

**Implementation of Title IV of the Magnuson-Stevens Fishery  
Conservation and Management Reauthorization Act of 2006**

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

**January 2011**

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

# Implementation of Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

## Biennial Report to Congress – January 2011

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## Executive Summary

In reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act in 2006, Congress 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. Congress also required the Secretary of Commerce to identify countries whose fishing vessels were engaged in these activities, and to consult with those countries on improving their fisheries management and enforcement practices.

In the 2009 Report to Congress, the Commerce Department surveyed U.S. efforts to date to carry out these mandates and identified six countries as having engaged in IUU fishing during the preceding two years: France, Italy, Libya, Panama, People's Republic of China, and Tunisia. Alleged violations of international conservation and management measures formed the basis for each of the identifications.

This report (in Part IX.A beginning on page 67) details the consultations with those countries over the past two years. As required by the reauthorization statute, it also contains the National Marine Fisheries Service's certification that each of the six has provided evidence of corrective action with respect to the offending activities, or has credibly disputed the basis of the original identifications. For each of the verified violations, the countries took punitive action against the vessels involved or against persons committing similar violations. The identified countries also produced evidence of their laws and regulations, some of them recently adopted, and of recently enhanced monitoring, reporting, and enforcement activities – all aimed at combating IUU fishing by vessels flying their flags. In short, the identification/certification process in 2009-2010 worked as Congress intended, to improve compliance with international fisheries measures.

This report (in Part IX.B.3 beginning on page 92) also contains NMFS's identification of six countries as having been engaged in IUU fishing during 2009 or 2010: Colombia, Ecuador, Italy, Panama, Portugal, and Venezuela. As in 2009, the identifications are based on violations of international measures, not on overfishing of shared stocks or on fishing practices destructive of vulnerable marine ecosystems (VMEs).

Colombian vessels fished in both 2009 and 2010 in violation of resolutions of the Inter-American Tropical Tuna Commission (IATTC). Several purse seine vessels flagged to Ecuador fished in the IATTC Convention Area in 2009 without authorization or otherwise in violation of IATTC resolutions. One Ecuadorian-flagged vessel increased its capacity, contrary to an IATTC resolution. Several Panamanian-flagged vessels were reported to have engaged in IUU fishing activities during 2009, in violation of IATTC conservation and management measures. Several vessels flagged to Venezuela were reported to have fished during IATTC purse seine closure periods in 2009, in violation of IATTC resolutions.

During 2009 and 2010, many vessels flagged to Italy again fished in violation of a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) that prohibits the use of driftnets for fisheries on large pelagic species, including swordfish and bluefin tuna, in the Mediterranean. These repeat driftnet infractions seem to indicate the need for additional measures to deter this type of IUU activity, including, *inter alia*, implementation of stronger sanctions permissible under Italian law, such as suspension of fishing authorization or licenses.

Two vessels flagged to Portugal engaged in IUU fishing activities during 2010 by violating conservation and management measures of the Northwest Atlantic Fisheries Organization (NAFO).

NMFS considered 12 other countries for identification during the reporting period, but consultations with those nations indicate corrective actions have already been taken to address the IUU fishing activities of concern, or the allegations of IUU fishing information were refuted (beginning on page 99).

As in 2009, NMFS is not identifying any countries for fishing activities involving the bycatch of protected living marine resources. See page 91.

This report also contains updates on U.S., regional, and global efforts to combat IUU fishing and to minimize bycatch of protected species. Among the most important developments in the past two years are the following:

- Adoption of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, in November 2009. One of the Agreement's objectives is to eliminate "ports of convenience" that serve as safe havens for IUU vessels and as portals for illegally harvested fish to enter the stream of commerce. See page 22.
- Recommendations by an FAO Technical Consultation in November 2010 that the Committee on Fisheries should launch the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels, beginning with Phase I (2011-2013) during which the largest vessels would enter the record. See page 33.
- Completion of the convention establishing the South Pacific Regional Fisheries Management Organization (SPRFMO), whose objective is to conserve and manage non-highly migratory fish stocks and protect vulnerable habitats and biodiversity in the South Pacific. See page 37.
- Expansion of the negotiations to establish a new RFMO in the North Pacific, to cover a wider geographic area (all high seas areas of the North Pacific) and include additional countries and entities, as well as agreement by negotiators on interim measures with regard to bottom fishing and steps to protect VMEs. See page 38.

- Entry into force on August 27, 2010, of the Antigua Convention, with improved enforcement provisions to combat IUU fishing as well as new measures to minimize impacts on bycatch species and conserve marine ecosystems. See page 39.
- Continuation of the “Kobe Process” to coordinate management and conservation efforts among the five tuna RFMOs, with a second meeting in San Sebastian in 2009 and four important workshops during 2010. The United States will host the third meeting in San Diego in July of 2011. See page 42.
- Development of the International Guidelines on Bycatch Management and Reduction of Discards, which will be presented to the FAO Committee on Fisheries in early 2011. See page 44.
- Convening of the Kobe II Bycatch Workshop (K2B), a component of the Kobe Process, in June 2010, to address bycatch in tuna fisheries and recommend measures for adoption by the tuna RFMOs. See page 45.
- Completion of a Memorandum of Understanding for Migratory Sharks in February 2010, to coordinate international action on the threats faced by sharks. See page 50.

## **List of Acronyms**

<b><u>Acronym</u></b>	<b><u>Full Name</u></b>
ACAP	Agreement on the Conservation of Albatrosses and Petrels
AIDCP	Agreement on the International Dolphin Conservation Program
ANPR	Advance notice of proposed rulemaking
ARAP	Autoridad de los Recursos Acuáticos de Panamá
CAFTA-DR	Dominican Republic-Central America-United States Free Trade Agreement
CARICOM	Caribbean Community and Common Market
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCAS	Convention on the Conservation of Antarctic Seals
CCBSP	Convention on the Conservation and Management of the Pollock Resources in the Central Bering Sea
CCM	For WCPRC, refers to all Commission members, cooperating non-members, and participating territories
CDS	Catch documentation schemes
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMM	Conservation and Management Measure (under the WCPFC)
CMS	Convention on Migratory Species
COFI	Committee on Fisheries of the FAO
DMLs	Dolphin mortality limits (under the AIDCP)
DOS	United States Department of State
EC	European Commission
EEZ	Exclusive Economic Zone
ESA	Endangered Species Act
ETP	Eastern Tropical Pacific
EU	European Union
FAD	Fish aggregating device
FAO	United Nations Food and Agriculture Organization
FFA	Forum Fisheries Agency
HSDN	High seas driftnet
HSFCA	High Seas Fishing Compliance Act
IAC	Inter-American Convention for the Protection and Conservation of Sea Turtles
IATTC	Inter-American Tropical Tuna Commission
ICAP	International Cooperation and Assistance Program
ICCAT	International Commission for the Conservation of Atlantic Tunas

**Acronym****Full Name**

ICES	International Council for the Exploration of the Sea
ICRW	International Convention for the Regulation of Whaling
IDCP	International Dolphin Conservation Program
IOSEA	Indian Ocean-South East Asia Marine Turtle MOU
IPHC	International Pacific Halibut Commission
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate IUU Fishing
IPOA-Sharks	International Plan of Action for the Conservation and Management of Sharks
IUCN	World Conservation Union
IUU	Illegal, unreported, and unregulated fishing
IWC	International Whaling Commission
K2B	Kobe II Bycatch
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
NOAA	National Oceanic and Atmospheric Administration
NPAFC	North Pacific Anadromous Fisheries Commission
NPOA	National Plan of Action
OECD	Organization for Economic Cooperation and Development
OLE	Office of Law Enforcement, NMFS
OSPESCA	Organization for the Fisheries and Aquaculture Sector of the Central American Isthmus
PLMRs	Protected living marine resources
PSC	Pacific Salmon Commission
RFMO	Regional Fisheries Management Organization
SCRS	Standing Committee on Research and Statistics (ICCAT)
SEAFO	South East Atlantic Fisheries Organization
SPREP	Secretariat of the Pacific Regional Environmental Programme
SPRFMO	South Pacific Regional Fisheries Management Organization

**Acronym****Full Name**

SPTT	South Pacific Tuna Treaty
STACTIC	Standing Committee on International Control (NAFO)
SWIOFC	South West Indian Ocean Fisheries Commission
TED	Turtle excluder device
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly
UNICPOLOS	United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea
USAID	United States Agency for International Development
USCG	United States Coast Guard
VME	Vulnerable marine ecosystem
VMS	Vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission
WTO	World Trade Organization

# Implementation of Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

## Biennial Report to Congress January 2011

### I. Introduction

The Secretary of Commerce submitted the first Biennial Report to Congress on January 13, 2009, pursuant to Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA or the Act). In the MSRA, 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,<sup>1</sup> and fishing practices that may undermine the sustainability of living marine resources.

The 2009 Report to Congress contains a comprehensive survey of the efforts by the United States to strengthen its leadership toward improving international fisheries management and enforcement, particularly with regard to IUU fishing and bycatch of protected living marine resources (PLMRs). The Report also describes progress in the international arena to deal with these issues. It contains an extensive list showing the status of international living marine resources, as well as information on actions taken to assist other countries in achieving sustainable fisheries and minimizing bycatch and discards.

In the report, the National Marine Fisheries Service (NMFS) identified six nations as having been engaged in IUU fishing in the two preceding years (2007 and 2008): France, Italy, Libya, Panama, People's Republic of China, and Tunisia. NMFS did not identify any nations as having been engaged in activities or practices that result in the bycatch of PLMRs, due primarily to the restrictive timeframe and other limitations in the statute.

This, the second Biennial Report to Congress, updates the 2009 report, contains certification decisions about the six nations identified in 2009 as engaged in IUU fishing, and identifies six nations engaged in IUU activities in the preceding two years (2009 and 2010).

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<sup>1</sup> 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 United Nations Food and Agriculture Organization (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.

## II. Background Information

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

In general, IUU fishing activity refers to activity that does not comply with national, regional, or global fisheries conservation and management obligations in areas under the jurisdiction of national or international entities. In addition, unregulated or unreported fishing may occur in international waters where no international management authority or regulation is in place.

IUU fishing activity affects fisheries of all types – from small scale to industrial. Besides illegal harvesting, it includes the shipment, processing, landing, sale, and distribution of fish and fish products. 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 fishers and, more broadly, to achieve food security.

**Definition of IUU Fishing.** Section 609(e)(3) of the High Seas Driftnet Fishing Moratorium Protection Act<sup>2</sup> contains language that the Secretary of Commerce is to include in a regulatory definition of “illegal, unreported, or unregulated fishing.” In 2007 NMFS published a definition that was exactly the same as the statutory text. In the final rule establishing identification and certification procedures (January 12, 2011), NMFS added the words in italics below, to make the definition more consistent with United Nations General Assembly Resolution 65/105:

- 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;
- 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.

**Effects of IUU Fishing.** Because IUU fishing activities are generally carried out covertly, monitoring and detection are difficult. This renders quantification of the problem elusive.<sup>3</sup> The

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<sup>2</sup> Title IV of the MSRA amended the Moratorium Protection Act by adding the provisions addressing IUU fishing and bycatch of PLMRs that are addressed in this report.

<sup>3</sup> Recent estimates of the annual value of IUU-harvested fish range from USD 9 to 25 billion. MRAG and Fisheries Ecosystems Restoration Research, Fisheries Centre, University of British Columbia, “The Global Extent of Illegal Fishing,” April 2008, p. 1.

FAO considers IUU fishing a serious threat to fisheries, especially those of high value that are already overfished; to marine habitats, including vulnerable marine ecosystems (VMEs); and to food security and the economies of developing countries. According to the FAO, increasing IUU fishing undermines national and regional efforts to manage fisheries sustainably.<sup>4</sup> IUU fishing activities have widespread economic and social consequences, including depriving legitimate fishers 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 use unsustainable fishing practices and 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.

**International Approaches to IUU Fishing.** 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, financial institutions, insurers, and consumers. The MSRA 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.

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

**Definition of PLMRs.** The bycatch<sup>5</sup> of PLMRs is also a serious issue in international fisheries. For purposes of the Moratorium Protection Act (section 610(e)), PLMRs mean:

- non-target fish, sea turtles, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on the International Trade in Endangered Species of Wild Flora and Fauna, but
- does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.

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<sup>4</sup> FAO, “The State of World Fisheries and Aquaculture, Rome, 2009, p. 71.

<sup>5</sup> The final rule published January 12, 2011, defines “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).

NMFS has developed a list of PLMRs for purposes of the Act, which appears in this report as Annex 3.

**Effects of Bycatch.** Bycatch of PLMRs in fisheries limits the ability of the United States and other nations to conserve these resources. Examples of bycatch of PLMRs include incidentally caught or entangled sea turtles, sharks, dolphins, and other marine mammals. Without proper measures in place to address bycatch, fishing can lead to injury or mortality of protected species, and can also have significant negative consequences on marine ecosystems and biodiversity.

**International Approaches to Reducing Bycatch.** In enacting the MSRA, Congress recognized the importance of U.S. leadership in establishing international measures to end or reduce 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 numerous global, regional, and bilateral fisheries agreements (see Annex 1). This report describes recent actions the United States has taken in these international forums and bilaterally to pursue strengthened bycatch reduction measures comparable to those of the United States.

### **C. Domestic Enforcement Tools**

The United States has numerous legal tools to address IUU fishing and PLMR bycatch, both domestically and internationally, including the Lacey Act, Magnuson-Stevens Fishery Conservation and Management Act (MSA), Moratorium Protection Act, Pelly Amendment to the Fishermen's Protective Act of 1967, Marine Mammal Protection Act, Endangered Species Act, and International Dolphin Conservation and Protection Act. See Annex 2 for summaries of statutes and recent U.S. enforcement cases with an international nexus.

The Lacey Act is an important tool, as it prohibits the trafficking, transportation, purchase, or sale of wildlife caught in violation of any state or Federal wildlife law, and provides for civil and criminal sanctions. However, activities subject to regulation under the MSA are exempt from the Lacey Act. As a result, fishery violations in Federal waters are, for the most part, subject to administrative action, whereas violations of state or foreign laws are subject to Lacey Act civil judicial and criminal enforcement provisions. S. 2870 (International Fisheries Stewardship and Enforcement Act) would have provided that MSA prohibitions and enforcement powers apply under several statutes, including the Dolphin Protection Consumer Information Act, Antarctic Marine Living Resources Convention Act of 1984, Atlantic Tunas Convention Act of 1975, Northwest Atlantic Fisheries Convention Act of 1995, Western and Central Pacific Fisheries Convention Implementation Act, Northern Pacific Halibut Act of 1982, Antigua Convention Implementing Act of 2009, and any other act designated by the Secretary. (H.R. 1080 included similar provisions, but covered fewer statutes.) Thus, these statutes also would not have civil judicial and criminal enforcement mechanisms available. To enhance efforts to address IUU fishing and bycatch, it is important to have a full complement of enforcement tools. Most major U.S. environmental statutes employ a tiered approach, including administrative action, civil action in Federal court for penalties and injunctive relief, and criminal action in Federal court. Such a regime gives the United States a full range of enforcement options so that violations of varying degrees of severity can be addressed through similarly varying degrees of sanctions.

In addition, S. 2870 would have amended the Moratorium Protection Act to allow, among other things, for identification of nations for national-level noncompliance as opposed to vessel-specific activities and also for consideration of IUU fishing and bycatch activities over a longer time period. See Part IX.B.1 for more details on the Moratorium Protection Act.

### **III. Magnuson-Stevens Fishery Conservation and Management Reauthorization Act – Provisions and Implementation**

#### **A. Provisions of the Act**

The MSRA 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 in 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;
- to seek adoption of lists that identify fishing vessels and vessel owners engaged in IUU fishing;
- to seek adoption of a centralized vessel monitoring system;
- to increase use of observers and technologies to monitor compliance with conservation and management measures;
- to seek adoption of stronger port State controls in all nations; and
- to adopt and expand the use of market-related measures to combat IUU fishing, including import prohibitions, landing restrictions, and catch documentation schemes.

They also include urging 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.

The MSRA authorizes the Secretary of Commerce to undertake activities to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international fishery 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 PLMRs to address such activities.

#### **1. Provisions for Identification and Certification**

The MSRA adds Sections 609 and 610 to the Moratorium Protection Act, to require the Secretary of Commerce to identify nations whose vessels are engaged in IUU fishing or bycatch activities and to certify whether those nations have taken appropriate corrective actions.

**Identification.** The Secretary of Commerce is required to:

- identify nations whose vessels are engaged, or have been engaged in the preceding two 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;
- identify nations whose vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices that either result in bycatch of PLMRs in waters beyond any national jurisdiction, or that result in bycatch of PLMRs shared by the United States beyond the U.S. Exclusive Economic Zone (EEZ), where the relevant international organization has failed to implement effective measures to end or reduce such bycatch, or where the nation is not party to or does not maintain cooperating status with such organization and the nation has not adopted a regulatory program comparable to that of the United States.

**Consultations.** Following identification of such nations, the Secretary has further duties:

- with regard to nations identified as having vessels engaged in IUU fishing activity, within 60 days of submission of the biennial report to Congress, to notify the nations, initiate consultations to encourage them to take corrective action, and notify any relevant international fishery management organization of actions taken by the United States under this section of the Act;
- with regard to nations identified as having vessels engaged in bycatch activities, to notify and initiate discussions with those nations as soon as possible, with the purpose of entering into bilateral and multilateral treaties to protect the species at issue; seek agreements calling for international restrictions on fishing activities or practices; and initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party to make it consistent with the purposes of the Act.

**Certification.** Within 90 days of promulgation of a final rule establishing a procedure for determining whether an identified nation has taken appropriate corrective action, and biennially thereafter in the report to Congress, the Secretary:

- with regard to nations identified as having vessels engaged in IUU fishing activity, must certify to Congress whether such nation has provided documentary evidence of its corrective action with respect to the offending activities, or whether the relevant international organization has implemented measures that are effective in ending the IUU fishing activities of that nation;
- with regard to nations identified as having vessels engaged in bycatch of PLMRs, must certify to Congress whether the nation has provided documentary evidence of adoption of a regulatory program governing the conservation of the PLMRs that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and whether the nation has established a management plan that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for PLMRs.

**Procedure for Identification and Certification.** The Department of Commerce published the final rule establishing identification and certification procedures on January 12, 2011. While not required to publish identification procedures in a rule, NMFS decided to do so, in the interest of transparency and to provide context for subsequent certification determinations.

IUU fishing activities. After gathering from many sources information that it believes could support a determination that a nation's vessels have been engaged in IUU fishing, NMFS will seek corroboration or refutation from that nation and encourage it to take action to address the activity. In deciding whether to make such an identification, NMFS will consider whether the nation is implementing and enforcing measures comparable to those implemented by the United States to address the pertinent activity. The final rule describes the sorts of measures that a nation might take to prevent, deter, and eliminate IUU fishing activities.

The rule also details the notification and consultation process, after which NMFS will provide a preliminary positive or negative certification to a nation identified for having vessels engaged in IUU fishing. An identified nation will have the opportunity to respond before the final certification is issued. As noted, the first certifications will occur within 90 days after the final rule is promulgated; thereafter they will be published in the biennial report. The rule lists factors NMFS will consider, 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.

PLMR bycatch activities. In evaluating information on bycatch of PLMRs, NMFS will take into account the extent of the bycatch and its impact on 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 final rule includes the types of measures nations and international bodies could take that would be effective in ending or reducing bycatch. NMFS will examine 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.

The same sort of 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 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 to respond before the final positive or negative certification is made. The final rule sets out the factors NMFS will consider in making the determination.

**Implications.** The identification of nations having fishing vessels engaged in IUU fishing activities or bycatch of PLMRs is deemed to be an identification under the High Seas Driftnet Fisheries Enforcement Act. If a nation does not receive a positive certification, indicating that it has taken appropriate corrective actions, sanctions under that statute may be applied, including prohibitions on the importation of certain fish and fish products into the United States, the denial of port privileges, and other measures, under specified circumstances. The final rule published

January 12, 2011, describes how recommendations will be made and any sanctions implemented, in the event a nation receives a negative certification.

## 2. Biennial Report to Congress

The MSRA requires the Secretary of Commerce to submit a biennial report to Congress. The first report was submitted in January 2009. The biennial report is to include the following information:

- 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 such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management of conservation of living marine resources;
- a list of nations whose vessels have been identified under Section 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to Section 609 or 610;
- a description of efforts taken by nations on those lists to take appropriate corrective action consistent with Sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;
- progress at the international level, consistent with Section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and
- steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

### **B. Actions to Implement the International Provisions of the Act**

This section highlights the work of NMFS as it continues to implement the international provisions of the MSRA.

**Development of Identification and Certification Procedures.** NMFS published a proposed rule on identification and certification procedures at the same time the 2009 Report to Congress was submitted (74 Fed. Reg. 2019, January 14, 2009). Public comments were solicited on the proposed rule for a period of 120 days. In conjunction with publication of the proposed rule, NMFS held public hearings in 2009 in locations where it expected substantial public interest in the proposed procedures: Boston, Silver Spring, San Diego, Seattle, Honolulu, and Miami. The public hearings provided valuable opportunities for NMFS to explain the proposed rule, respond to questions, and receive feedback from the public. After reviewing comments on the proposed rule and consulting with other nations, NMFS recently published the final rule (see Part III.A.1).

**Status of International Living Marine Resources.** Part IV of this report introduces the revised MSRA list of international living marine resources that appears online; an account of recent activities to mitigate seabird bycatch appears in Annex 4.

**Strengthening International Management Organizations.** NMFS's continuing efforts to enhance the ability of international management organizations to combat IUU fishing activities, to prevent the trade or import of fish or other living marine resources harvested by IUU vessels, and to reduce the bycatch of PLMRs are described at length in Parts V, VI, and VII of this report.

**International Cooperation and Assistance.** Part XIII of this report contains an extensive update of U.S. efforts to provide assistance and other cooperative activities to promote the adoption of international measures comparable to those in effect in the United States to reduce the impacts of fishing and other practices on PLMRs. It also summarizes recent U.S. assistance to other nations to help address IUU fishing and mitigate bycatch of PLMRs, including through activities such as training workshops and transfer of improved gear technology.

**Improved Monitoring and Compliance.** During the reporting period, NOAA Enforcement (the Office of Law Enforcement and the Office of General Counsel for Enforcement and Litigation) actively engaged in several bilateral and multilateral meetings to provide operational and legal advice on compliance issues and the development of new conservation and management measures. These include:

- Western and Central Pacific Fishery Commission (WCPFC)
- Bilateral meetings with Mexico and the Russian Federation
- International Pacific Halibut Commission (IPHC)
- Commission on the Conservation of Antarctic Living Marine Resources (CCAMLR)
- International Commission for the Conservation of Atlantic Tunas (ICCAT)
- Inter-America Tropical Tuna Commission (IATTC)
- South Pacific Tuna Treaty Annual Consultation (SPTT)

Accomplishments are described in Part V of this report.

**Designation of the Secretary's Representative for International Fisheries.** Section 408 of the MSRA requires the Secretary of Commerce to designate a senior NOAA official to perform the Secretary's duties with respect to international agreements involving fisheries and other living marine resources. The designated representative is Dr. Larry Robinson, who is the Assistant Secretary of Commerce for Oceans and Atmosphere. As allowed by the Act, Dr. Robinson has delegated those responsibilities to Russell Smith, who joined NOAA on July 19, 2010, as the Deputy Assistant Secretary for International Fisheries. He had been the Director for International Environmental Policy and Multilateral Environmental Agreements in the Office of the U.S. Trade Representative since 2006. Mr. Smith is the new U.S. Government Commissioner for ICCAT and will provide high-level coordination among all of the tuna RFMOs. Mr. Smith gave briefings to staff members of the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Resources during the fall of 2010.

#### **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>6</sup> NMFS has slightly revised the list that was published with the 2009 Report to Congress, to include or update the ESA or MMPA status of some species, and to provide links to status reviews that have been completed in the last two years. The revised list is available on the NMFS website ([http://www.nmfs.noaa.gov/msa2007/docs/state\\_of\\_knowledge\\_on\\_the\\_status\\_of\\_ilmrs.pdf](http://www.nmfs.noaa.gov/msa2007/docs/state_of_knowledge_on_the_status_of_ilmrs.pdf)).

The list includes international living marine resources over which an international treaty or agreement, to which the United States is a party, has explicit conservation or management authority, or 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 international living marine resources shared by the United States, including U.S. territories, on which a directed fishery exists or which are taken as bycatch that is 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.

**Marine Mammals.** To fulfill the agency's international obligations to protect and conserve marine mammals and to reduce the impacts of human activities on marine mammals and ensure that these activities are coordinated in a strategic fashion across the agency, the Offices of International Affairs and Protected Resources of NMFS have initiated an effort to develop an action plan that will guide NMFS's international efforts to protect and conserve marine mammals. As a precursor to this planning effort, NMFS funded the description and analysis of worldwide cetacean bycatch, since bycatch is, in many cases, the most serious threat facing those species (Young and Iudicello 2007). An informal agency-wide working group of representatives from each NMFS Region, Center, and interested Headquarters Office convened in 2009 to develop the action plan. The plan will be broad in scope and will consider all relevant NMFS actions to protect and conserve marine mammals in international and foreign waters, but will focus on species, threats, and regions that best align with the agency's mission, jurisdiction, and capabilities. The action plan will provide context and justification for current actions, strategic guidance for long-term approaches to protecting and conserving marine mammals in international and foreign waters, and recommendations of specific actions in the next three to five years.

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<sup>6</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 Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.

**Seabirds.** The definition of PLMRs under the MSRA does not include seabirds. However, 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. Section 116 of the MSRA 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 4 to this report highlights recent efforts to protect this international living marine resource.

## **V. International Actions to Address IUU Fishing**

Global international organizations, particularly the Food and Agriculture Organization of the United Nations (FAO), have acted in recent years to help address IUU fishing. This Part updates the descriptions of these activities in the 2009 Report to Congress.

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

The FAO Committee on Fisheries (COFI), established in 1965, constitutes the only global inter-governmental forum other than the United Nations General Assembly (UNGA) where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fishery bodies, NGOs, fish workers, and the international community on a world-wide basis. COFI is also a forum in which global binding agreements as well as non-binding instruments are negotiated.

In recognition of the rapid extent to which IUU fishing was undermining attainment of national, regional, and global fisheries management goals, COFI in 2001 adopted 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 (NPOAs). The United States finalized its NPOA 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 Regional Fisheries Management Organizations (RFMOs) to deal with IUU fishing. The IPOA-IUU is described more fully in the 2009 Report to Congress.

With active involvement of the United States, the FAO has aggressively promoted activity 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 2009 Report to Congress, the FAO Secretariat presented to the 28<sup>th</sup> Session of COFI a paper (COFI/2009/6) on progress in combating IUU fishing through two initiatives then pending: negotiation of a legally binding instrument on port State control measures, and establishment of a global record of fishing vessels.

IUU fishing activities have also been addressed by a number of other international bodies, including the UNGA in its annual Sustainable Fisheries Resolutions, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), the 2010 Resumed Review Conference for the United Nations Fish Stocks Agreement (UNFSA), and others. In fact, the annual Sustainable Fisheries 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.

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**

### **1. 2009 Agreement**

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. Perhaps the greatest achievement in the battle against IUU fishing during the past two years is completion of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted at an FAO-sponsored conference on November 22, 2009. A U.S. official, Ambassador David A. Balton, led a large delegation and was vice chair of the negotiations; the United States contributed \$150,000 to help defray the expenses of the meetings in Rome. The United States signed the treaty on the day of its adoption, and there are 23 signatories thus far. The Agreement will enter into force 30 days after deposit of the 25<sup>th</sup> instrument of ratification, acceptance, approval, or accession.

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 include:

- requiring foreign fishing vessels seeking entry into their ports to provide certain information on their activities and the fish they are carrying prior to entering into port, thereby helping port State authorities detect potential IUU activity and product in advance;
- conducting regular inspections of foreign fishing vessels that enter their ports, carried out in accordance with standards outlined in the Agreement;
- ensuring that ports have sufficient capacity to conduct inspections pursuant to this Agreement and that inspectors are properly trained;
- denying vessels port entry, and access to certain port services, where there is sufficient proof that a vessel has been engaged in IUU fishing, in particular where the vessel appears on an IUU vessel list established by an RFMO, except that States may allow such vessels to enter port for the purposes of conducting an investigation or taking other enforcement action;
- notifying the flag State and, as appropriate, other relevant States and international organizations of any decision to deny a foreign vessel port entry or access to port services

pursuant to the Agreement, thereby triggering flag State obligations to take certain follow-up actions;

- requiring their flagged vessels to cooperate with port State inspections carried out pursuant to the Agreement, and ensuring that measures they apply to their flag vessels are at least as effective in addressing IUU fishing as those applied to foreign vessels;
- creating information-sharing networks to let countries share details on IUU vessels and other information of relevance to the implementation of the Agreement; and
- implementing provisions of the Agreement intended to assist developing countries in meeting their treaty obligations.

Because Taiwan's political status would not allow it to become a party to the Agreement, and because Taiwan has the seventh largest fishing fleet in the world, the United States advocated special steps to allow Taiwan and potentially other "fishing entities" to adhere to the provisions of the Agreement. In its section on "application," the relevant text reads: "As this Agreement is global in scope and applies to all ports, the Parties shall encourage all other entities to apply measures consistent with its provisions. Those that may not otherwise become Parties to this Agreement may express their commitment to act consistently with its provisions."

The White House is reviewing documents to be submitted to the Senate for its advice and consent for ratification of the Agreement. Executive Branch agencies are working to identify necessary legislative changes to implement the Agreement, once it is ratified.

## 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 fishers 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. Negotiators of the new SPRFMO convention actually included a provision on the responsibilities of port States (Article 26).

ICCAT considered in November 2010 a draft regional port State measures recommendation developed at the February 2010 meeting of the Integrated Monitoring Measures Working Group. The draft proposal tracks closely with the 2009 Agreement, but it includes aspects that tailor it for ICCAT, in particular with respect to structure, scope, and definitions, so that it would fall clearly within ICCAT's mandate and take into account operational and implementation concerns. Despite the fact that adoption of such a measure is a priority for some ICCAT members, such as the United States, some parties continue to have concerns about certain aspects, such as applying the measure to ports outside of the ICCAT Convention Area. In addition, some parties, particularly developing States, have concerns about the timing of entry into force of such a measure; they have noted the potential need for capacity-building assistance to ensure effective and timely implementation. Negotiations advanced on this proposal at the 2010 meeting and will continue at the 2011 annual meeting.

In 2009, CCAMLR revised its requirements for port inspections of vessels carrying toothfish to include two "pro formas" to be completed by the vessel and inspecting State, and to set a 30-day

deadline for providing the inspection reports to the Secretariat. At CCAMLR's 2010 meeting, the United States and the EU co-sponsored a proposal on port measures that would have expanded an existing conservation measure to include components agreed in the 2009 Agreement. While the proposal attracted broad support, consensus could not be reached, as several members indicated they could not agree to these measures until their countries ratified the underlying Agreement. CCAMLR did agree that the Chairman should write to Singapore and Malaysia, whose ports were reported to have been used by vessels on the IUU vessel list, and request that these countries refuse entry to, and access to port services by, vessels on the CCAMLR list.

NAFO maintains a port State inspection scheme that includes: verification of species, quantities, and size; cross-checking with logbooks, exit catch reports, and reports of any other inspections; and verification of mesh size. The NAFO Scheme to Promote Compliance by Non-Contracting Party Vessels also provides that such vessels seen fishing in the NAFO Regulatory Area must be inspected if they enter ports of contracting parties. Such vessels may not land or transship unless they can establish that the species on board were not caught in the NAFO Regulatory Area. Inspecting parties send the results to NAFO and to all other contracting parties. Because NAFO and NEAFC have agreed to recognize each other's negative lists, closure of ports to IUU-listed vessels applies to all contracting parties of both organizations.

The WCPFC considered a draft port State measure proposed by the EU at its Technical and Compliance Committee meeting in October 2010, and during its annual plenary meeting in December 2010. The United States and other members consider this a priority item, and all members appear supportive of the proposal in principle. The FFA members, however, have expressed concern about their ability to implement such a measure and the need for funding to assist them. Members agreed to work together intersessionally and at the Technical and Compliance Committee meeting in 2011 to move the initiative forward.

### 3. Domestic Implementation of RFMO Measures

On September 27, 2010, NMFS published final regulations to implement port State controls and other actions against IUU fishing vessels required by the RFMOs to which the United States belongs (75 Fed. Reg. 59136). Specifically, these rules clarify domestic regulatory authorities to carry out conservation and management measures adopted by ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and AIDCP.

The measures pertain to vessels that these RFMOs have included in their respective IUU vessel lists. The new regulations restrict entry into any port or place of the United States and access to port services by vessels on the IUU lists. The specific action taken against an IUU vessel will be in accordance with the relevant conservation and management measure. These restrictions apply to approximately 80 vessels currently on the IUU lists.

The regulations also make it unlawful for any person subject to the jurisdiction of the United States to engage in commercial transactions with a listed IUU vessel, unless authorized to do so by NMFS. These transactions include, but are not limited to: transshipment; processing fish harvested or landed by a listed vessel or processing fish using a listed vessel; joint fishing

operations; providing supplies, fuel, crew, or otherwise supporting a listed vessel; or chartering or entering into a chartering arrangement.

In responding to comments on the proposed rule, NMFS in the final rule agreed to make public, subject to confidentiality of investigations and enforcement actions, decisions on specific actions taken against IUU vessels pursuant to the rule.

## **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 catching, 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 conservation and management measures; and by improving information on fishing mortality. Successful market measures are often based on information gathered from trade-tracking programs or catch-documentation schemes – 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.

### **1. Global forums**

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

**CITES.** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement with 175 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 considered threatened with extinction, but they may become so if international trade is not regulated. International trade is permitted for Appendix II species if the exporting country 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.

The Fifteenth Conference of the Parties to CITES met in Doha, Qatar, March 13-25, 2010. The meeting considered listing commercially harvested fisheries species, but none was actually listed. There was considerable discussion during the debates that focused on issues of implementation including introduction from the sea, capacity building, livelihoods of artisanal fishers, and general socio-economic impacts. One issue is whether CITES has a role in conserving commercially exploited marine food fisheries, as many parties claim that RFMOs are the appropriate international bodies with that responsibility. The United States maintains that CITES can be an important tool to complement the management of marine species by RFMOs, or to advance the protection of species that are managed inadequately or are not being managed

by RFMOs, in cases where the regulation of international trade would promote sustainable use of the species.

At the CITES conference in Doha, several proposals to list shark species were considered (see Part VII.B.3). Monaco proposed to list North Atlantic bluefin tuna on Appendix I of CITES. The EU supported an Appendix I listing with an amendment to the proposal that included a delay in implementation until May 2011, consideration by CITES of the new stock assessment and management actions taken by ICCAT in the intervening months, and a mail vote to be completed before May 2011 to downlist bluefin tuna, if information supported such action. The United States supported Monaco's proposal and the EU amendment, primarily due to the high level of IUU fishing in the Mediterranean. However, neither proposal garnered the two-thirds majority needed for passage.

**World Trade Organization (WTO).** The United States continues to press for an effective outcome to the Rules Negotiating Group deliberations underway in Geneva at the WTO, to strengthen disciplines on subsidies that contribute directly to overcapacity and indirectly to IUU fishing. In April 2010, the United States submitted a major contribution to the negotiations, through proposals that would clarify and expand upon draft provisions integrating the WTO rules system with the complex world of global fisheries. These negotiations continued at a session in October 2010.

**FAO.** In 2005, the FAO adopted "Guidelines for the Ecolabelling for Fish and Fishery Products," which cover wild-caught fish and generally provide that fish and fish products were harvested in a sustainable manner. 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 socio-economic issues relating to aquaculture workers. The Aquaculture Certification Guidelines will now go to COFI for approval when it meets in Rome in January 2011.

Taken together, these two sets of guidelines establish minimum standards for the labeling of all fish available in the marketplace, whether wild-caught or farmed. Assuming that IUU product is not likely to have been sustainably harvested, the "Ecolabelling 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 they are considering buying were raised without damaging the environment, whether the fish farm worker was paid a fair wage, and whether the shrimp is free of contamination. The guidelines will benefit consumers as well as persons working in connection with domestic and international seafood markets.

**Organization for Economic Cooperation and Development (OECD).** The United States is also a leader in the OECD Committee for Fisheries, which is chaired by a NMFS official. OECD's activities generally analyze, from an economic perspective, obstacles to attaining sustainable use of ocean resources.

## 2. RFMO Actions

At its 2009 meeting, ICCAT had its most thorough review to date of the implementation of all ICCAT rules and took strong action to address infractions. In particular, ICCAT identified approximately three-fourths of its members under the ICCAT trade measures instrument; most

others, including the United States, received letters of concern. ICCAT reviews identified parties once a year to see whether they have corrected the infractions, most of which in 2009 pertained to data-reporting problems. Failure to rectify the problems could lead to corrective measures such as quota reductions or catch limits, and if necessary the imposition of trade restrictions. The Compliance Committee also met in February 2010 for an interim review of implementation of agreed measures. It reminded parties they were required to submit their annual fishing plans by March 1. Failure to do so could be interpreted that the party did not intend to fish its 2010 bluefin tuna quota. All parties save Egypt and Syria submitted their fishing plans by the target date; these minor harvesters submitted their plans shortly thereafter.

At the 2010 ICCAT annual meeting, the Committee, under U.S. leadership, undertook a comprehensive review of compliance with reporting requirements and implementation of MCS measures. While some improvements were noted, many parties did not fully meet their obligations, including to provide data to the SCRS or management reports to the Commission. The Committee recommended that new letters be sent to all but two parties, including 23 letters of identification under ICCAT's trade measures recommendation and 23 letters of concern. One letter of concern will go to the United States for difficulties associated with implementation of the swordfish statistical document program. Parties are expected to provide a written response on how they will improve implementation in 2011. Commission members committed to take stronger action if non-compliance continues. To this end, the Committee discussed proposals for a schedule of sanctions and procedures to recommend actions according to the schedule, which will be further considered intersessionally in 2011. In addition, pursuant to its trade measure procedures that require ICCAT to take actions against nations that undermine its conservation and management measures, ICCAT maintained its recommendation that ICCAT members prohibit the importation of bigeye tuna from Georgia and Bolivia.

The United States strongly supported movement toward electronic systems as a first step in any effort to expand the coverage of catch documentation schemes at ICCAT. There was broad support for an EU proposal to develop an electronic bluefin tuna CDS; intersessional work will further this project, with the goal of having a fully operational system by 2012. An electronic system will require detailed documentation of bluefin tuna from the point of landing through international trade, and will assist in the fight against IUU fishing. The program should 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.

CCAMLR revised its catch documentation measure for toothfish, to confirm that only electronic catch documents, not paper ones, are valid. For the 2010 meeting, the EU resubmitted a perennial proposal on market-related measures, which the United States strongly supports, but again the proposal was defeated.

The IATTC does not currently have a resolution in force regarding the use of trade-restrictive measures to promote compliance with its conservation and management measures. The Commission adopted a trade measures resolution in 2006 that had an expiration date of June 2008. U.S. efforts to get a permanent trade measures resolution have not yet been successful, although a U.S. proposal has been tabled for consideration since then. The United States hopes IATTC will adopt a trade measures resolution at its 2011 annual meeting.

**European Union’s Council Regulation No. 1005/2008.** Citing the need to support the IPOA-IUU and the array of measures adopted by RFMOs to combat IUU fishing, the EU Council adopted a Community system that went into effect at the beginning of 2010. Among other features, it requires that most seafood exported to the European market be accompanied by a catch certificate signed by a competent authority of the flag State of the harvesting vessel, attesting that the catches have been made in accordance with applicable laws, regulations, and international conservation and management measures. As Europe is the United States’ largest export market, the regulation annually affects more than \$1 billion worth of U.S. seafood exported directly to European ports, as well as a substantial but unquantified amount of U.S.-harvested seafood processed and shipped to Europe through other countries.

After more than a year of negotiations with counterparts in Brussels, NMFS successfully concluded a bilateral “Agreed Record” with the European Commission in 2009. That document acknowledges that the U.S. fisheries management system is effective in deterring IUU fishing. It includes a streamlined catch certificate for use by U.S. exporters. As a result, U.S. exports have continued essentially uninterrupted to Europe since the regulation took effect.

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

As described in more detail below, the United States is one of the founding members of the International Monitoring, Control and Surveillance Network (MCS Network), as well as its current host. OLE participates in the MCS Network as a mechanism for sharing information and experience with fisheries law enforcement professionals from various other countries to monitor the increasingly complex harvesting and marketing of fish around the world.

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

NMFS OLE and the USCG work closely with the enforcement authorities of other nations to enforce international fisheries laws and regulations. For example, NMFS and the USCG work closely with enforcement agencies from Canada, Japan, Korea, and Russia to enforce the 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 United Nations global moratorium on large-scale high seas driftnet (HSDN) fishing. The members of the NPAFC jointly plan and coordinate multilateral air and surface patrols to utilize enforcement resources more efficiently. In addition, each spring the parties discuss current enforcement efforts, coordination of enforcement plans, and sharing of resources for the remainder of the calendar year. In 2009, parties conducted 188 ship patrol days and 279 aerial patrol hours in the Convention Area. In 2010, parties conducted 147 ship patrol days and 183 aerial patrol hours.

The USCG also coordinates air and surface patrol efforts through the North Pacific Coast Guard Forum, which consists of Canada, China, Japan, the Republic of Korea, the Russian Federation, and the United States, and also through the North Atlantic Coast Guard Forum, which includes Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, the Netherlands, Norway, Poland, Russia, Sweden, the United States, and the United Kingdom. The primary objective of both these bodies is to facilitate sharing of information and to coordinate combined operations across shared mission areas, including fisheries.

Cooperation between the United States and Canada is particularly close in the NPAFC context. Canadian Department of National Defense aircraft patrol approximately four million square km in the North Pacific Ocean high seas area for HSDN vessels, with an NOAA Fisheries Enforcement agent on board. Operational control of the aircraft is located in the USCG 17<sup>th</sup> District Headquarters in Juneau to coordinate information and surface-support operations. After a suspected HSDN vessel is sighted, real-time position information is posted and provided to at-sea assets of all participating nations for possible interception.

OLE, USCG, and the Chinese Government have also worked jointly since 1993 to ensure effective implementation of the UN global driftnet moratorium in the North Pacific Ocean, pursuant to the terms of an MOU that established procedures for law enforcement officials of either country to board and inspect U.S. or Chinese-flagged vessels suspected of driftnet fishing. The MOU also established a shiprider program, which allows Chinese enforcement officials to embark on USCG assets during driftnet enforcement patrols. These officials facilitate boarding and inspection of suspected Chinese HSDN vessels intercepted by the USCG.

The USCG has used similar shiprider agreements with several countries in the Western and Central Pacific to assist with enforcement in that area. Beginning in September 2007, ad hoc agreements were used to conduct six successful shiprider operations with officers from Palau, Kiribati, Micronesia, Marshall Islands, and Cook Islands aboard USCG cutters. Most of those agreements have now become long-term. Shiprider operations support the goals and objectives of the United States and Pacific Island Nations as members of the WCPFC. The shiprider agreements, which target a range of illicit activity at sea (fishing, smuggling of drugs and persons, violence at sea), provide for the embarkation of host-nation law enforcement officers on USCG cutters and aircraft. Those officers, in turn, are empowered to authorize the USCG units to enter the host nation's territorial sea to assist the officers in enforcing host-nation law in their EEZs; to board and search host-nation flag vessels at sea (including the high seas) to assist the officers in enforcing host-nation law; and to use reasonable force to stop non-compliant vessels subject to the jurisdiction of the officers.

NOAA Enforcement is engaged with the Pacific Islands Forum Fisheries Agency (FFA), through the WCPFC and through participation in FFA's MCS working group. FFA annually runs an MCS working group that provides an opportunity for enforcement professionals, both agents and prosecutors, to meet, discuss, share ideas, and provide training on regional MCS issues. Topics include implementation of WCPFC measures such as the VMS program, IUU vessel list, the Ad Hoc Data Working Group, the regional observer program, high seas boarding and inspection, port State measures, transshipment, and the process for monitoring compliance with conservation and management measures.

In July 2010, the SPTT parties adopted an Updated Agreed Minute on Monitoring, Control and Surveillance Cooperation. The Agreed Minute, first adopted in 1994, is intended to promote and enhance cooperation in the enforcement of conservation and management measures adopted by the Pacific Island parties for living marine resources covered by the South Pacific Tuna Treaty. It focuses on the exchange of data and information; the exchange of surveillance and enforcement personnel for training, briefings, and joint operations; and cooperation in periodic technical and other consultations. The Agreed Minute now reflects current practices more accurately and encourages future cooperative efforts among countries in the region. It also

contains a provision recognizing that the Pacific Island parties may wish to have the United States take legal action, on their behalf, for violations of conservation and management measures they have adopted pursuant to the treaty.

In 2009, the WCPFC adopted Rules and Procedures for the Protection of, Access to, and Dissemination of Non-Public Domain Data for MCS Purposes. The document identifies how and when non-public domain data will be made available for the purposes of MCS activities on the high seas; for the conduct of MCS activities by members in areas under their national jurisdiction; and in support of an investigation, judicial, or administrative proceeding. It also provides guidance on the dissemination of VMS data for scientific purposes.

The WCPFC recognized the need for procedures for charter arrangements, to ensure they do not promote IUU fishing activities or undermine conservation and management measures. 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.

The United States was invited to participate as an observer in the Joint Pacific Fisheries and Law Enforcement Ministerial meeting, for the purpose of discussing the possibility of future U.S. accession to the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, or to some other international instrument focused on cooperative fisheries enforcement. At the July 2010 meeting, the Ministers decided to begin the process of drafting a multilateral subsidiary agreement to the Niue Treaty to outline an expanded effort to engage in multilateral fisheries enforcement in the region. The United States intends to remain engaged as this process develops.

In addition to international enforcement efforts in the Pacific, the United States is working closely with Canada in the North Atlantic through participation in boarding and inspections in the NAFO Convention Area, by embarking USCG boarding officers as shipriders on Canadian Coast Guard vessels. USCG detailed an officer to assist the Canadian Department of Fisheries and Oceans with NAFO inspections of vessels fishing under the NAFO Convention during four patrols from May to August 2010. The USCG officer assisted with 17 inspections, with no violations found. The Coast Guard International Ice Patrol also assisted by conducting surveillance in support of NAFO operations concurrently with their scheduled flights.

Increasingly, ICCAT has been adopting measures that increase the reporting requirements of its membership. Such reporting concerns not only statistical information, such as catch and effort data, but trade data, lists of vessels, bycatch interactions, VMS data, information from at-sea and in-port inspections, and other compliance and enforcement information. At the 2010 meeting, ICCAT members agreed to provide provisional monthly catch data in the western Atlantic bluefin tuna fishery.

Given the sensitive nature of some of this information, ICCAT is seeking to develop rules and protocols for handling and releasing it. A proposal in this regard was developed by ICCAT's science body (SCRS) in 2009, and adopted at the ICCAT annual meeting in November 2010. Adoption of these guidelines will facilitate access to cannery and other data by the SCRS. They

specify that ICCAT members and cooperating parties will provide data to the extent consistent with their domestic confidentiality requirements.

## 2. MCS Network

The United States was one of the founding members of the International MCS Network, which links fisheries enforcement agencies from around the world and facilitates increased communication and information sharing between and among nations to prevent, deter, and eliminate IUU fishing. The MCS Network is completing the final year of a three-year enhancement project, initiated in response to recommendations contained in the 2006 report of the Task Force on IUU Fishing on the High Seas.<sup>7</sup> This initiative includes funding to improve communications within and among member countries and to hire staff to support the Network's coordination, analysis, and training efforts. Other international fisheries enforcement organizations are looking at the MCS Network as a model for international cooperation. The Network is currently housed in the OLE office and sponsored in part by NMFS. Additional information on the MCS Network is found at [www.imcsnet.org](http://www.imcsnet.org).

Since the 2009 Report, the Network has continued to strive toward increasing collaboration and cooperation among its members and with the international community in the fight against IUU fishing. Although participation is voluntary, the MCS Network has grown to include 59 member countries and six observers. Through information sharing, policy formation, and training, the MCS Network aims to strengthen these capabilities to minimize the economic, social, and ecological impacts of IUU fishing. These efforts include:

- providing monthly newsletters to the international community with current IUU fishing stories, including incidents, cases, updated laws and policies, and upcoming meetings;
- responding to requests for information from the international community on IUU fishing incidents and cases, providing the information, contacts, and analysis needed to support law enforcement efforts targeting IUU fishing;
- overhauling the website to expedite and facilitate real-time data and information sharing among government officials, relevant international bodies, and those with ground-level insight into IUU incidents;
- engaging in policy formation and outreach to advance international MCS commitments and engage its membership through participation at various multilateral meetings;
- conducting MCS training within West Africa (see Part VIII.B.4);
- performing an in-country assessment of the occurrence of IUU fishing and MCS capacity in Indonesia as part of the Coral Triangle Initiative and in conjunction with NOAA.

The MSC Network has been working with the Government of Mozambique, the FAO, Stop Illegal Fishing, and the Partnership for African Fisheries under the New Partnership for Africa's Development to plan and organize the Third Global Fisheries Enforcement Training Workshop. Originally scheduled to take place in September 2010 in Maputo, Mozambique, the workshop was rescheduled due to civil unrest. Currently, the workshop is scheduled to take place February 28-March 4, 2011.

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<sup>7</sup> See High Seas Task Force website and 2006 final report, Closing the Net, at <http://www.high-seas.org/>.

Finally, the Network, with support from donor countries and membership, has begun a transition from host-government sponsorship toward a fiscal sponsorship arrangement with a non-governmental organization that will give the Network greater independence and flexibility. The goal is for the transition to be complete by March 2011.

### 3. Vessel Lists

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

Members at the 2009 ICCAT meeting adopted a U.S. proposal to expand the scope of the IUU vessel list to non-harvesting vessels and another to expand the scope of the authorized vessel list from vessels above 24 meters to 20 meters and above.

At the 2010 CCAMLR meeting, proposals for listing and delisting IUU vessels between annual meetings were discussed, but not adopted.

At its meeting in December 2009, the WCPFC adopted a conservation measure declaring that vessels not flying the flag of any State, or vessels flying the flag of two or more States, are considered vessels without nationality, and that such vessels are presumed to be operating in contravention of WCPFC conservation measures.

At that meeting, the WCPFC also updated its conservation measure governing the Record of Fishing Vessels and authorizations to fish, including establishment of a temporary register of non-member carrier and bunker vessels, along with a number of conditions that must be met for a vessel to be included on the register. This interim list will continue to exist until at least the end of 2012, at which time the Commission will consider a prohibition on transactions with non-member carrier and bunker vessels. In the interim, all flag States of carrier and bunker vessels that operate in the Convention Area and have been listed on the temporary register were urged to apply for cooperating non-member status as soon as possible.

At its regular session in 2010, the WCPFC maintained the three vessels already on the IUU vessel list, and added two of the four vessels on the provisional IUU vessel list forwarded from the Technical and Compliance Committee. The Commission also resolved several aspects of its listing and delisting procedures, including adoption of criteria to be applied to vessels that share common ownership with listed vessels.

The United States has been working with other IATTC members for the last three years to adopt much-needed revisions to the IATTC IUU listing measure (the list currently includes 26 vessels). There are currently two different proposals before the Commission. The United States intends to work intersessionally to reconcile the remaining differences in hopes that the IATTC can adopt a new IUU listing procedure in 2011.

NAFO continues to maintain a "negative" 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 the Northeast Atlantic Fisheries Commission (NEAFC), as the two RFMOs are adjacent and manage groundfish stocks that are susceptible to IUU fishing by the same vessels.

NAFO and NEAFC have agreed to recognize each other's negative vessel lists. This allows membership from both organizations to act in concert to restrict port access by IUU-listed vessels. In 2010, the inclusion of "delisting" criteria/procedures to allow for removal (as appropriate) of listed vessels strengthened these provisions. Improvements to NAFO's at-sea inspection provisions will facilitate joint NAFO/NEAFC patrols. NAFO also revised catch reporting and labeling provisions to fortify the link between labeled product in the hold and catches recorded in the vessel logbook.

#### 4. Global Record of Fishing Vessels

The FAO's proposed "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, by making it more difficult and expensive for vessels and companies acting illegally to do business. A lack of transparency in the fisheries sector means that illegally caught fish products find their way into legitimate markets with relative ease; efforts to impose effective traceability measures are hampered because of the levels of global secrecy that exist.

Fishing vessel registration and the maintenance of a comprehensive record of fishing vessels are fundamental pillars of effective fisheries management at the national level, and just as essential for collaborative effort at the regional and global levels. Most major international fisheries instruments of recent years recognize the importance of such records, but, despite this, comprehensive data on the world's fishing fleets are not readily available. This initiative aims to identify the universe of fishing vessels to identify and eliminate those implicated in IUU fishing more easily. The global record is envisaged not as an international registry, but as a global database where information from many sources will be gathered and stored in one location – one-stop shopping for fishing vessel-related information. The global record could establish links to existing national databases without requiring States to make additional submissions containing data.

At the March 2007 COFI meeting, the United States supported, and the meeting agreed, that the FAO should proceed toward developing and maintaining a global record of all fishing and associated vessels, subject to the availability of funding. An expert consultation held in Rome in February of 2008 also strongly endorsed the concept. The FAO convened a Technical Consultation November 8-12, 2010, in Rome, where FAO members agreed on a set of operational recommendations for consideration at the 29<sup>th</sup> Session of COFI, in early 2011. In the first phase, 2011-2013, the largest vessels (100 gross tons or 100 gross registered tons or more, or 24 meters or longer) would enter the record. There are estimated to be around 185,600 of these vessels. Eventually, all vessels 10 gross tons or 10 gross registered ton or more, or 12 meters or longer, will be included (an estimated 725,600 vessels).

In 2010, CCAMLR discussed, but could not reach consensus on, a requirement that all fishing vessels operating in the Convention Area have an IMO number.

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

OLE is working closely with the NOAA's National Environmental Satellite, Data, and Information Service pursuant to the President's National Space Policy to identify areas where

OLE could utilize space-based resources to carry out its mission to combat IUU fishing activity. Incorporating information from civil and commercial space-based systems, as outlined in the National Space Policy, into Maritime Domain Awareness architecture and making it available to OLE would meet several needs. This system could be used for domestic purposes, such as real-time monitoring of Marine National Monuments and Sanctuaries. It could also be integral in capacity-building efforts with foreign partners, such as those underway with the Coral Triangle Initiative.

NMFS is working actively to support requirements that all U.S. large-scale fishing vessels be equipped with, and report their positions via, satellite-based VMS. NMFS also promotes the adoption of VMS requirements by RFMOs and other flag States. OLE currently monitors 5,100 U.S. fishing vessels, as well as several foreign vessels monitored under settlement or plea agreements.

A U.S. proposal establishing minimum standards for domestic scientific observer programs by ICCAT members was agreed at the 2010 meeting. Parties must ensure at least 5 percent coverage on their purse seine, pelagic longline, and baitboat fleets and use an effort measurement rather than just number of vessels. Among other improvements in collection of scientific information, this will provide better estimates of bycatch. ICCAT also tightened MCS measures for the eastern Atlantic and Mediterranean bluefin fishery, including requiring observers on towing vessels that deliver bluefin tuna to farms. An EU/Japan proposal for a comprehensive management plan for big eye tuna, including stronger MCS measures such as a regional observer program, was not adopted but will be revisited at the 2011 meeting.

The CCAMLR draft IUU vessel list now must contain an indication of whether the flag State of the vessel has given permission to any contracting party to inspect the listed vessel. A list of non-contracting parties that have authorized CCAMLR inspections of their vessels will be shared with CCAMLR members. Contracting parties must now share any response from non-contracting parties with the Secretariat, to be shared with other CCAMLR members.

In 2010 CCAMLR agreed to a minimum of 50 percent observer coverage on krill vessels for the next two years, under a scheme developed by the scientific committee. The United States has long been a proponent of a krill fishery observer program, which could have implications for PLMRs since fur seals have been reported as bycatch on some krill vessels in the past. CCAMLR also agreed to require centralized near-real-time VMS reporting from all krill fishing vessels.

The WCPFC developed a high seas boarding and inspection scheme in 2006 (CMM 2006-08), the first RFMO to incorporate the provisions of the UN Fish Stocks Agreement. Both NMFS and USCG have been involved in developing the specific rules applicable under this scheme. The United States began patrolling in support of the WCPFC in July 2008 and conducted several boardings of foreign-flagged vessels under the auspices of WCPFC, including the first-ever WCPFC-sanctioned boarding. In 2009 the Commission established a VMS program to cover double the number of vessels originally foreseen. The WCPFC's working group on its Regional Observer Program made progress in 2009 on issues such as minimum standards, vessel safety checks, observer trainer qualifications, liability and insurance, standard operating procedures for observer deployment, and authorization of de-briefers and requirements for debriefing.

The WCPFC in 2009 also adopted a measure addressing transshipment in the Convention Area of all highly migratory fish stocks covered by the Convention. The measure sets forth restrictions and conditions for transshipment of catches, including a requirement that transshipments at sea be observed by an observer from the WCPFC Regional Observer Program. The bulk of the provisions will enter into effect on July 1, 2011.

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, 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. Following a successful recent pilot program, parties now have the option to implement the current observer program or to change to 25 percent observer coverage with more detailed electronic reporting. In 2010, NAFO continued to develop its enforcement measures by implementing an improved system for recording daily catches of species in its Regulatory Area. This system simplifies reporting requirements and enhances monitoring capability.

#### **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 any 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 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.”

To act on this proposal, Canada hosted a workshop to examine flag State responsibilities in March of 2008. Participants discussed data gathering, criteria development, the assessment process, possible actions, legal research, and the potential for assistance to developing countries with regard to this issue. The workshop participants developed a Guidance Document and recommended several areas for further exploration in understanding and addressing the flag State control issue.

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 lengthy report that will be the subject of a Technical Consultation in May 2011. One of the most interesting topics is what steps other States and RFMOs might take with regard to a State that is not fulfilling its responsibilities as a flag State.<sup>8</sup>

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

As noted above, the MSRA defines IUU fishing to include fishing activity that has an 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

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<sup>8</sup> The 2010 UNGA sustainable fisheries resolution “urges States operating open registry to effectively control all fishing vessels flying their flag, as required by international law, or otherwise stop open registry for fishing vessels” (UNGA Resolution 65/38, December 7, 2010).

measures or in areas with no applicable international fishery management 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.

The 2006 UNGA Sustainable Fisheries Resolution (61/105) called upon States, both individually and collectively in RFMOs, to protect VMEs on the high seas from bottom-tending gear. The resolution called for flag States to assess their fishing activities to determine whether they would have significant adverse impacts on VMEs and, if so, to implement management measures to prevent such impacts, or not to authorize their vessels to fish in these areas. It further required the identification of known or likely VMEs and to close those areas to fishing until management measures are in place to prevent significant adverse impacts. Finally, the resolution called for vessels to stop fishing when a VME is encountered and to report the location of the encounter to the relevant authority for action. The FAO subsequently supported development of the International Guidelines for the Management of Deep-sea Fisheries in the High Seas, which were endorsed by COFI.

Since 2008, when the resolution came fully into effect, all RFMOs with the authority to manage bottom fishing – CCAMLR, NAFO, NEAFC, SEAFO, and the two RFMOs that were being negotiated in the South and North Pacific – have implemented measures to comply with 61/105. NAFO, at its annual meeting in 2010, agreed to additional management measures to support the existing mandate to protect VMEs. Specifically, NAFO extended a fisheries closure to include six seamounts in NAFO waters. Moreover, parties agreed to a more stringent protocol for assessments, which will improve the ability of the Scientific Council to assess potential fishing activities. A number of flag States that authorize fishing in high seas areas outside of RFMOs, such as the EU and New Zealand, have published their domestic measures to protect VMEs in accordance with 61/105. Despite this progress, the United States remains concerned that implementation of 61/105 has been uneven, in particular with regard to the assessments and encounter provisions. These gaps may reflect the need for greater scientific advice on the development of risk analysis or encounter thresholds.

In the fall of 2009, the informal consultations for the UNGA Sustainable Fisheries Resolution reviewed progress by States and RFMOs to implement the bottom fishing sections of 61/105. The meeting agreed with the United States that further action is required; UNGA Resolution 64/72 calls upon States and RFMOs, among other things, to develop or strengthen data collection standards for identification of VMEs; to improve vessel monitoring, control, and surveillance; and to develop best practice guidelines.

## **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 the United Nations General Assembly and the Food and Agriculture Organization, 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 the strengthening of existing regional fisheries institutions as well as creation of 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 2009 Report to Congress.

**Western and Central Pacific Fisheries Commission (WCPFC).** The United States was an active participant in negotiating the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which currently has 25 contracting parties, seven participating territories, and seven cooperating non-members. Like other recent conventions, this treaty managing tunas and other highly migratory species is generally more forward-looking than many earlier agreements, because it incorporates principles of the 1995 UNFSA such as the precautionary approach, ecosystem-based management, and measures needed to create effective systems of compliance. Indeed, of the 24 measures adopted so far, 12 relate directly to monitoring, compliance, and surveillance.<sup>9</sup>

Becoming a party to the Convention in 2007, the United States enacted implementing legislation, the Western and Central Pacific Fisheries Convention Implementation Act,<sup>10</sup> as part of the MSRA in 2006, and promulgated final regulations governing U.S. participation in these fisheries on January 21, 2010 (75 Fed. Reg. 3335).

**South Pacific Regional Fisheries Management Organization (SPRFMO).** After four years of negotiations to establish a new treaty to conserve and manage non-highly migratory fish stocks

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<sup>9</sup> Statement from WCPFC Chairman Satya N. Nandan to the Resumed Session of the UN Fish Stocks Review Conference, retrieved from <http://www.wcpfc.int/news/2010/statement-mr-satya-n-nandan-chairman-western-and-central-pacific-fisheries-commission> on September 13, 2010.

<sup>10</sup> 16 U.S.C. 6901 *et seq.*

and protect vulnerable habitats and biodiversity in the South Pacific, the Convention on the Conservation and Management of the High Seas Fishery Resources of the South Pacific Ocean concluded in November 2009. This process worked to fill a gap in the international fisheries management regime in the South Pacific, and to respond to recent calls from the United Nations and elsewhere to take urgent action with regard to the impacts of destructive fishing practices on high seas vulnerable marine ecosystems.

The treaty text builds on the best practices of other RFMOs and strengthens implementation of the modern principles of international fisheries management embodied in the UN Fish Stocks Agreement and in various instruments and guidelines developed by the FAO. SPRFMO enshrines the ecosystem approach to management through its stated objective. Now that the treaty discussions have concluded, the participants are engaged in a Preparatory Conference phase to develop the administrative framework for the organization that will be established once the treaty comes into force, such as rules of procedure and financial regulations.

The participants that were involved in the development of SPRFMO include: Australia, Belize, Canada, Chile, China, Colombia, Cook Islands, Cuba, Ecuador, the European Union, Faroe Islands, France (on behalf of its overseas territories), Korea, New Zealand, Papua New Guinea, Peru, the Russian Federation, the United States, Vanuatu, Venezuela, and Taiwan (as Chinese Taipei). At present New Zealand, Colombia, Denmark on behalf of the Faroe Islands, Chile, Peru, the European Union, and the Cook Islands have signed the Convention. The Convention will enter into force according to a formula involving eight to ten States and entities; so far, one State has deposited an instrument of approval (Denmark for the Faroe Islands).

The main fisheries currently covered 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 conservation and management measures covering both pelagic and bottom fisheries.

**Multilateral Arrangement in the North Pacific Ocean.** In 2006, Japan, the Republic of Korea, the Russian Federation, and the United States initiated negotiations to establish a new RFMO in the North Pacific Ocean. The negotiations have since expanded to include Canada, China, and Chinese Taipei (Taiwan). The Faroe Islands has participated as an observer. The goal of this endeavor is 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 draft convention would establish 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 impacts of bottom fisheries. It is important to note that the initial area of the negotiations was limited to the North West Pacific. Due to an initiative by the United States to limit gaps in the management of international fisheries, the proposed convention area now also includes the North East Pacific.

## **B. Strengthening Existing RFMOs**

In addition to working to establish new RFMOs, the United States has pushed for improved governance systems in existing RMFOs 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 renegotiation of their underlying agreements.<sup>11</sup> This section reports on developments in existing RFMOs since the 2009 Report to Congress.

**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 eastern Pacific Ocean. The new agreement – the Antigua Convention – entered into force on August 27, 2010. The United States worked very hard to ensure that the Antigua Convention reflects the duties and responsibilities of nations to cooperate to ensure the sustainable management of shared fisheries resources, to minimize impacts to bycatch species, and to conserve the marine ecosystems on which sustainable fisheries depend. Antigua provides improved enforcement provisions that increase U.S. capacity to combat IUU fishing and illegal imports of tuna product. In 2005, 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 111<sup>th</sup> Congress, such legislation was introduced as Title IV of S. 2870.

As noted in the 2009 Report to Congress, 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 three-quarters, or nine, of the contracting parties deposit their instruments of ratification. To date, Canada, Norway, and the European Union have done so. These amendments are comprehensive enough that the United States will require Senate advice and consent to ratification. The Northwest Fisheries Convention Act, which provides implementing authority for the NAFO Convention, will also likely need to be updated. This process is just beginning.

**Performance Reviews.** Many RFMOs have undertaken performance reviews to bolster their organizations. The Review Conference on the Fish Stocks Agreement at its 18<sup>th</sup> 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 included a requirement for a performance review every five years in its new Convention (Article 30).

In 2007 ICCAT established a Working Group on the Future of ICCAT, to consider the ICCAT Convention and recommendations and resolutions *vis a vis* relevant international treaties and agreements. The first meeting of the working group was held in Sapporo, Japan, in 2009 to take on board the outcomes of the 2008 ICCAT performance review and the report of the second joint

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<sup>11</sup> In the opinion of the Chair of the Conference that adopted the UNFSA, “...there appears to be no need to modify or adapt...the rules of the various RFMOs. There is, however, a pressing need for RFMOs to follow the scientific advice that is provided to them through their scientific committees and for all members of RFMOs to comply with and enforce the collective decisions of the RFMO with respect to their nationals and vessels.” See n. 9 above.

tuna RFMO meeting. The United States and most others felt that ICCAT needed to be pragmatic and creative in finding ways to address compliance issues, improve science-based management, and progress other priority issues (capacity building, decision making, non-member participation) in ICCAT's work, while exploring the possibility of amending the Convention, which is a more complicated and longer-term matter.

At the 2009 ICCAT meeting, some of the working group's recommendations were implemented and others were deferred. It was agreed that the working group should meet again in 2010, but the meeting scheduled for July in Brazil was postponed, due primarily to a lack of resources to host the meeting. At the 2010 ICCAT meeting, the Commission agreed on a process for advancing these efforts, including a meeting of the working group April 11-15, 2011, and a request to its chair to prepare a paper to guide the group's consideration of amendments to the Convention.

As described in the 2009 Report to Congress, the North Atlantic Salmon Conservation Organization (NASCO) embarked on a comprehensive performance review in 2004. One result was a requirement that each party provide detailed reports on three focus areas – Fisheries Management (2008); Habitat Protection, Restoration, and Enhancement (2009); and Aquaculture, Introductions and Transfers, and Transgenics (2010). Review of the first two sets of these focus area reports has already produced guidelines for member countries. In response to UNGA resolution 61/105, NASCO at its 2010 annual meeting agreed to establish a "Next Steps" Review Group to develop terms of reference for a further performance review by three external experts. The panel is expected to complete its work by April 1, 2012.

The performance review presented to CCAMLR at its 2008 meeting was discussed at both the 2009 and 2010 meetings; several recommendations stemming from the review, such as those dealing with the krill fishery, were adopted.

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 crossroad. 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 will begin to address each of the recommendations in its committees and hopes to make significant progress by the next annual meeting.

At the 2009 NAFO meeting, the United States tabled a proposal calling for a performance review of the organization. Following intersessional work to gain consensus on an approach and framework, NAFO adopted (at its 2010 annual meeting) procedures for a performance review, which will be conducted during 2011. A review panel will assess the performance of NAFO against the objectives set out in the NAFO Convention and other relevant international instruments addressing the conservation and management of marine living resources. The panel will consist of seven experts: the external experts will come from ICES, the FAO, and the United Nations Division of Ocean Affairs and Law of the Sea; the internal experts will be

knowledgeable representatives from contracting parties. The panel will conclude its business and make recommendations in advance of the September 2011 NAFO annual meeting.

At its Sixth Regular Session in December 2009, the WCPFC approved a recommendation from the Technical and Compliance Committee to undertake an independent performance review of the Commission in early 2010. Budgetary concerns delayed the review, but in 2010 the WCPFC reaffirmed its intent to conduct the review beginning in 2011. The WCPFC agreed the review panel will include both representatives of members and independent experts.

IATTC members have been unable to reach agreement on a plan to undertake a performance review of the Commission, despite the fact that one or more proposals to do so have been tabled at the last four annual meetings. A draft Resolution on the Review of the Performance of the Organization submitted by Costa Rica, El Salvador, Guatemala, Mexico, Nicaragua, Panama, and Venezuela at the 2009 IATTC annual meeting will be carried over for consideration at the 2011 annual meeting.

**Steps to Bolster Responsibilities of Members and Non-Members.** 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.

ICCAT has adopted a number of measures to improve adherence to its rules by both members and non-members, including the trade measures recommendation described in Part V.B.2. 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 restrictive measures. To date, trade action under this instrument has been applied several times to non-members and once to an ICCAT member.

**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 2009 Report to Congress, the IATTC had six cooperating non-parties or fishing entities; five of those have now become members (Belize, Canada, China, the European Union, and Chinese Taipei (Taiwan)). The Cook Islands and Kiribati are cooperating non-parties. Colombia and the Netherlands Antilles have joined Guyana and Chinese Taipei as ICCAT “cooperators.” 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 and management measures adopted by the Commission, and are excluded from participation in Convention Area exploratory fisheries. Currently there are nine such non-members. In addition, any non-contracting party may cooperate with CCAMLR by participating in its catch documentation scheme. NASCO has a protocol open to signature by non-parties, but to date no country has become bound by it.

Following a substantial revision of the WCPFC conservation and management 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 make 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 continues to increase. Thailand and Panama joined Belize, Indonesia, Senegal, Mexico, El Salvador, Ecuador, and Vietnam for 2011. The application from the Democratic People's Republic of Korea for 2011 was not accepted.

**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.

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 the summer of 2009. Participants agreed to call these joint meetings the "Kobe Process." At Kobe II, participants adopted by consensus a Course of Actions, which included a number of recommendations to the RFMOs for immediate measures, as well as a work plan for 2009-2011. The work plan called for four intersessional workshops, all of which were held during 2010: (1) best practices on the provision of scientific advice; (2) harmonization and compatibility of monitoring, control, and surveillance measures; (3) bycatch; and (4) the management of capacity in tuna fisheries. The United States participated in all Kobe II workshops, although the outcomes of the monitoring and bycatch meetings are most important for this report. The bycatch workshop is summarized in Part VII.A.2.

Recommendations from the monitoring measures workshop included standardizing VMS, transshipment, and observer protocols; expanding the use of catch documentation schemes (CDSs) as a means to deter illegal fishing; adopting port State control measures consistent with the 2009 Agreement; and developing protocols to share data within and between RFMOs. During the tuna RFMO meetings in the fall of 2010, the United States worked with its international partners to advance the outcomes of this workshop. Observer protocols, CDSs, and discussion of port State measures were key priorities.

The United States plans to host Kobe III in July 2011 in San Diego, CA. NMFS is currently in the preliminary planning stages for this meeting and has initiated outreach among our international partners. A Steering Committee composed of 14 members representing the broad geographic range and different perspectives in tuna fisheries (*e.g.*, harvesting/market nations, developed/developing countries) will support Kobe III planning. Kobe Process meetings are typically large and will involve substantial resources for the United States to host.

In December 2009, the WCPFC and IATTC finalized an MOU regarding the reciprocal exchange and release of data between the two Commissions. Data to be exchanged, subject to each Commission's internal rules on confidentiality and information security, includes operational level catch and effort data; observer, unloading, transshipment, and port inspection data; aggregate catch and effort data; and MCS data. The two organizations are working on a protocol that would allow observers from either Commission to serve on vessels that fished in both convention areas during the same trip.

## **VII. International Efforts to Encourage Adoption of International Measures Comparable to Those of the United States 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, dolphins, and some other marine mammals. This section describes the actions taken by international fisheries bodies with regard to these PLMRs, and U.S. involvement in those actions.

### **A. U.S. Tools Governing Conservation and Protection of PLMRs**

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. For example, U.S. fishers are subject to requirements concerning:

- the taking of marine mammals under the Marine Mammal Protection Act (MMPA);
- fishing and related actions that affect species listed as endangered or threatened under the Endangered Species Act (ESA);
- fishing with the use of large-scale high seas driftnets under the High Seas Driftnet Fisheries Enforcement Act; and
- fishing activities affecting sharks under the Shark Finning Prohibition Act

We note, however, the disparity between the enforcement scheme under these laws, and most other U.S. environmental statutes. Most of our nation's major environmental statutes empower the United States, in the event of a violation, (1) to bring an administrative action for penalties, (2) to file in federal court a civil action seeking penalties and appropriate injunctive relief, or (3) in the most egregious cases, to file in federal court a criminal action seeking criminal sanctions.

However, with the exception of the Lacey Act, the laws available to the United States to address IUU fishing and PLMR bycatch limit the United States to bringing an administrative action for penalties or permit sanctions. And while the Lacey Act allows for the full range of enforcement options, including criminal sanctions, it does not apply to activities subject to regulation under the MSA in federal waters.

The absence of the full range of enforcement options in these laws limits the U.S. ability to address IUU fishing and PLMR bycatch violations of varying degrees of severity through similarly varying degrees of sanctions, including the possibility of criminal prosecution.

In addition, U.S. law provides policy statements, action mandates, and research direction for U.S. actions in the international arena. For example, 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 Dolphin Conservation Program Act and the Pelly Amendment to the Fisherman'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. The Lacey Act prohibits the import, export, transport, sale, or possession in interstate or foreign commerce of any fish or wildlife taken, possessed, transported, or sold in violation of any law or treaty or regulation of the United States. A more detailed description of these and other laws appears in Annex 2 to this report.

**Marine Mammal Protection Act.** NMFS is evaluating options to implement the MMPA provisions addressing the bycatch of marine mammals in global fisheries, a significant threat to many marine mammal populations. Section 101(a)(2) of the MMPA directs the Secretary of the Treasury to ban imports of commercial fish caught with technology that results in the incidental kill or serious injury of ocean mammals in excess of U.S. standards. Since the 2009 Report to Congress, NMFS has been coordinating with other Department of Commerce offices, the State Department, the U.S. Trade Representative, and foreign fishing nations to develop standards and a regulatory framework to implement that provision for fisheries other than yellowfin tuna harvested in the ETP, which are already subject to standards under that provision.

The Center for Biological Diversity and the Turtle Island Restoration Network submitted a petition on March 5, 2008, requesting the U.S. Government to utilize the authority contained in Section 101(a)(2) to ban swordfish imports from nations whose bycatch of marine mammals exceeds U.S. standards. NMFS published a notice of receipt of the petition on December 15, 2008, with a 45-day comment period that was then reopened for another 45 days. The public, environmental and industry groups, members of Congress, and swordfish-exporting nations submitted more than 40,000 comments. NMFS also contacted all nations that exported swordfish to the United States during the past four years and invited them to provide information and comments.

On April 30, 2010, NMFS published an advance notice of proposed rulemaking (ANPR) to implement the fish import provision of Section 101(a)(2), and accepted public comment for 60 days (75 Fed. Reg. 22731). The comment period was reopened until August 30, based on requests from the original petitioners and several other stakeholders. NMFS contacted every nation that had recently exported wild-caught fish or fish products to the United States and invited those nations to provide information and comments relevant to the petition. The ANPR describes various options under consideration, particularly criteria that could be used to evaluate marine mammal bycatch in foreign fisheries that supply fish and fish products to the United States. The ANPR also describes options for implementing the MMPA provisions in a manner that is intended to be consistent with both the U.S. domestic process for managing marine mammal bycatch and the new process under the MSRA for identifying nations for bycatch of PLMRs. The next step is determining a path forward to implement this provision, including any associated rulemaking.

## **B. International Actions to Protect PLMRs**

### **1. Global Forums**

**FAO.** The United States has been participating in the development of FAO's International Guidelines on Bycatch Management and Reduction of Discards during 2009-2010 and will continue our leadership into 2011. In 2009, the FAO Committee on Fisheries agreed, as bycatch is an integral component of implementing the ecosystem approach to fisheries, to support the development of the Guidelines through an expert consultation followed by a technical consultation. A NMFS employee was invited to participate in the expert consultation, which is a meeting of scientists and other experts in their individual capacity. The resulting report of the meeting provided guidance to the States participating in the negotiations during the technical consultation on December 6-10, 2010. These Guidelines will provide advice to States, both individually and collectively through RFMOs, on ways to manage the bycatch of protected and all other marine resources, including target stocks. 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. NOAA, as the lead on the U.S. delegation, ensured that the Guidelines reflected and are in accordance with our existing strict domestic measures to protect living marine resources. The Guidelines will be presented to COFI in early January 2011 for its endorsement.

**International Council for the Exploration of the Sea (ICES).** The United States participated in several groups sponsored by ICES in 2010 that were directed at bycatch of protected species, including a workshop that produced draft guidelines on monitoring the incidental catch of mammal and bird species in fishing operations.

### **2. RFMOs**

**Kobe II Bycatch Workshop (K2B).** Following the second Kobe Process meeting (see Part VI.B), participants from the five tuna RFMOs held the K2B workshop in Brisbane, Australia, in June 2010; the meeting was co-hosted by the United States and the FFA. The goals of the K2B workshop, as outlined by the terms of reference agreed to at Kobe II, were to better assess, reduce, and mitigate bycatch and to improve coordination and cooperation on bycatch-related issues among the tuna RFMOs. The first day of the three-day conference consisted of expert presentations on assessment and mitigation of bycatch, followed by representatives from each of the five RFMOs summarizing actions that their organizations have taken to address bycatch. The second day included three structured dialogue sessions examining how to improve assessment and management of bycatch within the RFMOs. The workshop also explored ways to improve and enhance capacity-building efforts for developing nations on bycatch-related issues.

The workshop's recommendations call for assessment of bycatch in tuna and tuna-like fisheries, development of bycatch data collection standards, and enhancement of observer and port-sampling programs. Other recommendations include:

- adopt standards for bycatch data collection;
- support observer programs with sufficient coverage to estimate bycatch;
- implement/enhance observer and port sampling programs with sufficient coverage to estimate bycatch;
- evaluate the effectiveness of current bycatch mitigation measures;
- seek binding measures or reinforce existing mitigation measures;
- adopt bycatch conservation and management measures that are binding, clear and direct, measurable, science-based, ecosystem-based, ecologically efficient, practical and safe, economically efficient, holistic, collaboratively developed with industry and stakeholders, and fully implemented;
- establish a joint tuna RFMO technical working group to investigate methods to harmonize data collection protocols, identify species of concern, review the efficacy of existing bycatch measures, and compile information on bycatch research; and
- develop the long-term capacity of tuna RFMOs.

To assist developing nations carry out the mandate of K2B, the recommendations call for tuna RFMO members to consider capacity-building programs for developing countries. The United States worked closely with our international partners in the 2010 annual meetings of the tuna RFMOs to ensure that the recommendations of K2B would be adopted and implemented in a timely fashion. For example, ICCAT endorsed creation of the joint bycatch technical working group and is considering hiring a permanent bycatch coordinator within the Secretariat. In addition, ICCAT agreed in principle to reorganize its panels so that, beginning in 2012, one of the four will be devoted to sharks and bycatch species.

### 3. Bilateral Arrangements

The Canada-U.S. Species at Risk Working Group convened its annual meeting on June 1-2, 2010, in Boston, to increase information sharing between the two countries' sea turtle and marine mammal stranding and entanglement programs. The working group agreed there needed to be a more formal process for sharing information about entanglements, strandings, and necropsies, to increase each country's understanding of stranded and entangled transboundary sea turtle and marine mammal species. This process will better assist both countries in achieving conservation goals established in Canada's Species at Risk Act and the U.S. Endangered Species Act. To that end, the working group discussed marine mammal and sea turtle: 1) research and recovery efforts; 2) data holdings and data management; 3) response programs and activities; and 4) information and program management. The two countries plan to continue these discussions and hope to establish formal information processes for sea turtle and marine mammal strandings and entanglements in 2011.

### 4. Specific Species

**Sea Turtles.** Sea turtles are incidentally taken as bycatch or harmed in pelagic longline, trawl, gillnet, driftnet, purse seine, pound net, and trap/pot fisheries throughout their ranges. 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. Loggerhead and 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). NMFS proposed in 2010 to designate nine distinct population segments for loggerhead sea turtles, seven of which would be designated as endangered. The final determination is due in the spring of 2011.

Sea turtle species found in the Atlantic Ocean, Mediterranean Sea, Gulf of Mexico, and Pacific Ocean include the loggerhead, leatherback, green, hawksbill, olive ridley, and Kemp's ridley. Fisheries affecting all of those species in those areas often involve longline, purse seine, trawl, gillnet, pound net, and trap/pot operations. In addition, shrimp trawl fisheries in the Gulf of Mexico and other temperate areas also interact with sea turtles – primarily Kemp's ridleys, leatherback, and loggerhead turtles. In the Eastern Tropical Pacific (EPT), the distribution of olive ridleys, greens, hawksbills, leatherbacks, and loggerheads overlaps with longline, drift gillnet, and tuna purse seine fishing operations. 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 United States has worked aggressively through RFMOs, multilateral environmental agreements, and other fora to urge nations to implement measures comparable to those applicable in the United States to protect sea turtles from fisheries operations. For example, during 2009 and 2010, NMFS and the Department of State have actively advocated measures to protect sea turtles in international fisheries and conservation bodies and at bilateral fisheries meetings, such as the following:

- the 30<sup>th</sup> Annual Symposium on Sea Turtle Conservation and Biology;
- the FAO Committee on Fisheries Meeting;
- the annual meetings of IATTC, ICCAT, WCPFC, NAFO, and IOTC;
- the Kobe II meeting on bycatch;
- the International Working Group for the Conservation of the Northwest Atlantic Loggerhead Nesting Population;
- the Secretariat of the Pacific Regional Environment Program;
- bilateral meetings with Brazil, Mexico, Canada, and the EU; and
- the North American Trilateral Committee on Wildlife and Ecosystem Management.

In addition, a NMFS scientist served as a peer reviewer for Canada's Recovery Potential Assessment for loggerhead sea turtles, which may be listed under Canada's Species at Risk Act.

The Shrimp-Turtle Act committed the U.S. Government to work to ensure that other countries take measures to protect sea turtles in their shrimp fisheries through measures comparable to those in effect in the United States (*e.g.*, TEDs). Over the last two decades, the United States has worked with many governments to establish TEDs programs. Each year DOS and NMFS officers carry out TEDs inspections and trainings in countries mentioned below in the next section. In 2010, the United States maintained the embargo on Costa Rican wild-caught shrimp imports and for the first time embargoed such imports from Mexico. The United States has continued to work with both countries to address their gaps in enforcement, and in October 2010

lifted the embargo on Mexican products after that country made substantial efforts to improve enforcement of TED requirements. The embargo on Costa Rican shrimp is still in place.

Multilateral Sea Turtle Arrangements. With U.S. leadership, two multilateral arrangements have been negotiated to conserve and protect sea turtles. These are the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC), and the Indian Ocean-South East Asian Marine Turtle Memorandum of Understanding (IOSEA). Under the 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 IOSEA's provisions are somewhat more general, requiring measures to prevent bycatch of sea turtles, but without specifying specific gear types or actions. This MOU has 31 signatories, several of whom have implemented TEDs requirements for their shrimp trawl fisheries comparable to those applicable in the United States.

As a result of these two multilateral agreements, plus bilateral work with other States, 13 nations have regulatory regimes requiring the use of TEDs: Belize, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Madagascar, Nicaragua, Nigeria, Pakistan, Panama, and Suriname. Twenty-five nations and one economy have shrimp fishing environments that do not pose a danger to sea turtles. Of these, nine 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, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, 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.

RFMOs. As a result of U.S. efforts, several RFMOs have also adopted sea turtle measures. As described in the 2009 Report, the IATTC in 2007 adopted a resolution to mitigate the impact of tuna fishing on sea turtles, and NAFO adopted the Resolution to Reduce Sea Turtle Mortality in NAFO Fishing Operations in 2006.

Since 2008, the WCPFC has had a binding conservation and management measure in place for sea turtles. It requires the use of specific mortality mitigation methods in longline and purse seine fisheries and specific handling and release methods in all highly migratory species fisheries.

At the 2010 ICCAT annual meeting, the United States introduced a binding measure to reduce the impact of fishing operations on sea turtles and mandate reporting of interactions with sea turtles in ICCAT fisheries. The measure, adopted by consensus, requires that purse seine vessels avoid encircling sea turtles to the extent practicable and release turtles that are encircled or entangled, including on FADs. Pelagic longline vessels must carry onboard equipment capable of releasing sea turtles in a manner that maximizes the probability of survival; fishermen on such vessels must be trained and use the equipment. ICCAT directed the SCRS to advise the Commission by 2012 on additional approaches for mitigating sea turtle bycatch, and initiate an assessment of the impact of sea turtle bycatch in ICCAT fisheries no later than 2013.

U.S. efforts concerning sea turtles also include training, technology transfer, and related assistance. NMFS funded a number of projects aimed at gear modification for sea turtle conservation (other international sea turtle programs appear in Part VIII):

- with the University of Torino (Italy) to conduct field trials testing the effect of circle hooks on catch of target and non-target species (\$25,000);
- with Alnitak (Spain) to test circle hooks in an experimental longline fishery and study the effects on turtles of capture by longline (\$25,000);
- with Uruguayan organizations to track juvenile turtles in the Atlantic Ocean (\$10,000);
- in Brazil, to publish the final report of circle-hook trial results (\$24,500);
- with WWF-Greater Mekong (Vietnam) to train observers and test circle hooks in a pelagic longline fishery (\$20,000);
- in Costa Rica, to test release hooks for release of sea turtles from longline gear on observed trips (\$10,000);
- with the Ocean Discovery Institute in Mexico, to test net illumination on sea turtle capture rates (\$118,000 in FY2009/10);
- with WIDECAST and the Government of Trinidad, to assess the efficacy of modified gillnets in reducing leatherback turtle entanglements (\$4,000); and
- with the Sea Turtle Association of Japan, to test TEDs on Japanese pound nets (\$5,000).

Programs addressing sea turtle conservation in U.S. waters throughout the Pacific Ocean during 2009-2010 include monitoring nesting beaches; gathering information on sea turtles, including through taking genetic samples and affixing acoustic or satellite tags; and conducting education and outreach programs: in American Samoa (\$105,000), in the Commonwealth of the Northern Marianas (\$205,000), in Guam (\$35,000), and on Palmyra Atoll (\$140,000).

NMFS also supported deployment of pop-off archival transmitting tags on loggerheads nesting in Quintana Roo, Mexico, providing the tags, ARGOS satellite time, and hardware (\$151,000). The resulting data will provide survival rate estimates for the Caribbean recovery unit for future stock assessments. In addition, two Southeast Fisheries Science Center staffers spent most of the nesting season at Rancho Nuevo, Mexico, in 2009 and 2010, assisting in recovery efforts for Kemp's ridleys. In 2010, NMFS conducted a workshop for Mexican researchers studying conversion of shrimp trawlers in the Gulf of California from gillnets to trawls, to reduce turtle and vaquita bycatch (\$2,300).

**Sharks.** Sharks 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 catch of each species. 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. As demand and exploitation rates for some shark species and particularly for fins have increased, concern has grown regarding the status of many shark stocks and the sustainability of their exploitation in world fisheries.

For some species, retaining the entire shark carcass is not economical; however, many species are retained due to the value of their fins. Some shark fins are among the most valuable fish products in the world. None of the tuna RFMOs requires sharks to be landed with their fins

naturally attached. Some of the RFMOs have a 5 percent rule: the total weight of shark fins landed or found on board cannot exceed 5 percent of the total weight of shark carcasses landed or found on board; however, the 5 percent is not calculated uniformly across nations in that some countries use dressed weight while others use wet weight. A fins-naturally-attached policy would aid in Federal enforcement and also improve species-specific data collection. In the United States, vessels with Atlantic commercial shark licenses must maintain all fins, including the tail, naturally attached to the carcass through landing and offloading.

Recent developments in shark management are summarized below.

Joint Tuna RFMOs. At the second joint meeting in 2009, the United States took an active role in promoting shark conservation. Participants agreed to call on RFMOs, consistent with the IPOA-Sharks, to establish precautionary, science-based conservation and management measures for sharks taken in fisheries within the convention areas of each tuna RFMO, including:

- measures to improve the enforcement of existing finning bans;
- prohibitions on retention of particularly vulnerable or depleted shark species, based on advice from scientists and experts;
- concrete management measures in line with best available scientific advice with priority given to overfished populations;
- precautionary fishing controls on a provisional basis for shark species for which there is no scientific advice; and
- measures to improve the provision of data on sharks in all fisheries and by all gears.

UN Fish Stocks Review. The United States also continues to use the UNGA process to develop a more specific mandate for RFMOs to adopt stronger measures to reduce the bycatch of sharks. Most recently, the United States was successful in lobbying for specific language for the conservation and management of sharks at the UN Fish Stocks Review Conference, which recommended that States and regional economic integration organizations, individually and collectively through RFMOs or other arrangements, strengthen the conservation and management of sharks by:

- establishing and implementing species-specific data collection requirements for shark species caught in directed shark fisheries or as bycatch in other fisheries;
- conducting biological assessments and developing associated conservation and management measures for such sharks; and
- improving the enforcement of existing prohibitions on shark finning, including through requiring that sharks be landed with their fins naturally attached or through different means that are equally effective and enforceable.

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. An intergovernmental treaty, the CMS was concluded under the aegis of the United Nations Environment Programme and currently has 114 parties. The United States is not a party to the CMS; however, non-parties are able to participate in individual instruments concluded under the CMS umbrella, including a possible new global instrument on sharks.

At the Third Meeting on International Cooperation on Migratory Sharks, held February 8-12, 2010, in Manila, an MOU for Migratory Sharks was signed by the United States, the Philippines, and several other countries. The negotiations, convened under the auspices of the CMS with the support of the Government of the Philippines, adopted the MOU to coordinate international action on the threats faced by sharks. The MOU initially covers great white, basking, whale, porbeagle, shortfin mako, and longfin mako sharks, and the Northern Hemisphere population of spiny dogfish. An associated conservation plan is expected to be completed at the first meeting of signatories.

RFMOs. In November 2009 and August 2010, the IATTC convened shark stock assessment workshops to discuss technical aspects of scientific models that might be used for stock assessments of shark species. The workshops also reviewed several current shark stock assessments. Another technical meeting is scheduled for May 2011.

In 2009, the United States went to ICCAT seeking a reduction of mortality of North Atlantic shortfin mako sharks. ICCAT did not adopt the U.S. proposal to establish catch limits for the stock, but at the 2010 meeting did adopt a measure on shortfin mako that reinforces the existing requirements to reduce mortality of the North Atlantic stock and report data to the SCRS on the species. Retention of this species will be prohibited for parties that do not report the required data beginning in 2013. The Compliance Committee will annually review actions taken by parties to implement previous shark recommendations beginning at the 2011 annual meeting.

Belize, Brazil, and the United States submitted a proposal in 2009 and 2010 to require that all sharks be landed with their fins naturally attached at the first point of landing. There was support for this proposal from several ICCAT members, but consensus on the proposal could not be reached.

In 2010 ICCAT prohibited retention of all species of hammerhead sharks (except bonnethead sharks) that are caught in association with ICCAT fisheries, with limited exceptions for developing countries that rely on sharks as an important food source. Parties taking advantage of this exception must ensure that these sharks and their parts do not enter international trade. Given the coastal nature of hammerhead sharks, a statement was included in the record noting that several ICCAT members, including the United States, consider that this measure does not apply to directed fisheries prosecuted in coastal waters. Also adopted in 2010 was a prohibition on retention of oceanic whitetip sharks. The measure requires parties to collect and report the number of discards and releases of this species.

Canada and the EU submitted a porbeagle proposal for the northeast Atlantic and northwest Atlantic stocks at ICCAT's 2009 annual meeting. Several ICCAT parties, including the United States, expressed concern that the catch levels in the proposal were not in line with scientific advice and that some of the monitoring and control measures were unenforceable. Consensus on the porbeagle proposal was not achieved at ICCAT's 2009 annual meeting. At the 2010 meeting, the EU proposed prohibiting retention of this species, including in the South Atlantic. The United States supported this proposal, but no consensus was reached.

In 2009, ICCAT adopted a recommendation prohibiting retention of bigeye thresher sharks in all fisheries with the exception of a small-scale Mexican coastal fishery, which is allowed to retain

110 bigeye threshers. In 2010, Mexico withdrew its claim to the exception. The original EU proposal would also have prohibited the retention of other thresher shark species, but consensus on the broader proposal could not be reached. The final agreement, however, does include a requirement to submit catch and effort data for *Alopias* species other than bigeye thresher. It also mandates that the number of discards and releases of bigeye threshers be recorded with the indication of status (dead or alive) and reported to ICCAT. At the 2010 meeting, the EU again proposed prohibiting retention of common thresher sharks; there were questions about the scientific basis for the proposal and it was not adopted.

In 2004, NAFO set a 13,500 metric ton total allowable catch limit for thorny skates. As this limit exceeded scientific advice, greater protection for thorny skates has been a U.S. goal at NAFO for several years. At the 2010 annual meeting, the United States met bilaterally with a number of NAFO parties to seek support for a proposal that the limit for thorny skates be reduced to 10,000 mt, and that a trigger point be agreed to close the fishery when catches reached that limit. No agreement was reached; the 2011 TAC remains well above the level recommended by the NAFO Scientific Council.

At its 2005 annual meeting, NAFO adopted a U.S. proposal (co-sponsored by the EU) that called on parties to report catches of all sharks in accordance with existing NAFO data reporting procedures. Reporting of shark catches has been spotty at best since this regulation entered into force. In addition, the existing data reporting requirements allow for species to be aggregated if catches fall below a certain level, so that many shark catches are reported simply as "Sharks." Without species information, the data are not useful for determining whether shark bycatch is a significant problem in NAFO fisheries. In 2010, the United States asked the NAFO Standing Committee on International Control (STACTIC) to examine compliance with the shark data requirements and to communicate any information regarding submitted data. STACTIC responded that there is general consensus shark bycatch is very low in NAFO fisheries (which are predominantly bottom trawl fisheries). The United States then requested STACTIC to reflect further on potential reporting improvements with a view to enhancing NAFO's requirement to report all catch and bycatch of sharks.

In December 2008, the WCPFC adopted a U.S. proposal to modify and improve a 2006 binding measure for the conservation and management of sharks. The revised measure applies to all vessels regardless of size or gear type. Commission members, cooperating non-members, and participating territories must report annually regarding their retention and discards of all shark catches as well as their annual catch and effort by gear type for key shark species. The 2008 measure identified blue, oceanic whitetip, mako, and threshers as key species for which catch reporting is required. The measure was revised again in 2009 to include silky sharks on the list of key shark species, and again in 2010 to include porbeagle and hammerheads (four species).

In 2010 the WCPFC also adopted a Shark Research Plan for conducting stock assessments for key species. The International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean, which provides scientific advice to both the WCPFC and IATTC, established a shark working group in 2010 and intends to work with other organizations to conduct assessments of shark stocks in the North Pacific Ocean, starting with blue and shortfin mako. The WCPFC considered a proposal from FFA members to prohibit the setting of purse seines around and near whale sharks and to employ specific methods to release any encircled whale

sharks. Although the proposal enjoyed fairly broad support, some members believed it was unduly restrictive; it will be further considered in 2011.

CITES. At the 2010 Conference of the Parties, the United States and Palau sponsored two shark proposals, one to list scalloped hammerhead sharks in Appendix II, which included the proposed listing of four look-alike species, and the other to list oceanic whitetip sharks. Concern that the international fin trade is undermining the conservation status of these species prompted the proposals. The fins of these six shark species are among the most valuable. Outside the United States, there is little fishery management in place for these sharks.

In response to comments made on the floor, the United States amended the proposal to drop sandbar and dusky sharks as look-alikes, as well as to include an extension from 18 to 24 months for the delayed implementation period. The proposal did not garner the necessary support for adoption. The second proposal to include oceanic whitetip sharks in Appendix II also failed.

The EU and Palau proposed an Appendix II listing for porbeagle sharks. The proposal passed in committee, with 86 votes in support, 42 opposed, and 8 abstentions. The proposal was brought to a vote during the plenary session, where the proposal failed. The EU and Palau co-sponsored a proposal to include spiny dogfish (*Squalus acanthias*) in Appendix II. The United States did not back this proposal, as it was unsupported scientifically; it also failed.

FAO. In 1999, the FAO adopted the IPOA-Sharks, which is understood to include all species of sharks, skates, rays, and chimaeras. The IPOA calls on all FAO members to adopt a corresponding NPOA if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks in non-directed fisheries. The following entities have developed NPOAs for sharks: Argentina, Australia, Canada, Ecuador, Japan, Malaysia, Mexico, Seychelles, Taiwan, the United Kingdom, the United States, and Uruguay.

Domestic legislation. Congress continued work on bills targeting IUU fishing and illegal shark finning. NOAA prepared testimony as well as technical drafting assistance on H.R. 1080 (the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009) and S. 2907 (the International Fisheries Stewardship and Enforcement Act). Both of these bills contain significantly enhanced enforcement tools for combating IUU fishing and, in particular, the trafficking of IUU product.

The Shark Conservation Act of 2009 (H.R. 81 and S. 850) would have amended the Shark Finning Prohibition Act to require all sharks to be landed with their fins naturally attached. This would improve the enforceability of the current finning ban as well as regulations prohibiting the harvest of certain species of sharks. The bill would also have amended the Moratorium Protection Act to require the Secretary to: (1) identify, in a biennial report to Congress, nations whose fishing vessels engage in high seas fishing activities that target or incidentally catch sharks if the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit finning; and (2) encourage the RFMOs to which the United States is party to adopt shark conservation measures, including measures to prohibit finning.

**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 1995, 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 species/stock-specific annual dolphin mortality limits and represented an important step toward reducing bycatch of dolphins in commercial 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. Parties to the Agreement are Costa Rica, Ecuador, El Salvador, EU, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, United States, Vanuatu, and Venezuela. Bolivia and Colombia are applying the Agreement provisionally.

The objective of the AIDCP is 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; to progressively reduce incidental dolphin mortalities in the ETP tuna fishery to levels approaching zero; 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).

From 2007 through 2009 the average observed dolphin mortalities in the EPO purse-seine fishery were fewer than 1,082 individuals. This represents a reduction in dolphin 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 October 2009, the AIDCP revised its per-stock mortality limits for northeastern and western/southern spotted dolphins and eastern and whitebelly spinner dolphins, which had been based on abundance estimates from surveys conducted during 1986 through 1990. The revised stock mortality limits are based on more recent and extensive data. 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 that includes opportunities for participation by environmental NGOs and industry representatives, and 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. An estimated tens to 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 coastal and international fisheries, which makes quantitative analysis of bycatch extremely difficult. Progress in quantifying fishery impacts on marine mammal populations and related progress in mitigating or reducing mortality have been slow, sporadic, and limited to a few specific fisheries or circumstances.

Only a few RFMOs have discussed what is known about marine mammal bycatch in fishing gear. Still, the data that exist within RFMOs, their member nations, and other sources provide a suitable foundation for RFMOs to begin discussions of how best to assess and address the conservation of those species of marine mammals that interact with high seas and coastal fisheries. The United States will continue to work with international organizations and RFMOs to help design and implement data-gathering programs, identify and recommend bycatch reduction measures, and monitor the effectiveness of, and compliance with, those measures.

CCAMLR has focused significant effort on the assessment and avoidance of incidental mortality of Antarctic marine mammals in commercial fisheries through establishment of its Ad hoc Working Group on Incidental Mortality Associated with Fishing. During the 2008/09 season seven marine mammal incidental mortalities were recorded in the Convention Area: three elephant seals were caught in longline mainline, and two crabeater seals were hooked in the flipper and hauled up dead. There were also two cetacean incidental mortalities: a killer whale was hooked on a longline but was dead upon retrieval, and a sperm whale was hauled up dead after being caught in discarded fishing gear on the seabed. Twelve marine mammal incidental mortalities (all fur seals) were recorded in the krill trawl fishery in 2008/09, all from one vessel, *Dalmor II*. A further seven seals were recorded as being caught and released alive, four from the *Dalmor II*, two from the *Saga Sea*, and one from *Juvel*. This is an increase over the 2007/08 season when there were six reported incidental mortalities. No marine mammals were reported entangled or killed in the krill trawl fisheries in 2006/2007 compared to 142 Antarctic fur seals in 2004/2005 and one in 2005/2006. CCAMLR has strongly recommended that vessels participating in the krill fishery use seal excluder devices; such devices came into more regular use beginning with the 2005/2006 season. Finally, no marine mammal incidental mortalities were observed in finfish trawl fisheries or pot fisheries in the Convention Area. This was also the case for the previous two seasons.

Under its Convention, the WCPFC is to adopt measures to minimize waste, discards, and catch by lost or abandoned gear; catch of non-target species, both fish and non-fish, and in particular endangered species; and to promote the development and use of selective, environmentally safe, and cost-effective fishing gear and techniques. The WCPFC has not yet put into place measures specifically aimed at marine mammals, but in 2010 it considered a proposal from Australia to prohibit setting purse seines around cetaceans. A few members strongly opposed it. The United States will continue to work with our international partners so that appropriate measures for marine mammals are developed, adopted, and implemented.

## VIII. International Cooperation and Assistance<sup>12</sup>

### A. International Institutional Efforts

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 and helps promote the adoption of measures to mitigate the adverse impacts of fishing activities on PLMRs. The need for such cooperation and assistance has been recognized in several recent international and regional fisheries agreements, including the UNFSA. To help developing States implement the provisions of that Agreement, the United Nations established a trust fund that is managed by the FAO.

**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 addition, the ICCAT Chairman Fund supported several workshops and training courses in 2009 in Cape Verde, Turkey, Syria, and Morocco (Doc. No. PLE-108/2009).

**CCAMLR Activities.** In 2009, CCAMLR established a General Science Capacity Special Fund to secure wider participation in the work of its Scientific Committee, to promote capacity within the Committee, and to promote cooperative and collaborative research. Norway stepped forward to capitalize the fund with \$100,000, members of the Coalition of the Legal Toothfish Operators also committed to add \$10,000, and Australia has since contributed.

Through collaboration with the Australian Fisheries Management Authority, the UK Government, the South African Government, and the Stop Illegal Fishing Program, CCAMLR organized a Capacity Building Training Workshop in Cape Town in August of 2010. The objective was to build awareness, capacity, and expertise to combat IUU fishing and to create a network of key stakeholders based in Africa with the authority and expertise to support CCAMLR in preventing trade of illegal toothfish in the Southern Ocean. Fishery policy and enforcement officers from Benin, the Democratic Republic of Congo, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Seychelles, South Africa, Tanzania, and Togo participated in the workshop. The workshop, as well as the design and printing of new toothfish identification posters and CDS training materials, was funded in 2009/10 from CCAMLR's CDS Fund, which includes money contributed by the United States.

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<sup>12</sup> Section 607 of the Moratorium Protection Act does not explicitly require information on international cooperation and assistance in the biennial report. Since such cooperation and assistance are important in promoting progress at the international level to address IUU fishing and to promote adoption of international measures comparable to those of the United States to reduce impacts of fishing and other practices on PLMRs, and because NMFS actively is involved in programs, including cooperative research, for these purposes, the Department has chosen to include a section on international cooperation and assistance in this report.

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

The WCPFC developed the West Pacific East Asia Oceanic Fisheries Management Project to assist Indonesia, the Philippines, and Vietnam in becoming more effectively involved in the Commission. Initiated in January of 2010, the WCPFC Secretariat acts in collaboration with the United Nations Office of Project Services as the executing agency for this project, which is supported by funds from the Global Environment Facility. The project will enhance national capacities in fishery monitoring and assessment; improve knowledge of oceanic fish stocks and reduce uncertainties in stock assessments; increase national capacities in oceanic fishery management, with participant countries contributing to the management of shared migratory fish stocks; and strengthen national laws, policies, and institutions, to implement applicable global and regional instruments.

The WCPFC also decided to make available resources from its Special Fund to assist developing State members and territories in implementing the FAO guidelines on sea turtle conservation.

In 2010, the IATTC discussed a proposal from El Salvador and others on a fund to provide technical assistance to developing countries, but it has not yet been adopted.

**International Fisheries Observer and Monitoring Conference.** NOAA hosted this conference July 20-24, 2009, in Portland, Maine. More than 300 delegates from 39 countries attended; NMFS provided \$100,000 to assist 35 delegates from 21 different countries (primarily from developing nations) in participating. The purpose of the conference was to improve fishery monitoring programs worldwide through sharing of practices and development of new methods of data collection and analysis, as well as providing a forum for dialogue among those responsible for monitoring fisheries and those who rely upon the data they collect.

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

The MSRA directs NMFS to engage in international cooperation and assistance to implement the Act, particularly in the areas of combating IUU fishing and mitigating bycatch of PLMRs.<sup>13</sup> In addition to meeting these IUU and PLMR mandates, the NMFS International Cooperation and Assistance Program (ICAP) accomplishes many other important goals, including strengthening international fishery management organizations and promoting goodwill in international marine resource management fora. ICAP funds are used to build strategic partnerships with other nations and the capacity of developing countries 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. Examples of these programs during FY 2009 and 2010 are set forth in this section, which is organized by geographic area. One set of international programs, involving sea turtles, occurs across several areas and is treated in Part VII.B.3.

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<sup>13</sup> 16 U.S.C. 1826k(d).

## 1. Latin America and Caribbean

The need for regional fisheries management in the Wider Caribbean has long been recognized, but never attained. There is no binding international authority for fisheries management in the region. Thus the United States must work with intergovernmental bodies, such as CARICOM, OSPESCA, and with individual governments to promote scientific and management elements of fisheries conservation to compensate for this lack. The most successful partnerships have been with OSPESCA (a partnership among Central American countries dedicated to the development and integration of fisheries management in the region), and with the government of Colombia, which shows promise as a regional leader in fisheries management and good governance. NMFS hopes to combine efforts in these two areas, particularly in the San Andrés Archipelago, a territory of Colombia physically located in Central America. NMFS is active through partner organizations in other parts of the region.

The following projects were undertaken in this region:

- Capacity building workshop for Spanish-speaking countries on marine mammal stranding response (\$40,000 in FY2009 funds). This fulfills a goal from the White Water to Blue Water Initiative to complete basic training in all three languages of the Cartagena Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region.
- Bycatch Reduction Technology Transfer to Colombian Fishers, Fisheries Managers and Marine Enforcement (\$30,700 in FY2009 funds). The Southeast Fisheries Science Center, Engineering and Harvesting Branch provided training on use and enforcement of TEDs in the Pacific and Caribbean.
- Turtle Excluder Device (TED) Technology Transfer and Development in Uruguay's Coastal Non-Shrimp Trawl Fishery (\$44,000 in FY2009 funds). The Southeast Fisheries Science Center, Engineering and Harvesting Branch, provided the training.
- Continuing sea turtle workshops and offshore radio broadcasts to reach artisanal vessel captains in Peru (\$19,700 in FY2009 funds). The Southwest Fisheries Science Center assisted in training artisanal fisheries crew members and observers on proper sea turtle dehooking and resuscitation techniques and promoted these practices through radio public service announcements;
- TEDs University (\$50,000 from the CAFTA-DR Environmental Initiative in 2010). This was a comprehensive two-week training in TED technology for five students (from Costa Rica, Panama, Nicaragua, Honduras, and El Salvador), designed to establish TED extension agents in the region.

- A two-part project on construction and installation of TEDs in the Uruguayan trawl fishery (\$38,700 in FY 2010 funds). Three visitors from Uruguay attended a workshop in the Pascagoula Laboratory; NOAA experts will visit Uruguay to assist with installation of NOAA-funded TEDs.
- Building the Capacity of Central American Countries to Assess Bycatch (\$20,000 in FY2010 funds). The World Wildlife Fund will collaborate with five Central American governments on use of best fishing practices to reduce bycatch in artisanal longline fisheries. WWF also conducted an introductory workshop in French Guiana in conjunction with its new law requiring TEDs (\$3,200 in FY2009).
- Characterization of Bycatch in the Western Caribbean (\$24,934 in FY2010 funds). This was a program with the Seaflower Biosphere Reserve to collect information on bycatch generated in snapper reel, longline, and fish/lobster traps for use in the Colombian National Plan to Combat IUU Fishing.
- Bycatch Reduction of Pelagic Sharks in Uruguay (\$40,000 in FY2009 funds). The Southeast Fisheries Science Center provided assistance to measure biological productivity and susceptibility to longline fisheries of pelagic sharks in Uruguayan waters to reduce bycatch.
- Bycatch Reduction - The Effects of E+ Metals and Hook Type (\$20,000 in FY2010 funds). The Southwest Fisheries Science Center investigated the potential use of electropositive metal alloys to deter sharks from capture in longline gear and examined differences in shark capture on circle hooks versus J-hooks.
- Effects of Neodymium/Praseodymium (NdPr) Alloys on Shark Bycatch (\$37,000 in FY2009/2010 funds). The Pacific Islands Fisheries Science Center, in cooperation with WWF and EPSCO, worked in collaboration with the Ecuadorian Subsecretaria de Recursos Pesqueros del Ecuador and the Southwest Regional Office to conduct a pilot study in the Ecuadorian artisanal longline fisheries targeting tunas, billfish, and sharks to determine whether NdPr alloys have the potential to reduce shark bycatch.
- ICCAT Latin American Data workshop (\$40,000 in FY2009 funds). This was training in data collection and reporting for Spanish-speaking ICCAT countries in Latin America and the Caribbean.
- CAFTA workshop on making CITES no-detriment findings for marine species (\$13,400 in FY2009 funds). This joint NOAA-Department of the Interior effort trained Central American countries in how to make CITES findings. NOAA funds brought fisheries authorities to the workshop.
- International Advice to Establish a Scientific Observer Program in Colombia (\$15,000 in FY2010 funds). Experts from the United States, Uruguay, Chile, Argentina, and Mexico provided advice on practical aspects of setting up a fisheries observer program.

- NMFS collaborated with the University of Hawaii and a Brazilian technical coordinator to design an improved observer program for Brazil.

NOAA, with funding through USAID/CAFTA-DR, is collaborating with OSPESCA to develop operational MCS training modules and conduct a legal framework review to establish effective tools and mechanisms to combat IUU fishing in the region.

- Monitoring, Control and Surveillance Scoping Workshop in Central America (\$11,944 in FY09 funds). NOAA and OSPECSEA convened the first regional MCS Workshop in Central America May 12-14, 2009; the objective was to build up the knowledge of fisheries managers and MCS practitioners from Central America and the Dominican Republic who are engaged in the fight against IUU fishing. The workshop culminated in the development of recommendations for how the region as a whole can develop MCS capacities to contribute to the Regional Plan of Action to Prevent, Deter and Eliminate IUU Fishing in the region. These recommendations will support NOAA's future MCS capacity-building efforts in the region. USAID provided funds for countries covered by the Central America-Dominican Republic Free Trade Agreement. NOAA funds were used for non-CAFTA countries in the region.

Following the workshop NOAA, with support from USAID, initiated three operational training projects focused on TED and other inspections. The three trainings are explained in more detail below:

- Building on discussions held in May 2010, NOAA has committed \$50,000 to conduct a survey of Central American countries with shark finning laws and determine the nature and extent of the trade in meat and fins for the primary species being caught, the level of enforcement, as well as the rate of compliance. NOAA will train MCS personnel in the region and conduct dedicated MCS operations to enhance the level of compliance with shark finning laws, including dockside and at-sea inspections of longline vessels and inspections of seafood markets.
- Spiny lobster is one of the primary products exported to the United States from Central America. Violations of various regulations, including those restricting the harvest and export of undersized and egg-bearing lobster, have been detected with respect to shipments arriving in the United States. NOAA has committed \$25,000 to work with the fisheries enforcement authorities of Central American governments to conduct spot checks of the major seafood (lobster/conch/finfish) processing facilities that export to the United States.
- Colombia Implementation Workshops on Maritime Environmental Security (\$40,000 authorized from FY2010 funds; \$40,000 funded by SOUTHCOM). The U.S. Southern Command provided advice to the Coast Guard of the Colombian Navy on implementation of its first Environmental Manual. This is the second year of this innovative program of NOAA, U.S. Coast Guard, SOUTHCOM, U.S. Embassy Bogota, and Colombian military and environmental authorities.

In addition, with financial assistance from USAID, NOAA supported the creation of a regional coordinator function at OSPESCA, and helped in crafting selection criteria and interviewing candidates. This position will support continuation of training initiatives in Central American countries and facilitate future collaboration between NOAA and OSPESCA.

## 2. Coral Triangle

The Coral Triangle covers roughly 5.7 million square km of ocean and is "the epicenter of marine life abundance and diversity" on Earth, with more than 600 coral species, 3,000 fish species, and the greatest extent of mangrove forests of any region on the planet. In August 2007, Indonesian President Yudhoyono proposed the multilateral "Coral Triangle Initiative" partnership to preserve the region's unique marine and coastal biological systems. These systems are now significantly at risk due to overfishing, destructive fishing methods, habitat degradation and conversion, climate change, and land-based sources of pollution, among other factors.

The following projects supported by NMFS were undertaken in this region during the reporting period:

- Assess Biological and Trade Status of Live Reef Fish in the Coral Triangle Region (\$35,000 in FY2009 funds and \$35,000 in FY2010 funds). This project uses Humphead wrasse, a species listed in Appendix II of CITES, as a model for how to evaluate the effectiveness of management of the live reef food fish fisheries and enforcement measures in relation to international trade. The second phase of the project expands the scope to other live reef food fish and focuses on transactions in key trade centers in Asia.
- Developing a Mechanism to Document the Chain of Custody of the Live Reef Food Fish Trade from Taytay, Palawan (\$31,429 in FY2010 funds). The goal of this project is to develop a prototype tracking system to document coral trout from the Taytay Managed Resource Area in southeastern Philippines, to determine whether fish from an area known to be sustainably managed can be marketed at a higher price.
- With funding from USAID (a total of \$28,000 in FY2010), NOAA supported several planning and capacity-building activities that directly supported the understanding of the scientific and management needs of the live reef food fish fishery. NMFS presented a four-day workshop on capacity building, including the ecosystem approach to fisheries management, and the development of a forum to facilitate continued partnering on managing this fishery among the six countries. Follow-on activities will be further in-situ application of 'science to management' capacity-building activities.
- Collection, translation, and comparison of fisheries laws in the Coral Triangle (\$35,000 in FY2010 funds). Through collaboration with the World Wildlife Fund, fisheries management and enforcement laws throughout the Coral Triangle region are being collected and translated to develop an easily accessible catalog for future comparison and analysis by Coral Triangle Initiative participants. The compilation will be used to facilitate NMFS's efforts to direct technical and legal support toward developing laws

governing sustainable live reef food fish fisheries, as well as to support an assessment of legal MCS frameworks to be conducted by NOAA Enforcement in FY2011.

With support from USAID (a total of \$173,250 in FY2010), OLE is conducting activities focused on building MCS capacity in the Coral Triangle countries to support regional efforts to combat IUU fishing. The ultimate goal is to institutionalize MCS expertise and skills in the fisheries authorities in these countries to provide a sustainable infrastructure. NMFS is actively collaborating with these entities to develop effective MCS and management training models.

- In 2009, OLE hosted individuals from Indonesia at the United States-Indonesia Bilateral Workshop on Fisheries MCS and Port State Measures in Silver Spring, MD. This workshop addressed general topics related to fisheries MCS in port facilities, and also included training on operational requirements for implementation of the Port State Measures Agreement.
- In 2010, OLE, in partnership with the International MCS Network, developed a draft survey to further explore capabilities and potential gaps in fisheries MCS in the region. The survey includes questions on the types of vessels fishing in Coral Triangle waters, target species, access by foreign vessels, ports and port security, current fisheries management practices, and other pertinent issues that will provide insight into the current status of IUU fishing in the region. This survey was used to facilitate site visits to three of the six Coral Triangle countries, during which a team of OLE and IMCS Network staff gathered information about the scope of IUU fishing in the region, as well as current operational MCS capabilities and legal authorities to address the problem. The information gathered through these site visits will be used to develop curricula for training workshops and facilitate coordination of future activities aimed at developing effective MCS mechanisms in the region.

### 3. Pacific

The United States has significant moral, historic, and strategic links with the island nations of the Pacific. NOAA is involved in direct scientific collaboration with those nations, which makes up the large share of its Pacific activities, as well as through the Secretariat of the Pacific Regional Environmental Programme (SPREP). NOAA actively engages with SPREP on issues including climate, weather/meteorology, coral reefs, marine biodiversity, invasive species, marine pollution, marine protected areas, and protected species (turtles, whales, cetaceans). NOAA International serves as the primary contact for coordinating NOAA activities with SPREP. The Pacific Islands Regional Office manages many of the fisheries-related activities. The NOAA Coral Reef Conservation Program interacts with SPREP in various fora, including the Micronesia Challenge and the management of marine protected areas.

While another Pacific organization, the Secretariat of the Pacific Community, has become the dominant scientific and monitoring organization with respect to oceans and fisheries in the region, and provides technical support to RFMOs, SPREP provides a forum to help build capacity among the Pacific Island countries on various fisheries specific needs. SPREP's Regional Marine Species Program provides the opportunity for NMFS to promote capacity

building across the region in several relevant areas. Both the organizations will be the target of capacity-building projects in 2011 and beyond. The following is a list of programs conducted during the reporting period:

- NMFS provided technical assistance to the WCPFC for its observer training programs, including materials for sea turtle and marine mammal identification (\$70,000 in FY2009), and trained two observer trainers, one from the Republic of the Marshall Islands and one from Papua New Guinea.
- Observers from Papua New Guinea, the Philippines, Vietnam, and Fiji in 2009, and Vanuatu, the Federated States of Micronesia, the Republic of the Marshall Islands, and Kiribati in 2010 received training on species identification and on sea turtle dehooking practices (\$50,000 in FY2010).
- In FY2010 NMFS sponsored a workshop to develop the Pacific Islands Regional Fishery Observer debriefer program, and provided assistance in designing a training course (\$160,000).
- NMFS supported training that allowed a number of WCPFC observers to gain approval to work in the IATTC Convention Area on purse-seine vessels (\$40,000 in FY2010).
- To support the WCPFC observer program, NOAA offered training for Vietnamese officials and NGOs setting up a national longline fishery observer program (\$159,000 in FY2009/10).
- NOAA funded the International Seafood Sustainability Foundation (\$200,000 in FY 2010) to conduct a series of meetings to establish best practice fishing methods to reduce bycatch in tuna purse seine fisheries. The Foundation chartered a tuna vessel to conduct experiments on reducing bycatch, particularly in FAD fishing.
- The United States has worked cooperatively with governments bordering the eastern Pacific Ocean to hold a series of regional workshops aimed at improving shark conservation and management efforts. Following up on the first two workshops held in 2008, the third Eastern Pacific Ocean Shark Conservation Workshop was held in Manta, Ecuador July 6-9, 2010 (\$32,000). The following countries were represented: Ecuador, Mexico, Guatemala, Nicaragua, Costa Rica, El Salvador, Panama, Honduras, Columbia, Peru, Chile, Uruguay, Argentina, and Venezuela.
- Having listed basking sharks as a species of concern under the ESA, NMFS organized a meeting in November 2010 with counterparts in Canada and Mexico to coordinate data collection and recovery efforts (\$34,500).

- The Ocean Foundation and others conducted a systematic survey of shoreline in Baja California, Mexico, to assess baseline loggerhead turtle mortality, and supported research to test bycatch mitigation solutions (\$196,000 in FY2009/10).
- The Oceanic Society monitored green turtle nesting sites, tagged turtles, and took genetic samples in the Federated States of Micronesia (\$202,000 in FY2009/10);
- NMFS funded sea turtle education and outreach projects in the Marshall Islands (\$30,000) and in New Caledonia (\$100,000).
- The Marine Research Foundation is conducting a pilot study to see whether fixed-wing aircraft can assess leatherback turtle pelagic habitat use, localized threats, and turtle density in the Sulu-Sulawesi Sea, Malaysia and the Philippines (\$136,000 in FY2009).
- NMFS is funding an exchange program for Malaysian fisheries officers and experts to meet with U.S. officials to promote compliance with TED requirements so that Malaysian shrimp can be imported into U.S. markets (\$5,600 in FY 2009 for an introductory workshop held in NMFS's Pascagoula Laboratory; \$45,000 in FY2010). NMFS funded a site visit to assist with TED adoption in the shrimp trawl fleet in Sabah (\$4,900).
- An NGO based in Vanuatu trained dozens of monitors who are collecting data on leatherback turtle nesting beaches (\$49,000 in FY2009/10).
- French Polynesia will assess current turtle nesting activity at Scilly Atoll (unvisited since 1995) to assist in management of the American Samoa longline fishery (\$55,000 in FY2010).
- A bilateral project with Chile (\$40,000 in FY2010) is developing measures to reduce sea turtle bycatch in Chilean artisanal longline and gillnet fisheries.
- NMFS contributed to a training workshop in Mexico for tag attachment on leatherback turtles, to assist in telemetry studies (\$35,000 in FY2010).
- Use of Photoluminescent Technology to Reduce Incidental Capture of Sea Turtles in Gillnet Fisheries (\$16,170 in FY2009 funds). NMFS developed a system of assays that can be used to test a variety of potential sea turtle bycatch deterrents in gillnets and determine their usefulness in commercial fisheries.
- Developing California Sea Lion Bycatch Reduction Strategy based on Visual Cues (\$16,000 in FY2010 funds). NMFS worked with fishermen in Bahía de los Angeles, a small fishing town on the Gulf of California, to examine the effects of illuminated gillnets (using LED light sticks) on sea lion and finfish catch rates.

- NMFS funded development of an acoustic monitoring program for the critically endangered vaquita in Mexico (\$100,000 in FY 2010), to assess the effectiveness of bycatch reduction measures.
- The United States provided support for the SPRFMO interim Secretariat, including facilitating participation of an independent scientist in a stock assessment workshop, assisting developing States in submitting scientific data to the workshop, assisting in development of an SPRFMO bottom fishing footprint to provide a basis for conservation of VMEs, and providing support for ongoing negotiations (\$40,000 in FY 2009).

#### 4. West Africa

Poor regulations, lack of enforcement, and exploitation by foreign governments with large distant-water fleets have resulted in declining marine stocks in many regions of the world; West Africa is no exception. Fish stocks in West Africa are typically surveyed every two to five years. Near-shore marine population assessments are often lacking, but commonly artisanal fishers are reporting severely declining catches in traditional fishing areas where poaching is occurring by small- or large-scale industrial fishers. In West Africa, artisanal fishers provide more than 95 percent of fish or marine products available to local consumers.

Even if fish stocks are healthy, the marriage of stock assessments and fisheries management typically does not occur in West Africa. The fisheries research arm of the government has little or no connection to the fisheries management group that issues fisheries permits but does not monitor or provide information on the removals of fish.

In West Africa, fish or seafood products provide an estimated 60-70 percent of the region's protein supply. The result of depleted resources can have profound effects on developing nations, particularly those that are starting to recover from civil war (Sierra Leone, Liberia), and can destabilize nations undergoing transition (Guinea, Gabon). IUU fishing has flourished throughout the world as rogue vessels attempt to supply increasing seafood demand in developed nations. The nations most hurt by these activities are often the countries that require the most assistance. The loss in revenue, employment, and food sources from IUU fishing has significant impacts on the nations that can least afford it.

To combat IUU fishing and provide sound fisheries management for sustainable harvest, NOAA is focusing funding to provide capacity-building assistance to the nations of West Africa. International, regional, and national fisheries management and scientific institutions have identified the lack of fisheries and enforcement data as one of their primary limitations in developing and implementing sustainable fisheries practices. Well designed and well implemented observer programs offer international bodies and national agencies the opportunity to collect critical data on target and bycatch species, gear, and economic information, as well as assisting with data gathering on IUU fishing and enforcement-related matters. Alternatives to at-sea observers are very limited and usually do not provide the quality or the suite of robust information gathered by observers.

NOAA has identified improving data collection and reporting as a critical objective for the United States, and has undertaken a wide variety of initiatives to improve these tasks, such as observer training programs.

- Joint U.S.-Senegal Observer Training (\$30,000). This two-week session in Dakar, February 3-11, 2009, for 38 current fisheries observers focused on improving overall data collection, especially from bycatch of marine mammals and sea turtles. The United States also provided safety training, safety equipment, and sampling supplies. Partners with NOAA were the U.S. Navy African Partnership Station, which supports the United States African Command, and the Ministry of Fisheries-Senegal.
- Beginning Fisheries Management Training Course (\$30,000). This course in the Democratic Republic of Sao Tome and Principe (STP), June 7-16, 2010, provided technical training and conducted a fact-finding mission on the current status of the fisheries sector in STP to identify future capacity building opportunities. The U.S. Navy African Partnership Station again provided support, in the Brazilian Cultural Center in Sao Tome, in partnership with the STP government. The students were Sao Tomean employees and NGO members. The class size averaged between 21 and 32 students throughout the six days of instruction. Students expressed a strong interest in how to sustainably manage their fisheries and especially in MCS.
- International MCS Network Training Course in Ghana, March/April 2010, funded by the U.S. Navy. The IMCS Network trained participants from the Ghanaian Navy and Fisheries Commission in gear identification, measurement of gear for compliance with regulations, an overview of Ghana fisheries legislation, and operational planning to combat IUU fishing, which included boarding and inspection of fishing vessels and shore-based monitoring of vessels, gear, and catches.
- West African Regional Observer Program Manual (\$50,000). This project funded preparation and translation into French of a manual to support training presentations and work plans. It will provide a comprehensive and harmonized approach to procedures for data collection throughout the region (from Senegal to Gabon).
- With the Africa Partnership Station (U.S. Navy), NOAA donated 20 TEDs to the Government of Gabon (\$39,200 in FY2009).
- Abercrombie & Fish is developing an identification guide for shark fins, with funding from NMFS (\$33,000 in FY2010). Its unveiling will be in 2011 at a training session in Gabon, but the guide will eventually be used universally.

## 5. Mediterranean

- Planning for Sustainable Fisheries in Marine Protected Areas. More than 50 participants from 11 southern and eastern Mediterranean countries participated in this training in Kas, Turkey, October 4-11, 2010. The meeting covered basic fish reproduction biology, single-species management, ecosystem-based management, impacts from gear, marine

reserves, fisheries co-management, and fisheries enforcement. This is part of a five-year capacity building program in the Mediterranean conducted through a partnership between NOAA and WWF-Rome.

## **IX. Certification and Identification under Sections 609 and 610**

### **A. Certifications**

NMFS identified six countries in the 2009 Report to Congress as having vessels engaged in IUU fishing activity: France, Italy, Libya, Panama, the People's Republic of China, and Tunisia. Each incident of IUU fishing involved an alleged violation of the rules of an international fishery management organization in 2007 or 2008. Under Section 609 of the Moratorium Protection Act, within 90 days of promulgation of a final rule establishing a procedure for certification, and biennially thereafter in the report to Congress, the Secretary must certify to Congress whether an identified nation has taken appropriate corrective action to address the activities for which it has been identified. The NOAA Assistant Administrator for Fisheries has been delegated the authority to make that determination.

After notifying the six countries of their identifications in early 2009, the U.S. Government consulted extensively with those governments, through face-to-face meetings, teleconferences, and correspondence, through the fall of 2010. The six governments provided information that falls into several categories:

**Sanctions against Offending Vessels.** For each of the acknowledged violations, the countries took punitive action against the vessels involved or against persons committing similar violations. These sanctions included fines, revocation of licenses, deflagging, and forfeiture of catch and gear. For example, Libya revoked the licenses of two vessels that had conducted unauthorized fishing for bluefin tuna in the Mediterranean Sea, and removed them from the ICCAT register of authorized vessels.

**Changes to Laws and Regulations.** All of the identified countries produced documentation of their laws and regulations designed to combat IUU fishing. A number had recently been enacted or amended to give the countries more authority over their fishing fleets, and more tools with which to monitor and control them. For example, after a Panamanian-flagged vessel engaged in unauthorized fishing in the IATTC Convention Area, and then changed flags and names before returning to Panama's registry, Panama enacted a law allowing for automatic cancellation of a vessel's registration if it has engaged in IUU activity.

**Improved Monitoring, Reporting, and Enforcement.** Several of the identified countries provided documentary evidence that they have stepped up their monitoring, reporting, and enforcement activities in the past two years. For example, France has established protocols for catch reporting and inspections through a surveillance center that verifies the legality of transshipments and landings of bluefin tuna before authorizing those activities.

**Challenges to the Basis of the Identification.** In a few instances, countries did not provide evidence disputing the allegations of violations by their vessels in time to prevent their identification in the 2009 Report to Congress, but during the consultation period offered credible evidence and explanations that the vessels had not actually violated international measures. For example, Tunisia inspected the six vessels observed to be fishing with driftnets, but discovered the nets were small-mesh gillnets used to harvest small pelagic fish such as mackerel, rather than swordfish.

The rest of this section sets out in detail the consultations that occurred with each identified country, the information produced by those countries about corrective actions such as penalties imposed and fisheries management laws adopted, and NMFS's positive certification for each country. In short, however, the identification, consultation, and certification process in 2009-2010 worked as Congress intended, to promote compliance with international fisheries measures.

## 1. France

**Background.** France was identified based on the activities of French-flagged vessels engaged in fishing activities that violated ICCAT conservation and management measures during calendar years 2007 and 2008. At a hearing in the Fisheries Committee of the European Parliament, 81 French vessels were reported to be fishing for bluefin tuna with driftnets, contrary to ICCAT Recommendation 03-04, which prohibits the use of driftnets for fisheries of large pelagic stocks in the Mediterranean Sea. As a result, the EC launched an infringement procedure against France in the European Court of Justice on June 28, 2007, for compliance violations.

According to an EC press release dated June 20, 2008, announcing the early closure of the EC purse seine fishery on June 23 for most member States, eight French purse seine vessels had spent up to 21 days fishing since the start of the season, but had not declared any catches, in violation of ICCAT Recommendation 06-05.

In addition, according to that press release, there were significant discrepancies in the French bluefin tuna catch data such that, as of June 28, half the French fleet had not reported any catches while the other half declared catching more than 90 percent of their individual quotas, even though all the vessels showed similar activity rates.<sup>14</sup> The implication was that half of the French fleet failed to report catches in violation of ICCAT Recommendation 06-05.

**Notification and Consultation.** The Department of State notified the Government of France by diplomatic note in February 2009 of its identification in the 2009 Report to Congress. Representatives of the U.S. Government and the Government of France met on several occasions and exchanged correspondence during 2009 and 2010. The following is a list of meetings and other communications that occurred during consultation:

- A meeting was held between the Government of France and the U.S. Government on March 9, 2009. The U.S. delegation was headed by Dr. Rebecca Lent, Director of the Office of International Affairs, NMFS. The French delegation was led by Sylvie Alexandre, Director of Marine Fisheries and Aquaculture, in the French Ministry of Food, Agriculture, and Fisheries.
- The U.S. Government received correspondence and the following information from the Government of France dated April 29, 2010: information on penalties that were being applied to French-flagged vessels prosecuted for use of illegal fishing gear (*thonaille*) in 2008 and 2009; Council Regulation (EC) No. 302/2009 (April 6, 2010), concerning a multi-annual plan for the recovery of eastern Atlantic and Mediterranean bluefin tuna; Order of August 28, 2009, regarding a prohibition of fishing using drift gillnets; and

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<sup>14</sup> Press Statement from EC Commissioner Joe Borg. Retrieved from [http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/2008/com08\\_47\\_en.htm](http://ec.europa.eu/fisheries/press_corner/press_releases/2008/com08_47_en.htm) on June 20, 2008.

measures adopted by France to address compliance with bluefin tuna fishing quotas and rules in 2010.

- The Government of France and the U.S. Government met again on January 29, 2010. The U.S. delegation was headed by Dr. Lent; the French delegation, by Loic Laisne, Senior Ministry official in the French Ministry of Food, Agriculture, and Fisheries.
- The U.S. Government sent a letter dated June 26, 2010, to the Director of Marine Fisheries and Aquaculture requesting information on French regulations implementing the recovery plan for eastern Atlantic and Mediterranean bluefin tuna and the EC regulations prohibiting the use of drift gillnets.
- The U.S. Government received correspondence and the following information from the Government of France dated July 12, 2010: EC Regulation No. 894/97, as amended on June 28, 2007, prohibiting the use of drift gillnets to target large pelagic fish species; Order of April 10, 2009, defining measures to control bluefin tuna fishing within the multi-annual plan for recovery of bluefin tuna stocks in the eastern Atlantic and Mediterranean; and Order of June 10, 2010, laying down measures to monitor the fishing of eastern Atlantic and Mediterranean tuna in the multi-annual recovery plan.

During the consultation, the Government of France supplied information on its efforts to manage the eastern Atlantic and Mediterranean bluefin tuna fishery. The information presented here is focused on corrective actions taken by France for the particular activities described in the January 2009 Report to Congress.

**Vessel-Specific Actions.** The French Government asserted it has been in compliance with EU Regulation No. 894/97, as amended on June 28, 2007, which prohibits the use of driftnets in the Mediterranean, despite the fact that it did not apply this regulation to its fishermen using *thonaille*. In March 2009, however, the Court of Justice of the European Communities found that the *thonaille* was a drift gillnet and censured France for failing to meet its obligation to respect rules prohibiting drift gillnets to capture large pelagic fish species. In response to the court's orders, in August 2009, France promulgated regulations that prohibited the use of *thonaille* for targeting large pelagic fish species, thereby eliminating the legal loophole created by excluding *thonaille* from the definition of large-scale driftnet gear.

The French Government provided information demonstrating that penalties were applied to a number of vessels found illegally using *thonaille*, listing violations in 2008 and 2009 and the penalties that were applied, including confiscation of catches, withdrawal of fishing permits, and fines ranging from €1,000 to €12,000.

While NMFS does not have information indicating that the French Government undertook actions specifically addressing the activities of all vessels that were engaged in illegal fishing with *thonaille*, the French Government has adopted measures that implement EC Regulation No. 894/97, as amended on June 28, 2007, and it took punitive action against a number of vessels that were found violating these measures. NMFS considers the implementation of these measures to constitute corrective action for the illegal use of driftnets.

With respect to the French-flagged purse seine vessels that allegedly fished for 21 days at the start of the season but failed to report their catch, the French presented evidence to counter this claim. Specifically, they showed printouts of the VMS tracks and additional surveillance information indicating that the purse seine vessels had not been fishing at the start of the 2008 bluefin tuna fishing season. This information supports a finding that the French purse seine vessels did not fail to declare their catch in violation of ICCAT Recommendation 06-05.

**Fisheries Management Measures.** In the last few years, the Government of France has adopted laws for control of its fishing vessels and increased its inspection and enforcement efforts. The new laws and efforts focus on increasing compliance with respect to the eastern Atlantic and Mediterranean bluefin tuna fishery and appear to address the catch reporting concerns that were raised in the 2009 Report to Congress.

The Government of France has adopted a decree to regulate bluefin tuna fishing, pursuant to EC Regulation No. 296/2009 (March 25, 2009) and EC Regulation No. 302/2009 (April 6, 2009), which establishes protocols for catch reporting and fisheries inspections, as well as designates ports for landings. Under this decree, all vessels longer than 24 meters must transmit their bluefin tuna catch data to a surveillance center, which uses the data to verify the legality of transfers of live bluefin tuna from purse seiners to tug boats before authorizing such transfers. The center also verifies the legality of vessel landings. If a vessel exceeds its individual quota, authorization is denied for transfer or landings. Before the ICCAT bluefin catch document is validated, the control center checks compliance with the individual vessel quota. The center also transmits copies of logbook data to an automated processing system, which was implemented in 2008, and France transmits this data to the EC. It is the responsibility of the EC to submit the French catch data to the ICCAT Secretariat. According to the French Government, bluefin tuna catch data was submitted to the EC in 2008 as required. The EC, however, failed to submit this information to the ICCAT Secretariat in accordance with ICCAT Recommendation 06-05.

The Government of France also provided information demonstrating that the activities of its purse seine fleet were monitored in 2008. To illustrate, French officials stated there was an independent, onboard fisheries observer for each tuna purse seine vessel during the 2008 and 2009 fishing seasons, pursuant to ICCAT Recommendations 06-05 and 08-05, respectively, to verify landing declarations made by vessel captains. According to the Government of France, in 2010, 17 purse seine vessels were to have a regional ICCAT observer on board.

To help monitor its bluefin tuna fleet, French inspectors have been deployed in international waters as part of the EU's 2008 Bluefin Tuna Joint Deployment Plan. In 2008, 351 inspections were conducted at sea and during landing. In 2009, according to the French Government, efforts were increased with more than 1,100 inspections conducted.

**Certification.** In summary, the Government of France took corrective action for, or provided information challenging the basis of, each of the IUU activities that was noted in the 2009 Report to Congress. While NMFS does not have information indicating that the French Government undertook actions specifically addressing the activities of the vessels that were engaged in illegal fishing with *thonaille*, France has adopted measures that implement EC Regulation No. 894/97, as amended on June 28, 2007, and took punitive action against vessels that were found by the

French Government to be violating these measures. NMFS believes the implementation of these measures constitutes corrective action for the illegal use of driftnets. France also provided information indicating that it has increased its inspections and monitoring of the eastern Atlantic and Mediterranean bluefin tuna fishery.

On the basis of this information, NMFS sent the Government of France notice of a preliminary positive certification determination on November 12, 2010. In consultation with the Department of State, NMFS has determined that the Government of France has taken appropriate action to address the IUU fishing activities for which France was identified in the 2009 Report to Congress, and positively certifies France in this Report.

## 2. Italy

**Background.** NMFS identified Italy in 2009 based on the activities of several Italian-flagged vessels that violated ICCAT measures during 2007 or 2008:

- On May 7, 2008, the Greenpeace vessel *Arctic Sunrise* encountered the Italian fishing vessel *Diomede II* fishing with driftnet off of Sicily contrary to ICCAT Recommendation 03-04, which prohibits the use of driftnets for fisheries of large pelagic stocks in the Mediterranean Sea. The following day, the Messina Coast Guard formally cited this vessel for using 2.8 km of *ferrettara* net (a type of driftnet), instead of the maximum 2.5 km. The nets were seized and a fine was imposed.
- According to a report by Greenpeace, on June 14, 2007, the Italian purse seine vessel *Luca Maria* was observed and documented on Mediterranean bluefin tuna fishing grounds, but was not included on the ICCAT Register of Fishing Vessels licensed to fish for bluefin tuna, contrary to ICCAT Recommendation 06-05. According to the Government of Italy, the *Luca Maria* was inspected after the Greenpeace sighting, but no nets were found on board and no sanctions imposed.
- The same 2007 Greenpeace report includes photographic evidence of three Italian-flagged purse seine vessels (the *Ligny Primo*, the *Maria Antoinetta*, and the *Luca Maria*) surrounded by four spotter planes (three American and one Italian) during the 2007 fishing season for eastern Atlantic and Mediterranean bluefin tuna. The use of spotter planes in support of bluefin tuna operations is contrary to the spotter plane prohibition in ICCAT Recommendation 06-05.
- According to a press release by the EC dated June 20, 2008, eight Italian purse seine vessels exceeded their quota by between 100 percent and 240 percent in violation of ICCAT Recommendation 06-05.

**Notification and Consultation.** The Department of State notified the Government of Italy by diplomatic note in February 2009 of its identification in the 2009 Report to Congress. Throughout the consultation process with Italy, the U.S. Government sought additional information on the corrective actions taken by the Government of Italy. Representatives of the U.S. Government met with the Government of Italy on several occasions and exchanged

correspondence during 2009 and 2010. The following is a specific list of meetings and other communications that occurred:

- The U.S.–Italy consultation process began with a meeting in Rome on March 2, 2009. The Italian delegation was headed by Francesco Saverio Abate, Director General for Marine Fisheries and Aquaculture. The U.S. delegation was headed by Dr. Rebecca Lent.
- The Italian Under Secretary of Agriculture, Antonio Buonfiglio, held a meeting with U.S. Embassy officials in November 2009.
- Italy provided enforcement data in December 2009.
- Dr. Lent and Italian officials held meetings on the margins of the ICCAT meeting in February 2010.
- In April and May of 2010, Italy provided additional written information.
- The U.S. Government sent a letter on June 26, 2010, to Italy requesting information on the 2006 Italian ministerial decree and EC regulation prohibiting the use of certain types of *ferrettara*; a copy of the inspection report confirming that the *Luca Maria* was not used for fishing; and laws and regulations prohibiting the use of spotter planes for bluefin tuna.
- Italy sent its response on July 27, 2010.
- A bilateral meeting between the United States and Italy took place on November 15, 2010. The Italian delegation was headed by Francesco Saverio Abate, and the U.S. delegation was headed by Dr. Rebecca Lent.
- Dr. Lent and Italian officials met on the margins of the ICCAT meeting in November.

The information presented in the next section is focused on corrective actions taken by Italy for the particular activities described in the January 2009 Biennial Report to Congress.

**Vessel-Specific Actions.** NMFS understands that the *Diomede II* was authorized to fish using *ferrettara*, a type of driftnet that may be used to target small pelagic species such as bonito, dolphinfish, mackerel, sardines, and anchovies. Italian Ministerial Decrees of October 14, 1998, and May 24, 2006, stipulated conditions for the use of *ferrettara*: it can be used no more than 10 miles from the coast, must not be longer than 2.5 km, and must have a mesh opening not greater than 180 mm. *Ferrettara* can only be used to target small pelagic species. These limits are consistent with the prohibition on the use of driftnets to target large pelagic stocks contained within EC regulation 1239/98.

The Ministerial Decree of October 14, 1998, states that a violation of the conditions for use of *ferrettara* that were amended by the May 24, 2006, Ministerial Decree, is punishable with the

withdrawal of the *ferrettara* authorization for a period of three months after the first offense or with the withdrawal of that authorization for a period of six months in the case of subsequent violations. While these penalties have been available since 1998, NMFS understands that the Government of Italy has not applied them to any *ferrettara* violations.

The Italian Government cited the *Diomede II* for illegal use of *ferrettara* on May 8, 2008. During the consultation, Italian officials stated that this vessel was found to be violating both Clause 1 (use of *ferrettara* beyond 10 miles from the coast) and Clause 2 (use of longer-than-allowed *ferrettara*) of Article 1 of Ministerial Decree of May 24, 2006. Documentation provided by the Government of Italy stated that the activity was punishable under laws prohibiting fishing using vessels or floats, equipment, or tools prohibited by regulations or not expressly permitted, and that infringements would result in accessory penalties involving confiscation of catch and of equipment, tools, and devices that conflict with those provisions. Italian officials provided documentation that the Maritime Authority of Reggio Calabria seized 2.8 km of *ferrettara* (1.6 km of which were on board the *Diomede II* and 1.2 km that had been taken on board the Greenpeace vessel *Arctic Sunrise*), as well as 11 bluefin tuna with a combined weight of approximately 26,500 kg, which were destroyed as unsuitable for consumption.

In the court case, the party responsible for the illegal fishing paid a fine of €1,548 as settlement. The seized nets were returned to the owner on November 5, 2008. Court documents provided by the Government of Italy indicate that the charges for the illegal use of *ferrettara* were extinguished with payment of the fine.

The *Luca Maria* is the vessel observed on Mediterranean bluefin tuna fishing grounds without being included on the ICCAT Register. During the consultation, Italian officials provided photographs taken during the inspection; they show the exterior of the vessel with no visible gear. They explained that the *Luca Maria* is not authorized as a fishing vessel. At the time of sighting noted in the Greenpeace report, it was a ship intended for transporting goods, having been registered on April 16, 2007, in the Small and Floating Vessel Registry of the Local Maritime Office in Cetara. As of April 22, 2008, the vessel has been registered “for personal use.” Based on the inspection report, the Government of Italy, concluding that the *Luca Maria* was not used as a fishing vessel at the time of the sighting, took no further action.

With regard to the alleged use of spotter planes by Italian-flagged purse seine vessels during the 2007 fishing season for eastern Atlantic and Mediterranean bluefin tuna, the Italian Government took no action because officials believed use of the airplanes to assist in fishing could not be proved. However, NOAA understands that the Italian Government in subsequent years took steps to prevent the use of spotter planes during the fishing season. Since June 6, 2008, with the entry into force of law number 101/2008, the use of aircraft to search for bluefin tuna is illegal and the administrative fine could be as high as €4,000. In addition, in 2008 and 2009, the Italian Coast Guard worked with institutions responsible for commercial flight control to issue specific advisory notices forbidding any private low-level (below 3,000 feet) flights in the southern Tyrrhenian Sea during intense periods of bluefin tuna fishing. The Italian Government stated that this prohibition on flights was also put into place for the 2010 bluefin tuna fishing season, with an increase in the surveillance area up to the boundary of the Flight Information Regions of Croatia and Tunisia. The forbidden area was then monitored by the air traffic authorities.

The Government of Italy provided some details on the advisory notices that are given to pilots when they file a flight plan. In the event a flight plan is not submitted and an aircraft enters the forbidden area at altitudes below 3,000 feet, the pilot may be subject to a procedure called “conflict of traffic” that could lead to suspension of the pilot’s license for safety reasons.

The Government of Italy believes that spotter planes are unlikely to fly above an altitude of 3,000 feet because the aircraft would be required to provide an Instrument Flight Rules flight plan and follow restrictive regulations, such as constant reporting of their positions to air traffic authorities. The Government of Italy provided information on enforcement of the prohibition on spotter planes that occurred in June 2008, which resulted in sanctions against both the pilots and the fishing vessels. While the Italian Government was unable to undertake actions specifically for the three vessels identified in the 2009 Report, it implemented measures and a new law that the Italian Government asserts will prevent the use of spotter planes. NMFS considers implementation of these measures to be corrective action that addresses the illegal use of spotter planes.

As for the eight Italian purse seine vessels that were alleged to have exceeded their quota by between 100 and 240 percent in violation of ICCAT Recommendation 06-05, the Government of Italy has challenged the claims of the EC. The EC had used this information (and information on French-flagged vessels exceeding catch quotas) to issue EC Regulation No. 530/2008, by which the EC immediately stopped purse seining for the remainder of 2008.

The Government of Italy stated that onboard logbooks showed only 1,853,514 tons (of a total quota of 3,538,304 tons) had been fished at the time the EC closed the fishery. Italian officials asserted that the closure was based on a presumption that each vessel had fished to its “optimum capacity” rather than to its authorized quota and brought a legal case against EC Regulation No. 530/2008. As of September 2010, the decision was still pending in the Court of the First Instance of the European Community.

The Government of Italy provided information on the management of its bluefin quota, which follows the parameters of the pertinent European regulation (EC Regulation No. 302/2009). For each fishing season, a management plan is developed and transmitted to the EC. The plan includes a list of vessels authorized to use purse seines and longlines for fishing bluefin tuna and the allowed catch quota for each. The quotas are based on the proportions applied in the last fishing season and do not exceed the total allowed catch allocated to Italy. The cited national and individual catch quotas are monitored by cross-checking data reported in the documentation required by international and EC regulations (*e.g.*, catch declaration, logbook, bluefin tuna catch document), and through inspections carried out by the Maritime Authority-Coast Guard both at sea and in port. If an overharvest of the individual quota is discovered, the vessel is immediately stopped and the appropriate administrative penalty is imposed. This information suggests that Italy has a procedure in place to monitor the catch of its fishing vessels and that, if the quota is exceeded, punitive action would be taken.

**Fisheries Management Measures.** In the last few years, the Government of Italy adopted or maintained laws for control of fishing vessels and increased at-sea and port inspection and other enforcement efforts. The new laws and efforts focus on increasing compliance with fishing regulations, and appear to address the other concerns that were raised in the 2009 Report to

Congress. The changes occurred under the Berlusconi administration, which came into office in 2008, generally in response to legal cases the EC brought against Italy.

On April 8, 2008, Italy passed Decree Law 59/2008 prohibiting the possession of illegal or non-permitted fishing gear and establishing increased penalties for fisheries-related violations. This decree was converted into Law n. 101 on June 6, 2008. The 59/2008 decree law responded to EC infraction procedures against Italy and carried out the sentence of the European Court of Justice issued on December 7, 2006 (C-161/05 legal case dating from 2005). Article 3 of decree law 59/2008 added to the fishing activities prohibited under Law n. 963 of 1965, Article 15, “possession on board of fishing gear which is not permitted, not authorized, or not in keeping with applicable regulations.” Prior to the issuance of this law, the Italian sanctioning procedures with respect to fishing did not stipulate any penalty (criminal, civil judicial, or administrative) for the mere “keeping” of equipment that is not allowed, but only for its unlawful “use.” Decree Law 59/2008 filled that gap by changing the national regulatory system and providing for penalties against those responsible for infringements of EC legislation concerning keeping on board and using driftnets.

That law increased fines and added ancillary administrative sanctions, such as confiscation of catch; confiscation of tools, gear, and fishing equipment used in contravention of the regulations; confiscation and destruction of the illegal/unauthorized equipment (except the vessels themselves) at the expense of the violator; and suspension of the fishing license in a case of a repeat violation for a period of ten to 30 days. The law also introduced penalties for violation of VMS regulations and of regulations related to the protection of certain fish stocks.

The Government of Italy stated that these new measures were favorably reported in the October 29, 2009, ruling of the European Court of Justice concerning allegations that Italy lacked a way to enforce the driftnet ban. However, NMFS understand that the Government of Italy has not suspended any fishing licenses for repeat violations.

EC Regulation (No. 1224/2009 of December 22, 2009) went into effect on January 1, 2010, although some of its provisions do not take effect until the entry into force of implementing rules. It includes a point system for serious infractions that is expected to increase the deterrent effect of penalties. The point system will go into effect six months after implementing rules enter into force. Licenses would be revoked if too many points are accrued. NMFS understands that neither the EC nor the Government of Italy has yet implemented this new provision.

Italy appears to have made significant contributions to monitoring and enforcement of Mediterranean Sea fisheries, participating in the EU’s 2008 Bluefin Tuna Joint Deployment Plan for monitoring bluefin tuna fishing. In 2009, Italy played an active role in the EU bluefin tuna enforcement campaign, included the following missions: 193 in ports; 88 at sea, 32 using airplanes, and 18 to tuna-ranching pens, at a total cost of €868,922.

The Government of Italy provided documentary evidence that inspection and enforcement activities have been increasing over the past five years. In the 2009 fishing season, enforcement operations resulted in the seizure of 244,700 meters of “*spadare*” driftnets. During the early part of 2010, 44 violations related to *ferrettara* were found and sanctioned; four driftnets (for a total

of 12 km) and 40 *ferrettara* (for a total of 113 km) were seized. Regarding the latter, the most important violations were nets longer than allowed, fishing more than 10 miles from the coast, and illegal capture of species (e.g., seizure of 26,000 kg of bluefin tuna and 2,400 kg of swordfish).<sup>15</sup> The cases involving *ferrettara* are similar to the activities and actions taken with respect to the *Diomede II*. Italy continues to enforce its Ministerial Decree of May 24, 2006, regarding the use of *ferrettara*.<sup>16</sup>

Furthermore, the Government of Italy noted that the Maritime Directorate of Reggio Calabria has conducted outreach activities to increase fishermen's awareness of fisheries laws.

In addition to the new laws and the increase in monitoring and enforcement, the Government of Italy has taken other steps with regard to the bluefin tuna fishery. Between 2007 and 2009, the number of licensed bluefin tuna purse seine vessels was reduced by 35 percent (from 76 to 49 vessels). For 2010, Italy imposed a moratorium on bluefin tuna purse seining. Between 2007 and 2010, there was a 25 percent reduction in the number of longline vessels licensed to fish for bluefin tuna.

**Certification.** In summary, the Government of Italy took corrective action for, or provided information challenging the basis of, each of the IUU activities that was noted in the 2009 Report to Congress. The Government fined the *Diomede II* and temporarily confiscated its nets for fishing illegally using *ferrettara*.

As for the use of spotter planes during the bluefin tuna fishing in 2007, the Government of Italy placed restrictions on low-altitude flights to prevent the use of planes in such a manner in subsequent years, as well as put a law in place in 2008 that makes it unlawful to violate fishery recovery plans. NMFS considers these recent measures as corrective actions to address the use of spotter planes.

The Government of Italy provided information on the *Luca Maria* to the effect that it is not a fishing vessel and thus would not have been fishing in 2007 in contravention of ICCAT Recommendation 06-05. The Government of Italy is also challenging the claims by the EC that Italian-flagged purse seiners were exceeding the quota for bluefin tuna, and provided information to NMFS on its regime for allocating and monitoring that quota.

In addition to providing information on each of the specific vessel activities, the Government of Italy has adopted new laws that facilitate enforcement and, at the same time, increased

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<sup>15</sup> It is notable that the fishing licenses of these vessels were not suspended, as allowed under either the Ministerial Decree of October 14, 1998, or Decree Law 59/2008.

<sup>16</sup> During the consultation, the U.S. Government received information that one of the restrictions on the use of *ferrettara* net had been lifted. On June 4, 2009, the Italian Government had issued a Ministerial Decree allowing a vessel to fish using *ferrettara* up to the limit from the coast permitted by the vessel's license rather than the previous limit of 10 miles. A month later, however, the Administrative Tribunal for the Lazio Region suspended the June 4, 2009, Ministerial Decree, so that the limit of 10 miles was reinstated.

enforcement efforts. These efforts may increase compliance with fishery management measures and deter future IUU activity.

On the basis of this information, NMFS sent a notice of its preliminary positive certification determination to the Government of Italy on November 12, 2010. NMFS, in consultation with the Department of State, has determined that the Government of Italy has taken appropriate action to address the IUU fishing activities for which Italy was identified in the 2009 Report to Congress, and positively certifies Italy in this Report.

### 3. Libya

**Background.** NMFS identified Libya in 2009 because two of its vessels allegedly engaged in fishing activities that violated ICCAT conservation and management measures during 2007. A Greenpeace report showed photographic evidence of a Libyan-flagged vessel, the *Al Dafnia*, offloading 96 tons of frozen bluefin tuna at the Port of Valletta on September 4, 2007, three months after the closure of the bluefin tuna fishing season. This evidence indicated a possible violation of ICCAT Recommendation 06-05. This vessel and another Libyan-flagged vessel, the *Lebda*, targeting eastern Atlantic and Mediterranean bluefin tuna, were not entered into the ICCAT Record of Vessels authorized to fish for bluefin tuna in that region until July 15, 2007, after the 2007 fishing season for large-scale longliners ended. Under ICCAT Recommendation 06-05, all vessels targeting eastern Atlantic and Mediterranean bluefin tuna must be entered into the ICCAT Record of Vessels. Libya did not take the opportunity to respond to a Canadian document about the alleged violations before or at the 2008 ICCAT meeting.

**Notification and Consultation.** The State Department notified the Government of Libya by diplomatic note in February 2009 of its identification in the 2009 Report to Congress. Subsequent to this notification, the United States initiated consultation with the Government of Libya. The following is a list of the communications between the governments of Libya and the United States during the consultation:

- On July 23, 2009, officials from the two governments met in Portland, Maine. The Libyan Government was represented by Hussein Zaroug and Ahmed Abukhder from the Libyan General Authority for Marine Wealth. The U.S. delegation was headed by Dr. Rebecca Lent.
- On January 7, 2010, Libya provided a letter to the United States concerning the IUU fishing activities for which they were identified.
- On June 6, 2010, the United States sent a letter to Libya requesting additional information demonstrating that bluefin tuna was harvested during the fishing season (in support of Libya's claims), and any Libyan laws or programs that would help ensure timely registration of vessels and establish penalties or sanctions for violations of fisheries conservation and management measures.
- In September 2010 Libya provided documentation to the United States indicating that the *Al Dafnia's* and the *Lebda's* licenses had been revoked.

**Vessel-Specific Actions.** Initially, the Government of Libya stated that these two longline vessels, the *Al Dafnia* and the *Lebda*, were authorized to fish for bluefin tuna in the Mediterranean Sea. In its correspondence, Libya implied that the *Al Dafnia* may have fished during the bluefin tuna fishing season. Subsequently, the United States requested documentation to refute allegations of IUU fishing activities of the *Al Dafnia*. In response, a Libyan official informed NMFS that he had obtained and examined the logbooks of both vessels in September 2010 covering fishing activities during the time in question. Upon finding that the *Al Dafnia* had fished after the closure of the bluefin tuna season, and that both Libyan-flagged vessels were fishing prior to being added to the ICCAT Record of Vessels, Libyan officials canceled the licenses for these vessels and removed them from the ICCAT Record of Vessels on September 19, 2010. A document showing the withdrawal of the licenses and removal from the ICCAT register was provided in September 2010.

**Fisheries Management Measures.** In addition to these corrective actions, the Government of Libya indicated that it is taking action to improve its monitoring capabilities with respect to bluefin tuna fishing operations. According to the Government of Libya, in 2008 vessel monitoring systems were installed on board all vessels in its fleet that are active in bluefin tuna operations, and that all VMS data were transmitted to the ICCAT Secretariat for transparency. Libyan officials also noted that they take photos of and record the transfer of bluefin tuna from harvesting vessels to towing vessels and from towing vessels to tuna farms. Mr. Zaroug stated that Libya would also be increasing the number of patrol vessels.

**Certification.** In summary, the Government of Libya provided information to the U.S. Government to support a determination that Libya has taken appropriate corrective action to address the IUU fishing activity for which Libya was identified in the 2009 Report to Congress. Libya withdrew the licenses of the two vessels and removed them from the ICCAT Record of Vessels that are authorized to operate in the Convention Area. We believe the actions taken by Libya against these vessels are an indication that it enforces laws requiring vessels to comply with fisheries mandates and will take actions to address IUU activities by vessels flying its flag.

On the basis of this information, NMFS sent the Government of Libya a notice of its preliminary positive certification on November 12, 2010. NMFS, in consultation with the Department of State, has determined that the Government of Libya has taken appropriate corrective action to address the IUU fishing activities for which Libya was identified in the 2009 Report to Congress, and positively certifies Libya in this Report.

#### 4. Panama

**Background.** Panama was identified because several of its vessels fished in a manner that violated IATTC and NAFO conservation and management measures during calendar years 2007 and 2008.

According to reports of the IATTC Permanent Working Group on Compliance (COM-8-04 and COM-9-04), the Panamanian-flagged vessel, the *Vicente F*, continued to fish in the Eastern Pacific Ocean until June 2, 2008, after it was removed from the IATTC Regional Vessel Register in 2007. IATTC Resolution C-02-03 states that any purse seine vessel fishing for tunas in the

Eastern Pacific Ocean that is not on the IATTC Regional Vessel Register would be considered to be undermining IATTC management measures. That group also reported that a Panamanian-flagged vessel, the *Aracely F*, stored 97 tons of tuna in a well that was supposed to be sealed during a fishing trip in 2007, in violation of an IATTC measure.

Two other Panamanian-flagged vessels, the *Polestar* and the *Enxembre*, fished without authorization in the North Atlantic during 2007 or 2008 and were listed on the NAFO IUU vessel list.

Contracting parties to NAFO took action against the *Polestar* because it was included on the NAFO IUU vessel list: NAFO parties prohibited product from the *Polestar* from entering their ports, in fulfillment of a NAFO rule (Article 58 of the NAFO Conservation and Enforcement Measures) requiring contracting parties to deny entry into their ports by vessels on the IUU vessel list.

**Notification and Consultation.** The State Department notified the Government of Panama by diplomatic note in February 2009 of its identification in the 2009 Report to Congress. Subsequent to this notification, the United States initiated consultation with the Government of Panama. The *Autoridad de los Recursos Acuáticos de Panamá* (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:

- The Government of Panama provided written information in May 2009, responding to a request for information sent in the fall of 2008 prior to the identification of Panama.
- U.S. and Panamanian officials held discussions on the illegal activities of the Panamanian vessels identified in the 2009 report several times during 2009, including at the IATTC meeting in June.
- U.S. and Panamanian officials met in January 19, 2010, to discuss issues relating to the identification of Panama, among other matters.
- The U.S. Government sent a letter to ARAP dated March 4, 2010, requesting additional information and received a reply dated April 8, 2010.
- The U.S. Government sent a letter dated June 26, 2010, to ARAP requesting additional information and received a reply dated July 29, 2010.
- A video conference was conducted among officials of several Panamanian departments, NMFS, and the U.S. Department of State on August 24, 2010.
- The U.S. Government sent a letter to ARAP dated September 13, 2010, requesting additional information and received a reply dated September 21, 2010.
- The U.S. Government sent a letter to ARAP dated October 4, 2010, requesting additional information and received a reply dated October 25, 2010.

**Vessel-Specific Actions.** The *Vicente F* continued to fish in the Eastern Pacific Ocean until June 2, 2008, after it had been removed from the IATTC Regional Vessel Register in 2007. A review of Panama's record of purse seine vessels on the IATTC vessel register shows that the *Vicente F* and other vessels are frequently added or removed from this record or changed flags. Specifically, the *Vicente F* was added to Panama's list of active purse seine vessels on the IATTC vessel register in January 2007, when it changed flag from Nicaragua to Panama and changed its name from the *Victoria F* to the *Vicente F*. In April 2007, the *Vicente F* was removed from Panama's list of active purse seine vessels on the IATTC register but apparently continued to operate, and was thus included in the report of the IATTC Permanent Working Group on Compliance as a vessel operating without authorization. The vessel was added back onto the registry in June 2008 under the Guatemalan flag. It was added back to Panama's list of active purse seine vessels on the IATTC registry in early February 2009 and then changed flag to Nicaragua on February 24, 2009.

Although IATTC members are allowed to revise their lists of active purse seine vessels on the IATTC register, NMFS has concerns with the reflagging and renaming of Panamanian-flagged vessels. Such activities have historically been associated with vessels seeking to avoid established fisheries management rules, and, more currently, with listed IUU vessels seeking to escape detection by changing names and flags. The situation raises questions about how Panamanian-flagged vessels are controlled and monitored.

NMFS understands that the Government of Panama has taken action to address fishing that is not authorized or in accordance with relevant RFMO conservation and management measures. Since June 2008, Panama has adopted laws that establish a process for withdrawal of licenses if a vessel is found to have participated in IUU activity. In particular, Act No. 57 of August 6, 2008, which regulates the Panamanian vessel registry, includes provisions establishing the grounds for automatic cancellation of a vessel's registration. Two articles highlighted by the Government of Panama are as follows:

- Article 5. Regardless of the fact that the owner complies with the requirements set forth in the previous article, the General Directorate of the Merchant Navy may refuse registration of any ship in the National Merchant Navy in case it determines that such registration is harmful to the interest of Panama or national and international maritime industry, after taking the following considerations into account: (1) The rules contained in international conventions, in particular those related to maritime safety and protection, prevention of contamination and illicit acts on board ships, control of drug traffic, human traffic, money laundering and fishing regulations.
- Article 49(3). The following constitute grounds for automatic cancellation of the registration of the vessel... the expiration of the provisional navigation permit or regulatory permit without renewing it within a period of five years from the date of the expiration thereof, unless the reasons for which the renewal application was not timely submitted are stated.

This legislation went into effect after the IUU activity of the *Vicente F* and could not be applied retroactively. Although no penalties or punitive actions were directed at the *Vicente F* for the offending activity, Panama has put into place laws with the aim of prohibiting future fishing that is not authorized or that undermines fisheries management regimes. These laws are expected to deter future incidents of fishing without authorization.

An IATTC observer provided information that the *Aracely F* stored 97 tons of tuna in a well that was supposed to be sealed during a fishing trip in 2007, in violation of an IATTC measure. The Government of Panama conducted a subsequent inspection of the vessel and found that this vessel could not have stored tuna as alleged by the IATTC observer. The May 2009 written response from the Government of Panama included a detailed explanation of the discrepancy between the report of the observer and the subsequent inspection of the vessel by Panamanian authorities. The *Aracely F* has two holds, or storage areas, for fish. The Government of Panama stated that the hold that was supposed to be sealed did not contain any refrigeration equipment and could not be used to store catch. Therefore, the Government allowed the vessel to have the holds unsealed if the capacity requirements were met. The Government of Panama believes that another hold that can be used to store fish was incorrectly labeled in the initial investigation report. NMFS requested a copy of the Panamanian inspection report submitted to IATTC. In late September 2010, the Government of Panama provided the report, DBOMI/0930/07 of September 25, 2007. The results of that investigation suggest there was no improper storage of tuna in excess of the vessel's capacity limit.

Panama took punitive action against the *Polestar* after it was included on the NAFO and NEAFC IUU vessel lists. NMFS understands that Panama reviewed the *Polestar's* case and, as a result of the investigation, issued a sanction against the owner of the *Polestar* on November 9, 2007. Panama stated that the sanction was the highest possible for non-fishing vessels under current Panamanian legislation, and is of such magnitude that any future infringements or violations by the *Polestar* would result in immediate removal from the Panamanian registry.

The Government of Panama provided several documents on the administrative processes involving the *Enxembre*, which was renamed the *Yucatan Basin*, during the consultation. The fishing license of the *Yucatan Basin* expired on April 9, 2009, with no request for renewal. This resulted in an order that canceled its registration in the Merchant Marine of the Republic of Panama as of March 30, 2010. The Government of Panama stated that this vessel is no longer authorized to fly the Panamanian flag. In addition, documents from the Government of Panama show that it is undertaking a process to impose sanctions for IUU activities.

**Fisheries Management Measures.** In addition to information on these specific vessels, Panama provided information on the steps being taken to combat IUU fishing, its fishing vessel and licensing process, and monitoring of its fishing fleet and support vessels.

In the fall of 2009, the Government of Panama issued an executive decree to strengthen interagency cooperation within its government to combat IUU fishing. Executive Decree 96 of November 12, 2009, established an interagency council to support activities related to the implementation of plans and programs that guarantee the exports of fishing products comply with regulations established by RFMOs and fisheries management agencies in other States.

Executive Decree No. 98-A of November 17, 2009, authorized adoption of the Panamanian National Action Plan to Prevent, Deter, and Eliminate IUU Fishing by vessels engaged in capture, transport, or transshipment of aquatic resources, as well as support vessels used in the capture of such resources. The 2009-2010 Annual Operating Program for Implementation of the National Plan of Action included alignment and updating of national regulations and the lines of action between States and the inter-agency level.

Also in the fall of 2009, the statute and decree that established ARAP as Panama's lead agency for ensuring compliance with laws and regulations regarding aquatic resources, including enforcing international agreements and treaties (Law 44 of 2006 and Executive Decree 49 of 1997), was modified by Executive Decree 49 of October 19, 2009. The updated decree requires all Panamanian-flagged vessels that carry out fishing operations in international waters, including harvest, fish transport, and support vessels, to obtain an International Fishing License. The fishing license is valid for a period of one year and must be obtained prior to registration with the Government of Panama. To receive a fishing license, applicants must provide the Maritime Authority and ARAP proof of ownership of the vessel, technical information about the vessel, types of fish, fishing locations and methodology, ports to be used, information about the onboard VMS, and a \$5,000 fee per vessel. The decree also clarifies that Panamanian-flagged vessels involved in transshipments must carry an observer from ARAP, that ARAP will make public a database of Panamanian-flagged vessels with valid International Fishing Licenses, that fishing vessels can only transship at certified ports, and that ARAP must approve the transshipment based on certain criteria.

Effective in 2009, Panama expanded its VMS requirements to all international fishing vessels, pursuant to Executive Decree 17 of June 30, 2008.

**Certification.** In summary, the Government of Panama took corrective action for, or provided information challenging the basis of, each instance of IUU fishing noted in the 2009 Report to Congress. To address the IUU activity of the *Vicente F*, Panama put into place laws to prohibit fishing without authorization and fishing activities that undermine fisheries management requirements. As for the *Aracely F*, the Government of Panama provided information indicating that this vessel did not exceed its hold capacity limit in violation of IATTC conservation and management measures.

The Government of Panama provided documents stating that the *Polestar* was sanctioned. NAFO and NEAFC also took action with respect to this vessel by preventing it from completing delivery of fish while it was on their IUU vessel lists. Panama also penalized the *Yucatan Basin* for the IUU fishing activity that led to its inclusion on the NAFO and NEAFC IUU vessel lists. The Government of Panama provided documentation indicating that the vessel's registration has been canceled, the vessel is no longer authorized to fly the Panamanian flag, and a process to impose sanctions on the vessel is underway.

In addition to providing information on each of the specific activities, the Government of Panama adopted new laws that could improve monitoring and control over the activities of its fishing vessels. The Government of Panama also appears to have begun coordination among

several of its agencies to develop measures and take other steps to combat IUU fishing. Such efforts may increase compliance with fishery management measures and deter future IUU activity.

On the basis of this information, NMFS sent a notice of its preliminary positive certification to the Government of Panama on November 12, 2010. NMFS, in consultation with the Department of State, has determined that the Government of Panama has taken appropriate action to address the IUU fishing activities for which Panama was identified in the 2009 Report to Congress, and positively certifies Panama in this Report.

## 5. People's Republic of China

**Background.** China was identified for the activities of four of its vessels: the *North Ocean*, the *East Ocean*, the *West Ocean*, and the *South Ocean*. An Australian patrol vessel observed these four vessels in November 2006 (and subsequently) fishing without authorization in the CCAMLR Convention Area, which constitutes a violation of CCAMLR conservation measures. The vessels were advised that they were fishing without authorization and to cease fishing activity and leave the area. The patrol vessel also attempted to board and inspect these vessels, but the boarding was refused. These vessels were included on the CCAMLR IUU vessel list prior to the identification.

In December 2006, the Chinese government ordered the four vessels to leave the CCAMLR Convention Area and return to port. The *North Ocean* and the *South Ocean* were again sighted fishing inside the area in January 2007. When the four vessels returned to port in April 2007, their total catch of toothfish was 300 mt, according to information provided by China to CCAMLR (see CCAMLR COMM CIRC 07/69). In the absence of information to the contrary from the Chinese Government, NMFS determined that these vessels were engaged in illegal harvest of toothfish during 2007.

In seeking the delisting of the vessels from the CCAMLR IUU vessel list in 2008, the Chinese Government advised CCAMLR that it had revoked the licenses of the four vessels, and that the vessels had been confined to port since April 2007.

**Notification and Consultation.** The State Department notified the Government of the People's Republic of China by diplomatic note in February 2009 of its identification in the 2009 Report to Congress. Subsequent to this notification, the United States initiated consultation with the Chinese Government. Following is a list of the communications between the Government of China and the United States during the consultation:

- Officials met on June 15, 2009, in Beijing. The U.S. delegation was headed by Dr. Rebecca Lent, and the Chinese delegation was headed by Xiaobing Liu, Director of International Cooperation Division, Bureau of Fisheries, Ministry of Agriculture.
- NMFS sent a letter dated June 26, 2010, to the Ministry of Agriculture requesting information on laws or regulatory programs implementing CCAMLR measures, other

new laws that serve to prevent unauthorized fishing, and processes available to sanction a vessel or person responsible for unauthorized fishing.

- NMFS received a response from the Chinese Government dated July 13, 2010. Copies of some relevant laws were provided with the assistance of U.S. Embassy staff.
- U.S. Embassy staff visited with Chinese officials at the Changzhi shipyard in Zhoushan, Zhejiang Province, where the two vessels that remain on CCAMLR's IUU vessel list, the *North Ocean* and the *West Ocean*, were moored. Chinese officials advised that the vessels are being prepared for sale.

**Vessel-Specific Actions.** The Chinese Government stated that, after the four vessels returned to port in April 2007, their fishing licenses were revoked and the vessels confined to port. Mr. Liu reiterated during the consultation that the four vessels are unable to leave the port due to the lack of fishing authorizations.

During the consultation in 2010, the U.S. Government learned of the laws that apply to Chinese-flagged vessels operating on the high seas. Namely, the Regulation of Distant Water Fisheries Management (2003) includes a provision whereby a fishing company, fishing vessel, or person would be punished in accordance with relevant Chinese laws and regulations, including suspension or prevention of vessels and persons from engaging in distant water fisheries, if they engage in the following IUU activities:

- fished on the high seas without high seas fishing license or approval from Ministry of Agriculture;
- did not comply with the fishing type, area, or duration authorized by the Ministry of Agriculture or stipulated in the high seas fishing license;
- enrolled or dispatched crew on distant water fishing vessels that violated regulations,
- refused the monitoring or management of fishing authorities;
- did not report the required catch information or intentionally reported false information;
- refused to accept observers sent by the Ministry of Agriculture or disturbed the work of the observer; or
- did not fill in logbook as required.

With all four vessels confined to port, the Chinese Government has been working toward the sale of the vessels. Two of the vessels, the *East Ocean* and the *South Ocean*, were sold to the Insung Corporation of Korea in December 2009. The sale separated the vessels from the parties that were responsible for the IUU activities of 2006 and 2007. Documents showing proof of the sales included the Bill of Sale, Commercial Invoice, and Protocol of Delivery. These documents were circulated to CCAMLR members in January 2010, after which these two vessels were removed from the CCAMLR IUU vessel list. A change in ownership to a new owner with no legal, financial, or real interests in, or control over, the previous owner and no history of IUU fishing is one of the criteria for removing vessels from the CCAMLR IUU vessel list.

The *West Ocean* and the *North Ocean* have not yet been sold. In the letter dated July 13, 2010, however, Mr. Liu reiterated that these vessels have remained in port since April 2007. On behalf

of the U.S. Government, Julie Eadeh of the U.S. Embassy in Shanghai visited the Changshi shipyard on August 6, 2010, to obtain information on these two vessels. During the site visit, Ms. Eadeh observed the vessels, was told that the vessels had remained in port, and was encouraged to photograph the vessels. Ms. Eadeh reported that Chinese officials said some key electronic equipment was not installed in the vessels, thereby preventing their use. Mr. Liu also stated the vessels had no permit allowing them to leave port, and that the vessels had been refurbished, repaired, and painted to prepare them for prospective buyers. The information from the site visit gives no indication that the vessels had been engaging in fishing activities since they were confined to port.

**Fisheries Management Measures.** During the consultation, the Chinese Government provided information regarding its requirements for vessel registration and licensing and its system for monitoring and controlling its fishing fleet. In particular, the United States received information on the fishery law that requires all vessels operating in waters beyond China's national jurisdiction to obtain approval by the Chinese fisheries authority and to comply with treaties or agreements to which China is party. The Chinese Government prohibits its fishing vessels from conducting fishing operations in the area outside of Chinese national jurisdiction without a license.

According to Chinese officials, they have also taken action to implement RFMO measures that will improve fisheries monitoring and help deter IUU fishing activity, including ICCAT measures on submission of timely catch data by requiring that all tuna fishing companies submit logbook data for analysis.

**Certification.** In summary, the Chinese Government demonstrated that penalties were applied to the four vessels, by revoking their licenses and confining them to port since April 2007. Furthermore, China provided documentary evidence that two of the vessels were sold, with a change in ownership that severs the connection to past IUU fishing. This sale allowed for the removal of these vessels from the CCAMLR IUU vessel list. With respect to the two vessels that were not yet sold, a U.S. official observed these vessels in port; there was no indication that the vessels had been engaging in fishing activities since they were first confined to port.

On the basis of this information, NMFS sent a notice of its preliminary positive certification to the Chinese Government on November 12, 2010. NMFS, in consultation with the Department of State, has determined that the Chinese Government has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the 2009 Report to Congress, and positively certifies the People's Republic of China in this Report.

Note that the standards for this certification are different from and not connected to CCAMLR's requirements under Conservation Measure 10-06 (2008) regarding removal of the remaining two vessels from the CCAMLR Contracting Party-IUU vessel list. The requirements of CCAMLR's conservation measures must be met before these vessels are removed from that list.

## 6. Tunisia

**Background.** Tunisia was identified under the Act for actions of its vessels that were allegedly fishing contrary to ICCAT Recommendation 03-04, which prohibits the use of driftnets in fisheries of large pelagic stocks in the Mediterranean Sea. According to a 2007 Greenpeace report (*Pirate Booty: How ICCAT is Failing to Curb IUU Fishing*, page 36), six Tunisian driftnet vessels (the *Ahmed Khalil*, the *Ahmed Helmi*, the *Aladin*, the *El Jazira*, the *Molka*, and the *Sadik*) were observed fishing in the Mediterranean Sea with driftnets. Location information on these vessels is provided in the report. Tunisia was invited to respond to a Canadian document that presented these alleged violations, but did not do so.

**Notification and Consultation.** The State Department notified the Government of Tunisia by diplomatic note in February 2009 of its identification in the 2009 Report to Congress. Subsequent to this notification, the United States initiated consultation with the Government of Tunisia. Following is a list of the communications between the Government of Tunisia and the United States during the consultation:

- The Government of Tunisia provided substantial written information by diplomatic note received on January 7, 2009, in response to questions raised by the U.S. Government in correspondence prior to making a formal identification decision. In its response, Tunisia refuted allegations that its vessels were using driftnets to target large pelagic fish species and provided a copy of its law authorizing punitive actions for fishing vessels that engage in IUU fishing (Law No. 94-13).
- NMFS sent a letter dated June 26, 2010, to Tunisia requesting a copy of the Tunisian regulations prohibiting driftnet use, the investigation report concluding that illegal fishing did not occur, and copies of the Tunisian laws promulgated to address and deter IUU fishing activity.
- The Government of Tunisia sent a response, received on August 23, 2010, which included the law dated March 16, 2009, allowing for establishment of closed fishing seasons; a ministerial decree dated June 23, 2009, detailing the establishment of closed fishing seasons; a ministerial circular dated April 13, 2010, regulating the eastern Atlantic and Mediterranean bluefin tuna fishery; and correspondence from the EC acknowledging receipt of Tunisia's list of designated ports pursuant to EC fishing regulations to address IUU fishing.

**Vessel-Specific Actions.** Tunisian officials stated that they inspected the six vessels observed by Greenpeace to be fishing with driftnets. Investigators concluded that the vessels used set, small-mesh (40 mm) gillnets to target small pelagic fish such as mackerel, and did not target swordfish. According to the Government of Tunisia, Tunisian regulations have prohibited large-mesh driftnets targeting large pelagic fish stocks since January 1, 2002. Tunisian law (Law No. 94-13) stipulates that any person who has prohibited fishing gear on board fishing vessels or onshore from any body of water is subject to imprisonment, fines (ranging from 200 to 10,000 dinars, which is worth between approximately 150 and 7,330 USD), and possible confiscation and seizure of prohibited fishing gear.

**Fisheries Management Measures.** The Government of Tunisia provided a copy of regulations and laws that are aimed at addressing IUU fishing by its vessels and achieving compliance with ICCAT measures, in addition to the information provided above. The laws and regulations appear to address the other concerns that were raised in the 2009 Report to Congress, namely, Tunisia's failure to report to ICCAT on its vessels' catch of bluefin tuna.

With respect to data reporting, the Government of Tunisia provided an excerpt of a report to the ICCAT Compliance Committee and asserted that Tunisia's catch per vessel and monthly catch reports were received by ICCAT as of March 14, 2008. Furthermore, the Government of Tunisia provided import and export data collected under the ICCAT bluefin tuna statistical document program between January and June 2008 (ICCAT Circular #2384/08). The Government of Tunisia also established a vessel monitoring system for all tuna fishing vessels longer than 24 meters and submits to ICCAT information obtained on the fishing grounds of these vessels. In 2008, approximately 1,000 VMS messages were received by ICCAT. Furthermore, the Government of Tunisia reports that it conducts land- and sea-based inspections of vessel activities. Inspections are conducted in port; all catch is offloaded at port and must be observed to record the catch and ensure compliance with size requirements.

**Certification.** On the basis of this information, NMFS sent a notice of its preliminary positive certification to the Government of Tunisia on November 12, 2010. NMFS, in consultation with the Department of State, has determined that the Government of Tunisia has taken appropriate action to address the IUU fishing activities for which Tunisia was identified in the 2009 Report to Congress, and positively certifies Tunisia in this Report.

## **B. Identifications**

### **1. Statutory Requirements and Restrictions**

Section 403 of the MSRA, in amending the Moratorium Protection Act, requires that the Secretary identify nations<sup>17</sup> whose vessels are engaged in IUU fishing or PLMR bycatch. The identification process and decisions, in turn, are based on detailed criteria set forth in the act, as well as statutory definitions.

**IUU.** Section 609(a) of the Act provides that the Secretary shall identify a nation if fishing vessels of that nation are engaged or have been engaged at any point during the preceding two years, in IUU fishing –

- (1) the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

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<sup>17</sup> The 2009 Report to Congress noted that fishing entities and other governance arrangements and institutions that are not "nations" could not be identified for having vessels engaged in IUU fishing activity or PLMR bycatch under the MSRA. Under the Taiwan Relations Act (22 U.S.C. 3303), however, any reference in U.S. law to "nations" includes Taiwan.

(2) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

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 submission of the biennial report to Congress. Information concerning activities outside that time period cannot form the basis for an identification decision. As well, activities 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.

**PLMR Bycatch.** Section 610(a) of the Act requires the Secretary to identify a nation for bycatch activities if –

- (1) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices;
  - (A) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or
  - (B) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;
- (2) 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
- (3) 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 than the comparable provision for IUU fishing in Section 609(a), and shares the restriction that an identification cannot be based on the activities of a single vessel.

**Comment.** During the 111<sup>th</sup> Congress, the Senate Committee on Commerce, Science, and Transportation reported out S. 2870, which would have made the following changes in sections 609(a) and 610(a):

- A nation would be identified if it was engaged, or had been engaged at any time during the preceding three years, in IUU fishing that undermines the effectiveness of measures required under the relevant RFMO.
- A nation would be identified if it is violating, or has violated at any time during the preceding three years, conservation and management measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effectiveness of such measures.
- A nation would be identified if it is failing, or has failed at any time in the preceding three years, to effectively address or regulate IUU fishing in areas where there is no international fishery management organization with a mandate to regulate the fishing activity in question.

S. 2870 also would have expanded the time period for identifying nations for bycatch activities in Section 610(a)(1) to three years. Another provision of S. 2870 would have treated entities competent to enter into an international fishery agreement as nations for purposes of identification, both for IUU fishing and bycatch activities.

The full Senate did not take action on S. 2870 during the 111<sup>th</sup> Congress.

## 2. The Identification Process

In preparation for development of the list of nations that are recommended for identification, NMFS published a notice soliciting information on IUU fishing and PLMR bycatch activities (75 Fed. Reg. 10213, March 5, 2010).

**Fishing in Violation of International Measures.** The first prong of the definition of IUU fishing covers activities that violate measures required under an international fishery management agreement to which the United States is a party (16 U.S.C. 1826j(e)(3)(A)). NMFS created an analytical team to gather information on incidents where RFMO compliance measures may have been violated. The team began with a search of publicly available RFMO reports, including annual reports, correspondence, compliance committee meeting summaries, and IUU vessel lists. The team also searched USCG, foreign government, press, and NGO reports, and solicited information from U.S. sources familiar with the RFMOs and sometimes directly from the respective secretariats. The team analyzed data about the fishing activities of more than 50 countries in the process.

At this point, the team began to synthesize and distill all of these data: current flag, flag at listing, vessel name (current and previous), specific RFMO infractions and dates, additional infractions/data, and comments. Once all of this information on specific vessels or incidents was entered into a compendium, the team identified information gaps. For example, the RFMO report might not have included the IMO number for a specific vessel, or the specific RFMO measure violated.

To fill these gaps and where possible to verify existing information, the team reviewed applicable measures and identified the specific violations that had occurred; knowledgeable experts reviewed these conclusions. The team also used foreign government, NGO, open source, and commercial websites to fill remaining gaps. In addition, the team coordinated with subject matter experts to explore issues of vessel ownership throughout this entire process. Although this process has been exhaustive and drew together the reporting and knowledge of IUU fishing from numerous organizations and people with years of experience on these matters, some information gaps still exist.

Based on the analysis of all available information, NMFS determined 18 nations to be of interest for having vessels that allegedly engaged in IUU fishing activity during the relevant time period (2009 and 2010), and therefore considered them for identification under the Moratorium Protection Act. Through diplomatic channels, NMFS contacted these nations to verify information received regarding alleged IUU fishing activities of their vessels. Through responses from 12 of the 18 countries and other sources, NMFS collected information that either refuted the allegations or showed that corrective actions had been taken to address all the IUU fishing activities of concern. For the remaining six nations, while actions had been taken to

address some of the IUU fishing activities, the information provided failed to demonstrate that sufficient corrective action had been taken to address all of those activities.

In a case where action taken by the nation is pending against a vessel, but no resolution has been reached either 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 that vessel had been closed.

Detailed information on the six countries identified for this type of IUU fishing activity appears below in Part IX.B.3, as does information about 12 countries of interest that were not identified.

**Overfishing of Shared Stocks.** The second prong of the definition of IUU fishing (16 U.S.C. 1826j(e)(3)(B)) includes overfishing of stocks shared by the United States in areas without applicable international measures or management organizations. NMFS is working to identify U.S. fish stocks that are overfished, are undergoing overfishing, or are otherwise a stock of concern, and that are shared with other nations. Once these stocks are identified, only those that are not covered by either applicable international conservation or management measures or by an international fishery management organization or agreement will be considered for country identifications under this part of the IUU definition. The process of identification will require NMFS to enumerate fishing activities by other countries on these “uncovered” stocks and to assess whether those activities are considered IUU fishing as defined by the statute. For countries that are identified, NMFS will undertake the same notification and consultation process described previously. Because the work to categorize shared stocks as overfished is not yet complete, NMFS identified no countries as conducting this type of IUU fishing in 2009-2010.

**Destructive Fishing Practices on VMEs.** During the reporting period, NMFS found no nations having conducted IUU fishing activities under the third prong of the definition (16 U.S.C. 1826j(e)(3)(C)). Currently four RFMOs have the competency to manage bottom fishing: NAFO, NEAFC, SEAFO, and CCAMLR. Each of these organizations, as well as the two in formation (SPRFMO and NPRFMO), adopted and implemented measures to protect VMEs from bottom fishing activities, in accordance with the 2006 UNGA sustainable fisheries resolution and reflecting guidance from the FAO’s International Guidelines for Deep Sea Fisheries.<sup>18</sup> Nations fishing in accordance with these RFMOs, by definition, would not meet the criteria for IUU fishing identification under the Moratorium Protection Act.

The Southwest Atlantic and the Indian Ocean<sup>19</sup> are the only areas of the high seas not under the competency of an RFMO with the authority to manage bottom fishing. To avoid identification under the Moratorium Protection Act, States with vessels known to be fishing in these areas in 2009 or 2010 must have had measures in place to prevent significant adverse impacts to known or likely VMEs. In 2009, the United Nations reviewed progress made by States and RFMOs to implement the provisions of UNGA resolution 61/105 in areas outside of RFMOs and beyond national jurisdictions. Several States, including Australia, Cook Islands, New Zealand, Republic

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<sup>18</sup> See Part VI.E above.

<sup>19</sup> Although negotiations have been ongoing for the Southwest Indian Ocean Fisheries Commission, no real governance body has been formed to date.

of Korea, Russian Federation, Spain, and the United Kingdom, as well as the EC, reported having taken measures in high seas areas in accordance with paragraph 86 of resolution 61/105.

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. For 2009 and 2010, only the EC and the Cook Islands reported bottom fishing activities in areas outside of RFMO competency. The EC listed 43 Spanish vessels with the authority to fish in the Southwest Atlantic; as noted above, the EC has adopted measures to prevent significant adverse impacts on VMEs in accordance with resolution 61/105. Therefore, their fishing activity is not considered IUU fishing under the Moratorium Protection Act. The Cook Islands listed two vessels; through subsequent discussions with that nation, NMFS determined that these vessels would be fishing in the South Indian Ocean, under measures adopted by the Cook Islands to protect VMEs in accordance with the criteria set out in the Act. NMFS will continue to work with the Cook Islands to monitor implementation of these measures.

Moreover, NMFS will continue to work with other international partners to strengthen implementation 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 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. Qualifying activities are further restricted to those that result in the bycatch of PLMRs where the relevant 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 a regulatory program governing such fishing practices that is comparable to that of the United States, taking into account different conditions. Bycatch activities that fail to meet these standards cannot form the basis for identification.

Over the past two years, NMFS has collected significant amounts of information on bycatch activities from numerous sources, including relevant international organizations, as outlined above in Part VII.B. A number of nations self-reported bycatch of PLMRs to those organizations, but the information did not meet the criteria established by the Moratorium Protection Act. For example, almost none of the self-reported data on bycatch was available in time for action under the Act, since many countries 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. Several nations reported bycatch in a more timely fashion; however, the bycatch occurred within their territorial waters and the animals were not from stocks shared with the United States. Therefore, NMFS is not identifying any nation under section 610.

During the next two years, 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 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.

In addition, NMFS will continue to be a leader bilaterally, multilaterally, and globally to reduce bycatch of PLMRs. As Part VIII.B of this report notes, 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. 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, their need for assistance, and their willingness to work cooperatively with the United States. NMFS will also continue to promote comprehensive conservation and management measures 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 alternative gear types, and develop management measures to reduce bycatch.

### 3. Countries Identified

NMFS is identifying six countries as having vessels engaged in IUU fishing activity during 2009 and 2010: 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. The remainder of this section describes in detail the bases for identification for each country, along with other pertinent information and any communications with the governments.

**Colombia.**<sup>20</sup> No Colombian-flagged vessels adhered to the purse seine closure periods that were in place for tuna conservation in 2009, in violation of IATTC Resolution C-09-01. The Government of Colombia noted at the 2009 and 2010 IATTC meetings that it could not implement the IATTC's closure periods because it had already adopted purse seine closures for 2009 on an individual vessel basis prior to the adoption of IATTC Resolution C-09-01. Colombia, however, joined the consensus allowing C-09-01 to become effective. Colombia's 2009 individual closures were of shorter duration and, thus, less restrictive than the requirements set forth in Resolution C-09-01.

In addition, two vessels flagged to Colombia have been fishing 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 Eastern Pacific Ocean 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

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<sup>20</sup> The sources of information on Colombian fishing activity are a personal communication with staff on the U.S. delegation to IATTC, December 1, 2010, and the IATTC Compliance Report (Document COR-01-06), September 24, 2010.

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.

Other information or fishing activities that did not form the bases of identification. The Government of Colombia disputes its capacity allocation and for years has been seeking to adjust it with the United States and multilaterally through the IATTC process. In August 2010, the State Department sent a cable to the Government of Colombia seeking more information on Colombia's proposal to increase its capacity allocation; no response to the U.S. cable has been received.

**Ecuador.**<sup>21</sup> Several purse seine vessels flagged to Ecuador fished in the IATTC Convention Area in 2009 without authorization, in violation of Resolutions C-00-06 and 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 owner was granted a fishing license on September 7, 2009, but Ecuador did not make a request to IATTC for entry in the vessel register until March 4, 2010. Ecuador noted at the 2010 IATTC meeting that the government has initiated an administrative proceeding against this vessel, which could result in a penalty for fishing without authorization.

The *Cap. Tino B.* made two fishing trips in 2009 before being included on the IATTC Regional Vessel Register in April 2009. The owner was granted a fishing license on February 12, 2009, but Ecuador did not make a request for entry in the vessel register until April 15, 2009. Ecuador noted at the 2010 IATTC meeting that this vessel is being sanctioned for fishing without authorization. Ecuador stated that it has taken corrective action with regard to the *Ocean Lady* and the *Cap. Tino B.*, but has not yet supplied documentation to that effect.

The *Tuna I* made three fishing trips in 2009 without being on the IATTC Regional Vessel Register. According to the Government of Ecuador, the case against this vessel is pending.

Several other vessels made sets during the purse seine closure of the off-shore area in 2009, in violation of IATTC Resolution C-09-01. The *Lizy* made two sets during that closure. Ecuador noted at the 2010 IATTC meeting that there were proceedings against the *Lizy*. According to the Government of Ecuador, this vessel has been absolved; however, no details were provided.

The *Ocean Lady* also failed to adhere to the 2009 closure. Another vessel, the *Ingalapagos*, made short trips during the 2009 IATTC closure period without an observer or transit waiver, in

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<sup>21</sup> The sources of information on Ecuadorian fishing activities are the IATTC Compliance Report (Document COR-01-06), September 24, 2010; a December 10, 2010, letter from Luis Arriaga Ochoa, Undersecretary of Fishing Resources, Ministry of Agriculture, Livestock, Aquaculture and Fishing, Government of Ecuador, to Rebecca Lent; personal communication with staff of the U.S. delegation to IATTC, December 1, 2010; IATTC Reference 0079-410, February 26, 2010, letter from the IATTC Secretariat to Commissioners regarding the draft IATTC IUU vessel list; and a December 22, 2010, letter from Iván Prieto Bowen, Undersecretary of Fishing Resources, Ministry of Agriculture, Livestock, Aquaculture and Fishing, Government of Ecuador, to Rebecca Lent.

violation of IATTC Resolution C-09-01. Ecuador noted at the 2010 IATTC meeting and reaffirmed in correspondence that an administrative proceeding against this vessel is pending.

The *Tarqui* increased its capacity, contrary to IATTC Resolution C-02-03. According to the delegation from Ecuador at the 2010 IATTC meeting and correspondence to NMFS, Ecuador has initiated an enforcement proceeding against this vessel; it is pending.

Other information or fishing activities that did not form the bases of identification. The *Ignacio Mar I* made nine fishing trips in the Convention Area in 2009 (and 15 trips in the two years prior) without being included on the IATTC Regional Vessel Register. The Government of Ecuador claims that sufficient capacity exists for this vessel to be placed on the Register, since Ecuador retained the capacity associated with another fishing vessel (the *Roberto M*) that was sold, renamed (the *Pescatun*, now the *Tunapesca*), and registered under the flag of Panama in 2004.

The *Ignacio Mar I* also made short trips during the 2009 IATTC purse seine closure period without an observer or transit waiver, in violation of IATTC Resolution C-09-01. The delegation from Ecuador noted at the 2010 IATTC meeting that the government had initiated an administrative proceeding against this vessel. The Government of Ecuador provided documentation showing that the vessel was docked from August 4 to 18 and anchored from August 19 to September 30. As a result, this vessel is not being considered as a basis for Ecuador's identification.

Two other Ecuadorian-flagged vessels have increased their capacity, contrary to IATTC Resolution C-02-03: the *Doña Roge* and the *Ricky A*. The delegation of Ecuador reported at the IATTC meeting that it has acquired capacity to accommodate the *Doña Roge*. According to the Government of Ecuador, action has been taken against the *Ricky A*, but the case is under appeal. Therefore, these vessels were removed from consideration as a basis for Ecuador's identification.

The Government of Ecuador disputes its capacity allocation and is seeking to adjust it through the multilateral process at IATTC. It has requested greater collaboration with the United States, including through development of a fisheries-focused MOU between the two countries focusing on a number of specific topics, including marine conservation, marine protected areas, fisheries trade policy, and illegal fishing.

NMFS appreciates the responsiveness and helpful information that Ecuador provided describing actions it is taking to address illegal fishing by its vessels. This information was taken into account and resulted in several vessels being removed from consideration. Since actions against several vessels are pending, however, NMFS decided to identify Ecuador.

**Italy.**<sup>22</sup> During 2009 and 2010, many vessels flagged to Italy fished in violation of ICCAT Recommendation 03-04, which prohibits the use of driftnets for fisheries on large pelagic

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<sup>22</sup> The sources of information about Italian fishing activity are a November 23, 2010, letter from Dr. Abate to the U.S. Embassy in Rome; Fight Against Illegal Driftnet Use, 2005-2009 Five-Year Period, General Headquarters of the Corps of the Port Captaincies Coast Guard, Section III, Plans and Operations; Italian response to U.S. outreach letter, translated, received November 15, 2010; La Pesca

species, including swordfish and bluefin tuna, in the Mediterranean. Several Italian-flagged vessels were found with *spadara* nets (a type of driftnet used to target swordfish) and *ferrettara* nets (small-mesh driftnets), and with large pelagic species on board. This illegal driftnet activity is described in more detail below and documented in Italian Coast Guard and NGO reports. Italy penalized these vessels through seizure of their catch and nets and the imposition of fines of approximately €2,000 each. The Italian reports demonstrate that some Coast Guard divisions under the direction of that organization's Central Command are conducting enhanced operations to detect illegal driftnet fishing. Violations continue, however, including offenses involving the same vessels.

In July 2009, the *Federica II* was found to have 13 km of *spadara* net and 853 kg of fish onboard. Italy sanctioned the vessel for carrying out commercial fishing using *spadara*, and confiscated 16 swordfish, 24 bluefin tuna, and the nets. Two of the swordfish and 20 of the bluefin tuna were under the permissible size limit. The *Federica II* had four previous *spadara* and *ferrettara* driftnet violations between 2005 and 2008.

Also in July 2009, the *Maria Ilenia* was found with 16.6 km of driftnet onboard and approximately 1,400 kg of fish. The vessel was sanctioned for carrying out commercial fishing using a 16-km *spadara* net and a *ferrettara* net 600 meters longer than allowed. The catch, consisting of 59 swordfish, four yellowfin tuna, and one fish of unidentified species, for a total weight of 1458.7 kg, along with the nets. Eighteen of the swordfish were smaller than the size limit. The *Maria Ilenia* had a previous *ferrettara* driftnet violation in 2009.

The *Unita' Da Diporto* was sanctioned for carrying out commercial fishing in the summer of 2009 using a 4.5 km *spadara* net. Two swordfish and 27 tuna, with a total weight of 210 kg, were seized along with the net. In August 2009, the *Andrea Doria II* was found with a 15.5 km *spadara* net and 500 kg of swordfish onboard. The vessel was sanctioned for illegal driftnet use by seizure of the swordfish and net. This vessel also had a driftnet infraction in 2006. In August 2009, the *Ross Lucy* was found with *spadara* net and 500 kg of swordfish onboard. Italy sanctioned the vessel for driftnet fishing with seizure of the net and swordfish. The *Ross Lucy* also had a 2006 driftnet violation.

In addition to the previously mentioned vessels, four others were found with *ferrettara* and bluefin tuna on board. Since these vessels had bluefin tuna, they were found to be fishing in contravention of ICCAT Rec. 03-04. The *Maestrato*, sanctioned in April 2010, was caught with 1,076 kg of bluefin tuna, of which 33 fish were under permissible size limits. This vessel also had a *spadara* driftnet infraction in 2008. The *Anna Maria I* was sanctioned in April 2010 after being caught with 837.5 kg of bluefin tuna, of which 81 fish were undersized. This vessel also had a *spadara* infraction in 2008. Two vessels were sanctioned in June 2010: the *Santa Maria A*

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Illegale, Non Documentata e Non Regolamentata Nell'Unione Europea: Il Caso Delle Reti Derivanti Italiane, Lega Anti Vivisezione, Legambiente, and Marevivo, November 2010; communication with non-governmental organizations, December 2, 2010; and e-mail from Giovannone Vittorio to Federica Signoretti, November 26, 2010.

*Mare*, after being caught with 120 kg of bluefin tuna, and the *San Saverio*, with 300 kg of undersized bluefin tuna.

The repeat driftnet infractions indicate the need for additional measures to deter this type of IUU activity, including, *inter alia*, implementation of more severe sanctions as allowed under Italian law, such as suspension of fishing authorization or licenses.<sup>23</sup>

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

Approximately 30 other vessels found in 2009 or 2010 with illegal *ferrettara* had been cited previously for similar violations during 2005-2008. Thirteen of those vessels had three or more driftnet infractions during 2005-2008. Since it could not be ascertained whether these vessels were using driftnets to fish for large pelagic species, they are not being included in the bases for Italy's identification.

Vessels in possession of *spadara* nets, but with no associated catch, are likewise excluded from the bases for the identification of Italy. The *Vincenzo Primo* was found in possession of 7 km of *spadara* in July 2009. This vessel had two previous *spadara* violations in 2006 and June 2009. In July 2009, the *Maria Madre*, with a previous driftnet infraction in 2006, was found with *spadara* net (1.3 km long). In August 2009, the *Andrea Doria II* was inspected in port and sanctioned for possession of two *spadara* nets, one 10 km and another 0.5 km in length. The sanctions for the offenses of these vessels included confiscation of their nets.

In addition, three Italian-flagged vessels with *spadara* infractions during 2010 were highlighted in the November 2010 non-governmental report titled *La Pesca Illegale, Non Documentata e Non Regolamentata Nell'Unione Europea: Il Caso Delle Reti Derivanti Italiane*, written by Lega Anti Vivisezione, Legambiente, and Marevivo. The *Gianni Mazza* was found in July 2010 with 8 km of *spadara* net. It also had a driftnet infraction in 2009. The *Madonna Di Fatima* was found in April 2010 with 1.8 km of *spadara* net. This vessel had four previous infractions during 2005 and 2006. The *Felice* was found in April 2010 with a 1.5 km *spadara* net. Each of the three vessels was fined €2,000.

*The Italian Campaign to Monitor and Control Fishing, in conjunction with the Multiannual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean, National Plan 2009* included information on potential infringements of an ICCAT bluefin tuna management measure (Recommendation 08-05) that ICCAT is addressing through its compliance process.

The Government of Italy has been very cooperative and responsive to requests for information. A bilateral meeting was held in November 2010, and Italy responded to a letter of concern that was sent in October 2010. A meeting was also held in Paris on the sidelines of the 2010 ICCAT meeting.

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<sup>23</sup> Ministerial Decree of October 14, 1998, with subsequent modifications, allows withdrawal of authorization to use the driftnet (i.e., *ferrettara*) for three months with the first offense, or six months in the case of subsequent violations. Ministerial Decree-Law No. 59 of April 8, 2008, outlines fines for using fishing equipment not permitted, not authorized, or not in compliance with the laws in force. The 2008 law provides authority for confiscation of catch and prohibited fishing equipment, and states that the equipment shall be destroyed. In addition, the 2008 decree allows suspension of fishing licenses, in cases of repeat violations, of periods from ten to 30 days.

NMFS appreciates the responsiveness and helpful information that Italy provided describing actions it is taking to address illegal fishing by its vessels, as well as the recent meetings to discuss these issues. The information provided by Italy was taken into account. Although these vessels were sanctioned through seizure of catch and nets and imposition of fines, NMFS decided to identify Italy since driftnet violations continue to be committed by Italian-flagged vessels, including repeat offenses by these same vessels.

**Panama.**<sup>24</sup> Several Panamanian-flagged vessels engaged in fishing activities that violated IATTC conservation and management measures. Among these vessels, several were reported to have fished within the IATTC Convention Area during purse seine closure periods, in violation of IATTC Resolution C-09-01. The *Julie L* made at least one set in the high seas closure area in 2009, and the *La Parrula* at least 30 sets in two trips during the IATTC 2009 purse seine closure. According to the Government of Panama, an investigation carried out by Panamanian authorities on the *Julie L* showed evidence of lack of VMS transmission, in violation of a domestic law, for which a sanction has been applied. ARAP informed the United States that an investigation was opened for the *Julie L* within the penal process for fishing during the closure period. ARAP provided assurance that investigations and proceedings will continue.

The *Sirenza I* was not in port in 2009 at the beginning of the purse seine closure, also in violation of IATTC Resolution C-09-01, which requires members to ensure that at the time a closure begins, and for the entire duration of that period, all purse seine vessels fishing for yellowfin, bigeye, or skipjack tunas that are subject to the closure are in port or obtain a transit waiver to leave port.

The *Tunamar* made one trip in May 2009 while not on the IATTC Regional Vessel Register, in violation of Resolutions C-00-06 and C-02-03. This vessel was added to the IATTC Regional Vessel Register on July 2, 2009. A Panamanian agency is conducting an internal investigation to ascertain the responsibility of the official who authorized the *Tunamar* to fish without being registered with IATTC. According to the delegation from Panama at the 2010 IATTC meeting, sanctions have been issued against this vessel.

Other information or fishing activities that did not form the bases of identification. The *La Parrula* was reported to have made at least 30 sets in two trips during the IATTC 2009 purse seine closure, in violation of IATTC Resolution C-09-01. ARAP has stated that the *La Parrula* has been penalized, but has not been fined for fishing during the closed period because the

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<sup>24</sup> The sources of information about Panamanian fishing activities are IATTC, Reference 0113-410, March 15, 2010, letter from IATTC Secretariat to Commissioners regarding the preliminary report on compliance with the closures of the purse seine fishery in 2009; IATTC Compliance Report (Document COR-01-06), September 24, 2010; letter from Giovanni Lauri Carreti, General Administrator of ARAP, to Rebecca Lent, October 22, 2010; IATTC, Reference 0079-410, February 26, 2010; personal communication with staff of the U.S. delegation, December 1, 2010; CCAMLR COMM CIRC 09/94 and 10/10; and a December 20, 2010, letter from Giovanni Lauri Carreti, General Administrator of ARAP, to William Muntean, Economic Officer, Embassy of the United States (translated).

proceedings were suspended when the representatives for the vessel submitted a Warning of Illegality before the Supreme Court of Justice; the case is pending. In addition, the Panama Merchant Marine canceled the *La Parrula's* registration on September 6, 2010, effectively removing this vessel from consideration for identification.

Several Panamanian-flagged vessels on the CCAMLR IUU vessel list were sighted inside the CCAMLR Convention Area. The *Draco I* was observed inside the Area on July 1, 2009; the *Corvus* was sighted in the Area on January 21, 2010. Panama fined the *Draco I* for IUU fishing and canceled the vessel's registry on March 30, 2010. Panamanian officials stated that the license of the *Corvus* expired on June 6, 2009; it was removed from Panama's registry that October. Although the IUU fishing activities of the *Draco I* and the *Corvus* do not form the bases for Panama's identification because these vessels were removed from Panama's registry, NMFS has concerns about deregistering vessels to address IUU fishing in lieu of other sanctions. NMFS believes the United States should encourage the Government of Panama to take actions to prevent, deter, and eliminate IUU fishing, while maintaining control of, and continuing to monitor, its vessels.

The Government of Panama responded promptly to the letter of concern that NMFS sent in October 2010 and to additional questions regarding the status of several of their vessels. NMFS appreciates the responsiveness and helpful information that Panama provided describing actions it is taking to address illegal fishing by its vessels, as well as the meetings to discuss these issues. This information was taken into account and resulted in several vessels being removed from consideration. Since actions against several vessels are pending, however, NMFS has decided to identify Panama.

**Portugal.**<sup>25</sup> Two vessels flagged to Portugal engaged in fishing activities during 2010 that violated conservation and enforcement measures of NAFO. The *Aveirese* was found in the NAFO Regulatory Area on March 10, 2010, by Canadian inspectors and in port on July 12, 2010, in apparent infringement of a NAFO conservation and enforcement measure (Chapter I, Article 13.6) because the mesh in the cod end of the net was obstructed. These incidents are under investigation. Further information from the NAFO Secretariat confirms the infringement that was detected by the Canadian inspectors. According to the Government of Portugal, with respect to the *Aveirese*, it brought a proceeding against the captain and the ship owner; the case is pending.

The *Franca Morte* was inspected at sea on April 1 and 2, 2010, and in port on April 29, 2010, and was found to be using smaller than the required mesh size on two of the four panels of the fishing trawl, an infringement of Chapter I, Article 13. EU inspectors confirmed that this was an infringement as detected and reported by Canadian inspectors. The EU Report on Infringement dated August 2010 indicates that a case is pending against this vessel. According to the Government of Portugal, a final decision has been reached in the proceeding against this vessel.

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<sup>25</sup> The sources for information on Portuguese fishing activities are NAFO's STACTIC Working Paper 10/1 (Revised), 32nd Annual Meeting – September 2010; personal communication with NAFO staff, December 1, 2010; and a letter from Teresa Coelho, Assistant Director-General on behalf of the Director-General Fisheries and Aquaculture (Jose Apolinario), dated November 24, 2010 and received December 13, 2010.

However, no further information was provided on the nature of this decision or any resulting action to be taken against the vessel.

Other information or fishing activities that did not form the bases of identification. NMFS appreciates the responsiveness and helpful information that Portugal provided about the case pending against the captain and ship owner. In the case of the other vessel, a final decision has been reached but no other information was provided indicating that corrective action has been taken. Since additional information is needed on that case, NMFS decided to identify Portugal.

**Venezuela.**<sup>26</sup> Two vessels flagged to Venezuela were reported to have fished during IATTC purse seine closure periods in 2009, in violation of IATTC Resolution C-09-01. The *Don Francesco* made 19 sets during the purse seine closure in the Eastern Pacific Ocean. The *Athena F* made a transit trip without an observer or a transit waiver during the closure period in 2009, in violation of IATTC Resolution C-09-01, which requires members to ensure that during a closure all purse seine vessels subject to the closure are in port or obtain a transit waiver to leave port.

Other information or fishing activities that did not form the bases of identification. The Government of Venezuela provided a response on January 4, 2011. According to Venezuelan officials, an investigation against the *Don Francesco* is ongoing and the circumstances were properly reported to the IATTC Secretariat. The Government of Venezuela requested that the IATTC modify the closure periods for certain vessels due to certain emergency situations, but has not received a positive response. The government does, however, have authority to take action against vessels that have violated IATTC's resolution. The possible sanctions include fines, temporary suspension of fishing authorizations, revocation of fishing authorizations, and seizure or destruction of fishing products.

NMFS appreciates the responsiveness and helpful information that Venezuela provided describing the status of these vessels and its authorities to address fishing in violation of IATTC measures. Since action against the vessels is pending, NMFS has decided to identify Venezuela.

#### 4. Countries “of Interest” Not Identified

NMFS considered 12 other countries “of interest,” but decided not to identify them. This section describes the fishing activities examined and the rationale for the decisions.

**Belize.**<sup>27</sup> France proposed two Belize-flagged fishing vessels for inclusion on the IATTC IUU vessel list. On October 21, 2009, French authorities found the *Yu Long* in possession of 86 mt of sharks, without catch or transshipment records on board. French authorities noted that *Yu Long* had a license to engage in transshipment activities but had not been registered with the IATTC as

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<sup>26</sup> The sources for information on Venezuelan fishing activities are IATTC, Reference 0113-410, March 15, 2010, letter from IATTC Secretariat to Commissioners regarding the preliminary report on compliance with the closures of the purse seine fishery in 2009; IATTC Compliance Report (Document COR-01-06), September 24, 2010; and e-mail from U.S. Embassy Caracas, January 4, 2011.

<sup>27</sup> The sources for information on these vessels are IATTC, Reference 0079-410, February 26, 2010; IATTC, Reference 0173-410, April 22, 2010; and IATTC, Reference 0443-410, September 7, 2010.

a carrier vessel, in violation of Resolution C-08-02. They also reported that the *Yu Long* had no VMS equipment on board, in violation of Resolutions C-04-06 and C-08-02, which require vessels transshipping or harvesting to install and operate VMS. Belize noted that the vessel's license contained a clerical error; the vessel was actually authorized as a longline vessel. Belize conducted an investigation and found that all catches by the *Yu Long* had been reported, and that VMS was on board the vessel but was malfunctioning. Daily position reports were reportedly provided to Belize through other methods. Nonetheless, Belize revoked the fishing rights of the *Yu Long* for six months due to the malfunctioning VMS and recalled the vessel to port.

In addition, France found 15 kg of shark fins onboard the *Yu Long* without the corresponding carcass, in possible violation of IATTC Resolution C-05-03, which requires vessels to have on board fins that total no more than 5 percent of the weight of sharks on board, up to the first point of landing. Belize confirmed that the fins were on board, but asserted that the carcass had been consumed by the crew. While the vessel did not have catch records on board, Belize provided a copy of the report submitted by the vessel for the period of the alleged violation.

Also on October 21, 2009, French authorities found the *Yu Long No. 6* with approximately 150 sharks on board without corresponding records of catch, in violation of Resolution 05-07 for establishing the IUU vessel list. They asserted that no VMS was found on board this vessel during its inspection, in possible violation of Resolution C-04-06. According to an investigation conducted by Belize, the vessel did report its catches and VMS was onboard at the time of the inspection and was functioning.

Since Belize provided sufficient information to refute the allegations of IUU fishing activities by its vessels, Belize is not being identified as a nation with vessels engaged in IUU fishing.

**Cambodia.**<sup>28</sup> Vessels flagged to Cambodia engaged in fishing activities in 2010 that undermined the effectiveness of CCAMLR conservation measures. A Korean vessel observed the *Draco I*, included on the CCAMLR IUU vessel list since 2004, fishing inside CCAMLR Division 58.4.2 on January 27, 2010. An Australian patrol vessel observed the *Draco I* fishing on April 4, 2010, in CCAMLR Statistical Sub-area 58.4.3B. During a radio conversation, the master reported that the *Draco I* held a Cambodian license valid from August 26, 2009, through August 9, 2010, for the Indian, Pacific, and Atlantic oceans.

An Australian patrol vessel observed the *Trosky*, included on the CCAMLR IUU vessel list in 2008, deploying a stern gillnet on approach inside CCAMLR Division 58.4.1 on April 7, 2010. During a radio conversation, the master reported that the vessel held a high seas Cambodian license valid from November 30, 2009, through November 27, 2010.

The United States sent a letter to the Cambodian Ambassador on October 4, 2010, and received a response from Cambodia on December 7, 2010. In Cambodia's letter and a draft background document, the International Ship Registry of Cambodia provided detailed responses to the questions raised in the U.S. letter. Cambodia stated that, following an immediate and detailed

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<sup>28</sup> Sources for information on Cambodian fishing activities are CCAMLR COMM CIRC 10/45, April 20, 2010; and CCAMLR COMM CIRC 10/11, February 2, 2010.

investigation of the *Draco I* and the *Trosky*, it deregistered the two vessels for CCAMLR violations and informed the international community (including the International Maritime Organization and others) of the removal of the vessels from the Cambodian registry. Furthermore, Cambodia is no longer issuing fishing vessel registrations until VMS is fully implemented on all Cambodian-flagged fishing vessels.

Since Cambodia took action to address the illegal fishing activities of the *Draco I* and the *Trosky*, Cambodia is not being identified as a nation with vessels engaged in IUU fishing. However, NMFS has concerns about deregistering vessels to address IUU fishing activity in lieu of other sanctions. NMFS believes the United States should encourage the Government of Cambodia to take actions to prevent, deter, and eliminate IUU fishing, while maintaining control of, and continuing to monitor, its vessels.

**Denmark in respect of the Faroe Islands.**<sup>29</sup> Two vessels flagged to the Faroe Islands allegedly violated several NAFO conservation and enforcement measures in 2009. NMFS contacted Denmark about these vessels because it conducts the foreign affairs of the Faroe Islands. Canadian authorities inspected the *Ran* in the NAFO Regulatory Area on January 21, 2009, finding three apparent infringements of NAFO conservation and enforcement measures: failing to move 10 nautical miles to avoid the bycatch of protected species over the specified amounts (Chapter I, Article 12.2); interfering with size selectivity of fishing gear by obstructing mesh in the cod end of the net (Chapter I, Article 13.6); and failing to keep a proper stowage plan showing the location and quantities of different species in the holds (Chapter III, Article 24.6). The Government of the Faroe Islands is seeking to prosecute the *Ran*. The case is expected to conclude in early 2011.

The *Arctic Viking* was inspected in the NAFO Regulatory Area on December 4, 2009, because the master retrieved and emptied the net into the hold without waiting the required 30 minutes after receiving notification about a boarding (Chapter IV, Article 33.3). The Government of the Faroe Islands assessed the details of the inspection report and found that there was a difference of opinion between the inspector and the skipper as to whether 30 minutes had passed before the vessel's net was retrieved. The Government of the Faroe Islands is satisfied that consultations between the skipper and the inspection officers have adequately identified and clarified the relevant procedural issues that were missed during the inspection. According to the Government of the Faroe Islands, the skipper has been made aware that he must await permission from the inspector before retrieving the net and has agreed to comply with these procedural requirements in the future.

Since the case against the *Arctic Viking* has essentially closed, Denmark in respect of the Faroe Islands is left with only one vessel for potential identification and therefore is not being identified.

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<sup>29</sup> The sources of information on these two vessels are NAFO's STACTIC Working Paper 10/1 (Revised), 32nd Annual Meeting – September 2010; a December 9, 2010, letter from Kate Sanderson, Director of Fisheries and Trade, Faroe Islands, to Rebecca Lent in response to a letter of concern; and a December 22, 2010, letter from Hanna í Horni, Department of Fisheries and Trade, Faroe Islands, to Rebecca Lent.

**Estonia.**<sup>30</sup> Two vessels flagged to Estonia had alleged infractions of NAFO conservation and enforcement measures in 2010. The *Ontika* and the *Madrus* were inspected in NAFO Division 3M on January 28, 2010, and May 11, 2010, respectively. Inspectors alleged that both vessels mis-recorded catches in violation of Chapter III, Article 24.2, which requires vessels to record their catches on a daily basis. The EU disputed the finding with respect to the *Ontika*, which has been inspected many times since without any problems detected. The EU confirmed the infringement by the *Madrus*; according to the August 2010 infringement report, the case is pending. Given the dispute over the *Ontika*'s activity and its clean record during repeat inspections, Estonia has only one vessel that could potentially be used as the basis for an identification. Therefore, Estonia is not being identified as a nation with vessels engaged in IUU fishing.

**Georgia.**<sup>31</sup> Two vessels currently flagged to Georgia were reviewed with regard to WCPFC and IATTC violations. The *Fu Lien No. 1* was boarded on August 7, 2009, in Pago Pago, American Samoa, and determined to be a vessel without nationality fishing on the high seas in the WCPFC Convention Area in 2008 and 2009. Since the vessel was stateless and was not flagged to Georgia during the time of the alleged IUU activity, this vessel was removed from consideration as a potential basis for the identification of Georgia. The vessel will be added to the 2011 WCPFC IUU vessel list. The *Neptune* was recently included on the IATTC IUU vessel list for fishing without authorization in 2009. It was also added to the WCPFC IUU vessel list.

Given that Georgia only had one vessel engaged in IUU fishing activities during the reporting period, Georgia is not being identified as a nation with vessels engaged in IUU fishing.

**Morocco.**<sup>32</sup> At the 2008 ICCAT meeting, Morocco confirmed that it would need three more years for conversion of its driftnet fleet to alternative fishing gear. At the 2009 ICCAT meeting, it came to light that Morocco had made little progress on its plan to phase out driftnets. In the 2010 ICCAT Letter of Identification issued March 4, 2010, the Compliance Committee noted concern regarding the continued use of driftnets contrary to Recommendation 03-04.

Morocco recently made strides in eliminating driftnets from its waters. The Kingdom of Morocco prohibited driftnets in Law No. 19-07 on August 2, 2010. Morocco made a commitment to eliminate all driftnets by January 1, 2012, and impose sanctions for any violations.

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<sup>30</sup> The sources of information about Estonia's fishing activities are NAFO's STACTIC Working Paper 10/1 (Revised), 32<sup>nd</sup> Annual Meeting – September 2010, and personal communication with NAFO staff, November 5, 2010.

<sup>31</sup> U.S. Submission to 2010 WCPFC Draft IUU Vessel List, *Fu Lien No. 1*.

<sup>32</sup> The sources of information about Moroccan fishing activities are ICCAT Letter of Identification to Morocco, March 4, 2010; ICCAT Circular 3492/2010, August 25, 2010; and ICCAT Circular 3541/2010, September 1, 2010.

During a meeting between the United States and Morocco in October 2010, Moroccan officials explained that their program to eliminate driftnets is being financed at 130 million Dirham, and will take into account the social and environmental aspects of the elimination of driftnets. Under Morocco's plan to eliminate driftnets, vessel owners will have two options through a government buyout program: sell their nets to the government, which will destroy them; or leave the fishery completely, in which case the government will destroy the nets and vessels. Key challenges are destruction and disposal of the driftnets and training for fishermen who choose to shift from using driftnets to alternative fishing gear. Morocco stated that additional funding will be needed to make this program successful. The U.S. Government has engaged in discussions with Morocco on how to make the transition from driftnets to buoy gear and will provide assistance in early 2011.

Based on Morocco's actions to address driftnet use by its vessels, Morocco is not being identified as a nation with vessels engaged in IUU fishing. However, NMFS will be carefully monitoring Morocco's progress in eliminating driftnet use, and encourages the Government of Morocco to expeditiously eliminate the use of driftnets and continue the transition of its fishing fleet to alternative gear types.

**Philippines.**<sup>33</sup> NMFS reviewed two vessels flagged to the Philippines for WCPFC violations. On August 20, 2010, the purse seiner *Lorna No. 3* and its carrier vessel, the *Mark Anthony 1*, were allegedly engaged in several violations when they were boarded by the U.S. Coast Guard in the WCPFC Convention Area. Specifically, these vessels were not listed in the WCPFC Record of Fishing Vessels, in violation of CMM 2009-01, and did not have an International Telecommunication Union Radio Call Sign, in apparent violation of CMM 2004-03, which specifies the marking and identification of vessels. Both vessels failed to maintain sufficient logbooks or have permits on board, in apparent violation of CMM 2006-08. In addition, these vessels allegedly transshipped on the high seas in violation of CMM 2009-06 and failed to have VMS on board in violation of CMM 2007-02.

In its response to the U.S. outreach letter, the Philippines Bureau of Fisheries and Aquatic Resources explained that it treated the USCG notice as an Administrative Complaint for cancellation of the Commercial Fishing Vessel Licenses of the *Lorna No. 3* and the *Mark Anthony 1*. A notice was issued to the owner of these vessels on August 31, 2010. Philippine authorities stated that the licenses for these vessels were canceled, the gravest administrative penalty available under the Philippine legal system, and the vessel owner was ordered to cease operation of the vessels as of December 2, 2010.

Since the Philippines took action to address these activities, it is not being identified as a nation with vessels engaged in IUU fishing.

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<sup>33</sup> The sources of information on Philippine fishing activities are USCG letter to the Assistant Director, Bureau of Fisheries and Aquatic Resources, Department of Agriculture, August 20, 2010, regarding the *Lorna No. 3* and the *Mark Anthony No. 1*; letter from Malcolm I. Sarmiento, Jr. to Rebecca Lent, November 5, 2010; and Philippines Bureau of Fisheries and Aquatic Resources, Admin. Case No. 10-056, For: Cancellation of CFVL.

**Republic of Korea.**<sup>34</sup> NMFS reviewed the activities of three Korean vessels for potential ICCAT and WCPFC violations. Two vessels, the *Oryong 371* and the *Oryong 373*, entered a South African port on March 22, 2009; inspectors from the South African Department of Environmental Affairs and Tourism found undeclared shark fin on board, in violation of ICCAT Recommendation 04-10. The *Oryong 371* had 667 kg of undeclared shark fin, while the *Oryong 373* offloaded 389 kg of shark fin, but no shark carcasses. In both cases, the vessels' undeclared catch was confiscated and the vessels were sentenced to a fine of 500,000 South African rands or five years imprisonment. Initially, the press release from South Africa indicated that the vessels had violated ICCAT and IOTC shark finning measures, presumably for landing shark fins without shark carcasses. South Korea refuted the charges that the vessels had violated the shark measures, and provided a detailed summary of the vessels' activities to back up the claim that the requisite shark-to-fin ratio had been maintained through the first point of landing. In addition, a letter from South Africa to South Korea regarding the incidents confirmed that the violations and fines imposed by South Africa were based on mis-declaration and under-declaration of the products on board the two vessels, not for violations of ICCAT's or any other RFMO's shark finning measures. In bilateral discussions in November 2010, South African officials stated that the mention of shark finning violations in the original press release was an error, and confirmed that the sanctions imposed by their authorities were sufficient and that no further consideration by RFMOs was needed.

In a separate review, the *Oryong 371*, which is on the ICCAT, WCPFC, and IATTC vessel registries, was found to have been suspended from the South Korean Register in May 2010, but subsequently reinstated two months later. Korean officials explained that the vessel had failed to complete a regularly scheduled vessel class survey, but was reinstated once the survey had been done.

The USCG boarded the third vessel, the *Oyang No. 371*, a tuna longliner flagged to South Korea, on June 2, 2010, and found a violation of WCPFC CMM 2007-02 for failure to communicate VMS data. In response to the U.S. inquiry into this matter, South Korea reported that the vessel had a second form of VMS operating during the time of the inspection and that Korean officials were monitoring the vessel through that system. Furthermore, South Korea had not been alerted to the VMS failure by the WCPFC, and was only made aware of the problem on the day of the inspection by e-mail from the USCG.

Since South Korea provided sufficient information to refute allegations of vessels engaged in shark finning or otherwise in violation of RFMO requirements, it is not being identified as a nation with vessels engaged in IUU fishing.

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<sup>34</sup> The sources of information about Korean fishing activities are the South Africa Department of Environmental Affairs and Tourism, April 29, 2009; <http://www.info.gov.za/speeches/2009/09050410151001.htm>; letter from Jang Woo Seo to Rebecca Lent, November 16, 2010; letter from South Africa to Korea explaining penalties imposed on the South Korean vessels, July 28, 2010; South Korean Register Class Suspensions/Withdrawals/Reinstatements, <http://www.krs.co.kr/kor/technical/Suspensions/Suspensions.aspx>; accessed September 20, 2010; and USCG reporting.

**Spain.**<sup>35</sup> Four Spanish-flagged vessels committed violations of NAFO and WCPFC measures in 2009 and 2010, for which they were later sanctioned. The *Rio Caxil* was inspected on August 3, 2009, in the NAFO Regulatory Area, and on August 14, 2009, in port, and found to have three apparent infringements of NAFO conservation and enforcement measures: failure to accurately record catches on a daily basis (Chapter III, Article 24.2); failure to facilitate the work of the inspector (Chapter IV, Article 34.1); and failure to maintain an accurate stowage plan showing the location and quantities of different species in the holds (Chapter III, Article 24.5). The *Rio Caxil* was convicted and fined, but the case is under appeal. The *Rio Caxil* was also inspected in port on June 24, 2010, and found to be mis-recording catches, an infringement of Chapter III, Article 24.2. The case is pending.

The *Pescaberbes Dos* was inspected twice in February 2009 in the NAFO Regulatory Area and once in March 2009 in port with three apparent infringements of NAFO conservation and enforcement measures: having an improper stowage plan showing the location and quantities of different species in the holds (Chapter III, Article 24.6); retrieving the net without waiting the required 30 minutes after receiving notification of boarding (Chapter IV, Article 33.3); and failing to accurately record the area fished (Chapter III, Article 24.2). The *Pescaberbes Dos* was convicted and fined for the 2009 infringements and for infringements documented in February 2008.

The *Patricia Sotelo* was inspected in port on June 28, 2010, and found to be mis-recording catches in violation of a NAFO measure (Chapter IV, Article 36.1). The vessel was ordered to pay €50,000. The case is under appeal.

NOAA enforcement agents inspected the *Albacora Uno* while docked in Pago Pago, American Samoa, in March 2010. The vessel's logbook revealed deployment of 67 FADs in the U.S. EEZ in the western and central Pacific Ocean from November 2007 to October 2009 without a valid U.S. permit, violating rule 3b of CMM 2007-03 establishing the WCPFC IUU vessel list. Forty-six of the FADs were placed within the reporting period. In June 2010, a Notice of Violation and Assessment of Civil Penalty was issued by the U.S. Department of Commerce to the owner of the vessel in the amount of \$7.4 million. The United States also nominated the vessel for the 2010 WCPFC Draft IUU vessel list. The Spanish administration conducted its own investigation and concluded that the vessel did conduct IUU activities. In response to this finding, the captains of the vessel were fired. Following a \$5 million civil penalty settlement agreement, the United States withdrew its nomination of the *Albacora Uno* from the WCPFC 2010 draft IUU vessel list.

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<sup>35</sup> The sources of information on Spanish fishing activities are NAFO's STACTIC Working Paper 10/1 (Revised), 32<sup>nd</sup> Annual Meeting – September 2010; U.S. Submission to 2010 WCPFC Draft IUU Vessel List, F/V *Albacora Uno*; Note Verbale from DG MARE/B1 regarding Transmission of Correspondence, July 19, 2010; NOAA press release, \$5M Settlement Boosts Marine Conservation Plans in the Pacific, July 7, 2010; and letter from Charles Karnella to the WCPFC Acting Executive Director, August 12, 2010.

Since the Government of Spain took action to address the IUU fishing activities of its vessels and NMFS is aware of only one incident (which is pending further action), Spain is not being identified as a nation with vessels engaged in IUU fishing.

**Taiwan.**<sup>36</sup> NMFS reviewed the activities of two vessels flagged to Taiwan. The first vessel, the *Yu Fong 168*, was fishing illegally in the WCPFC Convention Area, and subsequently placed on the WCPFC IUU vessel list. The Republic of the Marshall Islands nominated this vessel for the IUU vessel list because it had fished in January 2009 inside the Marshall Islands' EEZ, in violation of CMM 2009-01. According to James Sha, Director General of the Taiwan Fisheries Agency, Taiwan does not know the location of the vessel, as it ignored Taiwan's instruction to return to port for investigation. Taiwan revoked both the vessel's fishing license, which is connected to the vessel owner, and the skipper's certificate. In addition, Taiwan requested that the vessel be added to the WCPFC IUU vessel list and requested assistance from WCPFC members in locating the vessel.

South African authorities identified and fined the second vessel, the *Chien Jiu 102*, for violating ICCAT's shark finning measures. The vessel had been seized at Cape Town harbor after entering the South African EEZ in March 2009. South African inspectors found the ratio of fins to the weight of sharks on board was in excess of the 5 percent limit allowed by ICCAT Recommendation 04-10 and in excess of the terms of the vessel's permit. The inspectors confiscated more than 1.6 tons of dried shark fins and 5.1 tons of shark carcasses. Taiwan suspended the vessel's fishing license for three months and the professional certificate of the skipper for one year. The combination of the suspension of the vessel's fishing license by Taiwan and a 1.5 million rand fine imposed by the South African authorities demonstrates to NMFS that sufficient action has been taken to deter the vessel from engaging in shark finning practices in the future. In addition, Taiwan's shark finning regulations appear to be consistent with the ICCAT recommendation.

Taiwan provided information demonstrating corrective action taken on the alleged infractions; therefore, Taiwan is not being identified for having vessels engaged in IUU fishing activity.

**Togo.**<sup>37</sup> NMFS examined the fishing activities of three Togolese-flagged vessels on the CCAMLR IUU vessel list. The *Typhoon I* was reported to have been sighted fishing inside CCAMLR Division 58.4.2 on January 25, 2010. This vessel was also sighted inside CCAMLR Division 58.4.3b on May 3, 2009, and on December 4 and 7, 2009. The *Bigaro* was sighted fishing in CCAMLR Division 58.4.1 on June 8, 2010. The *Carmela* was sighted in CCAMLR Statistical Sub-area 88.2 on December 16, 2009.

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<sup>36</sup> The sources of information on these two vessels are WCPFC Sixth Regular Session Summary Report Final, December 2009; Department of Environmental Affairs and Tourism, April 6, 2009, <http://www.info.gov.za/speeches/2009/09040615451002.htm>; and letter from James Sha to Rebecca Lent, November 12, 2010.

<sup>37</sup> The sources of information about Togo-flagged vessels are CCAMLR COMM CIRC 10/11, 09/78, 09/137, 10/72, and 09/143; and letter from Kossi Messan Ewovor to Rebecca Lent, November 25, 2010.

Documentation from CCAMLR indicated that the Republic of Togo issued certificates of deletion for these vessels from the Togolese vessel register following diplomatic demarches by the EU delegation in Lomé. In correspondence to the United States, the Government of Togo confirmed that it had issued certificates of deletion for these vessels, they are no longer allowed to operate under the flag of Togo, and the vessel owners will not be permitted to register other vessels in Togo.

Since action was taken to address the illegal fishing activities of these Togolese-flagged vessels, Togo is not being identified as a nation with vessels engaged in IUU fishing activity. However, NMFS has concerns about deregistering vessels to address IUU fishing activity in lieu of other sanctions. NMFS believes the United States should encourage the Government of Togo to take actions to prevent, deter, and eliminate IUU fishing, while maintaining control of, and continuing to monitor, its vessels. NMFS also believes the United States should encourage the Government of Togo to verify that vessels are not listed on RFMO IUU vessel lists before they are permitted to operate under Togo's flag.

**Turkey.**<sup>38</sup> The ICCAT Compliance Committee reviewed evidence of recent driftnet use by Turkish vessels in potential violation of ICCAT Recommendation 03-04. The allegation appears to stem from an Oceana letter to the ICCAT Executive Secretary, in which Oceana asserts that driftnet fishing activity was discovered on May 31, 2009, in the port of Alanya. Oceana supplied photos of five vessels with driftnet gear on board. The vessels were the *Bayrum Reis*, the *Kibar*, the *Aclama*, the *Nuri Baba*, and the *Haci Osman Reis 3*. Turkey carried out an investigation in response to the Oceana information, but did not detect driftnet fishing activity or nets, nor observe these vessels using driftnets for large pelagic species.

With regard to the driftnet violations, Turkey advised that it is illegal to use driftnets due to Recommendation 2005/3 of the General Fisheries Commission for the Mediterranean, of which Turkey is a member. Turkey's Ministry of Agriculture and Rural Affairs reported that approximately 150 vessels still use this type of net for swordfish and albacore. Turkish authorities carry out inspections (more than 26,000 in 2009), resulting in 383 penalties in the first half of 2009.

New driftnets may not be produced according to Notification 2/1 Regulating Commercial Fishing, published July 10, 2010. This rule allows fishermen to modify their nets if they experienced a loss due to the absence of a transition period. After July 1, 2011, however, use of all modified driftnets is prohibited. Turkish officials will be working to implement that prohibition, and will also provide loan and grant support to encourage fishermen to adopt alternative fishing methods. The U.S. Government will be providing assistance to Turkey on how to make the transition from driftnets to buoy gear in early 2011.

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<sup>38</sup> The sources of information on Turkish fishing activities are ICCAT Letter of Identification, March 4, 2010; Oceana letter to the ICCAT Executive Secretary, July 10, 2009, compiled within package "Information Submitted by Oceana in Accordance with Rec. 08-09," Doc. No. COC-307/2009, October 30, 2009; letter received by the ICCAT Executive Secretary from the Republic of Turkey's Ministry of Agriculture and Rural Affairs, ICCAT Doc. No. COC-307/2009, October 13, 2009; and ICCAT Circular #3225/2010, August 3, 2010.

Based on the actions taken by Turkey to address the IUU fishing activities of its vessels, Turkey is not being identified as a nation with vessels engaged in IUU fishing. However, NMFS will be carefully monitoring Turkey's progress in eliminating driftnet use by their vessels and encourages the Government of Turkey to expeditiously eliminate the use of driftnets and continue the transition of its fishing fleet to alternative gear types.

## 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 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 161 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 conservation and management measures established by that RFMO to its fishing vessels, and other similar requirements. The 1995 agreement, which entered into force in 2001, now has 78 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 (IWC). The IWC was established under the International Convention for the Regulation of Whaling (ICRW) in 1946, with the purpose of providing for

the proper conservation and management of whale stocks. It currently has 88 parties, including the United States.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). 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 175 parties, including the United States.

Agreement on the Conservation of Albatrosses and Petrels (ACAP). ACAP is one of six agreements established under the Convention on Migratory Species, and has 13 parties. ACAP’s purpose is to enhance the understanding of the conservation status of albatrosses and petrels and their susceptibility to a range of threats at sea and on land, as well as to provide an effective means of mitigating those threats. In 2008 President Bush submitted ACAP to the Senate for its advice and consent to accession; draft implementing legislation was submitted to Congress in early 2009. Although not yet a party, 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.

## **Atlantic**

International Commission for the Conservation of Atlantic Tunas (ICCAT). 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 four cooperating non-parties or fishing entities.

North Atlantic Salmon Conservation Organization (NASCO). NASCO has jurisdiction over salmon stocks that migrate beyond areas of coastal State fisheries jurisdiction in the Atlantic Ocean north of 36° N throughout their migratory range. It has six parties: Canada, Denmark (for Faroe Islands and Greenland), the European Union, Norway, the Russian Federation, and the United States. Iceland withdrew from NASCO at the end of 2009 because of financial considerations, but has indicated that it intends to re-accede to the Convention when the economic situation improves.

Northwest Atlantic Fisheries Organization (NAFO). 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 (SEAFO). 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. The United States was involved in

negotiation of SEAFO to promote incorporation of the principles of UNFSA. The United States signed the Convention, but is not a party because no U.S. vessels fish in the area. There are currently six parties.

## **Pacific**

Western and Central Pacific Fisheries Commission (WCPFC). 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 seven cooperating non-members.

South Pacific Regional Fisheries Management Organization (SPRFMO). Negotiation of the Convention on the Conservation and Management of the High Seas Fishery Resources of the South Pacific Ocean concluded in November 2009. The Convention will enter into force according to a formula involving eight to ten States and entities. Participants are engaged in a Preparatory Conference phase to develop the administrative framework for the organization that will be established once the treaty comes into force, such as rules of procedure and financial regulations.

South Pacific Tuna Treaty (SPTT). 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 (FFA), comprised of the 16 Pacific Island parties.

Inter-American Tropical Tuna Commission (IATTC). The IATTC manages tunas and other species taken by tuna-fishing vessels in the Eastern Pacific Ocean. It has 20 members, including the United States, plus two cooperating non-members.

Agreement on the International Dolphin Conservation Program (AIDCP). This agreement establishes legally binding mechanisms to reduce incidental dolphin mortality in the tuna purse seine fishery in the Eastern Pacific Ocean to levels approaching zero. The agreement has 13 parties, including the United States, plus two nations that apply the Agreement provisionally.

North Pacific Anadromous Fish Commission (NPAFC). 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: Canada, Japan, the Republic of Korea, the Russian Federation, and the United States.

Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (CCBSP). 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: Japan, the People’s Republic of China, the Republic of Korea, Poland, the Russian Federation, and the United States.

Pacific Salmon Convention (PSC). 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 country that are subject to interception by the other, salmon that affect the management of the other country's salmon, and salmon that biologically affect the stocks of the other country.

International Pacific Halibut Commission (IPHC). Established by a 1923 Convention between the United States and Canada, the mandate of the IPHC covers research on and management of the stocks of Pacific halibut within Convention waters of both countries. The Commission consists of three government-appointed commissioners for each country.

## **Southern Ocean**

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). Apart from seals south of 60° S and whales, CCAMLR applies to all marine living resources between the Antarctic continent in the south and the Antarctic Polar Front in the north (varying between 45° S and 60° S). CCAMLR coordinates with the Antarctic Treaty's Committee for Environmental Protection, including with respect to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty, "Conservation of Antarctic Fauna and Flora." CCAMLR has 25 contracting parties, including the United States.

Convention for the Conservation of Antarctic Seals (CCAS). 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 16 parties, including the United States.

## **Western Hemisphere**

Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). 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 (IOSEA). This MOU operates as a non-binding agreement under Article IV of the Convention on Migratory Species (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. It encourages parties to take measures to prevent bycatch of sea turtles, but without specifying gear types or particular actions. The MOU has 32 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 (MSRA). 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 amends 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. The MSRA is the only U.S. law that speaks specifically to IUU fishing. However, it does not represent the first or only attempt by the U.S. Congress to enact laws aimed at stopping fishing activity that compromises the effectiveness of domestic and international conservation regimes.

Magnuson-Stevens Fishery Conservation and Management Act. The Magnuson-Stevens Act, originally enacted in 1976, is the foundational legislation for conservation and management of fisheries within the U.S. Exclusive Economic Zone. 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 laws and regulations governing both domestic and foreign fishing within the EEZ.

Lacey Act. The Lacey Act, 16 U.S.C. 3371-3378, prohibits the import, export, transport, sale, possession, or transactions in interstate or foreign commerce 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 two-part prohibition requires evidence of a violation of domestic or foreign law, and also evidence of trafficking. The law has been used extensively in a variety of wildlife resource cases. NMFS has used it to prosecute foreign individuals who import illegal catch, such as tuna caught without authorization in another country’s EEZ. The Act has been described as one of the United States’ primary laws directly targeting illicit interstate or foreign trade in illegally taken species, and has served as a model for other countries in developing laws targeted on wildlife trafficking.

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. The Packwood-Magnuson

Amendment added a sanction on certified nations of a 50 percent reduction in their allocation of fish from the U.S. EEZ. The amendment also made the imposition of sanctions mandatory where a certification of “diminishing the effectiveness” of the ICRW was made.

High Seas Fishing Compliance Act (HSFCA). The HSFCA, 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 conservation and management measures.

Marine Mammal Protection Act (MMPA). 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. MMPA section 101 requires NMFS to allow the taking of marine mammals from species or stocks listed as threatened or endangered under the ESA incidental to commercial fishing operations if NMFS determines that incidental mortality and serious injury will have a negligible impact on the affected species or stock, and that applicable requirements for a recovery plan, monitoring program, and take reduction program have been met. Section 118 governs the incidental taking of all non-depleted marine mammals in the course of U.S. commercial fishing operations. 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.

International Dolphin Conservation Program Act (IDCP). 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 IDCP and is a member (or applicant member) of the IATTC, is meeting its obligations under the IDCP and the IATTC, and does not exceed certain dolphin mortality limits.

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 Driftnet Fishing Moratorium Protection Act. This Act, 16 U.S.C. 1826d-1826g, 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 amended this Act, adding specific authorities and responsibilities to assist in reducing or eliminating IUU fishing and bycatch of PLMRs.

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

requirements on an annual basis. For that purpose, DOS and NMFS experts verify that foreign governments effectively enforce their sea turtle conservation laws for those fisheries and that their national shrimp trawl fleets adequately use TEDs or other comparably effective measures.

Endangered Species Act (ESA). 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. Protective regulations against taking may also be applied to threatened species. Critical habitat is designated for listed species to provide additional protections. In addition, recovery plans are developed to provide a roadmap for the species’ recovery. The Act also provides for U.S. implementation of limitations on trade of species listed under CITES.

Whaling Convention Act. This Act, 16 U.S.C. 916 *et seq.*, authorizes the Secretary of Commerce to enforce the provisions of the ICRW.

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 done (see text of report).

### **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 or U.S. assistance with another nation’s investigation of a fisheries violation. NOAA Enforcement, USCG, and the U.S. Department of Justice are actively engaged around the country and overseas in the monitoring and inspection of fishing activity for a number of ecologically and economically valuable marine species. During the period of January 1, 2009, to the present, OLE initiated more than 250 investigations related to alleged violations of marine resource laws with an international nexus. 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 are outlined below:

- A Florida corporation pled guilty in U.S. District Court in Miami to charges related to the attempted import into the United States of approximately 96,984 kg of frozen toothfish, with a declared wholesale value of approximately \$ 1.2 million, in violation of the Antarctic Marine Living Resources Convention Act and the Lacey Act. Sentencing is set for January 2011. In a parallel civil forfeiture action, the company agreed to forfeiture of the toothfish, the value of the toothfish, or proceeds of the sale of the toothfish to the United States. Patagonian toothfish is very vulnerable to IUU fishing because it is primarily located in remote areas of the Southern Ocean surrounding Antarctica, where monitoring and surveillance are difficult.

- The former CEO of a U.S. seafood corporation was sentenced to 22 months in prison for importing falsely labeled fish from Vietnam and evading more than \$60 million in Federal tariffs, as well as selling more than \$500,000 in similarly misbranded fish purchased from another importer. He admitted that, from 2004 to 2006, he participated in a scheme to evade the applicable anti-dumping duties, by fraudulently identifying Vietnamese catfish as “grouper” on commercial contracts, purchase orders, and other documents because grouper was not subject to any anti-dumping duties.
- A U.S. judge in the Virgin Islands sentenced two Taiwanese nationals to prison for conspiracy to ship internationally protected black coral into the United States in violation of Federal wildlife statutes. One subject was sentenced to serve 30 months in prison and pay a \$12,500 fine; a second was sentenced to serve 20 months in prison and pay a \$12,500 fine. The court also prohibited both from shipping any coral or other wildlife products to the United States for a three-year period following their release from prison. These sentences are the longest prison sentences for illegal trade in coral to date.
- Six U.S. purse seine vessels were charged in late September 2010 with fishing on or deploying fish aggregating devices (FADs) during a 2009 FAD closure mandated under the Western and Central Pacific Fisheries Convention Implementation Act regulations. The FAD closure was one aspect of a conservation and management measure adopted by the WCPFC in 2008 in an effort to reduce catch of bigeye and yellowfin tuna in the region. A seventh vessel was charged in June with violations of the same regulations. The cases were documented by FFA observers who are deployed on U.S. purse seine vessels and assisted by OLE. A Notice of Violation and Assessment of civil penalty was issued in each case by NOAA’s Office of General Counsel.
- OLE conducted an investigation into 700 cases of canned fish that were labeled as bluefin tuna and bonito from a Peruvian cannery. The shipment drew attention because the company claimed that 550 of the cases contained bluefin tuna, but it had failed to file certificates of origin. Imports of yellowfin tuna from Peru are subject to an embargo because Peru has failed to certify to NOAA that tuna are harvested in a dolphin-safe manner. Lab results identified the species as tuna, not bonito. The mislabeled product was abandoned and donated to a food bank.
- After two years of pre-trial litigation, a case involving a September 2006 illegal fishing incursion into the EEZ of the United States adjacent to Howland and Baker Islands was settled on June 2, 2009. Under the terms of the settlement, the vessel owner will pay a \$500,000 fine and, in cooperation with the flag State (Republic of the Marshall Islands), will provide near real-time VMS data for the vessel to NOAA for three years. The vessel will also participate in NOAA's Global Drifter Program by deploying drifter data buoys on each of its fishing trips for the next five years. This is the first time participation in thus program has been used as part of a settlement in a NOAA enforcement action.
- An administrative law judge upheld NOAA's \$130,000 assessed penalty and five-year permit denial sanction against a Mexican company whose fishing boat was found with its

fishing gear deployed inside the U.S. EEZ without authorization. NOAA was successful in arguing the importance of assessing the maximum available penalty to deter other vessels from attempting to fish over the EEZ line in hopes of large profits.

- In February 2009, NOAA assessed civil penalties of \$130,000 to each of the owners of three Taiwanese vessels documented by the USCG actively fishing in the U.S. EEZ around the Commonwealth of the Northern Mariana Islands. All three cases have since been settled, with each vessel agreeing to pay a civil penalty and to allow the United States to monitor their vessels using VMS for a period of two years.
- On 29 April 2010, during an IUU patrol in the High Seas Driftnet high threat area, a USCG C-130 sighted a suspected HSDN vessel actively working a large-scale pelagic driftnet that measured nearly five nautical miles in length. The C-130 crew sighted what appeared to be salmon on the deck of the vessel. The vessel was subsequently determined to be a Cambodian-flagged vessel.
- A Spanish-flagged purse seine vessel was charged with 67 counts of fishing inside the U.S. EEZ in the western and central Pacific Ocean from November 2007 through October 2009. The vessel deployed 67 FADs inside the U.S. EEZ in violation of the MSA. On June 2, 2010, NOAA assessed a civil penalty of \$7,437,000; the case settled for \$5 million. The terms of the agreement also require the company to develop and implement a company-wide monitoring program to ensure future compliance by its vessels, and prohibited the vessel from entering U.S. waters, even for transit purposes, for a period of two years.
- In 2009, OLE agents traveled to Tanzania to assist in the investigation of a foreign fishing vessel suspected of fishing illegally in Tanzanian waters. This is the first fisheries case of its kind in Tanzania. Thirty-five crew members have been in prison since March 2009. The agents assisted in confirming that the vessel fished in the Tanzanian EEZ without authorization, helped determine the true owner of the vessel, and served as technical advisers by assisting in the preparation of the case against the vessel operators.
- A Taiwanese vessel was detected illegally fishing within the U.S. EEZ in August 2009. The vessel was boarded and escorted to Saipan, where the owner ultimately agreed to pay a \$500,000 fine.
- After several years of unsuccessfully seeking the cooperation of the Government of Ecuador in the investigation into illegal fishing activities by Ecuadorian-flagged vessels, in February 2009, the United States assessed a civil penalty of \$780,000 against an Ecuadorian vessel for six counts of fishing illegally inside the U.S. EEZ around Howland/Baker and Jarvis Islands. The case was settled in March 2009 for \$650,000.
- In December 2009, the United States assessed a civil penalty of \$140,000 against a Taiwanese-flagged vessel that was documented by the U.S. Coast Guard fishing unlawfully inside the U.S. EEZ around the Northern Mariana Islands. The vessel owner admitted liability and paid the assessed penalty.

## Annex 3

### List of PLMRs for Purposes of the High Seas Driftnet Fishing Moratorium Protection Act

<u>Common Name</u>	<u>Scientific Name</u>
<b><i>Corals</i></b>	
Elkhorn	<i>Acropora palmata</i>
Staghorn	<i>Acropora cervicornis</i>
<b><i>Dolphins</i></b>	
Atlantic spotted	<i>Stenella frontalis</i>
Atlantic white-sided	<i>Lagenorhynchus acutus</i>
Clymene	<i>Stenella clymene</i>
Coastal spotted	<i>Stenella attenuata graffmani</i>
Common, long-beaked	<i>Delphinus capensis</i>
Common, short-beaked	<i>Delphinus delphis</i>
Eastern spinner	<i>Stenella longirostris orientalis</i>
Fraser's	<i>Lagenodelphis hosei</i>
Northeastern offshore spotted	<i>Stenella attenuata attenuata</i>
Northern right whale	<i>Lissodelphis borealis</i>
Pacific white-sided	<i>Lagenorhynchus obliquidens</i>
Pantropical spotted	<i>Stenella attenuata</i>
Risso's	<i>Grampus griseus</i>
Rough-toothed	<i>Steno bredanensis</i>
Spinner	<i>Stenella longirostris</i>
Striped	<i>Stenella coeruleoalba</i>
White-beaked	<i>Lagenorhynchus albirostris</i>
<b><i>Eels</i></b>	
European	<i>Anguilla anguilla</i>
<b><i>Porpoises</i></b>	
Dall's	<i>Phoenoides dalli</i>
Finless	<i>Neophocaena phocaenoides</i>
Harbor	<i>Phocoena phocoena</i>
<b><i>Sea Lions</i></b>	
California	<i>Zalophus californianus</i>
Steller	<i>Eumetopias jubatus</i>

**Common Name**

**Scientific Name**

***Sea Turtles***

Australian flatback  
Green  
Hawksbill  
Kemp's Ridley  
Leatherback  
Loggerhead  
Olive ridley

*Natator depressus*  
*Chelonia mydas*  
*Eretmochelys imbricata*  
*Lepidochelys kempii*  
*Dermochelys coriacea*  
*Caretta caretta*  
*Lepidochelys olivacea*

***Seals***

Antarctic fur  
Gray  
Guadalupe fur  
Harbor  
Hooded  
Juan Fernandez fur  
Northern elephant  
Saimaa

*Arctocephalus gazelle*  
*Halichoerus grypus*  
*Arctocephalus townsendi*  
*Phoca vitulina*  
*Crysthophora cristada*  
*Arctocephalus philippi*  
*Mirounga angustirostris*  
*Phoca hispida saimensis*

***Sharks***

Atlantic angel\*  
Atlantic sharpnose  
Basking\*  
Bigeye sand tiger\*  
Bigeye sixgill\*  
Bigeye thresher\*  
Bignose\*  
Blacktip  
Blue  
Bonnethead  
Bull  
Caribbean reef\*  
Caribbean sharpnose\*  
Crocodile  
Cuban dogfish  
Dusky\*  
Florida smoothhound  
Galapagos\*  
Great hammerhead  
Lemon  
Longfin mako\*  
Narrowtooth\*  
Night\*

*Squatina dumerili*  
*Rhizoprionodon terraenovae*  
*Cetorhinus maximus*  
*Odontaspis noronhai*  
*Hexanchus nakamurai*  
*Alopias superciliosus*  
*Carcharhinus altimus*  
*Carcharhinus limbatus*  
*Prionace glauca*  
*Sphyrna tiburo*  
*Carcharhinus leucas*  
*Carcharhinus perezii*  
*Rhizoprionodon porosus*  
*Pseudocarcharias kamoharai*  
*Squalus cubensis*  
*Carcharhinus obscurus*  
*Mustelus norrisi*  
*Carcharhinus galapagensis*  
*Sphyrna mokarran*  
*Negaprion brevirostris*  
*Isurus paucus*  
*Carcharhinus brachyurus*  
*Carcharhinus signatus*

**Common Name****Scientific Name**

Nurse	<i>Ginglymostoma cirratum</i>
Oceanic whitetip	<i>Carcharhinus longimanus</i>
Porbeagle	<i>Lamna nasus</i>
Salmon	<i>Lamna diptropis</i>
Sand tiger*	<i>Carcharias taurus</i>
Sandbar	<i>Carcharhinus plumbeus</i>
Scalloped hammerhead	<i>Sphyrna lewini</i>
Sevengill*	<i>Heptranchias perlo</i>
Shortfin mako	<i>Isurus oxyrinchus</i>
Silky	<i>Carcharhinus falciformis</i>
Sixgill*	<i>Hexanchus griseus</i>
Smooth dogfish	<i>Mustelus canis</i>
Smooth hammerhead	<i>Sphyrna zygaena</i>
Spinner	<i>Carcharhinus brevipinna</i>
Spiny dogfish	<i>Squalus acanthias</i>
Thresher	<i>Alopias vulpinus</i>
Tiger	<i>Galeocerdo cuvieri</i>
Tope, school, or soupfin	<i>Galeorhinus galeus</i>
Whale*	<i>Rhincodon typus</i>
White*	<i>Carcharodon carcharias</i>

\* Species whose retention is prohibited by NOAA regulations.

***Whales***

Antarctic minke	<i>Balaenoptera bonaerensis</i>
Beaked, Baird's	<i>Berardius bardii</i>
Beaked, Blainville's	<i>Mesoplodon densirostris</i>
Beaked, Cuvier's	<i>Ziphius cavirostris</i>
Beaked, Gervais'	<i>Mesoplodon europaeus</i>
Beaked, Longman's	<i>Indopacetus pacificus</i>
Beaked, Sowerby's	<i>Mesoplodon bidens</i>
Beaked, Stejneger's	<i>Mesoplodon stejnegeri</i>
Beaked, True's	<i>Mesoplodon mirus</i>
Beluga	<i>Delphinapterus leucas</i>
Blue	<i>Balaenoptera musculus</i>
Bowhead	<i>Balaena mysticetus</i>
Bryde's	<i>Balaenoptera edeni</i>
Common minke	<i>Balaenoptera acutorostrata</i>
Dwarf minke	<i>Balaenoptera acutorostrata subspecies</i>
Dwarf sperm	<i>Kogia sima</i>
False killer	<i>Pseudorca crassidens</i>
Fin	<i>Balaenoptera physalus</i>
Gray	<i>Eschrichtius robustus</i>
Humpback	<i>Megaptera novaeangliae</i>
Killer	<i>Orcinus orca</i>

**Common Name**

Melon-headed  
Northern Atlantic right  
Northern Bottlenose  
Northern Pacific right  
Pilot, long-finned  
Pilot, short-finned  
Pygmy killer  
Pygmy right  
Pygmy sperm  
Sei  
Southern bottlenose  
Southern right  
Sperm

***Walrus***

Walrus

**Scientific Name**

*Peponocephala electra*  
*Eubalaena glacialis*  
*Hyperoodon ampullatus*  
*Eubalaena japonica*  
*Globicephala melas*  
*Globicephala macrorhynchus*  
*Feresa attenuata*  
*Caperea marginata*  
*Kogia breviceps*  
*Balaenoptera borealis*  
*Hyperoodon planifrons*  
*Eubalaena australis*  
*Physeter macrocephalus*

*Odobenus rosmarus*

***Note: This list will be updated periodically, as needed.***

## Annex 4

### Seabird Bycatch Issues

Seabirds fall within the definition of international living marine resources under the MSRA. They are not included, however, in the definition of “protected living marine resources” under Section 610(e) of the Moratorium Protection Act (Section 403 of the MSRA). Section 116 of the MSRA 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. A thorough summary of the history of seabird bycatch in fisheries generally and for each RFMO was provided in the 2009 report, and is not repeated here.

The Agreement on the Conservation of Albatrosses and Petrels (ACAP) coordinates international activity to mitigate known threats to albatross and petrel populations. Although the United States is not yet a party to ACAP, the ACAP treaty was submitted to the U. S. Senate on September 26, 2008, for its advice and consent to accession, and draft implementing legislation was submitted to Congress January 16, 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 third Meeting of the Parties in April 2009, where it was agreed to add the three North Pacific albatross species to the list of species covered by the agreement: short-tailed albatross, Laysan albatross, and black-footed Albatross. One of the three species, the short-tailed albatross, is listed as endangered on the ESA and as vulnerable by the IUCN.

Several RFMOs have taken action concerning seabirds during the reporting period:

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 annually. Observed seabird bycatch in the Convention Area is near zero in the legal fishery outside of the French EEZ. Seabird bycatch in 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 related to IUU fishing due to a lack of information on the potential rate of interactions with IUU gillnet fisheries, now believed to be the primary gear used by IUU vessels in the Convention Area. The Scientific Committee, however, noted that penguins are potentially at risk of incidental captures in gillnets, depending on the depths and locations fished.

WCPFC. The Scientific Committee has undertaken extensive discussion on possible improvements to the seabird conservation and management measure (CMM 2007-04), and has recommended some changes and areas for additional research. Accordingly, in 2010 the WCPFC directed the Scientific Committee to review the latest information and provide advice on the efficacy of various methods of mitigating seabird mortality in longline fisheries, with the

aim of revising the measure in 2011 or soon thereafter.

IATTC. The Commission first adopted a seabird resolution in 2005 that recommended members collect data on seabird interactions and implement National and International Plans of Actions for Reducing Incidental Catches of Seabirds in Longline Fisheries, and that the Working Group on Stock Assessment present an assessment of the impact of the incidental catch of seabirds in the Eastern Pacific Ocean to the Commission. Since then, the United States, in cooperation with other parties, had worked to strengthen this resolution, as described in the 2009 report. A seabird measure proposed by the United States was close to adoption in 2009; however, it ultimately did not gain consensus for an unrelated reason. In 2010, a Recommendation on Seabird Mitigation Measures in the Longline Fishery was adopted. The measure is very similar to the 2009 U.S. proposal and to the WCPFC measure; however, an exemption for the Mexican EEZ was included.

ICCAT. ICCAT adopted a seabird resolution in 2002 (02-14) and in 2007 agreed on a binding seabird recommendation (07-07). In 2009, the SCRS Ecosystem Sub-Committee completed work on the first assessment of the impact on seabirds of fishing activities of all vessels fishing for tunas and tuna-like species in the Convention Area. In 2009, the Commission considered three competing proposals to revise the seabird resolution based on recommendations from the assessment. Consensus on changes to the resolution could not be reached.

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