

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

## **Progress Report April 2010**

### **I. Introduction**

This report describes the progress to date since publication of the January 2009 biennial report on implementation of the international responsibilities assigned to the Secretary of Commerce under Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, P. L. 109-479 (MSRA or the Act). In this Act, Congress recognized the need for international cooperation to address some of the most significant issues affecting international fisheries today, including illegal, unreported, and unregulated (IUU) fishing and fishing practices that may undermine the sustainability of living marine resources. Congress emphasized, in particular, that international fisheries management organizations and their member nations need better tools and stronger enforcement mechanisms to address these issues. The Act is aimed at strengthening U.S. leadership in improving international fisheries management and enforcement, particularly with regard to IUU fishing and bycatch of protected living marine resources (PLMRs).

MSRA amends the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et. seq.*, and the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), 16 U.S.C. 1826d *et. seq.*, by directing the United States to proceed bilaterally and multilaterally through various entities, including regional fishery management organizations (RFMOs), to address IUU fishing, bycatch of PLMRs, and related issues. The Secretary of Commerce, in some cases acting with or through the Secretary of State, will exercise these authorities and responsibilities. The Secretary of Commerce is also authorized to undertake activities to promote improved monitoring and compliance for international fisheries. The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NMFS) is the implementing agency within the Department of Commerce.

The Act requires the Secretary of Commerce to produce a biennial report describing, *inter alia*,: progress in the international arena to strengthen RFMOs to address IUU fishing and to end or reduce fishing impacts on PLMRs; the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party; and the countries the United States has identified as having vessels engaged in IUU fishing and/or bycatch of PLMRs. The first biennial report, submitted on January 13, 2009, described actions taken to date to implement the international provisions of the Act, including actions that were being taken to address IUU activities and bycatch of PLMRs through international organizations, including RFMOs, and on a bilateral basis. The report also included

information on actions taken to assist other countries in achieving sustainable fisheries and minimizing bycatch and discards. It also set forth the nations identified as having vessels engaged in IUU fishing and/or bycatch of PLMRs under Sections 609 and 610 of the Moratorium Protection Act (Section 403 of the MSRA). This progress report includes information on actions taken and developments since the January 2009 biennial report.

## **II. Background Information**

### **A. Illegal, Unreported, or Unregulated Fishing Activity**

In general, IUU<sup>1</sup> fishing activity refers to fishing activity that does not comply with national, regional or global fisheries conservation and management obligations in areas under the jurisdiction of national or international entities. In addition, unregulated and/or unreported fishing may occur in international waters where no international management authority or regulation is in place.

IUU fishing activity can occur in fisheries of all types – from small scale to industrial. It encompasses a complex array of actions including illegal harvesting, as well as the shipment, processing, landing, sale and distribution of fish and fishery products. The provisioning of vessels and financing may also contribute to IUU fishing.<sup>2</sup> IUU fishing thwarts attempts by States and international organizations to manage fisheries in a responsible manner. It also affects the ability of governments to support sustainable livelihoods for fishers and, more broadly, to achieve food security. The United Nations General Assembly (UNGA) has described IUU fishing as “one of the greatest threats to marine ecosystems [that] continues to have serious and major implications for the conservation and management of ocean resources.”<sup>3</sup> The U.S. Congress declared in the findings to the MSRA that IUU fishing “may harm the sustainability of living marine resources.”<sup>4</sup>

#### **1. Definition of IUU Fishing**

As set forth in Section 609(e)(3) of the Moratorium Protection Act (Section 403 of the MSRA), and as promulgated in a final rule by NOAA on April 12, 2007 (72 Fed. Reg. 18404), “illegal, unreported, or unregulated” fishing includes:

“(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the

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<sup>1</sup> See n. 1 above with regard to the use of this term in the MSRA and generally in the international community.

<sup>2</sup>FAO Committee on Fisheries, “Combating Illegal, Unreported and Unregulated Fishing Through Monitoring, Control and Surveillance, Port State Measures and Other Means,” p. 2.

<sup>3</sup> General Assembly Resolution, A/RES/60/31 (2006), para 33.

<sup>4</sup> P.L. 109-479, Section 402, amending 16 U.S.C. 1801(a).

United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or

(C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.”

NMFS decided to publish the definition exactly as set forth in Section 609(e)(3) of the Moratorium Protection Act (Section 403 of the MSRA). If needed, NMFS may revise the definition of “illegal, unreported, or unregulated” fishing at a later date.

## **2. Effects of IUU Fishing**

Because IUU fishing activities are often carried out covertly, monitoring and detection are difficult. This renders quantification of the problem elusive. The Food and Agriculture Organization of the United Nations (FAO) notes that although the exact extent of IUU fishing is not known, it is estimated that for some important fisheries IUU fishing accounts for about 30 percent of the total catch.<sup>5</sup>

The FAO reports that IUU fishing activities have widespread economic, social, and management consequences, including depriving legitimate fishers of harvest opportunities. IUU fishing also deprives managers of information critical to stock assessments, and may exacerbate the problem of discards and bycatch because vessels engaged in illegal activity are likely to use unsustainable fishing practices and non-selective gear.

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

## **3. International Approaches to IUU Fishing**

Since IUU fishing activities are complex, a broad range of governments and entities must be involved in combating them. These include flag States, coastal States, port States, market States, international and intergovernmental organizations, the fishing industry, non-governmental organizations, financial institutions, insurers, and consumers. The MSRA recognizes the importance of active U.S. involvement in international efforts to combat IUU fishing through activities such as: adoption of IUU vessel lists; stronger port

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<sup>5</sup> Bray, K., A Global Review of Illegal, Unreported and Unregulated (IUU) Fishing. 2000. Available at [www.fao.org/DOCREP/005/Y3274E/y3274e08.htm](http://www.fao.org/DOCREP/005/Y3274E/y3274e08.htm).

State controls; improved monitoring, control and surveillance (MCS); implementation of market-related measures to help ensure compliance; and capacity-building assistance. The United States is a member of, or has substantial interests in, numerous international fisheries and related agreements and organizations. A discussion of the international actions the United States has been taking and will continue to take concerning IUU fishing is set forth below.

## **B. Bycatch of Protected Living Marine Resources**

### **1. Definition of Protected Living Marine Resources**

The unintentional catch (bycatch) of PLMRs is also a serious issue in international fisheries. For purposes of the Moratorium Protection Act, protected living marine resources (PLMRs) “means (1) non-target fish, sea turtles, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on the International Trade in Endangered Species of Wild Flora and Fauna, but (2) does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.”<sup>6</sup> Seabirds are not included in the definition of PLMRs under the Moratorium Protection Act. However, they are an international living marine resource for which conservation is an issue of growing global concern, and an issue on which NMFS has been actively involved internationally. Section 316 of the Magnuson-Stevens Fishery Conservation and Management Act highlights the need for the Secretary of Commerce to work cooperatively with the Secretary of Interior and industry and within international organizations to seek ways to mitigate seabird bycatch.

### **2. Effects of Bycatch**

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

### **3. International Approaches to Reduce Bycatch**

In enacting the MSRA, Congress recognized the importance of U.S. leadership in establishing international measures to end or reduce bycatch of PLMRs. The United States is party to a number of international agreements related to the protection of living marine resources, as well as to numerous global, regional, and bilateral fisheries

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<sup>6</sup> MSRA Section 403(a), adding new Section 610(e) to the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826d, et seq.

agreements. This report describes the actions the United States has been taking and will continue to take in all relevant international forums and bilaterally to pursue strengthened bycatch reduction measures comparable to those of the United States.

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

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

Section 402 of the MSRA adds to the Magnuson-Stevens Fishery Conservation and Management Act a finding that international cooperation is necessary to address IUU fishing activities. The Moratorium Protection Act (as amended by MSRA Section 403(a)) calls upon the Secretary of Commerce, in consultation with the Secretary of State, and in cooperation with relevant regional fishery management councils and any relevant advisory committees, to take actions to improve the effectiveness of international fishery management organizations in conserving and managing stocks under their jurisdiction, among other things. These actions are to include:

- “(1) urging international fishery management organizations to which the United States is a member to –
  - (A) incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;
  - (B) seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;
  - (C) seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under an international fishery management organization’s jurisdiction;
  - (D) increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems; and
  - (E) seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish;
- (2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including –
  - (A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

- (B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and
  - (C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry; and
- (3) urging other nations at bilateral, regional, and international levels, including the Convention on International Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.”<sup>7</sup>

Section 207 to the Magnuson-Stevens Fishery Conservation and Management Act also authorizes the Secretary of Commerce to undertake activities to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international fishery management agreements through sharing of information, participating in global and regional efforts to build an international MCS network, supporting efforts to create an international registry or database of fishing vessels, and other activities, including providing technical or other assistance to developing countries to improve their monitoring, control, and surveillance capabilities.

Section 610(d) of the Moratorium Protection Act calls on the Secretary, to the greatest extent possible based on the availability of funds, to provide assistance to nations whose vessels are involved in bycatch of PLMRs to assist them in addressing such activities.

In addition to these provisions, the MSRA contains implementing language for several international agreements and conventions, including the Western and Central Pacific Fisheries Convention and the Agreement between the Government of the United States and the Government of Canada on Pacific Hake/Whiting.

### **1. Provisions for Identifying and Certifying Nations under the Moratorium Protection Act**

Sections 609 and 610 of the Moratorium Protection Act require the Secretary of Commerce to identify nations whose vessels are engaged in IUU fishing or bycatch activities and to certify whether those nations have taken appropriate corrective action. Specifically, the Secretary of Commerce is required to:

- Identify nations whose vessels are engaged, or have been engaged during the preceding two years, in IUU fishing taking into account where the relevant international fishery management organization has failed to implement effective measures to end the IUU fishing activity, or where no international fishery

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<sup>7</sup> See Section 608 of the Moratorium Protection Act.

management organization with a mandate to regulate the fishing activity in question exists (Section 609(a));

- Identify nations whose vessels are engaged, or have been engaged during the previous calendar year, in fishing activities or practices that either result in bycatch of PLMRs in waters beyond any national jurisdiction, or that result in bycatch of PLMRs shared by the United States beyond the U.S. Exclusive Economic Zone (EEZ), where the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or where the nation is not party to or does not maintain cooperating status with such organization and the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions (Section 610(a));
- With regard to nations identified as having vessels engaged in IUU fishing activity, within 60 days of submission of the biennial report to Congress, notify the nations, initiate consultations for the purpose of encouraging them to take appropriate corrective action with respect to the offending activities of their fishing vessels, and notify any relevant international fishery management organization of the actions taken by the United States (Section 609(c));
- With regard to nations identified as having vessels engaged in fishing activities or practices that result in bycatch of PLMRs, notify those nations as soon as possible; initiate discussions as soon as possible with all foreign governments that are engaged in or have persons or companies engaged in such fishing activities or practices for the purpose of entering into bilateral and multilateral treaties with such countries to protect the species at issue; seek agreements calling for international restrictions on fishing activities or practices through the United Nations, the FAO Committee on Fisheries and appropriate international fishery management bodies; and initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of Section 610 of the Moratorium Protection Act (Section 610(b));
- With regard to nations identified as having vessels engaged in IUU fishing activity, certify to Congress whether such nation has provided documentary evidence that it has taken corrective action with respect to the offending activities, or whether the relevant international fishery management organization has implemented measures that are effective in ending the IUU fishing activity by vessels of that nation (Section 609(d));
- With regard to nations identified as having vessels engaged in bycatch of PLMRs, certify to Congress whether the nation has provided documentary evidence of adoption of a regulatory program governing the conservation of the PLMR that is comparable to that of the United States, taking into account different conditions, and whether the nation has established a management plan that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for PLMRs (Section 610(c)); and

- Establish procedures to implement the certification requirements of the Moratorium Protection Act.

The identification of nations having fishing vessels engaged in IUU fishing activities and/or bycatch of PLMRs is deemed to be an identification under Section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act (18 U.S.C. 1826a(b)(1)(A)). If a nation does not receive a positive certification, indicating that it has taken appropriate corrective action, this may lead to prohibitions on the importation of certain fish and fisheries products into the United States, the denial of port privileges and/or other measures, under specified circumstances.

## **2. Biennial Report to Congress**

Section 607 of the Moratorium Protection Act requires the Secretary of Commerce to submit a biennial report to Congress. The biennial report is to include the following information:

“(1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management of conservation of living marine resources;

(2) a list of nations whose vessels have been identified under Section 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to Section 609 or 610;

(3) a description of efforts taken by nations on those lists to take appropriate corrective action consistent with Sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;

(4) progress at the international level, consistent with Section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and

(5) steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.”

## **B. Action to Implement the International Provisions of the MSRA**

The NMFS Office of International Affairs has the lead in implementation of the mandates under the international provisions of the MSRA. Some of the steps being taken are summarized below.

Status of International Living Marine Resources. To implement Section 607 of the Moratorium Protection Act, the NMFS Office of International Affairs developed parameters to use in the development of a list of international living marine resources. Based upon these parameters, a list of international living marine resources has been compiled, and is set forth in the 2009 biennial report. This list will be reviewed and updated, as necessary, in future biennial reports. In its implementation of Section 610(e) of the Moratorium Protection Act, the NMFS Office of International Affairs has also developed criteria for, and prepared the list of, PLMRs. The list of PLMRs is available on the internet at:  
[http://www.nmfs.noaa.gov/msa2007/docs/list\\_of\\_protected\\_lmr\\_act\\_022610.pdf](http://www.nmfs.noaa.gov/msa2007/docs/list_of_protected_lmr_act_022610.pdf).

IUU Fishing Definition. As required by Section 609(e) of the Moratorium Protection Act, a definition of IUU fishing was published in the *Federal Register* on April 12, 2007 (72 Fed. Reg. 18404), and can be found at 50 CFR 300 Subpart N. NMFS requested comments on whether to change the IUU fishing definition in the proposed rule to implement the identification and certification procedures pursuant to Sections 609 and 610 of the Moratorium Protection Act (74 Fed. Reg. 2019, January 14, 2009). NMFS received comments on this definition during the comment period for the proposed rule on the identification and certification procedures and will take the comments received under advisement in determining whether to amend this definition.

Development of Identification and Certification Procedures. To implement the identification and certification procedures pursuant to Sections 609 and 610 of the Moratorium Protection Act, the NMFS Office of International Affairs developed proposed regulations that set forth processes and applicable criteria for identifying nations whose vessels have been engaged in IUU fishing or bycatch of PLMRs, although development of regulations with regard to identification is not required by the Act. This proposed rule, which was published on January 14, 2009 (74 Fed. Reg. 2019) provided the public an opportunity for review and comment on the proposed identification and certification procedures. Concurrently with the publication of the proposed rule, NMFS made identification determinations based on the criteria set forth in the Moratorium Protection Act in the January 13, 2009 biennial report.

Strengthening International Fishery Management Organizations. As called for under Section 608, NMFS expanded efforts already underway to strengthen international fishery management organizations in conserving and managing fish stocks under their jurisdiction to end IUU fishing activities. In accordance with Section 608, the United States is also continuing its efforts to urge other nations at bilateral, regional, and international levels – including in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the World Trade Organization (WTO) – to take all necessary steps, consistent with international law, to adopt measures and policies that will restrict as much as possible the trade or import of fish or other living marine resources harvested by vessels engaged in IUU fishing into their nations or territories.

Improved Monitoring and Compliance. Section 207 of the Magnuson-Stevens Fishery Conservation and Management Act addresses activities to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international fishery management agreements. NMFS is continuing and expanding its efforts in this regard as well.

#### **IV. Information Regarding Identified Nations and Subsequent Consultations**

##### **A. IUU Activities**

In preparation for the first identifications included in the biennial report to Congress in January of 2009, NMFS solicited information from the public, other nations, other U.S. government agencies, and international organizations regarding nations whose vessels are engaged in IUU fishing activity or PLMR bycatch. On March 21, 2008, NMFS published a notice in the *Federal Register* (73 Fed. Reg. 15136) requesting information on nations whose vessels are engaged, or have been engaged at any point during the two years preceding this biennial report, in IUU fishing. The notice also requested information on nations whose vessels are engaged, or have been engaged in the previous calendar year, in fishing activities either in waters beyond any national jurisdiction that result in bycatch of a PLMR, or beyond the U.S. EEZ that result in bycatch of a PLMR shared by the United States. This notice was circulated widely to constituents and discussed at relevant bilateral and multilateral meetings.

In response to the *Federal Register* notice, NMFS received reports, IUU vessel lists, peer-reviewed literature, and other information from individuals, nongovernmental organizations, and other nations. The information received focused mostly on alleged IUU fishing activity. Relatively little information was provided on PLMR bycatch. In addition to information gathered from the public, NMFS also compiled information from RFMOs. This information included RFMO IUU vessel lists, compliance reports, information on violations of conservation and management measures, and scientific reports. NMFS also reviewed solicited information on bycatch activities, including peer-reviewed literature, scientific reports, and information on cooperative scientific work, from its Regional Offices and Science Centers.

Timing of the alleged IUU fishing activities and PLMR bycatch was a key issue. Much of the information provided, particularly on PLMR bycatch, was from a few years ago and did not fall within the timeframes required in the Moratorium Protection Act for identification. The Moratorium Protection Act requires that identifications be based on PLMR bycatch information from the previous year, but bycatch information is rarely available for the previous year because of the time required to assemble, analyze, and disseminate the information.

Another issue that arose concerned the geographic scope and nature of alleged IUU fishing and bycatch activities. In some cases, information was provided on fishing activities that did not fall within the scope of IUU fishing or PLMR bycatch, as defined

under the Moratorium Protection Act. For example, information was provided on the bycatch of species found solely within the EEZ of another nation that are not shared with the United States. Such activities do not fall under the Moratorium Protection Act's definition of PLMR bycatch.

All information received and collected was compiled, reviewed, and compared against the criteria and statutory requirements of the Moratorium Protection Act. At the conclusion of this process, NMFS analyzed the information and determined that ten nations were of interest to the United States for allegedly having vessels engaged in IUU fishing. Through diplomatic channels, in cooperation with the State Department, NMFS conducted outreach to these nations to provide them the opportunity to respond to any information presented and, if possible, refute allegations that their vessels were engaged in IUU fishing. Based on further analysis and inquiry, four of the nations of interest did not become identified nations in 2009.

Six nations – France, Italy, Libya, Panama, People's Republic of China and Tunisia – were identified in the January 13, 2009 report to Congress because vessels flying their flags had violated conservation and management measures of the Northwest Atlantic Fisheries Organization (NAFO), International Commission for the Conservation of Atlantic Tunas (ICCAT), Inter-American Tropical Tuna Commission (IATTC), or Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). These six nations were notified of their status under the Moratorium Protection Act by diplomatic note in February 2009.<sup>8</sup> Thereafter, consultations and/or exchanges of information were held with all the identified nations. The four RFMOs involved, NAFO, ICCAT, IATTC, and CCAMLR, were also notified of the identifications and of the relevant requirements of the Act by letter in February of 2009.

Below is information on the IUU fishing activity of vessels that provided the bases for the identification of nations under Section 609(a) of the Moratorium Protection Act. This section also describes the consultations and/or exchanges of information with the identified nations with regard to the activities at issue in the identifications, and includes information on the actions taken by the identified nations since January of 2009 to further compliance with conservation and management measures or increase control and monitoring of fishing fleets.

## **France**

### ***Bases for Identification***

France was identified in the January 2009 biennial report to Congress because its vessels were engaged in fishing activities that violated conservation and management measures of ICCAT during calendar years 2007 and/or 2008.

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<sup>8</sup> Although the diplomatic notes were dated February 27, 2009, the delivery of the note to the appropriate authorities of the PRC occurred on March 5, 2009.

In 2007, 81 French vessels were reported to be fishing for bluefin tuna with driftnets contrary to ICCAT Recommendation 03-04, which prohibits the use of driftnets for fisheries of large pelagic stocks in the Mediterranean Sea. In 2008, eight French purse seine vessels spent up to 21 days fishing since the start of the season without declaring any of their catches, in violation of ICCAT Recommendation 06-05. There were also significant discrepancies in the French catch data; half the French fleet had not reported any catches while the other half declared catching over 90 percent of their individual quotas, even though all the vessels showed similar activity rates.<sup>9</sup> The implication is that half of the French fleet failed to report catches in violation of ICCAT Recommendation 06-05.

### ***Consultations***

Consultations with France were held on March 9, 2009 and January 29, 2010. On both occasions, the U.S. delegation was headed by Dr. Rebecca Lent, Director, NMFS Office of International Affairs. The French delegation was headed by Ms. Sylvie Alexandre, Fisheries Director, Ministry of Fisheries, in March 2009 and by Mr. Loic Laisne, Senior Ministry official, in January 2010.

Participants in the consultations discussed the vessel activities that had formed the bases for the identification as well as other information of relevance to the IUU fishing.

During the meetings, the French delegation shared monitoring and surveillance information that the purse seine vessels did not fish during the period in question. With regard to the failure of French vessels to declare their catch, French officials indicated that they would provide evidence that this was not the case. The French delegation offered to provide to the United States a written summary of the evidence on these issues. Written information was received on April 23, 2010. The contents could not be analyzed in time for this progress report, but will be considered in the certification process. It should be noted that France also provided NMFS with an extensive packet of information in Fall 2008 in response to learning that their nation was being considered for identification. While this information did not sufficiently refute the activities for which France was identified, it did provide NMFS with important information to help guide the subsequent consultations with this nation.

### ***Other Considerations***

In 2009, France promulgated regulations that ban the use of driftnet gear known as “thonaille.” France had not applied the European Union’s (EU) ban to thonaille because France defined it in a manner that distinguished it from driftnet gear. However, a European Court of Justice ruled that France could not allow fishing with thonaille nets in the Mediterranean, thereby eliminating the legal loophole created by defining its fishermen’s large-scale driftnet gear as thonaille.

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<sup>9</sup> Press Statement from EC Commissioner Joe Borg. Retrieved from [http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/2008/com08\\_47\\_en.htm](http://ec.europa.eu/fisheries/press_corner/press_releases/2008/com08_47_en.htm) on June 20, 2008.

## Italy

### *Bases for Identification*

Italy was identified based on the activities of several Italian-flagged vessels that violated ICCAT measures during 2007 and/or 2008. The bases for identification included activities of the Italian fishing vessel, *Diomede II*, reported to be fishing with a driftnet off Sicily contrary to ICCAT Recommendation 03-04; fishing activity for bluefin by the vessel *Luca Maria*, which was not included on the ICCAT Register of Fishing Vessels licensed for such fishery, contrary to ICCAT Recommendation 06-05; the activities of three Italian vessels (the *Ligny Primo*, *Maria Antoinetta*, and *Luca Maria*) seen with four spotter planes during the 2007 fishing season for eastern Atlantic and Mediterranean bluefin, contrary to the spotter plane prohibition of ICCAT Recommendation 06-05; and the activities of eight Italian purse seine vessels reported to have exceeded their 2008 quota by between 100 and 240 percent in violation of ICCAT Recommendation 06-05.

### *Consultations*

U.S.–Italian consultations began with a meeting in Rome on March 2, 2009. The Italian delegation was headed by Francesco Saverio Abate, Director General for Marine Fisheries and Aquaculture. The U.S. delegation was headed by Dr. Rebecca Lent, Director, NMFS Office of International Affairs. Consultations and discussions continued throughout 2009 and into 2010 in connection with ICCAT meetings and other activities. Such consultations included: a November 2009 meeting between Antonio Buonfiglio, Italy’s Under Secretary of Agriculture, and U.S. Embassy officials and submission by Italy of enforcement data in December 2009.

During the March 2, 2009 consultation, the Italian delegation explained that Italy has invested considerable resources in addressing IUU fishing. While the activities of the *Diomede II* (fishing with driftnets) and *Luca Maria* (fishing without being registered on ICCAT’s list of authorized fishing vessels) were not directly addressed, Mr. Abate explained the actions taken for the use of spotter planes by *Ligny Primo*, *Maria Antoinetta*, and *Luca Maria*.

With regard to driftnet fishing, the Italian delegation noted a new law enacted in June, 2008, that makes possession of fishing gear on board without a permit illegal and increased or introduced penalties for other violations. Among other factors, it doubled the administrative penalties for fishing in prohibited areas or with unauthorized equipment, allowed confiscation of equipment that is unauthorized, and introduced penalties for violations of vessel monitoring system (VMS) requirements and violations of regulations related to the protection of certain fish stocks.

In April and May of 2010, NMFS Office of International Affairs received from Italy additional written information regarding the events for which Italy was identified. The contents in their entirety could not be analyzed in time for this progress report, but will be considered in the certification process.

### ***Other Considerations***

The Government of Italy further informed NMFS of a number of developments during 2009. These include more centralized enforcement, enhanced monitoring and data collection, establishment of a “point system” for fishing licenses, a 50 percent reduction in the bluefin tuna fleet, a possible halt to bluefin fishing for the 2010 season, and the fact that driftnet-like ferrettara nets will be permitted only in national waters (within 12 miles).

In December 2009, Italian officials presented the U.S. Embassy with a substantial set of data on Port Captaincy-Coast Guard enforcement activities in 2008 and 2009, for USG consideration. Examples include an increase in inspections in ports and in illegal/non-licenses gear seized, an active role in the 2009 EU bluefin tuna enforcement campaign, and the seizure of 244,700 meters of “spadare” driftnets during 2009.

### **European Union Activities**

In its 2009 Annual Report of Contracting Parties for the ICCAT Secretariat, the EU reported that France has implemented monitoring of bluefin tuna fishing and an observer program for vessels over 15 meters in length that fish for bluefin tuna. The EU also reported that Italy took part in the Scheme of Joint International Inspection (also referred to as the Joint Deployment Program) during the 2008 bluefin tuna fishing season.

The European Union (on behalf of its member states) made a number of assurances in early 2010 that they are taking steps to strengthen monitoring and control measures in the Eastern bluefin tuna fishery. The ICCAT Compliance Committee reviewed monthly catch reports for 2009 and found that all Eastern harvesters, including the EU, remained within their bluefin tuna quota allocations during 2009. ICCAT parties, including the EU, have also made commitments to fully implement ICCAT Regional Observer Programs during the 2010 fishing season. The EU has organized training sessions on implementation of its IUU regulation, as well as held a training session in April 2010 on ICCAT's Bluefin Tuna Recovery Program at the Community Fisheries Control Agency in Vigo, Spain.

### **Libya**

#### ***Bases for Identification***

With respect to Libya, several of its vessels were engaged in fishing activities that violated conservation and management measures of ICCAT during calendar years 2007 and/or 2008. A Libyan-flagged vessel (*Al Dafnia*) offloaded frozen bluefin tuna three months after the closure of the 2007 bluefin tuna fishing season, which indicated a possible violation of ICCAT Recommendation 06-05. In addition, this vessel and another Libyan-flagged vessel (*Lebda*) targeting eastern Atlantic and Mediterranean bluefin tuna were not entered into the register of vessels until July 18, 2007, after the 2007 fishing

season for large scale longliners ended.<sup>10</sup> Under ICCAT Recommendation 06-05, all vessels targeting eastern Atlantic and Mediterranean bluefin tuna must be entered into the registry.

### ***Consultations***

Consultations with Libya concerning its identification were held in Portland, Maine on July 23, 2009. The U.S. delegation was headed by Dr. Rebecca Lent, Director, NMFS Office of International Affairs. The Libyan delegation was headed by Mr. Hussein Zaroug of the Libyan General Authority for Marine Wealth. Libya also provided a letter dated January 7, 2010 concerning the activities noted in the identification.

During the consultations, the Libyan delegation presented statements about the activities of the two vessels at issue in the identification. NMFS will seek additional details regarding the vessels and their activities.

### ***Other Considerations***

As a general matter, Libya noted that it is opposed to any kind of IUU activity and that it has acted consistent with this position at ICCAT. Mr. Zaroug's letter noted that Libya is working hard to build its capacity to manage and control its fishing fleet and believes that there has been excellent improvement since the 2006 ICCAT meeting. During the consultations, the Libyan delegation indicated that the Libyan government is increasing its focus on fisheries, including observing and monitoring of tuna fisheries. In 2008, Libya installed VMS coverage for all its fishing and support vessels that were active in the bluefin tuna fishing operations.

The budget for the government's fisheries program has increased ten-fold. Planned activities include the building of a fishery resource center with two buildings for vessel monitoring systems and the purchase of three additional speed patrol vessels, which will double the size of the enforcement fleet.

## **Panama**

### ***Bases for Identification***

Panamanian-flagged vessels were engaged in fishing activities that violated conservation and management measures of IATTC, NAFO, and ICCAT during calendar years 2007 and/or 2008. According to reports of the IATTC Permanent Working Group on Compliance, a Panamanian-flagged vessel (*Vicente F*) continued to fish in the Eastern Pacific Ocean until June 2, 2008, after it was removed from the Register in 2007. IATTC Resolution C-02-03 prohibits any purse-seine vessel from fishing for tunas in the Eastern Pacific Ocean that is not on the IATTC Regional Vessel Register. In addition, according to reports of the IATTC Permanent Working Group on Compliance, a Panamanian-flagged vessel (*Aracely F*) stored 97 tons of tuna in a well that was supposed to be sealed

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<sup>10</sup> *Pirate Booty: How ICCAT is Failing to Curb IUU Fishing* (2007), pages 45-46.

during a fishing trip in 2007, in violation of an IATTC measure. Finally, Panamanian-flagged vessels, *Polestar* and *Enxembre*, were listed on the Northwest Atlantic Fisheries Organization (NAFO) IUU vessel list for fishing without authorization in the North Atlantic during 2007 and/or 2008.<sup>11</sup>

### ***Consultations***

Panama provided written information in May 2009. In addition, officials of the two governments discussed the issues on a number of occasions during 2009, including, *inter alia*, at the IATTC meeting in June. Panamanian officials provided information on each of the four vessels at issue. NMFS officials also met face-to-face with Panama in January 2010 to discuss issues relating to this identification, among other matters. NMFS intends to continue discussions regarding the activities of some of the vessels.

### ***Other Considerations***

Panama provided additional information on the overall monitoring and control of its fishing fleet and support vessels. Panamanian officials provided specific information on Panamanian laws, rules and regulations in the following areas:

- The requirements for vessel registration; the issuance of fishing licenses or permits; entry into the Vessel Register and recording of Vessel Register information with RFMOs (such as ICCAT and IATTC).
- Examples of fishing license controls to achieve compliance with RFMO measures.
- Penalties imposed on ships in breach of fishing registry and license terms and conditions, and for illegal fishing activities.
- Surveillance activities, including satellite positioning, participation in observer programs such as IATTC's observer program, onboard inspections, and participation in the International MCS Network; and control activities such as notification of catch, conducting in-port inspections, and monitoring compliance with the management and conservation measures of the various RFMOs.

In the fall of 2009, the Government of Panama issued two executive decrees strengthening regulations and interagency cooperation. They also published both action and implementation plans to combat IUU fishing. One of the decrees, Executive Decree 96, issued November 12, 2009, established an interagency council to combat IUU fishing.

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<sup>11</sup> Under NAFO rules (Article 58 of the NAFO Conservation and Enforcement Measures), Contracting Parties shall take all necessary measures to the extent possible in accordance with their applicable legislation with regard to vessels on the IUU List, including prohibiting vessels flying their flag to assist the IUU vessel in any way, prohibiting fish landings and imports from IUU vessels, and encouraging importers, transporters and others to refrain from transshipping fish caught by such vessels. In fulfillment of these requirements, NAFO parties have prohibited product from the *Polestar* from entering their ports. This action demonstrates that the RFMO has taken effective action to address the IUU activity of these vessels.

The second, Executive Decree 49, issued October 19, 2009, modified Law 44 of 2006 and Executive Decree 49 of 1997, the statute and decree that established the Panama Aquatic Resources Authority (ARAP or Autoridad de Recursos Acuáticos de Panamá) as Panama's lead agency for ensuring compliance with the laws and regulations regarding aquatic resources, including enforcing international agreements and treaties. The updated Decree covers the requirement to obtain an International Fishing License. The Decree also clarifies that Panamanian-flagged vessels are to carry on-board observers from ARAP, provides that ARAP will publish a database of Panamanian flagged vessels with valid International Fishing Licenses, provides that fishing vessels can only transship at certified ports, and sets forth the conditions necessary for ARAP to approve transshipments. Panamanian officials further highlighted an extensive new VMS scheme.

## **People's Republic of China**

### ***Bases for Identification***

Several Chinese vessels were engaged in fishing activities that violated conservation and management measures of CCAMLR during calendar year 2007. The *North Ocean*, *East Ocean*, *West Ocean*, and *South Ocean* appear to have been fishing for toothfish in the CCAMLR Convention Area in 2007, after the Chinese government ordered, in December 2006, the vessels to leave the CCAMLR Convention Area and return to port. When the vessels returned to port in April 2007, their total catch of toothfish was 300 metric tons.

These four vessels had been added to the CCAMLR IUU vessel list after being observed by an Australian patrol vessel in November 2006 fishing without authorization in the CCAMLR convention area. Officials on the patrol vessel attempted to board and inspect these vessels but the boarding was refused. Fishing without authorization and refusal to allow an inspection constitute violations of CCAMLR Conservation Measures.

### ***Consultations***

Consultations with China were held on June 15, 2009 in Beijing. The U.S. delegation was headed by Dr. Rebecca Lent, Director, NMFS Office of International Affairs, and the Chinese delegation was headed by Mr. Liu Xiaobing, Director of International Fisheries. In addition, further consultations were held in connection with the 2009 CCAMLR meeting.

The Chinese delegation noted that the four vessels, the *North Ocean*, *East Ocean*, *South Ocean*, and *West Ocean*, were to be sold to the Insung Corporation of Korea, and had requested that the vessels be removed from the CCAMLR IUU Vessel List. Upon proof of sale, two of the vessels, the *East Ocean* and *South Ocean*, were removed from the CCAMLR Contracting Party-IUU Vessel List as agreed during the 2009 CCAMLR meeting. With regard to the other vessels, the *West Ocean* and *North Ocean*, the Chinese notification stated that the Chinese Government would continue requesting the Chinese company to finalize the sale as soon as possible.

Consultations will continue to obtain information on actions that are taken with regards to the *West Ocean* and *North Ocean*.

## **Tunisia**

### ***Bases for Identification***

Six Tunisian driftnet vessels (*Ahmed Khalil, Ahmed Helmi, Aladin, El Jazira, Molka, and Sadik*) were observed fishing in the Mediterranean Sea during June 2007, contrary to ICCAT Recommendation 03-04, which prohibits the use of driftnets for fisheries of large pelagic stocks in the Mediterranean Sea.

### ***Consultations***

While formal consultations have not yet been held with Tunisia, there has been contact at ICCAT meetings with brief exchanges on the identification and consultation process. Furthermore, Tunisia provided substantial written information by diplomatic note received on January 7, 2009, in response to the pre-identification process. In this response, Tunisia refuted allegations regarding the type of vessels involved in the IUU fishing activity. Tunisia stated that the vessels were not targeting large pelagic species but NMFS will continue to analyze the information on this matter.

### ***Other Considerations***

With regard to fishery fleet control, Tunisia indicated that its maritime surveillance service closely monitors adherence with both Tunisian and international law. Regarding legal tools for issuing fishing authorizations, Tunisia noted that Law No. 94-13 of January 31, 1994, provides that any person who holds prohibited fishing gear is liable for imprisonment or a fine, confiscation of the prohibited fishing gear, and the seizure of the fish harvested.

## **B. PLMR Bycatch Activities**

Formal identifications of nations whose vessels were engaged in PLMR bycatch, in fulfillment of the objectives of the Act to reduce PLMR bycatch and mitigate the adverse impact of fishing activities on PLMRs, were not made in 2009. NMFS developed a process to determine which nations' fishing activities are likely to result in bycatch of PLMR species. As part of this process, NMFS began to compare the distribution of PLMR species with the distribution of fisheries effort using gear that is known to have significant PLMR bycatch rates. An initial analysis was conducted comparing available information on pelagic longline fisheries with species distribution information. Additional analyses and information will be required to develop a comprehensive list of nations whose fishing activities are likely to result in PLMR bycatch.

NMFS already has long-standing outreach and assistance programs with a number of nations to address their PLMR bycatch rates. NMFS intends to continue those programs, and also to initiate additional programs with other nations based on the nature of their PLMR bycatch interactions, their need for assistance, and their willingness to work cooperatively with the United States. NMFS intends to work with such nations to reduce bycatch and mitigate any adverse impacts of their fishing activities, consistent with the objectives of the Moratorium Protection Act.

NMFS will also continue to collect information for possible identification of nations for PLMR bycatch under the provisions of the Moratorium Protection Act.