2008 REPORT OF THE SECRETARY OF COMMERCE TO THE CONGRESS OF THE UNITED STATES CONCERNING

U.S. ACTIONS TAKEN ON FOREIGN LARGE-SCALE HIGH SEAS DRIFTNET FISHING

Compiled by the National Marine Fisheries Service
Pursuant to Section 206(E) of the
Magnuson-Stevens Fishery Conservation and Management Act,
as Amended by Public Law 104-297,
The Sustainable Fisheries Act of 1996

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INTRODUCTION

Public Law 101-627: The President signed Public Law 101-627, the Fishery Conservation Amendments of 1990, on 28 November 1990. Title I, Section 107, of the law amended Section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (hereafter referred to as the Magnuson-Stevens Act) (16 USC 1826) to incorporate and expand upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987.

Section 206(b) of the Magnuson-Stevens Act sets forth Congressional findings, including inter alia that "the continued widespread use of large-scale driftnets beyond the exclusive economic zone (EEZ) of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans." It also notes the expansion of large-scale driftnet fishing into other oceans and acknowledges the 30 June 1992 global driftnet moratorium called for by United Nations General Assembly (UNGA) Resolution 44/225. Finally, Section 206(b) recognizes the moratorium on the use of large-scale driftnets agreed through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention.

Section 206(c) sets forth Congress's driftnet policy, specifically that the United States should:

(1) implement the moratorium called for by UNGA Resolution 44/225;

(2) support the Tarawa Declaration and the Wellington Convention; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

Section 206(d) directs the Secretary of Commerce, through the Secretary of State and the Secretary of Homeland Security, to seek to secure international agreements to implement immediately the findings, policy, and provisions of Section 206, particularly the international ban on large-scale driftnet fishing.

Section 206(e) directs the Secretary of Commerce, after consultation with the Secretaries of State and Homeland Security, to submit to Congress no later than 1 January an annual report (1) describing the efforts made to carry out Section 206, especially subsection (c); (2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and plans for further action; (3) listing and describing any new high seas driftnet fisheries developed by nations that conduct or authorize their nationals to conduct large-scale high seas driftnet fishing; and (4) listing nations that conduct or authorize their nationals to conduct high seas driftnet fishing in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party. (The number of reporting requirements in Section 206(e) of Public Law 101-627 were reduced in 1996 to those above by Public Law 104-297, the Sustainable Fisheries Act.)

Finally, Section 206(f) provides that, if at any time the Secretary of Commerce, in consultation with the Secretaries of State and Homeland Security, identifies any nation that warrants inclusion in the list described in (4) above, the Secretary shall certify that fact to the President. This certification shall be deemed to be a certification for the purposes of Section 8(a) of the Fishermen's Protective Act of 1967 (22 USC 1978(a), as amended by Public Law 102-582), commonly referred to as the Pelly Amendment. Such a certification gives the President discretion to embargo products imported into the United States from that nation, so long as such action is consistent with U.S. obligations under the General Agreement on Tariffs and Trade.

Public Law 102-582: On 2 November 1992, the President signed Public Law 102-582, the High Seas Driftnet Fisheries Enforcement Act. Among other things, this Act is intended to enforce implementation of UNGA Resolution 46/215, which called for a worldwide driftnet moratorium beginning 31 December 1992. Once the Secretary of Commerce identifies a country as a nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the EEZ of any nation, pursuant to the Act, a chain of U.S. actions is triggered. The Secretary of the Treasury must deny entry of that country's large-scale driftnet vessels to U.S. ports and navigable waters. At the same time, the President is required to enter into consultations with the country within 30 days after the identification to obtain an agreement that will effect the immediate termination of high seas large-scale driftnetting by its vessels and nationals. If these consultations are not satisfactorily concluded within 90 days, the President must direct the Secretary of the Treasury to prohibit the importation into the United States of fish, fish products, and sport fishing equipment from the identified country. The Secretary of the Treasury is required to implement such prohibitions within 45 days of the President's direction.

If the above sanctions are insufficient to persuade the identified country to cease large-scale high seas driftnet fishing within six months, or if it retaliates against the United States during that time period as a result of the sanctions, the Secretary of Commerce is required to certify this fact to the President. Such a certification is deemed to be a certification under Section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a), as amended by Public Law 102-582).

Public Law 104-43: Public Law 104-43, the Fisheries Act of 1995, was enacted on 3 November 1995. Title VI of this law, the High Seas Driftnet Fishing Moratorium Protection Act, prohibits the United States, or any agency or official acting on behalf of the United States, from entering into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of UNGA Resolution 46/215. Title VI also charges the Secretary of State, on behalf of the United States, to seek to enhance the implementation and effectiveness of the UNGA resolutions and decisions regarding the large-scale high seas driftnet moratorium through appropriate international agreements and organizations. Finally, the act specifies that the President of the United States shall utilize appropriate assets of the Department of Defense, the U.S. Coast Guard (USCG), and other Federal agencies, to detect, monitor, and prevent violations of the UN large-scale high seas driftnet moratorium for all fisheries under the jurisdiction of the United States, and to the fullest extent permitted under international law for fisheries not under U.S. jurisdiction.

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, in consultation with the Department of State and the Department of Homeland Security, submits the following report for 2008 in fulfillment of the Section 206(e) reporting requirement. Information pertaining to U.S. actions in support of the Act prior to 2007 and after 1988 can be found in the 1990-2007 annual driftnet reports to the Congress available from NMFS. The reports for 2004-2007 are also on the NMFS website at http://www.nmfs.noaa.gov/ia/intlbycatch/rpts_driftnet_fishing.htm.

DESCRIPTION AND PROGRESS OF EFFORTS MADE TO CARRY OUT PROVISIONS OF SECTION 206(c) POLICY

Implementation of the Global Driftnet Moratorium called for by UNGA Resolutions 44/225, 45/197, and 46/215:

Current Status of the Driftnet Moratorium

As of 31 December 2008, the UNGA global moratorium on large-scale high seas driftnet fishing has been in effect for 16 years. International implementation of the moratorium in the world's oceans and enclosed and semi-enclosed seas continues to be generally successful, although problem areas remain. Of the two major problem areas in recent years, the North Pacific Ocean and the Mediterranean Sea, 24 vessels capable of conducting unauthorized large-scale high seas driftnet fishing operations were sighted[1] in the North Pacific Ocean in 2008. The United States is aware of two documented[2] driftnet vessel sightings on the high seas of the Mediterranean in 2008. Anecdotal information from nongovernmental organizations (NGOs) confirms that large-scale high seas driftnet fishing is occurring in the Mediterranean Sea.

North Pacific Ocean

Two large-scale driftnet fishing vessels were intercepted out of a total of 24 suspected driftnet vessels sighted operating on the high seas of the Northwestern Pacific Ocean by the international community in 2008. This is approximately one half of the number of sightings in 2007.

North Pacific Regional Driftnet Enforcement Coordination

North Pacific Anadromous Fish Commission (NPAFC): The NPAFC serves as a forum for promoting the conservation of anadromous stocks and ecologically-related species, including marine mammals, sea birds, and non-anadromous fish, in the high seas area of the North Pacific

[1] A number of these vessels were unidentified, raising the possibility of multiple sightings of the same vessel or vessels. For purposes of this report, only those vessels that were visually confirmed as driftnet-capable have been considered sightings.

[2] On a technical level, actions taken pursuant to the High Seas Driftnet Fisheries Enforcement Act are initiated by identifying countries whose nationals or vessels are conducting large-scale driftnet fishing beyond the EEZ of any nation. This is a difficult determination if reports of driftnet vessel sightings do not, at a minimum, include vessel names or registration numbers, exact locations, and estimations of the length of netting deployed.

Ocean. This area, as defined in the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (the Convention that established the NPAFC), is "the waters of the North Pacific Ocean and its adjacent seas, north of 33° North Latitude beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured." The members of the NPAFC are Canada, Japan, the Republic of Korea (Korea), the Russian Federation (Russia), and the United States.

In addition, the NPAFC serves as the venue for coordinating the collection, exchange, and analysis of scientific data regarding the above species within Convention waters. It also coordinates high seas fishery enforcement activities by member countries. The Convention prohibits directed fishing for salmonids and includes provisions to minimize the incidental take of salmonids in other fisheries in the Convention area. Although it does not specifically ban large-scale high seas driftnet fishing, fishing for salmonids on the high seas has historically been conducted in this manner. As a result, the NPAFC and its enforcement activities are primarily targeted against high seas driftnet fishing vessels. The members of the NPAFC jointly plan and coordinate their high seas enforcement operations in order to most efficiently utilize enforcement resources, but the operational capabilities of each member vary.

NPAFC Enforcement Evaluation and Coordination Meeting (EECM): Representatives of the NPAFC Parties met in Vancouver, B.C., Canada, on 27-28 February 2008, for the annual NPAFC EECM. The primary purpose of the EECM was to discuss the threat of illegal, unreported, and unregulated (IUU) fishing for salmon in the Convention Area and to formulate a joint enforcement plan for the 2008 fishing season. The meeting included updates by each Party on IUU activity in 2007, information on enforcement efforts to date in 2008, and coordination of enforcement plans and resources for the remainder of 2008. The USCG presented its 2008 threat assessment for the Convention Area. This presentation showed trends in high seas driftnet fishing activities, including fishing gear, deployment methods, and deceptive/defensive measures, and the potential for IUU fishing on salmon, squid, and albacore tuna. NMFS provided information on a pilot derelict and abandoned driftnet gear satellite tracking project for 2008. Parties also discussed the creation of an IUU vessel list and agreed that for the time being, such a list would only be used internally by the NPAFC Parties as an enforcement tool within the NPAFC Integrated Information System (IIS), a protected website developed by Russia to improve information sharing and coordination among the Parties.

A North Pacific IUU Tripartite Meeting was held on 28 February 2008 in Vancouver immediately following the EECM. The NPAFC Enforcement Committee, the Technical and Compliance Committee of the Western and Central Pacific Fisheries Commission (WCPFC), the Fisheries Working Group of the North Pacific Coast Guard Forum, which is comprised of all of the NPAFC Parties plus the People's Republic of China (PRC), and the International Monitoring Control and Surveillance Network were represented at the meeting. Although the NPAFC and the WCPFC differ in membership, monitoring, control, and surveillance provisions in their respective conventions, convention areas, and species of interest, they do have a strong common interest in protecting the natural marine resources of the Pacific Ocean and in combating IUU fishing. The geographic and water temperature range of their species of interest overlaps

convention areas, making the species subject to similar IUU activities in the North Pacific. Each organization provided information on membership, charter/mandate, convention geographical area, and monitoring and control activities and processes. Participants agreed on the value of holding regular Tripartite meetings in the future.

NPAFC Annual Meeting: The 16th Annual Meeting of the NPAFC was held in Seattle, Washington, on 17-21 November 2008. Enforcement officials of the Parties met under the auspices of the NPAFC Committee on Enforcement to review enforcement activities in 2008 and begin planning activities for 2009. Representatives of Taiwan observed the proceedings of the meeting.

As a result of the Parties' cooperative enforcement efforts in 2008, two large-scale high seas driftnet vessels were intercepted in the Convention Area. Neither of the two was found to have engaged in driftnet fishing for salmon. Sightings, boardings, and fishing vessel seizures from 2003-2008 indicate that the high seas driftnet threat in the North Pacific Ocean is shifting fishing effort from salmon to squid and albacore tuna. Of the 16 driftnet vessels intercepted since 2003, only two had salmon on board; the rest had squid, tuna, sharks, and other species. This shift could be attributed to depressed salmon markets, intense IUU surveillance of traditional salmon fishing grounds by North Pacific countries, or a combination of the two.

A total of 24 vessels suspected of high seas driftnet fishing were sighted in 2008. Fifty percent of these sightings occurred in the September-November time frame. Prior to 2005, the Parties concentrated most of their enforcement efforts in the summer months in the North Pacific Ocean. In 2005, however, Japan patrolled the far northwestern part of the Convention Area in the September-October timeframe and made 11 of the 18 total driftnet vessel sightings for that year. There is some uncertainty as to whether the increased number of sightings in 2006 and 2007 represented a real increase in the occurrence of large-scale high seas driftnet fishing in the North Pacific Ocean or whether enforcement efforts simply uncovered an existing IUU fishery. Given that the NPAFC Parties have been patrolling the North Pacific for IUU fishing since 1992, it is likely that the illegal driftnet fleet has learned when and where not to conduct fishing operations. Since Parties have focused enforcement efforts on the Northwest Pacific, the number of sightings has dropped significantly. IUU driftnet vessels may adapt by shifting effort geographically or spatially, but it is likely that they will continue to try to hide within the legitimate squid jigging fleet in the high threat area.

Although the NPAFC has successfully deterred high seas salmon fishing and served as a forum for joint enforcement planning and coordination in the NPAFC Convention Area, it has limited enforcement authority against non-salmon non-Party high seas driftnet fishing threats. Because of the different target species and vessel flags involved, the NPAFC will continue to work multilaterally through enforcement and diplomatic channels to bring pressure on these driftnet fishing vessels and their flag states to end operations in the North Pacific. The NPAFC intends to invite the PRC, Indonesia, Malaysia, Thailand, and Taiwan to send representatives as observers to the NPAFC 17th Annual Meeting in Niigata, Japan, in fall 2009.

Because the North Pacific illegal driftnet fleet is operating in the part of the NPAFC Convention Area that is partially overlapped by the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area, and targeting species of interest to that Commission, the NPAFC is interested in coordinating with the WCPFC to eliminate the illegal fishing. To that end, the NPAFC will ask the WCPFC to invite a representative of the NPAFC to participate in future WCPFC enforcement meetings on a regular basis.

NPAFC Parties agreed to maintain 2009 enforcement efforts at levels similar to 2008 in light of the continuing threat of unauthorized high seas salmon fishing in the Convention Area. To coordinate enforcement efforts, the Parties agreed to hold the annual EECM in Fukuoka, Japan, from 23-25 February 2009.

A summary of high seas driftnet vessel sightings and apprehensions by North Pacific nations from 1998 to 2008 is provided in Table 1.

Table 1. North Pacific high seas driftnet vessel sightings and interceptions from 1998-2008.

Country	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Canada	0	3	3	0	0	1	2	1	26	9	7
Japan	0	2	0	0	3	0	1	17	67	21	5
Russia	0	1	0	0	0	0	0	0	0	2	0
China	0	0	0	0	0	0	11	0	0	0	0
Taiwan	2	3	0	0	0	0	0	1	0	7	2
United States	8	2	1	0	2	24	8	5	5	8	10
Total Sightings*	**10**	**11**	**4**	**0**	**5**	**25**	**22**	**24**	**98**	**47**	**24**
Apprehended**	**4**	**3**	**1**	**0**	**0**	**6**	**1**	**0**	**0**	**7**	**2**

* May include multiple sightings of the same vessel or vessels.
** Out of the total number of vessels sighted.

U.S. Driftnet Enforcement Efforts

Patrol efforts. The USCG patrolled high threat areas in the North Pacific in support of the U.S. High Seas Driftnet Fisheries Enforcement Act, NPAFC initiatives, and to monitor compliance with the UN high seas global driftnet fishing moratorium. Operation North Pacific Watch 2008, the USCG's North Pacific high seas fisheries enforcement plan, began in July 2008 with the patrol of the USCG Cutter *MUNRO*. *MUNRO* spent approximately 72 days in the NPAFC Convention Area, made port calls in Korea and Japan, and embarked PRC FLEC officers.

Coast Guard cutter patrols were augmented with USCG HC-130 aircraft deployments throughout the summer and fall to Shemya Island, Alaska, and Midway Island in July, September, and October. USCG aircraft flew a total of 115 surveillance hours and USCG cutters dedicated a combined total of 97 days (72 patrol days in the NPAFC Convention Area) in direct support of Operation North Pacific Watch.

The Japan Coast Guard conducted one joint Gulfstream-V flight coincidental with *MUNRO*'s visit to Japan in September and a second coordinated flight in October. The two flights continued joint U.S.-Japan high seas driftnet aircraft patrol operations (the first was in 2006) and sighted several fishing vessels; however, none appeared to be configured for high seas driftnet fishing.

The USCG Cutter *JARVIS* and the Russian Border Guard Patrol Vessel *DZERJINSKIY* conducted joint operations in August 2008 inside the northwest corner of the NPAFC Convention Area. Although the goal was for both vessels to support each other in conducting high seas fishery boarding operations, no vessels of interest warranting boarding were detected. However, increased enforcement coordination was realized as *DZERJINSKIY* conducted flight operations and both vessels exchanged vessel contact information. In addition, the vessels conducted officer exchanges, during which USCG and Russian officers observed their counterparts' vessel procedures. Both vessels were supported by USCG HC-130 aircraft surveillance coverage from USCG Air Station Kodiak. At the conclusion of the operation, *JARVIS* made a port call in Petropavlovsk-Kamchatskiy.

NMFS Special Agents and Enforcement Officers deployed with USCG HC130 and Canadian CP-140 aerial surveillance patrols to assist in the identification of vessels and investigation of suspected illegal activity. A total of 382 person-hours of enforcement effort were expended on patrol, logistics, and investigation in 2008.

The United States sighted 10 suspected driftnets vessels in 2008. Four of these vessels were also sighted by Canadian surveillance aircraft on separate occasions. Some of the vessels are suspected of being Indonesian-registered based on vessel name or homeport markings.

<u>Sightings</u>: Most notable of the vessels sighted was the fishing vessel *BANGUN SATRIA*. On 18 July 2008, a USCG HC-130 aircraft flying out of Shemya with two NMFS agents on board sighted the vessel actively fishing with net extending 3.8 nautical miles (nm) astern of the vessel. The vessel was retrieving its net at 42˚31.7'N, 174˚01.5'E, hauling in fish that the NMFS agents identified as appearing to be salmon. The aircrew repeatedly hailed the vessel on all available VHF channels with no response. The *BANGUN SATRIA* was sighted again by a Canadian CP-140 patrol flight on 17 September 2008. Unfortunately, no surface patrol vessels were in the vicinity to respond to either of these sightings. The vessel is suspected to be Indonesian-flagged as the name "Pallembang," the capital of the province of South Sumatra, was stenciled on the stern.

The *MUNRO* sighted a high seas driftnet while patrolling in the Convention Area on 16 August 08. The *MUNRO* followed the net for approximately 4.8 nm before locating the fishing vessel *TIRTA RAYA 2*. The *TIRTA RAYA 2* immediately initiated evasive maneuvers, including deploying another driftnet directly in front of the *MUNRO* in an apparent attempt to foul the *MUNRO*'s screws. The *TIRTA RAYA 2* finally came to a stop when *MUNRO*'s small boat approached and the Chinese FLEC officer established communication with the master. The master claimed that the *TIRTA RAYA 2* was Indonesian-flagged but had a Chinese crew (the vessel had the name "Banten," an Indonesian province, stenciled on the stern). The master also provided a crew

list, catch log, vessel Certificate of Documentation, and Radio Operating permit which appeared to support the claim of Indonesian registry. The vessel documents were subsequently relayed to Indonesian fisheries officials along with a request to verify registry. A response from Indonesian authorities a week later stated that the vessel was not Indonesian and the documents presented were false. Unfortunately, efforts to later relocate the *TIRTA RAYA 2* were unsuccessful. (The *TIRTA RAYA 2* was sighted driftnet fishing in September 2007 by a Canadian CP-140 Aurora surveillance aircraft.)

While the *MUNRO* was engaged with the *TIRTA RAYA 2*, its embarked HH-65 helicopter located a second potential high seas driftnet vessel with markings identifying it as the *BAHARI SENTOSA*. It had the name "Sarong" on its stern. This may have been a misreading or misspelling of "Sorong," a seaport in Irian Jaya, Indonesia. After the *MUNRO* had completed communications with the *TIRTA RAYA 2*, its helicopter returned to the area where the *BAHARI SENTOSA* had been spotted but was unsuccessful in relocating the vessel. The helicopter later sighted a large group of approximately 80 fishing vessels. It is believed that the suspected driftnet fishing vessel mingled with the larger fleet to avoid detection. The majority of the fishing vessels had markings indicating that they were home ported in the PRC. None appeared to be engaged in high seas driftnet fishing activity.

On 1 October 2008, the *MUNRO* encountered two vessels, the FF/V *DAY FULL* and the FF/V *MEI MEI*, engaged in IUU driftnet fishing activities 360 nm east of Hakkaido, Japan. The vessels abandoned their driftnet gear and attempted to flee. The *MUNRO* utilized its small boats to intercept them and conducted right-of-approach questioning. The vessels voluntarily provided documentation which showed them to be Indonesian-flagged. Copies of the documents and photographic evidence of the presence of high seas driftnet fishing gear on board, along with other information on the case, have been provided to the Indonesian Government by the U.S. Department of State. Both of these vessels are veteran members of the Northwest Pacific IUU driftnet fleet. The *DAY FULL*, a.k.a. the *MERINA*, was sighted by Japanese squid jigging vessels and a Taiwan patrol vessel in July 2007. The *MEI MEI*, a.k.a. the *NICKY*, was sighted by a Canadian CP-140 aircraft in September 2006 and a Japanese fisheries research vessel in August 2007.

On 3 October 2008, the *MUNRO* sighted the FF/V *FONG SHENG 88* engaged in suspected IUU driftnet fishing activity 600 nm east of the Tsugaru Strait. Net bins, net spreaders and net tubes were present on the vessel. The *FONG SHENG 88* claimed to be Indonesian-flagged. Information on the case has been turned over to the Indonesian Government.

<u>Seizures</u>: On 8 September 2008, the *MUNRO* sighted a vessel rigged for driftnet fishing. The vessel was identified as the *LU RONG YU 2880*, a 138-ft PRC-flagged fishing vessel with 28 people on board consisting of a Chinese master and Chinese crew. The PRC FLEC officer embarked onboard the *MUNRO* verified the PRC registration of the vessel and requested USCG support to assist with boarding the vessel to determine whether it was in violation of PRC fisheries law. The joint boarding team observed the presence of driftnet gear on board, and the FLEC officer seized the vessel. The *LU RONG YU 2880* had 7 nm of driftnet gear and 45 metric

tons of squid and skipjack tuna on board. The *MUNRO* escorted the vessel 475 nm to rendezvous with PRC FLEC patrol vessel *YU ZHENG 118*, which took it into custody.

On 24 October 2008, *MUNRO*'s embarked HH-65 helicopter sighted another vessel rigged for large-scale high seas driftnet fishing approximately 400 nm east of Hokkaido, Japan. Despite evasive maneuvers by the vessel, *MUNRO* intercepted the fishing vessel *ZHE PU YU LENG 9*, which claimed PRC flag. The FLEC officer verified the PRC registry of the vessel and a joint USCG-FLEC boarding team boarded the vessel and found over 20 kilometers (10.8 nautical miles) of stowed driftnets, a dismantled net tube, and other assorted large-scale driftnet fishing gear. The vessel also had onboard approximately 140 metric tons of squid. Because the vessel was suspected of fishing with large-scale high seas driftnet gear, the FLEC officer seized the vessel for violation of PRC fisheries law. *MUNRO* assisted with escorting the vessel to the Tsugaru Straits, where the vessel, crew and catch were transferred to the custody of a PRC FLEC patrol vessel.

A summary of the 2008 U.S. sightings and seizures of high seas driftnet vessels is included in Table 2. Only those vessels visually confirmed to be driftnet-capable were counted in this report--radar returns alone are not considered adequate confirmation that a vessel is driftnet-capable. In addition, two of the vessels reported were unidentified, making multiple sightings of these vessels possible and some of the identified vessels were sighted more than once. Therefore, it is critical to note that the number of sightings does not directly correspond to the total suspected number of high seas driftnet vessels.

Planned Future Efforts: The USCG will patrol with available aircraft and patrol vessels at resource levels to meet the suspected 2009 high seas driftnet and high seas salmon fishing threat. USCG high endurance cutters will continue to patrol in areas of the U.S. EEZ and in the NPAFC Convention Area as scheduling and resource demands allow. Analyzing previous years' data, increases in fishing vessel boardings and apprehensions is directly correlated with dedicated long range aircraft surveillance support. USCG Pacific Area current planning will dedicate a minimum of 200 aircraft hours and a minimum of 90 cutter days in support of the North Pacific NPAFC IUU mission in 2009. NMFS will continue to place officers on available Canadian high seas driftnet surveillance flights in 2009 and patrol with USCG HC-130 aircraft deployments when possible. The USCG also intends to continue issuing Local Notices to Mariners prior to and during the high threat season to encourage U.S. mariners and fishing fleets to report sightings of suspected large-scale driftnet fishing activity.

Table 2. Driftnet-capable vessels intercepted or sighted by the United States and Canada operating in the North Pacific Ocean in 2008.

DATE	VESSEL NAME	FLAG	POSITION	SOURCE OF REPORT	ACTION
18 July	*BANGUN SATRIA*	Indonesia	42°31'N, 174°01.6'E	U.S. Coast Guard HC-130 Aircraft	Sighting information provided to the NPAFC
16 Aug.	*TIRTA RAYA 2*	Unknown	42°45.2'N, 152°51.2'E	U.S. Coast Guard Cutter	Sighting information provided to the NPAFC
16 Aug.	*BAHARI SENTOSA*	Indonesia?	42°45'N, 152°51'E	U.S. Coast Guard Cutter	Sighting information provided to the NPAFC
22 Aug.	Unknown	Unknown	42°40'N, 153°E	U.S. Coast Guard Cutter	Seized and transferred custody to a PRC patrol vessel
22 Aug.	Unknown	Unknown	42°50'N, 153°E	U.S. Coast Guard Cutter	Sighting information provided to the NPAFC
8 Sept.*	*LU RONG YU 2880*	PRC	44°24'N, 155°58.1'E	U.S. Coast Guard Cutter	Seized and transferred custody to a PRC patrol vessel
10 Sept.	*BANGUN PERKASA*	Unknown	43°35'N, 154°50'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
14 Sept.	*MEI MEI (NICKY)*	Indonesia	43°33'N, 155°15'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
14 Sept.	*FONG SHENG 88*	Indonesia	43°23'N, 155°06'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
14 Sept.	*DAY FULL (MERINA)*	Indonesia	43°33'N, 154°31'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
17 Sept.	*BAGUN SATRIA*	Unknown	44°35'N, 154°25'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
17 Sept.	*BANGUN PERKASA*	Unknown	43°38'N, 154°19'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
17 Sept.**	Unknown *"9"*	Unknown	43°49'N, 154°31'E	Canadian CP140 Aircraft	Sighting information provided to the NPAFC
1 Oct.	*DAY FULL (MERINA)*	Indonesia	43°08'N, 154°15.4'E	U.S. Coast Guard Cutter	Sighting information provided to the NPAFC and Indonesia
1 Oct.	*MEI MEI (NICKY)*	Indonesia	43°33'N, 155°15'E	U.S. Coast Guard Cutter	Sighting information provided to the NPAFC and Indonesia
3 Oct.	*FONG SHENG 88*	Indonesia	42°34'N, 153°10'E	U.S. Coast Guard Cutter	Sighting information provided to the NPAFC and the Indonesian Government
24 Oct.*	*ZHE PU YU LENG 9*	PRC	43°04.2'N, 155°48.4'E	U.S. Coast Guard Cutter	Seized and transferred custody to a PRC patrol vessel

Note: Some of the vessels were sighted multiple times.

*Seized by PRC FLEC with USCG assistance
** matched with Zhe Pu Yu Leng 9 (PRC) which was subsequently seized by combined USCG/PRC FLEC efforts.

Canadian Driftnet Enforcement Efforts

Canada completed 10 aerial patrols from 5-17 September 2008 for a total of 114 hours of surveillance covering 4 million square kilometers in the North Pacific high seas driftnet fishing area. Six patrols were cancelled; three due to adverse weather conditions and the remainder due to mechanical problems. As in past years, Canadian flight operations involved two Department of National Defense (DND) CP-140 Aurora aircraft contracted by the Department of Fisheries and Oceans (DFO), associated flight crews, technicians and ground support, plus one DFO fishery officer and a NMFS enforcement officer per flight. The patrols were based out of Eareckson Airfield on Shemya Island, Alaska.

In general, the surveillance area was west of 175°W to the Russian EEZ and north of 38ºN to the U.S. EEZ off Alaska. The 2008 patrol area coordinates were chosen based on the high probability of thermoclines used by salmon, USCG threat assessment information, experience, capabilities of the aircraft, and the NPAFC Convention Area. As in past years, an operation command center was established at USCG 17th District Headquarters in Juneau, Alaska, to coordinate information and surface support operations.

Canada also employed Radarsat II, an advanced earth surveillance satellite launched in December 2007, on an experimental basis to locate vessel concentrations and monitor areas not being flown by the CP-140 aircraft in the NPAFC Convention Area.

Patrol Results: Canadian patrols reported seven sightings of high seas driftnet-rigged vessels in 2008. These sightings represented 6 individual driftnet vessels (one of the vessels was sighted twice). Details on the sightings are provided in Table 2. Two of the vessels, the *BANGUN PERKASA* (sighted on 10 September) and the *BANGUN SATRIA* (sighted on 17 September), had 4 and 3 nm of driftnet in the water, respectively.

Canadian Driftnet Enforcement Efforts for 2009: The Canadian Government will commit 180 hours of air surveillance time to high seas driftnet fisheries enforcement in 2009, subject to final confirmation by the DND. Canada also intends to utilize Radarsat II again in 2009.

Japan's Driftnet Enforcement Efforts

Japan's 2008 driftnet fishery enforcement efforts consisted of the deployment in the North Pacific Ocean of the Fisheries Agency of Japan (FAJ) patrol vessel *KANAZAWA* for a total of 12 ship days at sea in July 2008. Japan Coast Guard and FAJ aircraft flew a total of 55 hours (14 and 41 hours, respectively) from July-October 2008. As mentioned previously, a Japan Coast Guard Gulfstream-V aircraft conducted joint operations with the USCG Cutter *MUNRO* on 8 September and 25 October 2008. No high seas driftnet vessels were sighted.

Japanese fishing vessels sighted 4-5 unidentified driftnet vessels on 12 May 2008 at 36°21.4'-36°24.7'N, 155°44'-155°46.4'E, and one on 3 August 2008 at 41°14'N, 154°41'E. The sighting information was reported to the NPAFC IIS.

Japanese Driftnet Enforcement Efforts for 2009: Japan intends to maintain the same level of enforcement effort in 2009 as in 2008.

Korea's Driftnet Enforcement Efforts

Korea's Ministry of Food, Agriculture, Forestry and Fisheries and the National Fisheries Research and Development Institute patrolled the NPAFC Convention Area with a research vessel for 12 days in November 2008. The vessel did not report sighting any IUU fishing activity. Korea also reported that it participated in enforcement activities of the WCPFC in 2008.

Korea does not plan to conduct any enforcement activities pursuant to the NPAFC enforcement effort in 2009. However, as a member of the WCPFC, Korea will participate in the WCPFC boarding and inspection program in the WCPFC Convention Area, which partially overlaps the NPAFC Convention Area. Korea hopes to take part in NPAFC enforcement activities in the near future.

Russian Federation's Driftnet Enforcement Efforts

The Russian Federal Security Service's Northeast Regional Border Directorate in Petropavlovsk-Kamchatsky and Sakhalin Border Service in Yuzno-Sakhalinsk patrolled the North Pacific Ocean bordering the Russian EEZ from June-September 2008. Four Border Guard patrol vessels—*DZERJINSKY* (with helicopter), *OREL*, *ANTIAS*, and *MAGADANETS* spent a total of 32 days in the NPAFC Convention Area. The Border Directorate also deployed AN-72P aircraft for 13 surveillance flights totaling 87 hours from early June through mid-September 2008. From 7-8 August 2008, the *DZERJINSKY* and the USCG Cutter *JARVIS* conducted a joint patrol of the NPAFC Convention Area, together with the *DZERJINSKY*'s helicopter and a USCG HC-130 patrol aircraft. Although Russia reported sighting a number of suspicious vessels in the North Pacific in 2008, none were confirmed to be high seas driftnet vessels.

Russia plans to use two patrol vessels and aircraft from Petropavlovsk-Kamchatsky and Sakhalin in 2009.

Taiwan's Driftnet Enforcement Efforts

The Taiwan Coast Guard has conducted high seas fisheries enforcement patrols in the North Pacific Ocean since 1993 to deter Taiwan fishing vessels from engaging in large-scale high seas driftnet fishing. Although Taiwan is not a Party to the NPAFC, it shared information on its 2008 patrol plans with the NPAFC Secretariat and Parties on 16 June 2008, prior to deploying patrol vessels. Taiwan observers at the NPAFC 16th Annual Meeting reported that the Taiwan Coast Guard Administration sent two patrol vessels, the *HSUN HU NO. 2* and *HSUN HU NO. 3*, to the North Pacific from 16 June-7 November 2008 to monitor the activities of domestic fishing vessels. The vessels patrolled the area of 38°-45°N, 145°-170°E, for a total of 168 vessel days.

On 12 July 2008, the Taiwan patrol vessel *HSUN HU NO.3* sighted two driftnet vessels, the *LIAO JIN YU 2675* and the *LIAO JIN YU 2676*, at 40°33'N, 159°24'E. The patrol vessel chased the vessels for 8 hours, but finally broke off pursuit at 40°22'N, 156°44.3'E. Taiwan was unable to confirm their flag states but obtained photographs of the vessels. Taiwan authorities notified the NPAFC of the sightings on 12 July.

Taiwan's Driftnet Enforcement Efforts for 2009: Taiwan will continue to dispatch patrol vessels to the North Pacific to prevent Taiwan-flagged vessels and nationals from engaging in large-scale high seas driftnet fishing. It will also continue to cooperate and exchange enforcement information with the NPAFC.

Chinese Driftnet Enforcement Efforts

Although driftnet fishing for salmon on the high seas is illegal under PRC law, PRC fishing vessels and nationals have continued to engage in large-scale high seas driftnet fishing in the North Pacific Ocean in recent years. The encouraging news is that the cooperative efforts of U.S. and PRC fisheries law enforcement authorities are achieving success toward eliminating the problem. With the cooperation of the PRC Government, the USCG was able to intercept two PRC-flagged high seas driftnet vessels in the northwestern Pacific Ocean in 2008 (Table 2). These vessels were turned over to the PRC FLEC for investigation and prosecution under PRC law.

U.S. Coast Guard assets sighted eight suspected high seas driftnet fishing vessels in 2007 and facilitated seizure of six through the authority of the PRC FLEC officer on board. Of the vessels seized by FLEC in 2007, the PRC Government assessed significant penalties on all six vessels. The owners of five of the vessels with high seas fishing licenses were assessed fines of approximately $7,000 and their licenses were confiscated. The owner of the only vessel caught driftnet fishing without a high seas fishing license was fined approximately $14,000. In the PRC, license cancellations apply to a vessel owner's entire fleet, not just to the vessel in violation. In addition, the licenses of the captains of the six vessels were also suspended. The majority of the vessels were subsequently sold by their owners due to the inability to fish without permits. These punitive measures demonstrate the willingness of PRC authorities to investigate and provide a substantial domestic deterrent effect for the PRC fishing fleet.

Potential Driftnet Threat in the North Pacific Ocean in 2009

Historical sightings and this year's driftnet vessel seizures indicate that the high seas driftnet threat continues to exist in the North Pacific Ocean. This year's observations support a shift of fishing effort, both towards the later parts of the fishing season, and to a primary target species of squid. Additionally, evidence shows that anadromous and highly migratory species (e.g. swordfish and shark) are still being captured by high seas driftnet vessels as a target species and as bycatch.

Driftnet fishing targeting salmon is expected to take place north of 47°N, west of 173°E, and bounded by the U.S. and Russian EEZs. The greatest threat period for salmon is generally from April through June and for other species, May through November. High seas driftnet fishing vessels targeting squid may deploy nets in areas of strong temperature change. Targeted areas primarily include waters with a sea surface temperature (SST) between 11-17° Celsius (C). These waters typically occur in the North Pacific between 35°-48°N and 150°E-165°W. Strong evidence suggests fishing vessels target areas where SST changes rapidly over short distances. Historical evidence shows that Japanese fishing vessels deployed driftnets in areas where SST may differ by 2-3° C from one end of the net to the other. Prime fishing areas may be locations where the SST isotherm dips down to the south and forms a "U" shaped pocket.

In addition, there appears to be an increasing presence of Indonesian-flagged, or suspected Indonesian-flagged driftnet vessels operating in the IUU driftnet fishery since 2003. It is likely that the increased presence of NPAFC Party enforcement aircraft and vessels with embarked FLEC officers on the fishing grounds have resulted in IUU driftnet vessels reflagging to Indonesia to avoid seizure and prosecution. Currently, the USCG has no boarding and inspection arrangement with Indonesia. Interestingly, the suspected Indonesian vessels seem to have made little attempt to blend into the legitimate PRC squid fleet. PRC-flagged driftnet vessels, on the other hand, have adopted squid jigging vessel disguises, incorporating light strings and, on occasion, jigging machines.

Western and Central Pacific Ocean

At the Fifth Regular Session of the WCPFC held in Busan, Korea, on 8-12 December 2008, the Commission adopted a conservation and management measure proposed by the United States to prohibit the use of large-scale driftnets on the high seas in the WCPFC Convention Area. Among other things, the measure makes the use of such gear in the Convention Area a serious violation of the Western and Central Pacific Fisheries Convention It also charges Commission Members, Cooperating Non-Members and participating territories to take all measures necessary to prohibit their fishing vessels from using large-scale driftnets while on the high seas in the Convention Area. The new measure will provide greater authority for at-sea boarding and investigation of possible high seas driftnet vessels in the western and central Pacific and the WCPFC High Seas Boarding and Inspection Scheme will be available to help investigate potential violations and ensure compliance.

Mediterranean Sea

In addition to the UNGA global moratorium on large-scale high seas driftnet fishing, several other international mechanisms are in place to prohibit large-scale driftnet fishing in the Mediterranean Sea.

European Union (EU) Ban on Driftnets: In 1997, the EU began to consider an EU-wide driftnet ban in the Mediterranean Sea and North Atlantic Ocean as a means of complying with the UN

driftnet moratorium. From 1997 to 2004, the EU adopted a series of regulations leading to this goal:

- Regulation No. 894/97, adopted on 29April 1997, stated that no vessel could keep on board, or use for fishing, one or more driftnets whose individual or total length is more than 2.5 km.

- Regulation No. 1239/98, adopted on 8 June 1998, banned the use of all driftnets for catching tunas, billfish, sharks, dolphinfishes, sea bream, sauries, and cephalopods by 1 January 2002 in all waters falling within the jurisdiction of Member States, as well as outside those waters, with the exception of the Baltic Sea. The EU driftnet ban entered into force on 1 January 2002.

- Regulation No. 812/2004, adopted on 30 April 2004, expanded the ban to the Baltic Sea on 1 January 2008.

One of the major problems in enforcing the European Commission's (EC) driftnet regulations was that, until recently, the EC never legally defined what a driftnet is. This allowed the French and Italian Governments to exploit loopholes in EC Regulation 1239/98 by redefining driftnet gear and continuing to fish. Conventional large-scale driftnets--nets that fish passively, drift with ocean currents, and are often more than 20 km long--are called "spadare" driftnets in Italy. In 1998, after the EU driftnet ban was adopted, the Italian Government approved a new type of driftnet fishing gear called "ferrettara." Ferrettara driftnets could legally measure up to 2 km long, have a mesh size up to 100 mm, and had to be fished within 3 nm from the coast. In April 2005, the Italian Government amended the law to allow fishermen to use ferrettara up to 5 km long, 20m deep, and with mesh up to 180 mm. These nets could be fished up to 12 nm from the coastline. Over the years, many of the spadare driftnet fishermen hid behind the name "ferrettara," without modifying their spadare nets.

The French Government, on the other hand, redefined its fishermen's large-scale driftnet gear as "thonaille," or set surface gear. The thonaille is a type of driftnet up to 9.2 km long with mesh size measuring from 10-20 cm. Rather than drifting freely, the net incorporates a floating anchor, or sea anchor, at one end. This has allowed the French Government to claim that the net is an anchored gillnet, not a driftnet. Acoustic deterrent devices, or pingers, are also incorporated in thonaille to help minimize the bycatch of marine mammals.

The thonaille fishery was outlawed under French law in August 2005, due to a successful court case brought by three French conservation organizations--France Nature Environnement, the Cetacean Research Group (GREC), and SOS Grand Bleu. Despite this, the French Minister for Fisheries and Agriculture restated his support for the use of thonaille in a ministerial notification in September 2005. He defined thonaille as anchored driftnets. In 2006, the Ministry of Agriculture and Fisheries allocated a bluefin tuna quota to 47 thonaillers. This was repeated in 2007, when special fishing permits for bluefin tuna were granted by decree to 67 thonaillers.

To remove any confusion about what a driftnet is, the EC adopted a new definition of driftnets on 20 September 2006. The Commission believes that this single definition will simplify and

increase transparency in EU legislation governing this fishing gear and facilitate the control and enforcement of current restrictions on the use of driftnets. The Commission's driftnet definition follows:

> "Drift net means any gillnet held on the sea surface or at a certain distance below it by floating devices, drifting with the current either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilize the net and/or to limit its drifting."

The EC adopted on 28 June 2007 Regulation No. 809/2007, which amended the EC regulations that relate to the use of driftnets (No. 894/97, as amended by No. 1239/98, No. 812/2004, and No. 2187/2005, the regulation on technical measures in the Baltic Sea) by applying the new driftnet definition.

General Fisheries Commission for the Mediterranean (GFCM): At its 22nd Session in October 1997, the GFCM adopted binding Resolution 97/1 concerning the use of large-scale pelagic drift-net gear. The resolution, taking UNGA Resolution 44/225 into account and considering that uncontrolled expansion and growth of driftnet fishing may entail serious disadvantages in terms of increased fishing effort and increased bycatches of species other than target species, prohibited vessels flying the flag of a Contracting Party of the GFCM from keeping on board, or fishing with, one or more driftnets whose individual or total length is more than 2.5 km.

At the 29th Session of the GFCM on 21-25 February 2005, the Commission adopted ICCAT Recommendation 03-04 (described below) prohibiting the use of driftnets for fisheries of large pelagics in the Mediterranean Sea as Recommendation GFCM/2005/3(A).

International Commission for the Conservation of Atlantic Tuna (ICCAT) Driftnet Recommendation: On 26 November 2003, ICCAT adopted at its 18th Annual Meeting in Dublin, Ireland, Recommendation (03-04) which prohibits the use of driftnets in fisheries for large pelagic species in the Mediterranean by its Contracting Parties, Cooperating Non-Contracting Parties, Entities, and Fishing Entities. Contracting Parties are legally bound by the recommendation. In practical terms, the recommendation closes a driftnet fishing loophole that could be used by countries which are members of ICCAT but not the EU, and therefore are not bound by the EU driftnet ban. Unlike the UN high seas driftnet moratorium, neither the EU ban nor the ICCAT recommendation differentiates between driftnet fishing on the high seas or in territorial waters--driftnet fishing is prohibited in both.

Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area (ACCOBAMS): At the third meeting of the Parties to ACCOBAMS held in Dubrovnik, Croatia, on 22-25 October 2007, the ACCOBAMS Scientific Committee urged Parties to take immediate action to ensure compliance by their nationals with the EU ban on driftnets and to encourage similar actions by relevant non-member states. The Scientific Committee stressed that cetacean bycatch in driftnets is by far the primary cause of anthropogenic mortality for most pelagic cetacean populations in the Mediterranean Sea.

Consequently, the Parties agreed to include in the text of the Agreement the prohibition on the possession and use of driftnets on board fishing vessels to bring the Agreement into line with other international agreements. The Agreement entered into force for all Contracting Parties on the 22 March 2008. It states that "no vessels will be authorized to keep on board or to use any driftnets**."** France, Italy, Morocco, Tunisia, and Turkey are all members of ACCOBAMS.

2008 Developments:

NGOs, including Oceana and Greenpeace, continued to assert that 500 vessels from Algeria, France, Italy, Morocco, and Tunisia with driftnets from 7-13 km in length are operating throughout the Mediterranean Sea in 2007. The United States is aware of two documented sightings of large-scale driftnet vessels operating on the high seas of the Mediterranean in 2008.

France: The French Government applied to the EU Court of Justice on 10 October 2007 for an exemption from EU Regulation No. 809/2007, disputing the new EU driftnet definition and claiming that thonaille are different from driftnets. On 28 February 2008, the Court ruled that France could not allow fishing with thonaille nets in the Mediterranean. The Court also refused to grant the French Government a temporary exemption from the EU driftnet ban, thereby eliminating the legal loophole created by redefining its fishermen's large-scale driftnet gear as "thonaille," or anchored gillnets. This decision essentially eliminated the French thonaille tuna fleet in 2008 and increased the possibility that France will finally be sanctioned for not complying with the EU driftnet ban since 2002.

In spring 2008, France enforced the EU ban in the Mediterranean with a frigate and shipboard helicopter, smaller boats, and shipboard observers on the French fishing vessels. Despite these measures, French authorities determined that six French vessels violated the EU driftnet ban. These vessels were reportedly prosecuted.

France is currently studying the conversion of the French thonaille fleet to other gear types. No sightings of French large-scale driftnet vessels operating on the high seas were reported in 2008.

Italy: Despite the many driftnet measures (described in the 2006 driftnet report to the Congress available from NMFS) Italy has taken since 2002, Italian vessels and nationals have continued to fish with large-scale driftnets in the Mediterranean Sea in 2008. From 2005-2006, a total of 16 Italian vessels were documented using large-scale driftnets on the high seas of the Mediterranean and over a hundred more were sighted fishing in Italian territorial waters and docked in Italian ports. The United States was not aware of any documented sightings of Italian large-scale driftnet vessels fishing on the high seas of the Mediterranean in 2007. However, a 14 May 2008 report by Oceana claimed that at least 137 Italian vessels continued to fish with driftnets. Oceana observers identified 82 vessels in Italian ports in 2007 with driftnets on board or stowed on the docks. The United States is aware of the following sightings of Italian high seas driftnet vessels in 2008.

On 7 May 2008, the Greenpeace vessel, *ARCTIC SUNRISE*, sighted an Italian driftnet vessel, the *DIOMEDE II* (Registration 14ME621), fishing with 8-10 km of driftnet in international waters at 37°59.8'N, 16°45.8'E--approximately 50 km from the coast of Sicily. Greenpeace reported that

the *DIOMEDE II* was licensed to fish with only set longlines or anchored nets within 15 km of the Italian coast. The *ARCTIC SUNRISE* confiscated approximately 2 km of netting containing undersized bluefin tuna and a small sea turtle, which was later released alive. Greenpeace has film footage of the encounter on its international website.

The *ARCTIC SUNRISE* also sighted the LUNA ROSSA fishing at 37°59.3'N, 11°10.1'E, about 40 nm west of the Italian island of Marettimo, Sicily, on 7 July 2008.

From May through September 2008, the Oceana vessel *MARVIVA MED*, a 42-meter marine research vessel, recorded illegal fishing in the Mediterranean Sea. Although the sightings are anecdotal, they are an indication that Italian vessels are still using driftnets in the Mediterranean Sea:

- The *MARVIVA MED* reported sighting the Italian vessels *FEDERICA AII* (7PA1860) on 28 June and the *ALBA CHIARA SEGUNDA* on 3 July, actively driftnet fishing.

- On 10 July 2008, the *MARVIVA MED* reported five Italian driftnet vessels, the *AUSONIA* (4CT1055), *ANDREA DORIA II*, *ROSS LUCY* (3CT482), *SARATOKA* (3CT502), and *FEDERICA SECONA*, fishing in Tunisian waters on swordfishing grounds south of Sardinia and east of Tunis. According to Oceana, the vessels were disguised as trawlers and longliners, but carried large-scale driftnets.

- On 18 July, the *MARVIVA MED* reported sighting the driftnet vessels *S. MARIA* (1MZ1051) and the *ANNA PRIMA* driftnet fishing. Unfortunately, no details were available on the vessels' locations.

- From 7-21 July 2008, the crew of the *MARVIVA MED* reported seeing more than 25 Italian driftnet vessels at anchor in the ports of Lipari Island (off the eastern Tyrrhenian coast of Sicily), Isle De Ponza, Porto Di Messina, Catania, Santa Maria la Scala, Stazzo, Riposto, and Giardini Naxos. Many of the vessels were disguised as longliners but had driftnets on board.

<u>Status of the EC Infringement Procedure against Italy</u>: The EC Directorate for Fisheries and Maritime Affairs began an infringement procedure against Italy in November 2004, after monitoring the driftnet situation in Italy for several years and concluding that Italy was not complying with EC driftnet legislation. Article 226 of the EC Treaty gives the Commission power to take legal action against a member country that has not complied with EU law. The process may take considerable time to complete, and, if the Commission concludes that there has been an infringement of EU law, it may call upon the member country to comply within a specified period of time (this is known as a "reasoned opinion"). In the event that the country fails to comply with the Commission's ruling, the Commission may bring the case before the European Court of Justice. Finally, if the Court of Justice upholds the Commission's ruling, the member country is required to take all necessary measures to conform. Failure of the member country to comply with the Court's judgment could ultimately result in a financial penalty and the penalties for noncompliance can be significant.

In late 2007, the United States learned that the EC Directorate's Office of Legal Services had completed its review of Italy's response to the Commission's second reasoned opinion. The Commission referred the infringement case to the European Court of Justice on 10 June 2008. A copy of the action is attached. The action is a scathing indictment of Italy's failure to comply with the EU's driftnet regulations. As of December 2008, the case was still pending in the Court and had not yet been heard.

Morocco: Background--On 20 November 2003, the World Wildlife Fund (WWF) International released a report titled "Biodiversity impact of the Moroccan driftnet fleet in the Alboran Sea." The report claimed that the Moroccan driftnet fleet, with 177 vessels, was killing thousands of dolphins and other vulnerable species, such as sharks and sea turtles, in the Alboran Sea and around the Straits of Gibraltar. The WWF also alleged that Italian, French, Turkish, and most probably other fishing fleets are using driftnets in breach of existing legislation and the United Nations driftnet moratorium. The WWF report came out in advance of the Conference on Mediterranean Fisheries, which was held in Venice, Italy, on 23-25 November 2003. The WWF urged the EU to monitor and prosecute all of the fleets of its member states using driftnets. It also called on the GFCM, and non-EU countries, particularly those in North Africa, to introduce legislation banning the use of driftnets in the Mediterranean Sea.

At the 2003 ICCAT Annual Meeting, Morocco admitted to having a driftnet fleet. At the time ICCAT's driftnet recommendation was adopted, Morocco made a statement for the record of its intention to devise a national plan to phase out driftnet gear and pledged to work with the EU and others to accomplish this. At the 15-21 November 2004 ICCAT Annual Meeting in New Orleans, Morocco presented a 4-year plan for eliminating the use of driftnets in its fisheries, primarily through public education and assistance to its fishermen. The U.S. ICCAT delegation highlighted the urgency of this action and offered to work with Morocco to help expedite implementation of the plan.

A U.S. delegation traveled to Morocco from 26-28 September 2005 to discuss issues related to ICCAT and large-scale driftnets. Three of the goals of the trip were to learn about driftnet use by Morocco and other countries bordering the Mediterranean, to educate Morocco on U.S. driftnet laws and to explore possible areas of cooperation and capacity building, especially regarding the phase-out of Morocco's driftnet fleet. Morocco expressed the need for assistance in transitioning its driftnet fleet to other, more selective gears and noted that it was in the second year of its driftnet elimination plan. The plan called for buying driftnets and disposing of them. Morocco also expressed an interest in working with the United States on analysis of the social and economic impacts of eliminating its driftnet fleet, including the effect on fishermen, the social loss associated with such a change, and the cost of vessel/gear replacement. The United States provided funds to help with some aspects of Morocco's driftnet elimination program.

On 28 Feb 2007, Morocco ratified the EU-Morocco Fisheries Partnership Agreement. The 4-year Agreement allows 119 European vessels, mostly Spanish, to fish in Moroccan waters in exchange for an annual €36.1 million (approximately $46 million) compensation package. A

portion of this compensation package, €1.25 million (or $1.8 million) will fund the conversion of the Moroccan driftnet fleet to more sustainable fishing activities. The Agreement was signed on 28 July 2005, after 6 years of negotiations, and ratified by the EU on 29 May 2006.

Morocco passed a new law on 23 July 2007 to punish fishermen who continue to use driftnets in Moroccan waters. Under the new measure, fishermen caught using driftnet gear will face up to a year's imprisonment or heavy fines. Confiscated nets will be destroyed, ensuring that the banned gear will not be sold in other countries. Compensation will be provided to Moroccan fishermen who voluntarily give up their nets, and will enable them to invest in more sustainable activities. Morocco expected to complete the elimination of driftnet fishing gear by the beginning of 2009 and provided an update on the phase-out of its driftnet fishery at the ICCAT 20th Annual Meeting on 9-18 November 2007 in Antalya, Turkey.

2008 Developments NMFS received anecdotal information in 2008 that less than half of the Moroccan driftnet fleet had converted to longline fishing operations. At the 2008 ICCAT Annual Meeting in Marrakech, the Moroccan representative confirmed that Morocco would require 3 more years for the total conversion of its driftnet fleet. The extended deadline is 1 January 2012. Morocco stated that only 31 of 245 driftnet vessels left the fishery in 2008. Morocco's goal is to eliminate approximately 70 vessels each year over the next 3 years. The United States will continue to work bilaterally with Morocco and multilaterally through ICCAT to ensure that Morocco meets this deadline.

Tunisia: The Greenpeace vessel *RAINBOW WARRIOR* reported sighting at least seven Tunisian driftnet vessels fishing for bluefin tuna off the Libyan coast on 27 May 2007.

On 20 June 2007, the *RAINBOW WARRIOR* spotted six Tunisian driftnet vessels fishing on the high seas of the Mediterranean 160 km north of Tripoli. (Table 3).

Table 3. Tunisian driftnet vessels sighted by the Greenpeace *RAINBOW WARRIOR* fishing on the high seas of the Mediterranean Sea in June 2007.

Date	Vessel Name	Registration Number	Position
20 June 2007	*AHMED KAHLIL*	N/A	34°23.24 N, 12°55.50 E
20 June 2007	*AHMED HELMI*	N/A	34°23.24 N, 12°55.50 E
21 June 2007	*ALADIN*	MO 800	34°23.24 N, 12°55.50 E
21 June 2007	*EL JAZIRA*	MO 818	34°23.24 N, 12°55.50 E
21 June 2007	*MOLKA*	MO 801	34°23.24 N, 12°55.50 E
21 June 2007	*SADIK*	MO 827	34°23.24 N, 12°55.50 E

NMFS is not aware of any Tunisian high seas driftnet vessel sightings in 2008.

Turkey: In regard to NGO charges that Turkey is using large-scale high seas driftnets, Turkey told the United States in a bilateral meeting on 29 September-1 October 2005 that it has fewer than 100 driftnet vessels, each less than 15 meters long. Turkey claims that these are small-scale operations targeting swordfish in the Mediterranean off the southwest corner of Turkey. The fishing season lasts two months--May through June. The driftnet mesh size is 240-260 mm and the net is made of nylon polyfilament. The total length of the net is 1,000-1,500 m on average, with a depth of 4 m. The fishing areas are 300-2500 m deep and 5-9 nm from the coast. The driftnet is usually set in the evening at a depth of 6-7 m and is retrieved the next the morning.

Although Turkish vessels may not be violating the UN driftnet moratorium, Turkey is a member of ICCAT and the GFCM and is fishing in violation of ICCAT and GFCM rules. On 3 October 2005, Turkey opened accession negotiations with the EU, which banned the use of all driftnets by EU member nations beginning in 2002. Turkey must agree to adopt the common rules, standards, and policies that make up the body of EU law as a prerequisite to accession. This would include terminating its driftnet fleet. NMFS is not aware of any new driftnet developments for Turkey in 2008.

Antarctic Waters

Background: In recent years, a number of the vessels included on the IUU Vessel List for the Commission for the Conservation of Antarctic Living Marine Resources (CCAMLR) are reported to have converted from longlines to gillnets in the CCAMLR Convention Area. It is unclear whether the "gillnets" being deployed are, by definition driftnets, although there are references in CCAMLR documentation to two unknown vessels sighted recovering "driftnet-type fishing gear for catching toothfish" in Division 58.4.2 of the Convention Area. These vessels typically fish with nets that are 2.5-3 miles long with a mesh size of 250 mm. The catch reportedly consisted primarily of sharks and other pelagic fish.

At its 25th Annual Meeting in Hobart, Tasmania, on 23 October-3 November 2006, CCAMLR adopted Conservation Measure 22-04. The measure prohibits the use of deep sea gillnets for purposes other than scientific research in the CCAMLR Convention Area until the Commission's Scientific Committee has investigated and reported on the potential impacts of the gear and the Commission has agreed on the basis of advice from the Scientific Committee that such gear may be used in the Convention Area. In addition, the measure requires that any vessel seeking to transit the Convention Area carrying gillnets must give advance notice, including expected dates of transit, to the CCAMLR Secretariat. The measure was advanced by Australia and supported by the United States. The Commission agreed that gillnets are non-selective fishing gear with the potential to fish indiscriminately and to "ghost" fish over long time periods when lost or discarded.

2008 Developments At the 2008 CCAMLR Annual Meeting in Hobart, Tasmania, the Commission was encouraged to note that fewer sightings of IUU vessels had been reported and that IUU fishing in the Convention Area appeared to be declining. However, it expressed caution as it took into consideration information from CCAMLR's Standing Committee on Inspection and Compliance (SCIC) and the Scientific Committee that the majority of the IUU

fleet was reported to be using gillnets. The SCIC and the Scientific Committee also advised that there was little information on the likely rates or incidental mortality associated with fishing by these vessels. Consequently, this lack of information introduces considerable uncertainly in the estimates of IUU removals of toothfish from the Convention Area and consequently undermines confidence in the Scientific Committee's assessments.

The Commission agreed that it was important to obtain more information on the characteristics of the gillnets and the catch and incidental mortality rates of gillnet vessels. It requested that SCIC and the Scientific Committee work intersessionally to seek this information.

Interagency Agreements

Fisheries Enforcement Memorandum of Understanding (MOU): On 11 October 1993, the Secretaries of Transportation, Commerce, and Defense entered into the *Memorandum of Understanding Between the Secretary of Transportation, the Secretary of Commerce and the Secretary of Defense Relating to the Enforcement of Domestic Laws and International Agreements that Conserve and Manage the Living Marine Resources of the United States*. The MOU, required under Section 202 of Public Law 102-582, the High Seas Driftnet Fisheries Enforcement Act, established a mechanism for the use of the surveillance capabilities of the Department of Defense for locating and identifying vessels violating U.S. marine conservation laws and international agreements, including UNGA Resolution 46/215. The MOU also set formal procedures for communicating vessel locations to the Secretary of Commerce and the U.S. Coast Guard. A copy of the MOU was attached to the 1993 Driftnet Report to the Congress. There are no other interagency agreements regarding high seas driftnets.

Bilateral Driftnet Agreements

U.S.-China MOU

The United States and the PRC continued to work together in 2008 to ensure effective implementation of UNGA Resolution 46/215 in the North Pacific Ocean pursuant to the terms of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of December 20, 1991*, signed in Washington D.C. on 3 December 1993. The MOU (also referred to as the "U.S.-PRC Shiprider Agreement") established boarding procedures for law enforcement officials of either country to board and inspect U.S. or PRC-flagged vessels suspected of driftnet fishing. The MOU also established a shiprider program, which allows PRC FLEC officials to embark on USCG resources during each driftnet fishing season. As a bilateral enforcement agreement, the MOU facilitates/expedites investigations of suspicious vessels when they are encountered on the high seas. The MOU will expire on 31 December 2009.

The USCG has had a strong working relationship with the PRC FLEC for more than 15 years. This working relationship increases opportunities for cooperation on both high seas fisheries

enforcement efforts and training. The PRC has provided a total of 55 enforcement officials to the USCG since 1994.

Pursuant to the provisions of the U.S.-PRC MOU, the PRC FLEC continued to participate in high seas fisheries enforcement in 2008. As in the past, this participation was financially supported by NOAA, which facilitated logistics and travel costs of PRC officials. In May 2008, FLEC hosted an operational planning meeting for the 2008 enforcement season. As a result, FLEC assigned an officer to the North Pacific Regional Fishery Training Center in Kodiak, Alaska, for a 30-day period in July and August to assist in coordination of USCG-FLEC operations. The FLEC officials in Kodiak passed up-to-date operational information to their colleagues on board the FLEC cutters during their early summer patrol.

In addition, a total of six Chinese FLEC shipriders were deployed on the USCG Cutter *MUNRO* during its July-November 2008 IUU patrol. These officials were instrumental in facilitating communications between the USCG and the PRC FLEC and effectively expanded the jurisdictional reach of both enforcement agencies allowing for the seizure of the two high seas driftnet vessels in the North Pacific. The USCG hopes to host a similar number of PRC officials during the 2009 fishing season.

U.S.-Italy Driftnet Agreements

Background: Details on the history of the U.S.-Italy driftnet agreements can be found in previous NMFS driftnet reports to the Congress. The 1999 U.S.-Italy driftnet agreement expired on 1 January 2002 with the entry of the EU driftnet ban into force.

Resolutions and Letters in Support of UNGA Resolution 44/225

UNGA Driftnet Resolutions and Decisions

Details on UNGA Resolutions 44/225 (1989), 45/197 (1990), 46/215 (1991), 50/25 (1995), 51/36 (1996), 52/29 (1997), 53/33 (1998), 54/32 (1999), 55/8 (2000), 57/142 (2002), 58/14 (2003), 59/25 (2004), 60/31 (2005), 61/105 (2006), 62/177 (2007), and UNGA Driftnet Decisions 47/443 (1992), 48/445 (1993), and 49/436 (1994), and supporting resolutions and actions taken by the United States in other fora prior to 2007 have been provided in previous driftnet reports to the Congress available from NMFS.

On 5 December 2008, the General Assembly adopted, without a vote, draft resolution A/63/L.43 *Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments* as resolution 63/112. The Resolution reaffirms the importance the General Assembly attaches to continued compliance with Resolution 46/215 and other subsequent UNGA resolutions on large-scale pelagic driftnet fishing. It urges States and other entities to enforce fully the measures recommended in the UNGA Resolutions in order to eliminate the use of large-scale pelagic driftnets. UNGA Resolution 63/112 also expresses

concern that the practice of large-scale pelagic drift-net fishing remains a threat to marine living resources, and emphasizes that efforts should be made to ensure that the implementation of resolution 46/215 in some parts of the world does not result in the transfer to other parts of the world driftnets that contravene the Resolution.

Resolution 63/112 requests that the Secretary-General bring the Resolution to the attention of all members of the international community, relevant intergovernmental organizations, the organizations and bodies of the United Nations system, subregional and regional fisheries management organizations and relevant non-governmental organizations, and invite them to provide the Secretary-General with information relevant to the implementation of the Resolution. It requests that the Secretary-General submit to the General Assembly at the 65th session a report on *Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instrument,* taking into account the information provided by the bodies and organizations mentioned above.

Finally, Resolution 63/112 decided to include in the provisional agenda of the 64th session of the UNGA, under the item entitled "Oceans and the law of the sea," the sub-item entitled *Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments*.

UN Driftnet Reports

Since December 1992, the United States has been instrumental in ensuring that implementation of the high seas driftnet moratorium remains a priority of the UNGA. The United States will continue to support UNGA resolutions and decisions requesting that the UN Secretary-General submit to the General Assembly biennial reports on developments relevant to the implementation of the UN driftnet moratorium.

Resolution 62/177 requested the Secretary-General to submit to the General Assembly at its 63rd session in 2008 a report on *Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments*, taking into account information provided by States and other entities on the relevant paragraphs in Resolution 62/177.

Paragraph 82 of the Report (A/63/128, dated 14 July 2008), states that the occurrence of unsustainable fishing practices in the fishing sector, such as the persistence of overcapacity and institutional overfishing, IUU fishing, the use of unselective fishing gear and techniques with their toll of excessive bycatch and destruction of marine habitats, <u>as well as the continuation of large-scale pelagic driftnet fishing</u>, have adverse impacts on the long-term conservation,

management and sustainable use of marine fishery resources. Paragraph 121 reports, among other things, on the driftnet measures the United States undertook in the context of the NPAFC and the U.S.-PRC driftnet MOU in 2007.

Support for the Wellington Convention

The United States took no specific actions in support of the Wellington Convention in 2007. The Wellington Convention, formally known as the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, prohibits driftnet fishing within the Convention Area which includes both EEZs of South Pacific countries and territories, and adjacent high seas areas. Details on U.S. actions taken prior to 2007 are provided in previous driftnet reports to the Congress. No large-scale pelagic driftnet fishing activities have been reported in the Wellington Convention area since 1991.

EVALUATION OF THE IMPACTS ON LIVING MARINE RESOURCES

A detailed evaluation of the impacts of large-scale high seas driftnet fishing on salmonids, marine mammals and birds, tuna and non-salmonid fishes, and marine turtles was provided in the 1992 report to the Congress. The evaluation was based on catch data from the 1989-1992 scientific driftnet monitoring programs with Japan, Taiwan and Korea. However, an enormous amount of North Pacific ecosystem data resulted from the driftnet scientific monitoring programs. Analyses and interpretation of these data continued through 1994 and descriptions of such research were included in the 1993 and 1994 driftnet reports. With the advent of the UN moratorium on large-scale high seas driftnet fishing, legal sources for scientific data on this type of fishing gear disappeared. Only Japan continues to conduct research on the distribution and abundance and status of stocks of salmonids and non-salmonid pelagic fishes in the North Pacific Ocean using small scale driftnets (driftnets less than 2.5 km).

LIST AND DESCRIPTION OF ANY NEW FISHERIES DEVELOPED BY NATIONS THAT CONDUCT, OR AUTHORIZE THEIR NATIONALS TO CONDUCT, LARGE-SCALE DRIFTNET FISHING BEYOND THE EEZ OF ANY NATION

We are not aware of any new fisheries that have been developed by nations that conduct, or authorize their nationals to conduct, large-scale pelagic driftnet fishing on the high seas beyond the EEZ of any nation.

LIST OF NATIONS THAT CONDUCT, OR AUTHORIZE THEIR NATIONALS TO CONDUCT, LARGE-SCALE DRIFTNET FISHING BEYOND THE EEZ OF ANY NATION IN A MANNER THAT DIMINISHES THE EFFECTIVENESS OF OR IS INCONSISTENT WITH ANY INTERNATIONAL AGREEMENT GOVERNING LARGE-SCALE DRIFTNET FISHING TO WHICH THE UNITED STATES IS A PARTY OR OTHERWISE SUBSCRIBES.

The Secretary has not identified, pursuant to the High Seas Driftnet Fisheries Enforcement Act, any nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the EEZ of any nation in a manner that diminishes the effectiveness of, or is inconsistent with, any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

U.S. Actions

China: The United States is encouraged with the substantial increase in enforcement actions taken by the PRC Government in 2007 and 2008. As mentioned earlier in this report, PRC officials assessed significant penalties on all six PRC-flagged driftnet vessels seized in 2007. In regard to the PRC-flagged *LU RONG YU 2880* seized by the FLEC Officer embarked aboard the USCG Cutter *MUNRO* on 8 September 2008, the PRC Government has prosecuted the case and fined the vessel owner 50,000 CNY (about $7,250), destroyed the vessel's driftnet gear, seized and sold the fish catch, and auctioned off the vessel. These punitive measures demonstrate the willingness of PRC authorities to investigate and provide a significant domestic deterrent effect for the PRC fishing fleet. This initiative may be partially responsible for the decline in sightings of PRC-flagged driftnet vessels in the North Pacific in 2008.

The PRC has increased its commitment of FLEC enforcement officials ("shipriders") assigned to IUU high seas driftnet fishing in the North Pacific Ocean and committed to patrol the high seas of the North Pacific with two FLEC vessels. FLEC was able to increase its shiprider support in 2008 because it conducted a 1-month training session for 29 shiprider candidates in Shanghai in February-March.

The PRC's patrol planning is operationally limited by FLEC’s inability to refuel its cutters while on patrol. Japan is the closest major land mass to the high seas driftnet threat area, but the Government of Japan has not allowed PRC cutters to refuel in Japanese ports. In addition, it is difficult to find diesel fuel that the FLEC cutters' engines can burn without risking damage. The engines operate on a grade of diesel fuel that is not common in the region. To compensate for these problems, the PRC is planning to build a class of 3,000 ton FLEC patrol cutters, which would substantially increase its ability to extend fisheries enforcement in the North Pacific. However, funding for this new class of high endurance patrol vessels is uncertain. In the meantime, the United States will continue to assist the PRC to improve its enforcement presence on the squid fishing grounds in the North Pacific Ocean.

Indonesia: The United States is concerned about the increase in sightings of Indonesian-flagged or suspected Indonesian IUU driftnet vessels in the North Pacific. The U.S. Government will seek to engage the Indonesian Government in early 2009 to negotiate an enforcement arrangement. Initial contacts with Indonesia have been positive. Indonesia recognizes its responsibility to cooperate with other states for the conservation and management of high seas fisheries--Indonesian law (Act 31 of 2004--Fisheries Act) states that the activities of Indonesian fishing vessels outside the Indonesian EEZ should comply with international regulations, requirements, or standards. In addition, the Indonesian Government has indicated that it would be willing to take enforcement action against its flagged vessels based on documentation provided by the USCG and has exchanged points of contact with the USCG for that purpose. Indonesia has said it would be receptive to USCG personnel boarding and inspecting an Indonesian fishing vessel on the high seas to gather evidence of suspected illegal fishing activity as long as the inspection was performed in accordance with international law.

Italy and France: The U.S. Government remains concerned by reports in 2008 that Italian and French vessels and nationals continue to engage in large-scale high seas driftnet fishing, despite the many measures taken by the EC, ICCAT, and the GFCM to address this problem.

We are encouraged that the EC's application on 28 June 2007 of a new definition of driftnets to EC driftnet regulations has eliminated the loopholes which have allowed both countries to circumvent them. This action is largely responsible for the prohibition of fishing for the French thonaille tuna fleet in 2008. We hope that the French Government will now take concrete action to eliminate the fleet or convert it to other fishing methods.

Regarding Italy, the Secretary of Commerce identified it on 19 March 1999 pursuant to the High Seas Driftnet Fisheries Enforcement Act as a nation that conducts, or authorizes its nationals to conduct, large-scale pelagic driftnet fishing on the high seas beyond the EEZ of any nation. On 15 July 1999, the United States and Italy formally agreed on measures to effect the immediate termination of Italian large-scale high seas driftnet fishing. For this reason, the United States did not impose trade sanctions on Italian fish, fish products and sport fishing equipment pursuant to the Act. Although the 1999 agreement has expired, the United States has continued to apply the provision of the High Seas Driftnet Fisheries Enforcement Act that denies entry of Italian large-scale driftnet vessels to U.S. ports and navigable waters. Since 29 May 1996 it has also required Italy to provide documentary evidence pursuant to the Dolphin Protection Consumer Information Act (16 U.S.C. 1371(a)(2)(E)) that certain fish and fish products it wishes to export to the United States are not harvested with large-scale driftnets on the high seas.

The United States believes that a ruling against Italy by the European Court of Justice in the EC's infringement case would represent major progress in the effort to eliminate Italy's IUU driftnet fleet in the Mediterranean. We hope that such a decision will be forthcoming in 2009.

In the 2007 driftnet report, two important EU enforcement developments late in the year were discussed in some detail:

1) The European Commission unveiled on 17 October 2007 a proposal for a Council Regulation establishing a Community system to prevent, deter, and eliminate illegal, unreported and unregulated fishing**.** Central to this Regulation is implementation of a certification scheme applying to trade in fishery products with the EC. Although the main emphasis of this Regulation is Community trade with third party countries, it also pertains to nationals and vessels of EU Member States.

2) On 4 December 2007, the European Court of Auditors[3] released *Special Report No. 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources*. The Report characterized the current control system as inefficient, expensive, overly complex, and not producing the desired results.

As a result of these developments, the European Commission decided to review and reform the legal framework for Common Fisheries Policy (CFP) control in 2008. On 29 September 2008, the Council of the EU passed Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter, and eliminate illegal, unreported and unregulated fishing**.** The United States will be interested in seeing what effect this regulation will have on the level of compliance with CFP rules by EU nationals in EU waters.

In addition, on 14 November 2008 the EU Commission proposed a new Council Regulation completely revamping the EU fisheries control system. An EU press release characterized the result as "a completely modernized system for inspection, monitoring, control, surveillance and enforcement of CFP rules throughout the market chain, from catch to the retailer." The Commission claims that its capacity to intervene to ensure that the rules of the CFP are being implemented and enforced by the Member States will be greatly strengthened and that all aspects of the control and monitoring of fisheries activities will be simplified and made more efficient by the new Regulation. Commission inspectors will be given the same powers Member States inspectors and will have the authority to carry out inspections on their own initiative and without prior notice to the Member State concerned. The proposed regulation would introduce harmonized deterrent sanctions across the EU which will reflect the economic benefit received from the infringement. Other major innovations include (1) the proposal for a penalty point system for infringements committed by fishing masters, operators or beneficial owners of a fishing permit, which could lead ultimately to loss of fishing permits once a certain number of points have been accumulated; and (2) measures against Member States which do not adhere to the CFP rules to the detriment of fish stocks. Such measures include the possibility to suspend or reduce EU financial assistance, fisheries closures, the deduction of quotas, and the refusal of quota transfers and/or exchanges.

[3] The European Court of Auditors audits the revenue and expenditures of the European Union. It aims to contribute to improving the financial management of European Union funds, so as to ensure maximum value for money for all citizens of the Union.

Regarding the elimination of IUU large-scale high seas driftnet fishing in the Mediterranean Sea, both of the above measures are certainly steps in the right direction. Unfortunately, these new reforms are not expected to enter into force until 1 January 2010. In the meantime, the United States will continue to monitor the driftnet situation in the Mediterranean Sea in 2009 and encourage the EU to enforce compliance with CFP regulations.

Morocco: Morocco verified in 2004 that it had a large-scale high seas driftnet fleet and that it intended to phase out this fleet over a 4-year period, ending in 2008. However, at the Annual ICCAT Meeting in Marrakech in November 2008, Morocco announced that it needed an additional 3 years for the phase-out, to 1 January 2012. Part of the reason for this delay is that it enacted its new driftnet law in July 2007 and it will take some time for the law to be effective. Morocco's ratification of the EU-Morocco Fisheries Partnership Agreement in late February 2007 will also give it access to funds to help expedite the retirement of its driftnet fleet. The United States will continue to work bilaterally with Morocco and multilaterally through ICCAT in 2009 to ensure that Morocco meets this deadline.

Action brought on 10 June 2008 — Commission of the European Communities v Italian Republic (Case C-249/08)
(2008/C 209/45)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: K. Banks and C. Cattabriga, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that:

— by failing to provide appropriate measures for the control, inspection and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with the provisions governing the retention on board and use of drift-nets, and C 209/30 EN Official Journal of the European Union 15.8.2008

— by failing to comply sufficiently with its obligation to ensure that appropriate measures are taken against those responsible for infringements of the Community legislation on the retention on board and use of drift nets, in particular by imposing dissuasive penalties on those persons, the Italian Republic has failed to fulfil its obligations under Article 1(1) of Council Regulation (EEC) No 2241/87 (1) of 23 July 1987 establishing certain control measures for fishing activities and Article 2(1) and Article 31(1) and (2) of Council Regulation (EEC) No 2847/93 (2) of 12 October 1993 establishing a control system applicable to the common fisheries policy;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

1. Since it was introduced in 1992, the prohibition on retaining on board and using drift-nets of a length greater than 2.5 Km and, since 2001, drift-nets of any length, has been systematically infringed on a massive scale by the Italian fishing fleet.

2. According to the Commission, the extent and seriousness of the situation are directly attributable to the inefficiencies in the Italian system for monitoring compliance with that prohibition and the inadequacy of the penalties imposed under Italian legislation for infringement of that prohibition.

3. In that connection, the Commission observes that the supervision of the use of drift-nets is conducted by numerous organisations which are competing with each other and in such a way that other tasks entrusted to them take precedence over that supervision, which is, moreover, not adequately coordinated. The lack of human resources, time and the necessary means prevents effective control being carried out.

4. Adequate strategic programming and planning for the control of the use of drift-nets is also lacking. The Commission observes that the controls should be carefully programmed on the basis of specific risk factors and a comprehensive, integrated and rational strategy. There should also be a greater focus on certain periods of the year and on specific regions and control posts. At present, however, no such action is being taken by the Italian authorities.

5. The authorities responsible for surveillance of the use of drift-nets do not have access to information on the location of fishing vessels gathered by the satellite vessel monitoring system (VMS) provided for in Article 3 of Regulation No 2847/93. It is apparent from an investigation carried out by the Commission that a significant number of fishing vessels are still not equipped with the satellite-tracking devices necessary for the proper functioning of the VMS. As regards the collection of data, the computerisation of logbooks, landing declarations and sales notes required under Regulation No 2847/93 and, *a fortiori*, the crossanalysis of those data with the information collected by the VMS, are far from being fully implemented.

6. If the surveillance of the use of drift-nets carried out by the Italian authorities appears to be wholly unsatisfactory, then no more efficient is their prevention of infringements of Community provisions on the retention and use of such nets.

7. In that connection, the Commission observes, first of all, that, contrary to Article 9a of Regulation No 3094/86 (3) and the measures which subsequently repeated and expanded the content of that provision, the Italian legislation in force governing penalties prohibits, essentially, only the use or attempted use of drift-nets but not their simple retention on board.

8. Secondly, when it is found that an infringement of the prohibition on the use of drift-nets has actually occurred, it is not duly reported by the local surveillance authorities to the competent authorities, principally due to existing social pressures, and it is not in any event effectively pursued and penalised. The number and range of penalties imposed is, in fact, derisory.

9. The Commission therefore considers that it has been amply demonstrated that the system of controls and penalties put in place in Italy to ensure compliance with the Community provisions on drift-nets is wholly inadequate for the purposes of securing compliance with the obligations imposed on the Member States by Article 1(1) of Regulation No 2241/87 and Article 2(1) and Article 31(1) and (2) of Regulation No 2847/93.

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(1) OJ 1987 L 207, p. 1.
(2) OJ 1993 L 261, p. 1.
(3) Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources (OJ 1986 L 288, p. 1).