 2012).

**Fishing in Violation of International Measures.** The first prong of the IUU fishing definition covers activities that violate measures required under an international fishery management agreement to which the United States is a party. NMFS gathered information on incidents where RFMO compliance measures may have been violated. The process began with a search of publicly available RFMO materials, including annual reports, compliance committee meeting summaries, and IUU vessel lists. NMFS also searched United States Coast Guard (USCG), foreign government, press, and NGO reports.

Based on the analysis of all available information, NMFS determined 15 nations to be of interest for having vessels that allegedly engaged in violation of international measures during the relevant time period (2011 and 2012) (see Part III. A. 2 and 3). Through diplomatic channels, NMFS contacted these nations to verify information regarding alleged IUU fishing activities by their vessels. From the responses of five of the 15 nations and fishing entities and from other sources, NMFS collected information that either refuted the allegations or showed that corrective actions had been taken to address all of the IUU fishing activities of concern (see Part III. A. 3). Information provided by the remaining nations failed to demonstrate that sufficient corrective action had been taken to address all of the activities of concern.

In a case where action taken by a nation is pending against a vessel, but no resolution has been reached to exonerate or sanction the vessel, NMFS considered the activities of the vessel as a foundation for identification. NMFS also considered the activities of a vessel as a basis for identification when the agency was unable to ascertain the reason a case against the vessel had been closed.

Detailed information on the ten nations identified for this type of IUU fishing appears below in Part III.A.2; information on nations and fishing entities of interest that were not identified is found in Part III.A.3.

**Overfishing of Shared Stocks.** The second prong of the definition of IUU fishing includes overfishing of stocks shared by the United States in areas without applicable international measures or management organizations. As of June 30, 2012, NMFS has assessed the following four stocks as both overfished and shared by U.S. and foreign fleets: North Atlantic albacore, Atlantic blue marlin, western Atlantic bluefin tuna, and Atlantic white marlin. Since these stocks are managed by an international management organization, the International Commission for the

Conservation of Atlantic Tunas (ICCAT), NMFS is not identifying any nation as conducting this type of IUU fishing in 2011–2012.

**Destructive Fishing Practices on VMEs.** During the reporting period, NMFS found no nations that conducted IUU fishing activities under the third prong of the IUU fishing definition. Currently five RFMOs have the competency to manage bottom fishing: the Northwest Atlantic Fisheries Organization (NAFO), North East Atlantic Fisheries Commission (NEAFC), South East Atlantic Fisheries Organization (SEAFO), Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR), and South Pacific Regional Fisheries Management Organization (SPRFMO). Each of these organizations, as well as one in formation (North Pacific Fisheries Commission, NPFC), have measures to protect VMEs from bottom fishing activities, in accordance with the 2006 UNGA Sustainable Fisheries Resolution (61/105) and reflecting guidance from the FAO’s International Guidelines for Deep Sea Fisheries.<sup>16</sup> Nations fishing in accordance with the rules of these organizations, by definition, would not meet the criteria for IUU fishing identification under the Moratorium Protection Act.

The Southwest Atlantic Ocean and the Indian Ocean are the only areas of the high seas where bottom fishing is not being managed under an RFMO.<sup>17</sup> To avoid identification under the Moratorium Protection Act, States with vessels known to be fishing in these areas in 2011 and 2012 must have had measures in place to prevent significant adverse impacts to known or likely VMEs. Several States, including Australia, the Cook Islands, New Zealand, the Republic of Korea, the Russian Federation, Spain, and the United Kingdom, as well as the European Commission (EC), have reported to the UN and the FAO on measures taken in high seas areas in accordance with the 2006 UNGA Sustainable Fisheries Resolution.

In response to the 2009 UNGA review of Resolution 61/105, the FAO maintains a list of vessels authorized for bottom fishing on the high seas. In 2011 and 2012, only Korea reported having authorized vessels to bottom fish, although several European Union (EU) nations and the Cook Islands had previously reported having authorized vessels for bottom fishing on the high seas. All of those nations have informed the UN, and confirmed through consultations with NMFS, that all fishing activities were being conducted in accordance with Resolution 61/105. NMFS therefore concludes that they would not qualify as IUU fishing.

NMFS will continue to work with international partners to strengthen implementation of and compliance with existing RFMO management measures. NMFS will also continue to support scientific research to identify VMEs on the high seas and gear modifications to reduce the impact of bottom-tending gears on vulnerable habitats.

**PLMR Bycatch Activities.** Identification of nations for bycatch activities under Section 610(a)(1) of the Moratorium Protection Act may be based only on current activities of fishing vessels of that nation, or on activities in which those vessels have been engaged during the calendar year preceding submission of the biennial report to Congress in January. Qualifying activities are further restricted to those that result in the bycatch of PLMRs where the relevant

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<sup>16</sup> The SPRFMO and NPFC measures, at this point, are non-binding.

<sup>17</sup> The Southwest Indian Ocean Fisheries Commission has not yet established conservation measures to control bottom fishing.

international conservation organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to or a cooperating partner with such organization and the nation has not adopted and implemented a regulatory program governing such fishing practices that is comparable to that of the United States, taking into account different conditions.

Over the past 2 years, NMFS has collected significant amounts of information on bycatch activities from numerous sources, including government and academic studies, relevant international organizations, NGOs, and the media. NMFS' team of subject matter experts examined the bycatch in question, its impact on the affected PLMR, and any relevant regulations or management measures.

Based on analysis of all available information, NMFS determined one nation, Mexico, to be of interest for having vessels that allegedly engaged in PLMR bycatch, and therefore considered it for identification. Through diplomatic channels, NMFS contacted Mexico to verify information about alleged PLMR fishing activities by its vessels. Mexico has not yet responded to NMFS' inquiries. Detailed information on these fishing activities appears in Part III.A.2.

The identification of only one nation for PLMR bycatch activities is due to the "preceding year" limitation within the Moratorium Protection Act (described above) rather than significant reduction in PLMR bycatch in global fisheries. For example, a number of nations self-report bycatch of PLMRs to RFMOs or other international organizations, but those data are not generally available in time for action under the Act. Many nations publish bycatch reports and corresponding analyses in the year after the data are collected, or even later. International organizations and journal publications often report these data several years after they receive the information.

NMFS will continue to collect information for possible identification of nations for PLMR bycatch under the provisions of the Moratorium Protection Act. To support this work, NMFS will collaborate with international partners to improve reporting and collection of bycatch incidents within relevant international conservation organizations. While some RFMOs collect bycatch information, reporting is often voluntary. Most RFMOs that do collect data have not standardized their data collection. Those that do have standards often receive data from nations that do not use these standardized formats, which creates significant gaps in the technical information available and reduces the ability of these organizations to better address bycatch issues.

NMFS will continue to be a leader bilaterally, multilaterally, and globally to reduce bycatch of PLMRs. NMFS has long-standing outreach and assistance programs with a number of nations, through cooperative research or other capacity-building activities, to reduce and mitigate bycatch (see Part IX for examples). NMFS intends to continue to support existing capacity-building efforts, where appropriate, and to initiate additional programs with other nations based on the nature of their PLMR bycatch interactions, need for assistance, and willingness to work cooperatively with the United States. NMFS will also continue to promote comprehensive CMMs through international organizations to reduce bycatch of PLMRs, by working with international partners to improve assessment of the impact of fisheries on bycatch taxa, support

research into gear modifications and alternative gear types, and develop management measures to reduce bycatch.

**Shark Fishing Activities.** Identification of nations under the new provisions of the SCA may be based only on activities occurring on the high seas during the calendar year preceding submission of the biennial Report to Congress; thus for the 2013 Report the activities must have occurred during 2012. During the past 2 years, NMFS has analyzed information from the websites of many international organizations: the FAO, ICCAT, Inter-American Tropical Tuna Commission (IATTC), Western and Central Pacific Fisheries Commission (WCPFC), Indian Ocean Tuna Commission (IOTC), NAFO, General Fisheries Commission for the Mediterranean, SEAFO, and CCAMLR. A number of nations reported catching sharks, but none of the activity met the SCA criteria because it took place prior to 2012. Normally, nations report the prior year's catch to RFMOs. For example, at the 2012 annual meeting of ICCAT, the catch reported by members was for 2011. A further complicating factor is that the location of the catch of sharks is not reported; NMFS cannot discern whether the catch occurred on the high seas or within EEZs. Therefore, NMFS does not have any applicable data for shark catch on the high seas and is not identifying any nation under Section 610(a)(2) of the Moratorium Protection Act.

## 2. Nations Identified

**Colombia.**<sup>18</sup> Colombia is being identified for having a number of vessels that reportedly violated IATTC resolutions in 2011 and/or 2012. Three Colombian vessels, the *Nazca*, *Cabo de Hornos*, and *Maria Isabel C*, fished sharks and discarded the carcasses at sea before the point of first landing, in violation of Resolution C-05-03. Colombia responded that shark finning was illegal under Colombian law (Resolution 1633, June 19, 2007) and that the Government is working to harmonize shark regulations throughout the region. Colombia has been conducting public outreach and education efforts with fishing captains and crews to stress the importance of shark conservation.

The *Cabo de Hornos*, *Sea Gem*, and *Sandra C* discarded salt bags or plastic trash at sea in 2011, contravening Resolution C-04-05. Colombia indicated that a review of this allegation was underway.

Since Colombia has not yet resolved the cases of shark finning and discarding trash at sea, it is being identified.

**Other information and fishing activities that did not form the bases of identification.** The *Dominador I* and *Marta Lucia R* allegedly fished in the Eastern Pacific Ocean (EPO) in 2011 without being on the Regional Vessel Register. These vessels comprised one of the bases for Colombia's 2011 identification. Colombia has since taken corrective action by not renewing the vessels' fishing licenses and confining the vessels to port. The following seven vessels allegedly discarded tuna in 2011 in violation of Resolution C-11-01: the *American Eagle*, *Grenadier*, *Amanda S*, *Nazca*, *Cabo de Hornos*, *Sandra C*, and *Sea Gem*. A total of 17 sets had discards

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<sup>18</sup> The sources of information on Colombian fishing activities are the IATTC Compliance Report for 2011 (COR-03-04a Revised) and letters from Carlos Urrutia, Ambassador to the United States, dated November 19, 2012, and December 10, 2012.

amounting to 22.4 tons of tuna. Colombia stated that the former national fishing authority had prohibited discarding of fish bycatch when the fish were unlikely to survive. Colombia stated that the technical criteria in the IATTC Field Manual may be contradictory in determining whether fish may be discarded, as the resolution (C-11-01 paragraph 16) allows for discarding of fish considered unfit for human consumption. Colombia implied that these vessels discarded small tunas that were crushed (and thus unfit for human consumption), a practice not accurately reflected by the observers. Colombia stressed that it will be important for the IATTC to review and adjust these criteria to avoid confusion. In addition, three Colombian vessels, *Sandra C*, *Sea Gem*, and *Maria Isabella C*, searched for fish and/or deployed or recovered fish aggregating devices in the high seas area during the 2011 closure, in alleged violation of Resolution C-11-01. Given that interpretive differences exist regarding this measure and its application, the United States will work with IATTC and member states to reach consensus on its interpretation.

**Ecuador.**<sup>19</sup> Ecuador is being identified based on a number of Ecuadorian-flagged vessels that reportedly violated IATTC resolutions in 2011 and/or 2012.

The *Drennec* finned 14 sharks and discarded the rest of the animal in violation of Resolution C-05-03.

The following 11 vessels discarded salt bags or plastic trash at sea in 2011 in violation of Resolution C-04-05: the *Drennec*, *Lucia T*, *Rodolfo X*, *Zalbidea J*, *Monteneme*, *Yolanda L*, *Don Mario*, *Carmen D*, *Rosa F*, *Yelisava*, and *Ugavi Dos*.

On November 28, 2011, the fishing vessel *North Queen* traveled from Manta to Guayaquil without communicating a transit waiver to the IATTC Director, so the IATTC does not know whether Ecuador granted the waiver as required by Resolution C-09-04.

The following seven vessels had interactions with sea turtles in 2011 without fully complying with the provisions of Resolution C-04-05, in that they failed to release the turtles: the *Gloria A*, *Via Simoun*, *Lucia T*, *Malula*, *Esmeralda C*, *Julia D*, and *Guayantuna I*.

In January 2012, the *Julia D* made 13 sets less than a mile from a data buoy, in violation of Resolution C-11-03.

The following 16 vessels discarded tuna in 2011 in violation of Resolution C-11-01: the *Rocio*, *Charo*, *Rosa F*, *Julia D*, *Medjugorje*, *San Andres*, *Rossana L*, *Panchito L*, *Don Ramon*, *Via Simoun*, *Cap. Berny B*, *Pacific Tuna*, *Dona Roge*, *Esmeralda C*, *Sansun Ranger*, and *Ciudad de Portoviejo*. A total of 57 sets had discards amounting to a total of 216.1 tons of tuna.

It does not appear that Ecuador has begun investigating seven of the 11 vessels that discarded salt bags, the *North Queen*, the seven vessels that did not release sea turtles, or the *Rocio*. Other cases are still under investigation by Ecuador. Since none of the cases are resolved, Ecuador is being identified.

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<sup>19</sup> The sources of information on Ecuadorian fishing activities are the IATTC Compliance Report for 2011 (COR-03-04a Revised) and a letter from Ing. Guillermo Morán V., Deputy Minister of Aquaculture and Fisheries, dated November 7, 2012.



**Other Information.** In its November response to NMFS, Ecuador included a list of potential infractions from the IATTC Secretariat, including infractions of which NMFS had not been aware. Specifically, the IATTC requested that Ecuador investigate overcapacity issues involving the *Doña Roge* and *Ricky A*, and the *Julia D* and *Sansun Ranger*, for fishing in the “Corralito” area during a closure.

**Ghana.**<sup>20</sup> Ghana is being identified for failing to manage its fishing vessels consistent with CMMs adopted by ICCAT. The United States is specifically concerned about the following: data reporting and fleet control deficiencies, including data not submitted and data submitted late (Recommendation 05-09); overharvest of species, specifically the record of extensive overharvest of bigeye tuna (Recommendation 11-01); non-compliance with fleet capacity provisions (Recommendations 04-01 and 11-01); and Ghana’s failure to implement effective measures to prohibit at-sea transshipments (Recommendation 06-11). With regard to capacity, Ghana needs to phase out two more bait boats or four purse seiners to meet ICCAT capacity-limitation requirements.

While Ghana has prohibited at-sea transshipments, further evidence of the implementation and effective enforcement of these regulations is needed. Ghana has been overfishing bigeye tuna since quotas were first imposed in 2004. ICCAT first identified Ghana for overfishing in 2009. NMFS believes that Ghana needs to show progress in compliance with ICCAT recommendations by implementing the agreed payback plan for the overharvest of bigeye tuna and improving data collection. In addition, improvement in the accuracy of Ghana’s catch estimates is required to improve the ICCAT assessment of bigeye tuna stocks.

**Other information and fishing activities that did not form the bases of identification.**

NMFS is also aware of allegations from Liberian authorities that three Ghanaian-flagged vessels were suspected of conducting fisheries-related activities in Liberian waters without proper authorization in 2011 and 2012. Liberia reports that a Ghanaian-flagged, ICCAT-registered purse seine vessel was observed fishing in Liberia’s EEZ in November 2012, a violation of ICCAT Recommendation 03-12, which requires that ICCAT Contracting Parties ensure that their vessels do not conduct unauthorized fishing within areas under the national jurisdiction of other States. In addition, Liberia notes that an analysis of automatic identification system tracks from two Ghanaian refrigerated transport vessels suggests unauthorized transshipment activity in Liberian waters in 2011 and 2012, in violation of the ICCAT program for transshipment (Recommendation 06-11). Since these issues are being handled bilaterally between Ghana and Liberia, NMFS is not considering this information as a basis of identification, but will ask Ghana about it during the consultation.

**Italy.**<sup>21</sup> Italy is being identified for continued driftnet fishing in violation of ICCAT Recommendation 03-04. While Italy has made great progress in reducing illegal driftnetting

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<sup>20</sup> The sources of information on Ghanaian fishing activities are the ICCAT Letter of Concern to Ghana, dated February 21, 2012; Ghana’s response to the Letter of Concern from the Fisheries Commission in the Ministry of Food and Agriculture, dated October 3, 2012; and a letter from the Liberian Ministry of Agriculture to the Ghanaian Ministry of Food and Agriculture, dated December 5, 2012.

<sup>21</sup> The sources of information on Italian fishing activities are Pew report Doc. No. COC-307/2011 and a letter from Dr. Francesco Saverio Abate, General Director, Maritime Fisheries and Aquaculture, dated November 8, 2012.

practices through enforcement actions against individual vessels and adoption of new laws to better address these activities, at least 18 new infractions were observed during the relevant time period. Several EC inspections in Italy in 2011 noted driftnet infractions of EC and ICCAT regulations. The inspectors found illegal nets on docks and listed a number of vessels either with driftnets or with gear typical of driftnet fishing, including nets longer than permitted and with mesh size larger than permitted. EC inspectors also concluded that logbooks suggested under-reporting and the capture of prohibited species while using driftnets. This information indicates that some vessels are still using longer and larger-mesh nets than the legal limits, in violation of ICCAT Recommendation 03-04.

Italy subsequently investigated and sanctioned the vessels with driftnet violations in 2011, including suspension of fishing licenses. Italy also relayed that during 2011, the Italian Coast Guard performed 69,000 vessel checks (17,000 at sea and 52,000 in port), resulting in documentation of 3,132 infractions (2,668 administrative and 464 criminal), of which 96 related to driftnets. During 2012 (data through October 31, 2012), with half of 2011's financial resources, the Coast Guard performed 42,000 vessel checks (11,000 at sea and 31,000 in port), resulting in documentation of 2,168 infractions (1,881 administrative and 287 criminal), of which 18 related to driftnets. Each violator was fined 4,000€ in 10 cases, suspension of the fishing license for 30 days to 3 months was implemented.

However, concerns remain over the use of driftnets by Italian-flagged vessels. Given that the illegal driftnet use by Italian-flagged vessels has been a long-standing issue, and driftnet violations were again observed during the relevant time period, NMFS is identifying Italy in the 2013 Biennial Report to encourage Italy to end illegal driftnet use and to continue monitoring, surveillance, and control of the Italian fishing fleet.

**Other information and fishing activities that did not form the bases of identification.** An Italian fishing vessel, the *Santa Maria Carmela Madre*, was seized by the Italian Coast Guard on June 15, 2012, and discovered with 25 tons of bluefin tuna that, according to some accounts, was undersized. The Italian government provided documentation of action taken against the *Santa Maria Carmela Madre*, an official account of the seizure of the fish and purse seines. NMFS understands that fines will be administered (pending judicial decisions). In addition, the maximum number of points possible was imposed on the fishing license. Since the Government of Italy took corrective action against this vessel, it was removed from consideration as a basis for Italy's identification.

**Korea (Republic of).**<sup>22</sup> The Republic of Korea is being identified for failing to apply sufficient sanctions to deter its vessels from engaging in fishing activities that violate conservation and

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<sup>22</sup> The sources of information on Korean fishing activities are CCAMLR-XXX/BG/26 Rev. 1, October 10, 2011; CCAMLR-XXX/BG/38, October 19, 2011; CCAMLR-XXX, ISSN 1031-3184, paragraph 9/13, November 2011; a letter from Joon-suk Kang, Director General of the Distant Water Fisheries Bureau, Ministry for Food, Agriculture, Forestry and Fisheries, dated November 30, 2012; a letter from the Liberian Ministry of Agriculture to the Deputy Director of the Distant Water Fisheries Bureau, dated December 4, 2012; CCAMLR COMM CIRC 12/08, January 13, 2012; CCAMLR COMM CIRC 12/80, July 2, 2012; Report of the Standing Committee on Implementation and Compliance (Hobart, Australia, October 24-26, 2012, advanced copy); and the ICCAT Letter of Concern to the Republic of Korea, February 21, 2012.

management measures required under an international fishery management agreement. Specifically, NMFS is concerned that Korea is not effectively controlling its nine fishing vessels currently authorized to fish in the CCAMLR Convention Area. On February 23 and 24, 2011, the Korean fishing vessel *Insung No. 7* set fishing gear in CCAMLR Division 58.4.2 Subarea E. According to a Korean Government investigation, the master set the gear after he knew that the catch limit had already been exceeded. The set resulted in an illegal catch of 35.5 tons of toothfish, estimated by Korea to be worth 710,000 USD, and exceeding the Division's catch limit by 339 percent. Korea imposed a fine of approximately 1,300 USD and a 30-day suspension of the vessel's distant water fishing authorization. Korea also reported that the vessel master's license might be suspended for 30 days.

At the 2011 CCAMLR meeting, however, many delegations, including the United States, were of the view that Korea's sanctions against the operator, vessel, and master were inadequate, given the seriousness of the illegal activity. CCAMLR's Standing Committee on Implementation and Compliance (SCIC) proposed placing the *Insung No. 7* on the Contracting Party IUU Vessel List, but Korea blocked its inclusion. Although Korea agreed at the 2011 CCAMLR meeting to withdraw three of its vessels from the CCAMLR toothfish fishery for the 2011–2012 fishing season as a concession, this decision does not rectify the inadequacy of Korea's enforcement measures to address future violations.

In responses to outreach letters, Korea recognized the need for a stronger mechanism for administrative sanctions against its vessels engaged in IUU fishing. The Government of Korea further indicated that it is currently undertaking amendment of the relevant law to strengthen sanctions against IUU fishing activities. Korean officials expect the amendment will be promulgated during the first half of 2013. In reviewing the text of Korea's proposed amendment, NMFS is concerned that the potential new sanctions are insufficient to deter IUU fishing activities.

For example, NMFS believes that the pending amendment raising the maximum fine for a third violation from approximately 4,660 USD to 18,450 USD by itself is not enough of a disincentive to discontinue such profitable illegal activity. This is particularly relevant as NMFS understands that in the case of the *Insung No. 7* the vessel owner was allowed to retain the 710,000 USD in proceeds from the illegal harvest. The pending amendment does not appear to give Korea the ability to seize the illegal catch or its proceeds. In contrast, a U.S. fishing vessel charged with a similar violation would be subject to more stringent sanctions, including seizure of the illegal product or its proceeds. Thus, even if the pending amendment takes effect, it will most likely be insufficient to deter Korean vessels from violating measures adopted under an international fisheries management agreement.

Given Korea's current lack of ability to effectively control its fishing vessels authorized to fish in the CCAMLR Convention Area, the minimal sanctions it places on vessels found to be conducting IUU fishing, and the CCAMLR allegations described above, NMFS is identifying Korea. During the subsequent consultation, NMFS will encourage Korea to take stronger actions against IUU fishing activities, including passage of legislation to employ stronger sanctions.

**Other information and fishing activities that did not form the bases of identification.** On December 4, 2011, New Zealand CCAMLR inspectors boarded the Korean vessel the *Hong Jin 701* while in the CCAMLR Convention Area. Two violations were alleged: failure to mark

buoys and similar objects floating on the surface (CM 10-01), and failure to carry a license and make it available for inspection (CM 10-02). In July 2012, the *Hong Jin 701* was included on the Draft Contracting Party IUU Vessel List for consideration by the Commission.

The Republic of Korea advised CCAMLR that it had undertaken a thorough investigation and concluded that correct marking of fishing gear aboard the *Hong Jin 701* had been completed. It also reported that the allegation about failure to provide the license had been the result of miscommunication between the inspectors and the vessel's master. The master provided a copy of the license in Korean; however, the inspector did not understand the Korean language and reported that there was no fishing license on board the vessel. Thus, the *Hong Jin No. 701* was not included in the vessel list forwarded to the Commission.

CCAMLR's SCIC, reviewing information relating to transshipment reports during 2011–2012, noted that a Korean vessel had failed to provide 14 transshipment reports, in violation of CM 10-09, paragraph 2. Korea responded to SCIC that it had no intention of not complying with the conservation measure and ensured that an issue such as this would not happen again. Since Korea is working within CCAMLR to resolve this issue, NMFS is not considering this information as a basis of identification, but will ask Korea about it during the consultation.

NMFS is also aware of allegations from Liberian authorities that Korean-flagged vessels were suspected of fishing in Liberian waters without proper authorization in 2011 and 2012. Liberia reports a Korean-flagged, ICCAT-registered purse seine vessel was observed fishing in Liberia's EEZ in November and December 2011, and again in February to May 2012, in violation of ICCAT Recommendation 03-12. Since these issues are being handled bilaterally between Korea and Liberia, NMFS is not considering this information as a basis of identification, but will ask Korea about it during the consultation.

NMFS noted reports from the 2011 ICCAT meeting that Korean nationals may have been involved in the at-sea transshipment of Atlantic tropical tunas harvested by large-scale purse seine vessels operating in the Gulf of Guinea. Such transshipments are prohibited by Recommendation 06-11, which stipulates that only longline vessels under special conditions may engage in at-sea transshipment operations. Korea has an obligation under Recommendation 06-14 to investigate reports that its nationals may be engaged in IUU fishing activities (as defined in Recommendation 11-18) and to take appropriate action in response to any verified IUU fishing activities. In addition, ICCAT requires that its members provide timely reports to the Commission of such investigations and any actions that result. These matters were also highlighted in the Letter of Concern sent by ICCAT to Korea in 2011.

Regarding this matter, the Korean Government explained that it officially warned the person in question not to be engaged in IUU fishing activities. The Korean government investigated the individual and the company allegedly involved in the illegal at-sea transshipment, and has the legal authority to take measures against those who are implicated in IUU fishing activities, including revocation or suspension of relevant licenses and authorizations.

**Mexico.<sup>23</sup> IUU Fishing Identification.** Mexico is being identified for IUU fishing based on the activities of several Mexican-flagged fishing vessels that reportedly violated IATTC resolutions in 2011 and/or 2012. These violations include one vessel, the *Atún VII*, which finned sharks and discarded the carcasses at sea, in violation of Resolution C-05-03. Eight Mexican vessels discarded salt bags or plastic trash at sea, violating Resolution C-04-05: the *Atún VII*, *Azteca 5*, *Bonnie*, *Buenaventura I*, *Cartadedeces*, *Chac Mool*, *Maria Luisa*, and *Nair*. Five vessels (the *Arkos I Chiapas*, *Atún VI*, *Azteca 10*, *Azteca 2*, and *Maria Rosana*) violated sea turtle bycatch mitigation measures by failing to release turtles, in violation of Resolution C-04-05. The *Nair II* and *El Dorado* discarded tuna in violation of Resolution C-11-01; a total of four sets had discards amounting to 7 tons of tuna.

Mexico reports the allegations against these vessels are currently under investigation by the competent administrative authority, which will apply corresponding sanctions as necessary. Mexico, however, did not provide further information on the status of the investigations and is therefore being identified.

**Other fishing activities that did not form the bases of the IUU fishing identification.** Eight Mexican vessels transited without communicating a transit waiver to the IATTC Director, so the IATTC did not know whether Mexico had granted the waivers per Resolution C-09-04. Mexico confirmed that these vessels had authorization to transit during the off season; the information was sent to the IATTC Director. These transits did not contribute to the bases of identification for IUU fishing.

**Bycatch of PLMRs Identification.** Mexico is the first nation identified under the Moratorium Protection Act for PLMR bycatch. In 2012, its vessels engaged in bycatch of a shared PLMR without a regulatory program that is comparable in effectiveness to that of the United States. Specifically, 438 loggerhead sea turtles stranded, dead, along 43 kilometers of the shoreline of Playa San Lazaro, Baja California Sur in July and August 2012, according to Mexican Wildlife Law Enforcement. In October 2012, the Mexican Fisheries Research Institute published a report on bycatch reduction trials in the gillnet fishery in Baja California Sur. During six days of research trials, 88 loggerhead sea turtles were captured, indicating that local fleets likely have high bycatch rates. Considering the outcomes of this study, the absence of any harmful algal blooms or pollution incidents in the area at that time, and other available evidence, the United States believes bycatch from the gillnet fishery is the cause of the July strandings. More alarming, based on previous research studies, the 438 turtles that stranded are likely indicative of

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<sup>23</sup> The sources of information on Mexican IUU fishing activities are the IATTC Compliance Report for 2011 (COR-03-04a Revised); a letter from Lic. José Guadalupe Trujillo Jimenez, Director General, Office of Planning, Programming, and Evaluation, National Commission on Aquaculture and Fishing, dated November 1, 2012; the INAPESCA 2012 technical report "A Biotechnological Evaluation of Alternative Fishing Methods in the Coastal Fishery of the Gulf Of Ulloa B. C. S. to Avoid Accidental Capture of Non-Target Species. Preliminary Actions"; the news article "Loggerhead turtle deaths up dramatically off Baja Mexico --report," E&E News PM, November 15, 2012, by Laura Petersen found at <http://www.eenews.net/eenewspm/2012/11/15/archive/9?terms=loggerhead>; and the SEMARNAT Internal/External Meetings Report on Loggerhead Sea Turtle *Caretta caretta* in Baja California Sur, October 26, 2012.

a much larger number of turtles that drowned due to entanglement but that did not subsequently wash up on shore.

NMFS contacted the Government of Mexico immediately after learning of this stranding event in early December 2012, to request more information on the event and on Mexico's regulatory program for the management of bycatch of loggerhead sea turtles in the gillnet fishery. Mexico sent a detailed response to NMFS on its fisheries management authority, but did not include explicit information on regulatory measures to address this specific bycatch issue. NMFS believes that the regulations Mexico provided are not comparable in effectiveness to U.S. regulations for bycatch of North Pacific loggerheads. The Hawaiian long-line fleet is one of the major fleets in U.S. waters that interact with North Pacific loggerheads, which NMFS recently listed as endangered under the ESA. This fleet is required to have 100 percent observer coverage, and the fishery is closed after only 34 interactions with turtles. NMFS does note that other Mexican agencies besides the fisheries authority have been engaged in loggerhead conservation efforts, including convening stakeholder meetings as well as conducting ongoing research. These agencies, however, have no authority to manage the target fishery, and thereby are unable to end or reduce the bycatch in question.

**Panama.**<sup>24</sup> Panama is being identified because several Panamanian-flagged vessels reportedly violated IATTC resolutions in 2011 and/or 2012. The *Delia* finned a shark and discarded the carcass prior to the point of first landing, in violation of Resolution C-05-03. Three vessels (the *Delia*, *Connie Jean Two*, and *El Marquez*) discarded salt bags or plastic trash, in violation of Resolution C-04-05. The *Contadora I* and *Delia* discarded tuna in violation of Resolution C-11-01; a total of 14 sets had discards amounting to 22.8 tons of tuna.

Panama stated that the *Connie Jean Two* and *Delia* are currently involved in judicial processes. An administrative proceeding was opened on the *Connie Jean Two* on July 5, 2012, and is in the evidentiary stage. A preliminary investigation of the *Delia* resulted in charges being filed on July 5, 2012, although it is unclear whether they cover all three allegations against the vessel; the proceeding is in the evidentiary stage. No information was received on investigations of the *Contadora I* and *El Marquez*.

Since two cases remain open (*Connie Jean Two* and *Delia*) in Panama's judicial process, and the status of the two others (*Contadora I* and *El Marquez*) are unknown, Panama is being identified.

**Other information and fishing activities that did not form the bases of identification.** The *Chung Kuo 242*, *Gilontas 168*, and *Gilontas 777* were accused of fishing in the EPO while not listed on the Regional Vessel Register. Panama informed NMFS that these vessels had reflagged to Fiji or Vanuatu. Since these vessels are no longer flagged to Panama, they do not form part of the basis of identification.

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<sup>24</sup> The sources of information on Panamanian fishing activities are the IATTC Compliance Report for 2011 (COR-03-04a Revised) and a letter from Giovanni Lauri, General Administrator, dated December 10, 2012.

**Spain.**<sup>25</sup> Spain is being identified because two Spanish-flagged vessels engaged in fishing activities that violated CMMs required under an international fishery management agreement. One vessel allegedly violated NAFO conservation and enforcement measures; the other, an IATTC conservation and management recommendation. Spain is currently investigating both vessels.

On February 3, 2012, Canadian NAFO inspectors boarded the *Pescaberbes Dos* in Division 3L of the NAFO Regulatory Area and reported that approximately 134.7 tons of product was not labeled, as required by NAFO measures (Chapter IV, Article 24.1), and that approximately 30.2 tons of Greenland halibut product was not marked as having been harvested in NAFO Subarea 2 and Divisions 3KLMNO, a separate requirement (Chapter IV, Article 24.1). Spanish inspectors confirmed the violation related to the labeling of boxes. Spain explained that initial infringement proceedings against the vessel's owner have begun.

On August 18, 2011, the *Albacora Uno* allegedly discarded a ton of skipjack tuna in violation of IATTC Resolution C-11-01, which requires vessels to retain all catch of skipjack tuna. Spain is seeking information to determine the accuracy of the allegation. Spain notes everything to date seems to indicate the alleged violation did in fact take place. If so, Spain says appropriate sanctions will be put in place after official proceedings conclude.

Since the proceedings against the *Pescaberbes Dos* and *Albacora Uno* are not resolved, Spain is being identified.

**Other information and fishing activities that did not form the bases of identification.** The *Pescaberbes Dos* was boarded on April 24, 2011, in Division 3M, by Canadian NAFO inspectors who reported that the vessel had an improper stowage plan, an infringement of NAFO measures. According to follow-up information provided to the NAFO Secretariat, this apparent infringement was not confirmed during a port inspection in Vigo, Spain because the stowage plan submitted to national inspectors properly indicated the location and amount of each species; the case was closed.

On June 25, 2012, Canadian NAFO inspectors boarded the *Patricia Sotelo* in Division 3N of the NAFO Regulatory Area and reported a discrepancy between recorded redfish catch and the amount of redfish actually held on board the vessel. Spain's investigation, after full weighing of the cargo, found no discrepancies between the amount of redfish declared and the amount found in the hold. EC and Canadian inspectors participated in the port inspection. Spain maintains the at-sea inspection was improperly carried out.

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<sup>25</sup> The sources of information on Spanish fishing activities are a report by Canadian NAFO inspectors (available online at <http://www.dfo-mpo.gc.ca/international/mcs-citations-eng.htm>); a letter from Carlos Dominguez Diaz, Secretary-General of Fishing, Department of Agriculture, Food, and the Environment, dated November 6, 2012; the IATTC Compliance Report for 2011 (COR-03-04a Revised); Apparent NAFO Infringements and Disposition in 2011, April 2012; and reports available online at [http://www.stopillegalfishing.com/sifnews\\_article.php?ID=85](http://www.stopillegalfishing.com/sifnews_article.php?ID=85) and [http://www.stopillegalfishing.com/sifnews\\_article.php?ID=82](http://www.stopillegalfishing.com/sifnews_article.php?ID=82).

On April 5, 2012, Mozambican fisheries inspectors boarded the *Doniene* and allegedly found evidence that the vessel had fished in Liberian waters without proper authorization between September 2011 and January 2012, in violation of ICCAT Recommendation 03-12, which requires that ICCAT Contracting Parties ensure that their vessels do not conduct unauthorized fishing within areas under the national jurisdiction of other States. In addition, the master of this vessel allegedly did not cooperate with fisheries officers from the Ivory Coast during an inspection in February 2012, in violation of ICCAT Recommendation 97-10.

Spain investigated the allegations and found irregularities, but determined the irregularities were not the fault of the vessel. Spain explained that Liberian authorities, at some point, had notified the EC that the *Doniene* had been fishing in the Liberian EEZ during 2011, using a license obtained in a fraudulent manner. In the course of Spain's investigation, the owner of the *Doniene* provided documentation that Liberia had decided to validate the vessel's licenses retroactively for 2011 and 2012. A press release issued by the Liberian Government, dated August 23, 2012, confirms the negotiated settlement of the case. The allegation of the master's failure to cooperate, Spain explained, was based on the master's refusal to allow original documents to be removed from the vessel, but he did show the documents to the inspectors. This issue has now been resolved through the cooperation of the Spanish and Liberian Governments.

Lastly, a Singaporean inspection report alleges three Spanish nationals were documented as senior officers aboard the *Pion*, a Honduran-flagged vessel listed on the CCAMLR Non-Contracting Party IUU Vessel List. CCAMLR Conservation Measure 10-08 requires Contracting Parties to take appropriate measures to verify whether any of their nationals are engaged in, responsible for, or benefiting from IUU fishing activities, and to take appropriate action in response to any such verified activities. In its response to NMFS' request for additional information, the Spanish Government explained it is vigorously investigating these allegations, including through extensive international consultations. Spain stated that it will proceed to apply appropriate sanctions on these citizens once roles have been verified.

**Tanzania.**<sup>26</sup> Tanzania is being identified because four of its vessels undermined the effectiveness of CCAMLR conservation measures. All four vessels are currently listed on the CCAMLR Non-Contracting Party IUU Vessel List. Information obtained by the United States suggests that these vessels may have engaged in IUU fishing in 2012. The *Wutaishan Anhui 44*, listed in 2008, was observed inside CCAMLR Division 58.4.1 on January 20, 29, and 30, 2012, apparently flagged by Tanzania (Zanzibar). During the January 20 incident, this vessel contacted a CCAMLR-authorized fishing vessel concerning their fishing lines being entwined, thus indicating the *Wutaishan Anhui 44* was fishing in the Convention Area. This vessel was observed by Australian authorities on April 24, 2012, in the vicinity of Christmas Island, northwest of Australia, still flagged by Tanzania with the same external markings. French authorities then sighted this vessel hauling unmarked bottom-set gillnet in CCAMLR Subarea 58.6 on July 3, 2012. This time, the vessel was displaying the name *Huiquan* and a different international radio call-sign, still claiming Tanzanian registry with a homeport of Zanzibar.

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<sup>26</sup> The sources of information on Tanzanian fishing activities are CCAMLR COMM CIRCs 12/21 (February 9, 2012), 12/28 (February 24, 2012), 12/30 (February 27, 2012), 12/40 (April 11, 2012), 12/77 (June 24, 2012), 12/92 (July 30, 2012); and the CCAMLR Non-Contracting Party IUU Vessel List (CM 10-07) 2003-2013.



Australian authorities note that this vessel has a long history of association with IUU fishing under other names including the *Yangzi Hua 44*, *Paloma V*, and *Trosky*.

The *Shaanxi Henan 33*, placed on the vessel list in 2004, was observed by Australian authorities on May 16, 2012, in the vicinity of Christmas Island, apparently flagged by Tanzania (Zanzibar). Australian authorities note that, while this sighting was outside the Convention Area, this vessel has a long history of association with IUU fishing inside the Area, and continues to undermine conservation measures established by CCAMLR.

The *Huang He 22*, placed on the vessel list in 2003, was observed by Australian authorities on April 1, 2012, in the vicinity of Christmas Island, displaying international radio call sign 5IM487, which is a Tanzanian-allocated call sign. French authorities sighted this vessel in CCAMLR Subarea 58.6 on July 1, 2012. At the time of the sighting, the vessel was underway with fishing gear visible on the deck and displaying the same external markings as before. Australian authorities note that this vessel has been sighted on four occasions since 2004 and suspected of violating CCAMLR conservation measures. This vessel has been listed on the IUU vessel list under nine other names: the *Corvus*, *Galaxy*, *Ina Maka*, *Black Moon*, *Red Moon*, *Eolo*, *Thule*, *Magnus* and *Dorita*. This vessel is also reported as having been flagged to the Democratic People's Republic of Korea, Panama, Sierra Leone, Equatorial Guinea, Saint Vincent and the Grenadines, and Uruguay.

The refrigerated cargo vessel *Baiyangdian* was observed inside CCAMLR Division 58.4.1 area on January 28, 2012. Inconsistencies between information provided by the captain and other sources, as well as the captain's lack of willingness to communicate with Australian authorities, raised concerns that the vessel may have been engaged in IUU fishing by supporting vessels suspected of IUU fishing activities in the CCAMLR Convention Area. These concerns were reinforced when this vessel was observed on April 1, 2012, under tow by the CCAMLR-listed IUU vessel *Huang He 22* in the vicinity of Christmas Island. As a result, the vessel was added to the CCAMLR IUU vessel list in accordance with Conservation Measure 10-07.

**Venezuela.**<sup>27</sup> Records from the IATTC indicate a number of Venezuela's fishing vessels reportedly violated IATTC resolutions in 2011. These violations include two vessels (the *Ventuari* and *Cayude*) that finned sharks and discarded the carcasses at sea, in violation of Resolution C-05-03. The *Don Francesco*, *La Rosa Mistica*, and *Taurus I* discarded salt bags or plastic trash at sea, in violation of Resolution C-04-05. The *Don Francesco* and *Curimagua* violated sea turtle bycatch mitigation measures by failing to release turtles, in violation of Resolution C-04-05. The *La Rosa Mistica*, *Amazonas*, and *Canaima* illegally discarded tuna, in violation of Resolution C-11-01, in a total of six sets amounting to 25 tons of tuna.

**Other information and fishing activities that did not form the bases of identification.** Six vessels searched for fish and/or deployed or recovered fish aggregating devices in the high seas area during the 2011 closure, in violation of Resolution C-11-01: the *Falcon*, *Cayude*, *Orinoco II*, *Curimagua*, *Ventuari*, and *Canaima*. Given that interpretive differences exist regarding this

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<sup>27</sup> The source of information on Venezuelan fishing activities is the IATTC Compliance Report for 2011 (COR-03-04a Revised).

measure and its application, the United States will work with IATTC and member states to reach consensus on its interpretation.

### 3. Nations and Fishing Entities “of Interest” Not Identified

**Guatemala.**<sup>28</sup> IATTC Records indicate a number of Guatemala’s fishing vessels may have violated IATTC resolutions in 2011. Eight longline vessels are alleged to have fished in the EPO without being on the Regional Vessel Register, and one vessel is alleged to have transited without submitting a transit waiver to the IATTC Director.

The eight longline vessels that allegedly fished in the EPO without being on the Regional Vessel Register in violation of Resolution C-11-05 are: the *Anthony*, *Buen Samaritano*, *Capitan Caleb*, *Cylberik*, *El Pescador*, *Fernando*, *Henry*, and *Santidad y Poder*. Guatemala responded that it does not consider the fishing activities of these vessels to be within the authority of the Convention because none of the vessels exceeds 24 meters in total length, so they should not be subject to Resolution C-11-05. Further, Guatemala clarified that these vessels are licensed only for dorados and sharks.

On December 10, 2011, the *La Peña* traveled from Manta to Guayaquil without communicating a transit waiver to the Director. NMFS understands that Guatemala conducted an administrative process against the vessel resulting in a sanction that was communicated to the IATTC Secretariat on March 28, 2012. Although the vessel made a continuous transit without fishing, it was fined approximately 2,500 USD for failure to apply for a transit exemption.

Since Guatemala sanctioned the *La Peña* for transiting without a waiver and explained that the longline vessels are not required to be included on the Regional Vessel Register because of their length and licensure, Guatemala is not being identified.

**Japan.**<sup>29</sup> Reports indicate that two vessels flagged to Japan may have engaged in IUU fishing activities during 2011 or 2012. On April 17, 2012, the *Daito Maru No. 8* was observed working gear and retaining catch inside the Cape Verde EEZ without proper authorization, in violation of ICCAT Recommendation 03-12. Cape Verdean maritime officials, operating from the *USS Simpson* and supported by a USCG law enforcement detachment, boarded the vessel, which was actively engaged in fishing and targeting tuna east of Fojo Island, Cape Verde. The boarding team found 15,000 pounds of illegal catch on board. Japan explained that the vessel had proper authorization to fish tuna species, but noted the authorization did not allow retention of other species. Cape Verde later released the vessel with a warning since it was the vessel’s first offense. Japan determined the cause of the allegation stemmed from confusion regarding Cape Verde’s legal requirement mandating vessels have authorization to retain all species. To prevent a recurrence of this situation, the Japan Tuna Fisheries Association and the Cape Verdean

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<sup>28</sup> The sources of information on Guatemalan fishing activities are the IATTC Compliance Report for 2011 (COR-03-04a Revised) and a letter from Dr. Fraterno Díaz Monge, Director of Fisheries and Aquaculture Regulation, Ministry of Agriculture, Livestock and Nutrition, dated October 31, 2012.

<sup>29</sup> The sources of information on Japanese fishing activities are e-mail correspondence from the USCG, 17 APR – AMLEP – JA F/V Seizure in CV EEZ, April 17, 2012; a letter from Masanori Miyahara, Deputy Director General, Fisheries Agency, dated December 12, 2012; CCAMLR-XXXI/BG/06, September 24, 2012; and WG-SAM-12/06, June 20, 2012.

Government concluded a contract on August 2, 2012, which stipulates that the amount of by-catch species may not exceed 15 percent of total catch.

According to CCAMLR records, the *Shinsei Maru No.3* did not meet the minimum separation distance for research hauls while operating in Small-scale Research Unit 48.6E, a potential violation of Conservation Measures 41-04 and 41-01. Japan's investigation concluded there were two instances where research hauls in the area apparently did not meet the minimum separation distance of 3 nautical miles. One instance was due to a data entry error, which will be corrected when Japan submits the proper information to the CCAMLR Secretariat. The other incident related to a separation distance of 2.87 nautical miles, which Japan considered to be an honest mistake with no malicious intent. As such, Japan did not deem this a serious violation requiring punitive action in accordance with Japanese law.

In summary, Japan put measures in place to prevent a recurrence of the situation regarding the catch of non-target species in the EEZ of Cape Verde, in compliance with ICCAT Recommendation 03-12. Japan also explained that one research haul within the CCAMLR Convention Area was improperly recorded. As Japan had only one potential vessel for identification (the *Shinsei Maru No.3*) and has either provided information refuting allegations or taken appropriate corrective action to address all other reported IUU fishing activities, it is not being identified in the 2013 Biennial Report to Congress.

**Russian Federation.**<sup>30</sup> RFMO records indicate that three vessels flagged to the Russian Federation engaged in IUU fishing activities during calendar year 2011. Two vessels allegedly violated conservation and enforcement measures of NAFO and one vessel allegedly violated conservation measures of CCAMLR.

On March 6, 2011, Canadian NAFO inspectors boarded the *Severnaya Zemlya* in Division 3O of the NAFO Regulatory Area and reported that the vessel had previously conducted a directed fishery for a species for which bycatch limits apply (cod in Division 3L), an infringement of NAFO's conservation measures. Russia's response was that the trawl in question, although set in Division 3L, had not made contact with the seabed in 3L; the trawl hauling itself took place exclusively in Division 3M, which was open for cod fishing. Nonetheless, Russia issued "strong written warnings" for the activity characterized by Russia as an "indirect violation."

On May 21, 2011, Canadian NAFO inspectors again boarded the *Severnaya Zemlya*, this time in Division 3N of the NAFO Regulatory Area, and reported that the vessel had improperly labeled product. Russia responded that the product was stacked in a way that exposed some of the labels to contact with crew members' clothing and footwear, resulting in partially rubbed-off markings on only ten bags.

On December 27, 2011, Canadian NAFO inspectors boarded the *Novaya Zemlya* in Division 3L of the NAFO Regulatory Area and reported that, while fishing redfish and Greenland halibut,

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<sup>30</sup> The sources of information on Russian fishing activities are a report by Canadian NAFO inspectors (available online at <http://www.dfo-mpo.gc.ca/international/mcs-citations-eng.htm>); a letter from A.V. Fomin to O.V. Rykov in response to a letter from NMFS; CCAMLR COMM CIRC 12/11, January 18, 2012; CCAMLR COMM CIRC 12/80, July 2, 2012; and the Report of the Standing Committee on Implementation and Compliance (Hobart, Australia, October 24-26, 2012), advanced copy.

2.052 tons of cod had been caught and retained on board. The inspectors noted that the Russian Federation had closed its 3M cod fishery on April 22, 2011, making retention of cod a violation of NAFO measures. Russia's response asserted that the cod retained was less than the 5 percent bycatch allowed both in individual trawls and in total amounts. The vessel had changed fishing positions to avoid bycatch, as required by NAFO rules. Russia ordered the ship owners to adopt additional measures to minimize the risk of bycatch, but pointed out that there is no consensus among NAFO Parties as to allowable bycatch on board after directed fishing is closed.

On December 3, 2011, New Zealand CCAMLR inspectors boarded the *Chio Maru No. 3* while in Subarea 88.1B of the CAMLR Convention Area. Two violations were alleged: failure to mark buoys and similar objects floating on the surface (CM 10-01) and discharge of offal (CM 26-01). As of July 2012, the *Chio Maru No. 3* had been included on the Draft Contracting Party IUU Vessel List for consideration by the Commission. Russia has advised that it has taken action to prevent a recurrence of the alleged violations: the vessel will not be permitted to fish in the Convention Area in 2012-2013, and the offal grinding machinery has been decommissioned. The CCAMLR Standing Committee on Implementation and Compliance removed the *Chio Maru No. 3* from the draft IUU vessel list. Russia did provide notification of another vessel intending to operate in place of the *Chio Maru No. 3*, but NMFS has found no documented ownership ties between the *Chio Maru No. 3* and the Russian vessel replacing it in the fishery.

**Other Information.** Lastly, a Singaporean inspection report alleges two Russian nationals were documented as senior officers aboard the *Pion*, a Honduran-flagged vessel listed on the CCAMLR Non-Contracting Party IUU Vessel List. CCAMLR Conservation Measure 10-08 requires Contracting Parties to take appropriate measures to verify if any of their nationals are engaged in, responsible for, or benefiting from IUU fishing activities, and to take appropriate action in response to any such verified activities. Russia provided information concerning the two Russian nationals alleged to be senior officers aboard this vessel. Russia emphasized the information provided by Singapore does not allow for positive identification of crew members. Russia states it intends to review the information and take necessary measures in every case of confirmed violations in accordance with Russian laws.

Russia is not being identified because it took appropriate corrective action against the vessel found with violations in the CCAMLR Convention Area. In addition, Russia provided information refuting the allegations made against the two vessels in the NAFO Convention Area.

**South Africa.**<sup>31</sup> Records from CCAMLR indicate that two vessels flagged to South Africa may have violated CCAMLR Conservation Measures in 2011 or 2012.

Occasional incidents of the disposal at sea of inorganic waste were reported from observers on the *El Shaddai* and *Koryo Maru No. 11*, in violation of Conservation Measure 26-01. Hooks

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<sup>31</sup> The sources of information on South African fishing activities are the Report of the Standing Committee on Implementation and Compliance 2012; CCAMLR-XXXI/BG/06, September 24, 2012; WG-SAM-12/06, June 20, 2012; and a letter from Pheobius Mullins, Assistant Director, Pelagic and High Seas Fisheries Management, dated December 12, 2012.

were also observed in the offal discarded from the *El Shaddai*, as well as the disposal of fishing gear at sea. The *El Shaddai* and *Koryo Maru No. 11* also allegedly failed to comply with all of the requirements of Conservation Measure 25-02 to minimize the incidental mortality of seabirds in longline gear. It was reported that the *El Shaddai* did not use a bird exclusion device during hauls in Subareas 58.6 and 58.7. The *Koryo Maru No. 11* reportedly had streamer lines shorter than the required length and did not achieve the required tag overlap statistic per Conservation Measure 41-01. Nor did this vessel meet the required ratio of one research haul to three commercial hauls while operating in SSRU 58.4.1G, nor meet the minimum separation distance for research hauls while operating in SSRU 48.6D and 48.6G. These are potential violations of Conservation Measures 41-01, 41-04, and 41-11.

South Africa explained that it immediately informed the vessels that their licenses would be revoked or suspended if further infringements were noted. South Africa's Department of Agriculture, Forestry, and Fisheries mandated full briefing and debriefing meetings with the operators of these vessels to keep them abreast of applicable conservation measures. The Department also designed a compliance adherence reporting form that includes all the CCAMLR Conservation Measures addressing waste disposal, seabird mitigation measures, and general fishing operations. By mandate, this form is to be completed and submitted weekly by the National Scientific Observer to the Department to ensure that the vessels fully adhere to CCAMLR Conservation Measures.

South Africa is not being identified because it took appropriate measures to prevent future IUU fishing activities.

**Taiwan.**<sup>32</sup> USCG boarding and inspection reports on four fishing vessels registered to Taiwan and fishing in the WCPFC Convention Area noted that the vessels failed to maintain sufficient records of catch and catch-related data. Based on the reports on the *Hornng Yih Fwu 368*, *Jia Feng Tsair*, *Shin Yu Fu No. 26*, and *Kuen Fa Chen 888*, all of which indicated the vessels did not maintain sufficient records of catch and catch-related data, the United States requested that Taiwan provide details or copies of its laws or regulations that specify the requirements for maintaining catch and catch-related data.

Taiwan is not being identified because it took appropriate corrective actions to address all of the above described IUU fishing activities. Taiwan investigated and provided information on sanctions placed on the *Hornng Yih Fwu 368*, *Shin Yu Fu No. 26*, and *Kuen Fa Chen 888*. The vessels' fishing licenses and the masters' professional licenses were suspended for 2 to 4 months. According to Taiwan, it has not received an official notice regarding the *Jia Feng Tsair*. The sanctions placed on the vessels and masters demonstrate Taiwan's commitment to ensuring that its vessels maintain sufficient records of catch and catch-related data per its regulations. In addition, Taiwan demonstrated that its regulations pertaining to vessels catching tuna and tuna-like species are adequate to comply with WCPFC measures, and include requirements for maintaining catch and catch-related data, as well as sufficient penalties for violations.

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<sup>32</sup> The source of information on Taiwanese fishing activities is a letter from James Sha, Director General, Fisheries Agency, Council of Agriculture, dated November 14, 2012.

Taiwan also explained that it regularly holds professional training workshops focused on completing logbooks, carrying valid fishing permits, and maintaining operational VMS. Taiwan noted it has held seven professional training workshops, attended by more than 250 fishing vessel masters or owners, since September 2012.

## **B. Certifications**

NMFS identified six nations in the 2011 Report to Congress as having vessels engaged in IUU fishing activity: Colombia, Ecuador, Italy, Panama, Portugal, and Venezuela. Each incident of IUU fishing involved an alleged violation of the rules of an international fishery management organization in 2009 or 2010. Under Section 609 of the Moratorium Protection Act, the Secretary of Commerce must certify biennially in the Report to Congress whether an identified nation has taken appropriate corrective action to address the activities for which it has been identified. A positive certification means that a nation has provided documentary evidence that appropriate corrective action has been taken to address the IUU fishing activities for which it was identified. A negative certification means that a nation has not taken sufficient steps to warrant receipt of a positive certification. Under a negative certification, the United States may take certain measures, including prohibiting imports of certain fish or fish products from that nation and denying that nation's fishing vessels port privileges and entry into navigable waters of the United States. The NOAA Assistant Administrator for Fisheries has been delegated the authority to make those determinations.

After notifying the six nations of their identifications early in 2011, the U.S. Government consulted extensively with those governments, through face-to-face meetings, teleconferences, and correspondence, through late 2012. The six governments provided information that falls into several categories:

- For each of the acknowledged violations, the nations took punitive action against the vessels or persons (captains or vessel owners) involved. The sanctions included fines, revocation of licenses, and forfeiture of catch and gear. For example, Colombia denied renewal of the fishing licenses for the two vessels fishing in the IATTC Convention Area without being on the Regional Vessel Register, and Panama instituted substantial fines against two of its vessels found to be violating IATTC measures.
- As applicable and pertinent, the nations produced documentation of laws and regulations designed to combat IUU fishing, including measures that had recently been enacted or amended to give the nations more authority over their fishing fleets. For example, Italy passed a decree to help combat IUU fishing activities, including illegal driftnet use, by providing for stricter penalties and immediate suspension of the fishing license.
- In a few instances, nations did not provide evidence disputing the allegations of violations by their vessels in time to prevent their identification in the 2011 Report to Congress, but during the consultation period offered credible evidence and explanations, based on investigations, that the vessels had not actually violated international measures.

The rest of this section sets out in detail the information supplied by the identified nations about corrective actions taken – including penalties, withdrawal of fishing authorizations, and new

fisheries management laws adopted – and NMFS’ positive certification decisions for each nation. This process, as in past cycles of identifications and certifications, is continuing to work as Congress intended: it is promoting compliance with international fisheries measures

## 1. Colombia

**Bases for 2011 Identification.** Colombia was identified in 2011 because several of its vessels fished in a manner that violated CMMs of the IATTC during calendar year 2009. According to the IATTC’s Compliance Report, Colombian-flagged vessels did not adhere to the IATTC purse seine closure periods in place for tuna conservation in 2009 because Colombia had instituted a modified version of the closure period, which included Individual Vessel Closures of 49 days for Class 6 vessels. This violated IATTC Resolution C-09-01, which states that all purse seiners must stop fishing in the EPO for a period of 59 days during one of two specified periods in the 2009 fishing season. This resolution also requires applicable vessels to be in port during the closure or carry an observer from the On-Board Observer Program if the vessel was in transit during the closure.

In addition, two vessels flagged to Colombia fished in the IATTC Convention Area in 2009 and 2010 without being on the IATTC Regional Vessel Register, in violation of IATTC Resolutions C-00-06 and C-02-03. Resolution C-00-06 requires that any vessel fishing for tuna and tuna-like species in the EPO must be included on the IATTC Regional Vessel Register. Resolution C-02-03 establishes national capacity limitations in the purse seine fishery and requires that any active purse seine vessel be included on the Regional Vessel Register and be within these capacity limits. The *Marta Lucia R* made four trips and the *Dominador I* six trips in 2009 without being on the IATTC Regional Vessel Register, because the capacity currently allocated to Colombia by the IATTC is not sufficient to accommodate these vessels.

**Notification and Consultation.** Colombia was notified through a diplomatic note from DOS, dated January 11, 2011, and a letter from Russell Smith, NOAA’s Deputy Assistant Secretary (DAS) for International Fisheries, dated January 10, 2011, regarding its identification as a nation whose vessels engaged in IUU fishing activity. The Ministry of Foreign Affairs and Ministry of Agriculture and Rural Development were the primary entities within the Republic of Colombia involved in the consultation. The following lists the key communications between Colombia and the United States during the consultation:

- U.S. and Colombian government officials initially met via video conference to discuss the illegal activities of the Colombian vessels identified in the 2011 Report to Congress on March 4, 2011.
- The Republic of Colombia provided written information to NMFS on March 22 and December 28, 2011.
- U.S. and Colombian officials met several times throughout 2011 and 2012, often on the margins of IATTC meetings. U.S. and Colombian government officials met at the Colombian Embassy in Washington, D.C., on November 15, 2011, to discuss Colombia’s efforts to address its capacity issues within IATTC with Vice Minister Patti Londoño.

- The U.S. Government sent a preliminary certification letter to Colombia on October 2, 2012, stating that a negative certification would be issued to Colombia unless it could demonstrate that appropriate corrective action had been taken regarding the two vessels fishing without authorization in the IATTC Convention Area. The Colombian Ambassador to the United States responded to the preliminary certification letter on November 8, 2012, stating that the Government of Colombia had revoked the fishing authorizations of the *Marta Lucia R* and *Dominador I* and supplied the decrees documenting this action.

**Fisheries Management Measures.** Other actions taken by the Government of Colombia include:

- The Colombian Institute for Rural Development (INCODER) adopted a resolution for tuna conservation for 2010 that reflected 2010 closure requirements of IATTC Resolution C-09-01. INCODER subsequently adopted a resolution for tuna conservation for 2011 that reflected the closure requirements of IATTC Resolution C-11-01, which establishes IATTC requirements for tuna conservation for 2011–2013.
- Colombia passed Decree No. 4181 of 2011 on November 3, 2011, which created the National Authority of Aquaculture and Fisheries (AUNAP). The decree transfers authority over fisheries and aquaculture, as well as activities in promotion, research, regulation, registration, monitoring, and surveillance, from INCODER to AUNAP. The creation of the new fisheries agency is expected to give the government improved control over fisheries activities and better ensure that actions can be taken to address IUU fishing activities of Colombian vessels in the future.
- On March 1, 2012, Colombia enacted Decree No. 0444, which adopted a regulatory framework so that Colombia can apply IATTC measures to regulate its capacity through the inclusion or exclusion of vessels on the IATTC Regional Vessel Register.
- Colombia adopted Resolution No. 0653 on September 7, 2012, which commits to adopting measures for the sustainability of tuna and related species in the EPO within the IATTC’s purview; prohibiting the unloading in Colombian ports of tuna and related species caught in violation of the resolution; implementing control and monitoring measures to ensure compliance with the resolution; and applying sanctions upon failure to comply with it.
- Resolution No. 0761, adopted October 17, 2012, consistent with Decree No. 0444 and Resolution No. 0653, authorized AUNAP to deny requests for the renewal of the fishing licenses for the *Marta Lucia R. and Dominador I* since they are not listed in the IATTC’s Regional Vessel Register. The vessels have been in port for the off season and have not fished since July 29, 2012.

**Certification.** In summary, NMFS concluded that the Government of Colombia took corrective action for each of the IUU activities noted in the 2011 Report to Congress. The Government adopted resolutions so that its vessels will comply with IATTC closure periods and tuna



conservation measures. Colombia has also generally expressed its commitment to conservation measures ensuring sustainable fisheries, both in writing and during in-person meetings. Colombia adopted a decree authorizing the application of IATTC measures to regulate its domestic fishing capacity and a resolution providing for increased fisheries enforcement.

Regarding the *Marta Lucia R. and Dominador I*, the Government of Colombia adopted a decree authorizing denial of the vessels' fishing licenses since they are not included on the IATTC Regional Vessel Register; the vessels have been in port and have not fished since July 2012.

On the basis of this information, NMFS has determined that the Government of Colombia has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the 2011 Report to Congress, and positively certifies Colombia in this report.

NMFS is, however, identifying Colombia in this report for IUU fishing activities conducted by Colombian-flagged vessels during 2011 and/or 2012 (see Part III.A.2).

## 2. Ecuador

**Bases for 2011 Identification.** Ecuador was identified in the 2011 Report to Congress because several of its vessels violated CMMs established by the IATTC. Several purse seine vessels flagged to Ecuador fished in the IATTC Convention Area in 2009 without authorization, in violation of Resolution C-00-06 and Resolution C-02-03. The *Ocean Lady* made five fishing trips in 2009 before being added to the IATTC Regional Vessel Register in March 2010. The *Cap. Tino B.* made two fishing trips in 2009 before being included on the IATTC Regional Vessel Register in April 2009. The *Tuna I* made three fishing trips in 2009 without being on the IATTC Regional Vessel Register.

Several other vessels made sets during the purse seine closure in 2009, in violation of IATTC Resolution C-09-01. The *Ocean Lady* failed to adhere to the 2009 closure, while the *Ingalapagos* allegedly made short trips during the 2009 IATTC closure period without an observer. The *Lizi* allegedly made two sets in the "Corralito" closed area in violation of Resolution C-09-01. The measure states that the fishery for yellowfin, bigeye, and skipjack tuna by purse seine vessels bound by a certain area is closed from September 29 to October 29. At the time of the 2011 Report to Congress, NMFS was aware, unofficially, that the vessel (reported there as the *Lizy*) had been absolved of the alleged infraction, but Ecuador had not provided details of the investigation.

The *Tarqui* increased its well volume capacity, in violation of IATTC Resolution C-02-03, which prohibits increasing the capacity of any existing purse seine vessel unless purse seine vessels of equal or greater capacity are removed from the IATTC Regional Vessel Register.

**Notification and Consultation.** Ecuador was notified through a diplomatic note from DOS, dated January 11, 2011, and a letter from DAS Smith, dated January 10, 2011, regarding its identification as a nation whose vessels engaged in IUU fishing activity. The Ministry of Agriculture, Livestock, Aquaculture and Fisheries was the primary entity within the Government of Ecuador involved in the consultation. The following lists the key communications between Ecuador and the United States during the consultation:

- On January 18, 2011, U.S. officials met with Ecuadorian officials from the Ministry of Foreign Affairs and Trade Integration and the Ecuadorian Embassy in Washington, D.C., to discuss Ecuador's identification.
- On March 22, 2011, Dr. Rebecca Lent, Director of the NMFS Office of International Affairs, headed the U.S. delegation in a meeting at the Ecuadorian Embassy in Washington, D.C., with representatives from the Ministry of Foreign Affairs and Trade Integration, the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, Embassy officials, and industry representatives.
- U.S. and Ecuadorian officials from the Ministry of Agriculture, Livestock, Aquaculture and Fisheries met on the margins of the 11th Meeting of the IATTC Working Group on Fleet Capacity on April 25, 2011; the 12th Meeting of the IATTC Permanent Working Group on Fleet Capacity on October 24, 2011; and the 83rd Meeting of the IATTC in June 2012.
- The Government of Ecuador provided materials to NMFS in March, June, October, and December 2011, and in June 2012.
- On February 22, 2012, U.S. officials met with Iván Prieto, Vice Minister of Aquaculture and Fisheries, at the Ecuadorian Embassy in Washington, D.C. The U.S. delegation gave Mr. Prieto a document at the meeting outlining remaining questions and requests.
- The U.S. Government sent a preliminary certification letter to Ecuador on October 2, 2012, stating that it had not received sufficient documentation to determine that appropriate corrective action had been taken to address the activities of two of Ecuador's vessels and requested further information from Ecuador.
- The Government of Ecuador responded on November 7, 2012, with additional information on the two vessels, including further corrective actions that had been taken.

**Vessel-Specific Actions.** Ecuador's fishery resources agency assumed responsibility for the late notification to the IATTC for the *Ocean Lady* and *Cap. Tino B* and put corrective measures in place to handle and process future IATTC correspondence. The official responsible for the filing error was given a one-year suspension without pay. All documents related to the IATTC must now be forwarded to the Ecuadorian Department of Projects and International Cooperation to be processed and tracked until completion, including verification of a vessel's status on the IATTC Regional Vessel Register before issuing fishing permits.

In January 2011, the General Director of Fisheries ordered a preliminary writ of penal administrative proceedings against the owner and captain of the *Ocean Lady* for failing to adhere to the 2009 IATTC closure periods. According to Resolution JP-007-11, each was fined 1,000 USD, the vessel was ordered to comply with the closure periods in 2011, and the vessel was not allowed to take a 30-day trip during the closures, which is normally granted to Class 4 vessels per Resolution C-09-01. Ecuador submitted documentation of payment of the fine imposed on the captain of the *Ocean Lady*.

Ecuador has explained that it granted the *Tuna I* authorization to fish in the EPO without being on the IATTC Regional Vessel Register within the context of a protracted capacity dispute involving another vessel, the *Roberto M*. This situation arose when the *Roberto M*, while flagged to Ecuador, was detained in Panama due to outstanding debts and was subsequently sold at auction and reflagged to Panama in 2004. Ecuador claims that the subsequent reflagging of the *Roberto M* (now renamed *Tunapesca*) was done improperly, without the necessary consent of Ecuador. As a result, Ecuador maintains a claim to the capacity associated with this vessel within the context of the IATTC Regional Vessel Register. At the time of the sale and reflagging of the *Tuna I*, there was no common understanding among IATTC members regarding whether, and under what circumstances, fishing capacity reflected in the IATTC Regional Vessel Register would be deemed to have been transferred with the sale of a vessel to another flag. The uncertainty surrounding the facts and circumstances is reflected in the fact that the same vessel is listed twice on the IATTC Regional Vessel Register under different names (*Roberto M* and the *Tunapesca*) with different flags (Ecuador and Panama).

Throughout the dispute, Ecuador has maintained its claim to the *Roberto M* and its capacity. In 2007, the Ecuadorian Undersecretary of Fishery Resources decided to exercise Ecuador's claim to this capacity by requesting that the IATTC Secretariat place two vessels on the IATTC Register in place of the *Roberto M*, thus allowing use of the claimed fishing capacity. This request was denied by the IATTC Director, who explained that removing the vessel from the register would require the consent of both Ecuador and Panama. Ecuador claims that, since the *Tunapesca* continues to fish while the dispute continues, yet Ecuador was denied access to the same capacity by the IATTC, an injustice has occurred. The Director referred the matter to the Commission, but thus far the Commission has been unable to resolve the dispute between the two nations.

Ecuador notes that it has presented this case to the IATTC on an annual basis in hopes of obtaining some sort of resolution. The Commission has discussed this case, but so far has not found a means of resolving the dispute. The IATTC is in the process of setting up an ad hoc dispute resolution panel to consider and resolve cases such as this one, but has been unable to agree on terms of reference for the panel. Ecuador notes that it has pressed to streamline this process within the IATTC and convened a meeting of the Latin American member nations in March 2012 to analyze the terms of reference for the ad hoc group. Ecuador also notes that it attempted to resolve the dispute through diplomacy with Panama, by inquiring whether Panama received authorization of a capacity transfer from Ecuador and whether Panama granted, authorized, assigned, or distributed that capacity.

Ecuador has stated that the *Ingalapagos* completed a short transit consisting of a night voyage from Manta, where it unloaded fish, to its home port of Guayaquil to complete maintenance work. The vessel arrived in Manta on July 31, 2009, unloaded its catch, and sailed to Guayaquil on August 3, 2009, in the evening, arriving there on August 4 at 10:10 pm. The vessel sailed without nets. The sailing permit was granted by Ecuador's maritime authority but was not reported to the fisheries authority. Ministerial Decision No. 099-09, No. 0001-2011 stated that there was no record in the General Fisheries Department that the shipper or owner had requested an observer from the IATTC or the National Program, or that the vessel was going to move without nets, thus violating the provisions of the Ministerial Decision; a fine was imposed. Ecuador submitted documentation that the fine had been paid.

Ecuador investigated the *Lizi* and found that on October 24–25 and 27–28, 2009, the *Lizi* sailed through the closure area, which is not prohibited unless fishing for yellowfin, bigeye, or skipjack tunas occurs. During review of VMS data, Ecuador noted that the vessel did not stop to fish on those days as the speed was determined to be between 12 and 14 knots; monitoring each hour showed there was no break in speed or direction during the period inside and outside of the closure area. Ecuador claimed there was no violation in this case. Based upon review of the small amount of logbook and VMS data provided, NMFS determined that the *Lizi* steamed into the closure area but did not fish, as its speed appeared to be consistent at 12 knots. In addition, the vessel made two sets immediately outside of the closure area, which were reflected in the logbook. Given this information, NMFS concludes that the *Lizi* did not engage in IUU fishing activities.

In the late 1990s, large differences were discovered in the conversion factor used to determine capacity, so the IATTC began using cubic meters for capacity determinations. The *Tarqui*, which allegedly increased its capacity without authorization, had its capacity converted to cubic meters and was found to have a smaller capacity than originally calculated, but the owner claimed he should be able to keep the difference. The 1980 Shipping Certificate of Inspection and Measurement for the *Tarqui* stated the hold capacity was 226.74 cubic meters. On April 18, 2012, the Ecuadoran Navy carried out measurement of the *Tarqui*'s holds and found the vessel to have a 430 cubic meter capacity. On June 15, 2012, the Government of Ecuador issued a statement reiterating the Navy findings and presuming the *Tarqui* has not complied with IATTC Resolution C-02-03. An Administrative Fishing Investigation was thereby ordered to be brought against the vessel owner. In November 2012, the Directorate of Fisheries Control ordered the *Tarqui* to return to Manta to carry out an additional inspection and verify the actual dimensions and hold capacity of the vessel. The Government of Ecuador determined that the *Tarqui* increased both its length and capacity and sanctioned the vessel with a 2920 USD fine, which has been paid.

**Additional Information.** The *Miry Ann D* increased its capacity, contrary to Resolution C-02-03, but this vessel did not form the basis of Ecuador's identification in 2011 since the United States received the information after identifications had been made. The Director General of Fisheries issued a preliminary writ on February 17, 2010, to the owner and captain of the *Miry Ann D* indicating that the vessel added fish holds that increased capacity. The *Miry Ann D* was found to have expanded its fish holds, which the owner should have cleared through the Directorate General of Fisheries prior to modification. A fine of 5,000 USD was imposed on the owner and captain, along with suspension of fishing activities for 45 days. The United States received documentation of payment of the fine. In addition, documentation was sent by the Ecuadorian Naval Force that the *Miry Ann D*, according to its 45-day suspension of fishing activity, did not leave the Port of Manta between March 31, 2010, and May 13, 2010.

**Fisheries Management Measures.** The Government of Ecuador passed three fisheries-related resolutions on October 12, 2011. These resolutions implemented additional Ecuadorian fishing regulations and laws to prevent overfishing and excess capacity, and to promote sustainable use of the resource. Resolution 405 regulates the construction, expansion, or import of new commercial and/or artisanal fishing vessels to maintain control over Ecuador's fishing capacity. It also establishes the National Registry of Fishing Vessels, administered by the Under Secretariat of Fishery Resources, which will include all operational commercial and artisanal

fishing vessels, listing of their registration number, port of registry, and fishing license. As of April 1, 2012, fishing licenses cannot be issued to vessels not on the National Registry of Fishing Vessels. Resolution 407 establishes regulations for longline fishing mother ships, including criteria they must meet to be issued an annual fishing license. Resolution 408 establishes regulations for the use of fish aggregating devices on Ecuadorian-registered purse seine vessels operating in the EPO.

**Certification.** In summary, the Government of Ecuador took corrective action for, or provided information challenging the basis of, each of the IUU fishing activities noted in the 2011 Report to Congress. With regard to the *Ocean Lady* and the *Cap. Tino B*, Ecuador's fishery resources agency assumed responsibility for the late notification to the IATTC and put corrective measures in place to handle and process future IATTC correspondence. For violations of closure periods, the *Ocean Lady's* owner and captain were fined, and the vessel's fishing activities were restricted. Ecuador investigated the case of the *Lizi* and determined that IUU fishing did not take place; NMFS agrees with Ecuador's assessment based upon a close examination of the circumstances and documentary evidence provided.

Given that the denial of the inclusion of the *Tuna I* on the IATTC Regional Vessel Register occurred within the context of a dispute within the IATTC regarding unresolved issues concerning the interpretation of IATTC requirements, and that Ecuador's decision to authorize this vessel to fish was made within the context of that dispute and consistent with claims to the corresponding capacity, NMFS feels that actions regarding this vessel should be excluded from consideration when making Ecuador's certification determination. Rather, this case should be resolved multilaterally, such as within the context of an IATTC ad hoc working group on capacity, to clarify relevant requirements for the transfer of capacity, or alternatively resolved bilaterally between the Governments of Ecuador and Panama. The Government of Ecuador has previously stated that it will abide by the findings and decisions of an IATTC working group on this matter and has demonstrated a commitment toward resolving this issue.

The *Ingalapagos* paid the fine issued to the vessel for making a short trip without an observer. The *Tarqui* was sanctioned and paid the fine for increasing its capacity without authorization.

Ecuador has addressed the IUU fishing activities of other vessels engaged in violations of IATTC rules through investigations and issuance of fines and appropriate penalties upon a finding of non-compliance. On the basis of this information, NMFS has determined that the Government of Ecuador has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the 2011 Report to Congress, and positively certifies Ecuador in this report.

NMFS, however, is identifying Ecuador in this report for IUU fishing activities of Ecuadorian-flagged vessels during 2011 and/or 2012 (see Part III.A.2B).

### 3. Italy

**Bases for 2011 Identification.** Italy was identified under the Moratorium Protection Act in 2009 for several different violations of ICCAT requirements, including driftnet use. The United States determined that Italy took appropriate corrective action for each of the violations for which it was identified in 2009 and issued a positive certification in the 2011 Report to

Congress. Italy was then re-identified in that report for ICCAT driftnet violations by different vessels in the 2009–2010 period. A number of Italian vessels were found to be driftnet fishing in 2009 and 2010 in violation of ICCAT Recommendation 03-04, which requires contracting parties and cooperating non-contracting parties, entities, or fishing entities (CPCs) to prohibit the use of driftnets for fisheries of large pelagic species, including swordfish and bluefin tuna, in the Mediterranean. Although these vessels were sanctioned through seizure of catch and nets and imposition of fines, the United States decided to re-identify Italy in the 2011 Report since driftnet violations continued to be carried out by Italian-flagged vessels, including repeat offenses by the same vessels.

**Notification and Consultation.** Italy was notified through a diplomatic note from DOS, dated January 11, 2011, and a letter from DAS Smith, dated January 10, 2011, regarding its identification as a nation whose vessels engaged in IUU fishing activity. The Maritime Fisheries and Aquaculture Division under the Ministry of Agriculture, Food and Forestry was the primary entity within Italy involved in the consultation. The following lists the key communications between Italy and the United States during the consultation:

- U.S. Embassy Rome officers met with Fisheries Director General Dr. Francesco Saverio Abate and other Italian officials on July 20, 2011, to initiate consultations under the Moratorium Protection Act. During that meeting, and in subsequent follow-ups, information regarding Italian fisheries-related laws was conveyed.
- A U.S. delegation met with the EC IUU Unit of the Directorate-General for Maritime Affairs and Fisheries on February 14, 2012, in Brussels. The discussion focused on the discussions the EC has had with Italy regarding implementation of the 2009 Court of Justice ruling regarding the continued use of illegal driftnets by Italian vessels.
- U.S. Government officials met with Dr. Abate and other Italian officials in Rome on March 21, 2012, to discuss updates to Italian fisheries laws and Italy’s efforts to combat IUU fishing.
- The Government of Italy sent information regarding vessel sanctions and new decrees and resolutions to NMFS on March 5, 12, and 30, 2012, and May 28, 2012.
- The U.S. Government sent a preliminary certification letter to Italy on October 2, 2012, stating that it had not received sufficient documentation to determine that appropriate corrective action had been taken to address the activities of Italy’s vessels and requested further information from Italy.
- The Government of Italy responded on November 8, 2012, with additional information on enforcement implementation and sanctions of vessels for IUU fishing activities and on the 2012 reports of EC inspections in Italian ports.

**Fisheries Management Measures.** During 2011 and 2012, the Government of Italy passed a number of new decrees designed to address IUU fishing.

The July 1, 2011 Decree states that fishermen with licenses for both longline and *ferrettara* (small-mesh driftnets) may have only one type of gear on board. The chosen gear type must be reported to the Maritime Authority, which then issues a certificate that fishermen can show enforcement authorities. The decree was designed to prevent violators caught with pelagic species on board from claiming they were caught with longline when they were actually caught with driftnets. Fishermen contested the decree before the Regional Court of Lazio, which suspended it on September 7, 2011. The decree was reexamined in an appeals court in January 2012, with a final ruling in March 2012 in favor of the Government. According to Italian officials, this closes a legal loophole and makes enforcement easier for the Coast Guard, since it can be carried out in port. The Coast Guard was instructed to enforce the decree immediately. A review by the Italian Government of the logbooks of 55 fishing vessels fitted with both longline and *ferrettara* gear covering the period of January 1 through September 30, 2012, shows that no driftnets were used.

The September 21, 2011 Decree limits *ferrettara* use within 3 miles of the coast and stipulates that nets cannot be longer than 2.5 kilometers and mesh size cannot exceed 100 millimeters. The Italian Government has stated that driftnets exceeding the length or mesh limits are seized and destroyed by authorities at the violator's expense; in addition, fish found to be illegally caught are seized by authorities and distributed to charity. This decree was also contested before the Regional Court, reexamined in April 2012, and eventually upheld. The Italian Coast Guard did not find any infractions related to driftnets in October through December of 2011; a review of a sample of logbooks (from 30 vessels) from January 1 through September 30, 2012, shows that no driftnets were used with the exception of two vessels that were not shown to be fishing for pelagic species.

Legislative Decree No. 4/2012, issued on January 9, 2012, entered into force on February 2, 2012. This decree implements EC provisions on combating IUU fishing activities. With regard to serious infractions, the decree reformed sanctions by doubling minimum sanction amounts to 2,000€ and maximum amounts to 12,000€ relating to administrative violations (including the use or possession of illegal driftnets); authorizing immediate and permanent seizure of fishing equipment (including driftnets) that does not comply with Italian and EC regulations; authorizing immediate suspension of fishing licenses for 3 to 6 months in cases of use or possession of driftnets that do not comply with Italian and EC regulations; authorizing permanent revocation of fishing licenses in cases of a second offense for the use or possession of driftnets that do not comply with Italian and EC regulations; and introducing a system for assigning points to the fishing license and captain in cases of serious infractions (including those related to use or possession of driftnets).

On February 29, 2012, two Ministerial Decrees were signed that established administrative procedures to apply the point system for serious violations and to impose permanent suspension and/or revocation of the fishing license and captain's qualification. The decrees were published in the Official Gazette of the Italian Republic (No. 103) on May 4, 2012.

**Vessel-Specific Actions.** Italian officials have indicated that its Coast Guard addressed IUU fishing in 2010 and 2011 by applying the rules in force prior to adoption of the new decrees. As an example, two fishermen were sanctioned for fishing with *ferrettara* more than 10 miles from the coast in 2010. Each appealed, but since they were caught in the act, they were ordered to pay an administrative fine of 2,000€ each, their authorizations for *ferrettara* were withdrawn for 3

months, and the driftnets were confiscated. Two other fishermen were sanctioned for keeping driftnets on board in excess of the maximum allowable length. The individuals willfully and knowingly possessed the additional nets for commercial fishing purposes and were both repeat offenders who had been fined within the past 5 years for the same violation. The individuals were fined 4,000€, the nets were confiscated, and their fishing licenses were suspended for 15 days.

**Additional Information.** Three inspections by EC personnel were conducted in 2012 (two unannounced in May and July 2012, one announced in September 2012) in Sicily, Ponza, and Palermo. No driftnets were found during the inspections.

Through the National Fishing Control Center, Italy has stated that it will work to strengthen the police forces working on fisheries issues (Coast Guard, Customs, state police) by centralizing the functions of these groups related to fisheries enforcement.

In early 2013, the new state-of-the-art supply vessel, the *Bruno Gregoretti*, is expected to launch to assist with fisheries monitoring activities. In 2013, Italy is planning to revise national and local monitoring plans using a risk-based strategy, which will take into account intelligence information, findings and recommendations from EC officials, and any regulatory updates.

**Certification.** In summary, the Government of Italy adopted new decrees to increase its ability to combat IUU fishing, specifically with regard to illegal driftnets. Fishermen are no longer able to carry *ferrettara* and longline gear on board at the same time, and new dimensions have been established for *ferrettara* gear, including limiting how far from the coast it can be used. Sanctions were placed on vessels using illegal driftnets. In addition, Decree No. 4/2012 implements the EC provisions on combating IUU fishing activities. NMFS believes implementation of these measures constitutes corrective action for the illegal use of driftnets.

On the basis of this information, NMFS has determined that the Government of Italy has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the 2011 Report to Congress, and positively certifies Italy in this report.

The United States, however, remains concerned over the use of driftnets by Italian-flagged vessels and has received information regarding IUU fishing activities conducted by the Italian fleet during 2011 and 2012 (see Part III.2.A).

#### 4. Panama

**Bases for 2011 Identification.** NMFS identified Panama in 2011 because several of its vessels violated the IATTC purse seine closure periods in 2009, in violation of IATTC Resolution C-09-01, and one vessel fished without being on the IATTC Regional Vessel Register. The *Julie L* made at least one set in the high seas closure area in 2009. The *La Parrula* made at least 30 sets in two trips during the IATTC 2009 purse seine closure. The *Sirenza I* was not in port at the beginning of the 2009 purse seine closure. The *Tunamar* made one trip in May 2009 without being on the IATTC Regional Vessel Register, in violation of Resolutions C-00-06 and C-02-03.

**Notification and Consultation.** Panama was notified through a diplomatic note from DOS, dated January 11, 2011, and a letter from DAS Smith, dated January 10, 2011, regarding its



identification as a nation whose vessels engaged in IUU fishing activity. The Aquatic Resources Authority of Panama (ARAP) was the primary entity within the Government of Panama involved in the consultation. The following lists the key communications between Panama and the United States during the consultation:

- On February 9 and 17, 2011, Giovanni Lauri, General Administrator of ARAP, sent letters to DAS Smith outlining the legal actions that had been taken with regard to the *La Parrula*, *Julie L*, and *Tunama*, and refuting the fishing allegations against the *Claudia L (ex Sirenza I)*.
- U.S. officials met with Panamanian officials from ARAP and the Merchant Marine and an industry representative on the margins of the 11th Meeting of the IATTC Working Group on Fleet Capacity on April 26, 2011, to further discuss Panama's identification. Following this meeting, Panama sent a number of follow-up documents.
- Dr. Lent met with Mr. Lauri on the margins of the 12th Meeting of the IATTC Permanent Working Group on Fleet Capacity on October 24, 2011. The discussion focused on updates from Panama regarding its identified vessels. Panama sent documentation and updates through the U.S. Embassy in Panama following this meeting.
- On February 29, 2012, Mr. Lauri sent a letter to NMFS, giving updates and further details on the cases involving the *La Parrula*, *Julie L*, *Tunamar*, and *Templario I*.
- On June 27, 2012, the U.S. delegation met with Mr. Lauri and Raúl Delgado, Deputy Director General of Inspection, Monitoring and Control, on the margins of the 83rd Meeting of the IATTC to discuss updates to the cases of the vessels for which Panama was identified.
- On December 10, 2012, Panama sent a letter to NMFS with updates on the *Julie L*, *Tunamar*, and *La Parrula*.

**Vessel-Specific Actions.** ARAP convened administrative proceedings against the *Julie L* in both 2010 and 2011. The final resolution declared that the *Julie L* had committed a violation of Panama's Administrative Resolution No. 1791. The General Director of Inspection, Supervision and Control sanctioned the *Julie L* with a fine equivalent to 1.125 million USD and ordered the suspension of any processing related to the vessel (e.g., so the vessel cannot change owners) until the fine is paid. The owners of the vessel filed an appeal, resulting in a final penalty of 500,000 USD, payable in installments. The *Julie L* made an initial payment on September 12, 2011, of 40,000 USD and monthly payments of 20,000 USD through September 2012. NMFS is following this case and has requested evidence from ARAP of payment of the last installment once it is made.

Resolution No. 80 of July 29, 2010, fined the *La Parrula*, and the Merchant Marine canceled the vessel's registration on September 6, 2010, through Resolution No. 2604. Representatives for the vessel filed an appeal before the Panamanian Supreme Court of Justice in October 2010. Following the Supreme Court's ruling, the vessel owner was ordered to pay a fine of 704,930 USD. Collection of the fine has been referred to the appropriate department; however, the *La*

*Parrula* left Panama's registry, evading its obligations. Because of the actions of the vessel, Panama noted that it would also seek to have this vessel added to IUU vessel lists of RFMOs to which Panama is a contracting party to prevent this vessel from engaging in any future IUU fishing activities. NMFS views the steps taken as appropriate corrective action to address the IUU fishing activities of this vessel. The vessel re-flagged to Ecuador on January 19, 2012, according to the IATTC Regional Vessel Register.

ARAP opened an administrative process on the *Claudia L* (formerly the *Sirenza I*) to determine whether it engaged in IUU fishing. Upon investigation, ARAP determined that the vessel observed the closure period from August 1 to September 28, 2009, by ceasing fishing activities and anchoring in port. In concluding its investigation, the Government of Panama refuted the allegations against the *Claudia L*.

The *Tunamar* made one trip in May 2009 before being added to the IATTC Regional Vessel Register on July 2, 2009. The Directorate General of the Merchant Marine placed restrictions on the *Tunamar* so that ownership could not be transferred or cancelled during the administrative proceedings. Final Resolution DGIVC No. 0013 of April 20, 2011, imposed a fine equivalent to 1.335 million USD. After an appeal, the final punitive resolution (No. ADM/ARAP 083), issued on August 11, 2011, sanctioned the vessel for 500,000 USD, payable in installments. The *Tunamar* made an initial payment on September 13, 2011, of 40,000 USD and monthly payments of 20,000 USD through October 2012. NMFS is following this case and has requested evidence from ARAP of payment of the last installment.

**Additional Information.** The *Templario I* made two sets in one fishing trip during the second purse seine closure of 2010 in the EPO. NMFS was not able to include the activities of the *Templario I* as part of the rationale for Panama's identification in January 2011, because NMFS received the information after making those identifications. NMFS later learned, according to the Government of Panama's report of the official administrative proceedings, that there was confusion as to how the ship owners interpreted the closure period: they thought it did not include January 18, 2011, since the closure was from November 18, 2010 *until* January 18, 2011. The IATTC observer on board reportedly indicated in the file that the vessel and crew complied with IATTC rules. ARAP found no elements that warranted a penalty and therefore exonerated the vessel of the charges brought against it, warning it to carry out the closure period correctly in the future.

**Fisheries Management Measures.** Panamanian Resolution No. 110, of October 27, 2011, temporarily denies authority to approve new applications for International Fishing Licenses for international service vessels until investigations of vessels that have allegedly been involved in IUU fishing are complete. The measure applies to vessels that operate outside of Panama's EEZ.

**Certification.** The Government of Panama took corrective action for, or provided information challenging the basis of, each instance of IUU fishing noted in the 2011 Report to Congress that led to Panama's identification. To address the activities of the *Julie L* and *Tunamar*, Panama sanctioned each vessel with fines of 500,000 USD. Evidence of payment of the fines (up to October 2012) has been provided. The Government of Panama fined the *La Parrula* and is trying to collect the fine. The vessel, however, has left Panama's registry. Panama is recommending the vessel be added to the IUU vessel lists of RFMOs to which Panama is a party. The Government of Panama investigated the *Claudia L* and determined that it did not commit

IUU fishing because it had ceased fishing activities and anchored in port during the period in question.

On the basis of this information, NMFS sent the Government of Panama notice of a preliminary positive certification determination on October 2, 2012. NMFS has determined that the Government of Panama has taken appropriate corrective action to address the IUU fishing activities for which Panama was identified in the 2011 Report to Congress, and positively certifies Panama in this report.

NMFS, however, is identifying Panama in this report for IUU fishing activities conducted by Panamanian-flagged vessels during 2011 and/or 2012 (see Part III.A.2).

## 5. Portugal

**Bases for 2011 Identification.** NMFS identified Portugal in 2011 because two of its vessels had fished in a manner that violated NAFO conservation and enforcement measures during 2010. The *Franca Morte*, inspected at sea and in port, used smaller than the required mesh size on two of the four panels of the fishing trawl. The *Aveirense* was found in the NAFO Regulatory Area on March 10, 2010, and in port on July 12, 2010, in apparent infringement of NAFO measures because of an obstruction in the mesh in the cod end of the net.

**Notification and Consultation.** Portugal was notified through a diplomatic note from DOS, dated January 11, 2011, and a letter from DAS Smith, dated January 10, 2011, regarding its identification as a nation having vessels engaged in IUU fishing activity. The Ministry of Agriculture was the primary entity within the Government of Portugal involved in the consultation. The following lists the key communications between Portugal and the United States during the consultation:

- The Government of Portugal provided information, dated January 20, 2011, responding to its identification.
- U.S. and Portuguese government officials, along with a representative from the Directorate-General for Maritime Affairs and Fisheries, met via video conference to discuss the illegal activities of the Portuguese vessels identified in the 2011 report on February 10, 2011.
- Documentation from Portugal was sent on March 29 and August 17, 2011, and on March 9, 2012, regarding vessel updates, sanctions, and payment of fines.

**Vessel-Specific Actions.** To address the violation of the *Franca Morte*, Portugal instituted the following corrective actions: the illegal trawl net was confiscated and declared forfeited; the captain paid a fine of 600€ standard for a first offense; and the shipping company paid a fine of 1,250€. The value of the confiscated net was approximately 25,000€

According to the Government of Portugal, the owner and captain of the *Aveirense* were fined for an obstruction of the mesh in the cod end of the vessel's net. The owner paid a fine of 1,350€

while the captain paid a penalty of 1,000€ In addition, the owner forfeited the equipment used to commit the violation.

**Certification.** In summary, the Government of Portugal took corrective action against the two vessels found to be using illegal fishing gear in 2010 in the NAFO Conservation Area, which included seizure of the illegal gear and fines placed on both the vessel owners and captains. On the basis of this information, NMFS sent the Government of Portugal notice of a preliminarily positive certification determination on May 24, 2012. NMFS has determined that the Government of Portugal has taken appropriate corrective action to address the IUU fishing activities for which Portugal was identified in the 2011 Report to Congress, and positively certifies Portugal in this report.

## 6. Venezuela

**Bases for 2011 Identification.** NMFS identified Venezuela in 2011 based on two of its vessels that fished in violation of IATTC conservation and management measures during 2009. According to the IATTC's Compliance Report, Venezuelan vessels did not adhere to the IATTC purse seine closure periods. The *Don Francesco* made 19 sets during the 2009 purse seine closure, which violated IATTC Resolution C-09-01. The *Athena F* made a transit trip without an observer during the closure period in 2009 in violation of C-09-01.

**Notification and Consultation.** Venezuela was notified through a diplomatic note from DOS, dated January 11, 2011, and a letter from DAS Smith, dated January 10, 2011, regarding its identification as a nation whose vessels engaged in IUU fishing activity. The Ministry of the Popular Power for Agriculture and Lands, Socialist Institute of Fisheries and Aquaculture (INSOPESCA) was the primary entity within Venezuela involved in the consultation. The following lists the key communications between Venezuela and the United States during the consultation:

- On January 3, 2011, INSOPESCA sent a letter to Dr. Lent in response to the pre-identification letter the United States sent on October 29, 2010.
- INSOPESCA provided further written information, dated June 10, 2011, responding to Venezuela's identification in January 2011.
- On December 28, 2011, INSOPESCA provided a response to questions posed from the United States in its October 2011 letter.
- The U.S. Government sent a letter dated February 23, 2012, to Venezuela requesting additional information to make a certification determination and reminding Venezuela that those determinations would be published in the 2013 Report to Congress.
- On July 27, 2012, INSOPESCA sent a letter to NMFS responding to the questions in the letter dated February 23 from the United States, and providing further information on corrective actions Venezuela had taken with regard to the two vessels.

**Vessel-Specific Actions.** Venezuela investigated the case of the *Don Francesco* and determined that the vessel fished during the 2009 closure period; the owner of the vessel admitted that its captain fished in violation of the IATTC measure. Venezuela imposed a fine, issued a formal notice to the owner that a recurrence of this type of activity would result in the indefinite suspension of the fishing permit, and required the vessel captain and fishing captain to take a training course to avoid their exclusion from the list of qualified captains.

The fine for the *Don Francesco* was proposed as approximately 7,500 USD. The sanction would also entail a 6-month suspension of authorizations, including the fishing permit and authorization for the vessel to set sail. The suspension of authorizations would go into effect as of the date the fine is paid. The owner of the *Don Francesco* received a notice from INSOPESCA, dated May 18, 2011, to appear for a hearing. The ship owner filed an appeal with the Ministry of Agriculture and Land, which was turned down; the owner's representative then submitted an administrative appeal to the Supreme Court of Venezuela, where the case awaits ruling. The United States has requested that the Government of Venezuela keep it apprised of the ruling of the Supreme Court.

The *Athena F* transited, but did not fish, according to the investigation by Venezuela, as the vessel had no cargo upon arrival in port and traveled without a fishing captain on board. Venezuela classified the incident as an administrative mistake and sent a warning letter to the vessel owners urging them to be more careful in performing their activities. Venezuela also warned the owners that, if this type of activity occurs again, INSOPESCA will apply sanctions such as a fine, suspension of fishing, revocation of fishing, or seizure or disposal and destruction of fishery resources associated with the illegal act and the gear used.

**Certification.** The Government of Venezuela took corrective action for the two vessels identified for IUU fishing in the 2011 Report to Congress. In the case of the *Don Francesco*, Venezuela proposed the following sanctions: a fine, suspension of fishing, and the requirement that the captains attend a training course. The owner of the vessel has since appealed and the case currently resides in the Supreme Court of Venezuela. The Government of Venezuela investigated the allegations surrounding the *Athena F* and classified the incident as an administrative mistake. Venezuela issued a warning letter to the vessel owners urging them to be more careful in performing their activities. Venezuela also warned the owners that if transiting without an observer occurs again, INSOPESCA will apply sanctions.

On the basis of this information, NMFS sent the Government of Venezuela notice of a preliminarily positive certification determination on October 2, 2012. NMFS has determined that the Government of Venezuela has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the 2011 Report to Congress, and positively certifies Venezuela in this report.

NMFS, however, is identifying Venezuela in this report for IUU fishing activities conducted by the Venezuelan fleet during 2011 and/or 2012 (see Part III.A.2).

#### **IV. State of Knowledge on the Status of International Living Marine Resources**

Section 607 of the Moratorium Protection Act requires an accounting of the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all fish stocks that are classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with their management or conservation.<sup>33</sup> NMFS has updated the list that was cited in the 2011 Report to Congress, including a re-organization by species group and links to the latest (as of mid-summer 2012) status reviews of species. For each species, the table now shows the status of each stock, the organization(s) that made the assessment, and applicable treaties. The revised list is available online at [http://www.nmfs.noaa.gov/ia/iuu/msra\\_page/msra.html](http://www.nmfs.noaa.gov/ia/iuu/msra_page/msra.html).

The list includes resources over which an international treaty or agreement, to which the United States is a party, has explicit conservation or management authority; has in place measures designed to control fishing mortality; or has directed the collection of fisheries data, including bycatch, to inform assessments of status. It also includes other resources shared by the United States, including U.S. territories, on which a directed fishery exists or which are taken as bycatch that are significant either in absolute numbers or because of the sensitivity of the international living marine resources, such as seabirds, sea turtles, marine mammals, or sharks, but which are not subject to an international treaty or agreement to which the United States is a party. The list no longer contains some fish species for which no directed fishery or bycatch issue exists.

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<sup>33</sup> The term “international living marine resources,” as described in this sentence, is much more inclusive than the term “protected living marine resources.” The latter includes only non-target species protected under U.S. law or international agreement that, except for sharks, are not managed under the MSA, the Atlantic Tunas Convention Act, or any international fishery management agreement.

## V. International Actions to Address IUU Fishing

Global international organizations have acted in recent years to create many tools to combat IUU fishing and promote sustainable fisheries. This Part updates the descriptions of these activities in the 2011 Report to Congress.

**Food and Agriculture Organization.** Established in 1945, the FAO has a mandate to raise levels of nutrition and standards of living, improve agricultural productivity, and better the condition of rural populations. Today, the FAO is the largest autonomous agency within the UN system with 192 member nations plus the EU and one associate member (Faroe Islands). The FAO employs 1,600 professional staff and 2,000 general services staff.

The FAO's Committee on Fisheries (COFI), established in 1965, constitutes the only global intergovernmental forum other than UNGA where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fisheries bodies, NGOs, fish workers, and the international community on a worldwide basis. COFI is also a forum in which global agreements, binding and non-binding, are negotiated.

In 1995, the FAO concluded development of a Code of Conduct for Responsible Fisheries, a landmark set of guidelines arranged in six substantive chapters providing guidance on all phases of sustainable fisheries from scientific research to management to fishing operations to post-harvest practices and trade, including fresh water fisheries and aquaculture. Upon its completion, NMFS hailed the Code as a new "global ethic for the conduct of fisheries," and immediately embarked on the development of its implementation plan for the Code. NMFS revised and updated that implementation plan in January 2012; it is available online at [http://www.nmfs.noaa.gov/ia/reports/nmfs\\_imp\\_plan.pdf](http://www.nmfs.noaa.gov/ia/reports/nmfs_imp_plan.pdf). The Code continues to organize the work and budget of the FAO's Department of Fisheries and Aquaculture.

In recognition of the rapid extent to which IUU fishing was undermining attainment of national, regional, and global fisheries management goals, in 2001 COFI endorsed the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). The IPOA-IUU is a voluntary instrument that FAO members are to implement through national plans of action. The United States finalized its national plan of action in 2004. Under the IPOA-IUU, each State is to self-assess its laws, policies, and practices. The IPOA-IUU also provides specific sets of tools for flag States, coastal States, port States, market States, and RFMOs to deal with IUU fishing. The IPOA-IUU is described more fully in the 2009 Report.

With active involvement of the United States, the FAO has promoted actions to address IUU fishing activities by conducting studies, disseminating information, offering capacity building and institutional strengthening, and providing a global forum for States to formulate appropriate instruments. Since the 2011 Report to Congress, the FAO Secretariat presented to the 30<sup>th</sup> Session of COFI a paper on progress in combating IUU fishing through a number of initiatives discussed in this Part: adoption of the FAO Agreement on Port State Measures; training workshops to assist developing nations in implementing that Agreement; compiling a global record of fishing vessels; and developing criteria for evaluating flag State performance.

**Other UN activities.** IUU fishing activities have also been addressed by a number of other international bodies, including UNGA in its annual Sustainable Fisheries Resolutions, the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea, meetings of the parties to the United Nations Fish Stocks Agreement (UNFSA), and others. In fact, the annual UNGA resolution has an entire chapter devoted to IUU fishing. Among other things, it calls attention to IUU fishing as one of the greatest threats to marine ecosystems, urges States to take effective measures to deter IUU fishing, and reaffirms the need to strengthen the international legal framework for intergovernmental cooperation to combat IUU fishing.

At the UN Conference on Sustainable Development (Rio + 20), the United States advocated for inclusion of significant text on ocean, coastal, and fisheries issues, one of the sections that received the most attention. Paragraph 168 contains a commitment to enhance actions to protect VMEs from significant adverse impacts, including through the effective use of impact assessments. Paragraph 170 recommits nations to eliminate IUU fishing, as advanced in the Johannesburg Plan of Implementation. It calls for implementation of national plans under the IPOA-IUU, urges adoption of measures to deprive States and vessel owners of the benefits of IUU fishing, and promotes capacity building in developing nations for systems to combat IUU fishing. NOAA sponsored a side event at the U.S. Center, where panelists and audience members debated how these commitments might actually be carried out by the international community.

**Asia-Pacific Economic Cooperation (APEC).** APEC's Oceans and Fisheries Working Group (OFWG) has been addressing the negative impacts of IUU fishing in the APEC region for more than a decade, including a project co-sponsored by Canada and the United States to identify economic impacts. More recently, through the efforts of the United States and others in the OFWG, the APEC Food Security Ministerial Meeting in Kazan, Russia, issued a declaration re-emphasizing the importance of food security to APEC membership and, among other key actions, agreed to focus on combating IUU fishing and associated trade. At a meeting in Vladivostok in September 2012, APEC Leaders reaffirmed those commitments. The OFWG is responsible for carrying out the fisheries provisions. The United States is working with OFWG partners, including the Russian Federation, Indonesia, and Taiwan, to develop capacity building and other activities relative to IUU fishing.

**European Union–United States Joint Statement.** As two of the three top seafood importers in the world, the EU and the United States recognized their responsibility to protect the oceans' vital food and biodiversity resources in a historic statement pledging bilateral cooperation to combat IUU fishing. On September 7, 2011, NOAA Administrator Dr. Jane Lubchenco and Maria Damanaki, EU Commissioner for Maritime Affairs and Fisheries, signed a statement undertaking to work together to support adoption of effective management measures in regional and international organizations, promote tools that prevent IUU operators from benefiting economically from their illegal activities, exchange information on IUU activities, and promote the sustainable use of fisheries resources while preserving marine biodiversity. In 2012, U.S. and EU officials met on two separate occasions to continue planning their joint efforts against IUU fishing by identifying specific activities, dates, and points of contact, and through extensive discussion of regional and global fisheries issues. They created a staff-level working group to coordinate their respective efforts to combat IUU fishing.



The sections in this Part focus on particular approaches (such as port and flag State control measures) and specific tools (such as monitoring, vessel lists, and a global record of fishing vessels) that are being developed and implemented to deter IUU fishing activities.

## **A. Port State Measures**

The reason IUU fishing continues despite decades of effort to curb the problem is the economic incentive that makes such activities cost-effective and financially viable for many fishermen and, indeed, investors. Removing or disrupting the economic drivers of IUU fishing promotes eradication of this global activity.

### **1. 2009 Agreement**

One of the greatest achievements in the battle against IUU fishing in the past several years is completion of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted by the FAO Conference in 2009. The objective of the Agreement is to combat IUU fishing through the establishment of minimum standards for port State controls, including through eliminating “ports of convenience” that have served as safe havens for IUU vessels and as portals for illegally harvested fish and fish products to enter the stream of commerce. By recognizing the key role that ports play in the movement of IUU fish around the world, and the necessity for international cooperation and information sharing, the Agreement ensures that States will commit to taking measures to strengthen their ports to combat IUU fishing. By eliminating, or at least reducing, the ability of IUU product to find a market, the Agreement will also strengthen the competitive position of legally harvested U.S. product, both within our domestic market and abroad. The minimum standards established for parties to the Agreement are described in the 2011 Report.

The United States signed the treaty on the day of its adoption; there are 23 signatories. The Agreement will enter into force 30 days after deposit of the 25<sup>th</sup> instrument of ratification, acceptance, approval, or accession. Thus far four instruments have been deposited, by Burma, the EU, Norway, and Sri Lanka. To build capacity among developing nations to implement the treaty, Australia, Canada, Norway, the Republic of Korea, the United States, and the IOTC have financed a 3-year program of workshops, the first of which was convened in Thailand in April 2012 for nations in Southeast Asia.

The Obama Administration sent a ratification package to the Senate in November 2011 and implementing legislation to both Houses of Congress the following month. In July 2012 the Senate Commerce Committee reported favorably on S. 1980, and the House Committee on Natural Resources reported favorably on H.R. 4100, but the 112<sup>th</sup> Congress did not act on the legislation. Ratification and implementation of the treaty will strengthen U.S. efforts to make the Agreement an effective tool in the global effort to combat IUU fishing.

### **2. RFMO Actions**

While many RFMOs have adopted port State measures, frequently in conjunction with the measures that establish their IUU vessel lists, the Agreement, as a global, legally binding instrument, has the potential to fill in many of the existing gaps that enable IUU fishermen to

profit from their activities. Many of the RFMOs are considering proposals to adopt or amend existing port State measures to be consistent with the minimum standards set forth in the Agreement. The new SPRFMO Convention includes a provision on the responsibilities of port States.

At its November 2012 meeting, ICCAT adopted a U.S. proposal, co-sponsored by Canada, the EU, and Norway, that establishes minimum standards for inspections in port, replacing a scheme adopted in 1997. The new recommendation obliges port States to designate and publicize their ports where foreign fishing vessels may land or transship fish; calls for advance notice from such vessels seeking to enter those ports; provides that the port State must decide whether to grant entry to such vessels in light of the information received; and requires inspection of at least 5 percent of landing or transshipment operations by foreign vessels once in port. This represents a significant step in using port State measures to combat IUU fishing and brings ICCAT's rules into greater harmony with requirements of the Agreement.

Pending in ICCAT is a draft proposal that goes even further toward carrying out the Agreement. It is tailored with respect to ICCAT's structure, scope, and definitions so that it would fall clearly within ICCAT's mandate and take into account operational issues. ICCAT has been unable to finalize this more comprehensive arrangement, due to internal implementation concerns on the part of some ICCAT members. The strengthened port inspection standards agreed in 2012 are viewed as an important interim step while these concerns are addressed.

In 2012, CCAMLR adopted revisions to its port inspection scheme to include vessels carrying Antarctic species other than toothfish and to increase consistency with the measures and standards of the Agreement. The United States and the EU had first proposed revisions to the scheme in 2010, and worked with other CCAMLR members to devise acceptable revisions.

CCAMLR became the first RFMO to require that its members license a vessel to fish in the Convention's most important fishery (for toothfish) only if the vessel has a number issued by the International Maritime Organization. As the only global, unique vessel identifier, this number, along with associated information, is crucial in tracking vessel movements from fishing ground to port.

The United States supports adoption by the WCPFC of a port State measures scheme, but recognizes there are many complex issues in tailoring the scheme to the unique circumstances of the western and central Pacific nations and territories, as well as the fleets and ports in the region. After offering proposals in 2011 and 2012 to establish comprehensive port State measures, the EU introduced a scaled-down proposal for a port State inspection scheme; it failed to win agreement at the 2012 meeting.

## **B. Market- and Trade-Related Measures**

Trade and market measures reduce opportunities for IUU fishing activities in a number of ways: by precluding or impeding access to markets for IUU products in a manner consistent with international law; by tracking movements of fish products to identify those involved in harvesting, transshipping, and marketing of IUU catch; by monitoring changes in the pattern of trade to identify flag, port, and market States that can contribute to effective implementation of

CMMS; and by improving information on fishing mortality. Successful market measures are often based on information gathered from trade-tracking programs or catch documentation schemes (CDSs) – systems that can verify the origin, weight, and species composition of catch and indicate whether the catch was taken in accordance with the conservation and management regime in force. The United States is enhancing its ability to carry out global and regional fisheries trade-tracking programs through the International Trade Data System, an electronic “single window” for reporting all imports and exports. NMFS is working with U.S. Customs and Border Protection and other Federal agencies to build this system. See page 26 of the U.S. Treasury's December 2011 Report to Congress.

## 1. Global Forums

The United States routinely raises the issue of preventing trade or import of IUU-caught fish and living marine resources, whose sustainability is threatened by international trade, in both bilateral consultations and multilateral meetings and negotiations, as discussed throughout this report. In addition, the United States has pushed in the World Trade Organization (WTO) and other trade-related bodies for reduction of subsidies that contribute to overcapacity and illegal fishing activities.

**Convention on International Trade in Endangered Species.** CITES is an international agreement among 176 member nations, with the purpose of ensuring that international trade in wild animals and plants does not threaten their survival. Species covered by CITES are listed in different appendices according to the level of protection needed. Appendix I includes species threatened with extinction; it is the highest form of protection under CITES and essentially prohibits international commercial trade in listed species, including their parts and products. Species listed in Appendix II are not necessarily threatened with extinction, but they may become so if international trade is not regulated. International trade in Appendix II species is permitted if the exporting nation is able to make findings that the specimen was legally acquired and that the export will not be detrimental to the survival of the species. Appendix III includes species protected by a CITES party that has requested assistance from other CITES parties to control and monitor international trade of the species. Any CITES party may add a native species to Appendix III unilaterally, provided that party has domestic laws to protect the species. The U.S. Fish and Wildlife Service is the lead agency with responsibility for implementing CITES in the United States, under the authority of the ESA. Based on its expertise, NOAA provides guidance on marine issues.

The 16th meeting of the Conference of the Parties to CITES (CoP16) will take place in March 2013, in Bangkok, Thailand. There, CITES parties will consider several proposals to list shark species, as described at length in Part VIII of this report. Also before CoP16 are proposals to list manta rays in Appendix II (by Brazil, Colombia, and Ecuador), and to uplist freshwater sawfish from Appendix II to Appendix I (by Australia). One of the priorities for the United States is adoption of a resolution regarding the provisions for trade in specimens taken “in the marine environment not under the jurisdiction of any State” that are listed in Appendix I or II of the Convention. Within CITES, trade in these specimens is referred to as “introduction from the sea.”

**World Trade Organization (WTO).** The United States wants to strengthen disciplines on subsidies that contribute directly to overcapacity and indirectly to IUU fishing. Unfortunately, very little activity occurred during the past 2 years in the WTO Doha Round of negotiations; the most recent plenary session of the Rules Negotiating Group, the forum for negotiating rules on the provision of fisheries subsidies, occurred in April 2011. Despite calls by WTO members including the United States to keep the trade talks alive, the future of the Doha Round is uncertain.

**FAO.** In 2005, the FAO adopted ecolabeling guidelines covering wild-caught fish and generally providing that fish and fish products should be harvested in a sustainable manner (see 2011 Report). COFI's Sub-Committee on Aquaculture recently adopted the first global guidelines for aquaculture certification. The guidelines, which are non-binding, set minimum standards for animal health, food safety, the environment, and socioeconomic issues relating to aquaculture workers. COFI endorsed the Aquaculture Certification Guidelines, as well as Guidelines for the Ecolabelling of Fish and Fish Products from Inland Fisheries, in January 2011.

Taken together, these three sets of guidelines establish minimum standards for the labeling of all fish available in the marketplace, whether wild-caught or farmed, whether marine or freshwater product. Assuming that IUU product is not likely to have been sustainably harvested, the ecolabeling guidelines have the effect of denying markets to such product. If the guidelines are followed in full, certification will enable consumers in retail markets to know whether the shrimp or fish they are considering buying was raised without damaging the environment, whether the fish farm worker was paid a fair wage, and whether the shrimp or fish is free of contamination. The guidelines will benefit consumers as well as individuals working in connection with domestic and international seafood markets.

## 2. RFMO Actions

ICCAT undertakes an annual review of fishery-related activities in its Convention Area for members and non-members, which can result in the identification of nations for diminishing the effectiveness of CMMs under the ICCAT recommendation concerning trade measures. In 2011, ICCAT identified nine members for lack of reporting and agreed to send to 27 members "letters of concern" noting specific issues that needed correction. In 2012, ICCAT identified or maintained identification of seven members and one cooperating party for lack of reporting and other infractions. ICCAT will also send letters of concern to 26 members and one cooperating party calling their attention to lesser infractions.

ICCAT has adopted a number of measures in recent years to support its annual compliance review. At the 2011 meeting, ICCAT adopted a measure, to be implemented in 2013, requiring CPCs to submit information on how they are meeting data reporting requirements. In cases where yearly catch and effort data are not reported completely, CPCs will be prohibited starting the following year from retaining the species in question until the data are sent to ICCAT.

The United States strongly supported moving toward electronic implementation of ICCAT catch and trade documentation programs. In 2012, ICCAT agreed to begin the transition from a paper-based bluefin tuna CDS to an electronic program in May 2013. The agreement allows for paper documents to be accepted until the end of February 2014. The program is expected to enable

verification of the legitimacy of products in near real-time; reduce the burden associated with a paper-based system on the seafood industry, governments, and the ICCAT Secretariat; and make it more difficult to falsify catch documents. In addition, at the 2012 meeting, ICCAT agreed to consider a series of steps for potential development of new catch certification schemes. An intersessional meeting to begin this work will be held in 2013.

The WCPFC has been discussing a CDS for several years, but with little progress. At its 2012 meeting, the Commission finally adopted terms of reference for a working group, which is expected to meet in 2013.

CCAMLR has had a CDS for trade in toothfish since 1999. A nation involved in the harvest or trade of toothfish can obtain status as a non-contracting Party cooperating with CCAMLR by participating in the CDS, thus allowing CCAMLR members to import toothfish from that nation. In 2011, CCAMLR revoked that status from Singapore because it had not fully implemented the CDS nor provided sufficient response to communications from the Secretariat and members. The Commission also noted with concern that IUU-listed vessels were using ports in Singapore. At the 2012 CCAMLR meeting, Singapore expressed its commitment to fighting IUU fishing and reported on port inspections undertaken in 2011–2012, denial of port access for one IUU vessel, and additional steps it will take by 2014 that would enable it to fully implement the CDS. CCAMLR will consider Singapore's request for reinstatement of its status when those steps are complete.

## **C. Monitoring, Control, and Surveillance**

### **1. Information Sharing and Coordination**

International information sharing and coordination aimed at deterring IUU fishing take many forms: cooperation among national authorities to enforce regional and global measures, assistance to developing nations in protecting their own natural resources, and RFMO procedures to facilitate information sharing on enforcement matters.

NOAA and the USCG work closely with enforcement agencies from Canada, Japan, the Republic of Korea, and the Russian Federation to enforce the North Pacific Anadromous Fisheries Commission (NPAFC) prohibition on directed fishing for anadromous stocks in the high seas areas of the North Pacific Ocean. NPAFC enforcement activities also contribute significantly to implementation of the UN global moratorium on large-scale high seas driftnet fishing. NPAFC members coordinate multilateral air and surface patrols to utilize enforcement resources more efficiently. Each spring the parties discuss current enforcement efforts, coordination of enforcement plans, and sharing of resources for the remainder of the calendar year. In 2011, parties conducted 120 ship patrol days and 388 aerial patrol hours in the Convention Area. In 2012, the totals were 153 ship patrol days and 370 aerial patrol hours.

The United States and the Chinese Governments have worked since 1993 to ensure effective implementation of the UN global driftnet moratorium in the North Pacific Ocean, pursuant to the terms of a memorandum of understanding (MOU) that established procedures for law enforcement officials of either nation to board and inspect U.S.- or Chinese-flagged vessels suspected of driftnet fishing. The MOU also established a shiprider program allowing Chinese

enforcement officials to embark on USCG assets during driftnet patrols. These officials facilitate boarding and inspection of suspected Chinese driftnet vessels intercepted by the USCG. In FY 2012 the USCG conducted a number of patrols and boarded 30 vessels in support of the WCPFC High Seas Boarding and Inspection Procedures. On July 27, 2012, a team from the USCG Cutter *Rush* boarded the foreign fishing vessel *Da Cheng*. *Rush* boarding team members identified several violations of WCPFC measures, including that the vessel had been fishing with more than 10 miles of large-scale driftnets. The boarding team also noted questionable registry documents indicating the vessel was Indonesian-flagged. The vessel had 30 metric tons of albacore tuna on board, in addition to 6 metric tons of shark carcasses and fins. Indonesia formally denied registry of the vessel, which prompted the U.S. Government to assimilate the vessel to “without nationality” status. After determining that Chinese citizens were operating the vessel, the U.S. Government arranged for transfer of the *Da Cheng* to a Chinese enforcement vessel for further investigation, according to the MOU process.

In the North Atlantic, the USCG Cutter *Juniper* patrolled the NAFO Regulatory Area September 21-26, 2012. Before departure, the *Juniper* command staff and NAFO-designated U.S. inspectors attended an operations brief hosted by Canada’s Department of Fisheries and Oceans in St. John’s, Newfoundland. The *Juniper* also carried a Canadian NAFO inspector, who trained the USCG crew on inspection procedures and NAFO forms. During the patrol, the *Juniper* inspected three NAFO contracting party vessels. In addition to this patrol, the United States continued during 2011 and 2012 to work closely with Canada in the North Atlantic by embarking USCG boarding officers as shipriders on Canadian Coast Guard vessels.

The United States continues to expand its partnerships with island nations in the western and central Pacific Ocean to assist with enforcement in that area. The United States and Samoa signed a shiprider agreement in June 2012, bringing the total number of such agreements in the region to nine. In FY 2012, the USCG conducted 121 boardings under bilateral enforcement agreements with seven Pacific Island Nations: Cook Islands, Federated States of Micronesia, Kiribati, Republic of the Marshall Islands, Nauru, Palau, and Tuvalu, with 21 violations documented. Of these, four stemmed from WCPFC measures, while 17 were infractions of national laws applicable within the EEZ of Pacific Island Nations. (See Annex 2 for additional examples of U.S. assistance to coastal States that may lack adequate resources to enforce their national fisheries laws and regulations.)

NOAA and the USCG are collaborating with the U.S. Navy and the Pacific Command to enhance maritime domain awareness and assist Pacific Island Nations in exercising sovereignty over their natural resources, by merging USCG authorities with Department of Defense resources, a program called the Oceania Maritime Security Initiative. This program was expanded in April 2012 through an MOU among the three agencies that articulates the Defense Department’s authority to support USCG operations such as embarking USCG and partnership shipriders onboard naval assets to conduct fisheries boardings.

RFMOs continue to improve their requirements for information sharing that will enhance compliance with their management measures. ICCAT’s reporting obligations include trade data, lists of authorized vessels, bycatch interactions, VMS data, information from at-sea and in-port inspections, bilateral access agreements, and other compliance and enforcement information. A notable activity is the integration of ICCAT’s centralized VMS reporting requirements for the

eastern Atlantic and Mediterranean bluefin tuna fishery with the program of high seas boarding and inspection in that fishery. VMS signals are shared with ICCAT members participating in boardings and inspections.

The WCPFC recognized the need for procedures for charter arrangements, to ensure they do not promote IUU fishing activities or undermine CMMs. Accordingly, the Commission adopted a requirement that Commission members and participating territories provide basic information to the Commission regarding chartered vessels. The measure also stipulates that only vessels listed on WCPFC records and registers, and not on any IUU vessel list, are eligible for charter. In 2012 the Commission agreed to keep this charter notification scheme in place for 3 years while it works to improve it.

The IOTC in 2012 adopted a prohibition against large-scale driftnets within the IOTC Area, consistent with the UN moratorium, and a requirement that parties report annually on MCS actions relating to large-scale driftnet fishing on the high seas and within the IOTC area.

## 2. MCS Network and INTERPOL

The United States is one of the founding members of the International Monitoring, Control and Surveillance Network (MCS Network), and currently serves as host to its Secretariat. NOAA participates in the MCS Network as one mechanism for sharing information and experience with fisheries law enforcement professionals from other nations to monitor the increasingly complex harvesting and marketing of fish around the world.

The MCS Network, with support from donor nations and members, has transitioned from host-government sponsorship toward an arrangement with the International Seafood Sustainability Foundation, which will give the Network greater independence and flexibility. Network members met in Chile in March 2012, where they agreed to revised terms of reference and a business plan. The organization, with a new chairperson and executive director, continues to be housed in a NMFS office and sponsored in part by NMFS.

The Network hosted the Third Global Fisheries Enforcement Training Workshop in Maputo, Mozambique, March 21–25, 2011, and is planning the next such workshop to be held in Central America in 2013.

As part of an effort to recognize innovations in MCS technology, tools, methods, and processes, the Network, with FAO sponsorship, launched a “Stop IUU Fishing Award” contest, open to all stakeholders, at the 2012 COFI meeting. Winners will make presentations at the 2013 workshop. Additional information on the MCS Network is available online at <http://www.imcsnet.org>.

In early 2012, the International Criminal Police Organization (INTERPOL) held an Environmental Crimes Summit in Bangkok, Thailand, where participants decided to establish an ad hoc Fisheries Crime Working Group (FWG). The FWG plans to conduct several test studies over the next 2 years to assess INTERPOL’s ability to combat fisheries crimes. A NMFS special agent serves as vice-chair of the FWG.

### 3. Vessel Lists

The United States is engaged at various RFMOs in discussions about the listing and delisting of vessels from IUU vessel lists, by providing intelligence information regarding the vessels' activities, as well as advice regarding application of relevant criteria.

In 2011, ICCAT expanded the scope of the authorized vessel list from vessels above 20 meters to those 12 meters and above, and strengthened provisions on port inspection of IUU vessels. Based on the negative (IUU) list, which is reviewed annually, members and cooperating parties are to take necessary measures not to support those vessels, including prohibiting imports, landings, or transshipments of ICCAT species.

IUU fishing continues to be a problem in the CCAMLR Convention Area. During 2010–2011, five vessels were reported to have engaged in IUU fishing in the Convention Area, while three IUU-listed vessels were sighted outside the Area. At the 2011 meeting, the Commission agreed to remove two vessels from the Contracting Party IUU Vessel List. One member blocked consensus on the addition of one of its vessels to the list.

Three vessels were reported to have engaged in IUU fishing in the Convention Area during the 2011–2012 fishing season and were also sighted outside the Area. Three other vessels reported to be associated with IUU fishing were also sighted in the Convention Area during the 2011–2012 fishing season. Of these six, four were reported to be using gillnets fixed to the bottom with anchors or weights, a fishing method considered to result in significant bycatch. A refrigerated cargo vessel was added to the Non-Contracting Party IUU Vessel List, for providing support to IUU vessels in the Convention Area. CCAMLR members did not reach consensus on the removal of a vessel from the Non-Contracting Party IUU Vessel List or the addition of any vessels to the Contracting Party IUU Vessel List at the 2012 meeting.

The WCPFC, in implementing its conservation measure governing the Record of Fishing Vessels and authorizations to fish, established a temporary register of non-member carrier and bunker vessels, which allowed non-member carriers and bunkers to operate in the WCPFC Area subject to a number of conditions, including VMS participation. This interim list will expire in early 2013, at which time non-member carrier and bunker vessels will no longer be allowed to operate in the WCPFC Area. The impending ban has provided an incentive for carriers and bunkers to become flagged to WCPFC members, cooperating non-members, and participating territories, and for flag States of carriers and bunkers to become cooperating non-members of the WCPFC. In 2012, the WCPFC did not identify any additional vessels for inclusion on its IUU Fishing List for 2013, and removed one of the four vessels on the list. The United States has been leading intersessional work on a proposal by Tonga to take account of coastal States' interests in decisions to place a vessel on, or remove it from, the IUU vessel list, but no action was taken during the 2012 meeting.

NAFO continues to maintain a list of vessels that have conducted IUU fishing in its Regulatory Area. NAFO shares IUU vessel sightings with other RFMOs operating in the Area, particularly with NEAFC, as the two RFMOs are adjacent, share much of the same membership, and manage groundfish stocks that are susceptible to IUU fishing by the same vessels. NAFO and NEAFC have agreed to recognize each other's IUU vessel lists. This allows membership from both



organizations to act in concert to restrict port access by IUU-listed vessels and to “delist” vessels as appropriate. During 2011 and 2012, the United States has continued to work with NAFO to enhance at-sea inspection provisions and to conduct joint NAFO/NEAFC patrols. NAFO also continued to revise catch reporting, labeling, and stowage provisions to improve and facilitate monitoring and inspection activities both at sea and in port.

#### 4. Global Record of Fishing Vessels

The FAO initiative to compile a Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels is intended to provide a tool to prevent, deter, and eliminate IUU fishing and related activities. A global database where information from many sources will be gathered will make it more difficult and expensive for vessels and companies acting illegally to do business. A “technical consultation” developed recommendations for consideration by COFI in 2011 to launch the Global Record. Eventually, all vessels 10 gross tons or 10 gross registered tons or more, or 12 meters or more, will be included (an estimated 725,600 vessels). In the first phase, 2011–2013, the largest vessels will enter the record (i.e., 100 gross tons or 100 gross registered tons or more, or 24 meters or more). There are estimated to be around 185,600 of these vessels. In 2011, NMFS funded an FAO training workshop in Central America on the tools and capabilities necessary to contribute national vessel registry information effectively to the Global Record.

The five tuna RFMOs are engaged in a related effort to develop a combined list of authorized vessels (CLAV), including the assignment of unique vessel identifiers. The executive secretaries of the tuna RFMOs convened a second workshop on the CLAV system at the FAO in June 2012. The workshop agreed to host the new CLAV system at the IOTC or the IATTC. The workshop recommended that the terms and conditions for use of the CLAV system and exchange of information be incorporated in an MOU agreed by the FAO and the tuna RFMOs.

#### 5. Remote Sensing Technology, Observers, and Inspections

NMFS promotes the adoption of VMS provisions by RFMOs and flag States. Currently NMFS monitors 5,100 U.S. fishing vessels required to carry VMS equipment, as well as several foreign vessels under settlement or plea agreements. U.S. enforcement personnel assist in crafting RFMO conservation measures requiring VMS use, and provide training on the use of VMS in fisheries enforcement.

The IATTC took an important step toward improving the amount and quality of scientific data provided to the Commission by mandating a minimum of 5 percent observer coverage on all longline vessels greater than 20 meters length overall, effective January 1, 2013. The primary function of the observers will be to record the catches of targeted fish species, species composition, and any available biological information, as well as any interactions with non-target species such as sea turtles, seabirds, and sharks. The United States remains concerned that coverage may need to be increased to ensure adequate data on catch and bycatch in the IATTC longline fisheries. The recent resolution specifies that in 2014 the Commission will review the preliminary results of implementation, and after consulting with the Scientific Advisory Committee consider expanding the level of observer coverage. The United States has been a

strong advocate for development of longline observer programs for the tuna RFMOs and is very pleased that the IATTC has taken this first step.

At the 2012 annual meeting, ICCAT adopted a U.S. proposal that significantly expands and strengthens its rules on transshipment at sea and in port. It closes loopholes in the previous measure by eliminating a broad exemption for vessels under 24 meters; expanding coverage to all ICCAT species wherever transshipped; allowing observer verification of the fishing vessel's logbook and transshipment authorization; and requiring data to be provided on ICCAT-managed species by stock and on species caught in association with ICCAT species. These changes will enhance data quality for scientific and compliance purposes, and will help eliminate any incentive for vessels to circumvent ICCAT rules by transshipping outside the ICCAT Area.

In addition, ICCAT improved its MCS provisions for the eastern Atlantic and Mediterranean bluefin tuna fishery, including mandatory use of stereoscopic cameras in the transfers during caging and farming operations. ICCAT agreed to hold another meeting of its Working Group on Integrated Monitoring Measures in 2013, to consider revising its VMS recommendation, further developing a comprehensive high seas boarding and inspection scheme, using unique vessel identifiers, and improving chartering rules.

The WCPFC Convention requires that all vessels fishing for highly migratory fish stocks on the high seas in its Convention Area participate in a VMS operated by the Commission. The system has been largely operational for the last few years, and will be fully applied to all vessels by the end of 2013. In 2012, the WCPFC took the additional step of expanding its VMS to include, at the request of any coastal State member, waters under the member's national jurisdiction. Because most coastal State members apply their own national VMSs to vessels authorized to fish in their waters, this change is not expected to expand the number of vessels collectively covered by VMSs in the region, but it will make VMS information for those vessels more broadly available. Specifically, it will give coastal State members, including the United States, access to near real-time vessel position information – in their respective waters – for foreign vessels authorized to fish on the high seas or in the waters of other coastal States in the WCPFC Area.

A CCAMLR conservation measure amended in 2011 now allows the Secretariat to share VMS data from individual vessels with a contracting party that is planning active surveillance presence and/or inspections in a specified CCAMLR subarea or division. For the Secretariat to provide VMS data to the contracting party without the permission of the flag State, the contracting party must have designated inspectors, have previously carried out active surveillance and/or inspections, and have specified the geographic area of the planned surveillance or inspections. Other conditions and limitations apply. Also, the conservation measure now allows for a contracting party to request the Secretariat to check VMS data from a vessel against the claims on a *Dissostichus* [toothfish] Catch Document, which allows a simple check of VMS data without requiring release of data to the requester or permission from the flag State. (The Secretariat otherwise provides VMS data to contracting parties to verify such claims only with flag State permission.) At its 2012 meeting, CCAMLR agreed to form a VMS technical and operational group to advise on procurement of a new VMS software package and to review future needs of the system.

NAFO established a compliance-based observer program in 1998 and requires use of VMS on 100 percent of contracting party vessels in its Regulatory Area. All vessels are also required to carry at least one observer, with the exception noted below, whose main function is compliance but who may also perform scientific work as requested. Observers are to report infringements within 24 hours to an inspection vessel. Parties now have the option to implement the current observer program or to change to 25 percent observer coverage with more detailed and frequent electronic reporting, which requires on-board equipment that the NAFO Secretariat must have tested and found to be 100 percent reliable. In 2011 and 2012, NAFO continued to improve the effectiveness of its enforcement measures by implementing changes to catch reporting (logbook), VMS notification, and other provisions.

#### **D. Flag State Responsibilities**

IUU fishing can be exacerbated or even inadvertently encouraged by irresponsible flag States – in particular, those States that allow vessels to fly their flags without any capability or effort to monitor and control the operations of those vessels. In response to the perceived failings of several flag States in this regard, at the March 2007 COFI meeting, members asked the FAO to “consider the possibility . . . of an expert consultation to develop criteria for assessing the performance of flag States as well as to examine possible actions against vessels flying the flags of States not meeting such criteria.”

COFI members at their 2009 meeting discussed assessment of flag State performance, including development of criteria for self-assessment and evaluation by outsiders. A group of experts consulting in June 2009 produced a report that was considered by a technical consultation in May 2011 and March 2012. At the first meeting, participants were able to conduct an initial review of approximately half the criteria prepared at the expert consultation. They found significant differences of view on the geographic scope of the criteria and how the evaluation process should run.

At the March 2012 meeting, participants made significant progress on practically all outstanding issues. Those still unresolved are whether the criteria would apply to third-party EEZs as well as the high seas, whether a State can initiate a flag State performance assessment of another State, and use of the term “market States” in the draft text. At its meeting in July 2012, COFI noted the need for further progress on the draft Criteria for Flag State Performance and requested the Secretariat to convene the second resumed session of the technical consultation as soon as possible. COFI welcomed NMFS funding to support that session. The FAO reports that the Technical Committee is likely to develop a list of possible actions to be taken against vessels flying the flags of States not meeting the criteria.<sup>34</sup>

#### **E. Destructive Fishing Practices and Vulnerable Marine Ecosystems**

As noted above, the statutory definition of IUU fishing includes fishing activity that has a significant adverse impact on VMEs, including seamounts, hydrothermal vents, and cold water corals, located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management

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<sup>34</sup> FAO, “The State of World Fisheries and Aquaculture,” Rome, 2012, p. 95.

organization or agreement. The United States and the international community have taken a number of actions in recent years to address IUU fishing that has adverse impacts on VMEs.

In fall 2011, the informal consultations for the UNGA Sustainable Fisheries Resolution again convened to review progress by States and RFMOs in implementing the bottom fishing provisions of Resolutions 61/105 and 64/72, both of which are described in the 2011 Report. The near-consensus view of the participants was that, although significant progress had been achieved, implementation remains uneven and further work by States and RFMOs is needed to fulfill the UNGA mandate to protect VMEs on the high seas from bottom fishing.

To that end, the 2011 Resolution (66/68) contains new language focused on improving State and RFMO approaches to assessing and mitigating fishing impacts on VMEs; augmenting scientific knowledge of VME habitats and associated species through international research; establishing mechanisms for compliance with VME provisions; and enhancing information sharing. Collectively, these measures will promote more uniform implementation by States and RFMOs of existing mandates and provide greater protection to VMEs and associated habitats.

One identified contributing factor to uneven implementation is the lack of detailed technical guidance and scientific knowledge on the location, distribution, and nature of VMEs worldwide. The 2011 Sustainable Fisheries Resolution therefore requests that the FAO further assist States and RFMOs in addressing this issue. New language invites the FAO to develop guidance on applying criteria for VME identification and on measures to mitigate bottom fishing impacts on VMEs; to assist in establishing best practices for conducting assessments and standards for implementing those assessments; to produce scientific guidance on stock assessments for deep sea species; and to provide access to data for facilitating implementation. UNGA calls upon States and RFMOs to conduct research on seabed mapping for the purposes of identifying and protecting VMEs and to consider available research on where VMEs are known or likely to exist, to protect or mitigate impacts to those areas.

In addition, Resolution 66/68 calls for strengthened procedures and actions for assessing VMEs and related target and non-target species, including a directive that the cumulative impacts of fishing on VMEs be considered. The new provisions also provide clearer directives on sharing information and making assessments publicly available, and specify conditions under which assessments should be updated.

Since 2008, when the resolution came fully into effect, all RFMOs with the authority to manage bottom fishing have implemented measures to comply with 61/105.

The United States has taken a strong role in NAFO relative to protection of VMEs. Since 2006, NAFO has closed more than 360,000 square kilometers to bottom fishing in its efforts to protect VMEs, and extended all existing closed areas for coral, sponges, and seamounts until the end of 2014. NAFO continued to enhance this protection by adopting a list of VME indicator species identified by its Scientific Council; reducing existing catch thresholds of sponges and corals needed to trigger vessel "move-on" rules; adopting first-time catch thresholds for "sea-pens" (a soft coral); agreeing to a comprehensive reassessment of NAFO fishing activities with respect to significant adverse impacts on VMEs; further enhancing the NAFO provisions relating to

exploratory fishing; and taking action to increase communication between its scientific and management bodies relative to protection of VMEs.

CCAMLR, in 2011 and 2012, identified four areas (circles with a radius of 1.25 nautical miles) in which bottom fishing is prohibited, under a conservation measure to create a list of registered VMEs. Within those areas, only scientific research activities approved by CCAMLR for monitoring or other purposes, based on advice from the Scientific Committee, are allowed.

## **VI. Progress to Strengthen Fisheries Management Organizations to End IUU Fishing Activities**

For a number of years, the United States has pushed for effective international action against IUU fishing in global bodies such as UNGA and the FAO, as well as in RFMOs and bilaterally.

The United States is a member of numerous multilateral RFMOs, in addition to many global and bilateral agreements and arrangements. In recent years, the international community has increasingly recognized that successful action against IUU fishing activities and related problems will require strengthening existing regional fisheries institutions as well as creating new RFMOs to manage previously unregulated ocean areas. The United States has been a major force in these efforts, as discussed below. This Part highlights the establishment of new organizations, and the enhancement of existing ones in ways that induce their members to be more accountable, and influence non-members to be more cooperative, in managing fisheries on a sustainable basis.

### **A. Establishing New RFMOs**

Due to the efforts of the United States and many others, the number of RFMOs continues to expand. This section describes developments in nascent RFMOs since the 2011 Report to Congress.

**South Pacific Regional Fisheries Management Organization (SPRFMO).** The Convention on the Conservation and Management of the High Seas Fishery Resources of the South Pacific Ocean entered into force on August 24, 2012. This organization fills a gap in the international fisheries management regime in the South Pacific, and responds to recent calls from the UN and elsewhere to take urgent action with regard to the impacts of destructive fishing practices on high seas VMEs. The main fisheries currently addressed by SPRFMO are pelagic fisheries for jack mackerel and bottom fisheries for species such as orange roughy. During the course of the negotiations, the participants agreed to non-binding interim CMMs covering both pelagic and bottom fisheries.

The first meeting of SPRFMO will take place beginning on January 28, 2013, in Auckland, New Zealand. The United States is a signatory to the Convention. The Department of State (DOS) is preparing ratification documents for submission to the White House, while NMFS is working on implementing legislation.

**North Pacific Fisheries Commission (NPFC).** The goal of the negotiators in establishing this new RFMO was to ensure the long-term conservation and sustainable use of the fisheries resources in the North Pacific Ocean, while also protecting the marine ecosystems in which these resources occur, including addressing the negative impacts of bottom fishing activities on VMEs. The Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean was opened for signature in April 2012, with the United States the first signatory; it will enter into force when four parties have deposited their instruments of ratification. The first three sessions of the Preparatory Conference addressed the administrative and budgetary issues of setting up a Secretariat. Selection of a Secretariat host nation at the next session will facilitate detailed discussion of the budget.

The Convention establishes a management framework for all fisheries not already covered under existing international management instruments, with a particular focus on bottom fisheries, across the high seas areas of the North Pacific. Interim measures have been agreed with regard to bottom fishing, including the compilation, analysis, and exchange of data on bottom fishing in the region, and steps to protect VMEs from the impacts of bottom fisheries.

## **B. Strengthening Existing RFMOs**

In addition to working to establish new RFMOs, the United States has pushed for improved governance systems in existing RFMOs to bring them into closer conformity with the provisions of the UNFSA. Some RFMOs have been updated through renegotiation of their underlying agreements or negotiation of new protocols. Others are finding ways to improve management and compliance without renegotiating their underlying agreements. This section reports on developments in existing RFMOs since the 2011 Report to Congress.

### **1. Renegotiation or Amendment of Underlying Agreements**

U.S. officials were heavily involved in negotiating an agreement to update and modernize the guiding principles, mandate, and functions of the IATTC, a body established in 1949 to manage tuna fisheries in the EPO. The new agreement – the Antigua Convention – entered into force on August 27, 2010. The Senate provided its advice and consent to U.S. ratification, which is pending subject to the passage of implementing legislation to clarify U.S. authorities to implement the Antigua Convention. In the 112<sup>th</sup> Congress, such legislation was introduced as Title IV of S. 52 and Title II of H.R. 4100, but neither bill was passed.

NAFO adopted comprehensive amendments to its establishing Convention in 2007. The United States strongly supported revisions that incorporated the precautionary approach and ecosystem considerations into NAFO's mandate. The amendments will enter into force once nine of the contracting parties deposit their instruments of ratification. To date, Canada, Cuba, the EU, Norway, and the Russian Federation have done so. DOS has prepared a ratification package to obtain Senate advice and consent to the amendments; NMFS has drafted proposed revisions to the Northwest Fisheries Convention Act, which provides implementing authority for the NAFO Convention.

### **2. Performance Reviews**

Many RFMOs have undertaken performance reviews to bolster their organizations. The Review Conference on the Fish Stocks Agreement at its 18th meeting in May 2010 urged all RFMOs that had not undertaken performance reviews, including some element of independent evaluation, to do so no later than 2012.

The SPRFMO Convention includes a requirement for a performance review every 5 years (Article 30).

In 2007, ICCAT established a Working Group on the Future of ICCAT, to consider its Convention, other basic texts, and ICCAT recommendations and resolutions vis à vis relevant international treaties and agreements. After several years of discussion, informed by an

independent performance review in 2008, ICCAT agreed at its 2012 meeting to launch a process to develop convention amendments concerning scope, decision-making procedures, and non-party participation, among other subjects. A working group will begin the process in 2013, with a target of completion by 2015. As interim steps, ICCAT adopted a resolution to guide the use of its objection procedure, including improving transparency and minimizing delay in the entry into force of ICCAT recommendations, and amended its mail voting procedures.

As described in the 2009 Report to Congress, the North Atlantic Salmon Conservation Organization (NASCO) embarked on a comprehensive performance review in 2004. In 2011, NASCO appointed a panel of independent experts to assess its fitness for the future. At the 2012 meeting the panel presented its recommendations, including that NASCO should explore whether and how to make more of its decisions binding. NASCO decided immediately to improve reporting requirements, and to initiate a process to consider steps to meet current and future challenges to the effective conservation and management of wild Atlantic salmon. A meeting of the NASCO parties in February 2013 will develop a plan of action with prioritized recommendations for consideration at the 2013 annual meeting.

A review panel consisting of outside experts and chairs of the Commission's standing committees presented a report on its performance review of the NPAFC to the annual meeting in 2010. The review was quite favorable to the NPAFC, especially its Committee on Enforcement, but pointed out that the Commission's very success in virtually eliminating directed and indirect high seas fishing for anadromous stocks places it at a crossroads. The reviewers had a total of 54 recommendations for the Commission, most of which were procedural in nature, including establishment of a working group on the future of the NPAFC. The Commission has completed 41 of the tasks, with 13 still in progress.

A review panel assessed the performance of NAFO against the objectives set out in its Convention and other relevant international instruments addressing the conservation and management of living marine resources. The panel presented its report at the 2011 annual meeting. Highlights of the recommendations include: continued development of cooperative relationships with other RFMOs and international organizations; improved quality and timeliness in data submissions and in reporting by contracting parties on infringements; further harmonization of relevant NAFO rules with applicable provisions of the Port State Measures Agreement; further development and implementation of risk-based assessment approaches and integration of the precautionary approach to decision making within NAFO; and enhanced working relationships among scientists and managers in the organization. At the 2012 meeting, NAFO adopted a plan of action that assigns tasks and deadlines to appropriate bodies within the organization; many of these activities are already underway. For example, working groups on conservation and rebuilding of fish stocks, management strategies, and VMEs that once were under the Fisheries Commission are now joint groups with the Scientific Council.

In 2011, the WCPFC received a set of 79 recommendations from an independent performance review conducted by representatives of members and independent experts. The Secretariat has prepared a matrix of those recommendations and members' comments on them. At its 2012 meeting, the Commission agreed to a process whereby each of its subsidiary bodies will begin in 2013 to consider relevant recommendations.



### 3. Bolstering Responsibilities of Members and Non-Members

Article X of the Antigua Convention, which entered into force in August 2010, mandates the IATTC to establish a Compliance Committee. A resolution adopted in 2011 provides guidance and elaborates on the process to be followed, a significant expansion of the previous compliance review process that should result in increased adherence to adopted measures. The IATTC Director, based on measures in force, drafted a comprehensive compliance questionnaire that must be completed and returned in advance of the annual meeting. Transmission of the questionnaire is accompanied by any evidence from observer reports or other sources of information highlighting possible instances of non-compliance; CPCs must address these matters when returning the questionnaire. These results are compiled by the Director and then reviewed in detail during a multiday meeting of the Committee in advance of the annual meeting. The Chair of the Compliance Committee may then make recommendations for improving the compliance of CPCs, individually or collectively, and may also choose to follow up on highlighted matters intersessionally. The resolution does not provide for a process that could result in consequences for instances of repeated non-compliance, but anticipates the development of such a process: “[t]he Committee may consider development of a scheme of sanctions and incentives as well as a mechanism for their application to improve compliance by all CPCs to be submitted to the Commission for consideration and possible adoption.”

In 2009, CCAMLR revised a conservation measure to promote compliance by contracting party nationals by adding requirements to increase scrutiny of, and ability to take actions against, beneficial owners of vessels violating CCAMLR measures. Pursuant to this measure, in 2011 one member submitted information about actions it is taking against owners of IUU-listed vessels. In 2012, CCAMLR adopted a compliance evaluation procedure under which members will review incidents of non-compliance with a set of conservation measures, assess a compliance status category for each member, and make recommendations for action by the member in cases of non-compliance or for action by the Commission in cases of serious, frequent, or persistent non-compliance.

ICCAT has adopted a number of measures to improve adherence to its rules by both members and non-members, including mandatory quota reductions in cases of overharvest, prohibitions on retention of species if certain data are not supplied, and the trade measures recommendation mentioned in Part V.B.2. Regarding the latter, if an ICCAT member or non-member is found to be diminishing the effectiveness of ICCAT, that member or non-member is “identified.” ICCAT sends a letter notifying the party of the identification, including the reasons for it, and asking the party to rectify the situation. Failure to rectify the identified activity may result in the imposition of penalties, such as quota reduction or, as a last resort, non-discriminatory trade restrictions. To date, trade-restrictive action under this instrument has been applied several times to non-members and once to an ICCAT member.

In 2011, the WCPFC initiated a trial scheme for compliance monitoring. At its 2012 meeting, the Commission committed to continuing the scheme for another year, but only after adopting provisions to prevent use of the compliance information for purposes outside the WCPFC. The Commission is expected to consider supplementing the monitoring scheme with a system involving consequences for non-compliance.

#### 4. Steps to Enhance Participation by Non-Members

To implement the provision of the UNFSA relating to the duty of non-members to cooperate in the conservation and management of fish stocks, RFMOs are working toward enhanced participation by non-members in their organizations.

At the time of the 2011 Report to Congress, the IATTC had two cooperating non-parties, the Cook Islands and Kiribati. Kiribati has since become a member and the Cook Islands have maintained their cooperating status.

In CCAMLR, States that have acceded to the Convention, but that have not applied for membership in the Commission, are nonetheless obligated to abide by all the conservation measures adopted by the Commission, and are excluded from participation in Convention Area exploratory fisheries. Currently there are 10 such non-members. In addition, any non-Contracting party may cooperate with CCAMLR by participating in its CDS; Seychelles is the only nation with that status.

Following a substantial revision of the WCPFC measure pertaining to cooperating non-member status in 2008, the Commission again amended these provisions in 2009 to add a requirement that an applicant for this status commit to making financial contributions commensurate with what it would be assessed should it become a contracting party or a member. The number of WCPFC cooperating non-members has increased over the past few years. Those accepted for 2012 and 2013 are Belize, the Democratic People's Republic of Korea, Ecuador, El Salvador, Indonesia, Mexico, Panama, St. Kitts and Nevis, Senegal, Thailand, and Vietnam.

Currently, ICCAT has five cooperating non-members: Chinese Taipei, Colombia, Curaçao, El Salvador, and Suriname. At the 2011 meeting, ICCAT agreed to allow cooperating non-members to play a more active part in the Commission's work, in particular through presenting or co-sponsoring proposals.

#### 5. Steps to Improve Cooperation and Coordination

Representatives of RFMOs are working to improve cooperation and coordination among RFMOs themselves, particularly for those operating in the same region or managing highly migratory species.

Kobe III. The first meeting of the five tuna RFMOs occurred in Kobe, Japan, in 2007; the second was hosted by the European Community, in San Sebastian, Spain, in summer 2009. Participants agreed to call these joint meetings the "Kobe Process." The United States hosted Kobe III in La Jolla in July 2011. More than 50 nations attended, with a strong showing from West African nations. Principles proposed by the United States for the cross-listing of IUU vessels were forwarded to the five tuna RFMOs, as guidance in harmonizing criteria and processes so that each tuna RFMO list could include IUU vessels identified by the others. Kobe III participants recommended that the tuna RFMOs establish a common format for assessing compliance with data reporting requirements. Another recommendation affirmed that tuna RFMOs should adopt port State measures and support developing nations in their efforts to

implement such measures. They also established a steering committee of the RFMO chairs and vice chairs, first convened at the COFI meeting in July 2012.

The WCPFC and the IATTC have approved a memorandum of cooperation that allows observers from either commission to serve on vessels that fish in both convention areas during the same trip. Prior to this arrangement, a vessel intending to fish in both areas had to carry an observer from each body. To implement the memorandum, staff members of the two commissions have trained observers to be qualified as cross-endorsed, and have developed an operating manual with instructions for the regional observer program.

The IATTC and WCPFC Conventions share a large overlap area that presents a number of questions and challenges for management. IATTC members convened an Extraordinary Meeting of the Commission in October 2012 and adopted a two-step recommendation. In the short term, vessels registered exclusively with one commission would apply the CMMs of that commission in the overlap area. For vessels flagged to members and appearing on both registers, the flag State would decide which commission's CMMs will apply for at least 3 years. A vessel listed on both registers but whose flag State is a member of only one commission would follow the CMMs of that commission. In the long term, a joint working group would explore avenues for managing tuna stocks in the entire Pacific Ocean. The WCPFC agreed to this proposal at its regular session in December 2012.

At its 2011 meeting, ICCAT adopted guidelines to encourage information sharing between CITES and ICCAT and to foster better understanding of their respective work. CITES will consider the guidelines at CoP16.

## **VII. International Efforts to Reduce Impacts of Fishing on PLMRs**

The United States continues to work actively within the international community to promote measures that will protect and conserve PLMRs from bycatch or other harmful activities. U.S. bilateral and multilateral efforts include direct advocacy as well as training and other assistance. To date, U.S. efforts and RFMO actions concerning PLMRs have generally concentrated on the impacts of fishing on sea turtles, sharks (see Part VIII), dolphins, and some other marine mammals. This Part describes the actions taken by international fisheries bodies with regard to these PLMRs, and U.S. involvement in those actions.

### **A. Global Forums**

**United Nations General Assembly (UNGA).** As a direct result of U.S. leadership, the UNGA 2011 Sustainable Fisheries Resolution calls for States and RFMOs to establish or strengthen existing data collection programs for the bycatch of marine mammals, sea turtles, seabirds, and sharks, in addition to supporting research on and development of appropriately selective gears. This is the first time that nations have agreed to include a reference to the bycatch of marine mammals within the resolution, which should provide an impetus for efforts and measures in addressing marine mammal bycatch internationally.

**Food and Agriculture Organization (FAO).** The United States participated in the development of FAO's International Guidelines on Bycatch Management and Reduction of Discards in 2009–2010, developed through an expert consultation followed by a technical consultation. COFI endorsed the guidelines at its meeting January 31–February 4, 2011. These guidelines provide advice to States, both individually and collectively through RFMOs, on ways to manage the bycatch of protected and all other marine resources, including undersized target fish. They detail actions for States during all stages of planning and implementation of bycatch management, including data collection and assessments, research and development, management tools, capacity building, and MCS. NMFS, as the lead on the U.S. delegation, ensured that the guidelines accord with our existing domestic measures to protect living marine resources.

At the July 2012 COFI meeting, the United States noted its ongoing efforts to assemble information on the mitigation of marine mammal bycatch in commercial fisheries through a series of international workshops, and signaled its desire to develop international guidelines to reduce the bycatch of marine mammals in commercial fisheries similar to existing guidelines for sea turtles and seabirds.

**Convention on Migratory Species (CMS).** Also known as the Bonn Convention, the CMS aims to conserve terrestrial, marine, and avian migratory species throughout their range. In 2011, the 10th Meeting of the Conference of the Parties to CMS adopted a resolution requiring parties to reduce bycatch from gillnets of CMS-listed taxa, including species of sea turtles, seabirds, marine mammals, and sharks. The resolution specifically urges CMS parties to assess and address their gillnet bycatch. Parties also agreed to a Global Programme of Work for Cetaceans, which among other actions calls upon parties to collaborate regionally on addressing entanglement and bycatch of cetaceans. The United States is not a party to CMS, but attended the meeting as an observer.

**Pacific Cetacean MOU.** In September 2012, the United States signed the MOU, an initiative to bring coherence to cetacean conservation activities across the Pacific Islands Region under the auspices of the CMS. The Whale and Dolphin Action Plan is the implementing mechanism of the MOU, which seeks to foster cooperation, build capacity, and ensure region-wide conservation of cetaceans and their habitats, as well as to safeguard the associated cultural values for the people of the Pacific Islands. Earlier in the month, signatories to the MOU met in New Caledonia, where they adopted the Whale and Dolphin Action Plan for 2013–2017 and the Oceania Humpback Whale Recovery Plan for the same time period.

**International Council for the Exploration of the Sea.** The United States participated in several groups sponsored by the Council in 2011 and 2012 that were directed at bycatch of protected species.

**Joint Tuna RFMO Technical Bycatch Working Group.** On July 11, 2011, just prior to the Kobe III meeting, the Joint Tuna RFMO Technical Working Group on Bycatch convened for the first time. The working group first reviewed work conducted in the RFMOs on bycatch, implementation of CMMs, and priorities to reduce bycatch. The working group developed an extensive list of recommendations pertaining to standardization of data collection protocols, data sharing, and observer training and certification. The working group provided a provisional list of research priorities and its proposed work plan to the Kobe III meeting for consideration. In March 2012, some members of the working group met with technical experts from tuna purse seine fishery observer programs to begin to harmonize bycatch data collection by tuna RFMOs. ICCAT's Standing Committee on Research and Statistics (SCRS) has agreed to take the lead in an effort to develop minimum standards for observer programs in longline fisheries. (The working group's recommendations specific to sharks appear in Part VIII.)

## **B. RFMOs**

At its 2011 meeting, ICCAT adopted a recommendation that directs members and cooperating parties to require collection of bycatch and discard data through existing logbook and observer programs, and to report these data in a format specified by the SCRS. ICCAT has also adopted minimum standards for observer coverage, including 5 percent minimum coverage for pelagic longline, purse seine, and baitboat fisheries. For artisanal fisheries that are not subject to ICCAT's standards and requirements, CPCs are required to collect bycatch data through other means and to describe their efforts in annual reports. CPCs are also required to report on steps taken domestically to mitigate bycatch and reduce discards, beginning in 2012.

Funding for the new position of Bycatch Coordinator was included in ICCAT's 2012–2013 budget; the position has been filled with a permanent hire. This will permit the SCRS to more fully address both ecosystem-based management and fishery impacts on bycatch species.

Under its Convention, the WCPFC is to adopt measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species (both fish and non-fish), and impacts on associated or dependent species (particularly endangered species). Another mandate is to promote the development and use of selective, environmentally safe, and cost-effective fishing gear and techniques. The WCPFC has adopted a number of taxa-specific measures to meet these

obligations, as described in the following sections. The Commission administers a regional observer program that collects data on catches of non-target species and on discards. Its scientific data agreement requires that members provide total estimated catches of certain non-target species. The WCPFC maintains a Bycatch Mitigation Information System to facilitate information sharing related to bycatch and bycatch mitigation.

### **C. Specific Species**

**Sea Turtles.** All marine turtles are designated as either threatened or endangered under the ESA. The Kemp's ridley sea turtle, listed as endangered, is found principally in U.S. and Mexican waters. The breeding populations of olive ridley turtles on the Pacific coast of Mexico are currently listed as endangered, while other olive ridley populations are listed as threatened. Leatherback and hawksbill turtles are classified as endangered. Green turtles are currently listed as threatened (except for an endangered population of green turtles nesting in Florida and on the Pacific coast of Mexico). In September 2011, NMFS designated nine distinct population segments of loggerhead sea turtles, four listed as threatened and five as endangered. Previously, the entire global population had been listed as threatened.

Sea turtles in the Atlantic Ocean, Mediterranean Sea, Gulf of Mexico, and Pacific Ocean are incidentally taken as bycatch or entangled in pelagic longline, purse seine, trawl, gillnet, pound net, and trap/pot fisheries. Sea turtles frequently travel throughout ocean basins between their nesting beaches and foraging grounds. For instance, Pacific loggerheads nest in Japan, but spend part of their juvenile stage foraging off the Baja Peninsula of Mexico and in the central North Pacific Ocean.

The Shrimp-Turtle Act (Section 609 of P.L. 101-162) committed the U.S. Government to work to ensure that other nations take measures to protect sea turtles in their wild-caught shrimp fisheries through measures comparable to those in effect in the United States (e.g., turtle excluder devices, TEDs). Over the past two decades, the United States has worked with many governments to establish TEDs programs. Each year DOS and NMFS experts carry out TEDs inspections and training in nations mentioned below. The United States worked with Costa Rica to address gaps in enforcement that had resulted in an embargo, and on April 30, 2012, lifted the embargo on Costa Rican wild-caught shrimp products.

Currently, 13 nations have regulatory regimes requiring the use of TEDs: Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Pakistan, Panama, and Suriname. Twenty-six nations and one economy have shrimp fishing environments that do not pose a danger to sea turtles. Of these, 10 nations and one economy harvest shrimp using manual rather than mechanical means, or use other shrimp fishing methods not harmful to sea turtles. They are the Bahamas, Belize, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, the People's Republic of China, Peru, Sri Lanka, and Venezuela. The 16 other nations have shrimp trawl fisheries in cold waters, where the risk of taking sea turtles is negligible: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. In addition to the Shrimp-Turtle Act, the United States has worked aggressively through RFMOs, multilateral environmental agreements, and other forums to urge nations to implement measures comparable to those applicable in the United States to protect sea turtles from fisheries

operations. For example, during 2011 and 2012, NMFS and DOS have actively advocated measures to protect sea turtles in international fisheries and conservation bodies and at bilateral fisheries meetings.

Multilateral Sea Turtle Arrangements. With U.S. leadership, two multilateral arrangements have been negotiated to conserve and protect sea turtles. Under the Inter-American Sea Turtle Convention (IAC), which is the only binding international agreement for sea turtles, parties must work to reduce, to the greatest extent practicable, incidental capture, retention, harm, or mortality of sea turtles, and also to implement the FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations. The Fifth Conference of Parties, meeting in Bonaire in June 2011, set a 2-year work plan and budget, and adopted an MOU with the IATTC. The IAC Scientific and Consultative Committees are reviewing requests from Guatemala and Panama for exceptions from the Convention's harvest prohibitions, to allow domestic egg harvest for subsistence communities. Those committees will make a recommendation to the Sixth Conference of Parties in June 2013.

The Indian Ocean Southeast Asian Marine Turtle MOU, a non-binding instrument, recommends more general conservation action, such as measures to prevent bycatch of sea turtles, but without specifying specific gear types or actions. At the Meeting of Signatory States in January 2012, participants established a network of "sites of importance" for marine turtles and their habitats. They reviewed nations' implementation of the Conservation and Management Plan under the MOU, and conducted workshops on the impacts of climate change on sea turtle populations and on the use of telemetry data to better understand sea turtle interaction with coastal and ocean habitats.

RFMOs. As a result of U.S. efforts, several RFMOs, cited in the 2011 Report, have also adopted sea turtle measures. ICCAT's Subcommittee on Ecosystems met in July 2012 to discuss data needs to carry out an assessment of the impact of sea turtle bycatch in ICCAT fisheries, as required by a 2010 Commission recommendation; to review methods used to estimate bycatch rates; and to identify analytical techniques that may be possible to implement, given available data. A data request will be circulated to the parties prior to the next meeting of the Subcommittee to assist in completing the fishery impact assessment in 2013.

**Dolphins.** Since the early 1990s, the United States has worked diligently to ensure that foreign vessels fishing for tuna with purse seines in areas where such fisheries interact with dolphins are subject to measures to protect dolphins comparable to those applicable to U.S. purse seine vessels. In 1992, the United States and the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, and Spain negotiated the La Jolla Agreement, a voluntary arrangement that established conservative annual dolphin mortality limits and represented an important step toward reducing bycatch of dolphins in commercial Eastern Tropical Pacific (ETP) tuna purse seine fisheries. In 1999, the Agreement on the International Dolphin Conservation Program (AIDCP), a binding regime to protect dolphins in that fishery, entered into force. Nations and entities that have acceded to or ratified the Agreement include Belize, Colombia, Costa Rica, Ecuador, El Salvador, the EU, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, the United States, Vanuatu, and Venezuela. Bolivia applies the Agreement provisionally.

The objectives of the AIDCP are to progressively reduce incidental dolphin mortalities in the ETP tuna fishery to levels approaching zero; to ensure the long-term sustainability of tuna stocks in the ETP, as well as living marine resources related to the tuna fisheries; to seek ecologically sound means of capturing large yellowfin tunas not in association with dolphins; and to avoid, reduce, and minimize the incidental catch and discard of juvenile tuna and the incidental catch of non-target species, taking into consideration the interrelationship among species in the ecosystem. To achieve these goals, the AIDCP established a system of dolphin mortality limits (DMLs), a per-stock-per-year dolphin mortality cap (set at 0.1 percent of the minimum estimated abundance of stocks).

The observed dolphin mortalities in the EPO purse seine fishery for 2010 and 2011 were 1,170 and 986 respectively. This represents a reduction in observed mortality in the fishery of more than 99 percent from the estimated 133,000 mortalities in 1986. The Agreement requires parties to manage their DMLs in a responsible manner and provides for the reallocation of DMLs that have either not been used or have been forfeited during a particular year because of irresponsible use. In 2009, the AIDCP revised its per-stock mortality limits for northeastern and western/southern spotted dolphins and eastern and whitebelly spinner dolphins. The AIDCP will examine revised stock mortality limits for common dolphins over the next several years.

In addition to the DML system, the Agreement provides incentives to vessel captains to continue to reduce incidental dolphin mortality, with the goal of eliminating mortality altogether. The Agreement also includes a mechanism for transparent tracking and analysis of potential infractions, with opportunities for participation by environmental NGOs and industry representatives; it focuses on high-risk activities such as sets that occur after dark, as well as any possible harassment of national or international observers.

**Other Marine Mammals.** The bycatch of marine mammals in fisheries is a significant factor in long-term conservation and management of marine mammal stocks worldwide. Hundreds of thousands of these animals are killed each year through entanglement in fishing gear. Marine mammals interact with or are bycaught in gillnet, trap, longline, and trawl fisheries. Accurate abundance and bycatch estimates for marine mammals are lacking in areas where marine mammal distribution overlaps with coastal and international fisheries, which makes quantitative analysis of bycatch extremely difficult. Progress in quantifying fishery impacts on marine mammal populations and related efforts to mitigate or reduce mortality have been slow, sporadic, and limited to a few specific fisheries or circumstances.

CCAMLR has focused significant effort on the assessment and avoidance of incidental mortality of Antarctic marine living resources, including mammals, in commercial fisheries, through establishment of its Working Group on Incidental Mortality Associated with Fishing. All vessels in CCAMLR fisheries are required to carry an observer for some or all of their fishing operations. For icefish and toothfish, the requirement is 100 percent coverage by an international observer; for krill the requirement is 50 percent coverage by an international or national observer. Observers report a vessel's interactions with marine mammals and steps taken to mitigate interactions, such as abandoning hauling and using an acoustic device. CCAMLR requires the use of seal exclusion devices on trawls, and requires reporting of mammals caught and released or killed.



In 2011, the WCPFC adopted a CMM to prohibit vessels from setting purse seines on a school of tuna associated with a cetacean. In the event a cetacean is unintentionally encircled in a purse seine net, the vessel captain must take steps to ensure the cetacean's safe release.

63rd Annual Tuna Conference. In May 2012, NMFS organized a special session on marine mammal bycatch at the Tuna Conference, an open and informal forum for scientists, engineers, managers, fishermen, and NGOs from around the world to exchange information and ideas including recent research findings on tunas and "tuna-like" species. The session reviewed what is known about marine mammal bycatch in global tuna fisheries, discussed available mitigation measures within purse seine and longline fisheries to reduce bycatch, and identified data gaps and research needs.

## VIII. Shark Conservation and Protection

The key components of a comprehensive framework for international shark conservation and management have already been established in global agreements and organizations, which have identified or adopted provisions or guidance to assist States and RFMOs in the development of measures to conserve and sustainably manage sharks. Some of these mechanisms have created international legal obligations with regard to shark conservation and management, while others are voluntary.

### A. Global Forums

**CITES.** Parties at CoP16 in March 2013 will consider several proposals to list shark species in Appendix II, which requires a two-thirds majority of parties present and voting. The United States is co-sponsoring one proposal to list the oceanic whitetip shark, a top predator with one of the widest ranges of any shark. In the past, oceanic whitetips were described as among the most common sharks found in temperate, tropical waters; however, populations of this species have declined markedly. The primary threats to oceanic whitetip sharks are unsustainable harvest aimed at supplying the international shark fin market, and mortality from bycatch in other fisheries.

At the last CITES meeting, the United States submitted a similar proposal; it received a simple majority of votes, but not the needed two-thirds. Since then, a stock assessment has reaffirmed that certain populations of this species have continued to decline. This new information, as well as continued international and domestic concern, prompted the United States to co-sponsor, with Brazil, Colombia's proposal to include the oceanic whitetip shark in Appendix II.

Brazil, Colombia, Costa Rica, Denmark (on behalf of the EU), Ecuador, Honduras, and Mexico are proposing to list scalloped, great, and smooth hammerhead sharks on Appendix II. The United States offered such a proposal at the last CITES meeting in March 2010, due to concerns that over-exploitation for the international fin trade is undermining the conservation status of these species. The fins of these hammerhead shark species are among the most valuable. The proposal failed to acquire the two-thirds majority needed for adoption. The United States remains concerned about the status of scalloped, great, and smooth hammerhead sharks and supports the leadership of the nations that have sponsored the CoP16 proposal for inclusion in Appendix II.

Brazil, Comoros, Croatia, Denmark (on behalf of the EU), and Egypt propose to list the porbeagle shark on Appendix II.

**Convention on Migratory Species.** The United States is not a party to the CMS; however, non-parties are able to participate in individual instruments – MOUs and agreements – concluded under the CMS umbrella. The first meeting of signatories of the CMS Sharks MOU was held in September 2012 in Bonn, Germany. The signatories adopted a conservation plan to catalyze regional initiatives to tackle overfishing and raise awareness of other threats to migratory sharks.

**Joint Tuna RFMOs.** At the third joint meeting of the tuna RFMOs in 2011 (Kobe III), a newly created bycatch working group, with participants from all five tuna RFMOs, stressed that full stock assessments should be conducted for those shark species where data are available. For species where data are lacking, precautionary measures should be taken, consistent with the FAO International Plan of Action for the Conservation and Management of Sharks. The working group recommended that RFMOs should:

- Initiate research to determine the impact and outcome of the practice of intentional sets on whale sharks, if there is evidence the practice is occurring.
- Conduct risk assessment processes to develop their priorities for shark species that may need further assessment or mitigation.
- Require their members and CPCs to record in logbooks the number of sharks discarded.
- Take action to improve data collection on sharks and manta and devil rays in targeted industrial and artisanal fisheries. (The Working Group noted that a fins-naturally-attached requirement would improve species identification and enforcement and should be considered as part of existing shark finning bans.)
- Consider supporting studies to investigate post-release survival of sharks in longline fisheries in relation to hook type and duration of set, among other factors.
- Consider supporting studies to further develop shark bycatch mitigation strategies for longline fisheries.
- Evaluate the costs and benefits of banning the use of wire leaders in tuna longline fisheries.
- Develop handling and release protocols for all sharks and manta and devil rays, taking into consideration the safety of the crews.

## **B. RFMOs**

In 2011, the IATTC adopted a resolution prohibiting the retention of any part of an oceanic whitetip shark in fisheries covered by the Antigua Convention. The IATTC also held two technical meetings on sharks, primarily focused on undertaking a stock assessment of silky sharks in the EPO, consistent with the priorities identified by the Commission. The stock structure and assessment results are considered preliminary at this stage, but should facilitate the development of future conservation advice.

In 2011, ICCAT adopted a recommendation co-sponsored by the United States that requires release of silky sharks caught in association with ICCAT fisheries, as well as prohibiting retention on board, transshipment, and landing of the species. There are limited exceptions, one for developing coastal States that retain silky sharks for local consumption. Parties not reporting species-specific data for sharks were required to submit a data collection improvement plan. At the 2012 ICCAT meeting, agreement was reached on only one measure proposed for sharks, a recommendation that requires reporting on implementation of and compliance with existing shark CMMs and with the “no data, no fish” recommendation as it relates to shark data. A proposal repeatedly put forward by Belize, Brazil, and the United States would have required all sharks caught in association with ICCAT fisheries to be landed with their fins naturally attached. Support for this proposal increased from the 2011 to the 2012 meeting, but no consensus was reached.

In 2004, NAFO set a 13,500 metric ton total allowable catch limit for thorny skates, a number far in excess of scientific advice for this stock. Although catches remain below the catch limit, the potential for overharvest is considerable. The United States has advocated greater protection for thorny skates since then, and particularly in meetings with interested NAFO parties in 2010 and 2011. As a result, NAFO agreed on a limit of 12,000 metric tons for 2011; 8,500 metric tons for 2012; and recently adopted an even lower number, 7,000 metric tons, for 2013 and 2014. The United States can take credit for reducing this catch limit by almost 50 percent.

The WCPFC has a CMM that prohibits shark finning, a list of “key shark species,” and a research plan for conducting stock assessments for key species. In 2011, based on a U.S. proposal, the WCPFC adopted a CMM for oceanic whitetip sharks, prohibiting retention on board, transshipment, and landing of the species. In 2012, the Commission considered but could not agree on a proposal from members of the Pacific Islands Forum Fisheries Agency to require that fins stay attached to the carcass, and to prohibit the use of wire leaders. The Commission did agree to prohibit intentional purse seine sets around whale sharks. The measure includes a dispensation for Japan, allowing it to consider adoption of “compatible measures” in its EEZ.

CCAMLR has established bycatch limits for skates and rays in new and exploratory fisheries and toothfish fisheries in certain areas. While Conservation Measure 32-18 bans the directed fishing of sharks, except for scientific research, and requires as far as possible the live release of incidentally caught sharks, there are no provisions in place to prohibit shark finning. At the 2011 meeting, the United States proposed prohibiting shark finning in the CCAMLR Convention Area. While several members expressed support for the proposal, others expressed concerns that precluded them from supporting it. Recognizing that some members were not prepared to act on its shark finning proposal at that meeting, the United States withdrew the proposal. At the 2012 meeting, CCAMLR adopted revisions to a conservation measure to clarify the circumstances under which skates may be returned to the water, and to require reporting the number caught. For one area of high skate bycatch, CCAMLR adopted measures for the 2012–2013 fishing season requiring a vessel to move fishing location when the take of skate exceeds 0.5 tons per set, limiting soak times to less than 30 hours, and limiting the area where fishing may occur.

## **IX. International Cooperation and Assistance**

The international community recognizes the importance of providing necessary tools and training to assist developing coastal and fishing States with management and monitoring of their fisheries and fishing vessels. Such assistance helps nations address IUU fishing activities, promotes the adoption of measures to mitigate the adverse impacts of fishing activities on PLMRs, and furthers shark conservation programs. The need for such cooperation and assistance has been recognized in several recent international and regional fisheries agreements, including the UNFSA.

### **A. International Institutional Efforts**

**FAO Activities.** To help developing States implement the provisions of the UNFSA, the UN established a trust fund that is managed by the FAO. The FAO has also recognized the critical role of capacity development as a means of assisting developing nations to combat IUU fishing through port State measures. At COFI's request, the FAO convened an informal, open-ended technical meeting to review draft terms of reference for the ad-hoc working group referred to in the Port State Measures Agreement and to draft terms of reference for an appropriate funding mechanism to assist developing States in implementing the Agreement. The July 2012 COFI meeting endorsed these terms of reference, which will be considered further by the ad-hoc working group when it is eventually established. In the meantime, NMFS is providing financial support for the next regional training workshop on skills and capabilities necessary to implement the Port State Measures Agreement.

**ICCAT Funds.** ICCAT has several funds created specifically for scientific capacity building; these are used primarily to finance travel of scientists from developing States to participate in intersessional scientific meetings and the annual SCRS meeting. In 2011, ICCAT established a fund to support the attendance of developing State members in various scientific and non-scientific meetings. In 2012, ICCAT spent around 294,000 USD for such activities.

**CCAMLR Activities.** CCAMLR's CDS Fund supported the July 2012 African IUU Capacity Building Training Event, aimed at strengthening port State controls on continued IUU activity involving toothfish and other species. Fifty-six participants from 15 African nations attended.

**WCPFC Efforts.** The WCPFC is the only RFMO whose budget contains a line item funded by all members to support the special needs of developing States parties.

**IATTC Fund.** In 2011, the IATTC created a fund for strengthening the scientific and technical capacity of developing nations that will allow them to fully comply with their obligations under the Antigua Convention.

### **B. Bilateral and Regional Assistance**

Congress has directed NMFS to engage in international cooperation and assistance, particularly in the areas of combating IUU fishing and mitigating bycatch of PLMRs. In addition to meeting these IUU and PLMR mandates, the NMFS International Cooperation and Assistance Program accomplishes many other important goals, including strengthening international fishery

management organizations and promoting goodwill in international marine resource management forums. Program funds are used to build strategic partnerships with other nations and the capacity of developing nations to promote sustainable and responsible fisheries management at the national, regional, and global levels.

The United States has been active in providing technical and other types of cooperation and assistance to developing States for conservation and management, stock assessment, scientific research, and monitoring and enforcement. This section sets forth some examples from among the many programs NMFS carried out during 2011 and 2012.

**Strengthening Monitoring, Control, and Surveillance in Central America.** Under the auspices of the Central America-Dominican Republic Free Trade Agreement, NMFS has forged a partnership with the Organization of the Fishing and Aquaculture Sector of Central America – OSPESCA – to promote sustainable and legal fisheries in this region, from which the United States imported more than \$481 million worth of seafood products in 2011. Perhaps the most impressive collaboration began in 2009. Initial efforts are described in the 2011 report, and have progressed through establishment of an MCS Network in Central America, workshops on conducting inspections for illegal products in seafood processing plants, enforcement of shark laws, and uses of enforcement technology including VMS. Work to be completed includes steps to implement the Agreement on Port State Measures and to participate in the Global Record of Fishing Vessels.

**Enhancing Fisheries Enforcement and Observer Capabilities in West Africa.** Over the past 2 years, NOAA has collaborated in efforts to train West African fisheries management and enforcement officials and students. U.S. trainers instructed 10 students at the Murray Town (Sierra Leone) Armed Forces Maritime Wing during a 3-day session in March 2011. The same course was presented to 40 Liberian students during a 4-day training session in Monrovia in March 2011.

NOAA conducted two separate 3-week observer training sessions in 2011. The first was in May, for 35 Liberian staff from the Bureau of National Fisheries and the World Bank's West African Regional Fisheries Project. Those organizations partnered with NOAA in training on at-sea safety and data collection for targeted and bycatch species, marine debris, and sea turtle and marine mammal interactions. The second course was conducted in November in Libreville, Gabon, for 30 fisheries observers; the Wildlife Conservation Society, the World Wildlife Fund, the University of Exeter, and the Darwin Initiative provided assistance. In February 2012, U.S. trainers presented a 5-day course in Monrovia, providing previously trained observers and inspectors information on collecting data from tuna purse seine and longline vessels.

As a follow-up, NOAA has assisted West African nations in creating and implementing databases for the management and storage of observer information. Once the Liberian database was established, U.S. officials trained 12 staff members in database management and analysis. The United States is also assisting Gabon in establishing an observer database similar to Liberia's, particularly through translation services.

**Colombia–United States Partnership on Queen Conch.** NMFS has a long history of collaboration with Colombia on management of marine species. Colombia is a leader in the management of queen conch, an important species whose international trade is regulated under Appendix II of CITES. Workshops have promoted coordination between CITES and regional fisheries authorities to encourage cooperation among range States in enforcement of national and CITES requirements. NMFS recently sponsored a workshop to review management of queen conch in the Southwest Caribbean, from which Colombia developed a case study on its methods of making no-detriment findings to demonstrate sustainability for export of queen conch. That case study, presented at a workshop of CITES experts, became the basis of guidance provided to other nations in using this important conservation tool.

**International Gillnet Workshops.** In October 2011, NMFS hosted an international workshop to develop recommendations regarding best practices, a “toolkit” of mitigation options, and research and experimental priorities for the future.<sup>35</sup> A month later, NMFS organized a second workshop, focused on overcoming the challenges associated with mitigating gillnet bycatch in developing nations with significant gillnet fisheries and a lack of expertise to address bycatch problems. Held concurrent with a meeting of the Society for Marine Mammalogy, the workshop identified key actions to address marine mammal bycatch in artisanal gillnet fisheries. NMFS hosted a third workshop in September 2012, coincident with the meeting of the Sociedad Latinoamericana de Especialistas en Mamíferos Acuáticos. The purpose was to define a process for achieving major marine mammal bycatch reductions in South American gillnet fisheries. Participants examined different courses of action that could lead to greater progress in reducing bycatch of threatened marine mammals in both industrial and non-industrial gillnet fisheries. They considered the bycatch of species such as the franciscana and Chilean dolphin, while exploring mitigation strategies that respect the interests of fishermen to maintain productive livelihoods.

**Driftnet Eradication and Alternative Gear Testing in Morocco.** In 2011, Moroccan legislation banned use of driftnets in its large pelagic fisheries. To assist with Morocco’s transition to alternative gear in its swordfish fisheries, NOAA offered to share “buoy gear” technology developed by U.S. fishermen. Use of this gear in small-scale fisheries off the coast of Florida has demonstrated decreased bycatch rates while increasing target catch rates. Buoy gear is simple to construct and inexpensive to maintain. If effective in Morocco, this type of gear potentially offers an optimal alternative to driftnets. With the support of DOS funding, NOAA conducted a needs assessment in January 2012; testing in the Mediterranean is planned for 2013.

**International Symposium on Circle Hooks in Research Management and Conservation.** In May 2011, NMFS organized a 3-day meeting of international scientists, managers, and industry and NGO representatives. The goal was to develop an updated, science-based assessment of the management and conservation utility of circle hooks in commercial and recreational fisheries around the globe. The meeting provided a forum for individuals, organizations, and agencies to share relevant research results and perspectives. Themes of the symposium included empirical field studies, ecological and population assessments, fisheries management evaluations, and

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<sup>35</sup> The outcome of this workshop will be published as a special edition of the journal *Endangered Species Research*.

socioeconomic research and analysis. Ultimately, organizers of the meeting hope to support uniformity in circle hook terminology, research approaches, and data analyses as well as greater collaboration among the international scientific, management, and conservation communities.

**U.S. –Taiwan Circle Hook Research.** NOAA is engaged in a cooperative experiment with Taiwan in the Atlantic Ocean to study the use of large circle hooks in deep-set longline fisheries. This experiment will evaluate the effect of this gear on target catch retention rates for bigeye tuna, as well as rates of associated bycatch. As part of this project, NOAA provided supplemental training for experienced observers from Taiwan and has helped to develop training material on data collection protocols. Participants are gathering data on fishing effort, catch, biological information on species caught, disposition of any bycatch, tag encounters, and marine mammal/sea turtle sightings.

**Reducing Sea Turtle Interactions with Gillnet Fisheries.** Since 2005, NMFS researchers and a team of international collaborators have been conducting research that has identified net illumination as a potential strategy to reduce sea turtle interactions with gillnets while not impacting rates of target fish catch. To date, experiments have been conducted in coastal fisheries in Peru (collaborating with ProDelphinus since 2010), and Brazil (working with TAMAR since 2010). Researchers chose these locations due to their high levels of sea turtle interactions and the availability of local collaborating scientists with the necessary infrastructure to carry out these experiments. This work has demonstrated significant reduction in sea turtle bycatch in certain fisheries and has been internationally recognized by the Smartgear competition.

**Japanese Pound Nets.** Upon returning from their trans-Pacific migrations from the west coast of North America to Japan, subadult and adult loggerhead turtles spend considerable time in coastal and nearshore habitats of Japan and other Asian nations where there is high risk of interactions with coastal pound net fisheries. Recent reports suggest a very high interaction rate between sea turtles and these fisheries and, in particular, high mortalities in mid-water pound nets. Since 2009, in collaboration with researchers from the University of Hawaii, the Sea Turtle Association of Japan, the Tokyo University of Marine Science and Technology, and ProPensula, NMFS scientists have developed an in-water method to identify mitigation measures useful in reducing sea turtle bycatch in mid-water pound net fisheries. Using both wild-caught and captive loggerhead sea turtles, they have developed and tested pound net escape devices for turtle exclusion as well as testing for fish retention. The work engages fishermen, fisheries officials, gear manufacturers, and scientists to develop these devices.

**Mariculture of Corals to Reduce Wild Harvest.** In 2004, more than one million live corals were harvested from the wild for the aquarium trade. The United States is the world's largest consumer in that market (more than 70 percent of corals, other reef invertebrates, and marine fish). Several Coral Triangle nations are exploring mariculture as a lower-impact option for the sustainable harvest of corals. NOAA and the Ocean Foundation hosted an international workshop in July 2011 in Indonesia with the goal of improving the mariculture of stony corals through the development of comprehensive best management practices that all nations could apply. While many nations already had stony coral mariculture guidelines developed, the



workshop participants identified information gaps and components of current plans that could be improved.

A follow-up workshop, held in Indonesia in cooperation among NOAA, the Ocean Foundation, and Yayasan Alam Indonesia Lestari, took place in June 2012. Participants included Indonesian officials; coral mariculture farmers, exporters, and importers from Indonesia and other Asian nations; academic experts; and NGOs. The workshop provided a forum to fill in gaps related to Indonesia's guidelines, and also allowed NOAA to continue initiatives to address the unsustainable and destructive trade in coral reef species, specifically building on past efforts to address trade issues through CITES listing and trying to better understand the magnitude of the coral trade. The workshop participants were asked to develop draft criteria for restocking (restoration) of corals, and to develop recommendations to support a sustainable and responsible coral trade.

## **Annex 1: International Fisheries and Related Agreements and Organizations to which the United States Is Party or in which the United States Has a Substantial Interest**

To provide basic knowledge of the multilateral agreements, RFMOs, and related international organizations concerning living marine resources of which the United States is a member or that are of substantial interest to the United States, a list of many such organizations and agreements, with brief descriptions, is set forth below.

### **Global**

United Nations Convention on the Law of the Sea. This treaty sets the rules for jurisdiction and management authority in the oceans, and establishes general requirements concerning conservation. The Convention currently has 164 parties; the United States is not yet a party, but operates consistent with the fisheries provisions of the Convention. President Clinton submitted the Convention to the Senate in 1994.

Agreement for the Implementation of the Provisions of the U.N. Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement or UNFSA). This agreement provides more specific rules for the conservation and management of straddling and highly migratory fish stocks, including application of the precautionary approach, ecosystem-based management, a requirement that nations with vessels fishing on the high seas either join the appropriate RFMO or apply the CMMs established by that RFMO to its fishing vessels, and other similar requirements. The 1995 agreement, which entered into force in 2001, now has 79 parties, including the United States.

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement). This agreement requires flag States to exercise control over their vessels on the high seas to ensure that they follow applicable conservation and management regulations. The agreement was adopted in 1993 and entered into force in 2003. It has 39 parties, including the United States.

FAO Code of Conduct for Responsible Fisheries. This non-binding document, prepared in 1995, sets forth principles and international standards of behavior for responsible fisheries practices, to ensure effective conservation, management, and development of living aquatic resources.

International Whaling Commission. The IWC was established under the International Convention for the Regulation of Whaling in 1946, with the purpose of providing for the proper conservation and management of whale stocks. It currently has 89 parties, including the United States.

Convention on International Trade in Endangered Species of Wild Fauna and Flora. CITES provides for the protection and regulation of certain species of wild fauna and flora, including certain living marine species, against over-exploitation, through limitations on international trade. Under CITES, species are listed in Appendices according to their conservation status:

Appendix I (“threatened with extinction”); Appendix II (may become threatened with extinction unless trade is strictly regulated); and Appendix III (species that any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and that needs the cooperation of other parties in the control of trade). CITES currently has 176 parties, including the United States.

Agreement on the Conservation of Albatrosses and Petrels. ACAP, a legally binding agreement, was established under the CMS; it has 13 parties. Its purpose is to enhance the understanding of the conservation status of albatrosses and petrels and their susceptibility to a range of threats, as well as to provide an effective means of mitigating those threats. Although not a party, the United States participates in ACAP meetings as an observer.

Memorandum of Understanding on the Conservation of Migratory Sharks. This non-binding agreement, negotiated under the auspices of the CMS, provides an international framework for coordinating sustainable management and conservation efforts for seven species of migratory sharks. The MOU has 25 signatories, including the United States.

## **Atlantic**

International Commission for the Conservation of Atlantic Tunas. ICCAT provides for international cooperation in conservation and management, including scientific research, for tunas and tuna-like species in the Atlantic. It covers all waters of the Atlantic Ocean, including the adjacent seas. ICCAT has 48 contracting parties, including the United States, plus five cooperating non-parties or fishing entities.

North Atlantic Salmon Conservation Organization. NASCO has jurisdiction over salmon stocks that migrate beyond areas of coastal State jurisdiction in the Atlantic Ocean north of 36° N. It has six parties, including the United States.

Northwest Atlantic Fisheries Organization. NAFO’s Convention Area is located within the waters of the Northwest Atlantic Ocean roughly north of 35° N and west of 42° W. The principal species managed are cod, flounders, redfish, American plaice, Greenland halibut (turbot), capelin, shrimp, hake, and squid. NAFO has 12 contracting parties, including the United States.

Southeast Atlantic Fisheries Commission. The SEAFO Convention, which entered into force in 2003, regulates fisheries outside EEZs in the Southeast Atlantic Ocean. Species covered include fish, mollusks, crustaceans, and other sedentary species, except species subject to coastal State jurisdiction and highly migratory species. There are currently seven parties. The United States signed the Convention, but is not a party because no U.S. vessels fish in the area.

## **Pacific**

Western and Central Pacific Fisheries Commission. The WCPFC manages tuna and other highly migratory species in the western and central Pacific Ocean. The Convention entered into force in

2004. It currently has 25 members, including the United States; seven participating territories; and eleven cooperating non-members.

South Pacific Regional Fisheries Management Organization. The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean entered into force on August 25, 2012. Its objective is to ensure the long-term conservation and sustainable use of fishery resources and to safeguard the marine ecosystems in which these resources occur. The Convention has 10 parties, not yet including the United States.

South Pacific Tuna Treaty. This agreement provides U.S. tuna purse seine vessels access to fish in the waters of the Pacific Island parties to the Treaty, including adjacent high seas areas in the central and western Pacific. Although not a fisheries management arrangement, it is referenced in this report because it contains some important and forward-looking monitoring and control provisions, including observer and VMS requirements. The Treaty has 17 parties, including the United States. It is administered by the Forum Fisheries Agency, comprised of the 16 Pacific Island parties.

Inter-American Tropical Tuna Commission. The IATTC manages tunas and other species taken by tuna-fishing vessels in the EPO. It has 21 members, including the United States, plus one cooperating non-member.

Agreement on the International Dolphin Conservation Program. This agreement establishes legally binding mechanisms to reduce incidental dolphin mortality in the tuna purse seine fishery in the EPO to levels approaching zero. The agreement has 15 parties, including the United States, plus one nation that applies the Agreement provisionally.

North Pacific Anadromous Fish Commission. The NPAFC promotes the conservation of anadromous stocks (salmon) and ecologically related species, including marine mammals, seabirds, and non-anadromous fish, on the high seas of the North Pacific, the Bering Sea, and the Sea of Okhotsk, north of 33° N. It has five parties, including the United States.

Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea. This Convention was established to conserve and manage the pollock resources in the high seas area of the Bering Sea (the “donut hole”). It has six parties, including the United States.

Pacific Salmon Convention. The PSC implements the United States-Canada Pacific Salmon Treaty. Four commissioners and four alternates from each nation represent the interests of commercial and recreational fisheries as well as Federal, state, and tribal governments. The PSC provides regulatory advice and recommendations to the two parties with regard to salmon originating in waters of one nation that are subject to interception by the other, salmon that affect the management of the other nation’s salmon, and salmon that biologically affect the stocks of the other nation.

International Pacific Halibut Commission. Established by a 1923 Convention between the United States and Canada, the Commission’s mandate covers research on and management of the

stocks of Pacific halibut within Convention waters of both nations. The Commission consists of three government-appointed commissioners for each nation.

Memorandum of Understanding for the Conservation of Cetaceans and their Habitats in the Pacific Islands Region. Negotiated under the auspices of the CMS, this non-binding MOU provides an international framework for coordinated conservation efforts for cetaceans and their habitats in the Pacific Islands Region. The MOU has 15 signatories, including the United States.

## **Southern Ocean**

Commission for the Conservation of Antarctic Marine Living Resources. With the exceptions of any commercial seal hunt south of 60° S and all whaling activities, CCAMLR conserves and manages all marine living resources between the edge of the Antarctic continent and the Antarctic Polar Front (varying between 45° S and 60° S). There are 25 members of the Commission, including the United States. Another 10 nations have acceded to the Convention, agreeing to be legally bound by its terms, but not contributing to the budget or participating in decisions.

Convention for the Conservation of Antarctic Seals. The Convention is designed to promote and achieve the protection, scientific study, and rational use of Antarctic seals, and to maintain a satisfactory balance within the ecological system of Antarctica. It prohibits the killing or capture of seals in the area south of 60° S, except as specifically provided for in the Convention. It has 14 parties, including the United States.

## **Western Hemisphere**

Inter-American Convention for the Protection and Conservation of Sea Turtles. The IAC is the only binding Convention for the protection and conservation of sea turtles in the world. The IAC specifically protects six of the seven species of sea turtles: loggerhead, green, leatherback, hawksbill, olive ridley, and Kemp's ridley. This Convention entered into force in 2001 and has 15 parties, including the United States.

## **Indian Ocean**

Indian Ocean–South East Asian Marine Turtle Memorandum of Understanding. This MOU operates as a non-binding agreement under the CMS. It provides a framework within which the States of the region as well as other concerned States can work together to conserve and replenish depleted marine turtle populations for which they share responsibility. The MOU has 33 signatories, including the United States.

**Annex 2: United States Laws and Regulations**  
**Providing Tools to Address IUU Fishing and Bycatch of PLMRs, including**  
**Summaries of Recent Enforcement Cases**

Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. The 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, directs substantial attention to fishing issues outside U.S. waters, particularly IUU fishing and bycatch of PLMRs. Title IV of the Act amended the High Seas Driftnet Fisheries Moratorium Protection Act, 16 U.S.C. 1826d-1826g, to call on the Secretary of Commerce to urge other nations and RFMOs to address IUU fishing and to put into place regulatory measures to end or reduce bycatch of PLMRs comparable to those of the United States, taking into account different conditions. It also puts into place an identification and certification procedure for nations whose vessels engage in IUU fishing or bycatch of PLMRs.

Magnuson-Stevens Fishery Conservation and Management Act. The MSA, originally enacted in 1976, is the foundational legislation for the conservation and management of fisheries within the U.S. EEZ. Besides establishing the framework for regulating U.S. fisheries, the Act contains specific and extensive prohibitions and enforcement authorities to ensure a high rate of compliance with regulations governing both domestic and foreign fishing within the EEZ.

High Seas Driftnet Fishing Moratorium Protection Act. This Act prohibits the United States from entering into international agreements that would prevent full implementation of the UN Moratorium on Large-Scale High Seas Driftnets. The MSRA and SCA added specific authorities and responsibilities to assist in reducing or eliminating IUU fishing, bycatch of PLMRs, and certain shark fishing practices.

High Seas Driftnet Fisheries Enforcement Act. This Act, 16 U.S.C. 1826a-1826c, seeks to end the use of large-scale driftnets by foreign fisheries operating beyond the EEZ of any nation. Among other provisions, the Act authorizes identification of nations whose vessels are engaging in high seas fishing with large-scale driftnets; such identification may lead to limitations on importation of certain products from those nations.

High Seas Fishing Compliance Act. This Act, 16 U.S.C. 5501-5509, implements the FAO Compliance Agreement for vessels flagged in the United States. The Act requires high seas fishing vessels to operate under permits issued by the Secretary of Commerce, and to comply with certain international measures.

Shark Conservation Act of 2010. Enacted January 4, 2011, Public Law 111-348 amended the Moratorium Protection Act to promote adoption by RFMOs of shark conservation measures, including banning removal of any of the fins of a shark and discarding the carcass at sea. The Act amended the definition of IUU fishing with an explicit reference to violation of international shark conservation measures, and provides for identification of a nation for activities related to shark conservation.

Shark Finning Prohibition Act. This Act, 16 U.S.C. 1866 note, makes it illegal for persons under U.S. jurisdiction to remove any fins of a shark and discard the carcass at sea, or to possess such

fins, and for persons to offload into a U.S. port any shark fins without the corresponding carcass. The law requires U.S. delegations at bilateral and multilateral meetings to seek a prohibition on shark finning, which some RFMOs have adopted.

Lacey Act. The Lacey Act, 16 U.S.C. 3371-3378, prohibits the import, export, transport, sale, possession, or purchase in interstate or foreign commerce of any fish or wildlife taken, possessed, transported, or sold in violation of any U.S. state law or regulation or of any foreign law. The two-part prohibition requires evidence of a violation of domestic or foreign law, and also evidence of trafficking. NMFS has used the law to prosecute foreign individuals who import illegal catch, such as tuna caught without authorization in another nation's EEZ.

Marine Mammal Protection Act. A goal of the MMPA, 16 U.S.C. 1361 *et seq.*, is to reduce the incidental kill or serious injury of marine mammals in the course of commercial fishing to insignificant levels, approaching zero. The Act prohibits "taking" (actual or attempted harassment, hunting, capture, or killing) and importation into the United States of marine mammals except where explicitly authorized. The MMPA also bans the importation of fish caught with commercial fishing technology that results in the incidental kill or serious injury of marine mammals in excess of U.S. standards.

Endangered Species Act. This Act, 16 U.S.C. 1531 *et seq.*, provides for the conservation of species that are in danger of extinction throughout all or a significant portion of their range. The Act lists species as either "threatened" or "endangered." When a species is endangered, it is protected from being "taken" through harassment, harm, injury, pursuit, hunting, killing, capturing, or collection. The Act also provides for U.S. implementation of limitations on trade of species listed under CITES.

International Dolphin Conservation Program Act. This Act, 16 U.S.C. 1441 *et seq.*, amended the MMPA to provide that nations whose vessels fish for yellowfin tuna with purse seine nets in the ETP are permitted to export tuna to the United States only if the nation provides documentary evidence that it participates in the International Dolphin Conservation Program and is a member (or applicant member) of the IATTC, is meeting its obligations under the Program and the IATTC, and does not exceed certain dolphin mortality limits.

Shrimp-Turtle Law (Section 609 of P.L. 101-162). This law, 16 U.S.C. 1537, requires the United States to embargo wild-caught shrimp harvested with commercial fishing technology, such as trawl nets, that may adversely affect sea turtles. The import ban does not apply to nations that have adopted sea turtle protection programs comparable to those of the United States. Nations seeking to import shrimp must be certified by DOS as meeting the law's requirements on an annual basis.

Pelly Amendment. The 1971 Pelly Amendment to the Fishermen's Protective Act of 1967, 22 U.S.C. 1978, directs the Secretary of Commerce to certify to the President if "nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program." The President has discretion in whether to direct the Secretary of the Treasury to prohibit the importation of products from the certified country.

## **Summaries of Recent Enforcement Cases with an International Nexus**

This section summarizes recent U.S. enforcement cases involving an international nexus such as IUU fishing by a foreign-flagged vessel, international trafficking in seafood illegally harvested or labeled, and U.S. assistance with another nation's investigation of a fisheries violation. NOAA, the USCG, and the U.S. Department of Justice are actively engaged around the nation and overseas in monitoring fishing activity for a number of ecologically and economically valuable marine species. These efforts in combating IUU fishing and PLMR bycatch not only help to protect global fish stocks and other marine resources, but also preserve the integrity of the U.S. domestic fish market and the safety of the U.S. food supply.

Some of the more significant cases since January 2011 are outlined below:

- A joint investigation between the U.S. Fish and Wildlife Service and NOAA into illegal black coral imports produced a guilty plea. The criminal sentencing resulted in a \$1.8 million criminal fine and an additional \$500,000 as community service. More than 13,600 pounds of raw black coral, valued in excess of \$2.17 million, were forfeited. According to the U.S. Department of Justice, this was the largest financial penalty for illegal coral trade, the largest non-seafood wildlife trafficking financial penalty, and the fourth largest monetary fine for any U.S. case involving illegal wildlife trade.
- In April 2012, NOAA completed an investigation of a Los Angeles-based seafood company that imported approximately 5,000 pounds of Mexican abalone through the Otay Mesa commercial port of entry using invoices that were illegal, according to the Mexican Government. The importer also labeled shark fin chunk with false information. This was a joint investigation with the California Department of Fish and Game; the case has been referred for criminal prosecution.
- On July 27, 2011, United Seafood Imports was fined \$200,000. The company owner was sentenced to 2 years of probation with 6 months of home confinement, restrictions on working in the seafood industry, 200 hours of community service, and a requirement to teach Lacey Act seminars and write an article for publication regarding the mislabeling of products. The charges involved the importation of Thai, Malaysian, and Indonesian shrimp that was relabeled to indicate Panama, Honduras, and Ecuador as the nations of origin.
- On September 2, 2011, Van Bodden-Martinez was sentenced to 3 years of probation with the special condition that he cannot import into the United States any fish or marine products harvested in Bahamian waters. Bodden-Martinez was charged for violation of the Lacey Act, based on violations of Bahamian law. The investigation showed that Van Bodden-Martinez returned to the United States from the Bahamas with approximately 528 queen conch; 45 wrung spiny lobster tails, of which 43 were undersized; and 42 yellowtail snapper – all well above the Bahamian bag limits. Neither the defendant nor his vessel possessed any Federal, state, or Bahamian permits or licenses.



- On September 7, 2011, the USCG responded to a sighting by a Japanese patrol aircraft of the *Bangun Perkasa* actively engaged in high seas driftnet fishing 210 miles southeast of Hokkaido, Japan. This vessel claimed Indonesian registry in an attempt to prevent law enforcement action by the USCG, but the Government of Indonesia denied registry. As a "vessel without nationality," the fishing vessel was subject to the jurisdiction of the United States and was subsequently seized for violating U.S. law, specifically the MSA's prohibition against large-scale driftnet fishing. The vessel was escorted to Dutch Harbor, Alaska, where it was turned over to NOAA for processing and follow-up investigation. The vessel has been scheduled for scrapping.
- In 2011, NOAA worked closely with Russian officials to seize 112 metric tons of Russian-origin King crab that was harvested in the Russian EEZ. The United States alleged that Harbor Seafood, Inc., imported the crab illegally because it was harvested from Russian waters in violation of Russian quotas, was not marked in accordance with regulations under the Lacey Act, and was not accompanied by information required under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The importer entered into a consent judgment under which the United States will retain approximately \$2.1 million of the \$2.5 million in proceeds from sale of the illegally imported product. The importer also agreed to undertake a compliance review and provide remedial training to its employees concerning the laws that govern importation of seafood products.
- In spring 2012, a USCG law enforcement detachment aboard a naval warship, operating in support of the African Maritime Law Enforcement Partnership, assisted in two cases in West African EEZs. In March, the team boarded a French-flagged vessel in the Sierra Leone EEZ and detected three violations: failure to notify Sierra Leone authorities of the maximum amount of catch, improper hull marking, and improper notification when entering the EEZ. Sierra Leone fined the vessel the equivalent of 51,000 USD and seized 320 tons of catch. In the second case, on June 19, 2012, the detachment assisted Gambian shipriders with boarding a Sierra Leone vessel. The team issued two violations, for fishing without a license and for not flying a flag while fishing in the Gambian EEZ. The Gambian shipriders seized the catch; the naval ship escorted the fishing vessel to a Gambian patrol boat for disposition of the case.
- On November 2, 2011, a USCG team operating in coordination with a Kiribati shiprider boarded an Indonesian-flagged vessel fishing in the Kiribati EEZ. The boarding team discovered several violations: no notification to Kiribati of commencement of fishing, license not on board, and out-of-date logs. The Kiribati shiprider issued citations to the vessel's owner.
- A USCG team operating under a shiprider agreement with Palau boarded a Philippine-flagged fishing vessel on May 14, 2012. The team documented five violations: fishing inside the Palau EEZ without permit, illegal entry into the Palau territorial sea, reef fish on board, shark fins on board, and no VMS. The USCG cutter assisted the Palau shiprider in escorting the vessel to Koror, where it was seized.

### **Annex 3: Seabird Bycatch Issues**

Seabirds fall within the definition of international living marine resources under the Moratorium Protection Act, but not within the definition of protected marine living resources. Section 316 of the MSA highlights the need for the Secretary of Commerce to work cooperatively with the Secretary of the Interior, with regional fishery management councils, and within international organizations to seek ways to mitigate seabird bycatch. NMFS has pushed hard internationally for action to protect seabirds.

The Agreement on the Conservation of Albatrosses and Petrels (ACAP) coordinates international activity to mitigate known threats to albatross and petrel populations. The ACAP treaty was submitted to the Senate in 2008 for its advice and consent to ratification; draft implementing legislation was submitted to Congress in 2009. The United States participates in ACAP meetings as an observer due to its interest in seabird conservation and its status as a range State under ACAP. ACAP held its fourth Meeting of the Parties in April 2012, where the Balearic shearwater was added to the list of species covered by the Agreement.

Several RFMOs have taken action concerning seabirds in 2011 and 2012:

CCAMLR. CCAMLR's Working Groups on Incidental Mortality Associated with Fishing and on Fish Stock Assessment analyze and report on observed and estimated seabird mortality by fishery and gear type. Observed seabird bycatch in the Convention Area is near zero in the legal fishery outside of the French EEZ. Seabird bycatch within the French EEZ continues to decline significantly each year due to improved mitigation and management measures. CCAMLR was unable to produce an estimate of the levels of incidental mortality of seabirds in IUU fishing due to lack of information on the potential rate of interactions with gillnets, now believed to be the primary gear used by IUU vessels in the Convention Area. The Scientific Committee did note that penguins are potentially at risk from incidental capture in gillnets, depending on the depths and locations fished. At its 2012 meeting, CCAMLR revised the conservation measure for minimizing mortality of seabirds incidental to longlining, to clarify that systems to remove hooks from offal must be effective.

IATTC. The IATTC first adopted a seabird resolution in 2005. Since then, the United States, in cooperation with other parties, has worked to strengthen this resolution. The IATTC adopted a non-binding recommendation on seabird mitigation measures in the longline fishery in 2010; the substance of the recommendation was made binding at the 2011 meeting. The measure is very similar to the 2009 U.S. proposal and the 2007 WCPFC measure, although exclusions for waters around Mexico were added.

ICCAT. In 2011, ICCAT agreed to a supplementary recommendation on reducing incidental bycatch of seabirds in longline fisheries. This measure strengthens the 2002 requirements for mitigation and moves toward implementation of best practices. The 2011 recommendation requires use of two of three measures (night setting, branch line weighting, and bird scaring lines) for vessels fishing south of 25° S, and recommends voluntary use of the measures in the Mediterranean and other areas as appropriate. The recommendation also establishes binding minimum technical standards for each of the measures and provides additional technical

guidance for design and deployment of tori lines. The recommendation comes into effect to the extent possible in January 2013, and is fully in effect no later than July 2013. The SCRS will undertake another fishery assessment in 2015 to evaluate the efficacy of the measures.

IOTC. In 2012, the IOTC adopted a resolution on reducing the incidental bycatch of seabirds in longline fisheries, to enter into force on July 1, 2014. This measure is substantially the same as the ICCAT recommendation described above. The Scientific Committee will evaluate the resolution prior to the 2016 meeting.

WCPFC. Based on its Scientific Committee's review of recent mitigation research and possible improvements to the measure that was first adopted in 2007, the Commission in 2012 adopted a revised measure that varies the requirements for the northern and southern hemispheres. Requirements for the southern hemisphere are now consistent with those recently adopted by the IOTC and ICCAT. Requirements for the northern hemisphere remain largely unchanged and are consistent with those adopted by the IATTC.

In addition to involvement with multilateral organizations, the United States also addresses seabird bycatch initiatives at bilateral fishery meetings with Brazil, Canada, Chile, the EU, Japan, the Republic of Korea, Mexico, Russia, and Taiwan.



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