

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

**Progress Report to the NOAA Assistant Administrator
For Fisheries**

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Executive Summary

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) was adopted by the U.S. Congress and signed into law by the U.S. President in January 2007. This Act contains a number of new provisions that will significantly shape the focus of fisheries management in the coming years. Importantly, the MSRA pays an unprecedented level of attention to international fisheries. The overarching approach is a call for the Secretary of Commerce to work multilaterally through various fora, such as Regional Fishery Management Organizations (RFMOs), to address illegal, unregulated and unreported (IUU) fishing and bycatch of protected living marine resources (PLMRs). The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA Fisheries) is the implementing agency within the Department of Commerce for the authorities and responsibilities under the MSRA.

Specifically, Title IV of the MSRA amends the High Seas Driftnet Fishing Moratorium Protection Act to require the Secretary of Commerce to produce a biennial report to Congress that lists countries which the United States has identified as having vessels engaged in IUU fishing and/or bycatch of protected LMRs. The first biennial report is due to Congress in January 2009. The Act calls on the Secretary of Commerce (in some cases acting with or through the Secretary of State) to work with and encourage identified nations to take appropriate corrective action to address IUU fishing; adopt regulatory programs for PLMRs that are comparable to U.S. programs, taking into account different conditions; and establish management plans for PLMRs.

The Act also requires the development of rulemaking to implement certification procedures for nations that have been identified in the biennial report. The absence of steps by identified nations to address problems of IUU fishing and bycatch of PLMRs may lead to prohibitions on the importation of certain fisheries products from such nations into the United States and other measures. NOAA Fisheries is currently developing a proposed rule that would establish procedures for the identification of nations whose vessels are engaged in IUU fishing and/or bycatch of PLMRs, as well as procedures to certify to Congress whether appropriate corrective action is being taken by identified nations.

The biennial report to Congress must outline the state of knowledge on the status of international living marine resources that are shared by the United States or subject to treaties or agreements to which the United States is a party. NOAA Fisheries has begun drafting a list of international living marine resources and compiling information on their status for inclusion in the first biennial report.

Under Title IV of the MSRA, the Secretary of Commerce must seek to strengthen international fishery management organizations to address IUU fishing and reduce fishing impacts on PLMRs through the adoption of IUU vessel lists, stronger port state controls, market-related measures, and other actions. The United States has actively worked to strengthen existing RFMOs through renegotiation of their underlying agreements or negotiation of new protocols. With substantial U.S. involvement,

international fishery management organizations have taken action towards the adoption and sharing of vessel lists; use of observers and technologies to monitor compliance; promotion and use of centralized vessel monitoring systems (VMS); adoption of trade tracking and documentation schemes; prevention of trade or import of IUU-caught fish or other living marine resources; and protection for vulnerable marine ecosystems.

The Act also calls on the Secretary of Commerce to promote improved monitoring and surveillance of international fisheries. NOAA Fisheries has taken a number of actions to fulfill these obligations, such as the establishment of programs to share information on IUU fishing activities; development of real-time information sharing capabilities; and participation in efforts to build a Monitoring, Control, and Surveillance (MCS) Network for high seas fishing and fishing under regional or global agreements. NOAA Fisheries has also sought to improve monitoring and compliance by helping to create an international registry or database of fishing vessels; enhancing enforcement to address IUU and other illegal fishing incursions through remote sensing technology; and supporting VMS requirements for large-scale fishing vessels operating on the high seas.

Finally, Title IV of the MSRA specifies that the Secretary of Commerce help build capacity in other countries to ensure sustainable fisheries and regulatory enforcement, and to the extent possible, provide assistance to nations whose vessels are engaged in the bycatch of PLMRs to help them address such activities. NOAA Fisheries has been involved in various international institutional efforts to support capacity building through agreements and bodies, including the United Nations (UN) Fish Stocks Agreement, UN General Assembly and various RFMOs. In cooperation with its federal partners, NOAA Fisheries has assisted other nations in addressing IUU fishing activity and reducing bycatch of PLMRs, such as by hosting and supporting workshops on techniques and tools to strengthen enforcement and prevent IUU fishing; methods to prevent and mitigate incidental take of marine turtles, mammals, seabirds, and other resources; and response to marine mammal strandings. NOAA Fisheries has also provided technical and other assistance to developing countries to improve their MCS capabilities and has sought to promote the development of effective fisheries observer programs in other countries.

As illustrated above, NOAA Fisheries is actively working to implement the international provisions of the MSRA. As NOAA Fisheries strives to work in a cooperative and transparent manner towards achieving the goals of the MSRA, this progress report describes in detail the relevant activities that have been taken to date. Future actions will be outlined in the first biennial report to Congress.

List of Acronyms

Acronym	Full Name
ACAP	Agreement on the Conservation of Albatrosses and Petrels
AIDCP	Agreement on the International Dolphin Conservation Program
APEC	Asia Pacific Economic Cooperation
CAFTA	United States - Central America Free Trade Agreement
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCAS	Convention on the Conservation of Antarctic Seals
CCBSP	Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea
CCM	For WCPFC – refers to all Commission members, cooperating Non-members and participating territories
CITES	Convention on International Trade in Endangered Species
CNMI	Commonwealth of the Northern Mariana Islands
COFI	Committee on Fisheries of the United Nations Food and Agriculture Organization
CPC	For ICCAT – refers to all contracting parties, cooperating non-parties, entities and fishing entities; for IATTC – refers to all contracting parties, cooperating non-parties, fishing entities and regional economic integration organizations
DMLs	Dolphin mortality limits (under the AIDCP)
DOS	United States Department of State
EEZ	Exclusive Economic Zone
EPO	Eastern Pacific Ocean
ESA	Endangered Species Act
ETP	Eastern Tropical Pacific
EU	European Union
FAD	Fish aggregating device
FAO	United Nations Food and Agriculture Organization
FFA	Forum Fisheries Agency
GIS	Geographic information system
HSDN	High seas driftnet
HSFCA	High Seas Fishing Compliance Act Sea Turtles
IATTC	Inter American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICRW	International Convention for the Regulation of Whaling
IIS	Integrated information system

Acronym	Full Name
IOSEA	Indian Ocean – South East Asia Marine Turtle Memorandum of Understanding
IPHC	International Pacific Halibut Commission
IPOA – IUU	International Plan of Action to Prevent, Deter and Eliminate IUU Fishing
IPOA – Seabirds	International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries
IPOA – Sharks	International Plan of Action for the Conservation and Management of Sharks
IUCN	World Conservation Union
IUU	Illegal, unreported and unregulated fishing
IWC	International Whaling Commission
MCS	Monitoring, control and surveillance
MCS Network	International Monitoring, Control and Surveillance Network
MEA	Multilateral environmental agreement
MMPA	Marine Mammal Protection Act
MOU	Memorandum of understanding
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	Northeast Atlantic Fisheries Commission
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NPAFC	North Pacific Anadromous Fisheries Commission
OECD	Organization for Economic Cooperation and Development
OLE	NOAA Fisheries Office of Law Enforcement
PLMRs	Protected living marine resources
RFA	Regulatory flexibility analysis
RFMO	Regional Fisheries Management Organization
SCRS	ICCAT Standing Committee on Research and Statistics
SEAFO	South East Atlantic Fisheries Organization
SIOFA	South Indian Ocean Fisheries Agreement
SPAW	Protocol for Specially Protected Areas and Wildlife
SPREP	South Pacific Regional Environment Program
SPRFMO	South Pacific Regional Fisheries Management Organization
SPTT	South Pacific Tuna Treaty
SWIOFC	South West Indian Ocean Fisheries Commission
TED	Turtle excluder device
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly

Acronym	Full Name
UNICPOLOS	United Nations Open – Ended Informal Consultative Process on Oceans and the Law of the Sea
USAID	United States Agency for International Development
USCG	United States Coast Guard
VME	Vulnerable marine ecosystem
VMS	Vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission
WIDECAST	Wider Caribbean Sea Turtle Conservation Network
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WWF	World Wildlife Fund

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

Progress Report January 2008

I. Introduction

This is a progress 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 towards improving international fisheries management and enforcement, particularly with regard to IUU fishing and bycatch of protected living marine resources (PLMRs).

Title IV of P. L. 109-479 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., to direct 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 (NOAA Fisheries) 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. Under the Act, the first biennial report to Congress will be due in January of 2009. NOAA Fisheries Office of International Affairs has prepared this progress report to describe actions taken to date to implement many of the international provisions of the Act, including actions that have been and are now being taken to address IUU activities and bycatch of PLMRs through international organizations, including RFMOs, and on a

bilateral basis. The report also includes information on actions that have been taken to build capacity in other countries to help ensure sustainable fisheries and regulatory enforcement.

II. Background Information

A. IUU Fishing Activity

In general, IUU 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 affects 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.¹ 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 has termed IUU fishing, “one of the greatest threats to marine ecosystems [that] continues to have serious and major implications for the conservation and management of ocean resources.”² The U.S. Congress declared in the findings to the MSRA that IUU fishing “may harm the sustainability of living marine resources.”³

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

¹FAO Committee on Fisheries, “Combating Illegal, Unreported and Unregulated Fishing Through Monitoring, Control and Surveillance, Port State Measures and Other Means,” p. 2.

² General Assembly Resolution, A/RES/60/31 (2006), para 33.

³ P.L. 109-479, section 402, amending 16 U.S.C. 1801(a).

measures or in areas with no applicable international fishery management organization or agreement.” NOAA Fisheries 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, NOAA Fisheries may revise the definition of “illegal, unreported, or unregulated” fishing at a later date.

2. Effects of IUU Fishing

Because IUU activities are often carried out covertly, monitoring and detection are difficult. This renders quantification of the problem illusive. The United Nations Food and Agriculture Organization (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.⁴

The FAO reports that IUU fishing activities have widespread economic, social, and management consequences, including depriving legitimate fisheries 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.

Unfortunately, the amount of IUU fishing worldwide appears to be increasing as some fishing vessels try to avoid strict fishing rules put in place to address declining catches in a growing number of fisheries.⁵ IUU 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 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 State controls; improved monitoring, control and surveillance (MCS); implementation of market-related measures to help ensure compliance; and capacity-building assistance. The United States is a member of or has substantial interests in numerous international fisheries and related agreements and organizations (see Annex 1 for a list of those most relevant to this report). A discussion of the international actions the United States has been taking and will continue to take concerning IUU fishing is set forth below.

⁴ Bray, K., A Global Review of Illegal, Unreported and Unregulated (IUU) Fishing. Available at www.fao.org/DOCREP/005/Y3274E/y3274e08.htm.

⁵ FAO, “Stopping Illegal, Unreported and Unregulated (IUU) Fishing, 2002, p. 2.

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.”⁶ NOAA Fisheries is in the process of developing the list of PLMRs for purposes of the Act.⁷

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 serious 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 and regional fisheries agreements (see Annex 1). This report describes the actions the United States has been taking and will continue to take in these various bodies to push for strengthened bycatch rules comparable to those in effect for the United States.

⁶ 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.

⁷ Seabirds are not included in the definition of PLMRs under the MSRA. However, they are an international living marine resource for which conservation is an issue of growing global concern, and an issue on which NOAA Fisheries has been actively involved internationally. Section 116 of the MSRA highlights the need for the Secretary of Commerce to work cooperatively with the Secretary of Interior and industry and within international organizations to seek ways to mitigate seabird bycatch. Seabirds are discussed in this report as an international living marine resource. See section IV and Appendix 4.

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

A. MSRA Provisions

In the MSRA, Congress added a finding that international cooperation is necessary to address IUU fishing activities. Section 403(a) of the MSRA adds a new section 608 to the Moratorium Protection Act, calling on 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. These actions are to include:

- “(1) urging international fishery management organizations to which the United States is a member –
 - (A) to incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;
 - (B) to 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) to 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) to 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) to 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.”⁸

MSRA section 401, which adds a new 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.

The MSRA also 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 (see MSRA section 403(a), which adds a new section 610(d) to the Moratorium Protection Act).

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 Identification and Certification

The MSRA also adds sections 609 and 610 to the Moratorium Protection Act, to require the Secretary of Commerce to identify nations whose vessels are engaged in IUU fishing or bycatch activities and to certify whether those nations have taken appropriate corrective 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 where the relevant international fishery management organization has failed to implement effective measures to end the IUU fishing activity, or where no international fishery 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

⁸ MSRA section 403, amending Title VI of the High Seas Driftnet Fishing Moratorium Act, 16 U.S.C. 1826d et. seq.

- 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 under this section of the Act;
 - 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 this section of the Act;
 - 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 Act.

The identification of nations having fishing vessels engaged in IUU fishing activities and/or bycatch or PLMRs is deemed to be an identification under section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act. 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

MSRA also adds a new section 607 to the Moratorium Protection Act, requiring the Secretary of Commerce to submit a biennial report to Congress. The biennial report must 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 comply 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.”⁹

⁹ MSRA Section 403, amending Title VI of the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826d et. seq.

B. Action to Implement the International Provisions of the MSRA

NOAA Fisheries Office of International Affairs is actively working to implement the international provisions of the MSRA. Some of the steps being taken are described in detail below.

Status of International Living Marine Resources. To implement newly-enacted section 607 of the Moratorium Protection Act, NOAA Fisheries Office of International Affairs has 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 will be compiled. In its implementation of section 610 (e) of the Moratorium Protection Act, NOAA Fisheries Office of International Affairs is also developing criteria for and preparing the list of PLMRs.

IUU 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.

Development of Identification and Certification Procedures. To implement the identification procedures provided for in new sections 609(a) and 610(a) of the Moratorium Protection Act, NOAA Fisheries Office of International Affairs is developing processes and applicable criteria for identifying nations whose vessels have been engaged in IUU fishing or bycatch of PLMRs. Although not required by the Act, NOAA Fisheries Office of International Affairs is developing a proposed rule to establish procedures for the identification of nations whose vessels are engaged in IUU fishing or bycatch of PLMRs. This will provide the public opportunity for review and comment on the proposed identification procedures. In addition, NOAA Fisheries has begun the collection of necessary information to make the above identification determinations in time for inclusion in the first biennial report to Congress.

With regard to the nations that are identified as having vessels engaged in IUU fishing under section 609(a) and bycatch of PLMRs under section 610(a), NOAA Fisheries Office of International Affairs is developing the procedures called for in section 609(d) and section 610(d) to certify to Congress whether appropriate corrective action is being taken by identified nations. These certification procedures will be developed through a rulemaking process. Currently, NOAA Fisheries Office of International Affairs is developing a proposed rule to establish procedures for the certification of nations that have been identified in the biennial report.

To guide its rulemaking process, NOAA Fisheries published an Advance Notice of Proposed Rulemaking (ANPR) on June 11, 2007 (72 Fed. Reg. 32052). In the ANPR, NOAA Fisheries announced its decision to develop certification procedures under the Moratorium Protection Act and invited public comment on the development of these procedures. Three public meetings were held (in Silver Spring, MD; Long Beach, CA; and Seattle, WA) in July 2007 to further solicit public input into the development of certification procedures under the Moratorium Protection Act. All written comments received and a summary of comments received orally at the public meetings were

reviewed by NOAA Fisheries Office of International Affairs and posted on the NOAA Fisheries MSRA implementation website (<http://www.nmfs.noaa.gov/msa2007/>). NOAA Fisheries Office of International Affairs has commenced review of its proposed actions under the National Environmental Policy Act (NEPA) and the Regulatory Flexibility Act (RFA), and is developing an Environmental Assessment and a Regulatory Impact Review (RIR).

Strengthening International Fishery Management Organizations. As called for by section 608, NOAA Fisheries is expanding 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 CITES and the WTO – to take all necessary steps, consistent with international law, to adopt measures and policies that will prevent the trade or import of fish or other living marine resources harvested by vessels engaged in IUU fishing into their nations or territories.

International Cooperation and Assistance. In accordance with section 610, the United States is continuing to take steps at the international level to promote the adoption of international measures comparable to those in effect in the United States to reduce the impacts of fishing and other practices on PLMRs. This is being done on a bilateral basis, as well as through international fisheries and related organizations and multilateral environmental agreements.

Assistance is also being provided to other nations to help address IUU fishing and mitigate bycatch of PLMRs through capacity building activities, such as training workshops and transfer of improved gear technology.

Improved Monitoring and Compliance. Section 207 of the MSRA addresses activities to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international fishery management agreements. NOAA Fisheries is continuing and expanding its efforts in this regard as well.

For purposes of the biennial report called for in section 607, NOAA Fisheries is compiling information on U.S. efforts in all these areas. This progress report contains background information on past and current developments.

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

Section 607 of the Moratorium Protection Act requires an accounting of the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all fish stocks that are classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with their management or conservation. NOAA Fisheries is compiling and reviewing materials in order to develop a list of international living marine resources and their status, where known. The list will include international living marine resources subject directly to conservation or management authority under an international treaty or agreement to which the United States is a party. It will also include international living marine resources that may be taken incidentally as bycatch in fisheries subject to conservation and management measures or data collection requirements under treaties or agreements to which the United States is a party. The list will further include other international living marine resources shared by the United States, including U.S. territories, on which a directed fishery exists or which are taken as bycatch that is significant either in absolute numbers or because of the sensitivity of the international living marine resources involved, such as seabirds, sea turtles, marine mammals or sharks, but which are not subject to an international treaty or agreement to which the United States is a party.

A draft list of international living marine resources and their status is included in Annex 2 to this report. This list is still under consideration and development. In addition, Annex 4 to this report highlights one international living marine resource on which considerable international work is ongoing – seabirds. Other international marine resources will be discussed in detail in future reports.

V. Progress to Strengthen International Fishery Management Organizations to end IUU Fishing Activities

The United States has numerous domestic legal tools to assist it in dealing with IUU fishing both domestically and internationally. These include the Magnuson-Stevens Act, the Moratorium Protection Act, the Lacey Act, the High Seas Fishing Compliance Act, the Pelly Amendment to the Fishermen's Protective Act of 1967, the Marine Mammal Protection Act, the International Dolphin Conservation and Protection Act, and the High Seas Driftnet Fisheries Enforcement Act. Short descriptions of relevant statutory authorities are set forth in Annex 3 to this report.

For a number of years, the United States has pushed for effective international action against IUU fishing. These efforts have been pursued in global bodies, such as the United Nations General Assembly (UNGA) and the Food and Agriculture Organization (FAO), as well as in RFMOs and bilaterally.

The United States is a member of 10 multilateral RFMOs, in addition to numerous global and bilateral agreements and arrangements. In recent years, the international community has increasingly recognized that successful action against IUU fishing activities and related problems will require the strengthening of existing regional fisheries institutions as well as creation of new RFMOs to manage previously unregulated ocean areas. The United States has been a major force in these efforts, as discussed below.

A. Establishment of New RFMOs

Due to the efforts of the United States and many others, the number of RFMOs is now expanding. Since 2003, six RFMOs have been established or are being negotiated. This will result in a growing body of international conservation and management measures for which effective and coordinated compliance tools will be essential.

The Western and Central Pacific Fisheries Convention entered into force in 2004. This agreement, which has 25 contracting parties, seven participating territories and one cooperating non-member, establishes the Western and Central Pacific Fisheries Commission (WCPFC) to manage tuna and other highly migratory species in the Central and Western Pacific Ocean. The United States was a major participant in the negotiation of this Convention and became a party in 2007.

The South East Atlantic Fisheries Convention (SEAFO) entered into force in 2003. This Convention establishes the SEAFO Commission, which regulates fisheries outside of EEZs in the Southeast Atlantic Ocean. Species covered include fish, mollusks, crustaceans, and other sedentary species, except species subject to coastal State jurisdiction and highly migratory species. The United States was involved in negotiation of SEAFO in order to promote incorporation of the principles of the United Nations Fish Stocks Agreement (UNFSA) into the Convention. The United States has signed the

Convention, but has not become a party because its vessels do not currently fish in the area. U.S. representatives attend some SEAFO meetings as observers, as appropriate.

In addition, the South West Indian Ocean Fisheries Commission (SWIOFC) was established in 2004 for coastal States in the South West Indian Ocean. The United States, however, is not involved with that body because its vessels do not fish in the area.

Several other RFMOs and regional fisheries arrangements are now being developed. Negotiations for a South Pacific Regional Fisheries Management Organization (SPRFMO) were initiated in early 2006. Participants agreed to work to establish a legally binding instrument governing the long-term conservation and sustainable use of non-highly migratory fishery resources and, in so doing, safeguard the marine ecosystems in which those resources occur. The area of concern is the high seas areas of the South Pacific from the eastern part of the South Indian Ocean through the Pacific toward the EEZs of South American countries. The United States and more than 20 entities are participating in the negotiations. In May of 2007, the participants agreed on a set of interim measures to be applied prior to the entry into force of the convention, including steps to protect vulnerable marine ecosystems (VMEs) from impacts of bottom fisheries.

Another initiative is underway to establish a multilateral arrangement in the North Western Pacific Ocean. Participants are the Republic of Korea, Japan, the Russian Federation and the United States. These nations have also agreed on interim measures with regard to bottom fishing, including the compilation, analysis, and exchange of data on bottom fishing in the region, and are negotiating a binding conservation and management agreement which eventually will supplement the interim measures.

The South Indian Ocean Fisheries Agreement (SIOFA) was signed in July 2006 to establish a body with a mandate over fishery resources other than tuna in areas that fall outside areas of national jurisdiction in the South Indian Ocean. Six countries (the Comoros, France, Kenya, Mozambique, New Zealand and Seychelles) and the European Community signed the Agreement. The United States is not a party and was not involved in the negotiations because its vessels do not fish in the area.

Recent conventions, such as those establishing the WCPFC and SEAFO, are generally more forward-looking than many of the earlier conventions because they incorporate the principles of the 1995 UNFSA, such as the precautionary approach, ecosystem-based management, and measures needed to create effective systems of compliance (e.g., observers, VMS, and port State and flag State systems of control). The United States will continue to support the establishment of conventions in this tradition, resulting in strong organizations.

B. Strengthening Existing RFMOs

In addition to working to establish new RFMOs, the United States has pushed for strengthened governance systems in existing RFMOs to bring them more in conformity

with the provisions of the UNFSA, such as those noted above. Some RFMOs are being updated through renegotiation of their underlying agreements or negotiation of new protocols. Others are finding ways to improve management and compliance without renegotiation of their underlying agreements.

Numerous RFMOs report that their management and enforcement systems have been strengthened in recent years. These include the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the North Atlantic Salmon Conservation Organization (NASCO), and the North Pacific Anadromous Fisheries Commission (NPAFC).¹⁰

The United States played a key role in many of these efforts. For example, U.S. officials were heavily involved in negotiation of an agreement to strengthen the IATTC, a body originally established in 1949 to manage tuna fisheries in the Eastern Pacific Ocean. The new agreement -- the Antigua Convention -- was signed on November 14, 2003. In addition, with U.S. involvement, the Northwest Atlantic Fisheries Organization (NAFO) recently completed a two-year process of modernizing its 1979 convention, consistent with the UNFSA and other recent instruments. An agreement amending the convention was adopted at the 2007 NAFO annual meeting.

In order to strengthen their organizations, many RFMOs have undertaken performance reviews. In 2005, ICCAT adopted a proposal committing the Commission to review its conservation and management regime and to develop a work plan to strengthen the organization. A 2006 resolution established terms of reference for a working group on the future of ICCAT. This working group will meet intersessionally in 2009 to review the 1969 ICCAT convention, its decision making process, its current structure, and other matters of relevance. An independent review by outside experts will be conducted in 2008, the results of which will be provided to the ICCAT working group for discussion. Following this review, the working group will make recommendations to strengthen the organization, possibly including amending the convention, the rules of procedure, and other matters.

On the occasion of its 20th anniversary, the North Atlantic Salmon Conservation Organization (NASCO) undertook a similar review. Through an intensive working group process that included public scoping meetings, the convention, rules of procedure, decision making process, structure, and operations were reviewed. Based on a new vision for NASCO developed by the working group, a task force established improved reporting procedures to enhance compliance and accountability, and required each party to produce an implementation plan covering its NASCO responsibilities. Those implementation plans are now being reviewed, with specific focus on unreported catches.

¹⁰ Swan, J., "International Action and Responses by Regional Fisheries Bodies or Arrangements to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing," FAO Fisheries Circular No. 996, Rome, 2004, section 3.2.1, figure 1, fn 122. Of the bodies polled, 11 indicated that their institutions had been strengthened: CCAMLR, CCSBT, CECAF, CTMFM, IATTC, IBSFC, ICCAT, NAFO, NASCO, NEAFC, NPAFC. The United States is party to six of these.

To implement the provision of the UNFSA relating to the duty of non-members to cooperate in the conservation and management of fish stocks, RFMOs are also working towards enhanced participation by non-members. The IATTC has put in place formal cooperating non-party status; Belize, Canada, China, the Cook Islands, European Union (EU), and Chinese Taipei have all become cooperating non-parties or cooperating fishing entities. WCPFC provides for cooperating non-members; at the current time Indonesia is the only such cooperating non-member, although the Commission is reviewing several pending applications. ICCAT also has a membership category covering cooperating non-contracting parties, entities or fishing entities; at the current time, Guyana is a cooperating non-contracting party and Chinese Taipei is a cooperating non-contracting fishing entity. Generally, an ICCAT cooperating non-party receives fishing privileges in areas for which these are allocated, but does not have to pay an assessed contribution. Under the CCAMLR Convention, States that have acceded to the agreement, but that have not applied for membership in the Commission, are nonetheless obligated to abide by all of the conservation and management measures adopted by the Commission. Such non-member States are excluded from participation in Convention Area exploratory fisheries.¹¹

Other RFMOs, including NAFO, have put into place mechanisms to encourage non-members to join and participate in the conservation and management programs. For example, the NAFO Scheme to Promote Compliance by Non-Contracting Party Vessels with Recommendations contains a presumption of guilt, such that any non-contracting party vessel sighted engaged in fishing activities (or transshipping) in the Convention Area is presumed to be undermining the NAFO Conservation and Enforcement Measures, and is subject to negative attention from NAFO.

Representatives of RFMOs are also working to improve cooperation and coordination among RFMOs themselves – particularly for RFMOs operating in the same region. The United States has actively pushed for such collaborations and hopes that creating open lines of communication between RFMOs will help them address issues of shared concern. For example, at a January 2007 meeting in Kobe, Japan, chaired by the United States, representatives of the five tuna RFMOs and representatives from as many as 54 countries and territories collaborated on common recommendations concerning IUU fishing and other issues. In addition, various RFMOs have established Memoranda of Understanding (MOUs) promoting collaboration in areas such as bycatch of sea turtles, seabirds, sharks and other marine mammals. These will be discussed later in this report.

To further coordination among RFMOs, NOAA Fisheries hosted a meeting of all U.S. Commissioners to RFMOs in 2007. This forum provided an ideal opportunity to share information and experiences about cross-cutting issues of interest. A subsequent meeting

¹¹ Under the CCAMLR Convention, contracting parties that participated in the meeting at which the Convention was adopted are automatically members of the Commission. Parties that have acceded to the Convention subsequently are entitled to Commission membership as long as they are engaged in research or harvesting activities relating to the marine living resources to which the Convention applies, but such parties must apply for Commission membership and not all parties have done so.

took place in January 2008. Discussion topics included shark conservation, destructive fishing practices, IUU fishing (including IUU lists and port State measures), trade measures and bycatch.

C. Global International Action to Address IUU Fishing

Global international organizations, particularly the FAO, have acted in recent years to help strengthen RFMOs to address IUU fishing. This section describes these initiatives, as well as the role of the United States in pushing for such measures, and the activities the United States intends to continue in the future under the MSRA.

1. FAO

Although the actual term “illegal, unreported and unregulated (IUU)” fishing was not coined until 1997 at CCAMLR, international action to combat such fishing had begun gaining momentum even before that time, as fisheries experts became increasingly aware of the rapid extent to which such fishing was undermining attainment of national, regional and global fisheries management goals. Based on the 1982 U.N. Convention on the Law of the Sea (UNCLOS), the 1993 FAO Compliance Agreement, the 1995 UNFSA and the 1995 FAO Code of Conduct for Responsible Fisheries, the United States and others began pushing in the mid-1990’s for FAO Committee on Fisheries (COFI) action specifically on IUU fishing. After several years of substantial effort by the United States and many others, the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) was adopted in 2001.¹²

The IPOA-IUU is a voluntary instrument that is to be implemented by FAO members through national plans of action (NPOAs). It requires each State to self-assess its laws, policies and practices, and provides specific sets of tools for flag States, coastal States, port States, market States, and RFMOs to deal with IUU fishing. These tools include the following:

- Flag States – use of various monitoring, control and surveillance (MCS) mechanisms, registration requirements, authorization to fish requirements, reporting and record requirements, penalties, and other control measures;
- Coastal States – use of formal access agreements, prohibiting access for IUU vessels, records of vessels, and various MCS mechanisms such as VMS and observers;

¹² Several other IPOAs were adopted at about the same time. These included the IPOA for Management of Fishing Capacity; the IPOA on Conservation and Management of Sharks (IPOA-Sharks); and the IPOA on Reduction of Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds). These IPOAs were developed as the COFI members in 1997 found it necessary to have some international instruments to manage compliance with the Code of Conduct for Responsible Fisheries. The most suitable instruments for each of the three texts were developed in the course of two intergovernmental meetings, open to all FAO members, in 1998. The IPOAs were adopted by the twenty-third Session of the FAO Committee on Fisheries in February 2000 and endorsed by the FAO Council in 2001. An FAO Strategy on Improving Information on the Status and Trends of Capture Fisheries was also developed in 2003.

- Port States – denial of access to IUU vessels, use of prohibitions on landing and transshipping, requirements for advance notice, copy of authorization to fish and other information prior to landing;
- Market States – necessary steps, consistent with the WTO, to prevent IUU-caught fish from being traded or imported into their territories; and
- RFMOs – collection and dissemination of information on IUU fishing, identification of IUU vessels and countries, adoption of port inspection schemes, restrictions on transshipment at sea, catch certification and/or trade documentation systems, and market-related measures.

The IPOA-IUU provides that States should cooperate and comply with RFMO measures even if they choose not to become parties. This provision implements the requirement in article 8(3) of the UNFSA that nations whose vessels fish in areas governed by an RFMO must either join the RFMO or agree to apply its rules. The IPOA includes a long list of items deemed necessary “to strengthen and develop innovative ways” to deal effectively with IUU activities. These range from developing compliance measures and comprehensive arrangements for mandatory reporting, to developing definitions for when a vessel will be presumed to have engaged in or supported IUU activities. The IPOA contemplates that RFMOs would become clearing houses for national and international efforts to combat IUU activities, sharing collected information with all other RFMOs and the FAO.

The IPOA-IUU also sets forth a toolbox of market measures designed to restrict international trade in fish harvested through IUU fishing, including catch certification and trade documentation requirements, and import and export restrictions and prohibitions. RFMOs play a primary role in coordinating the creation and use of market-related measures. Finally, recognizing the special needs of developing countries, the IPOA-IUU calls on countries, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, to provide training and capacity building and to consider providing financial, technical and other assistance to developing countries so that they can meet their commitments under the IPOA-IUU.

With active involvement of the United States, the FAO has aggressively promoted activity to address IUU fishing activities, through conducting studies, disseminating information, offering capacity building and institutional strengthening and providing a global forum for States to formulate appropriate instruments. In 2002, FAO COFI published a set of technical guidelines, “Technical Guidelines for Responsible Fisheries, No. 9, Implementation of IPOA-IUU.” Between 2002 and 2006, the FAO held 14 workshops on the issue, attended by up to 300 representatives of over 100 countries; conducted a pilot workshop in the Pacific Islands in cooperation with the Forum Fisheries Agency (FFA) and WCPFC; and developed a Model Plan for a Pacific Island Country National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing. In view of the linkage between fishing fleet overcapacity and IUU fishing, the FAO also held a Technical Consultation in 2004 to look at the progress on full implementation of the IPOA on Fishing Capacity, as well as the IPOA-IUU. NOAA

fisheries has provided both technical and policy expertise in support of these international efforts.

In addition, the FAO is working with a number of other international organizations, such as the International Maritime Organization (IMO), the International Labor Organization (ILO), the Commission on Sustainable Development (CSD), the Organization for Economic Cooperation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), and others to encourage those organizations to address IUU fishing activities in their unique areas of coverage or expertise. It has also provided critical opportunities for the sharing of information and experience among RFMOs and their members, to ensure that the various fisheries management bodies learn from one another.

In 2003, the High Seas Task Force on IUU Fishing was established under the auspices of the OECD.¹³ This Ministerial-level task force developed an action plan to combat IUU fishing activities on the high seas, which was published in a 2006 report entitled, “Closing the Net.” The plan recommended tools such as an enhanced international MCS network; establishment of a global fisheries vessel information system; development of model RFMO standards; use of market-based measures, including greater use of port-based and import measures; attempts to fill critical gaps in scientific knowledge and assessment; and development of methods to address the needs of developing countries.¹⁴ As host of the international MCS Network the United States contributed to the development of the recommendation for an enhanced network.

Based on a recent survey of RFMO actions, the FAO published a March 2007 report entitled “Combating Illegal, Unreported and Unregulated Fishing through Monitoring, Control and Surveillance, Port State Measures and Other Means.” This document contains a thorough discussion of what RFMOs have done (or have not done) to date in addressing IUU fishing, and what needs to be done for the future.

2. Other International Bodies

IUU fishing activities have also been addressed by a number of other international bodies, including the UNGA in its annual Sustainable Fisheries Resolutions, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS),¹⁵ the World Summit on Sustainable Development (WSSD)¹⁶, the 2006

¹³ The High Seas Task Force, which has now been disbanded, involved the Fisheries Ministers of six nations (Australia, Canada, Chile, Namibia, New Zealand and the United Kingdom), plus several global conservation organizations (Earth Institute, World Conservation Union (IUCN) and WWF International and the Marine Stewardship Council).

¹⁴ Stemming from the High Seas Task Force, Australia, Canada, New Zealand and the United Kingdom, along with World Wildlife Fund (WWF) International and the World Conservation Union (IUCN), collaborated on a project to develop a model RFMO, based on an analysis of best practices worldwide. Chatham House was selected as the host institution for the project. This project resulted in a report entitled, “Recommended Best Practices for Regional Fisheries Management Organizations,” August, 2007. A major impetus for this work was to seek better ways to address IUU fishing.

¹⁵ UNICPOLOS has addressed IUU fishing each year since 2000. In 2003, a number of delegations proposed to accelerate the implementation of controls on IUU fishing through a more systematic approach

Review Conference for the UNFSA, the IMO, the OECD, APEC and others.¹⁷ With U.S. leadership, addressing IUU fishing activities is a high priority for the APEC Fisheries Working Group. The United States and Canada recently co-sponsored an APEC Fisheries Working Group project on the effects of IUU fishing, which will lead to a number of case studies of specific fisheries.¹⁸

D. RFMO Actions to Address IUU Fishing

The IPOA-IUU calls on States, acting through RFMOs and in conformity with international law, to take specific actions to address IUU fishing activities, including actions such as strengthening RFMOs, improving enforcement, and putting into place market-related measures. The MSRA provides specific authorities and responsibilities with regard to NOAA Fisheries' involvement in such activities. This section discusses some of the specific measures taken in recent years to address IUU fishing activities by RFMOs and related fisheries organizations, with U.S. engagement.¹⁹

1. Multilateral Market-related Measures

Trade and market measures reduce opportunities for IUU fishing activities by precluding or impeding access to markets for IUU product in a manner consistent with international law; tracing movements of fish products to identify those involved in catching, transshipping, and marketing of IUU catch; monitoring changes in the pattern of trade to identify flag, port and market States that can contribute to effective implementation of conservation and management measures; and improving information on fishing mortality.²⁰ Successful market measures are often based on information gathered from trade tracking programs or catch documentation schemes – systems that can verify the origin, weight and species composition of catch and indicate whether the catch was taken

to compliance and enforcement measures adopted at the regional level, and to strengthen regional fisheries bodies for that purpose. See Swan, *supra* n. 10 at section 1.3.2. The issue has also been addressed in the UNGA Resolutions on Fisheries and on Oceans and the Law of the Sea each year since 2000.

¹⁶ 2002 Johannesburg Political Declaration on Sustainable Development and Plan of Implementation of the World Summit on Sustainable Development (WSSD-POI).

¹⁷ See Swan, *supra* n. 10 sections 1.3 and 1.4.

¹⁸ On October 17, 2007, the European Commission released a proposed Council regulation aimed at strengthening market-based measures to address IUU fishing. Major features of the proposed Regulation include restricting access to the European Union (EU) market only to fishery products that have been certified as legal by the flag state or the exporting State and establishing a new EU list of IUU vessels and States. Fisheries relations, including trade in fishery products, between EU Member States and States identified on the IUU list would be effectively banned. Other measures in the proposed regulation include deterrent sanctions against IUU activities in EU waters and against EU operators engaged in IUU fishing anywhere in the world. In addition, access to EU port facilities for third country vessels would be limited to a list of designated ports drawn up by each member State. Transshipments between third-country vessels and EU vessels would be banned at sea and could be carried out only in designated ports.

¹⁹ In the five years beginning in 2000, 29 resolutions passed by regional fisheries bodies dealt directly with IUU fishing. Swan, *supra* n. 10, section 2.1. More have been passed since that time. These measures have been of varying specificity and effectiveness.

²⁰ Chatham House Report, "Recommended Best Practices for Regional Fisheries Management Organizations," 2007, p. 58.

in accordance with the conservation and management regime in force. Based on such trade tracking schemes, in turn, some RFMOs have put in place restrictions on landings and/or trade by offending vessels or offending States. Some RFMOs have also put in place presumptions for use in determining whether catch was taken in accordance with the conservation and management regimes in force.²¹

Trade Tracking and Catch Documentation Schemes. Of the RFMOs to which the United States is party, ICCAT, CCAMLR, IATTC, and AIDCP have put in place trade tracking programs or catch documentation schemes, and WCPFC is considering such a program. Descriptions of these programs are provided below.

ICCAT took early steps with its 1992 development of the Bluefin Tuna Statistical document program, which required exporters of frozen product to include documents identifying the location and flag of the vessel catching the fish. This system was expanded to other product types (e.g., fresh product) in 1993. Similar programs were implemented for fresh and frozen swordfish and frozen bigeye tuna in 2001. Starting in 2004, ICCAT began a review process to improve its trade tracking programs. In 2007, ICCAT adopted a recommendation establishing a catch documentation scheme for bluefin tuna, which should improve the tracking of catch from vessel to market. In addition, the United States successfully advanced a proposal in ICCAT in 2006 for an electronic statistical document pilot program that will assist in trade tracking through provision of more timely and, in some cases, enhanced information on the flag State and name of vessel, location of harvest, point of export, description of fish in shipment, and other necessary elements.

CCAMLR has responded to the management challenge posed by IUU fishing through improved data-recording procedures, the promotion of closer cooperation between CCAMLR parties and non-parties, requirements for flag States to authorize their vessels to fish in the Convention Area and a process to monitor the international toothfish trade. With strong U.S. involvement, CCAMLR developed a catch documentation scheme that became binding on all members in 2000. The scheme is designed to track landings and trade flows of toothfish (*Dissostichus* spp.) caught in the Convention Area and, where possible, adjacent waters. It is designed to enable the Commission to identify the origin of toothfish entering the markets of all parties to the scheme, and to help determine whether toothfish taken in the Convention Area were caught in a manner consistent with CCAMLR's conservation measures.

IATTC adopted a Statistical Documentation program for bigeye tuna in 2003 (Resolution 03-01), modeled on ICCAT's program. The IATTC program requires that bigeye tuna (fresh and frozen product) imported into the territory of a contracting party must be accompanied by an IATTC bigeye tuna statistical document meeting specified requirements, or a bigeye tuna re-export certificate. It applies to all bigeye tuna, except for tuna caught by purse seiners and baitboats and destined principally for canneries.

²¹ Of the RFMOs to which the United States is party, these include CCAMLR, IATTC, ICCAT, NAFO and WCPFC.

AIDCP. With strong U.S. involvement, the parties to the Agreement on the International Dolphin Conservation Program (AIDCP) have established a far-reaching Tuna Tracking System. The objective of that system is to ensure that tuna caught in accordance with the dolphin-safe requirements of the agreement is distinguished from, and kept physically separate from, other tuna from the time such tuna is caught to the time it is ready for retail sale. The system uses a Tuna Tracking Form issued by the Secretariat, and additional verification procedures. The program is monitored through 100% observer coverage, as well as periodic audits and spot checks.

WCPFC. With strong U.S. involvement, the recently-negotiated Western and Central Pacific Fisheries Convention allows for the establishment of a catch documentation program. The parties are now considering several possible programs.

Trade Restrictive Measures. Based in part on data and information obtained from their respective trade tracking programs or catch documentation schemes, ICCAT, IATTC, and CCAMLR have put in place trade restrictive measures that can be taken against individual states or vessels.

ICCAT was the first RFMO to put into place such measures, and is the only RFMO to date to have employed them against offending States. The Bluefin Tuna Action Plan (1994), the Swordfish Action Plan (1995) and the IUU Resolution (1998) established mechanisms by which import restrictions could be imposed against parties deemed to be diminishing the effectiveness of ICCAT conservation measures. In 2003, the measures were expanded to apply to all fisheries and all fishing States (whether or not members of ICCAT). The 2003 resolution provided for a transparent process for application of trade-restrictive measures, including due process provisions and comparable standards for evaluation. The ICCAT measures include prohibition of imports, landings and/or transshipments. In 2006, the measure was further strengthened. To date, the large majority of trade-restrictive measures have been taken against non-members of ICCAT, although one ICCAT member (Equatorial Guinea) was sanctioned under the 1998 Unreported/Unregulated Catches Resolution, which has since been replaced by ICCAT's Trade Measures Recommendation.

CCAMLR requires parties to deny port access and urges parties to prohibit the import, export and re-export of toothfish from vessels on its list of IUU vessels. Importers, transporters and other concerned sectors are also encouraged to refrain from dealing with and from transshipping fish caught by vessels on the CCAMLR IUU vessel list. CCAMLR also urges contracting parties and cooperating non-contracting parties to prohibit landings and transshipments of fish and fish products from flag of convenience vessels (Resolution 19/XXI).

IATTC adopted a resolution on trade measures (Resolution 06-05) in 2006. This resolution establishes an identification procedure that can lead to trade restrictive measures. Specifically, each year the Compliance Working Group is to identify contracting parties that have failed to fulfill their obligations to ensure compliance by vessels flying their flags. The Joint Working Group on Fishing is to do the same thing

for non-contracting parties that have failed to discharge their obligations under international law to cooperate with the IATTC by exercising control over their vessels to prevent activity that undermines the effectiveness of IATTC conservation and management measures. The Commission informs the parties or non-party nations or entities of their identification as having failed to discharge their obligations, provides them the opportunity to respond, and evaluates their responses. If action to correct the problem is not forthcoming, the Commission may recommend that the contracting parties adopt non-discriminatory trade restrictive measures against the identified countries or entities.

Broader and more effective application of trade-related measures will require, among other things:

- Development and use of market-related measures by more RFMOs;
- Better integration within and between RFMOs and port States;
- Use of methods to promote continuous monitoring of patterns of trade wherever they occur;
- More uniform or universal definition of fish and fish products through designations (e.g., tariff codes) recognized by all.²²

With active U.S. involvement, progress is being made in these areas. For example, the FAO Subcommittee on Fish Trade is working on harmonizing trade tracking programs toward a global harmonized system that could exchange information securely and efficiently. At a United States-hosted Joint Tuna RFMO Working Group on Trade and Catch Documentation schemes in July 2007 in Raleigh, North Carolina, the United States, Canada, and the European Commission developed and proposed objectives and best practices for trade tracking programs. Other proposals discussed included a harmonized statistical document for bigeye tuna covering all oceans, and a method to track purse seine catches from vessel to market. The United States also helped develop a new electronic statistical document pilot program now being tested in ICCAT.

2. Adoption and Sharing of Vessel Lists

Vessel lists assist enforcement authorities in determining which vessels are or are not authorized to be fishing or conducting fishing support activities in specified areas. Vessel lists are maintained by most RFMOs. The challenge, however, is to keep such lists up to date, and to address the practice of re-flagging and utilization of flags of convenience.

The following RFMOs to which the United States is party maintain records of authorized fishing vessels (i.e., a “positive” list): CCAMLR, IATTC, ICCAT, IPHC (International Pacific Halibut Commission), NAFO, and WCPFC.²³ The Forum Fisheries Agency (FFA) also maintains a Regional Register of Foreign Fishing Vessels under authority of the South Pacific Tuna Treaty (SPTT). The following RFMOs also indicate that their

²² See Chatham House Report, supra n. 20 at pp. 59-60.

²³ Swan, supra n. 10, section 3.2.1, fn 125.

records of authorized fishing vessels are made available to other RFMOs: CCAMLR, IATTC, ICCAT, IPHC, NAFO, WCPFC, and the FFA.

A number of RFMOs to which the United States is party also maintain records of IUU vessels (i.e., a “negative” list):²⁴ CCAMLR, IATTC, ICCAT, NAFO, NASCO, and NPAFC. CCAMLR, IATTC, ICCAT, NAFO, NASCO, and NPAFC also report that they engage in information exchange on IUU and support vessels. Most of the RFMOs have included trade restrictive measures that member States are to take regarding vessels on the “negative” list. More detailed information on vessel lists and how they are used by various RFMOs is outlined below.

ICCAT. With substantial U.S. involvement, ICCAT adopted proposals to create both positive and negative vessel lists in 2002. Each party submits its list of vessels authorized to fish in the ICCAT Convention Area by a date certain each year. The Secretariat compiles the list of all vessels and posts it on the ICCAT website. A negative (IUU) vessel list is also established based on information submitted by the parties. This information is compiled and, after a formal process, the final IUU list is adopted by the Commission. The parties are then to take all necessary measures not to support the fishing activities of vessels on the negative list, including through the prohibition of imports, landings or transshipments. Under the 2002 measure, vessels are not to assist or engage with vessels on the negative list. Vessels on the negative list are not authorized to land, transship, refuel, resupply or engage in other commercial transactions. Port access was originally allowed with inspection, but under a 2006 measure port access is now prohibited. Chartering is prohibited; and importers, transporters and other sectors are encouraged to refrain from doing business with IUU vessels. In addition, States parties are to refuse to grant their flags to such vessels, except where the vessel owner has changed. Through exchange of information among parties and cooperating non-parties, an attempt is made to find, control and prevent false import/export certificates. In 2006, refinements were made to the IUU list, including a process for removing vessels intersessionally. The ICCAT IUU list is reviewed and adopted annually and is available on the ICCAT website. The list is also transmitted to the other tuna RFMOs. In addition to its other vessel lists, ICCAT has also established a record of authorized carrier vessels. Certain ICCAT fisheries also have additional vessel list requirements. In 2007, ICCAT established a process for incorporating the IUU vessel lists of other tuna RFMOs into its IUU vessel list.

NAFO maintains a “negative” list of vessels that have conducted IUU fishing in the NAFO Regulatory Area. IUU vessel sightings are shared with other RFMOs operating in the area, such as the Northeast Atlantic Fisheries Commission (NEAFC). NAFO and NEAFC have mutually agreed to recognize each other’s negative lists, leading to possible restrictions on port access for IUU listed vessels in all contracting parties in both organizations. The United States chaired the NAFO Standing Committee that developed the measures dealing with non-contracting party fishing in the NAFO Regulatory Area, and also played a leadership role in expansion of these measures to address IUU fishing activities and in development of the NAFO IUU list to ensure coordination with the

²⁴ Id at section 3.2.1., fn 126.

adjacent NEAFC Commission. These measures are found in Chapter VI (Scheme to Promote Compliance by Non-Contracting Party Vessels with Recommendations Established by NAFO, Articles 44 and 48-51) of the NAFO Conservation and Enforcement Measures.

IATTC has a “positive” Regional Vessel Register of contracting party vessels that are presumed to be following the rules (Resolution C-00-06). IATTC also has a similar positive list of longline vessels (Resolution C-03-07). In 2005, the IATTC passed a resolution to establish a “negative” list of vessels that have carried out IUU fishing (Resolution C-05-07). Sanctions, which are similar to those in ICCAT, and include prohibitions on transshipment at sea, landings or transshipment in ports; prohibition on chartering; refusal to grant flags to the vessels unless they have undergone a change of owner; prohibition of commercial transactions; and encouraging traders, importers, transporters and others to refrain from transactions and transshipment of IUU-caught fish. IATTC is also establishing a registry of vessels authorized to receive transshipment at sea by July 1, 2008 and an IATTC observer program for transshipment vessels by January 1, 2009. At that time, transshipment at sea will be limited to vessels that are both on the registry and carrying an observer. The United States has played, and continues to play, a strong and pivotal role in the IATTC’s actions to combat IUU fishing.

CCAMLR has approved a combined “negative” list that includes contracting and non-contracting vessels that have carried out IUU fishing activities. Contracting parties are required to deny port access to vessels on the list, and are urged to prohibit trade with them. Contracting parties are also required to take all necessary measures, subject to and in accordance with their applicable laws and regulations and international law in order that: issuance of licenses to vessels on the IUU list (in the case of a vessel on the contracting party IUU vessel list) to fish in waters in the Convention Area or in their fisheries jurisdictions is prohibited; and fishing vessels, support vessels, refuel vessels, mother-ships and cargo vessels flying their flags do not in any way assist vessels on the IUU list by participating in any transshipment or joint fishing operations, or by supporting or resupplying such vessels. Contracting parties are also required to prohibit the chartering of vessels on the IUU list; refuse their flag to vessels on the list; and prohibit the import, export and re-export of toothfish from vessels on the list. Importers, transporters and other sectors concerned are encouraged to refrain from dealing with and from transshipping fish caught by vessels on the CCAMLR IUU vessel list. Vessels on the list are also not permitted to participate in exploratory fisheries.

WCPFC has adopted a measure to establish a “negative” list of vessels that have carried out IUU fishing, similar to the lists adopted by other tuna RFMOs. Listed vessels are to be sanctioned by Commission members through prohibitions on imports and landings, and prohibitions on transshipment, chartering and resupply.

SEAFO. In 2006, SEAFO established a record of fishing vessels to control and monitor fishing (Conservation Measure 07/06). Fishing vessels not entered into the record are deemed not to be authorized to fish for, retain on board, transship or land species covered by the Convention.

NPAFC established an innovative electronic Integrated Information System (IIS) for its vessel list in 2003-04. IIS allows parties to house all electronic information about illegal or suspected vessels in the Convention Area on a closed website. In 2006, enforcement professionals from all parties met to share lessons learned and best practices. In 2007, standard codes for fish species, vessels and gear types, based on the codes employed internationally by the FAO, were agreed for use in the IIS system. Parties plan to add mapping capability to the IIS in the near future so that the precise locations of vessel sightings can be displayed and utilized for enforcement planning purposes.

Consolidation of Vessel Lists. As fisheries authorities look to the future, one of the areas of need is consolidation or sharing of lists among RFMOs, where appropriate, and consideration of a global listing system for high seas vessels. Since the five tuna organizations began meeting in 1999, they have been working toward the establishment of such a global registry for tuna vessels. The 2007 Kobe meeting of the five tuna RFMOs recommended, among other things: creation of a harmonized “positive” list of tuna fishing vessels with permanent unique identifiers for each vessel; and creation of a global “negative” list of IUU vessels.

In the 2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing, fisheries ministers called for development of a “comprehensive record of fishing vessels within the FAO.” The ministers called for such a record to include refrigerated transport vessels and supply vessels – vessels often involved in transshipments from IUU vessels – as well as fishing vessels. They also noted that the global record should include available information on beneficial ownership, subject to confidentiality requirements in accordance with national law. In 2006, the Asia Pacific Economic Cooperation organization (APEC) looked at the possibility of a global listing system for high seas vessels. The UNGA Fisheries Resolution in 2006 further encouraged and supported the development of a comprehensive global record.²⁵

A feasibility study prepared by the FAO in 2007 concluded that development of a global record is technically feasible, although it would be expensive to prepare and maintain. It would require detailed information regarding vessels and their ownership in a complete and accurate manner from flag States and entities. A unique vessel identifier system would also be needed so that any vessel could be identified permanently, irrespective of change of vessel name, ownership or flag. A phased approach was recommended. VMS experts expressed the view that such a global record could directly benefit national MCS authorities and those responsible for registering fishing vessels and authorizing fishing. A global record could also dissuade the practice of re-flagging and utilizing flags of convenience.²⁶ In 2007, FAO COFI supported the convening of an Expert Consultation to further develop the concept of a comprehensive global record of vessels, as described in the feasibility study. In turn, the 2007 United Nations General Assembly Sustainable Fisheries Resolution welcomed the decision by COFI to create this global vessel list. To

²⁵ FAO “Combating Illegal, Unreported and Unregulated Fishing through Monitoring, Control and Surveillance, Port State Measures and other Means,” *supra*. n.1, at p. 11.

²⁶ *Id.*

support this action, the UNGA requested the FAO to consider establishing a system of unique and permanent fishing and support vessel identification.

The United States is actively involved in these efforts and intends to continue to work to strengthen the individual RFMO vessel lists, as well as working toward a meaningful global list, as appropriate.

3. Observers and Use of Technologies to Monitor Compliance

Use of observers on fishing vessels and vessel monitoring systems (VMS) are important tools in eliminating IUU fishing. Vessel monitoring systems, which are generally satellite-based, allow fisheries management authorities to monitor the positions and activities of fishing vessels for purposes of management and enforcement. The following RFMOs to which the United States is party have VMS requirements in place:

- ICCAT – requires VMS on vessels above 24 meters as of 1 November 2005, and on vessels above 15 meters fishing for eastern Atlantic and Mediterranean bluefin tuna from 1 January 2010. A 2006 recommendation required centralized VMS data reporting to the ICCAT Secretariat for vessels fishing for eastern Atlantic and Mediterranean bluefin tuna; a centralized VMS operational plan that will facilitate at-sea inspections for vessels fishing eastern bluefin tuna was adopted in 2007.
- IATTC – requires parties to implement VMS for vessels over 24 meters as of 2005. The program is intended to cover 10% of vessels of parties with fleets of 10 or more vessels.
- WCPFC – the Convention includes detailed requirements, also elaborated in conservation and management measure CMM 2006-06, for the establishment of a VMS system for the high seas portions of the Convention Area; the VMS program will commence January 1, 2008 for certain parts of the Convention Area for vessels larger than 24 meters in length, and will apply to smaller vessels in that same area as of January 1, 2009. WCPFC has adopted minimum standards for automatic location communicators to be used in its VMS.
- NAFO – requires use of VMS on 100% of contracting party vessels in the NAFO regulatory area.
- CCAMLR -- the automated satellite-linked vessel monitoring system was revised in 2005 to provide for continuous position reporting within the Convention Area; all VMS reports and messages transmitted by the contracting party or its fishing vessels must be transmitted to the CCAMLR Secretariat and must be in a computer-readable form in a CCAMLR-agreed data exchange format.
- FFA – the SPTT between the United States and the FFA States establishes a VMS program, overseen by the FFA.
- SEAFO – agreed on a VMS system in 2005, which came into effect in March of 2007.

Numerous RFMOs also require observers on all or a portion of vessels fishing in their conservation areas. Observer requirements, which are sometimes combined with VMS and other monitoring requirements, include the following:

- CCAMLR requires full observer coverage on all fishing vessels, with the exception of vessels fishing for krill in all but one of the Convention's subdivisions. Beginning in the 2007/2008 fishing season, vessels participating in the krill fishery in subdivision 58.4.2 must carry a scientific observer but have the option of carrying a CCAMLR international inspector or a national inspector; CCAMLR also requires that the master of a licensed fishing vessel sighting a fishing vessel in the Convention Area document and report the sighting as soon as possible to the CCAMLR Secretariat, via the flag State. These reports are used in assessing the level of IUU fishing.
- NAFO established a compliance-based observer program in 1998. All vessels are required to carry at least one observer, whose main function is compliance, but who may also perform as much scientific work as requested. Observers are to report infringements within 24 hours to an inspection vessel. Recently NAFO ran a pilot program involving electronic data submission from the fishing grounds, combined with withdrawal of observers from some vessels. Parties now have the option to implement the current observer program or to change to 25% observer coverage with more detailed electronic reporting.
- ICCAT has adopted an observer program for transshipment vessels. The observers are to record, observe, verify, and report transshipment activity particularly as it relates to the bigeye tuna fishery. ICCAT has also adopted management measures which set minimum observer coverage levels for national observer programs in several fisheries.
- IATTC requires 100% observer coverage on large-scale purse seine vessels; 70% of the observers must be employed by the RFMO and the remainder by the parties; IATTC has also established an observer program for transshipment vessels; under this program, by January 1, 2009, transshipment at sea will be limited to vessels that are both on the transshipment registry and carrying an observer.
- WCPFC is developing a regional observer program.
- FFA runs an observer program under the SPTT covering U.S. purse seine vessels fishing for tuna in the SPTT area.
- SEAFO requires scientific observers on all vessels fishing in the SEAFO area; these observers record catches and report to the SEAFO Office.
- The South Pacific RFMO, now in negotiation, has put into place interim measures to address deepwater and small pelagic fishing, which have suggested observer coverage levels.
- The Central Bering Sea Pollock Convention has provisions in place for VMS and observers, should Pollock stocks recover sufficiently in the Convention Area to allow for a commercial fishery in the future. VMS is currently used on fishing vessels in the Convention Area.

NOAA Fisheries has been active in promoting observer programs in RFMOs and in other nations. Each year since 1997, NOAA has sponsored the International Fisheries Observer Conference, which includes representatives from many countries (43 countries in 2007). The purpose of this conference is to share information on observer programs throughout the world; foster partnerships with industry, NGOs, government, observers, community members, and other parties that participate in observer programs; and begin to develop common operating standards for observer programs worldwide. NOAA has also developed an electronic at-sea data collection system called FSCS, which it has provided to Canadian West Coast fisheries managers. Further examples of NOAA assistance in this area appear in the section on International Cooperation and Assistance below.

RFMOs also have in place a number of other MCS measures, including at-sea boarding and inspection schemes and at-sea transshipment controls. These are discussed in the section on International Monitoring and Compliance below.

4. Centralized Vessel Monitoring System

VMS is recognized as a component of effective fisheries monitoring and control. Approximately 94% of large fishing vessels over 100 tons in countries under obligations to regional fisheries agreements have VMS capabilities.²⁷ Despite the broad use of VMS, however, a recent FAO Expert Consultation on the Use of Monitoring Systems and Satellites for Fisheries Monitoring, Control and Surveillance recommended a number of mechanisms to address gaps in VMS implementation. These included:

- FAO action to update the existing FAO Technical Guidelines on VMS;
- A checklist of legislative requirements, model clauses and templates for the implementation of VMS, including access, use and sharing of data;
- Better integration of VMS into other existing data streams collected by national authorities, such as vessel registration data; data concerning catches, effort, and gear; license information; logbook data and other available maritime information;
- Action to ensure that VMS exists as part of an institutional framework of policies, laws and practices.²⁸

Participants in the Expert Consultation considered that the current international legal framework provides an adequate basis to accomplish strengthened VMS capabilities, and that a new binding international instrument would not be necessary. The Kobe Meeting of Joint Tuna RFMOs in January of 2007 also considered integrated MCS measures, such as VMS, to be important in ensuring compliance with management measures.

U.S. authorities, and in particular the NOAA Fisheries Office of Law Enforcement (OLE), have played an important role in assisting RFMOs to craft effective regulations

²⁷ FAO, "Combating Illegal, Unreported and Unregulated Fishing Through Monitoring, Control and Surveillance, Port State Measures and other Means," *supra* n. 1 at p. 9.

²⁸FAO, "Report of Expert Consultation on the use of Monitoring Systems and Satellites for Fisheries Monitoring Control and Surveillance," FAO Fisheries Report No. 815, October 2006, p. 8-9.

concerning VMS, as well as other enforcement matters. NOAA Fisheries intends to provide additional assistance and training in these areas in the future.

5. Port State Controls

Port State controls constitute a critical link in addressing the transport and marketing of IUU-caught fish. Recognizing the key role played by port States, FAO COFI published a Model Scheme on Port State Measures to Combat IUU Fishing in 2005. The United States has been heavily involved in development of FAO's port State work.

As a general matter, port State enforcement tools can include:

- Denial of port access altogether;
- Prohibiting the landing, transshipment and/or processing of catch;
- Seizure and forfeiture of catch;
- Prohibiting the use of port services, such as refueling, resupplying, repairs;
- Prohibiting the sale, trade, purchase, export, and/or import of IUU caught fish;
- Initiating criminal, civil or administrative proceedings under national law;
- Cooperating with the flag State and/or members of an RFMO on enforcement and/or deterrence.²⁹

Building on a call for human capacity development to support port State measures, FAO coordinated a Regional Workshop on port State measures in partnership with the FFA in August of 2006. Workshops for other regions are also being planned.

In addition, at its March 2007 meeting, FAO COFI agreed to a proposal to undertake the negotiation of a global binding agreement on minimum standards for port State measures to combat IUU fishing. The agreement is to be presented to the March 2009 meeting of the Committee for approval. The United States has been substantially involved in this effort. Among other contributions, the United States hosted and chaired one of two Experts' Consultations, which produced the draft of an agreement. The FAO has scheduled a Technical Consultation for June 23-27, 2008, at which all FAO members will have an opportunity to discuss and agree on a final draft of the agreement. The draft convention covers, *inter alia*, requirements prior to port entry, use of ports (including denial of port entry in certain circumstances), inspections and follow-up actions, and exchange of information.

A number of RFMOs have also enacted port State measures. The High Seas Task Force on IUU Fishing found in February 2006 that in general RFMOs had made good progress towards implementation of the FAO model port State scheme. Nonetheless, both the High Seas Task Force, and the UN Fish Stocks Review Conference in May of 2006 found that much more needs to be done to enhance port State controls.

²⁹ Swan, J., "Port State Measures to Combat IUU Fishing, International and Regional Developments," Appendix G to the Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported and Unregulated Fishing," Aug 2006, p. 71-72.

Examples of port State measures called for by RFMOs follow:

ICCAT's regulations require port inspections and set minimum standards to guide inspectors in monitoring landings and transshipments, checking compliance with quotas and other conservation measures, and collecting data and other information (Recommendation 97-10). Landings and transshipments of all fish from non-contracting party vessels identified as having committed serious infringements through a vessel inspection process are prohibited if the vessel has on board species subject to ICCAT conservation measures, unless the vessel can show that the fish were caught outside the Convention Area or in compliance with the relevant ICCAT conservation measures and requirements under the Convention. ICCAT has also adopted enhanced port inspection requirements for specific fisheries such as eastern Atlantic and Mediterranean bluefin tuna. The United States continues to push for further enhancements.

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

CCAMLR denies port access to vessels on its IUU vessel list. The provision on port access requires that vessels listed on CCAMLR's contracting party or non-contracting party IUU vessel list be denied access to contracting party ports except for the purpose of enforcement action, for reasons of *force majeure*, or for purposes of rendering assistance to vessels, or persons on those vessels, in danger or distress. Vessels allowed entry into ports are to be inspected. Where the origin of the catch cannot be verified, contracting parties are required to detain the catch or refuse landing or transshipment. When catch is in contravention of CCAMLR measures, contracting party port States are to confiscate the catch and prohibit all support of the vessel.

WCPFC is in the process of developing a regional scheme governing port State measures. These will be based on the FAO Model Scheme, with enhancements to make the measures as strong as possible. The U.S. has been heavily involved in these efforts.

FFA. While FFA member countries have not yet agreed on the details of a region-wide port State inspection scheme, a number of regional initiatives support the standards elaborated in the FAO Model Scheme. These include, among others: a requirement that foreign vessels be licensed and in good standing on the regional vessel register; a requirement that foreign vessels submit to inspection of vessel, gear, documentation and

catch; a requirement for 24-hour prior notification of port access; and a ban on at-sea transshipment.³⁰

Both the High Seas Task Force on IUU Fishing and the UN Fish Stocks Review Conference in 2006 encouraged enhancements to strengthen port State measures, and the FAO will soon hold negotiations for a global agreement on port State controls. The United States has consistently urged the strongest port State measures possible in RFMOs and other fisheries organizations consistent with international law, and is heavily involved in the ongoing FAO negotiations. In addition to strengthened controls in individual port States, better coordination among port States is critical. The FAO and the World Bank have suggested that coordination could be facilitated by the adoption in other States of U.S. Lacey-Act-type legislation. This would facilitate legal action against product illegally leaving one State by the State into which it is imported, sold or transported.

6. Efforts to Prevent Trade or Import of IUU-caught Fish or other Living Marine Resources

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

CITES provides an important potential tool to combat IUU fishing activities through CITES Appendix II. As a tool for tracking trade and as a legally binding instrument, CITES Appendix II, which regulates, but does not ban, international trade, can be useful in accurately cataloguing and deterring IUU fishing. CITES could be of particular use for species not under the management of an RFMO. One example is queen conch, a species for which there is no multilateral mechanism yet in place to regulate harvest. CITES has been instrumental in promoting assurance that trade in this species is legal and sustainable. For species covered by RFMOs, an Appendix II listing could complement RFMO efforts by helping to address issues such as non-member fishing (CITES currently has 172 parties) and through the potential for multilateral trade action on States found to be out of compliance with CITES provisions. CITES also has the ability to address IUU fishing for non-listed species through resolutions and discussion papers.

The United States led the effort to encourage closer cooperation between the FAO and CITES to improve the applicability of CITES provisions to commercial fisheries. The two organizations now have an MOU providing for such cooperation. The MOU facilitates the transfer of fisheries expertise to CITES parties as they consider listing

³⁰ Brown, C., "Field Study on Port State Measures in Select Major SIDs Fishing Ports in the Western Central Pacific Region," Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Control Illegal, Unreported and Unregulated Fishing, August 2006, Appendix M, p. 131.

proposals for commercially exploited aquatic species. The United States also hopes that greater cooperation between FAO and CITES will lead to increased law enforcement capacity from both organizations in line with the MCS provisions of the IPOA. Before a significant number of commercially harvested fish species could be successfully listed on CITES Appendix II, a number of technical issues need to be resolved, particularly for species taken in international waters. The United States expects that the FAO will discuss and provide advice to CITES on some of these technical issues, as contemplated by the MOU.

WTO. The United States has been a leader in pushing for strong new rules on fisheries subsidies in the WTO Doha round of trade negotiations. While it is difficult to address IUU fishing activities directly in new WTO rules because governments do not directly and deliberately subsidize IUU fishing, large levels of subsidization contribute to overcapacity, which frequently leads to IUU fishing operations. Curbing government subsidies and establishing new rules for how governments may provide subsidies to the fishing industry should make a significant contribution to combating IUU fishing activities.

OECD. The United States is also an active member and leader in the OECD Committee for Fisheries, which is currently chaired by a NOAA fisheries representative. In recent years, the OECD Committee has undertaken a number of studies analyzing the economics that drive, and the governance failures that have allowed, IUU fishing, including the role of subsidies to the fishing sector in creating obstacles to policy reform. The United States has contributed case studies to the current OECD Committee on Fisheries program of work on policy reform, and has contributed to the development of best practices for vessel decommissioning schemes. Such schemes, when well designed and implemented, can effectively remove fishing capacity from the oceans and reduce pressures to engage in IUU fishing activities.

E. IUU Fishing and Vulnerable Marine Ecosystems (VMEs)

As noted above, the MSRA defines IUU fishing to include 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. The United States and the international community have taken a number of actions in recent years to address IUU fishing that has adverse impacts on vulnerable marine ecosystems. This section briefly discusses those actions.

UNGA Resolution (61/105, 2006) called for domestic and international actions to protect VMEs, including seamounts, cold-water corals and hydrothermal vents, from destructive fishing practices on the high seas. Specifically, it called on States and RFMOs to:

- Identify locations of VMEs;

- Close areas to bottom fishing if VMEs are known to occur or are likely to occur unless conservation and management measures are in place to prevent significant adverse impacts;
- Assess the impact of bottom fishing on VMEs and, if significant adverse impacts are found, manage fishing to prevent impacts or not authorize fishing to proceed;
- Cease bottom fishing if a VME is encountered during fishing operations and report the encounter so that appropriate measures can be adopted in respect of the relevant site.

The resolution called for RFMOs to implement these provisions by December 31, 2008. In addition, States participating in negotiations to establish new RFMOs are to expedite negotiations and adopt and implement interim measures regulating bottom fisheries and vulnerable marine ecosystems, consistent with the above provisions, by December 31, 2007. Flag States are to adopt and implement similar measures for their vessels fishing on the high seas or cease to authorize bottom fishing in areas where there is no competent RFMO or where no interim measures have been adopted. Actions taken under this resolution will be reviewed in 2009 with a view to further recommendations, where necessary.

Further, in 2007, members of COFI asked the FAO to assist with implementation of these measures through:

- Development of technical guidelines for the management of deep sea fisheries on the high seas, including standards and criteria for identifying VMEs and the impacts of fishing on such ecosystems;
- Creation of a global database of VMEs on the high seas; and
- Creation of a global vessel list of vessels authorized to conduct bottom fisheries on the high seas.

Based on several meetings and expert consultations, the FAO has developed Draft International Guidelines on the Management of Deep-sea Fisheries in the High Seas. In February 2008, the FAO will convene a Technical Consultation, at which governments will review and negotiate these guidelines. This work is in addition to and complements the other work being done by the FAO to assist States and RFMOs to combat IUU fishing.

The United States has been a key player in these developments. In 2006, the President issued a directive that the departments of State and Commerce work with other countries directly and through new and existing RFMOs to protect VMEs from destructive fishing practices on the high seas. Based on this directive, U. S. negotiators participated actively in the development of UNGA Resolution 61/105 as well as in the ensuing FAO work. NOAA Fisheries is also pursuing further follow-up work.

NOAA Fisheries is also actively working in relevant multilateral organizations to develop, implement and enforce conservation and management measures in accordance with Resolution 61/105. This includes CCAMLR's recent adoption of strong

management measures concerning the identification of VMEs, assessment of bottom fishing activities and subsequent management measures, the requirement of observer coverage for bottom fishing vessels, and cessation of bottom fishing if a VME is encountered. It also includes NAFO's decision to close five seamount areas and a newly-created coral conservation zone. NAFO parties will develop additional measures at an intersessional meeting in April 2008. The United States also participated in development of the interim measures adopted by the parties negotiating the South Pacific RFMO, as well as the interim measures in the Northwest Pacific.³¹

VI. International Monitoring and Compliance

Section 401 of the MSRA (new section 207 of the Magnuson-Stevens Act) provides that the Secretary may undertake activities to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international fishery management agreements. This section sets forth some of the monitoring and compliance activities taken by NOAA Fisheries in recent years, as well as activities planned for the future, with particular emphasis on programs not referenced in the preceding sections. This section is organized on the basis of the provisions of MSRA section 401.

A. Share Information on High Seas IUU Fishing

The rise in illegal fishing activities that has accompanied globalization underscores the need for cooperative law enforcement across national borders. IUU fishing is an area of particular focus. The United States is one of the founding members of the International Monitoring, Control and Surveillance Network (MCS Network). The MCS Network is sponsored in part by NOAA, chaired by the United States, and housed in the NOAA Fisheries Office of Law Enforcement (OLE). It is a voluntary network that has almost 50 members from around the world. It was established in 2001 to provide a mechanism for fisheries law enforcement professionals in various countries to share information and experiences as they monitor the increasingly complex harvesting and marketing of fish around the world. The MCS Network is viewed as a test model for international cooperation involving of sharing information on IUU fishing and fisheries enforcement efforts.

NOAA OLE and the U.S. Coast Guard (USCG) send representatives to a number of RFMOs to assist in crafting regulations concerning monitoring, control and surveillance. For example, based on provisions of the UNFSA, the WCPFC has developed an innovative high seas boarding and inspection scheme that permits vessels of one party to board vessels of another under specified circumstances where violations of conservation and management measures may be involved. Both agencies have been integrally

³¹ See descriptions of the interim measures in section V. A., above. In addition, other RFMOs, to which the United States is not party, have also addressed bottom fishing. In 2006 and 2007, SEAFO closed ten seamount areas to all bottom fishing, and in 2007 NEAFC closed three seamount areas to bottom fishing.

involved in developing the specific rules applicable under this scheme. They also participate in technical assistance projects. Enforcement efforts in other areas are described below.

B. Develop Real-time Information Sharing Capabilities

NOAA OLE and the USCG work closely to enforce federal and international fisheries laws and regulations. An important part of these efforts involves working with the enforcement authorities of other nations. For example, NOAA and the USCG work closely with enforcement agencies from Canada, Japan, Korea and Russia to enforce the NPAFC's prohibition on directed fishing for anadromous stocks in the high seas areas of the North Pacific Ocean. NPAFC enforcement activities also contribute significantly to the implementation of the United Nations global moratorium on large scale high seas driftnet (HSDN) fishing, due to the fact that IUU salmon fishing in the NPAFC Convention Area is primarily conducted with large-scale driftnets. The members of the NPAFC jointly plan and coordinate their high seas enforcement operations in order most efficiently to utilize enforcement resources. Each spring, the parties hold an Enforcement Evaluation and Coordination Meeting, which includes presentations by each party on current enforcement efforts and coordination of enforcement plans and resources for the remainder of the calendar year.

Cooperation between the United States and Canada is particularly close in the NPAFC context. Canadian Department of National Defense aircraft patrol approximately four million square kilometers in the North Pacific Ocean high seas area for HSDN vessels, with a NOAA Fisheries Enforcement agent on board. Patrols are based out of Eareckson Airfield on Shemya Island in Alaska, and operational tasking of the aircraft is located in the USCG 17th District Headquarters in Juneau to coordinate information and surface support operations. After a suspected HSDN vessel is sighted, real time position information is posted on the NPAFC Integrated Information System (IIS) and provided to USCG at-sea assets for possible interception. In 2007, Canadian aircraft patrols sighted nine suspected HSDN fishing vessels and one support vessel.

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

In 2005, the USCG implemented a new IUU enforcement plan in the NPAFC Convention Area called Operation North Pacific Watch. This initiative, along with coordinated multi-national operational efforts involving Canadian, Japanese, and Chinese surface and air patrols, resulted in the U.S. apprehension of six Chinese HSDN vessels during September-October 2007. This is the largest number of IUU vessels apprehended by the USCG since 1998, when four vessels were intercepted. The increase of HSDN interdictions in 2007 is likely the result of better enforcement targeting and operational coordination, rather than an increase in HSDN fishing in the Convention Area.

In addition to international enforcement efforts in the North Pacific, the United States is working closely with Canada in the North Atlantic. For example, in July 2006, the USCG, Canadian Coast Guard, and Canadian Department of Fisheries and Oceans conducted a joint patrol aboard the Canadian Coast Guard Cutter COWLEY to observe and participate in Northwest Atlantic Fishery Organization (NAFO) inspections on the Flemish Cap and Grand Banks. This is notable in that the United States has been a contracting party to NAFO since 1995, but has never previously participated in the inspection program. The joint boarding teams conducted inspections of NAFO convention vessels, inspecting for compliance with NAFO conservation and management measures.

C. Participate in Efforts to Build MCS Networks for High Seas Fishing and Fishing under Regional or Global Agreements

As noted above, the United States was one of the initiators and founding members of the MCS Network. The MCS Network flowed originally from Chile's initiative in sponsoring the International Conference on Monitoring, Control and Fishing Surveillance, held in Santiago in January of 2000. Further discussions followed at the IUU-IPOA negotiations in October 2000. The Executive Committee was first officially convened in January 2001 in Florida, and subsequent meetings were held in Australia in October 2001 and New Zealand in May 2002. The Executive Committee consists of governmental fisheries MCS organizations from Chile, Peru, United States, European Commission, Australia, Canada, New Zealand, Norway, the FFA and the FAO (an observer). As noted above, the network is sponsored by NOAA and housed in the NOAA OLE Office.

In 2005, the MCS Network held a Global Fisheries Enforcement Training Workshop in Malaysia, with about 150 participants. The workshop covered a number of enforcement topics, including case studies, VMS, and MCS capabilities with regard to IUU fishing. A Second Global Fisheries Enforcement Training Workshop is planned for Norway in 2008. At this workshop, the MCS Network hopes to have 250 participants, including 20 to 40 sponsored participants from developing countries. NOAA hopes the workshop will generate interest and expand the membership of the MCS Network, particularly among developing countries.

As a follow-up to the High Seas Task Force, in January 2007, the MCS Network approved a three-year enhancement project. Five countries, including the United States, are funding the enhancement. One of the goals of the MCS Network enhancement project is to improve communications within and among other countries. Other world fisheries enforcement organizations are looking at the MCS Network as a model for international cooperation. For the future, NOAA is actively working to expand the MCS Network and to assist RFMOs in strengthening their MCS operations.

D. Support Efforts to Create an International Registry or Database of Fishing Vessels

At the March 2007 COFI meeting, the United States supported, and the meeting agreed, that the FAO should proceed toward developing and maintaining a global record of all fishing and associated vessels, subject to the availability of funding. Specifically, COFI supported the convening of an Expert Consultation to do further work on developing the concept of a comprehensive global record of fishing vessels, as described in the earlier FAO feasibility study. The 2007 UNGA Sustainable Fisheries Resolution welcomed the decision by COFI to create this global vessel list. To support this action, the UNGA requested the FAO to consider establishing a system of unique and permanent fishing and support vessel identification.

E. Enhance Enforcement of IUU and other Illegal Fishing Incursions through Remote Sensing Technology

NOAA, the USCG, and the Department of Homeland Security are studying possible use of the Unmanned Aerial Vehicle (UAV), which has been used successfully by the military for remote sensing for a number of years. The UAV would be used to help enforce both fisheries and sanctuary regulations. To date, two test flights have occurred using UAVs. During one flight, which took place over the Channel Islands in California, NOAA enforcement officials in several offices throughout the country were able to see real time images of fishing vessels via the internet.

NOAA, the USCG and the Department of Homeland Security are also working with the Department of Defense on a remote radar station. This experimental station will be located in the Florida Keys National Marine Sanctuary, and will be able to identify vessels using both radar and optical images. The optical package makes available real time images and radar information that can be examined by any authorized user on a web-based site.

NOAA and the other agencies involved will be monitoring these systems and working to see what improvements can be made. They are also looking into other remote systems that might have potential for fisheries enforcement, such as satellite images.

F. Provide Technical or other Assistance to Developing Countries to Improve their MCS Capabilities

As noted above, NOAA houses and provides partial support for the MCS Network and the MCS enhancement project. The enhancement project provides funds to hire full time staff, including a technical/training staff member and a Network Coordinator. Utilizing its updated website, the Network will offer technical assistance and training to its members around the world.

In conjunction with the MCS Network, NOAA is engaged in a number of technical assistance and capacity building projects. A number of these projects are described below in the section on International Cooperation and Assistance.

G. Support VMS Requirements for Large-scale Fishing Vessels Operating on the High Seas

NOAA is working actively to ensure VMS coverage of U.S. large-scale fishing vessels, and to promote VMS requirements by RFMOs and other flag States. NOAA OLE currently monitors 5,100 U.S. fishing vessels, as well as several foreign vessels monitored under international cases or plea agreements. The VMS program is expanding within the United States. As noted above, OLE also sends enforcement representatives to RFMOs to assist in the crafting of regulations concerning VMS as well as other enforcement issues. In the future, OLE hopes to be involved with additional RFMOs and to expand its VMS training, both directly and through the MCS Network.

VII. International Efforts to Encourage Adoption of International Measures Comparable to those of the United States to Reduce Impacts of Fishing on Protected Living Marine Resources

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

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

U.S. law and policy establish a number of domestic requirements designed to reduce bycatch and other harmful effects of fishing activities on PLMRs by vessels subject to U.S. jurisdiction. For example, U.S. fishers are subject to requirements concerning the taking of marine mammals under the Marine Mammal Protection Act (MMPA); fisheries and related actions that affect species listed as endangered or threatened under the Endangered Species Act; fishing with the use of large-scale high seas driftnets under the High Seas Driftnet Fisheries Enforcement Act; fishing in a manner that harms sea turtles under the Shrimp Turtle Act; fishing activities affecting sharks under the Shark Finning Prohibition Act; the taking of whales under the Whaling Convention Act; and various measures relating to bycatch and harm to PLMRs under the MSRA.

In addition, U.S. law provides policy statements, action mandates and research direction for U.S. actions in the international arena. For example, the Marine Mammal Protection Act (MMPA) requires the Secretary of Commerce, working through the Secretary of State, to initiate negotiations for development of bilateral or multilateral agreements with other nations for the protection and conservation of covered marine mammals. The Dolphin Conservation Program Act, the Pelly Amendment to the Fishermen's Protective Act, the High Seas Driftnet Fisheries Enforcement Act, and section 609 of P.L. 101-162 (the Shrimp-Turtle Act) call for nations to comply with international fisheries management measures, and provide for various types of trade restrictive measures against nations whose vessels engage in activities that undermine the effectiveness of international fishery conservation measures or otherwise engage in prohibited activities. The Lacey Act prohibits the import, export, transport, sale or possession in interstate or foreign commerce of any fish or wildlife taken, possessed, transported or sold in violation of any law or treaty or regulation of the United States. A more detailed description of these and other laws is set forth in Annex 3 to this report.

B. International Actions to Protect PLMRs

A number of international organizations have taken action to reduce bycatch of PLMRs. In most of these cases, the United States has been a major driving force behind the development of such measures.

1. Sea Turtles

Sea turtles are incidentally taken as bycatch or harmed in some pelagic longline, purse seine, gillnet, driftnet, pound net, trap/pot, and trawl fisheries throughout the Atlantic, Pacific, and Indian Oceans as well as other areas, such as the Gulf of Mexico. All marine turtles are designated as either threatened or endangered under the ESA. The Kemp's ridley sea turtle is listed as endangered and is found principally in United States and Mexican waters. The breeding populations of Mexico olive ridley turtles on the Pacific coast of Mexico are currently listed as endangered, while other olive ridley populations are listed as threatened. Leatherback and hawksbill turtles are classified as endangered. Loggerhead turtles and green turtles are listed as threatened (except for an endangered population of green turtles nesting in Florida and on the Pacific coast of Mexico).

Sea turtle species found in the Atlantic, Mediterranean, and Gulf of Mexico include the loggerhead, leatherback, green, hawksbill, olive ridley, and Kemp's ridley turtles. Fishing impacts in those areas often involve longline, purse seine, trawl, gillnet, pound net, and trap/pot operations, and affect all of the aforementioned species. In addition, shrimp trawl fisheries in the Gulf of Mexico and other temperate areas also interact with sea turtles – primarily leatherback and loggerhead turtles. In the Eastern Tropical Pacific, the distribution of olive ridleys, greens, hawksbills, leatherbacks, and loggerheads overlaps with longline, drift gillnet, and tuna purse seine fishing operations. Due to the migratory nature of sea turtles, they frequently travel throughout ocean basins between their nesting beaches and foraging grounds. For instance, Pacific loggerheads nest in Japan, but spend part of their juvenile stage foraging off the Baja Peninsula of Mexico and in the central North Pacific.

The United States has worked aggressively to urge RFMOs, multilateral environmental agreements (MEAs), and other nations to implement measures to protect sea turtles in fisheries operations comparable to those applicable in the United States. For example, during 2007-2008, NOAA and the Department of State are actively advocating measures to protect sea turtles in the following international fishery and conservation fora and at bilateral fisheries meetings:

- The 28th Annual Symposium on Sea Turtle Conservation and Biology (2008);
- The Fourth International Fishers Forum (2007);
- The FAO Committee on Fisheries Meeting;
- The 5th meeting of the Signatory States to the Memorandum of Understanding on the Conservation and Management of Marine Turtles of the Indian Ocean and Southeast Asia;

- The first Extraordinary Meeting of the Inter-American Convention for the Protection and Conservation of Sea Turtles (2007) and the 4th Conference of Parties of the Inter-American Convention for the Protection and Conservation of Sea Turtles (2008);
- The second meeting of the Signatory States of the Memorandum of Understanding concerning Conservation Measures for Marine Turtles of the Atlantic Coast of Africa;
- The Ad-hoc Working Group on the Incidental Mortality Associated with Fishing of the Commission for the Conservation of Antarctic Marine Living Resources;
- The IATTC Annual Meeting;
- The ICCAT Annual Meeting;
- The WCPFC Annual Meeting;
- The United States – Brazil Common Agenda Meeting;
- The United States – Mexico Bilateral Meeting;
- The United States – Canada Bilateral Meeting;
- The United States – EU Fisheries Bilateral; and
- An informal fisheries consultation with Vietnam.

The 1989 passage of Public Law 101-162 committed the United States Government to work to ensure that other countries take similar measures to protect sea turtles in their shrimp fisheries by using measures comparable to those in effect in the United States (e.g., TEDs). Over the last twenty years, the United States Government has worked with numerous governments to establish TEDs programs. Each year the State Department and NOAA Fisheries travel to countries to carry out TEDs inspections and trainings.

UNGA. As a result of the efforts of the United States and others, the 2005, 2006 and 2007 UNGA Fisheries Resolutions highlighted the sea turtle bycatch issue and called on UN members urgently to implement the FAO guidelines. An FAO Technical Consultation on sea turtles in 2005 also recommended that FAO produce a set of technical guidelines to supplement the 2005 guidelines.

FAO-COFI. U.S. efforts also led to promulgation by the FAO Committee on Fisheries of Guidelines to Reduce Sea Turtle Mortality in Fishing Operations. These 2004 Guidelines, developed at a workshop chaired by the United States, list specific measures to promote appropriate handling and release of sea turtles affected by coastal trawl, purse seine, longline, and other fishing activities. For example, for coastal shrimp trawl vessels, the guidelines promote the use of TEDs or other measures comparable in effectiveness. For longline vessels, they indicate that recent research has shown positive results for circle hooks with no greater than a ten degree offset, combined with whole fish bait; gear configurations and settings so that hooks remain active only at depths beyond the range of sea turtles; retrieval of long line gear earlier in the day; and reducing the soak time of hooks. The Guidelines also call for research and exchange of information, policy consistency, education and training, capacity building, and other elements.

Multilateral Sea Turtle Arrangements. In addition, with U.S. leadership, two multilateral arrangements have been negotiated to conserve and protect sea turtles. These are the

Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC), and the Indian Ocean – South East Asian Marine Turtle Memorandum of Understanding (IOSEA). Each of these multilateral instruments puts into place arrangements to protect and conserve sea turtles through use of TEDs and other conservation measures. The IAC, which is a binding international agreement, requires use of TEDs in shrimp trawl fisheries in a manner comparable to U.S. regulations, and also calls for parties to implement the FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations. The Indian Ocean – South Asia MOU operates as an agreement under Article IV of the Convention on Migratory Species (CMS). Its provisions are somewhat more general, requiring measures to prevent bycatch of sea turtles, but without specifying specific gear types or actions. This MOU has 27 signatories, several of whom have implemented TEDs requirements for their shrimp trawl fisheries comparable to those applicable in the United States.

As a result of these two multilateral agreements, plus bilateral work with other States, 16 nations were certified in 2007 as employing TEDs or other comparable measures, for purposes of importing shrimp from those fisheries into the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Suriname, and Venezuela. In addition, 24 shrimp harvesting nations were certified as having fishing environments that do not pose a danger to sea turtles. Sixteen of these have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy harvest shrimp only with small boats and small crews that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles: The Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.³²

IATTC. As a result of U.S. efforts, several RFMOs have also adopted sea turtle measures. At its 75th meeting in June of 2007, the IATTC adopted a resolution to mitigate the impact of tuna fishing on sea turtles. The United States was the major force behind enactment of this resolution. The resolution calls on the contracting parties, cooperating non-parties, fishing entities and regional economic integration organizations (collectively “CPCs”) to implement the FAO guidelines to reduce the bycatch, injury, and mortality of sea turtles in fishing operations and to ensure the safe handling of all captured sea turtles. CPCs are required to report each year to the IATTC on the progress of their implementation of the FAO guidelines, including information collected on interactions with sea turtles in fisheries managed under the Convention, and to enhance any national sea turtle bycatch, injury, and mortality reduction measures already in place. The resolution also seeks to implement observer programs for fisheries that the Commission manages that may have impacts on sea turtles and are not currently subject to observer coverage (e.g., longline fisheries). It further requires fishers on vessels targeting tuna to bring aboard, if practicable, any comatose or inactive hard-shell sea turtle for the purpose of resuscitation and return to the sea.

³² Federal Register, Vol. 72, No. 98, p. 28753-28754 (Tuesday, May 22, 2007).

For purse seine vessels, the guidelines require that vessels avoid encirclement of sea turtles, monitor fish aggregating devices (FADs) for entanglement of sea turtles, release all sea turtles observed entangled in FADs, conduct research and development of modified FAD designs to reduce sea turtle entanglement, and use designs found to be successful. For longline vessels, fishers are required to carry and, when sea turtle interactions occur, employ equipment, such as de-hookers, line cutters, and scoop nets that aid in the release of incidentally-caught sea turtles; improve techniques for further reduction of sea turtle bycatch; and undertake fishing trials to determine the feasibility and effectiveness of circle hooks, bait, depth, gear specifications, fishing practices, and other measures in reducing the bycatch, injury, and mortality of sea turtles, assess their effects on the catch of target and other bycatch species, and provide results to the IATTC.

WCPFC adopted a non-binding sea turtle resolution in 2005. This resolution calls on Commission members, cooperating non-members, and participating territories (“CCMs”) to implement the FAO guidelines and to ensure the safe handling of all turtles that are captured, in order to improve their survivability. It also encourages CCMs to collect and provide to the WCPFC all available information on interactions with sea turtles in fisheries managed under the WCPF Convention; to enhance the implementation of their respective turtle mitigation measures already in place; and to foster collaboration with other CCMs in the exchange of information in this area.

CCMs are encouraged to require their purse seine vessels to: avoid encirclement of sea turtles and, if any are encircled or entangled, take measures to release them safely; undertake efforts to rescue any turtle sighted in the net before it becomes entangled; stop net roll if a turtle is entangled in the net; assist the recovery of the turtle before returning it to the water; monitor FADs to release any sea turtles that become entangled; and consider the use of FAD designs that reduce sea turtle entanglement. With regard to longline fisheries, CCMs are urged to undertake research trials of appropriate-size circle hooks in commercial pelagic longline fisheries and the use of circle hooks in recreational and artisanal fisheries. CCMs are also urged to require their longline vessels to carry on board and use equipment, such as de-hookers, line cutters, and scoop nets, for the prompt release of incidentally caught sea turtles.

Finally, the measure provides for cooperation with the IATTC in sharing data on sea turtle bycatch and developing and applying compatible bycatch reduction measures. It also notes that observer programs should be reviewed to ensure that appropriate information on sea turtle interactions is being collected. The WCPFC also decided to make available resources from its Special Fund to assist developing State members and territories in implementing the FAO guidelines. The United States introduced a proposal for a binding sea turtle conservation and management measure in 2007, but action on the measure was deferred to the 2008 annual meeting.

ICCAT adopted a resolution on sea turtles in December of 2003. It encourages contracting parties, cooperating non-contracting parties, entities or fishing entities to collect and provide to the ICCAT Standing Committee on Research and Statistics all

available information on interactions with sea turtles in ICCAT fisheries, including incidental catches and other impacts on sea turtles in the Convention Area, such as the deterioration of nesting sites and swallowing of marine debris. It also encourages the release of marine turtles that are incidentally caught alive, and encourages sharing of information on technical measures to reduce the incidental catch of turtles and to encourage the safe handling of all turtles that are released. It calls further for the development of data collection and reporting methods covering the incidental bycatch of sea turtles in tuna and tuna-like fisheries, and for support for the efforts by FAO to address the conservation and management of sea turtles, through a holistic approach. In 2005, ICCAT adopted a resolution on circle hooks which calls on parties to conduct research on the impact of circle hooks in reducing bycatch in different fisheries.

NAFO. In 2006, NAFO adopted a Resolution to Reduce Sea Turtle Mortality in NAFO Fishing Operations. This resolution calls on countries to implement the FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations and to provide data to the Secretariat on sea turtle interactions in NAFO managed fisheries.

U.S. efforts concerning sea turtles also include training, capacity-building and technology transfer. These efforts are described in the section concerning International Cooperation and Assistance, below.

2. Sharks

Pelagic sharks are an important bycatch species of longline and other fisheries in the Atlantic Ocean, the Gulf of Mexico, the Caribbean, the Eastern Tropical Pacific, and the Western and Central Pacific Ocean. In the Atlantic Ocean, Gulf of Mexico and Caribbean, blue, shortfin mako, and other sharks are caught in a variety of gears, including longlines, gillnets, handlines, and rod and reel. In the pelagic longline fisheries targeting tuna and swordfish, sharks are caught primarily as bycatch. Some commercial fisheries, such as the bottom longline fishery and gillnet fishery, also target sharks. These commercial fisheries generally target sandbar and blacktip sharks. Recreational handline and rod and reel fisheries also target sharks – generally the pelagic species such as blue and shortfin mako sharks.

In the Western and Central Pacific Ocean, pelagic sharks and rays are common bycatch of the longline and purse seine fisheries, but few data have been collected at the species level. Observer data indicate that at least 16 species have been observed as bycatch in the longline fishery and at least 10 species in the purse seine fishery. Blue and silky sharks are taken in commercial longline operations in this area, although silky sharks appear to be taken at a lower rate than blues. Blue sharks are also the species most associated with finning. The predominant shark species observed in the purse seine fishery in the Western and Central Pacific are the silky shark and the oceanic whitetip shark.

UNGA. At the strong urging of the United States, the 2007 UNGA Sustainable Fisheries Resolution (A/62/L.24) calls for strengthened protections for vulnerable and endangered shark populations around the world. Nations agreed to language based on a U.S.

proposal that calls on individual nations and international fisheries organizations to take immediate and concerted actions to improve shark conservation and management, and to better enforce existing rules on shark fishing, including bans on shark finning. The resolution language calls for, among other things, establishing limits on shark catches, undertaking improved assessment of the health of shark stocks, reducing shark bycatch in other fisheries, and limiting shark fisheries until management measures are adopted. One key aspect of the language agreed in the UNGA negotiations is the call for improved compliance with current bans on shark finning, including through measures requiring that sharks be landed with fins attached.

FAO/COFI. Based on concerns emanating from within the U.S. conservation community in the late 1990s – concerns that led to enactment of the Shark Finning Prohibition Act of 2001 – U.S. officials initiated discussion of shark finning and bycatch in the FAO Committee on Fisheries. The United States, with support from like-minded states, successfully pushed for adoption by COFI of the International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) in 2000. The objective of the plan is to ensure the conservation and management of sharks and their long-term sustainable use. The plan calls for individual countries to adopt NPOAs for the conservation and management of shark stocks if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks in non-directed fisheries. The plan sets forth specific conservation and management strategies, including decreasing fishing effort on any shark stock where the catch is unsustainable, improving the utilization of sharks caught, improving data collection and monitoring, training all concerned in identification of shark species, facilitating and encouraging research on little known shark species, and obtaining utilization and trade data on sharks. It also sets forth suggested contents of a shark assessment report.

To date, adoption of national plans has been slow. Based on 2004 FAO data, the top shark fishing nations and entities, in descending order of catch, are: Indonesia, European Commission, India, Spain, Taiwan Mexico, Argentina, United States, Thailand, Pakistan, Japan, Malaysia, France, Brazil, Sri Lanka, Islamic Republic of Iran, New Zealand, United Kingdom, Nigeria and Portugal. Of those, only Taiwan, Mexico, the United States, Japan and Malaysia have adopted NPOAs covering sharks.

CITES. At U.S. urging, CITES has addressed the issue of sharks on several recent occasions. In 1996, the CITES Animals Committee began compiling data on the biological and trade status of shark species subject to international trade. Several species of pelagic sharks, such as the basking shark and great white shark, have been listed in Appendix II of CITES as species that may become threatened with extinction unless trade is subject to regulation. The Animals Committee has also discussed the potential role for CITES in assisting FAO members in implementation of the IPOA-Sharks, especially in respect of international trade in sharks and their parts and derivatives. At its 12th annual meeting in 2002, CITES adopted a resolution concerning conservation and management of sharks. Among other elements, that resolution called on parties to implement the IPOA-Sharks, and directed the Animals Committee to make species-specific recommendations at subsequent meetings if necessary to improve the conservation of

sharks and the regulation of international trade in shark species. It also requested parties to collaborate with their national Customs authorities to expand classification systems to allow for the collection of detailed data on shark trade, including, where possible, separate categories for processed and unprocessed products, and for meat, cartilage, skin and fins. It also called for methods to distinguish imports, exports and re-exports.

CITES considered sharks again at its June, 2007 meeting, leading to adoption of resolution 14.101. This resolution urges parties to implement the IPOA-Sharks as a matter of priority, establish systems for verification of catch, and improve monitoring and reporting in cooperation with FAO and RFMOs. It also calls on parties that are members of RFMOs to urge those bodies to develop shark management plans. It encourages parties landing and exporting products from shark species to improve communication between their CITES and fisheries authorities and to ensure that levels of international trade are not detrimental to the status of the species. Parties are also encouraged to continue developing manuals and guides for the identification of sharks and shark products in international trade. Finally, the resolution urges parties, when developing proposals to include shark species in CITES appendices, to consider factors affecting implementation and effectiveness, including monitoring and enforcement practicalities, given that sharks are generally traded in parts (meat, fins, etc.).

In December 2007, the United States, along with 34 other countries, participated in a Convention on Migratory Species (CMS) meeting to identify and elaborate an option for international cooperation on migratory sharks. The U.S. focus at the meeting was to explore ways that CMS may be able to add value to the primary areas of focus related to migratory sharks, including (1) strengthening shark management in U.S. waters; (2) working with other nations, particularly developing nations, to build capacity for shark management; (3) working through RFMOs to fulfill their mandates for sharks; and (4) improving enforcement of shark finning bans. The United States remains hopeful that this new international instrument, as envisioned by the CMS, can help in these endeavors.

Shark conservation has also been raised at meetings of the World Customs Organization, with the purpose of promoting the establishment and use of specific headings within the standard tariff classifications of the Harmonized System of Tariffs to discriminate between shark meat, fins, leather, cartilage and other products.

Numerous RFMOs to which the United States is party have taken measures to protect sharks:

ICCAT. The Sub-Committee on Bycatches of the ICCAT Standing Committee on Research and Statistics (SCRS) assessed pelagic sharks in 2001. Several subsequent resolutions have been adopted. The first, in 2002, provided that the SCRS should conduct assessments for Atlantic shortfin mako and blue sharks in 2004. It also required that all contracting parties, cooperating non-parties, entities and fishing entities (CPCs) submit catch and effort data for porbeagle, shortfin mako and blue sharks; encourage the release of live sharks caught incidentally, especially juveniles, to the extent possible; minimize waste and discards from shark catches; and voluntarily agree not to increase

fishing effort targeting Atlantic porbeagle, shortfin mako and blue sharks until sustainable levels of harvest can be determined through stock assessments.

With U.S. leadership, these provisions were augmented in 2004. Among other things, the 2004 measure required full utilization of shark catches. Full utilization is defined as retention by the fishing vessel of all parts of the shark except the head, guts and skins, to the point of first landing. The recommendation (binding under ICCAT rules) requires CPCs to prohibit their vessels from having on board fins that total more than 5% of the weight of sharks onboard, up to the first point of landing. CPCs that currently do not require fins and carcasses to be offloaded together at the point of first landing are required to take measures to ensure compliance with the 5% ratio through certification, monitoring by an observer, or other appropriate measures. The measure requires that the ratio of fin-to-body weight of sharks be reviewed by the SCRS and reported back to the Commission in 2005 for revision, if necessary. It also prohibits fishing vessels from retaining on board, transshipping or landing any fins harvested in contravention of the provisions. In fisheries that are not directed at sharks, it calls on CPCs to encourage the release of live sharks, especially juveniles that are caught incidentally and not used for food and/or subsistence.

Based on a U.S. proposal, in 2006 ICCAT required stock assessments of and preparation of management alternatives for shortfin mako and blue sharks in time for consideration at the 2008 meeting. In 2007, in turn, based on U.S. and Canadian proposals, the Commission passed a measure requiring data collection, measures to reduce fishing mortality on porbeagle and shortfin mako sharks until assessments determine sustainable harvest levels, an assessment of porbeagle sharks as soon as possible but no later than 2009, and research on pelagic sharks, specifically to identify potential nursery areas.

IATTC. Due in large part to U.S. leadership, IATTC adopted a measure to protect sharks in 2005 (Resolution C-05-03). This measure requires contracting parties, cooperating non-parties, fishing entities and regional economic integration organizations (CPCs) to establish and implement NPOAs for conservation and management of shark stocks, in accordance with the FAO IPOA-Sharks. It also requires CPCs and, if possible, the Western and Central Pacific Fisheries Commission, to provide preliminary advice on the stock status of key shark species and propose a research plan for a comprehensive assessment of these stocks.

To prohibit shark finning, the resolution requires CPCs to fully utilize any retained catches of sharks. Similar to the ICCAT measure, full utilization is defined as retention by the fishing vessel of all parts of the shark except the head, guts, and skins, to the point of first landing. CPC vessels may not have on board fins that total more than 5% of the weight of sharks onboard, up to the first point of landing. CPCs that currently do not require fins and carcasses to be offloaded together at the point of first landing are required to adopt measures to ensure compliance with the 5% ratio through certification, monitoring by an observer, or other appropriate measures. Finally, fishing vessels are prohibited from retaining on board, transshipping, landing or trading in any fins harvested in contravention of the resolution.

The bycatch provisions of the resolution encourage CPC tuna fisheries to release live bycaught sharks, especially juveniles, and to undertake research to identify ways to make fishing gear more selective. CPCs are also encouraged to conduct research to identify shark nursery areas. Each CPC is required to submit annually data concerning catches, effort by gear type, landing and trade of sharks by species.

NAFO. Under Article 13 of its Conservation and Management Measures, and as a result of a U.S. initiative, NAFO requires reporting of data, requires full utilization of sharks caught, and prohibits shark fins on board that total more than 5 % of the weight of sharks on board. Also, in 2005, NAFO became the first RFMO to bring a stock of elasmobranchs, thorny skates, under a conservation and management regime. The United States proposed this measure. Members are also to provide reports on progress on developing their NPOAs for sharks, for circulation among NAFO members.

WCPFC. The WCPF Convention provides that the Commission adopt conservation and management measures to address the mortality of non-target species. In 2006, the WCPFC adopted Conservation and Management Measure 2006-05 governing the conservation and management of sharks. The United States was instrumental in getting this measure adopted. It calls on commission members, cooperating non-members, and participating territories (CCMs) to implement the IPOA – Sharks and to advise the WCPFC annually on their implementation. The measure encourages the inclusion of particular items in NPOAs or other relevant policies for sharks. Such plans should include measures to minimize waste and discards from shark catches and to encourage the live release of incidental catches of sharks. Each CCM is expected to include key shark species, to be identified by the Scientific Committee, in annual reports to the Commission.

The measure, which currently applies only to vessels greater than 24m in length, prohibits the finning of sharks and requires that CCMs adopt measures to require that their fishers fully utilize any retained catches of sharks. The full utilization requirements are similar to those under ICCAT and IATTC.

The broader bycatch restrictions contained in the measure encourage CCMs with tuna fisheries and fisheries not directed at sharks to release live sharks that are caught incidentally and are not used for food or other purposes. Finally CCMs are encouraged to cooperate in the development of stock assessments for key shark species within the Convention Area. The measure entered into force on January 1, 2008, with interim application on a voluntary basis.

CCAMLR. In 2006, CCAMLR recognized that, pending the collection of information on the status of shark stocks, it would be appropriate to restrict and, if possible, to reduce removals from these stocks. It therefore adopted a conservation measure that prohibited directed fishing on shark species in the Convention Area for purposes other than scientific research. This prohibition is to remain in effect until such time as the Scientific Committee has investigated and reported on the potential impacts of this fishing activity

and the Commission has agreed, on the basis of scientific advice, that such fishing may occur in the Convention Area. Until then the Commission stipulated that any sharks, especially juveniles and gravid females, taken accidentally in other fisheries, are to be released alive, as far as possible.

3. Dolphins

Since the early 1990s the United States has worked diligently to ensure that foreign vessels fishing for tuna with purse seines in areas where such fisheries interact with dolphins are subject to measures to protect dolphins comparable to those applicable to U.S. purse seine vessels. In 1995, the United States and the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, and Spain negotiated the Panama Declaration, establishing conservative species/stock specific annual dolphin mortality limits and representing an important step toward reducing bycatch of dolphins in commercial Eastern Tropic Pacific tuna purse seine fisheries. The United States also pushed for conclusion of a binding agreement establishing for all countries fishing in the tuna purse seine fishery in the Eastern Tropical Pacific methods of protecting dolphins comparable to those under U.S. law. As a result of these efforts, the Agreement on the International Dolphin Conservation Program (AIDCP) was signed in Washington in 1998 and entered into force in 1999. Parties to the Agreement are Costa Rica, Ecuador, El Salvador, EU, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, United States, Vanuatu, and Venezuela. Bolivia, Colombia, and the European Union are applying the Agreement provisionally.

The objective of the AIDCP is to ensure the long-term sustainability of tuna stocks in the EPO, as well as living marine resources related to the tuna fisheries; to seek ecologically sound means of capturing large yellowfin tunas not in association with dolphins; progressively to reduce the incidental dolphin mortalities in the tuna fishery of the EPO to levels approaching zero; and to avoid, reduce and minimize the incidental catch and discard of juvenile tuna and the incidental catch of non-target species, taking into consideration the interrelationship among species in the ecosystem. The Agreement applies to typical dolphins associated with the yellowfin tuna fishery in the Agreement Area (in practice, the spotted and, to a lesser extent, common and spinner dolphins, although other species, including striped and bottlenose dolphins, are also relevant).

The Agreement establishes a system of dolphin mortality limits (DMLs) by which dolphin mortality is reduced. It also establishes per-stock-per-year dolphin mortality caps with the objective of achieving a limit of 0.1 percent of the minimum estimated abundance of stocks from the year 2001 onward. This objective was achieved. In 2006, the number of observed dolphin mortalities in the EPO purse-seine fishery was less than 900 individuals. This represents a reduction in dolphin mortality in the fishery of over 99% from the estimated 133,000 mortalities in 1986. The Agreement requires parties to manage their DMLs in a responsible manner and provides for the reallocation of DMLs that have either not been used or have been forfeited during a particular year because of irresponsible use.

In addition to the DML system, the Agreement provides incentives to vessel captains to continue to reduce incidental dolphin mortality further, with the goal of eliminating mortality altogether. It also provides for implementation of a system for the tracking and verification of tuna harvested with and without mortality or serious injury of dolphins; the exchange of scientific research data collected by the parties pursuant to the Agreement; and the conduct of research for the purpose of seeking ecologically sound means of capturing large yellowfin tuna not in association with dolphins.

The AIDCP is widely recognized as the most successful and comprehensive bycatch agreement of its kind. In November 2005, the FAO recognized the “unqualified success” of the AIDCP, and awarded it the Margarita Lizárraga award in recognition of its “comprehensive, sustainable and catalytic initiatives” in support of the Code of Conduct for Responsible Fisheries. Some of the most important elements of the Agreement include 100% observer coverage on large purse-seine vessels, conservative species/stock specific annual dolphin mortality limits, a tuna tracking and verification program, and mandatory measures to ensure that all dolphins are released from the nets unharmed, prior to bringing the tuna catch aboard (e.g. mandatory backdown, putting divers in the water, a prohibition on the use of explosives, and a prohibition on night sets). The Agreement also includes a mechanism for transparent tracking and analysis of potential infractions that includes opportunities for participation by environmental non-governmental organizations and industry representatives, and focuses on high-risk activities such as sets that occur after dark and any possible harassment of national or international observers.

4. Other Marine Mammals

A number of other marine mammals are also taken incidentally as bycatch or harmed in fishery operations in the world’s oceans. In the Atlantic and Northeast Coastal areas, the vast majority of marine mammals that interact with longline activities are pilot whales and Risso’s dolphins. Pilot whales are primarily observed to interact with the longline fishery in the Mid-Atlantic Bight and Northeast Coastal areas, while Risso’s dolphins interact with the fishery in these areas as well as the Northeast high seas areas and the Gulf of Mexico. Other observed marine mammal interactions in the Atlantic pelagic longline fishery have included common dolphins, bottlenose dolphins, Atlantic spotted dolphins, striped dolphins, northern bottlenose whales, killer whales, minke whales and pygmy sperm whales. In the Atlantic Ocean and the Mediterranean more generally, interactions with marine mammals have included minke whales, sei whales, brydes whales, fin whales, common dolphins, northern right whales, shortfin pilot whales, humpback whales, various species of dolphins and others.

In addition to the dolphins that interact with the tuna purse seine fishery discussed above, other marine mammal species that have been sighted in the waters of the Eastern Tropical Pacific during NOAA Fisheries stock assessments include blue whales, sei whales, fin whales, southern right whales and humpback whales. These species are all listed as endangered under the ESA. Pinnipeds have also been sighted in the Eastern Tropical Pacific, but they have not been known to interact regularly with tuna purse seines.

Pinniped species seen, usually one or two at a time, include the California sea lion, northern fur seal and the northern elephant seal.

In the Western Pacific, endangered cetacean species observed in the waters during NOAA Fisheries stock assessments have included the humpback whale, sperm whale, blue whale, fin whale, and sei whale. There is little evidence that dolphin-associated sets are made by purse seiners in the Western and Central Pacific area. A few records indicate encirclement of Risso's dolphins and pilot whales during log sets in some areas. Sei whale sets are more common in equatorial areas, but these very large animals are usually released unharmed. Marine mammals may occasionally be entangled in longline gear. False killer whales and pilot whales are frequently associated with depredation of longline bait and catch in the Western Pacific Ocean and may be killed or seriously injured incidental to fishery operations.

IWC. The International Whaling Commission (IWC) manages thirteen species of great whales (Bowhead whale, North Atlantic right whale, North Pacific right whale, Southern right whale, Gray whale, Blue whale, Fin whale, Sei whale, Bryde's whale, Common minke whale, Antarctic minke whale, Humpback whale, and Sperm whale). The IWC's charge is to adopt regulations for the conservation and utilization of whale resources. Regulations are put in place and updated through periodic amendments to the Schedule, a document that is an integral part of the International Convention for the Regulation of Whaling (ICRW). Amendments to the Schedule must be based on scientific findings and require a three-fourths majority of all voting members. Any government can "object" to any decision, provided the objection is lodged within 90 days of notification of the decision. The government or governments that object are not then bound by that particular decision. Since 1985-86, a moratorium on commercial whaling has been in effect. The moratorium does not affect aboriginal subsistence whaling. In addition, scientific whaling and some commercial whaling (by nations who objected to the moratorium) currently occurs. The IWC also discusses smaller cetaceans at its meetings, although difference of opinion exists among the members about whether the IWC has authority to regulate those species. NOAA Fisheries undertakes a number of research projects on cetaceans in U.S. waters and overseas. NOAA Fisheries also collaborates with non-U.S. scientists on a wide variety of cetacean research activities.

CCAMLR has focused significant effort on the assessment and avoidance of incidental mortality of Antarctic marine mammals in commercial fisheries through establishment of its Ad hoc Working Group on Incidental Mortality Associated with Fishing. Three marine mammal mortalities were reported in longline gear during the 2006/2007 fishing season, compared to no reports or mortalities in 2005/2006. No marine mammals were reported entangled and released alive in longline fisheries in 2006/2007, compared to two in the previous season. No marine mammals were reported entangled or killed in the krill trawl fisheries in 2006/2007 compared to 142 Antarctic fur seals in 2004/2005 and one in 2005/2006. CCAMLR has strongly recommended that vessels participating in the krill fishery use seal excluder devices, and such devices came into more regular use beginning with the 2005/2006 season. No marine mammals were reported entangled or killed in the finfish trawl fisheries and there were no reports of marine mammals in pot fisheries.

WCPFC. The WCPF Convention specifically calls for the Commission to adopt measures to minimize waste, discards, and catch by lost or abandoned gear; catch of non-target species, both fish and non-fish species, in particular endangered species; and to promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques. Although the Commission has not yet put into place measures specifically aimed at marine mammals, it may do so as it develops measures under the relatively new Convention.

VIII. International Cooperation and Assistance

A. International Institutional Efforts to Support Capacity Building

The international community is increasingly recognizing the importance of assisting developing coastal and fishing States in managing their fisheries and fishing vessels. The need for such cooperation and assistance has been recognized in several recent international and regional fisheries agreements.

UNFSA. Part VII of the 1995 UN Fish Stocks Agreement recognizes the special requirements of developing States with regard to conservation and management of straddling and highly migratory fish stocks and development of fisheries for such stocks. To this end, it provides that States shall, either directly or through international organizations, such as the FAO or other appropriate international or regional organizations and bodies, provide assistance to developing States. The purpose of such cooperation is to enhance the ability of developing States to conserve and manage their fisheries, to enable them to participate in high seas fisheries, and to facilitate their participation in subregional and regional fisheries management organizations and arrangements. Cooperation is to include financial assistance; assistance in human resources development; technical assistance; transfer of technology; and advisory and consultative services in the areas of improved conservation and management, stock assessment and scientific research, monitoring, control and surveillance, and compliance and enforcement, including training and capacity building at the local level. Article 26 provides that States shall cooperate to establish special funds to assist developing States in the implementation of the agreement. In implementation of Article 26, UNFSA parties have established an Assistance Fund, administered by FAO, to provide developing States parties, especially small island developing States, with financial assistance to help them in implementing the Agreement. To date, Canada, Iceland, Norway and the United States have contributed to the fund, which had \$417,700 available for disbursement at the time of the UNFSA Review Conference in 2006.

The UNFSA also provides that in giving effect to the duty to conserve and manage stocks, States are to take into account the special requirements of developing States, in particular the vulnerability of States that depend on exploitation of living marine

resources, including for the nutritional requirements of their populations; the need to avoid adverse impacts on and ensure access to fisheries by subsistence, small-scale and artisanal fisheries, women fish workers, and indigenous people in developing States, particularly small island developing States; and the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action to developing States.

UNGA Since the entry into force of UNFSA, the UNGA has emphasized the importance of capacity-building assistance in these areas. For example, Resolution 61/105 (2006) places particular emphasis on development of special financial mechanisms or instruments to help developing States enhance their national capacities to manage and exploit fishery resources. The 2007 UNGA Sustainable Fisheries Resolution also encourages States, individually and through RFMOs and arrangements, to provide greater assistance and promote coherence in such assistance.

The WCPF and SEAFO Conventions, which were negotiated since the entry into force of the UNFSA, incorporate special provisions for developing States. In addition, some other RFMOs have incorporated special treatment of developing countries in practice, even though not specifically called for in their founding conventions.

WCPFC. Under its Convention, the WCPFC has established a special requirements fund for developing State members. A pre-cursor fund was set up during the negotiations to assist developing States to participate in the negotiations. The United States supported establishment of these funds and contributed to them, both during the negotiations and subsequently under the Convention itself. The WCPF Convention also requires that in developing criteria for the allocation of catch or effort, the Commission must recognize the circumstances of developing states in the region.

SEAFO. The SEAFO Convention similarly contains established mechanisms to provide not only financial assistance to developing countries, but also technical assistance, information exchange to facilitate conservation and management of stocks, and assistance with scientific research and monitoring, control and surveillance.

CCAMLR parties have agreed to develop a program that provides support and technical assistance as well as advice and training to non-contracting parties.

ICCAT has put into place allocation criteria that take into account the various coastal community and State needs with regard to the economic and social importance of the fishery. In addition, the Madrid Protocol to the ICCAT Convention, which has entered into force, reduces the costs of membership for developing States. In 2007, the United States provided financial support and technical expertise for an ICCAT Data Workshop in West Africa, designed to improve developing State data collection and stock assessments.

B. Bilateral and Regional Fisheries Conservation and IUU-Related Management Assistance

The United States has been active in providing capacity building, technical and other types of assistance to developing states for conservation and management, stock assessment, scientific research, and MCS programs. Examples of some of those programs are set forth in this section.

One of the areas of major U.S. concentration in recent years has been Central America and the Caribbean – an area in which there is considerable IUU fishing. A key focus area in the Central American Free Trade Agreement (CAFTA) Economic Cooperation Agreement is enforcement and compliance. To address enforcement and compliance issues in fisheries, three projects have been funded by the United States Agency for International Development (USAID) and the Department of State (DOS) under CAFTA for Fiscal Year (FY) 2005, FY 2006, and FY 2007. Those projects will be carried out by NOAA Fisheries:

- A Central American workshop for fisheries and enforcement officers through the Organizacion del Sector Pesquero y Acuicola del Istmo Centro Americano (OSPESCA) to assess their needs for assistance to build enforcement capacity for marine resources enforcement (\$100,000); once the assessment is completed, the hope is that a second phase involving training in the areas identified can be implemented;
- A project to promote the use of circle hooks in the tuna longline fishery to reduce sea turtle bycatch, which will involve a series of workshops and field experiments using circle hooks to see how they work best and to promote their use (\$325,000);
- A series of workshops to build capacity for the use of TEDs to protect sea turtles in the shrimp trawl fishery (\$300,000).

NOAA Fisheries has also supported the development and operation of regional fisheries organizations in the Caribbean. For example:

- NOAA Fisheries provided \$50,000 to convene a working group of the Western Central Atlantic Fisheries Commission (WECAFC) to discuss regional fisheries management in the wider Caribbean.
- NOAA Fisheries provided slightly more than \$4,000 to support Caribbean biologists and policy makers to attend the 2005 meeting of the Wider Caribbean Sea Turtle Conservation Network (WIDECAST).
- Contributions were made to the Gulf and Caribbean Fisheries Institute (GCFI) – two contributions totaling \$30,000 for its 58th Annual Meeting in 2006.

NOAA Fisheries has also assisted with activities concerning specific fisheries management issues in the Caribbean. These included:

- Workshop on implementation of CITES for Queen Conch (\$27,000);

- Workshops on Queen Conch and Spiny Lobster through GCFI (\$10,000);
- Stranding response workshops through the Protocol for Specially Protected Areas and Wildlife (SPA)W) (\$23,200);
- Workshop on Spiny Lobster through FAO (\$50,000);
- Workshop on Stranding in French-speaking Caribbean through SPAW (\$25,000);
- Production of a taxonomic field guide for stranding responders (\$10,000); and
- Translation and posting to a website the fishing and aquaculture laws of Central America by OSPESCA (\$30,000).

In West Africa, NOAA Fisheries is now beginning to look at ways to improve fisheries monitoring and enforcement. Working with the Navy, NOAA Fisheries plans to conduct observer and enforcement training workshops in on-board classrooms in Ghana. The Ghana program is planned to include training in marine resource management techniques, the role of the fisheries observer, data collection and identification procedures, seabird and sea turtle bycatch mitigation, as well as vessel safety and fisheries enforcement. In addition, NOAA Fisheries and U.S. Navy representatives were able to discuss fisheries as an important aspect of maritime security with representatives from Senegal's Department of Fisheries.

NOAA Fisheries has been working with the Navy on a number of fisheries-related programs in West Africa. As part of its increased engagement in broad maritime safety and security issues in West Africa, the Navy, along with the United States European Command, the West Africa Trade Hub, USAID, and the Africa Center for Strategic Studies, sponsored a Maritime Safety and Security workshop in 2006. Policy papers prepared for this workshop noted that one of the primary threats in the Gulf of Guinea region was the poaching and depletion of fish stocks. Based on the results of the workshop, a Ministerial Conference was held in November 2006 to build political will to address these maritime threats. Both of these meetings included discussion of IUU fishing. With the advent of the Africa Partnership Station, NOAA Fisheries, the Navy and other organizations, such as the World Wildlife Fund and the Wildlife Conservation Society, have joined forces to train fisheries and park personnel to build capacity to stop illegal fishing within their 200-mile zones and conserve their coastal stocks. These trainings may also cover coastal monitoring, including application of Geographic Information Systems (GIS), shore-based surveillance, and patrol boat maintenance.

In addition, NOAA Fisheries has partnered with the U.S. Coast Guard to conduct needs assessment surveys in West Africa. In the spring of 2008, the USCG will have a vessel in the region, following the Africa Partnership Station initiative, which will focus on addressing countries' legislative needs relating to fisheries and maritime security. Subsequently, in the summer of 2008, NOAA Fisheries is collaborating with the USCG's International Training Division to conduct Pre-Training Surveys in Senegal and Gabon to help assess and design future fisheries-based training activities.

In December of 2007, NOAA Fisheries participated in a workshop entitled A Regional Dialogue for Fisheries Policy Coherence in West Africa. The workshop was organized by the OECD, WWF, and the Sub Regional Fisheries Commission in West Africa. The

discussions focused on making progress on MCS activities and programs aimed at addressing IUU fishing. Other priority issues included sustainable management of living marine resources using an ecosystem based approach and harmonization of minimum conditions for access to fishery resources by foreign nationals. NOAA Fisheries is planning on engaging with the follow-up committee that arose out of this workshop and organizing a regional MCS workshop to be held in late 2008 or early 2009.

In Asia and the South Pacific, NOAA Fisheries is also supporting institutional capacity building. This includes:

- Support to the WCPFC for development of the Commission's Regional Observer Program (\$99,000);
- Work with the IUCN Grouper and Wrasse Group on a Regional Model for Sustainable Management of Humphead Wrasse (\$10,414);
- Work with the South Pacific Regional Environment Program (SPREP) on the development and editing of proceedings of a workshop and training materials on Cetacean Management Training in the Pacific Islands (\$20,000); and
- Work with SPREP to convene national Cetacean stranding workshops and provide stranding kits (\$25,000).

C. Assistance with Bycatch Issues

In addition to the programs referenced above, NOAA Fisheries has carried out substantial training with regard to bycatch of sea turtles, seabirds and marine mammals.

Sea Turtles. In 2006, NOAA Fisheries, working with the Department of State, held numerous training programs regarding the protection and conservation of sea turtles, including the following. Some of these are still ongoing in 2007:

- Sea turtle conservation, mitigation and management in Mexico, Malaysia, Indonesia, Palau, Vanuatu, the Marshall Islands, Micronesia and New Caledonia, for which more than \$800,000 in financial assistance funds were committed;
- Programs for TEDs observers in Chile and Peru, for which \$129,000 was committed;
- Programs for sea turtle tagging and capacity building in Micronesia, Papua New Guinea, the Solomon Islands and the Marshall Islands (more than \$300,000);
- Technology transfer regarding TEDs in Brazil, Costa Rica, Colombia, Ecuador, Madagascar, Mozambique, Mexico, Nicaragua, Panama, Venezuela, El Salvador, Gabon, Guatemala, Guyana, Malaysia, and Nigeria (over \$80,000);
- Transfer of sea turtle mitigation technology for Costa Rica, Ecuador, Spain, Canada, Mexico, Peru, Italy, Uruguay, and Venezuela (over \$250,000);
- Provision of sea turtle mitigation technology for the gillnet fishery in Trinidad & Tobago;

- Provision of assistance for research to reduce sea turtle bycatch in longline fisheries, including over \$190,000 in assistance to Costa Rica, Brazil, Italy and Spain (coordinated by the Pacific Islands Region of NOAA Fisheries); and
- Provision of hooks designed to reduce sea turtle bycatch to the Philippines, Costa Rica, Panama, and other Central American nations.

In addition, in 2005, NOAA Fisheries and the State Department:

- Supported training of observers in turtle de-hooking and resuscitation techniques in Indonesia, the Republic of the Marshall Islands, Papua New Guinea, and the Federated States of Micronesia;
- Provided training in in-water turtle monitoring activities in the Commonwealth of the Northern Mariana Islands (CNMI) and American Samoa;
- Assisted the PNG in a phase II pilot turtle excluder device project (TEDs were expected to be deployed by local fishing companies in PNG in the near future); and
- Continued to provide support for a post-doctorate resource economist reviewing current efforts to optimize sea turtle conservation and management efforts in Indonesia, Malaysia and the PNG.

For longlining nations in 2005, NOAA Fisheries and the State Department:

- Provided information on results of gear experiments that were conducted with the U.S. fleet;
- Convened the first “Technical Assistance Workshop on Sea Turtle Bycatch Reduction Experiments,” to which Australia, Indonesia, Malaysia, Mexico and the Philippine Islands sent national delegations;
- Disseminated educational and outreach materials that have been translated into multiple languages;
- Conducted training workshops on safe handling and release practices; and
- Conducted four protected species workshops in American Samoa for pelagic longline fishers covering the handling of marine turtles, seabirds, and marine mammals.

In addition, NOAA Fisheries and the State Department have carried out TEDs workshops in El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica and Gabon; and TEDs compliance inspections in Belize, El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Guyana, Surinam, Brazil, Trinidad & Tobago, Nigeria, Madagascar, Mozambique, and Australia.

Seabirds. Since 2004, NOAA Fisheries has also provided financial support for several international activities related to reducing seabird bycatch in commercial fisheries (e.g., gear mitigation studies, outreach, and small-scale observer data collection). The NOAA Fisheries National Seabird Program spent \$137,000 for these purposes in 2004-2007. In 2007, NOAA Fisheries provided financial support for two new initiatives – an ecological risk assessment conducted by BirdLife International for use by ICCAT in the assessment

of its fisheries' impacts on seabird populations (\$21,000) and the FAO BirdLife Workshop for the development of technical guidelines for NPOA-Seabirds (\$12,000).

NOAA Fisheries also promotes seabird conservation by building the capacity of other nations to address priority seabird issues, specifically by lending financial and technical support to meetings such as the International Fishers Forum, where scientists, managers, and industry representatives came together to collaborate on ways to reduce seabird bycatch. In 2005 and 2006, NOAA Fisheries supported a project to monitor seabird bycatch in Peruvian fisheries (\$25,000). This project generated information on seabird bycatch in a poorly studied geographic area, provided basic resources to local researchers and government offices to manage their natural resources, and encouraged local participation in seabird conservation through an education and awareness campaign targeting fishermen, local authorities, and researchers. NOAA Fisheries also carried out a program for reduction of seabird bycatch in Russia's longline fisheries, including testing of techniques to avoid seabird interactions with demersal longline gear (approximately \$75,000).

Other Bycatch Programs. NOAA Fisheries has supported programs concerning shark conservation and bycatch in Brazil and Peru; a program on shrimp bycatch reduction in Australia; and a program concerning data collection on sawfish populations in Kenya.

NOAA Fisheries also provided funding to support the attendance of fisheries officials from El Salvador, Panama, Mexico, Nicaragua, and Peru at the Fourth International Fishers Forum (IFF4) held in Costa Rica in November of 2007. IFF4 continued the focus of previous Forums on addressing the incidental capture of seabirds and sea turtles in longline fisheries. In addition, the Forum addressed bycatch management of two additional species groups – sharks and cetaceans. The aim of IFF4 was to motivate fishers and industry to recognize and find effective and practical ways to address bycatch issues and to promote responsible longline fisheries.

D. Observer Program Outreach and Capacity Building

NOAA Fisheries has also provided program outreach and capacity building with regard to development and operation of effective fisheries observer programs. In recent years, these have included:

- NOAA's National Observer Program collaborated with a visiting scientist from Taiwan to design a new improved observer program for Taiwan. NOAA Fisheries also met with Taiwanese fisheries managers concerning their observer program, which is expected to represent the first step towards long term cooperation.
- NOAA Fisheries provided Ghana with scientific and sampling equipment for the Ghana fisheries observer program. Supplies were transported to Ghana on board the U.S. Naval vessel, Ft. McHenry.

- NOAA's North West Fisheries Science Center provided information to Chilean scientists on vessel selection for fishery observers, data collection methodologies, data storage, techniques for ensuring data quality, training and other relevant information, as well as information on the current use of Electronic monitoring in the shoreside hake fishery.
- The South East Fisheries Science Center collaborated with the Panama City Laboratory and Pro-Delphinus-Peru with regard to shark bycatch in pelagic longline and artisanal fisheries off Peru. This included provision of examples of observer data forms and observer manuals to give guidance in data collection and training for at-sea observers.
- The Alaska Fisheries Science Center provided a three-week training class to a Kenyan scientist, including provision of training supplies.
- The Alaska Fisheries Science Center provided training materials to the Pacific Scientific Research Centre's Laboratory of Applied Biotechnology in Russia.
- The Alaska Fisheries Science Center worked with Korea on observer deployment and alternative sampling methodologies.
- The Alaska Fisheries Science Center provided a mini-observer training for two Chilean scientists at the Center.
- The NOAA Fisheries Observer Program assisted the FFA and the Secretariat of the Pacific Community (SPC) with regional observer trainings in the areas of marine mammal identification and sea turtle de-hooking practices. This included trainings for observers in Papua New Guinea, Solomon Islands, Palau, FSM, and Spain.
- NOAA Fisheries assisted observer programs across the globe in addressing a wide range of identified needs, such as training, data form development, and programmatic policies; training and/or observer materials have been provided to the Marshall Islands, Ghana, Spain, Papua New Guinea and the Solomon Islands.

IX. Conclusion

The MSRA recognizes and addresses several critical issues in international fisheries – in particular the need to work internationally to strengthen international fisheries management organizations to reduce or eliminate IUU fishing and bycatch of PLMRs, and also more effectively to enforce and promote compliance with fisheries conservation and management regulations. The Secretary of Commerce, through NOAA Fisheries, and in conjunction with the Department of State and other agencies, has actively worked to promote strengthened international fisheries management institutions. Positive achievements have been made in many areas. However, much more needs to be done. The Secretary of Commerce, through NOAA Fisheries, is proceeding actively to implement the authorities and requirements of the MSRA and in doing so will continue and reinforce the efforts to strengthen international fisheries management and enforcement. NOAA Fisheries is compiling a more complete accounting of the scope and nature of its international fisheries activities in fulfillment of its obligations under the MSRA for inclusion in first biennial report to Congress in 2009.

Annex I

International Fisheries and Related Agreements and Organizations to which the United States is Party or has a Substantial Interest

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

Global

United Nations Convention on the Law of the Sea (UNCLOS). This Convention sets the rules for jurisdiction in the oceans and establishes general requirements concerning conservation. UNCLOS currently has 155 parties; the United States is not a party but operates consistent with the fisheries provisions of the Convention, which it regards as customary international law.

Agreement for the Implementation of the Provisions of the U.N. Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement or UNFSA). This agreement provides more specific rules for the conservation and management of straddling and highly migratory fish stocks, including application of the precautionary approach, ecosystem-based management, the requirement that nations with vessels fishing on the high seas either join the appropriate RFMO or apply the conservation and management measures established by that RFMO to its fishing vessels, and other similar requirements. The 1995 agreement, which entered into force in 2001, now has 67 parties, including the United States.

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement). This agreement requires flag States to exercise control over their vessels on the high seas to ensure that they follow applicable conservation and management regulations. The agreement was adopted in 1993 and has been ratified by 18 parties, including the United States; however, 25 ratifications are needed to bring the agreement into force.

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

International Whaling Commission (IWC). The IWC was established under the International Convention for the Regulation of Whaling (ICRW) in 1946. The purpose of the Convention is to provide for the proper conservation and management of whale

stocks. It currently has 78 parties, including the United States. At present, the United States chairs the IWC.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES provides for the protection and regulation of certain species of wild fauna and flora, including certain living marine species, against over-exploitation, through limitations on international trade. Under CITES, species are listed in Appendices according to their conservation status: Appendix I (“threatened with extinction”); Appendix II (may become threatened with extinction unless trade is strictly regulated); and Appendix III (species that any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and that needs the cooperation of other parties in the control of trade). CITES currently has 172 parties, including the United States.

Agreement on the Conservation of Albatrosses and Petrels (ACAP). ACAP is one of six agreements established under the Convention on Migratory Species. The 11 parties to ACAP are Argentina, Australia, Chile, Ecuador, France, New Zealand, Norway, Peru, South Africa, Spain and the United Kingdom. Brazil is a signatory, but has not ratified. ACAP’s intent is to enhance the understanding of the conservation status of albatrosses and petrels and their susceptibility to a range of threats at sea and on land, as well as to provide an effective means of mitigating these threats. The United States is not a party, but participates in ACAP meetings as an observer due to its interest in seabird conservation and its status as a Range State under ACAP.

Atlantic

International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT provides for international cooperation in conservation and management, including scientific research, for tuna and tuna-like species in the Atlantic. It covers all waters of the Atlantic Ocean including the adjacent seas. ICCAT has 45 contracting parties, including the United States, plus two cooperating non-contracting parties or fishing entities. Dr. William Hogarth, Assistant Administrator of NOAA, chaired ICCAT in 2006 and 2007.

North Atlantic Salmon Conservation Organization (NASCO). NASCO has jurisdiction over salmon stocks that migrate beyond areas of coastal State fisheries jurisdiction in the Atlantic Ocean north of 36 degrees N. throughout their migratory range. It has seven parties: Canada, Denmark (for Faeroe Islands and Greenland), EC, Iceland, Norway, United States, and Russia.

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

Southeast Atlantic Fisheries Commission (SEAFO). The SEAFO Convention, which entered into force in 2003, regulates fisheries outside EEZs in the Southeast Atlantic Ocean. Species covered include fish, mollusks, crustaceans, and other sedentary species, except species subject to coastal State jurisdiction and highly migratory species. The United States was involved in negotiation of SEAFO in order to promote incorporation of the principles of the UNFSA. The United States has signed the Convention, but is not a party, because its vessels do not fish in the area. Current parties are the EC, Namibia and Norway.

Pacific

Western and Central Pacific Fisheries Commission (WCPFC). The WCPFC manages tuna and other highly migratory species in the Central and Western Pacific Ocean. The Convention went into force in 2004 and the United States became a party in 2007. It has 25 members, seven participating territories, and one cooperating non-member.

Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty – SPTT). This agreement provides U.S. purse seine tuna vessels access to fish in certain waters in the central and western Pacific. Although not a fisheries management arrangement, it is referenced in this report because it contains some important and forward-looking monitoring and control provisions, including observer and VMS requirements. The treaty has 17 parties, including the United States. It is administered by the Forum Fisheries Agency (FFA), comprised of the 16 Pacific Island State parties.

Inter-American Tropical Tuna Commission (IATTC). The IATTC manages tunas and other species taken by tuna-fishing vessels in the Eastern Pacific Ocean. It has 16 contracting parties, including the United States, plus 6 cooperating non-contracting parties.

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

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

Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (CCBSP). This Convention was established to conserve and manage the

pollock resources in the high seas area of the Bering Sea. It has six parties: Japan, China, Republic of Korea, Poland, Russia and the United States.

Southern Ocean

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). Apart from seals south of 60°S and whales (which are covered by the Convention for the Conservation of Antarctic Seals and the International Convention for the Regulation of Whaling respectively), CCAMLR applies to all marine living resources between the Antarctic continent in the south and the Antarctic Polar Front in the north (at about 50°S). CCAMLR coordinates with the Antarctic Treaty's Committee for Environmental Protection, including with respect to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty, "Conservation of Antarctic Fauna and Flora." CCAMLR has 25 Contracting Parties, including the United States. Species subject to management include krill, toothfish, icefish, crab, squids, rays and sharks. Conservation measures have also been adopted with respect to seabirds and marine mammals.

Convention for the Conservation of Antarctic Seals (CCAS). This Convention is designed to promote and achieve the protection, scientific study and rational use of Antarctic Seals, and to maintain satisfactory balance within the ecological system of Antarctica. It prohibits the killing or capture of seals in the area south of 60 degrees S, except as specifically provided in the Convention. It has 16 parties, including the United States.

Western Hemisphere

Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). The IAC is the only binding Convention for the protection and conservation of sea turtles in the world. The IAC specifically protects six of the seven species of sea turtles: loggerhead, green, leatherback, hawksbill, olive ridley and Kemp's ridley. This Convention entered into force in 2001 and has 12 parties, including the United States. It protects sea turtles and their habitats in the Western Hemisphere by prohibiting the intentional capture, retention or killing of sea turtles, their eggs, parts and/or products, except for subsistence needs by traditional communities. The Convention also protects and conserves sea turtle habitats and nesting zones. The IAC meets every two years to assess the status of sea turtles and take steps to improve conservation in the region. The United States was integral in negotiating the Convention, and works to ensure that it continues to move toward its objectives through financial contributions and in-kind efforts.

Indian Ocean

Indian Ocean – South East Asian Marine Turtle Memorandum of Understanding (IOSEA). This MOU operates as a non-binding agreement under Article IV of the Convention on Migratory Species (CMS). It provides a framework within which the States of the region, as well as other concerned States, can work together to conserve and replenish depleted marine turtle populations for which they share responsibility. It requires parties to take measures to prevent bycatch of sea turtles, but without specifying specific gear types or actions. The MOU has 27 signatories, not including the United States.

Annex 2

State of Knowledge on the Status of International Living Marine Resources (The list below is a draft list, and is still under consideration and development.)

List and Status of International Living Marine Resources under the High Seas Fishing Moratorium Protection Act

		Common Name	Scientific Name	Status, if known	Relevant treaty or agreement, if any
Agreement on the International Dolphin Conservation Program	AIDCP	Coastal Spotted Dolphin	<i>Stenella attenuata graffmani</i>	Depleted	AIDCP
		Northeast Offshore Spotted Dolphin	<i>Stenella attenuata attenuata</i>	Depleted	AIDCP
		Eastern Spinner Dolphin	<i>Stenella longirostris orientalis</i>	Depleted	AIDCP
Central Bering Sea Pollock Convention		Pollock	<i>Theragra chalcogramma</i>	Low biomass \approx 486,667 t	Central Bering Sea Pollock Convention
Commission for the Conservation of Antarctic Living Marine Resources	CCAMLR				
Convention for the Conservation of Antarctic Seals	CCAS	Anarctic Fur Seal	<i>Arctocephalus gazella</i>	all populations with known status either stable or increasing	CCAS
		Subantarctic Fur Seal	<i>Arctocephalus tropicalis</i>	all populations with known status either stable or increasing	CCAS
		Southern Elephant Seal - South Georgia Stock	<i>Mirounga leonina</i>	varies by island	CCAS
		Southern Elephant Seal - Iles Kerguelen Stock	<i>Mirounga leonina</i>	varies by island	CCAS
		Southern Elephant Seal - Macquarie Island Stock	<i>Mirounga leonina</i>	varies by island	CCAS

		Common Name	Scientific Name	Status, if known	Relevant treaty or agreement, if any
Convention on International Trade in Endangered Species	CITES				
Inter-American Convention on the Protection of Sea Turtles	IAC	Loggerhead turtle	<i>Caretta caretta</i>	Threatened	IAC
		Green turtle- Atlantic	<i>Chelonia mydas</i>	Threatened, except Florida breeding colony populations in Florida, which are endangered	IAC
		Green turtle- Pacific	<i>Chelonia mydas</i>	Threatened, except breeding colony populations on Pacific coast of Mexico, which are endangered	IAC
		Leatherback turtle	<i>Dermochelys coriacea</i>	Endangered	IAC
		Hawksbill turtle	<i>Eretmochelys imbricata</i>	Endangered	IAC
		Kemp's Ridley turtle	<i>Lepidochelys kempii</i>	Endangered	IAC
		Olive Ridley turtle	<i>Lepidochelys olivacea</i>	Threatened everywhere found except breeding colony populations on the Pacific coast of Mexico, which are endangered	IAC
Inter-American Tropical Tuna Commission	IATTC	Yellowfin tuna- Eastern Pacific	<i>Thunnus albacares</i>	Overfishing occurring	IATTC
		Bigeye tuna- Pacific	<i>Thunnus obesus</i>	Overfishing occurring	IATTC
		Skipjack tuna- Eastern Pacific	<i>Katsuwonus pelanis</i>	Overfishing not occurring; not overfished	IATTC
		Striped Marlin- Eastern Pacific	<i>Tetrapturus audax</i>	Overfishing not occurring; not overfished	IATTC

		Common Name	Scientific Name	Status, if known	Relevant treaty or agreement, if any
Inter-American Tropical Tuna Commission	IATTC	Indo-Pacific Blue Marlin- Pacific	<i>Makaira mazara</i>	Close to fully exploited, but overfishing not occurring and not overfished	IATTC
		Swordfish- North Pacific	<i>Xiphias gladius</i>	Overfishing not occurring; not overfished	IATTC
		Swordfish- Southern Eastern Pacific Ocean	<i>Xiphias gladius</i>	Likely close to fully exploited	IATTC
		Dolphinfish- Pacific	<i>Coryphaena hippurus</i>	Unknown	IATTC
		Wahoo- Pacific	<i>Acanthocybium solandri</i>	Unknown	IATTC
		Jack Mackerel- Pacific	<i>Trachurus symmetricus</i>	Not overfished	IATTC
		Blue shark- Pacific	<i>Prionace glauca</i>	Overfishing not occurring; not overfished	IATTC
		Shortfin mako shark- Pacific	<i>Isurus oxyrinchus</i>	Unknown	IATTC
		Longfin mako shark- Pacific	<i>Isurus paucus</i>	Unknown	IATTC
		Silky Shark- Pacific	<i>Carcharhinus falciformis</i>	Unknown	IATTC
		Oceanic Whitetip Shark- Pacific	<i>Carcharhinus longimanus</i>	Unknown	IATTC
		Antipodean albatross	<i>Diomedea antipodensis</i>	Vulnerable	IATTC
		Black-browed albatross	<i>Thalassarche melanophrys</i>	Endangered	IATTC
		Black-footed albatross	<i>Phoebastria nigripes</i>	Endangered	IATTC
		Buller's albatross	<i>Thalassarche bulleri</i>	Vulnerable	IATTC
		Chatham albatross	<i>Thalassarche eremita</i>	Critically Endangered	IATTC
		Grey-headed albatross	<i>Thalassarche chrysostoma</i>	Vulnerable	IATTC
		Laysan albatross	<i>Phoebastria immutabilis</i>	Vulnerable	IATTC
		Light-mantled albatross	<i>Phoebastria palpebrata</i>	Near Threatened	IATTC
		Northern royal albatross	<i>Diomedea sanfordi</i>	Endangered	IATTC
		Salvin's albatross	<i>Thalassarche salvini</i>	Vulnerable	IATTC
		Short-tailed albatross	<i>Phoebastria albatrus</i>	Vulnerable	IATTC

		Common Name	Scientific Name	Status, if known	Relevant treaty or agreement, if any	
Inter-American Tropical Tuna Commission	IATTC	Southern royal albatross	<i>Diomedea epomophora</i>	Vulnerable	IATTC	
		Wandering albatross	<i>Diomedea exulans</i>	Vulnerable	IATTC	
		Waved albatross	<i>Phoebastria irrorata</i>	Vulnerable	IATTC	
		Black petrel	<i>Procellaria parkinsoni</i>	Vulnerable	IATTC	
		Grey petrel	<i>Procellaria cineria</i>	Near Threatened	IATTC	
		White-chinned petrel	<i>Procellaria aequinoctialis</i>	Vulnerable	IATTC	
		Southern giant petrel	<i>Macronectes giganteus</i>	Vulnerable	IATTC	
International Convention for the Conservation of Atlantic Tunas	ICCAT	Yellowfin tuna	<i>Thunnus albacares</i>	Overfished/overfishing (2003 assessment)	ICCAT	
		Bigeye tuna	<i>Thunnus obesus</i>	Overfished (2007 assessment)	ICCAT	
		Skipjack tuna	<i>Katsuwonus pelanis</i>	Unknown	ICCAT	
		Northern Albacore tuna	<i>Thunnus alalunga</i>	Overfished/overfishing (2007 assessment)	ICCAT	
		Southern Albacore tuna	<i>Thunnus alalunga</i>	Overfished (2007 assessment)	ICCAT	
		Mediterranean Albacore tuna	<i>Thunnus alalunga</i>	Unknown	ICCAT	
		Western Bluefin tuna	<i>Thunnus thynnus</i>	Overfished (2006 assessment)	ICCAT	
		Eastern Bluefin tuna	<i>Thunnus thynnus</i>	Overfished/overfishing (2006 assessment)	ICCAT	
		Blue marlin	<i>Makaira nigricans</i>	Overfished/overfishing (2006 assessment)	ICCAT	
		White marlin	<i>Tetrapturus albidus</i>	Overfished	ICCAT	
		Sailfish	<i>Istiophorus albicans</i>	Unknown	ICCAT	
		North Atlantic Swordfish	<i>Xiphias gladius</i>	Fully exploited	ICCAT	
		South Atlantic Swordfish	<i>Xiphias gladius</i>	Fully exploited	ICCAT	

		Common Name	Scientific Name	Status, if known	Relevant treaty or agreement, if any
International Convention for the Conservation of Atlantic Tunas	ICCAT	Mediterranean Swordfish	<i>Xiphias gladius</i>	Overfished/overfishing	ICCAT
		Blue shark	<i>Prionace glauca</i>	Not overfished	ICCAT
		Shortfin mako shark	<i>Isurus oxyrinchus</i>	Overfished	ICCAT
		Porbeagle shark	<i>Lamna nasus</i>	Unknown	ICCAT
International Pacific Halibut Commission	IPHC	Pacific Halibut	<i>Hippoglossus stenolepis</i>	Overfishing not occurring; not overfished	IPHC
International Whaling Commission	IWC				
North Atlantic Fisheries Organization	NAFO				
North Atlantic Salmon Conservation Organization	NASCO				
North Pacific Anadromous Fish Commission	NPAFC	Chum salmon	<i>Oncorhynchus keta</i>		N. Pac. Anadromous Stocks Convention
North Pacific Anadromous Fish Commission	NPAFC	Coho salmon	<i>Oncorhynchus kisutch</i>		N. Pac. Anadromous Stocks Convention
		Pink salmon	<i>Oncorhynchus gorbuscha</i>		N. Pac. Anadromous Stocks Convention
		Sockeye salmon	<i>Oncorhynchus nerka</i>		N. Pac. Anadromous Stocks Convention
		Chinook salmon	<i>Oncorhynchus tshawytscha</i>		N. Pac. Anadromous Stocks Convention
		Cherry salmon	<i>Oncorhynchus masou</i>		N. Pac. Anadromous Stocks Convention

		Common Name	Scientific Name	Status, if known	Relevant treaty or agreement, if any
North Pacific Anadromous Fish Commission	NPAFC	Steelhead trout	<i>Oncorhynchus mykiss</i>		N. Pac. Anadromous Stocks Convention
Pacific Salmon Commission	PSC	Chum salmon	<i>Oncorhynchus keta</i>		U.S.-Canada Pacific Salmon Treaty
		Coho salmon	<i>Oncorhynchus kisutch</i>		U.S.-Canada Pacific Salmon Treaty
		Pink salmon	<i>Oncorhynchus gorbuscha</i>		U.S.-Canada Pacific Salmon Treaty
		Sockeye salmon	<i>Oncorhynchus nerka</i>		U.S.-Canada Pacific Salmon Treaty
		Chinook salmon	<i>Oncorhynchus tshawytscha</i>		U.S.-Canada Pacific Salmon Treaty
		Steelhead trout	<i>Oncorhynchus mykiss</i>		U.S.-Canada Pacific Salmon Treaty
South Pacific Tuna Treaty	SPTT				
U.S.- Canada Alabacore Treaty		North Pacific Albacore	<i>Thunnus alalunga</i>	Unknown	
U.S.-Canada Pacific Whiting Commission		Pacific Hake/Pacific Whiting	<i>Merluccius productus</i>	Overfishing not occurring; not overfished	
Western and Central Pacific Fisheries Commission	WCPFC	WCPO Bigeye Tuna	<i>Thunnus obesus</i>	Overfishing may be occurring, not yet overfished	WCPFC
		WCPO Yellowfin Tuna	<i>Thunnus albacares</i>	Overfishing may be occurring, not yet overfished although small probability overfished	WCPFC
		WCPO Skipjack Tuna	<i>Katsuwonis pelamis</i>	Not overfished	WCPFC
		Southern Albacore	<i>Thunnus alalunga</i>	Not overfished	WCPFC
		Northern Albacore	<i>Thunnus alalunga</i>	Fully exploited	WCPFC
		SW Pacific Swordfish	<i>Xiphias gladius</i>	May be overfished	WCPFC
		Pacific Striped Marlin	<i>Tetrapturus audax</i>	Unknown	WCPFC

Annex 3

United States Laws and Regulations Providing Tools to Address IUU Fishing and Bycatch of Protected Living Marine Resources

Magnuson-Sevens Fisheries Conservation and Management Act (MSRA). The 2006 reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. 1801 et. seq., directs substantial attention to fishing issues outside U.S. waters, particularly IUU fishing and bycatch of PLMRs. Title IV of the Act amends the High Seas Driftnet Fisheries Moratorium Protection Act, 16 U.S.C. 1826d-1826g, to call on the Secretary of Commerce to urge other nations and RFMOs to address IUU fishing and to put into place regulatory measures to end or reduce bycatch of PLMRs comparable to those of the United States, taking into account different conditions. It also puts into place an identification and certification procedure for nations whose vessels engage in IUU fishing or bycatch of PLMRs. The MSRA is the only U.S. law that speaks specifically to IUU fishing. However, it does not represent the first or only attempt by the U.S. Congress to enact laws aimed at stopping fishing activity that compromises the effectiveness of domestic and international conservation regimes.

Lacey Act. The Lacey Act, 16 U.S.C.3371-3378, prohibits the import, export, transport, sale, possession or transactions in interstate or foreign commerce of any fish or wildlife “taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law.” The two-part prohibition requires evidence of a violation of domestic or foreign law, and also evidence of trafficking, i.e., import, export, sale, etc. The law has been used extensively in a variety of wildlife resource cases, and NOAA has used it to prosecute foreign fishing vessels that import catch such as tuna caught without authorization in another country’s EEZ. The Act has been described as one of the United States’ primary laws directly targeting illicit interstate or foreign trade in illegally taken species.

Pelly Amendment. The 1971 Pelly Amendment to the Fishermen’s Protective Act of 1967, 22 U.S.C. 1978, directs the Secretary of Commerce to certify to the President if “nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program” The President has discretion in whether to direct the Secretary of the Treasury to prohibit the importation of products from the certified country. The law was originally passed in response to the inability of the International Whaling Commission to enforce its quotas on member States. The Secretary of Commerce made five certifications under Pelly in the ensuing ten years, but no sanctions or import bans were imposed. The Packwood-Magnuson Amendment added an additional sanction on certified nations of a 50 % reduction in their allocation of fish from the U.S. EEZ. The amendment also made the imposition of sanctions mandatory where a certification of “diminishing the effectiveness” of the ICRW was made.

High Seas Fishing Compliance Act (HSFCA). The HSFCA, 16 U.S.C. 5501-5509 (1995) implements the FAO Compliance Agreement for vessels flagged in the United States. The Act requires high seas fishing vessels to operate under permits issued by the Secretary of Commerce, and to comply with international conservation and management measures. Penalties include civil, criminal and forfeiture sanctions.

Marine Mammal Protection Act (MMPA). A stated goal of the MMPA, 16 U.S.C. 1361 et. seq., is to reduce the incidental kill or serious injury of marine mammals in the course of commercial fishing to insignificant levels, approaching zero. The Act prohibits “taking” (harassment, hunting, capture, killing or attempt thereof) and importation into the United States of marine mammals, except where an exception is explicitly authorized. Section 101(a)(2) authorizes limited incidental taking of marine mammals by U.S. fishermen in the course of commercial fishing pursuant to a permit issued by NOAA Fisheries, in conformity with certain statutory criteria and implementing regulations. Section 101(a)(2) bans the importation of commercial fish or products from fish which have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of ocean mammals in excess of U.S. standards. The Act also requires the Secretary of Commerce, working through the Secretary of State, to initiate negotiations for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by the MMPA, including negotiations with all foreign governments engaged in commercial fishing found to be unduly harmful to any species or population stock of marine mammals, to develop bilateral and multilateral treaties with such countries to protect marine mammals.

International Dolphin Conservation Program Act. This Act, 16 U.S.C. 1441 et. seq., amended the MMPA to provide that nations whose vessels fish for tuna with purse seine nets in the Eastern Tropical Pacific are permitted to export tuna to the United States only if the nation provides documentary evidence that it (1) participates in the International Dolphin Conservation Program and is a member (or applicant member) of the IATTC; (2) is meeting its obligations under the IDCP and the IATTC; and (3) does not exceed certain dolphin mortality limits.

High Seas Driftnet Fisheries Enforcement Act (1992). This Act, 16 U.S.C. 1826a – 1826c, seeks to reduce the mortality of non-target marine animals in driftnets used by foreign fisheries operating in the North Pacific Ocean and Bering Sea. It assists the United States in the enforcement of the U.N. Moratorium on Large-Scale High Seas Driftnets. Among other provisions, the High Seas Driftnet Enforcement Act provides for the identification and certification of nations whose vessels are engaging in high seas fishing with large-scale driftnets. Certification may lead to limitations on importation of products from those nations.

High Seas Driftnet Fishing Moratorium Protection Act (1995). This Act, 16 U.S.C. 1826d-1826g, prohibits the United States from entering into international agreements that would prevent the full implementation of the UN Moratorium on Large-Scale High Seas

Driftnets. This Act is amended by the MSRA, adding specific authorities and responsibilities to assist in reducing or eliminating IUU fishing and bycatch of PLMRs.

P.L. 101-162, Section 609 (Shrimp-Turtle Act). This law, enacted in 1989, 16 U.S.C. 1537, requires the United States to embargo shrimp harvested with commercial fishing technology that may adversely affect sea turtles. The import ban does not apply to nations that have adopted sea turtle protection programs comparable to that of the United States (e.g., require and enforce the use of turtle excluder devices (TEDs)) or to fishing nations where incidental capture does not present a threat to sea turtles (e.g., nations that fish in areas where sea turtles do not occur or that fish with vessels or gear that does not affect sea turtles). The law is implemented by the Department of State (DOS) with NOAA Fisheries as technical adviser. Nations that seek to import shrimp into the United States must be certified to meet the requirements of P.L. 101-162 on an annual basis. For that purpose, DOS and NOAA Fisheries experts inspect portions of national shrimp trawl fleets for adequate use of TEDs. Approximately 40 countries are currently certified. Although most certifications are done on a national basis, DOS certification guidelines allow for import of individual shipments of TED-harvested shrimp from uncertified countries.

Endangered Species Act (ESA) – This Act, 16 U.S.C. 1531 et. seq., provides for the conservation of species that are in danger of extinction throughout all or a significant portion of their range. The Act lists species as either “threatened” or “endangered.” When a species is listed as endangered, it is protected from being “taken” through harassment, harm, injury, pursuit, hunting, killing, capturing or collection. Protective regulations against take may also be applied to threatened species. Critical habitat is designated for listed species providing additional protections. In addition, recovery plans are developed, providing a roadmap for the species’ recovery. The Act also provides for U.S. implementation of limitations on trade of species listed under the CITES.

Whaling Convention Act – The Whaling Convention Act, 16 U.S.C. 916 et. seq., authorizes the Secretary of Commerce to enforce the provisions of the International Convention for the Regulation of Whaling. Under this Act, it is illegal for any person under U.S. jurisdiction to engage in any act prohibited by or to fail to do any act required by the Convention, the Act or any regulations promulgated thereunder. It is also illegal to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or whale products taken in violation of the Convention, the Act or any regulation promulgated under it.

Shark Finning Prohibition Act – This Act, P.L. 106-557, amends the Magnuson-Stevens Fisheries Conservation and Management Act to make it illegal for persons onboard fishing vessels, including foreign fishing vessels, to offload any shark fins into a U.S. port, unless they offload the rest of the shark carcass with the fins. The Act creates a presumption of violation (that may be refuted) if the total weight of shark fins landed or found on board a vessel exceeds 5 % of the total weight of shark carcasses. This law also requires that U.S. delegations at bilateral and multilateral meetings seek a prohibition on shark finning. Prohibitions on finning have been approved by several RFMOs (see text

of report). Enacted in 2001, the law is aimed at drastically reducing the number of sharks finned and carcasses discarded at sea.

Annex 4

Seabird Bycatch Issues

The term “seabird” describes any bird species that spends most of its life at sea, returning to land only to breed and raise its young. Seabirds are typically long-lived and place high levels of investment in reproductive behavior, forming tight pair bonds and laying only one egg at a time. They are among the most threatened birds in the world. A recent assessment of seabird populations found that many species of albatrosses and petrels are considered globally threatened or near threatened with extinction. Bycatch in fisheries is becoming widely recognized as a major threat to many seabirds. Seabirds fall within the definition of international living marine resources under the MSRA, and section 116 of the MSRA highlights the need for the Secretary of Commerce to work cooperatively with the Secretary of the Interior, with regional fishery management councils, and within international organizations to seek ways to mitigate seabird bycatch.³³ NOAA Fisheries has pushed hard internationally for action to protect seabirds, as described in this Annex.

Seabirds, such as albatrosses and petrels, can be caught in virtually any type of fishing gear, but are most often taken in longline fisheries when they attempt to take sinking baits attached to hooks and are pulled underwater with the outgoing lines. Longline fisheries from 40 nations around the world were estimated to have set approximately 1.4 billion hooks in 2000, the equivalent of 3.8 million hooks each day. Since then, longline fisheries have expanded worldwide, both in terms of vessels and overall effort. Therefore, while an individual fishing vessel may catch an albatross or petrel only occasionally, the sheer scale of global fishing may threaten a species’ very existence. Although estimates are lacking or imprecise in most cases, perhaps as many as 100,000 seabirds are killed annually worldwide.

Because seabird ecology, particularly of albatrosses and petrels, is typically characterized by long-range movement between breeding and feeding grounds, effective seabird conservation requires international cooperation. Bycatch of seabirds and is thus beginning to be addressed in multiple fora.

The only multilateral agreement that coordinates international activity to mitigate known threats to albatross and petrel populations is the Agreement on the Conservation of Albatrosses and Petrels (ACAP), which entered into force in 2004. The primary objective of this agreement is to “achieve and maintain a favorable conservation status for albatrosses and petrels.” ACAP’s Advisory Committee meets annually and oversees the activities of four working groups, which cover breeding sites, taxonomy, status and trends, and bycatch. These groups have made significant progress in reviewing the population status and trends of threatened seabird species, addressing taxonomic issues, collecting information on breeding sites, and assessing threats to species from factors associated with these sites. On this basis, they have begun to devise strategies for

³³ Seabirds, however, do not fall within the definition of “protected living marine resources” (PLMRs) under section 610(e) of the Moratorium Protection Act (section 403 of the MSRA).

addressing seabird bycatch and engaging RFMOs. Although not a member of ACAP, the United States is currently considering joining, and participates in ACAP meetings as an observer due to its interest in seabird conservation and its status as a Range State under ACAP.

ACAP will hold the fourth meeting of its Advisory Committee in 2008, in South Africa, where the Advisory Committee is expected to consider adding the three North Pacific albatross species to the list of species covered by the agreement. One of the three species, the short-tailed albatross, is listed as endangered on the ESA and as vulnerable by the IUCN.

In 1998, the FAO hosted an expert consultation on reducing seabird-fishery interactions, initiated and partly funded by the United States. As an outcome of that consultation, the FAO finalized an International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds) in 1999, which calls on nations to assess and mitigate seabird bycatch in longline fisheries. Brazil, Canada, Chile, New Zealand, Falkland Islands (Malvinas), Japan, the United States and Uruguay have submitted final Seabird NPOAs to the FAO. Others are in development (e.g., Argentina, Australia, Namibia, South Africa, and Taiwan). The IPOA-Seabirds is referenced in resolutions passed by ICCAT, IATTC, and IOTC (Indian Ocean Tuna Commission). The FAO has also recently agreed to work with relevant bodies (CCAMLR, BirdLife International, ACAP) to develop best practice technical guidelines for NPOAs, including the guidelines for gear types other than longlines. The United States is assisting in the planning for a workshop for this purpose in 2008.

Several RFMOs have taken action concerning seabirds:

CCAMLR. With the leadership of the United States and other likeminded States, CCAMLR adopted Conservation Measure 25-03 in 2003. The objective of this measure was minimization of the incidental mortality of seabirds and marine mammals in the course of trawl fishing in the Convention Area. For trawl fisheries within the CCAMLR Conservation Area, the measure: prohibits the use of net monitor cables on vessels; requires arrangement of the location and level of lighting so as to minimize illumination directed out from the vessel, consistent with the safe operation of the vessel; prohibits the discharge of offal during the shooting and hauling of trawl gear; requires vessels to clean nets prior to shooting to remove items that might attract birds; and requires use of shooting and hauling procedures that minimize the change of birds encountering the parts of the net to which they are most vulnerable. Subsequently, in 2005, two measures were adopted for conservation of seabirds in longline fisheries.

During the 2006/07 fishing season, for the first time, no seabirds were reported killed in regulated longline fishing in the Convention Area outside the French EEZs, and for two consecutive years no albatross mortalities were observed in longline fisheries in the entire Convention Area, including the French EEZs. Bycatch of petrels in the French EEZs decreased by 13 %. Six seabirds were observed killed in the icefish trawl fishery and another three were released alive and uninjured. Two seabird mortalities were observed

in the Division 58.5.2 trawl fishery. No seabird mortalities were observed in the krill trawl fishery.

CCAMLR continues to refine its seabird conservation measures to represent best practices. CCAMLR's seabird risk assessment has been documented and will be shared with other RFMOs so they can consider the experience of CCAMLR when developing approaches to minimizing bycatch in their own fisheries. This is particularly important given that the continued decline of some albatross populations breeding in the CCAMLR Convention Area is thought to result from bycatch in fisheries outside the Convention Area. Concerned about continued mortality of seabirds, in 2007 CCAMLR stepped up its efforts under Resolution 22/XXV ("International Actions to Reduce the Incidental Mortality of Seabirds arising from Fishing) to reach out to other RFMOs and to work with them to address the problem in a broader context. RFMOs with which collaboration is sought include IATTC, ICCAT, SEAFO, IOTC, WCPFC, SIOFA, and others.

WCPFC. In 2006, the WCPFC became the first tuna RFMO to establish required actions for mitigating seabird bycatch. The conservation measure includes lists of mitigation methods that may be used to prevent seabird bycatch in the course of fishing operations. WCPFC members are required to employ at least two of the measures, which include tori lines (bird scaring lines), side setting with a bird curtain and weighted branch lines, night-setting, weighted branch lines, the use of blue dyed bait, management of offal discharge, the use of a deep line setting shooter, or an underwater setting chute.

At its annual meeting in 2007, the WCPFC adopted minimum technical specifications for use of the above measures and required nations to provide to the WCPFC Scientific Committee and Technical and Compliance Committee details regarding the use of the measures, so that the measures may be reviewed annually for effectiveness and ease of use. The United States was actively involved in the adoption of the conservation measure in 2006 and has since participated in the identification of minimum technical specifications.

IATTC adopted a seabird resolution in 2005, and a seabird bycatch mitigation plan based on the WCPFC measure was proposed in 2007. Although the measure was not adopted, it was referred to the appropriate working groups and will be considered again in 2008.

ICCAT adopted a seabird resolution in 2002 (02-14) and in 2007 the SCRS Ecosystem Sub-committee initiated work on an assessment of the impact on seabirds of fishing activities of all the vessels fishing for tunas and tuna-like species in the Convention Area. The risk assessment will be presented to ICCAT's Standing Committee on Research and Statistics in 2008. At its 2007 annual meeting, the Commission adopted seabird measures based on those required by the IOTC. Measures include: data collection and reporting on seabird interactions, use of bird scaring lines (streamer lines) by all longline vessels fishing south of 20 degrees South, and additional requirements (night-setting and line-weighting) for specified vessels targeting swordfish that are exempt from using streamer lines. The Commission may consider additional measures based on the 2008 seabird assessment.

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