2009 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

TABLE OF CONTENTS

INTRODUCTION **2**

DESCRIPTION AND PROGRESS OF EFFORTS MADE TO CARRY OUT PROVISIONS OF SECTION 206(C) POLICY **4**

IMPLEMENTATION OF THE GLOBAL DRIFTNET MORATORIUM CALLED FOR BY UNGA RESOLUTIONS 44/225, 45/197, AND 46/215 4

Current Status of the Driftnet Moratorium *4*

North Pacific Ocean 4

North Pacific Regional Driftnet Enforcement Coordination 4

U.S. Driftnet Enforcement Efforts 7

Canadian Driftnet Enforcement Efforts 8

Japan's Driftnet Enforcement Efforts 10

Korea's Driftnet Enforcement Efforts 10

Russian Federation's Driftnet Enforcement Efforts 10

Taiwan's Driftnet Enforcement Efforts 11

Chinese Driftnet Enforcement Efforts 11

Potential Driftnet Threat in the North Pacific Ocean in 2010 11

Western and Central Pacific Ocean 11

Mediterranean Sea 12

France 15

Italy 15

Morocco 17

Tunisia 18

Turkey 19

Antarctic Waters 12

Interagency Agreements *19*

Bilateral Driftnet Agreements *20*

U.S.-China MOU 21

U.S.-Italy Driftnet Agreement 21

Resolutions and Letters in Support of UNGA Resolution 44/225 ..... *21*

UNGA Driftnet Resolutions and Decisions 21

UN Driftnet Reports 22

SUPPORT FOR THE WELLINGTON CONVENTION 22

EVALUATION OF THE IMPACTS ON LIVING MARINE RESOURCES **23**

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 **23**

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. **23**

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 Homeland Security 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 Homeland Security to prohibit the importation into the United States of fish, fish products, and sport fishing equipment from the identified country. The Secretary of Homeland Security 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 2009 in fulfillment of the Section 206(e) reporting requirement. Information pertaining to U.S. actions in support of the Act prior to 2009 and after 1988 can be found in the 1990-2008 annual driftnet reports to the Congress available from NMFS. The reports for 2004-2008 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 2009, the UNGA global moratorium on large-scale high seas driftnet fishing has been in effect for 17 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, one vessel capable of conducting unauthorized large-scale high seas driftnet fishing operations was sighted in the North Pacific Ocean in 2009. The United States is not aware of any large-scale driftnet vessel sightings on the high seas of the Mediterranean Sea in 2009, although anecdotal information from nongovernmental organizations (NGOs) indicates that large-scale high seas driftnet fishing is continuing in the Mediterranean Sea.

North Pacific Ocean

Only one suspected driftnet vessel was sighted operating on the high seas of the Northwestern Pacific Ocean by the international community in 2009, a significant reduction from the 24 vessels sighted in 2008.

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 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 (nm) 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 Parties to 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 Fukuoka, Japan, on 23-24 February 2009, 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 2009 fishing season. The meeting included updates by each Party on IUU activity in 2008, information on enforcement efforts to date in 2009, and coordination of enforcement plans and resources for the remainder of 2009. The USCG presented its 2009 threat assessment for the NPAFC Convention Area. The 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. A detailed coordinated patrol schedule was developed in an attempt to maximize patrol coverage of the Convention Area as effectively and efficiently as possible.

An enforcement workshop for operational personnel was held on 25 February, after the conclusion of the EECM. Each country presented information with respect to its patrol activities. Canada presented information on the use of its new commercial Synthetic Aperture Radar satellite and how it can be used to more efficiently task NPAFC air patrols (described later in this document). Korea provided information with respect to its patrols conducted in the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area, and Japan provided a summary of its patrol activities since 2003. Russia presented its vision on joint enforcement operations in the Convention Area and the U.S. representatives explained how they develop and deliver their patrols, starting with planning and securing the assets, to boarding and inspection procedures.

NPAFC Annual Meeting: The 17th Annual Meeting of the NPAFC was held in Niigata, Japan, on 2-6 November 2009. Enforcement officials of the Parties met under the auspices of the NPAFC Committee on Enforcement to review enforcement activities in 2009 and begin planning activities for 2010. Representatives of Taiwan observed the proceedings of the meeting.

Collectively, member countries conducted a total of 188 ship patrol days and 279 aerial patrol hours in the Convention Area in 2010. No NPAFC Parties sighted any vessels suspected of illegal fishing, however Taiwan reported sighting one vessel with driftnets deployed. Although other factors, such as environmental conditions and market forces certainly affect fisher's

behavior, the decrease in sightings of driftnet vessels on the high seas this year may be in part also attributable to the increased effectiveness of coordinated enforcement efforts of NPAFC members.

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 may be attributed to a combination of factors including depressed salmon markets, more effective surveillance of traditional high seas salmon fishing grounds, and more effective control of fishing fleets by North Pacific countries.

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.

Because the North Pacific illegal driftnet fleet is operating in the part of the NPAFC Convention Area that is partially overlapped by the 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. The NPAFC is establishing closer relations with the WCPFC by developing a Memorandum of Understanding (MOU) between the two organizations, inter alia for the exchange of information on North Pacific large-scale driftnet fishing activities. NPAFC will continue to invite the WCPFC to send representatives to observe its annual meetings.

Due to the continued threat of high seas fishing for salmon in the NPAFC Convention Area, all Parties reaffirmed their commitment to maintain 2010 enforcement activities at high levels as a deterrent to the threat of potential unauthorized fishing activities. To coordinate enforcement efforts, the Parties agreed to hold the annual EECM in Yuzhno-Sakhalinsk, Sakhalin Island, Russia, the week of 19 April 2010.

A summary of high seas driftnet vessel sightings and apprehensions by North Pacific nations from 1998 to 2009 is provided in the table below.

North Pacific high seas driftnet vessel sightings and apprehensions from 1998-2009.

Country	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
Canada	0	3	3	0	0	1	2	1	26	9	7	0
Japan	0	2	0	0	3	0	1	17	67	21	5	0
Russia	0	1	0	0	0	0	0	0	0	2	0	0
China	0	0	0	0	0	0	11	0	0	0	0	0
Taiwan	2	3	0	0	0	0	0	1	0	7	2	1
United States	8	2	1	0	2	24	8	5	5	8	10	0
Total Sightings*	**10**	**11**	**4**	**0**	**5**	**25**	**22**	**24**	**98**	**47**	**24**	**1**
Apprehended**	**4**	**3**	**1**	**0**	**0**	**6**	**1**	**0**	**0**	**7**	**2**	**0**

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

U.S. Driftnet Enforcement 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 2009, the USCG's North Pacific high seas fisheries enforcement plan, began in August 2009 with the patrol of the USCG Cutter *RUSH*. The *RUSH* participated in a multinational IUU fisheries enforcement patrol from 20 August through 20 November, which included enforcement coordination with NPAFC Parties and China. Unfortunately, *RUSH* was delayed 15 days in port in Japan due to mechanical problems. The Japan Coast Guard conducted a joint Gulfstream V flight coincidental with *RUSH*'s visit--continuing a tradition of joint U.S.-Japan high seas driftnet aircraft patrol operations begun in 2006. *RUSH* also made a port call in China to embark Chinese Fisheries Law Enforcement Command (FLEC) officers.

RUSH spent approximately 70 days (35 patrol days in the NPAFC Convention Area) in support of Operation North Pacific Watch. Coast Guard cutter patrols were also augmented with several USCG HC-130 aircraft flights from Shemya Island, Alaska. USCG aircraft flew a total of 93 surveillance hours. NMFS Special Agents and Enforcement Officers deployed with Canadian CP-140 aerial surveillance patrols to assist in the identification of vessels and investigation of suspected illegal activity. A total of 261 person-hours of NOAA enforcement effort were expended on patrol, logistics, and investigation related to driftnet enforcement in 2009.

Patrols sighted a total of 266 fishing vessels, 200 of which were actively engaged in fishing or transiting. None were observed conducting large-scale high seas driftnet fishing operations. The *RUSH* carried multiple NOAA satellite buoys on board with the objective of attaching them to derelict driftnet gear. NOAA hopes to track the trajectory of the debris across the North Pacific Ocean to find out where it concentrates and, ideally, remove it from the water. *RUSH* did not locate any untended nets in the Convention Area; consequently none of the buoys were deployed.

Planned Future Efforts: The USCG will patrol with available aircraft and patrol vessels in 2010 in order to address the projected 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. USCG Pacific Area current planning will dedicate 125 aircraft hours in the high threat area and a minimum of 90 cutter days in support of the North Pacific NPAFC IUU mission in 2010. Finally, NMFS will continue to place officers on available Canadian high seas driftnet surveillance flights in 2010 and patrol with USCG HC-130 aircraft deployments when possible.

The USCG 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. The United States encourages other parties to establish similar systems.

Canadian Driftnet Enforcement Efforts

In previous years, Canadian driftnet surveillance flight operations were stationed out of Eareckson Airfield on Shemya Island, Alaska. Because Eareckson Airfield was undergoing runway repairs in 2009, Canada shifted its CP-140 aircraft base of operation to Kaneohe Bay, Hawaii, for the 2009 enforcement season. The 2009 operation involved one CP-140 aircraft, associated aircrew, technicians and ground support, and a Canada Department of Fisheries and Oceans (DFO) fishery officer and two NOAA enforcement officers to identify vessels and collect information on suspected IUU vessels, if needed. With the support and cooperation of the USCG District 14, DFO established an operational command center based out of Honolulu, Hawaii, for targeting aerial surveillance assets.

Unfortunately, the range of CP-140 aircraft operating out of Hawaii was too short to reach the driftnet high threat area in the Northwestern Pacific. Consequently, DFO developed and initiated a modified patrol plan for 2009. The new patrol area extended the eastern patrol boundary in the North Pacific to the area west of 160˚W to the Russian EEZ and north of 32˚N to the U.S. EEZ off Alaska. Although this area has not been traditionally patrolled, it is a route for highly migratory species such as tuna, which have been targeted by IUU fishermen. Canada hoped that its patrols in this area could benefit the NPAFC by confirming the presence or absence of fishing vessels and IUU fishing activity. Due to the uncertainty related to illegal fishing activity within

the range of the CP-140 aircraft, plus ongoing commitments on the aircraft, Canada reduced its 2009 commitment of 180 patrol hours to 80 hours. A total of six aerial patrols were conducted from 9-18 September 2009. No large-scale high seas driftnet vessels were sighted.

To compensate for the reduced patrol time, Canada increased the number of Radarsat-2 (RS2) images in the NPAFC Convention Area from 80 to 1,200. (RS2 is Canada's second-generation commercial Synthetic Aperture Radar satellite that provides enhanced information for applications such as environmental monitoring, ice mapping, resource mapping, disaster management, and marine surveillance.) This allowed Canada to increase space-based reconnaissance of the Convention Area from 3 weeks to nearly 2 months. The data was shared with the other NPAFC Parties.

Space-based Automated Identification System (AIS) data was also introduced to Canada's enforcement efforts in 2009. The AIS is a shipboard broadcast system that acts like a transponder, operating in the VHF maritime band. The International Maritime Organization's International Convention for the Safety of Life at Sea requires AIS to be fitted aboard international voyaging ships with gross tonnage of 300 or more tons, and all passenger ships regardless of size. AIS data was projected over RS2 images to remove commercial ship traffic from the RS2 radar contacts. This allowed Canadian enforcement officials to unclutter RS2 images and identify concentrations of fishing vessels and potential areas of interest.

The RS2 and AIS data were employed from 5 August and provided continuous passes of the entire Convention Area until 18 September 2009. The RS2 data was the primary tool for locating vessel activity and cueing the CP-140 aircraft within its assigned patrol area. Patrols were planned following a daily analysis of RS2 contacts, information gathered by CP-140 flights in the Convention Area, ocean conditions, and highly migratory species migration routes. Data from the satellite assets showed fishing vessel concentrations similar to those in 2008. The main concentration of fishing activity in 2009 was in the driftnet high threat area.

Patrol Results: Although no large-scale high seas driftnet vessels were sighted, Canada and the other NPAFC Parties were able to experiment with the application of new satellite-based reconnaissance assets to detect the problem of IUU fishing. As the demands on aircraft and ship patrol time increases, the application of satellites for fisheries surveillance will undoubtedly increase in importance.

Canadian Driftnet Enforcement Efforts for 2010: The Canadian Government remains committed to combating IUU fishing in the North Pacific Ocean in 2010; however, aerial surveillance operations will once again be affected by continuing runway repairs at Eareckson Airfield in the Aleutian Islands. Canada will continue to explore basing options for its CP-140 aircraft operations but cannot predict what its exact aerial surveillance contribution will be for 2010.

Canada anticipates that it will again employ RS2 in order to develop a knowledge base of vessel traffic in the Convention Area. Canada will continue to share RS2 data with other countries with enforcement assets in the Convention Area in 2010.

Japan's Driftnet Enforcement Efforts

Japan's 2009 driftnet fishery enforcement efforts consisted of the deployment of six Fisheries Agency of Japan (FAJ) patrol vessels in the North Pacific Ocean for a total of 105 ship days at sea from 28 May to 24 September 2009. The FAJ also deployed a Citation V aircraft for 76 patrol hours during that same time period.

The Japanese Coast Guard (JCG) deployed the patrol vessel *YASHIMA* with embarked helicopter for 4 ship days during August 2009. The patrol vessel and its helicopter covered more than 495,000 km^2 in the Northwest Pacific Ocean. The JCG also conducted 6 hours of aerial surveillance with a Gulf V aircraft in September 2009. The aircraft patrolled 732,000 km^2.

No large-scale high seas driftnet fishing activity was observed during these operations.

Japanese Driftnet Enforcement Efforts for 2010: Japan will report on its 2010 enforcement plans at the NPAFC EECM in Yuzhno-Sakhalinsk, Russia, in April 2010.

Korea's Driftnet Enforcement Efforts

Korea did not participate in large-scale high seas driftnet fisheries enforcement activities in the NPAFC Convention Area in 2009.

Korea does not plan to conduct any enforcement activities pursuant to the NPAFC enforcement effort in 2010. However, as a member of the WCPFC, Korea is considering taking part in WCPFC enforcement activities (as mentioned previously, the WCPFC Convention Area partially overlaps the NPAFC Convention Area). Korea is also negotiating an MOU with the USCG which could improve Korea's participation in future enforcement activities.

Russian Federation's Driftnet Enforcement Efforts

The Russian Federal Security Service's Northeast Regional Border Directorate in Petropavlovsk-Kamchatsky and the Sakhalin Border Service in Yuzno-Sakhalinsk coordinated 12 AN-72 aircraft patrols totaling 64 hours in the NPAFC Convention Area in 2009. They also deployed six patrol vessels in the Convention Area for 44 ship days. No vessels were observed engaged in large-scale driftnet fishing or other illegal fishing activities.

On 10 June 2009, the Russian Border patrol frigate *DZERJINSKY* intercepted a Panamanian-flagged cargo vessel, *NORTA*, at 45˚50"N, 158˚38"E. The *NORTA* refused to allow the *DZERJINSKY's* inspection team to board and fled southward. Russia believes it may have been involved in illegal fishing activity in the Convention Area.

Russian Driftnet Enforcement Efforts for 2010: Russia will finalize its 2010 driftnet enforcement activities at the NPAFC EECM in Yuzhno-Sakhalinsk, Russia, in April 2010.

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 2009 patrol plans with the NPAFC Secretariat and Parties on 22 June 2009, prior to deploying its patrol vessel, *HSUN HU NO. 3*, to the North Pacific Ocean. The *HSUN HU NO. 3* patrolled the area of 39°-44°N, 148°-165°E, from 30 June to 26 September for a total of 84 vessel days.

On 19 July 2009, the *HSUN HU NO. 3* sighted the fishing vessel *URAL 1* with driftnets in the water at 40˚47”N, 165˚03”E. However, due to fog, the *HSUN HU NO. 3* was unable to identify the flag state of the vessel or the species of fish being caught. On 20 July, the Fisheries Agency of Taiwan notified the NPAFC Executive Director of the sighting.

Taiwan’s Driftnet Enforcement Efforts for 2010: Taiwan’s continued level of driftnet enforcement in the North Pacific in 2010 will depend on the availability of funding for patrol vessel operations.

Chinese Driftnet Enforcement Efforts

Although driftnet fishing for salmon on the high seas is illegal under Chinese law, Chinese 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 Chinese fisheries law enforcement authorities are achieving success toward eliminating the problem. There were no confirmed sightings of Chinese-flagged driftnet vessels in the North Pacific in 2009.

Potential Driftnet Threat in the North Pacific Ocean in 2010

Historical sightings indicate that the high seas driftnet threat continues to exist in the North Pacific Ocean. Past years' 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 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 suspected Indonesian-flagged driftnet vessels operating in the IUU driftnet fishery since 2003. It is possible that the increased presence of NPAFC Party enforcement aircraft and vessels with embarked FLEC officers on the fishing grounds has resulted in IUU driftnet vessels reflagging or making an unauthorized claim of nationality 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 Chinese squid fleet. Chinese-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 Conservation and Management Measure (CMM) 2008-04, prohibiting the use of large-scale driftnets (greater than 2.5 km in length) on the high seas within the WCPFC Convention Area. CCM 2008-4 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 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.

The WCPFC has also coordinated with the NPAFC to establish a cooperative framework between the two organizations to exchange information on North Pacific large-scale driftnet fishing activities between NPAFC and WCPFC members. A Memorandum of Understanding between the two organizations is under review for this purpose.

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 10 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.

2009 Developments:

NGOs, including Oceana, Greenpeace, and the World Wildlife Fund (WWF), continued to assert that vessels from Algeria, France, Italy, Morocco, Tunisia, and Turkey with driftnets from 7-14 km in length are operating throughout the Mediterranean Sea in 2009. The United States is not aware of any documented sightings of large-scale driftnet vessels operating on the high seas of the Mediterranean in 2009.

France: The European Commission launched an infringement procedure[1] against France in the European Court of Justice (ECJ) on 28 June 2007 for driftnet compliance violations. The infringement resulted from a hearing on bluefin tuna in the Fisheries Committee of the European Parliament in which it came to light that 81 French vessels were reported to be fishing illegally for bluefin tuna with thonaille.

The French Government applied to ECJ 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 could finally be sanctioned for not complying with the EU driftnet ban since 2002.

On 5 March 2009, almost 2 years after the original infringement procedure against France was initiated, the ECJ resolved the case in favor of the European Commission and condemned France for the lack of control over the use of driftnets by its vessels and nationals, rejecting France's appeal. According to the ruling, French authorities had neither effectively inspected nets used by fishermen for catching bluefin tuna, nor had they applied strict enough rules to prevent the use of illegal drift nets.

From a legal perspective, the use of thonaille can be considered illegal from March 2009.
No documented sightings of French large-scale driftnet vessels operating on the high seas were reported in 2009.

Italy: Non-governmental environmental organizations (NGOs) assert that Italian vessels and nationals continued to fish with large-scale driftnets in the Mediterranean Sea in 2009. However, the United States is not aware of any documented sightings of Italian large-scale driftnet vessels

[1] 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.

fishing on the high seas of the Mediterranean in 2009.

Vessel Sightings: On 27 March 2009, Oceana reported the arrest of three captains and ship owners in the Italian port of Bagnara Calabra for their use of illegal driftnets. The Prosecutor's Office of Calabria took action as a result of a documentary aired by Italian TV Channel RAI 3 on 16 November 2008 in collaboration with Oceana. The three were charged with resisting authorities during operations on the high seas and assaulting authorities at port.

On 26 July 2009, Italian authorities confiscated 15 km of driftnets and an illegal catch of 30 bluefin tuna and swordfish from the Italian fishing vessel *FREDERICA II*. The vessel had tried to flee, but the Greenpeace ship, Rainbow Warrior, kept it in sight until the Coast Guard arrived. The crew of the Rainbow Warrior located the Frederica II earlier in the day driftnet fishing off the coast of Sicily and reported its location to the authorities. The vessel was inspected in the harbor of Pantelleria, in the Sicilian Channel and authorities discovered longline fishing gear on board, in addition to driftnets. According to the EU's online Fleet Register, the Frederica II was only licensed to fish with bottom trawling gear.

Italian Decree: Despite the EC's new definition of driftnets, Italian Agriculture Under Secretary Antonio Buonfiglio, who has the Minister of Agriculture's delegation of authority for fisheries matters, signed a decree on 4 June 2009 eliminating the 10-mile maximum limit on the distance from the coast for the use of ferrettara driftnets under Italian law. Instead, the decree authorized the use of ferrettara nets according to the distance from the coast authorized for each vessel, thus allowing some vessels to fish the gear beyond the previous limit. This change meant that Italian enforcement authorities had to inspect net length, ensure that vessels were setting nets only on permitted species (e.g., mackerel, European pilchard, anchovy), and check the authorized distance from the coast for each vessel. Fisheries Directorate International Affairs Director Cesare Tabacchini stressed that Italy intended to strictly enforce both the 2.5-km limit and the species limitations. The species rules were intended to limit the incentive for vessels to fish farther from the coast, since the permitted species all tend to be found close to the coast, except for anchovy.

The Lazio (Rome regional) Court accepted on 25 June 2009 a case brought by environmental NGOs against the decree. The Court agreed to suspend the implementation of the decree while the case was being heard. Unfortunately, the results of the action were not available at the time of this report.

Status of the EC Infringement Procedure against Italy: 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. 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 ECJ on 10 June 2008. The action was a scathing indictment of Italy's failure to comply with the EU's driftnet regulations.

On 29 October 2009, the ECJ finally declared that Italy has failed to fulfil its obligations under Article 1(1) of Regulation (EEC) No 2241/87 establishing certain control measures for fishing activities and Articles 2(1), 31(1) and (2) of Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy, 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. Italy was particularly condemned for failure to comply with the provisions governing the retention on board and use of driftnets. Italy also failed 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 driftnets, in particular by imposing inadequate penalties. It is not clear that there will be any monetary penalty imposed on Italy as a result of the ECJ ruling, but Italy will have to implement EC driftnet laws.

One other development of note: in January 2009, the EU called on Italy to return 7.7 million Euros (approximately U.S. $10 million) of Community funds used fraudulently for the first driftnet vessel buyout plan implemented by Italy in 1997. That buyout was a product of the U.S.-Italy 1996 Driftnet Agreement.

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) was earmarked to 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.

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.

2009 Developments: At the 21st ICCAT Annual Meeting held in Recife, Brazil, on 9-15 November 2009, Morocco provided a status report on its plan. The bottom line is that Morocco has made very little progress on its driftnet phase-out plan. As a result, the ICCAT Committee on Compliance identified Morocco as being in violation of ICCAT conservation and management measures. Morocco will be given until 1 January 2012 to eliminate its driftnet fleet. If it does not meet that deadline, ICCAT may impose sanctions.

Tunisia: Although Tunisian driftnet vessels have been sighted fishing for bluefin tuna off the Libyan coast in recent years, NMFS is not aware of any Tunisian high seas driftnet vessel sightings in 2009.

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.

At the ICCAT 2009 Annual Meeting in Brazil, the ICCAT Committee on Compliance identified Turkey as being in violation of ICCAT Recommendation 03-04, which prohibits the use of driftnets in fisheries for large pelagic species in the Mediterranean. Turkey responded that it will implement new regulations to ban modified driftnets in 2011.

Antarctic Waters: 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 was initially unclear whether the "gillnets" being deployed were, by definition driftnets, as there are references in CCAMLR documentation to unidentified vessels sighted recovering "driftnet-type fishing gear for catching toothfish" in the Convention Area.

At the 2008 CCAMLR Annual Meeting in Hobart, Tasmania, 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 CCAMLR's Standing Committee on Inspection and Compliance and the Scientific Committee work intersessionally to seek this information.

Further investigation in 2009 has revealed that the gillnets are actually anchored to the ocean floor with weights. Although they are large-scale (exceeding 2.5 km long), by definition they are not driftnets.

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 China continued to work together in 2009 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.-China Shiprider Agreement") established boarding procedures for law enforcement officials of either country to board and inspect U.S. or Chinese-flagged vessels suspected of driftnet fishing. The MOU also established a shiprider program, which allows Chinese 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.

Pursuant to the provisions of the U.S.-China MOU, China's FLEC continued to participate in high seas fisheries enforcement in 2009. As in past years, this participation was financially supported by NOAA, which facilitated logistics and travel costs of Chinese officials. In June 2009, the Coast Guard hosted an operational planning meeting for the 2009 enforcement season in Honolulu, Hawaii.

A total of six Chinese FLEC ship riders were deployed on USCG Cutter *RUSH* during its August-November 2009 IUU patrol. These officials were instrumental in facilitating communications between the USCG and the Chinese FLEC and effectively expanded the jurisdictional reach of both enforcement agencies allowing for inspection and enforcement action had any Chinese-flagged HSDN vessels been found in the North Pacific. The cooperative partnership resulted in a joint boarding inspection of the Chinese fishing vessel *DONG YU*. No violations were found during the boarding.

With the current MOU expiring at the end of the year, the United States is working with China to renew the MOU for another 5 years. The USCG hopes the successful conclusion of the extension will allow its units to host a similar number of Chinese officials during the 2010 fishing season. The USCG has had a strong working relationship with the Chinese FLEC for more than

16 years. This working relationship increases opportunities for cooperation on both high seas fisheries enforcement efforts and training. China has provided a total of 61 enforcement officials to the USCG since 1994.

U.S.-Italy Driftnet Agreements

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), 63/112 (2008), 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 4 December 2009, the General Assembly adopted, without a vote, draft resolution A/64/L.29 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* as Resolution 64/72. The Resolution reaffirms the importance it attaches to continued compliance with Resolution 46/215 and other subsequent resolutions on large-scale pelagic driftnet fishing, and urges States and other entities to enforce fully the measures recommended in those resolutions in order to eliminate the use of large-scale pelagic driftnets in all seas and oceans. Resolution 64/72 also expresses concern that, despite the adoption of resolution 46/215, the practice of large-scale pelagic driftnet fishing still exists and remains a threat to marine living resources. It 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 of driftnets that contravene the Resolution.

Resolution 64/72 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 also requests that the Secretary-General submit to the General Assembly at the 67th 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 64/72 decided to include in the provisional agenda of the 65th 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 63/112 requested the Secretary-General submit to the General Assembly at its 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 instruments*, taking into account information provided by States, relevant specialized agencies, in particular the Food and Agriculture Organization of the United Nations, and other appropriate organs, organizations and programs of the United Nations system, subregional and regional organizations and arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as other relevant intergovernmental bodies and non-governmental organizations…" Consequently, there was no Report of the Secretary General on Sustainable Fisheries at the 64th Session of the General Assembly.

Support for the Wellington Convention

The United States took no specific actions in support of the Wellington Convention in 2009. 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 2009 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:

Italy and France: Thanks to European Court of Justice rulings in 2009, there are few, if any, loopholes left for French and Italian fishermen to circumvent EC driftnet regulations. The United States anticipates the end of these fisheries in the near future. The French thonaille tuna fleet was effectively sidelined in 2008 and 2009. We note that there has been a significant decline in documented sightings of Italian fishing vessels employing large-scale driftnets on the high seas of the Mediterranean in recent years and none in 2009.

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. We plan to end the above reporting requirement in 2010.

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[2] 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 two 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**.**

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

[2] 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.

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 as Member State 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.

On 22 October 2009, the EC adopted Commission Regulation (EC) No. 1010/2009 establishing the implementing rules for Regulation No. 1005/2008 (the 2008 IUU regulation). As one of the central pillars of the Community's fisheries control policy, the IUU Regulation will control all landings and transshipments of third-country fishing vessels in Community ports and all trade of marine fishery products to and from the Union. The IUU Regulation and its implementing rules have the ambitious goal to combat illegal fishing by making sure that none of its products end up on the Community market. To do so, the Regulation sets up a catch certification scheme ensuring the full traceability of all marine fishery products traded from and into the Community. The certification scheme will help countries comply with their own conservation and management rules and will also make cooperation among countries easier for control and enforcement purposes. Finally, the Regulation seeks to ensure that no EU citizens are engaged in IUU activities, no matter where those activities take place.

As a final disincentive for the use of driftnet fishing gear by EU members, the ICCAT Committee on Compliance identified the European Community at the 2009 ICCAT Annual Meeting in Brazil on 9-15 November for violating ICCAT Recommendation 03-04, which prohibits the use of driftnets in fisheries for large pelagic species in the Mediterranean. If the Community is not able to completely eliminate driftnet fishing by its member nations, it will be interesting to see what sanctions are pursued by ICCAT.

Morocco: The threat of ICCAT sanctions in 2012 if Morocco fails to achieve a phase out of its driftnet fleet will hopefully provide Morocco incentive to make meaningful progress toward this goal in the next two years. An additional incentive will be provided by the entering into force of the European Commission’s Regulation on IUU fishing in January 2010. Among other things, the regulation will prohibit the importation of fishery products obtained from IUU fishing into the EU. We understand that the EU has granted Morocco an exclusion from the IUU regulation until 2012 to allow for the driftnet fleet phase out. The United States will continue to follow closely the progress of Morocco's plan and will offer assistance, as appropriate.