AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# H.CON.RES. 268, A RESOLUTION REGARDING ATLANTIC HIGHLY MIGRATORY SPECIES, INCLUDING MARLIN

## LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Thursday, September 11, 2003

**Serial No. 108-54**

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

89-312 PS WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

## COMMITTEE ON RESOURCES

RICHARD W. POMBO, California, *Chairman*
NICK J. RAHALL II, West Virginia, *Ranking Democrat Member*

Don Young, Alaska
W.J. "Billy" Tauzin, Louisiana
Jim Saxton, New Jersey
Elton Gallegly, California
John J. Duncan, Jr., Tennessee
Wayne T. Gilchrest, Maryland
Ken Calvert, California
Scott McInnis, Colorado
Barbara Cubin, Wyoming
George Radanovich, California
Walter B. Jones, Jr., North Carolina
Chris Cannon, Utah
John E. Peterson, Pennsylvania
Jim Gibbons, Nevada,
*Vice Chairman*
Mark E. Souder, Indiana
Greg Walden, Oregon
Thomas G. Tancredo, Colorado
J.D. Hayworth, Arizona
Tom Osborne, Nebraska
Jeff Flake, Arizona
Dennis R. Rehberg, Montana
Rick Renzi, Arizona
Tom Cole, Oklahoma
Stevan Pearce, New Mexico
Rob Bishop, Utah
Devin Nunes, California
Randy Neugebauer, Texas

Dale E. Kildee, Michigan
Eni F.H. Faleomavaega, American Samoa
Neil Abercrombie, Hawaii
Solomon P. Ortiz, Texas
Frank Pallone, Jr., New Jersey
Calvin M. Dooley, California
Donna M. Christensen, Virgin Islands
Ron Kind, Wisconsin
Jay Inslee, Washington
Grace F. Napolitano, California
Tom Udall, New Mexico
Mark Udall, Colorado
Aníbal Acevedo-Vilá, Puerto Rico
Brad Carson, Oklahoma
Raúl M. Grijalva, Arizona
Dennis A. Cardoza, California
Madeleine Z. Bordallo, Guam
George Miller, California
Edward J. Markey, Massachusetts
Rubén Hinojosa, Texas
Ciro D. Rodriguez, Texas
Joe Baca, California
Betty McCollum, Minnesota

Steven J. Ding, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
James H. Zoia, *Democrat Staff Director*
Jeffrey P. Petrich, *Democrat Chief Counsel*

---

## SUBCOMMITTE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

WAYNE T. GILCHREST, Maryland, *Chairman*
FRANK PALLONE, JR., New Jersey, *Ranking Democrat Member*

Don Young, Alaska
W.J. "Billy" Tauzin, Louisiana
Jim Saxton, New Jersey
Mark E. Souder, Indiana
Walter B. Jones, Jr., North Carolina
Randy Neugebauer, Texas
Richard W. Pombo, California, *ex officio*

Eni F.H. Faleomavaega, American Samoa
Neil Abercrombie, Hawaii
Solomon P. Ortiz, Texas
Ron Kind, Wisconsin
Madeleine Z. Bordallo, Guam
Nick J. Rahall II, West Virginia, *ex officio*

---

# C O N T E N T S


| | Page |
|---|---|
| Hearing held on Thursday, September 11, 2003 | 1 |
| Statement of Members: | |
| Faleomavaega, Hon. Eni F.H., a Delegate in Congress from American Samoa | 6 |
| Pallone, Hon. Frank, Jr., a Representative in Congress from the State of New Jersey | 4 |
| Prepared statement of | 5 |
| Saxton, Hon. Jim, a Representative in Congress from the State of New Jersey | 1 |
| Prepared statement of | 3 |
| Statement of Witnesses: | |
| Balton, David A., Deputy Assistant Secretary of State for Oceans and Fisheries, U.S. Department of State | 20 |
| Prepared statement of | 23 |
| Response to questions submitted for the record | 25 |
| Considine, John, Director of Cargo Verification Division, Trade Compliance and Facilitation, Bureau of Customs and Border Protection | 27 |
| Prepared statement of | 28 |
| Dunnigan, John H., Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce | 10 |
| Prepared statement of | 13 |
| Response to questions submitted for the record | 16 |
| Hathaway, Rear Admiral Jeffrey J., Director of Coast Guard Operations Policy, U.S. Coast Guard | 29 |
| Prepared statement of | 31 |
| Response to questions submitted for the record | 32 |
| Additional materials supplied: | |
| Recreational Fishing Alliance, Statement submitted for the record by The Honorable Jim Saxton | 7 |

# LEGISLATIVE HEARING ON H.CON.RES. 268, A RESOLUTION EXPRESSING THE SENSE OF CONGRESS REGARDING THE IMPOSITION OF SANCTIONS ON NATIONS THAT ARE UNDERMINING THE EFFECTIVENESS OF CONSERVATION AND MANAGEMENT MEASURES FOR ATLANTIC HIGHLY MIGRATORY SPECIES, INCLUDING MARLIN, ADOPTED BY THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS AND THAT ARE THREATENING THE CONTINUED VIABILITY OF UNITED STATES COMMERCIAL AND RECREATIONAL FISHERIES.

---

**Thursday, September 11, 2003**
**U.S. House of Representatives**
**Subcommittee on Fisheries Conservation, Wildlife and Oceans**
**Committee on Resources**
**Washington, DC**

---

The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 1324, Longworth House Office Building, Hon. Jim Saxton presiding.

Present: Representatives Saxton, Faleomavaega, and Pallone.

## STATEMENT OF THE HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. Good morning and welcome to Members of the Subcommittee and witnesses who have taken time out of their schedules to be here with us today. Thank you for coming.

I am pleased to be here to discuss a resolution I have sponsored and one which Mr. Gilchrest has joined me on. And though he could not be here with us today, this is an issue of importance to him as well.

While we held a hearing on a similar resolution during the 107th Congress, several new issues and subsequent questions regarding this problem have arisen since then, and it is my hope that we can examine them further and hopefully draw some conclusions as to how we ought to proceed.

One of the biggest of these issues is that of compliance on many levels. For example, as more than 90 percent of the world's fish are taken within countries' EEZs, how do we get compliance with international fishery regimes and within countries' EEZs?

Another part of the compliance issue is, since white marlin has been petitioned for listing under the U.S. Endangered Species Act and the problem is international fishing pressure, how do we get compliance on marlin conservation measures which are already in place?

Finally, ICCAT was created to protect these species and to work toward sustainable management goals to ensure their survival. One question which could be logically asked of this process is: What mechanisms are there for ICCAT to ensure enforcement with member nations?

I have, for a very long time, been concerned with the dramatic drop in population of white marlin. Prior to the 1960s, these species were healthy and thriving, just before the introduction of pelagic longline fishing in the Atlantic Ocean. Since this time, the species has steadily plummeted.

The latest stock assessment I have seen indicates the total Atlantic marlin stock population has declined to less than 12 percent of its maximum sustainable yield level. Current fishing mortality was estimated to be at least 7 times higher than the maximum sustainable level. Overfishing had taken place for over three decades, and the stock is less productive than previously estimated, with a maximum sustainable yield of less than 1,300 metric tons. The bottom line: This species needs an immediate strong conservation measure, or it may disappear forever.

This resolution represents an important step in the process of international conservation of this dwindling species. I have spent a great deal of time on this issue. It is important we recognize that the bottom line is pelagic longline fishing is an indiscriminate, irresponsible way of fishing. Though the U.S. longline fleet does contribute to the taking of this species, the majority of the bycatch comes from the international fleets, and this needs to be stopped.

I was pleased that the Recreational Fishing Alliance filed a petition with the U.S. Trade Representative last year, requesting the President take action against the European Union under Section 301 of the Trade Act of 1974 as amended. Though this petition was withdrawn, the issue remains a critical one.

As a contracting nation, the U.S. has a history of compliance with ICCAT quotas and conservation measures. However, the European Union, particularly Spain and Portugal, has a history of serious non-compliance with ICCAT. For example, the EU has consistently exceeded catch limits, quotas, and landing limits for the Eastern Atlantic bluefin tuna and ignored rules for the protection of juvenile swordfish.

In deciding that the white marlin does not warrant designation as threatened or endangered under the Endangered Species Act, the National Marine Fisheries Service said the U.S. accounts for approximately 5 percent of the total mortality of white marlin, while the rest is due to bycatch by the international longline fisheries.

The petition alleges that the EU has committed three unfair trade practices under Section 301, including: non-compliance with ICCAT catch limits, quotas, and landing limits for certain species of highly migratory fish; non-compliance with ICCAT rules for the protection of juvenile fish; and granting subsidies to the fishing industry through its Common Fisheries Policy in violation of the WTO's Subsidies Agreement.

The U.S. is a world leader on so many important and complex issues. I do not understand why the issue of fisheries management and enforcement of regulations currently in place, both domestically and internationally, seems to be impossible to accomplish. I look forward to working with all of you to find a solution to this grave problem. I fear if we do not, many of these species will simply disappear forever, which would be tragic.

Thank you, and I look forward to hearing the testimony. At this time I will yield to Mr. Pallone for his comments.

[The prepared statement of Mr. Saxton follows:]

**Statement of The Honorable Jim Saxton, a Representative in Congress from New Jersey**

Good morning, and welcome members of the Subcommittee and the witnesses who have taken the time out of their schedules to be with us today. I am pleased to be here to discuss a resolution I have sponsored, and one which Mr. Gilchrest has joined with me on, and though he could not be with us today, this is an issue of importance to him as well.

House Concurrent Resolution 268, which was introduced on July 31, 2003, expresses the sense of Congress regarding the imposition of trade sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic marlin adopted by the International Convention for the Conservation of Atlantic Tunas (ICCAT) and that are threatening the continued viability of United States commercial and recreational fisheries.

While we held a hearing on a similar resolution during the 107th Congress, several new issues and subsequent questions regarding this problem have arisen since then and it is my hope we can examine them further and hopefully draw some conclusions as to how we ought to proceed.

One of the biggest of these issues is that of compliance—on many levels. For example: as more than 90 percent of the world's fish are taken within countries' EEZs, how do we get compliance with international fishery regimes within countries' EEZs?

Another part of the compliance issue is: Since white marlin has been petitioned for listing under the U.S. Endangered Species Act and the problem is international fishing pressure, how do we get compliance on marlin conservation measures already in place?

Finally, ICCAT was created to protect these species and to work toward attainable management goals to ensure their survival. One question which could be logically asked of this process is: what mechanisms are there within ICCAT to insure compliance with member nations?

I have for a very long time been concerned with the dramatic drop in population of white marlin. Prior to the 1960s these species were healthy and thriving, just before the introduction of pelagic longline fishing in the Atlantic Ocean. Since this time, the species has steadily plummeted.

The latest stock assessment I have seen indicates the total Atlantic stock population had declined to less than 12 percent of its maximum sustainable yield level; current fishing mortality was estimated to be at least seven times higher than the maximum sustainable level; over fishing had taken place for over three decades and the stock is less productive than previously estimated, with a maximum sustainable yield of less than 1300 metric tons. The bottom line—this species needs an immediate strong conservation measure or it may disappear forever.

This resolution represents an important step in the process of the international conservation of this dwindling species. I have spent a great deal of time on this issue, it is important we recognize the bottom line is pelagic longline fishing is an indiscriminate, irresponsible way of fishing. Though the U.S. longline fleet does con-

tribute to the taking of this species, the majority of bycatch comes from the international fleets and this needs to be stopped.

I was pleased that the Recreational Fishing Alliance (RFA) filed a petition with the U.S. Trade Representative last year, requesting the President take action against the European Union under Section 301 of the Trade Act of 1974, as amended. Though this petition was withdrawn, this issue remains a critical one.

As a contracting nation, the U.S. has a history of compliance with ICCAT quotas and conservation measures. However, the European Union, particularly Spain and Portugal, has a history of serious non-compliance with ICCAT. For example, the EU has consistently exceeded catch limits, quotas, and landing limits for Eastern Atlantic bluefin tuna and ignored rules for the protection of juvenile swordfish.

In deciding that the white marlin does not warrant as threatened or endangered under the Endangered Species Act (ESA), the National Marine Fisheries Service said the U.S. accounts for approximately five percent of the total mortality of white marlin, while the rest is due to bycatch in international longline fisheries.

The petition alleges that the EU has committed three unfair trade practices under Section 301 including: non-compliance with ICCAT catch limits, quotas, and landing limits for certain species of highly migratory fish, non-compliance with ICCAT rules for the protection of juvenile fish, and granting subsidies to its fishing industry through its Common Fisheries Policy in violation of the WTO Subsidies Agreement. The U.S. is a world leader on so many important and complex issues; I do not understand why the issue of fisheries management and enforcement of the regulations currently in place both domestically and internationally, seems impossible to accomplish. I look forward to working with all of you to find a solution to this grave problem. I fear if we do not, many of these species may simply disappear forever, which would be tragic.

Thank you, and I look forward to hearing your testimony.

---

## STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Saxton. I want to thank you for reintroducing this resolution and also our Chairman for promptly holding a hearing on it. And if I am not already a cosponsor, I would ask that I be made a cosponsor of the resolution because I do support it.

As I said at our May Subcommittee hearing, international fisheries agreements, including the International Commission for the Conservation of Atlantic Tunas, ICCAT, are critical for a healthy ocean and a healthy economy. When fish stocks remain at severely depleted levels, ecosystem structure is altered and millions of dollars in revenue are lost every year.

As we learned at the Subcommittee's hearing last year on a similar resolution, the Atlantic white marlin stock is in the worst shape of all the species managed by ICCAT. Considering it is only one of eight overfished highly migratory species, this is quite a distinction. It is a distinction, however, that our fishermen would rather not have to live with. Not only does illegal, unregulated, and unreported fishing undermine market prices to a point that our law-abiding commercial fishermen can no longer afford to fish, but IUU fishing also forces non-commercial fishermen to be stringently regulated.

Forty years of ICCAT management has led to two-thirds of the highly migratory species it oversees being overfished. Although fisheries management is not easy and has not been done exceptionally well anywhere in the world, the lack of compliance by ICCAT contracting members with ICCAT's own recommendations hamstrings this commission considerably. And if U.S. fishermen are expected to adhere to national and international laws while

maintaining an economically viable industry, our administration must be willing to take a strong position supporting internationally enforceable recommendations.

I am heartened, however, by the attention this problem is receiving both within our Subcommittee and also with the public. The Pew Oceans Report and the Dr. Myers and Dr. Worm's Nature article leave no doubt that ICCAT's management of international fisheries needs to improve, and I have high hopes that this resolution will provoke a thorough debate at this November's ICCAT meeting in Dublin.

The United States must continue to be a leader in formulating internationally enforceable commission that will lead to healthy stocks, but we must also improve our own compliance as well. Although a challenging task, the increased monitoring of the import and export of fish will lead to greater understanding of this trade and help impede illegal and unregulated commerce. And I look forward to hearing how the administration is tackling this charge and whether we in Congress can do anything to help.

And, again, thank you, Mr. Saxton, for once again bringing this to our attention.

[The prepared statement of Mr. Pallone follows:]

**Statement of The Honorable Frank Pallone, Ranking Democrat, Subcommittee on Fisheries Conservation, Wildlife and Oceans**

Good morning. I'd like to thank Mr. Saxton for reintroducing this resolution and our Chairman for promptly holding a hearing on it. As I said at our May subcommittee hearing, international fisheries agreements, including the International Commission for the Conservation for Atlantic Tunas (ICCAT), are critical for a healthy ocean and a healthy economy. When fish stocks remain at severely depleted levels, ecosystem structure is altered, and millions of dollars in revenue are lost every year.

As we learned at the subcommittee's hearing last year on a similar resolution, the Atlantic white marlin stock is in the worst shape of all the species managed by ICCAT. Considering it is only one of eight overfished highly migratory species (HMS), this is quite a distinction. It is a distinction, however, that our fishermen would rather not have to live with. Not only does illegal, unregulated, and unreported (IUU) fishing undermine market prices to a point that our law-abiding commercial fishermen can no longer afford to fish, but IUU fishing also forces non-commercial fishermen to be stringently regulated.

Forty years of ICCAT management has led to two thirds of the highly migratory species it oversees being overfished. Although fisheries management is not easy and has not been done exceptionally well anywhere in the world, the lack of compliance by ICCAT contracting members with ICCAT's own recommendations hamstrings this commission considerably. And if United States fishermen are expected to adhere to national and international laws, while maintaining an economically viable industry, our administration must be willing to take a strong position supporting internationally enforceable recommendations.

I am heartened, however, by the attention this problem is receiving both within our subcommittee and the public's eye. The Pew Oceans report and Dr. Myers and Dr. Worm's Nature article leave no doubt that ICCAT's management of international fisheries needs to improve. I have high hopes that this resolution will provoke a thorough debate at this November's ICCAT meeting.

The United States must continue to be a leader in formulating internationally enforceable recommendations that will lead to healthy stocks, but we must also improve our own compliance as well.

Although a challenging task, the increased monitoring of the import and export of fish will lead to greater understanding of this trade and help impede illegal and unregulated commerce. I look forward to hearing how the Administration is tackling this charge and whether we in Congress can do anything to help. Thank you.

---

Mr. SAXTON. Thank you very much.

Mr. Faleomavaega?

**STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Mr. Chairman, I, too, would like to add my name as a cosponsor to the proposed resolution and commend you and Mr. Gilchrest for bringing forth this resolution for consideration by our Subcommittee. Not only is it overdue, but we seriously need to review the situation with the fisheries. It has always been my understanding that in the Atlantic area there are some very serious problems in conservation and there are moratoriums on several different species of fish. Of course, for those of us from the Pacific, we have similar problem, for example, with all the fishing countries from Europe and everywhere else coming to the Pacific.

To my understanding, right now 53 percent of the world's tuna comes from the Western and Central Pacific regions. We are having problems with some of the European countries coming over here, those having bilateral agreements with some of the island nations. They completely disregard any measures of conservation. They just take everything.

One of the concerns that I have expressed in earlier years, Mr. Chairman, when you were Chairman of our Subcommittee is that of miscellaneous fish that we just do not seem to care about. Fishing boats go out and do not like the swordfish—which have, you know, just as much protein in them, but are disregarded because there is not a market value like tuna or other species.

I am very concerned about this. In fact, I would like to see a similar resolution to address the concerns we have in the Pacific.

The question of drift nets is also being raised in the Pacific. We have had some very interesting experiences in dealing with these drifts nets, 15, 30 miles a stretch, catching just about everything in sight. It has been a real learning experience over the past years regarding some of the countries that provide for these kinds of fishing methods.

I have also recommended to our Chairman that we hold an oversight hearing on the recent Pew Oceans Commission Report and a couple of other reports that address the situation with the oceans and what this means to fisheries.

Unfortunately, I think we are not doing enough in promoting more fisheries programs, agricultural development and fish farming. Why we have to import $9 billion worth of fish every year from foreign countries just escapes me. Why can't we do it domestically on our own? I am puzzled by this.

I do want to offer my welcome to our friends who are going to be testifying this morning, and I look forward to hearing from them.

Again, Mr. Chairman, thank you for calling this hearing this morning.

Mr. SAXTON. Thank you, Mr. Faleomavaega. I appreciate your comments.

Just let me say that from a conservation point of view, this is an extremely important issue—set of issues, I should say. From an economic point of view, it is equally important. You know, we talk a lot about the commercial fishing industry, and that is very impor-

tant to our economy. But it is a small fraction, frankly, the commercial fishing aspect of this is a small fraction of the total economic impact.

When Mr. Pallone stands on Sandy Hook and watches the fishing boats go out to sea, you see a commercial boat go out, and then you see ten recreational boats go out. And when he stands at Manasquan Inlet in his district and he sees a commercial fishing boat go out, then he sees 20 recreational fishing boats go out. And when I stand at Barnegat Light or Atlantic City Inlet and watch a commercial boat go out, I see 20 or 30 recreational boats go out.

And so this is a conservation issue, a set of conservation issues that has enormous economic consequences if we do not deal with it in an expeditious way.

And I might say that a lot of the economic impact is really hidden from many who think about conservation. In the southern part of New Jersey, Mr. Pallone and I probably have something in the neighborhood of seven, eight, ten thousand people working building boats that go out of Cape May and Atlantic City and Barnegat and Manasquan and the other smaller inlets along the coast. And these are little guys. These are guys that do fiberglass work. These are guys that do plumbing. These are electricians. These are people who are working hard to put together a system of systems that is called a fishing boat.

For our State and for other coastal States, and for your home as well, these are great issues, conservation issues, but also economic issues that affect both the commercial and recreational fishing industry.

So thank you all for being here. I just would like to ask unanimous consent at this point to include a statement from the Recreational Fishing Alliance for the record.

[The prepared statement of the Recreational Fishing Alliance follows:]

**Statement submitted for the record by the Recreational Fishing Alliance**

*I. Introduction*

The Recreational Fishing Alliance (RFA) is a national, grassroots political action organization representing individual sport fishermen and the sport fishing industry. The RFA Mission is to safeguard the rights of saltwater anglers, protect marine, boat and tackle industry jobs and ensure the long-term sustainability of U.S. saltwater fisheries. RFA members include individual anglers, boat builders, fishing tackle manufacturers, party and charter boat businesses, bait and tackle retailers, marinas, and many other businesses in fishing communities.

The U.S. recreational fishing industry has a right to expect foreign governments to live up to their treaty obligations. The European Union has not lived up to its obligations under the International Convention for the Conservation of Atlantic Tunas (ICCAT). The U.S. must take stronger steps to assert the interests of the recreational fishing industry through ICCAT. Therefore, the RFA fully supports H.Con.Res. 268.

*II. Economics of Recreational Fishing*

As stated in the 2003 Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory Species (SAFE report) from the National Marine Fisheries Service (NMFS), recreational fishing has a large impact on the economies of coastal communities. In fact, a 2002 report from the American Sportfishing Association states that overall, recreational fishing is a $116 billion industry in the United States.

While recreational fishing for highly migratory species such as marlin, sharks, swordfish and tuna is a specialized segment of this industry, it has a major impact on our Nation's economy and quality of life. There is a vast segment of boat builders, fishing tackle manufacturers, party and charter boat businesses, bait and tackle

retailers, marinas, and many other businesses in fishing communities which cater specifically to recreational fishermen who fish for Atlantic highly migratory species (HMS). For example, the Viking Yacht Company in New Gretna, N.J., in Mr. Saxton's District employs over 1200 people who build 100 yachts a year that are specifically designed and primarily used to target highly migratory species. There are also a number of annual Atlantic HMS tournaments such as the Ocean City White Marlin Open in Ocean City, Md., and the Mid-Atlantic $500,000 in Cape May, N.J., which generate millions of dollars for coastal communities. Thus, a large segment of the recreational fishing industry is dependent on healthy stocks highly migratory species.

These fishermen have a strong, voluntary conservation ethic and employ sustainable, inefficient fishing gear that traditionally has not resulted in overfishing. In fact, recreational fishermen who fish for marlin release over 98% of the fish they catch believing that fishing for, hooking, fighting and releasing them to swim another day is a more valuable experience than killing the fish for consumption.

*III. Overfishing by the European Union*

The Recreational Fishing Alliance asserts that fishing pressure by the highly subsidized commercial longline vessels of the EU has placed certain highly migratory species of the Atlantic Ocean and adjacent seas at risk and resulted in violations of the International Convention for the Conservation of Atlantic Tunas (ICCAT), a commercial fisheries treaty that permits the use of trade-related sanctions, and the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). The actions of the EU have turned the International Convention for the Conservation of Atlantic Tunas into the International Convention for the Destruction of Atlantic Tunas. Less fish plus more regulation of U.S. fishermen equals significantly less participation in recreational fishing. Less participation equals significantly less commerce for the recreational fishing industry.

*IV. Why ICCAT is a Trade Agreement*

The ICCAT Convention is a commercial fisheries agreement and, as such, is a "trade agreement" within the meaning of Section 301 of the Trade Act of 1974. The domestic implementing legislation for the ICCAT Convention is the Atlantic Tunas Convention Act of 1975 (ATCA). This statute is listed in the "Overview and Compilation of U.S. Trade Statutes" published by the Committee on Ways and Means of the House of Representatives (emphasis added), underlining the fact that the ICCAT Convention is a type of trade agreement and the ATCA is the U.S. trade statute implementing the ICCAT Convention domestically.

The ICCAT Convention is an international commodity agreement designed to conserve natural resources by limiting harvesting of fish through a total allowable catch (TAC) and individual participating country quotas. As such, the ICCAT Convention is an international commodity agreement that restricts the play of competitive market forces because of its form. The ICCAT Convention is a "trade agreement" because it restricts trade in the fish species that it covers. By limiting the volume of fish that may be landed from national vessels, the ICCAT Convention is restricting international trade in the covered species.

*V. The European Union's Unfair Trade Practices*

The RFA alleges that the EU has committed three unfair trade practices under Section 301 of the Trade Act of 1974, as amended:

(a) It has acted unjustifiably by violating and acting inconsistently with the ICCAT Convention by non-compliance with the catch limits, quotas, and landing limits for certain species of HMS and rules for the protection of juvenile fish;

(b) It has acted unreasonably by refusing to accept the determination of the scientific advisory body of ICCAT, the Standing Committee on Research and Statistics (SCRS), that the stock for East Atlantic bluefin tuna is over-exploited and that the total allowable catch (TAC) for East Atlantic bluefin tuna should be limited to 25,000 metric tons, resulting in overfishing of East and West Atlantic bluefin tuna; and

(c) It has provided subsidies to its fishing industry through its Common Fisheries Policy (CFP) and its funding mechanism, the Financial Instrument for Fisheries Guidance (FIFG), that violate and are inconsistent with the WTO Subsidies Agreement adopted by the EU and the United States in the Uruguay Round of Multilateral Trade Negotiations.

These unfair trade practices are related because they are all part of a common scheme by the European Union. The subsidies granted by the European Union to its fishing sector have contributed to increasingly large fleets that participate in unsustainable and illegal fishing in the Atlantic Ocean and adjacent seas. The injection of 1.1 billion Euros of public money into the fisheries sector each year in

the EU represents a significant proportion of the value of the total Community production (7 billion Euros for fish landings). About $440 million a year has been contributed by the EU and national governments to the fisheries sector in subsidies that contribute to reducing the costs of the investment of the fisheries sector and thus contributes to overfishing.

Twenty-four percent of the structural aid provided by the EU to its fisheries sector, or about 160 million Euros a year, has been used to promote investment in the modernization or renewal of fishing vessels, while 280 million Euros per year are paid for the right of about 850 EU vessels to fish outside EU waters under fisheries agreements with non-European third countries. The over-capacity in EU fleets has, in turn, resulted in over-exploitation by the EU of HMS. The trade-distorting EU fishing subsidies have had adverse effects on the U.S. commercial and recreational fishing industries, resulting in serious prejudice to the interests of the United States.

That EU subsidies for its fishing sector have led to overfishing has been recognized by the EU Commission, which has stated bluntly that "if current trends continue, many stocks will collapse. At the same time, the available fishing capacity of the Community fleets far exceeds that required to harvest fish in a sustainable manner." (See ICCAT, 1999 Detailed Report—Swordfish, available at http://www.iccat.es/, under "Assessment and Biology," Species Groups, at Table 29). Fueled by its subsidized over-capacity, the EU has violated and acted inconsistently with the ICCAT Convention by failing to ensure that vessels registered under its laws fish in a manner that is consistent with ICCAT conservation and management measures relating to East Atlantic bluefin tuna, North Atlantic swordfish, Atlantic white marlin, and Atlantic blue marlin, all of which are highly migratory species.

The EU has violated the ICCAT Convention by failing to enforce binding ICCAT recommendations related to the catch of juvenile swordfish and bluefin tuna. For example, despite a tolerance level set at 15% of total landings for undersize fish, in 1998 Spain had a landing percentage of juvenile North Atlantic swordfish of 37% and Portugal had a landing percentage of 39.5%. Thus, Spain and Portugal caught more than twice as many juvenile swordfish as permitted under ICCAT rules.

The EU has acted inconsistently with the ICCAT Convention by overfishing East Atlantic bluefin tuna in contravention of the recommendations of ICCAT's Standing Committee on Research and Statistics (SCRS). Such overfishing not only affects East Atlantic bluefin tuna stocks but also West Atlantic bluefin tuna stocks because there is significant mixing between the "two stocks". The unwillingness of the EU to accept the scientific advice of the SCRS of ICCAT is part of the pattern of systematic fixing of Total Allowable Catch for fish by the EU members at levels higher than indicated in the scientific advice provided to the EU from experts within the EU.

The EU's actions have placed excessive pressure on several HMS, including the Atlantic white marlin, which is at approximately 15% of the maximum sustainable yield (MSY) level. Drastic remedial action at the international level forced by the United States is required because the level of catch of white marlin by the U.S. domestic vessels operating under the catch-and-release policy is only 5% of the total mortality for Atlantic white marlin.

*VI. Burden on U.S. Commerce*

The unjustifiable and unreasonable practices of the EU have burdened U.S. commerce by severely reducing fishing opportunities for the recreational fishing industry as highly migratory species such as the white marlin and bluefin tuna become harder and harder to catch. Moreover, the failure of foreign ICCAT signatories to comply with catch limits and quotas has resulted in increasing restrictions on U.S recreational fishermen related to volume of fish they are allowed to land in the United States.

For example, current regulations allow recreational fishermen to retain only one bluefin tuna per person per trip during a short season; current regulations allow recreational fishermen to retain only three yellowfin tuna per person per trip; current regulations allow recreational fishermen to retain only one swordfish per person per trip and a maximum of only three per vessel. Depleted stocks of HMS combined with these restrictions have resulted in significant harm to the recreational fishing industry. Less fish plus more regulation equals significantly less participation and less participation equals significantly less commerce.

The U.S. recreational fishing industry has a right to expect foreign governments to live up to their treaty obligations. The European Union has not lived up to its obligations under the International Convention for the Conservation of Atlantic Tunas (ICCAT). The U.S. must take stronger steps to assert the interests of the

recreational fishing industry through ICCAT. Therefore, the RFA fully supports H.Con.Res. 268.

---

Mr. SAXTON. I would also just note that a couple of witnesses have asked that they be permitted to provide testimony for more than the allotted 5 minutes, which is fine. We are going to use the lights just as indicators so that you know that your 5 minutes have come and gone, but we are flexible this morning.

So thank you for being here. Our witnesses this morning are: Mr. John Dunnigan, Director of the Office of Sustainable Fisheries, National Marine Fisheries Service at NOAA; and Mr. David A. Balton, Deputy Assistant Secretary of State for Oceans and Fisheries, Department of State; Mr. John Considine, Director of Cargo Verification Division, Trade Compliance and Facilitation, Bureau of Customs and Border Protection; and Rear Admiral Jeffrey J. Hathaway, Director of Coast Guard Operations, United States Coast Guard.

Gentleman, thank you all for being here with us this morning. Mr. Dunnigan, why don't you begin.

**STATEMENT OF JOHN H. DUNNIGAN, DIRECTOR, OFFICE OF SUSTAINABLE FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NOAA, U.S. DEPARTMENT OF COMMERCE**

Mr. DUNNIGAN. I am Jack Dunnigan. I am the Director of the Office of Sustainable Fisheries in NOAA Fisheries. If I could, before I get into my testimony, Mr. Chairman, just a couple of comments.

Today is obviously a very memorable day in the recent history of our country. It is a day that reminds all of us as to why we are Americans and brings us back to the true values that are important to us all.

I would also like to take note of a sort of sad event last week, and that is the passing of a former staffer of this Committee and former NOAA Congressional Affairs staffer, Kip Robinson. He was a leader and a true gentleman and a great professional, and just a good guy. And we are all somewhat diminished that he is not with us anymore, and I hope we can all continue to carry forward the excellent example that he set for us, both in his time at NOAA and working with the Committee.

With that thank you, let me say I think this is the first time, Mr. Chairman, that I have actually been before the Committee in my new Federal capacity. I have had the pleasure many times of being with you in my former position when I worked for the Atlantic Coastal States. I am glad to be back and honored to be able to represent the employees of NOAA and its Fisheries Service in dealing with what really are some of the very important issues that we have in the future of fisheries conservation and management.

My new position has afforded me the opportunity to get more actively involved with international fisheries issues. I am the U.S. Government Commissioner now to the Northwest Atlantic Fisheries Organization, and I a member of our ICCAT delegation, and I supervise the International Fisheries Division. So it has been an interesting and eye-opening experience. In many ways, it is similar to what I encountered at the Atlantic State Marine Fisheries Commission in that you are trying to put together effective fisheries

conservation and management with regulatory institutions that are somewhat sovereign and take great pride in their sovereignty. And what it does is it makes the job very difficult because rather than being able to just as a Federal Government say this is the way it is going to be because our authority derives from the Magnuson-Stevens act, we have to take the longer, harder, tougher approach of working with colleagues and convincing them of the importance of what we are doing and the absolute necessity to be aggressive in moving forward with fisheries conservation and management.

Mr. Chairman, I would ask at this time that my written statement be inserted in the record, and I will just summarize a couple of the most salient points. Thank you.

Mr. SAXTON. Thank you. Your statement will be included in the record.

Mr. DUNNIGAN. I would like to focus, I think, for the Committee's benefit mainly on the questions that you specifically directed to NOAA in your letter of invitation. Obviously, there is an interest here in trying to understand what is it we can do in this international world to try to bring countries together to do fisheries conservation and management effectively.

The first thing that we have found that you have to do is you have to create a big table. You have to have a forum and encourage all of the parties to come together. We have seen a major change, for example, in the International Commission for the Conservation of Atlantic Tunas over the last 15 years where the membership of that organization has gone from about 20 to almost 40. And by bringing more of the countries under the tent, we say, it gives everybody a sense that they are stakeholders in the process.

It is actually what we are doing now in the Western Pacific with the development of the Western and Central Pacific Treaty and Commission, creating a forum where all of the parties, all of the countries who are stakeholders in these fisheries can come together and decide mutually what is in their best interest.

The second thing that we have to do is to be very attentive and very aggressive, really, in making sure that these regional fishery conservation organizations move forward with responsible fisheries conservation and management measures. We do that in all of the regional fishery management organizations. I think if you look around the globe, you will find that the United States is a leader in promoting responsible fisheries conservation and management practices. And it is not always easy to do because you have to recognize that parties come to the table with a lot of different interest, but that should not dissuade us from being as assertive as we can in sticking to good science-based management that points the direction that we have to go so that we can achieve some of the economic benefits that the Chairman was referring to in his opening statement.

The third thing that you have to do is you then have to make sure that all of those countries go home and implement those measures, and that requires a lot of attention and a lot of follow-up by all of the parties. Certainly in my office, we are responsible for implementing, for example, all of the ICCAT recommendations for United States fishermen. But at the same time, it is very important for us to not just focus on what we are doing in our own

fisheries, but keep a weather eye out for what our partners in the international community are doing.

Earlier this year, there was an exchange of correspondence with the European Community over steps that they are taking to implement the recommendations out of ICCAT, and I think Dr. Hogarth in his discussions with the EU representatives has made is very clear that we appreciate the steps that the EU has said that they are going to take, but we are going to keep our eyes on them to make sure that they follow through.

And then the fourth thing that we have to do is to make sure that these countries not only talk the talk and that we talk the talk, but that we actually implement and carry these things out. So it is a complex process to try to make these organizations work, but as a matter of fact, it is the steps that you have to take in a modern world if you are going to be able to influence ultimately the outcomes that you want to see in our international oceanic fisheries.

A number of your questions also deal with IUU fishing, and let me say that I think over the last 5 years, there has been more attention given to IUU fishing by all countries than any of us might have expected when we started down this road. The problem with IUU fishing, your questions indicated some concern about whether it was a bigger problem in oceanic fisheries as opposed to coastal fisheries. And we don't really have a good feel for that. The problem, of course, is that the IUU fishermen who are all fishing illegally are not very transparent about what they are doing, so it is hard to get information.

The other thing that has made IUU a greater problem in oceanic fisheries over the last couple of years really stems from three factors.

First of all, the technology has gotten a lot better with advances in GPS, with advances in gear, with mechanical advances in power plants that fishing vessels can put on. It is much easier for fishermen to get out into the oceans and exploit these where they are away from surveillance that often predominates in coastal fisheries.

I think, second, there has been a stepped-up amount of enforcement by countries all over the world in their coastal fisheries, and that enforcement has forced these IUU vessels, these illegal vessels that do not belong in any fishery, away from coastal fisheries.

And, third, some of the species that these IUU fisheries are most interested in have become extremely valuable in the current world marketplace for fish products. If you look at the value of salmon, if you look at the value of Chilean sea bass, there is tremendous profit to be made in these illegal fisheries, and I think that also is stemming there.

One of the things that the United States has done over the last couple of years to help address this issue is to become a leader in putting together what we call the MCS, the marine monitoring, conservation, and surveillance program, which involves about 20 countries right now. The United States chairs this effort. The United States runs the website, and it is a cooperative enforcement program among all of these countries to work together to identify

where the IUU fishing is happening and coordinate enforcement responses to that.

We think we have had a lot of success in the last couple of years, for example, with illegal imports of Patagonian toothfish, and we have been able to do that because we have the enforcement cooperation of the other countries through the MCS network. Chile has been an important part of that, as have other countries from the Southern oceans. So it is an important thing for us to continue to follow up on.

Lastly, Mr. Chairman, a couple of your questions dealt specifically with ICCAT. We are getting ready right now very carefully for the ICCAT meeting, which will be held in Dublin in the second week of November. There are a number of activities that are ongoing. I know at least one of our commissioners is with us here this morning. Bob Hayes is here. I don't know if Glenn has made it yet. But we would agree that it is very important to improve the conservation and implementation measures that the countries are taking under ICCAT.

There was an intercessional meeting that was held in Madeira last May where we looked at the compliance measures that are currently in place. Part of the problem in ICCAT is that these measures have been specified on a fishery-by-fishery basis as the commission moved forward to address the conservation that was necessary for these species. We think that ICCAT ought to take a broader approach, and we think that by doing that, we will be able to improve overall the ability of the ICCAT contracting parties to make sure that the recommendations are complied with.

We also think that there is a very difficult problem with data in a lot of these ICCAT fisheries. The United States delegation made a major point of this at our meeting last year, and we will be having a follow-up meeting in Madrid on October the 11th.

So with that, Mr. Chairman, let me move on here and say again it is a pleasure to be able to be here, and I look forward to being able to answer your questions.

[The prepared statement of Mr. Dunnigan follows:]

**Statement of John H. Dunnigan, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce**

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to present testimony on H.Con.Res. 268 and topics related to international fishery conservation and management. I am John H. Dunnigan, Director of the Office of Sustainable Fisheries in the National Oceanic and Atmospheric Administration, Department of Commerce. I am the U.S. Government Commissioner to the Northwest Atlantic Fisheries Organization, and I serve on the U.S. Delegation to the International Commission for the Conservation of Atlantic Tunas (ICCAT).

NOAA is pleased that the Subcommittee is focusing on efforts to ensure greater compliance with conservation measures adopted by international regional fishery management organizations (RFMOs) by both member and non-member nations, as well as the effect that illegal, unreported, and unregulated (IUU) fishing activities are having on the effectiveness of conservation measures. We have devoted increased effort to these areas in recent years, and we appreciate the Subcommittee's interest in and support of these activities.

The Department welcomes H.Con.Res. 268, expressing the sense of Congress in ensuring compliance by foreign fishing fleets with the ICCAT conservation and management program. We recognize that Congress has provided a number of tools to encourage compliance with ICCAT rules and the rules of other RFMOs. We believe

that the tools that result from multilateral decision processes are likely to be the most effective, and we intend to pursue their development and implementation.

In its letter of invitation, the Subcommittee raised a number of questions regarding compliance with international conservation and management measures, and IUU fishing. I will address these concerns in this same order.

*Compliance with RFMO Conservation and Management Measures and IUU Fishing*

The Food and Agriculture Organization of the United Nations (FAO) defines IUU fishing to include wrongful fishing wherever it might occur on the high seas or in areas of national jurisdiction. The United States is completing its corresponding National Plan of Action in response to the agreement of the international community to the FAO International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing. The Department of State took the lead in its development, and I will defer to its witness to brief you fully on this National Plan of Action.

The FAO estimates that more than 90 percent of the world's marine fish harvests take place within areas of national jurisdiction. The question then arises, how do we secure compliance with international fishery regimes within areas of national jurisdiction? By definition, the question relates to highly migratory and straddling fish stocks. The answer is simpler in theory than in practice: first, we must ensure that the relevant coastal states are members of the applicable RFMO or, at least, observe its rules; second, we must ensure that the RFMO adopts appropriate conservation and management measures; third, we must ensure that the members implement in their domestic laws and regulations the measures agreed to within the RFMO; and, finally, we must ensure that these domestically implemented measures are properly enforced by the coastal states. Conservation can and will fail if any of these links is broken or not present. Importantly, the United Nations Fish Stock Agreement requires states whose fishing vessels operate in any area covered by a relevant RFMO to join the RFMO or agree to apply its conservation and management measures. This provision, however, only applies to Parties to the U.N. Agreement.

The Subcommittee has also asked how much of the world's overfishing takes place within areas of national jurisdiction and how much occurs on the high seas. Complete documentation of the incidence of IUU fishing, either on the high seas or in areas under national jurisdiction, and the degree to which it contributes to overfishing does not exist. Those engaged in IUU fishing make every effort to conceal their activities. Also, I am not aware of any accepted estimate of the share of overfishing in high seas areas versus areas of national jurisdiction. I believe, however, that many of the most well-known examples of historic overfishing, e.g., various cod fisheries in the Atlantic off Canada, Iceland and Norway; sardines off California; and orange roughy in the South Pacific, have taken place largely, if not predominantly, in areas of national jurisdiction.

IUU fishing on the high seas is a significant contemporary problem because the fishing technology employed tends to be very efficient and the target species, e.g., salmon and Patagonian toothfish, very valuable. IUU fishing on the high seas can do serious damage in a relatively short period of time; nevertheless, IUU fishing within areas of national jurisdiction likely contributes more to missing conservation goals than does IUU fishing on the high seas. At one extreme, even countries with the finest fisheries enforcement capabilities, like the United States, cannot conduct monitoring and surveillance everywhere within their jurisdictions. At the other extreme, the majority of the world's coastal states have far less adequate and, in some cases, virtually nonexistent fisheries enforcement capabilities. The same is true of their fisheries management, and scientific information collection and analysis capabilities. Coastal states that target highly migratory and straddling fish stocks, share a common interest in their ability to execute these functions. A number of ICCAT's newest members are countries in need of and desiring such internal capacity building. To that end, the United States is involved in a number of initiatives that directly address capacity building in needed areas, including the White Water to Blue Water initiative and the Large Marine Ecosystems project. While there are no quick fixes with regard to this important matter, any efforts to improve the ability of countries to monitor and control their fleets will help in combating IUU fishing.

I also want to note our involvement in establishing and providing leadership to, along with our Chilean colleagues, the International Monitoring, Control, and Surveillance (MCS) Network. The MCS Network is a web-based, virtually cost-free alliance of fisheries enforcement professionals founded to enhance cooperation, coordination, and information collection and exchange. Its expanding membership includes 11 states plus the Forum Fisheries Agency of the Central and South Pacific and the European Union. It is a very tangible implementation of the International Plan of Action on IUU fishing, as well as a means to expand the effectiveness and efficiency of fisheries enforcement, particularly for developing countries.

*ICCAT*

ICCAT coordinates the international management of Atlantic tunas and tuna-like species. The organization currently has 36 members. Primary U.S. objectives over the last several years have included seeking measures to rebuild overfished stocks and improve adherence to ICCAT rules by members and non-members. With regard to rebuilding, we have had a number of successes, including the adoption of rebuilding plans for western bluefin tuna (1998), North Atlantic swordfish (1999), and blue and white marlins (2000). As you may know, the sacrifices made to rebuild North Atlantic swordfish began to show results last year with a significant increase in biomass. Although the resultant increase in total allowable catch was higher than the United States would have liked, we were nevertheless pleased to see such encouraging signs from the fishery in such a short time.

ICCAT has adopted a variety of state-of-the-art compliance measures, including imposing penalties (e.g., quota reductions, trade sanctions) against members for infractions. The Commission has also adopted action plans that contemplate the use of trade sanctions against member and non-member countries that diminish the effectiveness of ICCAT, and sanctions have been imposed in several instances. These measures have been successful in reducing IUU fishing in the Convention area. Most recently in its fight against IUU fishing, ICCAT adopted a vessel list program that provides a basis to limit market access to only those products taken by authorized vessels.

Despite the strides made at ICCAT, particularly over the last decade, a number of difficult issues remain. Data collection and reporting continue to be a challenge for some parties, and a special meeting will be held in fall 2003 to consider this matter. Moreover, the stock structure of Atlantic bluefin tuna, currently managed as two separate stocks, remains in question. ICCAT agreed to convene a meeting of scientists and managers in November 2003 to consider this issue. In addition, ensuring that ICCAT rebuilding plans stay on course and that new programs are developed for any other overfished stocks will be important. We intend to ensure that ICCAT continues to make needed progress in improving member compliance and non-member cooperation, including addressing IUU issues. Progress was made in this area during recent intersessional meetings at which members worked to streamline ICCAT's current trade instruments and considered the need to broaden substantially its existing compliance regime. Currently, the 100 percent quota payback provision applies to all species under catch or landings limitations, including marlin. The penalty and trade sanction provisions of this regime, however, only apply to bluefin tuna and swordfish. Trade sanction provisions also apply to bigeye tuna. ICCAT is developing a more comprehensive monitoring and control program, part of which includes clearly defining flag state duties and requiring the use of vessel monitoring systems and logbooks. ICCAT will again consider these issues in November 2003.

With respect to compliance issues in ICCAT fisheries, the Secretary of Commerce sent letters to the European Commission (EC) in April of this year. Secretary Evans noted the importance of the conservation of marine fisheries and expressed concern about actions and positions taken by the EC at ICCAT in 2002, particularly regarding EC support of an eastern bluefin tuna total allowable catch far in excess of scientifically recommended, sustainable levels. Secretary Evans stated that positions such as these have the potential to threaten the long-term future of shared resources and to lead to serious friction in U.S.- EC trade relations. As an example, the Secretary pointed to a petition filed by a recreational fishing organization under Section 301 of the Trade Act of 1974 that sought relief from allegedly unjustifiable acts, policies, and practices of the EC related to ICCAT. Although this petition was withdrawn prior to the 2002 ICCAT meeting, in his letter, the Secretary urged the EC to take prompt action to improve EC compliance with existing ICCAT measures and to reconsider accepting science-based conservation measures in the future.

NOAA Fisheries has also received a request to certify the EC pursuant to the Pelly Amendment to the Fishermen's Protective Act of 1967, for diminishing the effectiveness of ICCAT. The decision on certification has been left open for the time being while we monitor the activities of the EC and its Member States. In this regard, Assistant Administrator Hogarth sent a letter to EC Director General for Fisheries explaining the request, noting its seriousness, and indicating that we intend to investigate it fully. He has also been in contact with the head of the EC delegation to ICCAT concerning this matter, and we continued our dialogue at the U.S.-EC High Level Fisheries Consultations, held June 30 - July 1, 2003, in Washington, D.C., we have consistently stressed the importance of EC implementation of its ICCAT commitments and will continue to do so.

The United States intends to continue its active involvement in addressing the problems of overfishing and IUU fishing at the national, regional, and global levels.

NOAA and its federal partners faced these challenges with regard to large-scale pelagic driftnet fishing on the high seas. NOAA Fisheries will bring our responsibilities for recovering and conserving protected species and habitats, and our concern with reducing bycatch and addressing IUU fishing to bear in addressing these problems as part of NOAA's global marine stewardship mission.

Thank you, Mr. Chairman, for this opportunity to review how NOAA Fisheries is conducting the tasks assigned it pursuant to the many international fisheries treaties and conventions with which the United States is involved. We are committed to working with our state and federal partners for the effective management of our Nation's fisheries resources. Mr. Chairman, this concludes my testimony. I would be pleased to respond to any questions from Members of the Subcommittee.

---

[Mr. Dunnigan's response to questions submitted for the record follows:]

**Questions submitted for the record by John Dunnigan from The Honorable Frank Pallone, Jr., Subcommittee on Fisheries Conservation, Wildlife and Oceans Hearing on H.Con.Res. 268, September 11, 2003**

**Question #1: Can you give examples of the instances in which trade sanctions have been imposed and particularly the ones the U.S. has been involved with?**

Answer: The International Commission for the Conservation of Atlantic Tunas (ICCAT) has adopted and the United States has implemented the following trade restrictive measures with respect to the following countries:

*Bluefin Tuna and Swordfish Action Plan Recommendations:*

*Panama*—ICCAT agreed to impose bluefin tuna sanctions in 1996; recommendation entered into force August 1997; U.S. regulations effective January 1998. ICCAT agreed to lift sanctions in 1999; entered into force June 2000; U.S. regulations effective January 2001.

*Honduras*—ICCAT agreed to impose bluefin tuna sanctions in 1996; entered into force August 1997; U.S. regulations effective August 1997. ICCAT agreed to impose swordfish sanctions in 1999; entered into force June 2000; U.S. regulations effective January 2001. ICCAT agreed to lift bluefin and swordfish sanctions in 2001; entered into force September 2002; U.S. regulations under development.

*Belize*—ICCAT agreed to impose bluefin tuna sanctions in 1996; entered into force August 1997; U.S. regulations effective August 1997. ICCAT agreed to impose swordfish sanctions in 1999; entered into force June 2000; U.S. regulations effective January 2001. Preliminary agreement in 2002 to lift bluefin tuna and swordfish sanctions; there was an affirmative decision at the 2003 ICCAT meeting to lift sanctions as of January 2004.

*Unregulated and Unreported Catches Recommendations:*

**ICCAT members:**

*Equatorial Guinea*—Agreed to impose bigeye tuna sanctions in 2000; entered into force June 2001; regulations effective December 2002.

*Honduras*—Agreed to impose bigeye tuna sanctions in 2000; entered into force October 2001. Agreed to lift in 2002; entered into force June 2003; U.S. regulations under development.

**Non-Members:**

*Belize*—Agreed to impose bigeye tuna sanctions in 2000; entered into force October 2001; U.S. regulations effective December 2002. Preliminary agreement in 2002 to lift bluefin tuna and swordfish sanctions; there was an affirmative decision at the 2003 ICCAT meeting to lift sanctions as of January 2004.

*Cambodia*—ICCAT agreed to impose bigeye tuna sanctions in 2000; entered into force October 2001; U.S. regulations effective December 2002.

*St. Vincent and the Grenadines*—ICCAT agreed to impose bigeye tuna sanctions in 2000; entered into force October 2001; U.S. regulations effective December 2002. Preliminary agreement in 2002 to lift as of January 2004 pending affirmative decision by ICCAT in 2003.

*Sierra Leone*—ICCAT agreed to impose bigeye tuna, swordfish, and bluefin tuna sanctions in 2002; entered into force June 2003; U.S. regulations under development.

*Bolivia*—ICCAT agreed to impose bigeye tuna sanctions in 2002; entered into force June 2003; U.S. regulations under development.

*Georgia*—ICCAT agreed to impose bigeye tuna sanctions in 2003; will enter into force June 2004. U.S. regulations will be developed.

*ICCAT compliance recommendations requiring quota payback for overharvest and authorizing trade sanctions as a last resort:*

*Equatorial Guinea (ICCAT member)*—ICCAT agreed to impose bluefin tuna and swordfish sanctions in 1999; entered into force June 2000; regulations effective January 2001.

**Question #2: Have these sanction measures been effective?**

Answer: The sanction decisions taken by ICCAT have greatly reduced, if not eliminated, harvests of the embargoed species by the sanctioned country. Moreover, the multilateral sanctions have provided an incentive to many of these countries to cooperate with ICCAT by deregistering IUU vessels, implementing monitoring and control regimes, joining the Commission, etc. These actions have reduced fishing pressure on the stocks in question and have improved ICCAT's control over the fisheries under its purview.

**Question #3: What is the hesitancy of the Commission to adopt action plans that actually use trade sanctions rather than contemplating them?**

Answer: The idea expressed by the word "contemplate" does not mean ICCAT does not take decisions to apply trade restrictive measures, where appropriate and deemed to be effective. ICCAT has adopted a number of measures that provide the Commission express authority to adopt binding decisions to impose trade restrictive measures under certain circumstances. Further, the process for arriving at these decisions is set out in the action plans and other documents to ensure that the Commission acts in a fair and transparent manner relative to any trade decision it may take. As noted, ICCAT has used trade measures numerous times to support stock conservation.

**Question #4: Can you explain the quota payback provision of ICCAT's compliance recommendations and why trade sanction provisions only apply to swordfish and bluefin tuna?**

Answer: The 1996 compliance recommendation outlines a process for members to first explain how any overharvest occurred and then describe the actions they have taken to prevent further overharvests. Such explanations must be made to the Compliance Committee each year. The agreement also requires repayment of 100 percent of the amount of these overharvests, and ICCAT may recommend other appropriate actions. Continued overharvests can result in other penalties, including quota reductions of at least 125 percent of the overharvest and, as a last resort, trade restrictive measures. ICCAT agreed at its 1997 meeting to extend the 1996 compliance agreement to include the South Atlantic swordfish fishery. At its 1998 meeting, ICCAT adopted a supplemental recommendation that clarifies the application of the compliance recommendations in the eastern Atlantic bluefin fishery and the North Atlantic swordfish fishery.

In 2000, a recommendation was adopted to simplify the rules regarding the application of quota overharvest and underharvest. This recommendation specifies that for any species under quota/catch limit management, underages/overages from one year may be added to/must be subtracted from the quota/catch limit of the management period immediately after, or one year after that year. However, if any recommendation on a stock specifically deals with overages/underages, then the stock-specific recommendation will take precedence. The 2000 recommendation recognizes that it is difficult to deduct an overharvest from the following year's quota given that there is a one year lag in the receipt of catch information and Compliance Committee action. It is possible, however, that certain countries can anticipate an overharvest and take internal steps to address overharvests from one year to the next. This recommendation entered into force in 2001.

The compliance recommendations of 1996 and 1997 only covered swordfish and bluefin tuna because these were the only species under quota management at the time. Since then, a number of other stocks have come under such management, including bigeye and albacore tunas and blue and white marlins.

**Question #5: Would you need additional authority to implement trade sanctions on other highly migratory species and if so, what form would this authority ideally take—U.S. legislation or ICCAT recommendation?**

Answer: In order to assess quota penalties and to apply trade sanctions on species not already covered by ICCAT's compliance recommendations, the Commission needed to expand the scope of existing measures to include all species under quantitative harvest restriction. At its November 2003 meeting, ICCAT adopted a resolution on trade that lays out a comprehensive approach to the application of trade restrictive measures. It applies broadly to all species, and all countries, both contracting and non-contracting parties.

**Question #6: Under what regime are trade sanctions applied to bigeye tuna fishing infractions?**

Answer: To date, the Commission has recommended trade restrictive measures against ICCAT members and non-members on bigeye tuna products in accordance with the 1998 Unregulated and Unreported Catches Resolution. This instrument was limited in its application as it addressed IUU fishing by large-scale tuna longline vessels. In future years, trade restrictive measures will be adopted in accordance with the November 2003 trade resolution.

**Question #7: Has the United States received a response to the letters sent to the EC in early 2003?**

Answer: The United States received a response from the EC's Commissioner for Agriculture, Rural Development and Fisheries in early June. The Commissioner expressed surprise at the letter sent by Secretary Evans, noting, among other things, that the United States had agreed to the eastern Atlantic bluefin tuna total allowable catch at the 2002 ICCAT meeting and disagreeing with the U.S. interpretation of the scientific advice. Secretary Evans responded to the EC in July 2003. He noted that the United States and the EC differ on our interpretations of scientific advice but that the United States did agree to the eastern bluefin tuna TAC in 2002. An important part of that agreement, however, was EC implementation of measures to reduce small fish harvests, which should help offset any negative effects of the high TAC, and to improve data collection and reporting. He called on the EC to implement faithfully its ICCAT commitments.

**Question #8: Are these letters a precursor to further action?**

Answer: The United States will continue to engage the EC on conservation and compliance matters relative to ICCAT species. We have met with our fisheries counterparts numerous times to emphasize to them the importance of full implementation of ICCAT's decisions (particularly relative to quotas, reducing small bluefin tuna harvests, and improving data collection and submission), and to seek specifics on this implementation. We will continue to make these efforts. As you may know, late last year a request was submitted to the Department of Commerce to certify the EC under the Pelly Amendment to the Fishermen's Protective Act. At this time, we have left the certification decision open pending further investigation and discussion with the EC.

**Question #9: Is this the extent to which the administration is willing to push countries to comply with international fisheries management recommendations or is this administration willing to impose trade restrictions to encourage other countries to comply with international recommendations?**

Answer: Notwithstanding the Pelly review discussed above, this administration has imposed trade sanctions against both ICCAT members and non-members to encourage conformance with ICCAT's rules pursuant to multilateral decisions taken at ICCAT. In addition, we have implemented a trade tracking program for swordfish that allows us to keep undersized swordfish out of our market. As noted above in the response to Question #5, ICCAT took action at its November 2003 meeting to adopt a new resolution on trade, which we expect will improve the process significantly.

**Question #10: Has information concerning the Atlantic Tunas Convention Act (ATCA) requirement to identify annually those nations whose fishing vessels are fishing or have fished in the previous calendar year in a manner that diminishes the effectiveness of a conservation recommendation been regularly provided to the Committee? When was the last time it was provided?**

Answer: Yes. The ATCA requires that the Secretary of Commerce prepare an annual report to the Congress on Atlantic Highly Migratory Species by April 1 of each year. Section 2 of that report contains relevant information with respect to the identification requirement. We last sent in this report in April 2003.

**Question #11: Has a plan to develop a trade monitoring program for the import, export, and re-export of swordfish and bigeye tuna been formulated? What are the obstacles to implementing such a plan?**

Answer: NOAA Fisheries is currently developing a proposed rule that would replace the existing U.S. Swordfish Certificate of Eligibility program with the ICCAT Swordfish Statistical document. The rule would also implement the ICCAT and IATTC Bigeye Tuna Statistical document programs and adopt means to use the statistical documents in conjunction with the ICCAT authorized vessel list to prohibit imports of IUU product. Careful coordination will be required between NOAA Fisheries and the Bureau of Customs and Border Protection regarding examination and validation of documents. NOAA Fisheries is examining the resource implications of implementing the programs.

**Question #12: Is it true that the United States has been out of, and may still be out of, compliance with ICCAT recommendations on observer coverage for all longline trips targeting yellowfin and bigeye tuna?**

Answer: U.S. observer coverage on the pelagic longline fleet has fluctuated between about 3 percent and 6 percent between 1992 and 2001 and was increased to 8 percent in 2002. Coverage has been 100 percent for the Grand Banks swordfish fleet for the last 3 years. While the United States may have been out of compliance on some harvest limitations and minimum size tolerances in particular years, this is not a routine occurrence. In such cases, corrective actions are taken either through regulatory adjustments or catch limit adjustments consistent with ICCAT recommendations. All such corrective actions have been reported to ICCAT via the annual U.S. National Report.

**Question #13: NOAA Fisheries is reportedly evaluating the efficacy of recently implemented time-area closures intended to reduce bycatch. Can you summarize the preliminary results that have been found for these closures? Are international time and area closures a potentially effective tool for international fisheries management?**

Answer: The preliminary evaluation of the area closures was presented in the 2003 Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species. Generally, swordfish discards declined by 25 percent and bluefin tuna and marlin discards declined by around 50 percent. International time area closures could be effective if the bycatch species of concern are concentrated in discrete areas. If the bycatch species are widely dispersed, the costs in terms of lost target catch would render area closures impractical. In such cases gear modifications may be more feasible.

**Question #14: Last year this hearing focused heavily on white marlin and the depleted nature of the stocks. Dr. John Graves mentioned the lack of data about post-release mortality as a problem. Have any further studies on post-release mortality been completed? Is post-release mortality factored into the current stock assessments of Atlantic white marlin?**

Answer: Dr. Graves and his research team are investigating post-release mortality of Atlantic white marlin. It is an ongoing research concern, but certainly not the only one. The ICCAT Advisory Committee and the ICCAT Standing Committee on Research and Statistics have separately compiled lists of research needs for this species. In addition to post-release mortality, they include: the identification of habitat preferences; more generalized production-based population assessment models; development of methods to minimize bycatch in each of the multiple fisheries in which bycatch occurs; and the identification of biological parameters. Research on post-release mortality is not yet at a stage at which it can be factored into current stock assessments in any comprehensive manner.

**Question #15: Do you think that recovery of North Atlantic swordfish by 2009 or before is possible given the total allowable catch (TAC) limit set by ICCAT in 2002? If not, does the rebuilding plan need to be amended?**

Answer: Recovery of North Atlantic swordfish to biomass levels that would support maximum sustainable yield (MSY) is possible by 2009 under the revised ICCAT quotas. However, given the high proportion of juvenile fish in the current standing stock, it is important that harvesting nations abide by the minimum size restrictions to avoid excess mortality on pre-spawning fish. If continued progress is not evident at the next stock assessment, ICCAT may revise the TAC to reduce fishing mortality. The United States will monitor contracting parties' compliance with minimum sizes.

**Question #16: A paper appeared in the journal Science in January of this year estimating that populations of several of the large coastal and oceanic sharks (including scalloped, hammerhead, white, and thresher sharks) have declined by over 75% in the past 15 years. ICCAT is not responsible for managing these highly migratory species; however, it is obvious that without some regulation these species will continue to be decimated.**

- **Is there currently an international body monitoring and/or regulating the demise of highly migratory shark species?**
- **If not, should there be and what form should it take—regulation under ICCAT or a separate body or conservation fund?**

Answer:

- The United States has been aggressively pursuing for a number of years improved information collection requirements and management measures for sharks in the ICCAT context. Similarly, we have been pressing the Northwest Atlantic Fisheries Organization (NAFO) for the establishment of catch limits on thorny skates, which account for the vast majority of skate catches in the NAFO Regulatory Area. When the Convention on the Conservation and Management

of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean comes into force, the Commission it creates will have management competence over pelagic sharks, although its initial focus will be on tunas.

- Working with the Congress, we are addressing the problem of shark finning. We have implemented and are enforcing the Shark Finning Prohibition Act, and I am happy to inform you that the following countries and the European Union have adopted domestic measures that address shark finning in an effort to prohibit the practice: Australia, Brazil, Canada, Costa Rica, India, Nicaragua, Oman, and South Africa. In the case of Nicaragua, U.S. officials consulted regularly with authorities in Managua in the drafting of anti-finning legislation, and their final law is nearly identical to that of the United States. Mexico is in the process of developing comprehensive shark fishing regulations that may prohibit shark finning.
- Generally speaking, we think the best approach at this time to addressing the conservation needs of sharks is to continue carrying out the international mandates in the Shark Finning Prohibition Act and to implement the FAO International Plan of Action for the Conservation and Management of Sharks (IPOA) by urging countries to develop corresponding national plans of action and by insisting that regional fishery management organizations carry out their important roles under the IPOA.

**Question #17: Are data collected by Custom's Automated Commercial System (ACS) on imports for fish species and products reported to Congress in an annual report? When was the last time that equivalent information was provided to Congress?**

Answer: The annual report to Congress required by the Atlantic Tunas Convention Act provides import statistics for all Atlantic highly migratory species of fish. In addition, specific information on the swordfish and bluefin tuna import monitoring programs is provided in the annual U.S. National Report to ICCAT and the annual Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species (both available on NOAA Fisheries website). We are not aware of any particular Congressional request to the Bureau of Customs and Border Protection.

---

Mr. SAXTON. Jack, thank you very, very much for a very good statement.

Mr. Balton?

## STATEMENT OF DAVID A. BALTON, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES, U.S. DEPARTMENT OF STATE

Mr. BALTON. Mr. Chairman, members of the Subcommittee, thank you. It is a great pleasure to be here today. I do have a written statement, and with your permission, I would ask that it be included in the record.

Mr. SAXTON. Without objection.

Mr. BALTON. Thank you.

I know that this Subcommittee has a particular interest in matters affecting Atlantic tunas and the organization known as ICCAT. What I would like to do in my oral statement, though, is to provide what I see as the broader context within which these issues need to be dealt. I would like to make three basic points today:

One—and this will not come as a surprise to anyone—IUU fishing, illegal fishing, is a very serious problem worldwide.

Two, the United States has been a real leader internationally in trying to tackle this problem, and we have had some real successes.

But, three, we still face very daunting challenges ahead.

On that first point, illegal fishing occurs in all capture fisheries, both that are conducted within EEZs and those on the high seas. As Mr. Dunnigan said, it is difficult to know where the problem is greatest. By its very nature, illegal fishing is very hard to quantify.

Since most fishing occurs within EEZs, it may be possible to presume that a large majority of illegal fishing also occurs there. However, the high seas does pose special challenges because it is the area of the world where no one state has authority to enforce. Only cooperatively can high seas fishing be brought under control.

IUU fishing directly frustrates fishing management objectives. It can seriously hamper efforts to restore depleted fish stocks. It is also grossly unfair to the fisheries who do follow the rules and creates disincentives for them to continue to do so. The IUU fishers are, in effect, free riders who are benefiting from the conservation costs borne by those who do follow the rules.

Although it is difficult to quantify, IUU fishing has been estimated by the U.N. Food and Agriculture Organization to account for up to 30 percent of catches in some important fisheries worldwide, perhaps even more. More troubling still, there is evidence that it seems to be on the rise in some fisheries.

Let me turn now to what we have been doing. The United States has been working hard to combat illegal fishing on both the global level, the regional level, and bilaterally. Globally, our efforts have focused on the U.N. Food and Agriculture Organization. We were leaders in pressing for and getting adopted in 2001 an International Plan of Action to prevent, deter, and eliminate IUU fishing. This document is conceived of as a toolbox to help countries both individually and in cooperation with others to crack down on illegal fishing in their own waters and on the high seas. FAO followed up on this effort by publishing a book of guidelines further giving states, including the United States, recommendations for what to do to deal with various types of IUU fishing.

One of the central commitments in this was for each nation that is a member of FAO, including the United States, to develop a corresponding national plan of action on IUU fishing. And I can report to you today, Mr. Chairman, the United States is doing just that. We have a comprehensive national plan of action on IUU fishing. It is in the final stages of clearance now. It will have quite a few recommendations for us to take as an administration and for us to consider in consultation with you for recommendations for possible legislative change as well. We hope to have it ready for presentation to the Subcommittee in the coming weeks, and we look forward to discussing it with your staff at that time.

Regionally, we have been hard at work, as Mr. Dunnigan has said, in all of the fishery management organizations of which the United States is a member to deal with IUU fishing there too. And in many of these organizations, often at the behest of the United States, we have new measures in place to control illegal fishing. These measures can include satellite-based vessel monitoring systems, independent observers on some percentage of fishing boats, schemes for boarding and inspecting boats at sea, or inspecting them as well when they land in port. Other types of ports that control is restrictions on landings and transshipment. We have now a wide variety of catch documentation schemes, paperwork that must follow fishery products around the world. And we have adopted import restrictions on a multilateral basis in a number of organizations.

These seem to be having some beneficial effect, and they are not just being done in ICCAT. Some of the other organizations that are working on these issues include the Northwest Atlantic Fishery Organization, NAFO; the Inter-American Tropical Tuna Commission, the IATTC; the Commission for the Conservation of Antarctic Marine Living Resources, CCAMLR. And even in the organization not yet up and running, the new Tuna Commission for the Central and Western Pacific, in its preparatory meetings, work is being done in illegal fishing there as well.

One of the latest efforts that I would highlight is the creation of these white lists and black lists of vessels. The vision is to ultimately create registers of vessels that operate in each of these fisheries. If vessels are not in good standing on these lists, products caught by these vessels ought not to be imported or traded.

Bilaterally, we are working with our closest neighbors to deal with incidents of cross-border illegal fishing. With Canada, we have reciprocal enforcement agreements that apply in the Atlantic and Great Lakes. We have good cooperation with Canada as well on incidents of cross-border illegal fishing in the Pacific.

With Mexico, we have arrangements in place, and we would like to broaden those as well to deal with cross-border problems.

With the People's Republic of China this summer, I would highlight a number of instances of very good cooperation we received. There were a number of incidents of large-scale drift net fishing by Chinese vessels in the North Pacific this year. We have an agreement with the PRC that is in place that allowed a PRC ship rider to ride aboard U.S. Coast Guard cutters. The PRC Government allowed us to board and inspect those vessels on the high seas. We were able to document the instances of illegal fishing and turn those vessels over to the PRC for further investigation and prosecution.

I would note as well we are dealing with our neighbor across the Bering Sea, the Russian Federation, where there are serious problems of Russian and third-country vessels crossing the maritime boundary line to fish illegally in U.S. waters. We have reasonable cooperation with the Russian Fisheries Enforcement Service in dealing with those matters, but we have proposed a broader, comprehensive agreement, bilateral agreement with Russia that we will be discussing with them next week in the meeting in Portland.

Despite all this activity, we have many challenges that we face. We must press for full implementation of the measures that have already been adopted, both globally and regionally and bilaterally. We must, I believe, expand the use of the tools in this toolbox to deal with IUU fishing in all its forms. No one set of tools works in every situation. It depends a lot on the type of fishery involved.

I would highlight as well that we must provide more assistance to developing countries. A large percentage of IUU fishing occurs in the zones of developing countries that cannot monitor their fisheries there. It is in our own interest to help them do a better job of monitoring and controlling those fisheries.

We look forward to working with Congress and considering possible strengthening of U.S. laws in this area. As I mentioned, we will very likely have a series of recommendations for you in the coming weeks.

Thank you very much for this opportunity.

[The prepared statement of Mr. Balton follows:]

**Statement of David A. Balton, Deputy Assistant Secretary of State for Oceans and Fisheries, U.S. Department of State**

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to testify today on international fisheries conservation issues and particularly to address issues of compliance. It has become increasingly apparent that, even as the international community has made enormous progress in the last decade towards coordinated management of the world's fishery resources, this progress is meaningless without compliance. We are seeing a growing incidence of fishing that does not respect international laws and regulations. Left unchecked, this illegal fishing can significantly diminish the benefits of the fisheries management regimes we have worked so hard to establish. And this type of activity is clearly unfair to those fishers who do follow the rules.

The Department of State has been focusing much of its attention on fighting illegal, unreported and unregulated (IUU) fishing within regional fisheries management organizations, and through our National Plan of Action to prevent, deter and eliminate this type of fishing. I will outline the efforts underway not just in the International Commission for the Conservation of Atlantic Tunas but also in other regional bodies, and will summarize some of the new tools contemplated by the U.S. National Plan of Action on IUU Fishing.

*Compliance Agreement*

In its letter of invitation, the Subcommittee asked about the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ("the Compliance Agreement"). The Compliance Agreement entered into force on April 24, 2003, upon the deposit of the 25th instrument of acceptance with the U.N. Food and Agriculture Organization (FAO), which serves as depository for this treaty. Most of the major fishing States are party to this treaty, including the United States, Canada, Japan, Mexico, South Korea, Norway and the European Community.

The Compliance Agreement is one of three global fisheries instruments of vital significance that have been adopted in the past decade, along with the U.N. Fish Stocks Agreement and the non-binding Code of Conduct for Responsible Fisheries. The United States played a pivotal role in the development of each of these instruments and has steadfastly urged all States to implement them.

Building on the general framework of the 1982 United Nations Convention on the Law of the Sea, the Compliance Agreement seeks to address the threat to international fisheries management posed by vessels that do not abide by agreed fishing rules. The Agreement contains three basic requirements:

- Each Flag State must ensure that its vessels do not engage in any activity that undermines the effectiveness of international fishery conservation and management measures, whether or not the Flag State is a member of the regional fishery organization that adopted such measures;
- No Flag State shall allow any of its vessels to be used for fishing on the high seas unless the Flag State has specifically authorized it to do so; and
- No Flag State shall grant such authority to a vessel unless the Flag State is able to control the fishing activities of that vessel.

These three rules represent a new vision for high seas fisheries. To abide by these rules, Flag States may no longer allow their fishing vessels to venture out onto the high seas the way that the early explorers ventured out beyond the frontiers of known society. Flag States must now actively oversee the high seas fishing operations of their vessels. They must decide on a case-by-case basis whether to authorize any vessel to fish on the high seas. Most importantly, they may not permit any vessel to fish on the high seas at all, unless they are able to prevent the vessel from undermining agreed conservation rules. The Agreement also seeks to increase the transparency of high seas fishing operations through the collection and dissemination of data. Parties must submit to FAO a wide range of information on each of their respective high seas fishing vessels.

If all States were parties to the FAO Compliance Agreement and other relevant international agreements, and if all States fully implemented their commitments under these instruments, there would be virtually no IUU fishing. Unfortunately, most of the Flag States whose vessels are the greatest source of IUU fishing are not parties to these treaties. Encouraging these States to accede to these treaties and to implement effective control over their fishing vessels remains a top priority.

I do not want to give the impression, however, that only vessels flying the flags of non-parties to these agreements conduct IUU fishing. Even responsible fishing nations, such as the United States, do not achieve 100 percent compliance by their vessels. Ocean fishing, by its very nature, is difficult and costly to monitor. As fish stocks decline, the temptation to evade fishing rules grows. To deal with this daunting situation, the United States has been among the leaders of the international community in fashioning a comprehensive "toolbox" of measures to crack down on IUU fishing.

*National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*

As part of the implementation of the Code of Conduct for Responsible Fisheries, the FAO has adopted a number of International Plans of Action (IPOA) to address specific international fisheries problems. Most recently, the FAO undertook a concerted effort to develop a comprehensive "toolbox" of measures that States could take, both individually and collectively, to address the problems of IUU fishing. This effort culminated with the adoption in 2001 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

As its title suggests, the objective of the IPOA is to prevent, deter and eliminate IUU fishing. The principles to guide the pursuit of this objective include: (1) broad participation and coordination among States, as well as representatives from industry, fishing communities and non-governmental organizations; (2) the phasing-in of action to implement the IPOA on the earliest possible timetable; (3) the use of a comprehensive and integrated approach, so as to address all impacts of IUU fishing; (4) the maintenance of consistency with the conservation and long-term sustainable use of fish stocks and the protection of the environment; (5) transparency; and (6) non-discrimination in form or in fact against any State or its fishing vessels. States were charged to develop their own National Plans of Action to implement the IPOA.

The draft U.S. National Plan of Action was developed over the past two years by the Department of State, the Department of Commerce and the U.S. Coast Guard, with input from the U.S. Trade Representative, the Customs Service, and others. It is undergoing a final review and should be released shortly.

It is organized along the same lines as the IPOA, including sections on All State Responsibilities, Flag State Responsibilities, Coastal State Measures, Port State Measures, Internationally Agreed Market State Measures, Measures to be Implemented Through Regional Fisheries Management Organizations and Special Requirements of Developing States. In addition to describing what the United States already does to fight IUU fishing, the National Plan of Action also lays out a wide range of recommendations for enhancing our abilities in this regard, such as changes to vessel registration rules, increased sanctions and penalties, tightened port controls, and broader outreach and capacity-building with other States.

*ICCAT and other Regional Fisheries Management Organizations*

My colleague from NOAA Fisheries has provided a thorough overview of the issues surrounding member compliance and illegal fishing within ICCAT. Although, with U.S. leadership, ICCAT has been at the forefront of developing innovative approaches towards controlling IUU fishing, it has become clear that ICCAT's existing tools need to be re-examined and updated to reflect the changing nature of IUU fishing. As part of that effort, the Department welcomes Congressional action to support U.S. efforts in ICCAT such as H.Con.Res. 268, which reiterates U.S. commitment towards ensuring compliance with ICCAT measures and offers specific guidance how we should support that commitment. We do note that some parts of H.Con.Res. 268 would change the standard of review for taking trade measures from looking at the actions of a number of vessels to the actions of a single vessel. While we agree the United States should take every possible action to fight IUU fishing, such a narrow standard may present significant implementation difficulties. We would be happy to discuss this issue with staff.

In addition to the work carried out within the FAO and ICCAT, the United States is working in other regional organizations to address the issue of IUU fishing. In particular, the Inter-American Tropical Tuna Commission (IATTC) has been working actively to address the issues of IUU fishing in the area regulated by the IATTC. In 2002, the IATTC adopted a resolution on purse seine fleet capacity. Among other things, the resolution specified that any purse seine vessel not included on the IATTC vessel register is not authorized to fish in the IATTC area. In the fall of 2002, a number of vessels from the western Pacific crossed over into the eastern Pacific to fish on a large biomass of yellowfin tuna that moved from the west into the eastern Pacific. The Flag States of these vessels ordered the vessels

to withdraw from the area once they were notified by the Director of the IATTC that the vessels were fishing in violation of the IATTC rules.

More recently, at its annual meeting in June 2002, the IATTC adopted measures, similar to the measures adopted in ICCAT, both for a catch certification scheme for bigeye tuna and for the development of a "positive list" of large-scale longline fishing vessels authorized to fish in the area regulated by the IATTC. The Commission also adopted a set of criteria for identifying "cooperating non-parties." Key to such designation is that vessels from such non-parties provide all relevant data about their operations and that they respect all rules, regulations and resolutions governing fishing for highly migratory species in the IATTC area.

Finally, at a special meeting of the IATTC scheduled for this fall, the IATTC will consider a U.S. proposal on steps to be taken by members and cooperating non-parties of the IATTC in cases of noncompliance with IATTC conservation and management measures.

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) also provides a model of how a more comprehensive "negative" vessel list approach could work. Last year, CCAMLR adopted measures that establish lists of both member and non-member vessels of any kind that are diminishing the effectiveness of CCAMLR. Under the CCAMLR measures, the Flag State of vessels on the lists may be identified and subject to further action, but the vessels themselves are also subject to restrictions on access to certain fisheries. We will be watching the implementation of these new measures carefully in the next year or two.

Thank you, Mr. Chairman, for this opportunity to discuss these issues. I would be happy to try to answer any questions from the Members of the Subcommittee.

---

[Mr. Balton's response to questions submitted for the record follows:]

**Questions for the Record Submitted to**
**Assistant Secretary David A. Balton by**
**Rep. Frank Pallone (#1)**
**Subcommittee on Fisheries Conservation**
**Committee on Resources**
**Sept. 11, 2003**

**Question: You mention that even responsible fishing nations, such as the United States, do not achieve 100 percent compliance by their vessels, and point to monitoring costs as a limiting factor. Is achieving 100 percent compliance by the United States possible? If so, how can we achieve this? If not, what percent compliance should we be striving for and what needs to be done to get there?**

Answer: No government can guarantee 100 percent compliance by all its vessels with all fishery conservation and management measures all the time. There will always be those who seek to bend or break the rules. Even wealthy and technologically advanced nations such as the United States cannot have an enforcement presence monitoring all fisheries at all times. But the United States has one of the best fisheries management and enforcement regimes in the world. The combined efforts of the National Marine Fisheries Service's Office of Law Enforcement and the U.S. Coast Guard are extremely effective in ensuring that the vast majority of U.S. fishing vessels are in compliance with both domestic regulations and our international obligations. Of course, there is more that we can do. The soon-to-be-released U.S. National Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing represents a comprehensive assessment of what the United States is doing to ensure compliance by its fishing vessels and lays out a number of recommendations for regulatory and legislative changes to make our enforcement regime even stronger.

As we look at compliance by other countries with the rules adopted in ICCAT and other regional organizations, we recognize that individual violations are less of an issue than a systemic and pervasive lack of will or ability by the flag State to control its vessels. In these regional fisheries bodies, the United States has led efforts to take strong action—including the imposition of trade sanctions—against States whose vessels consistently undermine international conservation and management measures.

**Questions for the Record Submitted to**
**Assistant Secretary David A. Balton by**
**Rep. Frank Pallone (#2)**
**Subcommittee on Fisheries Conservation**
**Committee on Resources**
**Sept. 11, 2003**

**Question: The U.S. sent letters to the European Commission (EC) in April 2003 regarding catch limits that were set above what ICCAT's scientific advisory body recommended for bluefin tuna. Has the U.S. received a response to these letters? Are these letters a precursor to further action? Is this the extent to which the administration is willing to push countries to comply with international fisheries management recommendations or do you think this administration is willing to impose trade restrictions to encourage other countries to comply with international recommendations?**

Answer: The Secretary of Commerce exchanged a series of letters with EC officials earlier this year on this subject, and the Department of Commerce could certainly provide more information on that exchange. We met with the EU several times this summer and raised once again our concerns about overfishing and excessive juvenile catches in the east Atlantic bluefin tuna fishery, among other things. We continue to press the EU at a high level to implement the commitments it made at the 2002 ICCAT annual meeting, and we will work closely with the Department of Commerce as it considers the pending request to certify the EU under the Pelly Amendment.

The United States has imposed trade restrictions on a number of countries that were identified by ICCAT as undermining ICCAT conservation and management measures, and we will consider additional action against several others at the upcoming ICCAT annual meeting. Combating IUU fishing and achieving compliance with internationally agreed rules are essential if we are to ensure the sustainability of our shared fisheries resources. This is why the United States has been the leader in ICCAT and other organizations in developing strong, multilateral programs that use trade and other economic tools to change the behavior of problem countries. Our efforts are paying off on many fronts, but they will only be successful if all the major fishing States and market States work together.

At the upcoming ICCAT annual meeting, one of our top priorities will be updating ICCAT's compliance regimes to ensure that both members and non-members are held to the same, strict standard—and that ICCAT members can use a suite of quota penalties, landing restrictions, and market controls to uphold ICCAT's conservation and management rules.

**Questions for the Record Submitted to**
**Assistant Secretary David A. Balton by**
**Rep. Frank Pallone (#3)**
**Subcommittee on Fisheries Conservation**
**Committee on Resources**
**Sept. 11, 2003**

**Question: A question was raised last year that if other nations adopt policies similar to those detailed in H.Con.Res 427, the U.S. itself would be vulnerable to trade sanctions. If I recall correctly, one of the recommendations for which our compliance was questionable required a minimum of five percent observer coverage for all longline trips targeting yellowfin and bigeye tuna. While this violation has less severe conservation consequences than most of those discussed today, it ostensibly makes the United States vulnerable to retaliatory actions. Is it true that the U.S. has been out of, and may still be out of compliance with ICCAT recommendations? Which ones?**

Answer: The United States acts in good faith within ICCAT and is generally in compliance with the conservation and management measures adopted under its auspices. Occasionally, we have faced regulatory delays—for instance we could not meet a deadline to implement mandatory VMS coverage for pelagic longliners pending the resolution of litigation. The National Marine Fisheries Service may be better able to address the specifics of our level of compliance with all ICCAT recommendations.

---

Mr. SAXTON. Thank you very much, Mr. Balton.

Mr. Considine?

**STATEMENT OF JOHN J. CONSIDINE, DIRECTOR, CARGO VERIFICATION DIVISION, TRADE COMPLIANCE AND FACILITATION, BUREAU OF CUSTOMS AND BORDER PROTECTION**

Mr. CONSIDINE. Mr. Chairman and members of the Committee, thank you for this opportunity to testify.

Although the main focus of Customs and Border Protection (CBP) has shifted to protecting the United States from terrorist attacks, CBP also enforces over 400 requirements for more than 40 other Federal agencies at the U.S. borders. These requirements include the laws that prohibit the illegal importation of fish and marine products that fall under the jurisdiction of the National Marine Fisheries Service, a part of the National Oceanic and Atmospheric Administration under the Department of Commerce.

While the NMFS has the expertise and authority over these laws and takes the lead in developing regulations to implement these laws, they consult closely with CBP to ensure that such regulations are practical to enforce.

CBP and NMFS have a close working relationship. A Memorandum of Understanding between the agencies has been in force since 1996. Under this MOU, CBP provides to NMFS, on a monthly basis, data collected by our Automated Commercial System on imports of fish species and products that NMFS monitors for enforcement and compliance purposes. This MOU is modified on a regular basis by NMFS to reflect any changes in laws, rules, and requirements regarding products under their jurisdiction.

The two agencies have also worked closely in enforcing import restrictions on various types of fish. When the requirements for the import of these fish and marine products are changed, CBP will inform its local offices of these changes through memoranda issued to the field. Instructions in our Automated Commercial System are updated to ensure that these new requirements are met.

Cooperation between the two agencies on Antarctic and Patagonian toothfish, popularly known as the Chilean sea bass, over the past few years has led to several significant enforcement actions, including seizures and arrests by NMFS for the smuggling of toothfish. CBP is also working with NMFS on several ongoing investigations on the West Coast.

NMFS is also exploring setting up a task force to address the issue of the illegal importation of Chilean sea bass. Representatives from several Federal agencies will be invited to participate, and a representative from CBP will be on that task force.

CBP enforces the restrictions and the documentation requirements for the importation of Chilean sea bass in the following manner: instructions in ACS, our Automated Commercial System, have been updated to alert CBP officers to the new rule that took effect on June 16, 2003, requiring that imports of frozen toothfish and fresh shipments of over 2,000 kilograms present a signed and stamped approval NMFS form titled "Approval Action of Catch Documents for Toothfish Imports." Included in the instructions are contact points for CBP officers who have questions about the validity of such permits. All toothfish shipments are reviewed by CBP for proper documentation before they are released.

If a decision is made to impose import restrictions on more fish species, CBP believes that it could operate in a similar manner.

NMFS would approve a shipment in advance and issue an approval document. CBP would examine the paper entry work package to ensure that the shipment is in compliance and has approval from NMFS. Because of the anticipated volume, CBP would not—unlike what is done for toothfish—examine every entry package. Instead, CBP would perform selected verification on a risk management basis and concentrate on countries and importers that NMFS has identified as potential violators of international agreements. Any shipment not in compliance would be detained or appropriate action by NMFS.

CBP does not have the knowledge, expertise, or authority to implement fish tracking programs. We would leave such matters to agencies like NMFS, but as mentioned above, CBP could act as a gatekeeper helping prevent illegally caught shipments of fish, as determined by NMFS, from entering the U.S.

CBP does have the authority under its own statutes to seize products that are imported in violation of the laws of other agencies. The decision on the destruction of any seized fish products would be made on a case-by-case basis. Input from the agencies concerned would be sought as to whether destruction or exportation would be appropriate.

I would like to thank you and the members of the Committee for considering Customs and Border Protection in your review of this resolution and will answer any questions the Committee may have.

[The prepared statement of Mr. Considine follows:]

**Statement of John J. Considine, Director, Cargo Verification Division, Trade Compliance and Facilitation, Bureau of Customs and Border Protection**

Mr. Chairman, members of the Committee, thank you for this opportunity to testify. I am John Considine, Director of the Cargo Verification Division, Trade Compliance and Facilitation at the Bureau of Customs and Border Protection (CBP).

Although the main focus of the CBP has shifted to protecting the United States from terrorist attacks, CBP also enforces over 400 requirements for more than 40 other federal agencies at U.S. borders. These requirements include the laws that prohibit the illegal importation of fish and marine products that fall under the jurisdiction of the National Marine Fisheries Service (NMFS), a part of the National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce.

While the NMFS has the expertise and authority over these laws and takes the lead in developing regulations to implement these laws, they consult closely with CBP to ensure that such regulations are practical to enforce.

CBP and NMFS have a close working relationship. A Memorandum Of Understanding (MOU) between the agencies has been in force since 1996. Under this MOU, CBP provides to NMFS, on a monthly basis, data collected by our Automated Commercial System (ACS) on imports of fish species and products that NMFS monitors for enforcement and compliance purposes. This MOU is modified on a regular basis by NMFS to reflect any changes in laws, rules and requirements regarding products under their jurisdiction.

The two agencies have also worked closely in enforcing import restrictions on various types of fish. When the requirements for the import of these fish and marine products are changed, CBP will inform its local offices of these changes through memoranda issued to the field. Instructions in ACS are updated to ensure that these new requirements are met.

Cooperation between the two agencies on Antarctic and Patagonian toothfish, popularly known as Chilean sea bass, over the past few years has lead to several significant enforcement actions, including seizures and arrests by NMFS for the smuggling of toothfish. CBP is also working with NMFS on several ongoing investigations on the West Coast.

NMFS is also exploring setting up a task force to address the issue of the illegal importation of Chilean sea bass. Representatives from several federal agencies will be invited to participate. A representative from CBP will be on that task force.

CBP enforces the restrictions and documentation requirements for the importation of Chilean sea bass in the following manner: Instructions in ACS have been updated to alert CBP officers to the new rule that took effect on June 16, 2003 requiring that imports of frozen toothfish and fresh shipments of over 2,000 kilograms present a signed and stamped approval NMFS form titled "Approval Action of Catch Documents for Toothfish Imports". Included in the instructions are contact points for CBP officers who have questions about the validity of such permits. All toothfish shipments are reviewed by CBP for proper documentation before they are released.

If a decision is made to impose import restrictions on more fish species CBP believes that it could operate in a similar manner. NMFS would approve a shipment in advance and issue an approval document. CBP would examine the entry package to ensure that the shipment is in compliance and has approval from NMFS. Because of the anticipated volume, CBP would not (unlike what is done for toothfish) examine every entry package. Instead, CBP would perform selected verification on a risk management basis and concentrate on countries and importers that NMFS has identified as potential violators of international agreements. Any shipment not in compliance would be detained for appropriate action by NMFS.

CBP does not have the knowledge, expertise, or authority to implement fish tracking programs. We would leave such matters to agencies like NMFS, but as mentioned above, CBP could act as a "gatekeeper" helping prevent illegally caught shipments of fish (as determined by NMFS) from entering the U.S.

CBP does have the authority under its own statutes to seize products that are imported in violation of the laws of other agencies. The decision on the destruction of any seized fish products would be made on case by case basis. Input from the agencies concerned would be sought as to whether destruction or exportation would be appropriate.

I want to thank you and the members of the Committee for considering Customs and Border Protection in your review of this resolution and will answer any questions the Committee may have.

---

Mr. SAXTON. Thank you very much, Mr. Considine.

Admiral Hathaway?

## STATEMENT OF REAR ADMIRAL JEFFREY J. HATHAWAY, DIRECTOR OF COAST GUARD OPERATIONS POLICY, U.S. COAST GUARD

Admiral HATHAWAY. Good morning, Mr. Chairman and members of the Subcommittee. I know that you have received my written testimony, and I request that that be accepted into the record, and I have just a couple other comments to make.

First of all, the Coast Guard sits here today representing our country's at-sea enforcement arm, whether it is operations inside our exclusive economic zone or in support of international agreements in international waters. Today I will tell you that in the international fora, the Coast Guard is concentrating its enforcement activities in three areas. Mr. Balton has talked about some of those. First of all, the threat of high seas drift netters in the North Pacific Ocean. There are enforcement regimes there that make that a very good use of Coast Guard assets, and as Mr. Balton pointed out, we have made some very fruitful seizures there this past year.

We also concentrate in the Central and Western Pacific Island area assisting those island countries to develop their own domestic fisheries regimes, which we think is, again, a very good long-term investment for this country in terms of eventually successfully impacting IUU fishing in that part of the world.

And, finally, in the international fora, we have been concentrating in the Pacific in conjunction with our drug enforcement and illegal migrant enforcement activities. We have found several fishing vessels in violation of the Inter-American Tropical Tuna Commission regulations. All of those, by the way, have been foreign flag vessels, not U.S. flag vessels, who for the most part abide by regulations. But what are we able to do? We are only able to make a case package and refer it to whoever the flag state is. In most cases, it is Mexico based on where we operate.

A couple comments on ICCAT. ICCAT from an at-sea enforcement point represents a great challenge for at-sea enforcement activities. All of the fish species covered by ICCAT are highly migratory, and the geographic area covered by ICCAT extends from Iceland to Cape Horn. So, from an at-sea enforcement point of view, very, very challenging for your at-sea enforcement arm, the U.S. Coast Guard. And because of that, the focus of ICCAT has not been on at-sea enforcement to date. Other enforcement regimes—again, Mr. Balton mentioned several of the more fruitful—have been pursued under ICCAT to date.

With that said, the Coast Guard's integrated deep water acquisition project, which will recapitalize our long-distance cutters, our high seas cutters, and our long-range aircraft, is well under way. The capabilities that that acquisition project will give the Coast Guard will allow us to reach further out into the international fora and be a more effective international enforcement arm for fisheries for the U.S., which will include something we don't have now, which is unmanned aerial aircraft.

Finally, I would just like to say that the Coast Guard, despite our increased activity in defending our maritime borders, remains totally dedicated to our fisheries enforcement mission. I will say that just yesterday we seized 47,000 pounds of shrimp from a U.S. vessel fishing inside the EEZ. We found that he had sewn shut his turtle exclusion devices, and he had no bycatch reduction equipment on board. And in addition to that, the captain was arrested by the U.S. Coast Guard on an outstanding drug charge. So the Coast Guard remains multi-mission as we are out there.

I would also say, as we speak in this hearing room, a U.S. Coast Guard C-130 aircraft from our air station in Kodiak, Alaska, at the request of our Russian colleagues, is flying in support of the Russians in an area called the "doughnut hole," which is a North Pacific almost no-man's-land, looking for a vessel that the Russians had previously sighted who was taking illegal offloads of crab from, most likely, Russian crabbers in violation of Russian quotas. Mr. Balton mentioned some of the international cooperative arrangements we have. The U.S. Coast Guard has a reasonably good relationship with the Russians, and I see that we would respond to a request from them to fly into an area that truly is not under any one country's jurisdiction to assist in an international fisheries matter as very important.

So we remain very dedicated to that mission, and the Coast Guard, as we increase our assets in the future to be able to take into account our new work in defending our maritime borders, will be returning probably in fiscal year 2004 to our historic levels of resource hours dedicated to the fisheries mission.

Thank you very much.

[The prepared statement of Admiral Hathaway follows:]

**Statement of Rear Admiral Jeffrey Hathaway, Director, Coast Guard Operations Policy, U.S. Department of Homeland Security**

Good morning Mr. Chairman and distinguished members of the Subcommittee. I am Rear Admiral Jeffrey Hathaway, Director of Coast Guard Operations Policy. It is a pleasure to appear before you today to discuss House Concurrent Resolution 268 and its implications for the Coast Guard.

With respect to House Concurrent Resolution 268, I encourage any action that highlights the importance of responsible resource management throughout the world's oceans. As the demand for fish products increases globally, so too does the responsibility of all nations to ensure the sustainability of our very precious and very finite fishery resources. The high seas and the resources they hold are the village commons of the 21st Century.

Today we see many significant threats to their sustainability. These threats take the form of illegal, unreported and unregulated fishing, under-reported catch, using illegal harvesting methods such as high seas drift nets (HSDN), and unlawful encroachment into the U.S. Exclusive Economic Zone (EEZ). The Coast Guard's role is to enforce the laws and regulations that prohibit these practices. This is a mission we take very seriously and into which we funnel significant resources. This year, 12% of the Coast Guard's Operating Expenses budget is dedicated to supporting the fisheries mission.

The Coast Guard is the only Federal agency capable of projecting a law enforcement presence throughout the EEZ and in key areas of the high seas. Under the auspices of the Magnuson-Stevens Fisheries Conservation and Management Act, the Coast Guard invests significant resources to patrol these waters and works closely with domestic and international enforcement agencies to thwart illegal fishing practices at sea.

The Coast Guard assists the Department of State in developing international enforcement regimes through various Regional Fishery Management Organizations such as the International Convention for Conservation of Atlantic Tuna, the North Pacific Anadromous Fish Commission, the Northwest Atlantic Fisheries Organization, and the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific to name a few. The Coast Guard maintains a liaison officer at the State Department's Office of Marine Conservation to advise U.S. delegations to these organizations on the enforceability of proposed management regimes. We also work closely with the National Oceanic and Atmospheric Administration's (NOAA) Fisheries Office for Enforcement and the Department of Justice in prosecuting foreign fishers who illegally encroach upon the U.S. EEZ.

"Fish do not recognize Exclusive Economic Zone (EEZ) boundaries" is an oft-quoted phrase in the fisheries management and enforcement business, and the Coast Guard is directly engaged with enforcement agencies in Canada, Mexico, the Russian Federation, Japan, South Korea, the People's Republic of China and many other nations to promote sustainability through compliance with regulations and management regimes. Our efforts include enforcement Memoranda of Agreement, fisheries enforcement workshops, ship rider agreements, joint operations, and boarding officer training. In an action plan on the Marine Environment and Tanker Safety prepared in June 2003 at the G-8 Summit in Evian, France, G-8 leaders, including President Bush, pledged to work toward sustainable fisheries and marine conservation.

I would like to share with you a success story in international cooperation and effective enforcement. In 1991, the United Nations declared an international moratorium on the use of large-scale (greater than 2.5 kilometers in length) pelagic high seas driftnets. Since that time, the U.S. Coast Guard, NOAA Fisheries, the Canadian Department of Fisheries and Oceans, the Russian Federal Border Service, the People's Republic of China Bureau of Fisheries, and the Fisheries Agency of Japan have worked together to seize 18 high seas driftnet vessels, including four this summer. Our closely coordinated efforts have resulted in Russian officers staffing a joint command center in Alaska; Chinese enforcement officers sailing on U.S. Coast Guard cutters; and NOAA Fisheries agents flying in Canadian Air Force surveillance planes. These countries are also members of the North Pacific Heads of Coast Guard organization in which the Commandant of the Coast Guard is a participant. The North Pacific Heads of Coast Guard, recognizing the importance of fisheries, recently implemented a Fisheries Working Group to meet regularly and discuss fisheries issues of regional interest.

The Coast Guard's fisheries law enforcement strategic plan OCEAN GUARDIAN, stipulates that our highest priority enforcement mission is to prevent encroachment of the U.S. EEZ and internal waters by foreign fishing vessels. The Plan also emphasizes ensuring compliance with international agreements for the management of living marine resources, such as the International Convention on the Conservation of Atlantic Tunas (ICCAT), and the HSDN moratorium I mentioned earlier.

Fisheries enforcement, particularly enforcement of international fisheries management schemes, is a mission largely conducted by Coast Guard Deepwater assets. The U.S. EEZ is the largest and most productive in the world. It covers 3.36 million square miles of ocean and includes 95,000 miles of coastline. It contains an estimated 20% of the world's fishery resources. These vast patrol areas, coupled with the long distance from U.S. shores—for example the non-contiguous EEZ in the central Pacific—provide a significant challenge to the Coast Guard's assets. As fish stocks throughout the world dwindle and the fleets of distant water fishing nations are being pushed farther from home and into the high seas in search of catch, the bounty of our EEZ becomes a more attractive quarry. The improved capabilities the Coast Guard will garner and the technology we will have available to leverage as a result of the Integrated Deepwater System project will greatly enhance our ability to enforce international fisheries regulations in the U.S. EEZ and beyond.

The world is becoming more aware of the need to ensure the sustainability of our collective fish stocks. At the same time, the United States is becoming increasingly involved in the management of living marine resources on the high seas. Naturally, this means the Coast Guard will become even more involved in the enforcement of agreements to which the U.S. is a party. In the past, international policies governing the conservation of high seas fisheries fell well short of their goals because they lacked any effective enforcement provisions. However, in 1995, a landmark agreement, the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement established the framework for all future international fishery regimes. This agreement calls for strict adherence with fishery conservation measures and, more importantly, contains non-flag state enforcement provisions that allow the Coast Guard to board foreign fishing vessels flagged by any nation party to any mutual international fishing agreement. The Agreement entered into force on December 11, 2001.

I believe emphasis in three areas is the key to improving our international fisheries enforcement posture. First, active participation in international fora such as the Regional Fishery Management Organizations I mentioned earlier. Second, working within those fora to develop a regulatory regime that not only sustains the resources, but is also enforceable. Finally, providing the resources necessary to carry out enforcement operations under that scheme. By resources, I am referring to people, vessels and also technology such as the Vessel Monitoring System, multi-lateral working groups like the North Pacific Heads of Coast Guard organization, and combined operations such as the high seas driftnet operations in the North Pacific.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.

---

[RADM Hathaway's response to questions submitted for the record follows:]

**Response to questions submitted for the record by Rear Admiral Jeffrey Hathaway, Director, U.S. Coast Guard Operations Policy, Department of Homeland Security**

*IUU FISHING*

**QUESTION: RADM Hathaway, Mr. Balton from the State Department mentions in his testimony that most of the flag States whose vessels are the greatest source of IUU fishing are not parties to international fishing treaties.**

**In your testimony you mention the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, which allows the Coast Guard to board foreign fishing vessels flagged by nations that are a party to the mutual international fishing agreements. It appears that you are helpless to stop IUU fishing from flag states whose vessels are the greatest source of IUU fishing.**

- **Is this True?**

**Besides convincing these rogue nations to sign international agreements, how could this problem be solved (see below related question/suggestions)?**

ANSWER: The Coast Guard is not helpless to stop IUU fishing. International law, fishery management conventions, and various memorandums between the U.S. and foreign governments present a number of enforcement options available to the Coast Guard depending on the specific circumstances of each scenario. Examples of enforcement options against foreign fishing vessels available to the Coast Guard on the high seas include:

- Taking action on behalf of the flag state. This was done in July and August 2003 on four People's Republic of China vessels conducting illegal high seas driftnet operations.
- The United Nations Fish Stocks Agreement allows non-flag state boardings, and we are using this as leverage in all of our interactions with foreign nations when looking for their assistance or approval of USCG actions.
- Assisting the flag state in conducting its own enforcement operations by embarking law enforcement ship riders on Coast Guard vessels.
- Preparing a case package and submitting it to the flag state for enforcement action via State Department as a demarche. This was done in Aug 2003 for two South Korean vessels suspected of illegal high seas driftnet operations.

*FISHING VESSELS*

**QUESTION: A recent Atlantic Monthly article (September 2003) mentioned that in July 2002 President Bush signed an executive order expanding the U.S. Navy's authority to intercept merchant ships on the high seas in order to keep watch over the several hundred ships on the government's terrorist suspect list.**

**Does the U.S. government list of suspect merchant vessels include fishing vessels?**

ANSWER: The U.S. government list of suspect merchant vessels would include fishing vessels only if they are suspected of activities unrelated to fishing operations that were for or in support of terrorist activities.

*ILLEGAL FISHING VESSELS INTERCEPTION*

**QUESTION: Does the Coast Guard have a similar authority to intercept illegal fishing vessels from countries not party to international fishing agreements?**

ANSWER: With regard to the authority attributed to the Atlantic Monthly article "Anarchy at Sea" (September, 2003), the Coast Guard is unaware of any executive order issued during the stated time period that expanded on the U.S. Navy's authority to intercept merchant ships on the high seas. As a result, the Coast Guard does not have similar authority.

However, in the absence of an international agreement in force and if a vessel is not otherwise subject to the jurisdiction of the United States, the Coast Guard has the authority to board foreign vessels engaged in illegal fishing only with the ad hoc consent of the flag or coastal State. Under international law, the Coast Guard may also board and exercise jurisdiction over vessels without nationality that may be engaged in illegal fishing.

*ICCAT*

**QUESTION: Can this list (mentioned in the Atlantic Monthly article) be combined with the ICCAT's recommended "black list" of fishing vessels from non-Contracting parties that have been involved in IUU fishing for joint enforcement among U.S. agencies?**

ANSWER: ICCAT is not recommending a "black list" of fishing vessels, but a "white list" of vessels that do not engage in illegal fishing practices. This makes it impossible to combine these two lists. Further, it would be inappropriate to combine any U.S. government's terrorist suspect list with any list of vessels that are suspected of engaging in illegal fishing practices. We are, however, fusing this "white list" and many other pieces of information and intelligence to further our Maritime Domain Awareness and increase the effectiveness of our operations.

---

Mr. SAXTON. Admiral, thank you.

Let me return for just a moment, or maybe for more than that, to an issue that I mentioned in my opening statement, and that is that the latest stock assessment that I have seen indicates that the total Atlantic stock population of white marlin has declined to less than 12 percent of its maximum sustainable yield level. This is an issue which should serve, in my opinion, as an example or a warn-

ing of the level of effectiveness of the international fisheries management regimes that we currently depend on for conservation purposes. Those international regimes I think have proven to be less effective than we all would at least hope they would be.

Several of you have talked about the IUU issues, and I think most everyone would agree that fishing and non-compliance are serious problems within the context of conservation and the issues that we are dealing with.

So, from a United States point of view, a country which has proven over decades and now centuries to be world leaders in a variety of ways, one need only to turn on a cable news station to see examples of leadership or attempts at leadership in a variety of ways, economically, politically, militarily, and conservation-wise.

So what is it that we need to do—let me ask this question: How can the U.S. take unilateral action as a world leader to bring into compliance the conservation measures that are necessary to have a reasonable chance of conserving species such as white marlin, but not limited to white marlin, and others? What unilateral action can we take to try to accomplish these kinds of goals? Mr. Dunnigan?

Mr. DUNNIGAN. Thank you very much. Let me say first off that we in NOAA certainly share your concern and appreciate your leadership on this question of the status of white marlin. We did make the determination last year that it didn't deserve to be listed under the Endangered Species Act, but that does not mean that we are not completely dedicated to working through the ICCAT forums and in our own management program to provide the conservation that this species needs. ICCAT has started to put together the rebuilding plan. They have instituted very conservative country quotas. We are in the process right now of promulgating the rule that will make these quotas apply, the 250-fish limit that we have for our fishermen, that will make them apply to our fishermen.

Part of the problem in white marlin is that it is a lot more important to us than it is to a lot of other countries, where we have the very large recreational fishery that depends on white marlin. In a lot of other countries where they have commercial fisheries, it is considered to be a relatively low-value species, so they have not really devoted the kind of attention to it that we would want them to.

So we will continue to press at ICCAT, and we believe that ICCAT needs to do a better job with its conservation and enforcement measures, and we will be working very hard to push ICCAT in that direction.

As far as unilateral measures, which is what you really asked about, there is not a lot that we can do without having some start. We can take unilateral action, for example, under the Pelly Amendment, or there are some provisions that are available to us in the Atlantic Tunas Convention Act. And we were asked to look into the Pelly Amendment by five State Governors and a couple of nongovernmental organizations last year. We have kept that record open. We are going to continue to observe the actions of the European Community as they step forward to carry out the responsibilities that we all came home from ICCAT with last year. And if the case presents itself, I believe that we will be prepared to follow through on the statutory authority that we have.

But, essentially, in both of those cases you are talking about first having to have some underlying conservation regime that is established by an international organization so that we can make a finding that a country's vessels are taking action that diminishes the effectiveness of that regime. So you have to at least start, I think, with some level of cooperation to specify what the management program needs to be. And then later on, if a country is not following through, then we have some ability under those laws to take unilateral action.

Mr. SAXTON. Mr. Balton, do you want to take a crack at this?

Mr. BALTON. Thank you, Mr. Chairman. I don't have very much to add to what Mr. Dunnigan said. International fisheries, particularly for highly migratory species, are such that no one state operating on its own can produce a successful solution. As Mr. Dunnigan, you first need to get agreement from the major fisheries and the major market states on a conservation regime, but once that is in place, the United States does have tools at its disposal to promote compliance with the rules that have been adopted multilaterally.

But a lot of what can be done are the sorts of things you are doing. Congress can raise the profile of this issue. You can put pressure on the United States administration to put pressure on other countries at international meetings. We can look at the statutory tools that we have in place already and use them more, maybe broaden them.

A strictly unilateral approach is not likely to win the day. We need to somehow mix multilateral conservation measures with unilateral measures. So, for example, there are certain species, bluefin tuna, for which the U.S. has a very small market, relatively speaking. There is not much we can do on our own to control problems of overfishing in bluefin tuna. Ninety percent of it goes to Japan. We need to work with Japan if we are to have a successful regime there. With swordfish, the U.S. shares the lion's share of the market with the European and other states. Once again, operating solely on our own, we are unlikely to achieve a full solution to the problem of swordfish conservation.

Thank you.

Mr. SAXTON. Mr. Considine, do you want to take a crack at this?

Mr. CONSIDINE. I am afraid it is probably outside my area of expertise, sir.

Mr. SAXTON. OK. Then let me just go back and revisit this question again with Mr. Dunnigan and Mr. Balton. It seems to me that both of your answers tended to point toward international cooperation, which is what ICCAT is all about. But that wasn't my question. My question is: What can the United States do unilaterally to be a world leader to show the folks at ICCAT and other participants in the fisheries that we are going to lead the way in solving this problem?

For example, if the United States and Japan, for example, the two largest importing nations for fish products, if these two countries were to block imports from countries that are not complying with ICCAT fishing measures, wouldn't that be effective?

Mr. BALTON. Mr. Chairman, we are doing just that within ICCAT. We have pioneered rules. If countries are fishing illegally,

they are identified by ICCAT. They have 1 year, in principle, to correct the behavior. If they do not do so, ICCAT will require all members in the United States, Japan, all of the importing states to prohibit imports of that species from that country.

Mr. SAXTON. Which countries have we prohibited imports from?

Mr. BALTON. I would have to give you a—get back to you on a full list. But, for example, one member of ICCAT itself, an actual ICCAT member, Equatorial Guinea, was under trade sanctions for bluefin tuna. Many countries are under import restrictions with respect to swordfish. A couple of years ago, we instituted import restrictions, prohibitions on a variety of countries with respect to big-eye tuna. So that is expanding. And with respect to bluefin tuna, as I said, the market is in Japan; swordfish is shared. Big-eye tuna mostly goes to Asia. It depends on the species, it depends on the nature of the fishery. But we are doing exactly what you are suggesting. And yes, it was largely at U.S. behest that these procedures were put into place.

Mr. SAXTON. Do we ever take unilateral action outside of ICCAT, or do we have to wait for ICCAT to make a determination that a country is in violation?

Mr. BALTON. We have not gotten ahead of ICCAT. But I think when we present to you the list of countries under a trade sanction, you will be rather impressed just how many there are. And I cannot think of instances off the top of my head where we felt strongly that a particular country ought to be under trade sanctions and ICCAT did not agree.

Mr. SAXTON. Mr. Dunnigan?

Mr. DUNNIGAN. I hate to keep coming back to this, but I just believe it is absolutely the truth. We are going to make the greatest progress toward getting where we want to go by working with our partners. If you look at a lot of the IUU fishing that has been going on over the last couple of years, it has been centered in Asia. And the Japanese have actually been very aggressive in working with the Government of Taiwan and a number of other parties in that part of the world to ferret out and track where this IUU fishing has been happening. And we would not be able to move forward on this if we were doing it strictly on our own. The best strategy that we have to get to where we want to go is to work with the other countries.

Mr. SAXTON. Well, I am going to yield my time, or move on to Mr. Pallone. But I couldn't disagree with you more. I mean, the record proves that we are not being effective in using the regimes that we are currently using.

Here is what I think is going to happen. We are going to take unilateral action. You know what it is going to be? It is going to be unilateral action against U.S. commercial and recreational fishing interests through the Endangered Species Act. That is what is going to happen. When we are forced to—when you are forced to close the white marlin fishery because of the Endangered Species Act, you are going to put everybody out of business that goes offshore for commercial fishing or for recreational fishing. That is when we will finally get serious about international conservation. I don't think we are serious about it today.

And I don't think—I am not pointing at you as individuals. I am talking about the conservation regimes that are in place today, that are proven ineffective. If you look at what has happened to, again, white marlin over the last 40 years, these regimes have been in place, you have all been working internationally, cooperating with each other, getting ICCAT to identify bad actors, doing what you do, and the population of marlin continues to drop.

So, if this was a court of law, a prosecutor would come and indict the process and lock it up, because it is not working.

Mr. Pallone?

Mr. PALLONE. Thank you, Mr. Chairman. My questions are of Mr. Dunnigan, although I guess others can jump in if they like.

In your written testimony you mentioned that the decision on certification of the EC pursuant to the Pelly Amendment has been left open. When do you expect to make a decision in that regard?

Mr. DUNNIGAN. Thank you, Mr. Pallone. This is a matter that we, as I said, have left open, and we don't have a specific timetable. We have made it very clear to the European Community that we are going to continue to monitor their implementation and their compliance with the recommendations that came out of ICCAT last year. They have made great statements about what they are going to do for juvenile tuna, they have made great statements about what they are going to do for their data programs. All of these are very important.

Mr. PALLONE. Can you give us any estimated timetable?

Mr. DUNNIGAN. After we get back from ICCAT this year, we will review the situation again, but no, we don't have any specific drop-dead date that we are looking at that we are going to—

Mr. PALLONE. But you are going to try to address it after the ICCAT meeting?

Mr. DUNNIGAN. Well, we will take another review of it at that point.

Mr. PALLONE. Last year, this hearing focused heavily on white marlin and the depleted nature of the stocks. Obviously, you know, that is a—from the Chairman's comment, that is a continued concern. And Dr. John Graves mentioned the lack of data about post-release mortality as a problem. Have any further studies on post-release mortality been completed? And is post-release mortality factored into the current stock assessments of Atlantic white marlin?

Mr. DUNNIGAN. Mr. Pallone, I think that deserves a very specific answer that I can't give you here this morning.

Mr. PALLONE. Or you can get back to us.

Mr. DUNNIGAN. Yes, we would be glad to get back to you.

Mr. PALLONE. All right. I appreciate that.

With regard to swordfish, the recovery rate of North Atlantic swordfish has been impressive, from the accounts that I have read, but nonetheless, the stock is still severely over-fished. Do you think that recovery of North Atlantic swordfish by 2009 or before is possible, given current rates of fishing and stock recovery? And if not, does the rebuilding plan need to be amended?

Mr. DUNNIGAN. If we are talking specifically about swordfish, I think I would not say that the rebuilding plan appears to need to be amended. As I recall, the assessment last year told us that the

swordfish stock was at about 94 percent of the biomass at maximum sustainable yield. It is as close to being recovered as—well, it is very close to being recovered, and we expect that it will get to that level.

Mr. PALLONE. So you think it is—we will be able to recover by 2009?

Mr. DUNNIGAN. For North Atlantic swordfish, yes.

Mr. PALLONE. There was a paper that appeared in the journal Science in January this year estimating the populations of several of large coastal and oceanic sharks—and that includes scalloped hammerhead, white, and thresher sharks—have declined by over 75 percent in the past 15 years. I know ICCAT is not responsible for managing these highly migratory species; however, it is obvious that without some regulation, these species will continue to be decimated.

So my question is, is there currently an international body monitoring and/or regulating the demise of highly migratory shark species? And if not, should there be one?

Mr. DUNNIGAN. I am going to ask that I be allowed to supplement this in writing, just to make sure. I don't believe that we have a specific body right now. There has been a lot of attention paid to sharks all over the world. There is an international plan of action for addressing elasmobranch species. I know at NAFO, the United States is a leader in having that organization look at, especially, thorny sharks. I know there is a lot of attention given to it around the world. We, of course, have a significant management responsibility for sharks in our own waters, under the Magnuson-Stevens Act, and that occupies a lot of the time of our Highly Migratory Species staff. But I am not specifically aware that there is a single international body right now that is looking at shark management.

Mr. PALLONE. Well, do you think there should be something—

Mr. DUNNIGAN. Perhaps Mr. Balton could add to that.

Mr. PALLONE. —then, is what I am asking, if there isn't anything now? Sure, Mr. Balton?

Mr. BALTON. Mr. Dunnigan is right that, in the Atlantic, the organization that deals with tunas doesn't have direct management authority for sharks. It is only tunas and tuna-like species. It might be possible to change that. It would require amending the ICCAT Convention.

In the Pacific, however, we are better off. We have the Inter-American Tropical Tuna Commission. It was based on a 1950 treaty that has just been renegotiated. We will be presenting it to the Senate this year, I believe, and it should enter into force fairly soon. And it will give that organization responsibility for species including sharks.

Similarly, in the Central and Western Pacific, a new convention creating a new commission there will also have authority to deal with shark species.

Mr. PALLONE. But you might have to amend ICCAT, you said?

Mr. BALTON. ICCAT as currently configured does not have direct management responsibility for sharks. They can be dealt with as bycatch. We would like to see that changed. The prospects of doing

so are not great, though, right now. ICCAT has so much else on its agenda.

Mr. PALLONE. OK. Did you want—I can ask one more question—again of Mr. Dunnigan or Mr. Considine, whoever wants to answer it.

The Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory Species 2003 said that NOAA fisheries would have developed a trade monitoring program for the import, export, and reexport of swordfish and big-eye tuna by early this year. And this was to comply with ICCAT's 2001 annual meeting recommendations. Do you know if a plan has been developed with a program, or a program formulated in this regard, and whatever obstacles there might be to implementing such a plan?

Mr. DUNNIGAN. We have implemented a program to carry out those recommendations. We actually do import-export documentation now for swordfish, for bluefin tuna, for big-eye tuna, and for Patagonian tooth fish. And really, this is the way that a lot of enforcement is going for international trade, the requirement for documentation to accompany all imports. It helps us to know that the fish was harvested legally in the first place.

Those programs are cooperative. We are working, as I said earlier, through the MCS network with other countries. We work very closely with the Customs Service.

Mr. PALLONE. You say you have developed a plan, though? Is that something that—

Mr. DUNNIGAN. Those documentation programs are in effect. We are supplying documentation to our exporters for big-eye tuna, because that was the new one that was added.

Mr. PALLONE. Right.

Mr. DUNNIGAN. Because other countries have insisted that the ICCAT recommendation be implemented immediately. We are still getting the rule out to make it final for big-eye in this country, but the other ones, documentation programs, are in place.

Our big challenge right now, by the way, is that they are all a little different in the way they got their authority, so we are trying to figure out a way to come up with a common system that meets all of the data requirements for all four of those programs.

Mr. PALLONE. And what about other highly migratory species? Why not for all highly migratory species?

Mr. DUNNIGAN. Right now, the requirement is not there in ICCAT or other organizations to do that. But frankly, I see that coming. I see we are moving, especially in this context of authorized vessel lists and prohibited vessel lists. I think we are moving to a world where the import-export trade is going to be accompanied with documentation that ties the product back to the method of harvest and the legality of harvest. I think it is coming generally in fishing.

Mr. PALLONE. Do you want authorization for these other species or, you know, should Congress do something about that?

Mr. DUNNIGAN. I think we ought to look into it. Right now, our authority to do that derives from specific statutory bases, for example, the Atlantic Tunas Act that gives us the authority to implement the ICCAT recommendations, the CCAMLR statute that gives us the authority to implement those. If we are going this way

generally—we will have to look at it, but it may be appropriate to have a broader approach legislatively for the United States. And we would be glad to work with you on that.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. SAXTON. Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. In the interest of time, Mr. Chairman, I would like to ask unanimous consent to submit a series of written questions to the members of the panel to respond to for the record.

Mr. FALEOMAVAEGA. Mr. Chairman, I could not agree more with your concerns about the problems that we face. And unless I am hard of hearing—and I apologize, I did not specifically read every portion of the gentlemen's statements—I have not heard whether your respective agencies support the substance of this resolution. I would like to ask Mr. Dunnigan, does the administration support the resolution?

Mr. DUNNIGAN. The administration welcomes the attention that Congress is giving. We do support the intent of the resolution. We have some concerns about some specific language that is in it that we would like to have an opportunity to talk to the Committee staff about.

For example, part of the language refers to actions by individual vessels in other countries and if they violate a law, it creates a—it appears to create a presumption that the country has violated the international statute. We need to—

Mr. FALEOMAVAEGA. So you do have some concerns.

Mr. DUNNIGAN. —make sure we don't set an unrealistic standard.

Mr. FALEOMAVAEGA. So you do have some concerns.

Mr. DUNNIGAN. Just about the language, yes.

Mr. FALEOMAVAEGA. So do you have some recommendations to make changes in the resolution?

Mr. DUNNIGAN. We think we ought to talk to your staff about that.

Mr. FALEOMAVAEGA. I think we are being too diplomatic about this, Mr. Chairman. I think we need a sledgehammer, because if my sense of the Chairman's concerns are accurate, this has not been a 1-year problem. This has been 5 years, 20 years, and thousands of his constituents from the commercial fishing industry who have had a tremendous, tremendous impact on the coastline states. I suspect in this part of our country, despite whatever international and regional commissions or organizations that we are a part of, that the problem is that we are just spinning our wheels. There are no substantive results from all these recommendations, those which are supposed to be enforced by these commissions. I think what the Chairman is trying to say is, if they cannot do the job, then maybe the Congress has to do it, and the recommendation offered in this resolution is let's put forth trade sanctions.

I would like to offer a suggestion, Mr. Chairman, that maybe we ought to extend our EEZ zone to 1,000 miles. Maybe that might be a better way of allowing us, our own country, unilaterally, to take real, strong conservation measures and to protect our economic interests, not only for our commercial fishermen but as well as our recreational interests.

What do you think of that, Mr. Dunnigan?

Mr. DUNNIGAN. I certainly don't believe that the administration has a position yet on suggesting that we extend our exclusive economic zone beyond 200 miles.

Mr. FALEOMAVAEGA. Could I offer a recommendation? Because of the failures of these regional organizations to do what they should be doing, could the administration do a little study to see what the economic impact would be if we say, all right, because you failed to do this, we are going to extend our exclusive economic zone to 1,000 miles? What would be the result in terms of our recreational and our commercial interests given the problems that we have had with white marlin and all these other things? We have 110 longline fishermen from the East Coast that are now in Hawaii because of the moratorium placed on the swordfish, as I recall, simply because of over-fishing.

I welcome your comment, Mr. Dunnigan.

Mr. DUNNIGAN. Well, I thank you, and I certainly respect and understand your concerns. Even if we were to carve up all of the oceans and give them all to different countries' exclusive jurisdictions, it wouldn't solve our problems when you are talking about fishery resources that migrate broadly across oceans. One way or the other, we are going to have to resolve these problems in collaboration with the other countries that we are going to share these resources with.

And I think that, and what I would like to say is that there is always this question of the glass being half-full or half-empty. I think that there is a lot of progress that has been made. There is a lot of progress that has been made in ICCAT. We have seen rebuilding of swordfish. We saw in the latest stock assessment some improvement in bluefin tuna stocks. We have now got an agreement by the Eastern Atlantic countries to sit down and talk about managing the entire tuna stock as unit. We have commitments for better data programs, and we are working on having better compliance and monitoring.

ICCAT only started working with a recommendation on white marlin in the year 2000. So some of these things have got to have some time to play out. I still think that we have some hard work to do at ICCAT. And it is not perfect; it is difficult. But it is really the way that we are going to be able to go, with these highly migratory species that are trans-oceanic, to get effective conservation.

Mr. FALEOMAVAEGA. Oh, I know what you mean, because this is one of the issues that we have faced in the Pacific, our self-declaration that tuna, being highly migratory fish, have no boundary. So this little island nation named the Solomons, confiscated one of our purse seiners and it caused a tremendous international problem. We put sanctions on this little island nation, the Solomons, simply because our vessels went right into their EEZ. As a result we had to get rid of this theory, or this idea, that because tuna is a highly migratory fish, you can fish anywhere. That did not help our fishing industry, I might say.

But, sharing the Chairman's concerns, has the administration established any benchmarks? For example, where are we after a 2-year period, and where are we going in order to show exactly whether ICCAT is really doing its job or is it just dragging its feet?

Or are they just giving you the runaround? As the Chairman had said, there continues to be a depletion of the stock of species that are supposed to be ICCAT's responsibility to conserve.

Mr. DUNNIGAN. Thank you. Again, I would say that I think that ICCAT is making a lot of progress. We don't have benchmarks in ICCAT quite the same way that we do in our domestic management program, where we look at minimum spawning stock thresholds and maximum fishing mortality thresholds. All of those parameters are calculated by the scientists that support the decision-makers, but ICCAT doesn't adopt those same sorts of benchmarks specifically.

This is a business of incremental progress and of being patient and of sticking to it and not giving up.

Mr. FALEOMAVAEGA. I didn't mean to hit you with these questions. I would like to ask Admiral Hathaway, do you think the Coast Guard should participate in our military operations in Iraq?

Admiral HATHAWAY. Thank you for that question. A little off the subject, but the Coast Guard has been for many years a very proud and capable member of our joint war-fighting team. And I certainly believe, and I know the commandant of the Coast Guard believes, that it is in the best interest of the American public that it stay that way. However, we do bring unique capabilities to our joint force package. We have a niche in the expeditionary overseas missionary, and we think we perform that very well. And I think that everyone involved had only rave reviews for Coast Guard participation that continues today supporting Iraqi freedom.

Mr. FALEOMAVAEGA. Well, I just want you to know how appreciative and proud I am to know that you had a role, and that all the men and women associated with our Coast Guard are doing a fantastic job. Whether it be in time of military need or protecting our coastline, I think you are doing a fantastic job.

I don't have any questions to ask Mr. Considine. As you have constantly said, Customs is out of this whole picture, practically, but that is OK.

Mr. Balton, regarding the State Department policy on this very issue: Is suggesting that we do trade sanctions as a possible option something that the State Department would support, such as that offered in the proposed resolution?

Mr. BALTON. Let me first look at the resolution and talk about trade sanctions more generally. As Mr. Dunnigan said, we support the thrust of this resolution. We do think it is appropriate that Congress express its view of the need for ICCAT to take stronger measures and to be more effective.

There is some wording in here, as Mr. Dunnigan suggested, that raise a question. So for example, I am looking at this phrase that says "if any vessel" of a commission member or non-member fishes in a way in violation of ICCAT rules, then trade sanctions kick in. If every nation adopted this rule, the U.S. could not export tuna. Because no country, including the United States, can guarantee 100 percent compliance by all its vessels at all times.

It is that sort of issue we want to sort out with your staff, to try to get the standard to be the right standard. That is what he was referring to.

Mr. FALEOMAVAEGA. As you know, the concurrent resolution really is just an expression of the sense of the Congress.

Mr. BALTON. Yes, I understand.

Mr. FALEOMAVAEGA. I thought that maybe the Chairman may want to go to the next phase by putting more teeth into it and by not calling it a resolution, but by making a bill out it and really get the attention of ICCAT. What do you think of that?

Mr. BALTON. That would make it all the more important to get the standard to be the appropriate one. And single-vessel standard, in my view, is not the appropriate standard. We could not meet that standard.

However, we are already prohibiting imports of tuna caught in the Atlantic from many countries, based on the ICCAT multilateral trade restriction scheme. We chair the committee in ICCAT that governs these issues. Indeed, I chaired it myself one year. It is quite effective. We may need to expand it, may need to do more of the same. But it is not like we are not using trade sanctions already.

Mr. FALEOMAVAEGA. Gentlemen, thank you. Thank you, Mr. Chairman.

Mr. SAXTON. Mr. Balton, do you agree with the general thrust of the resolution?

Mr. BALTON. Yes, Mr. Chairman. I think I already said that.

Mr. SAXTON. Mr. Dunnigan, do you agree with the general thrust of the resolution?

Mr. DUNNIGAN. Yes, Mr. Chairman.

Mr. SAXTON. Thank you. That is a good thing.

Mr. DUNNIGAN. Thank you.

Mr. SAXTON. We held a hearing similar to this one—I am sure my colleagues will remember—about a year ago. Are we any better off today than we were a year ago, when we held the hearing? Have we made any progress?

Mr. DUNNIGAN. I think we significantly are, Mr. Chairman. I think we made a lot of progress at ICCAT last year. And frankly, I think, from our standpoint in the delegation, it is helpful to know that we have the support and the attention and the concern of the Congress behind us. But last year at ICCAT, we worked on rebuilding programs, we emphasized the need for data. ICCAT, for the first time in a long time, recognized that as an organization it was changing, and we brought a lot of countries under the tent. There is now a quota table for eastern bluefin tuna, where all of the countries that are fishing are on that table and now have a clear, affirmative obligation to limit themselves to quotas.

I think we came back from ICCAT with an improving structure that gives us some hope that the organization is going to be able to be even more effective in the future. And by my earlier comments, I think you understand, we agree that ICCAT needs to become more effective. We are working very hard to make it a more effective organization. And we think we made a lot of progress. That was part of the good news that we came back from ICCAT with last year. So I think we are further ahead, especially, you know, once ICCAT recognized the scientific advice of the improvement in the swordfish stocks.

There is still a lot to do. White marlin is a problem; we have got to keep working on it.

Mr. SAXTON. Tell me what—in a general sense, what is the biggest issue, what is the biggest problem facing the ICCAT process?

Mr. DUNNIGAN. I would say right now the biggest issue is improving and making more effective its compliance schemes.

Mr. SAXTON. Mr. Balton, you are agreeing, I think?

Mr. BALTON. Yes.

Mr. SAXTON. What can Congress do to be helpful? You both have indicated that it is helpful to have Congress sit up and take notice and say that we are interested, which we are, as you can tell. If you had a blank sheet of paper and you could say here, Congress, this is what you need to do to help us, what would that be?

Mr. BALTON. It is a difficult question to answer. Let me try this: I have a vision of ICCAT that in several years we will have gotten the organization to fully implement this white list approach. This would be, in effect, a register of ICCAT vessels that are permitted to fish in the Atlantic for tunas; and that vessels that are not on the list—and you only get on the list if you are in good standing—cannot sell their product, cannot land it, cannot have it transshipped, cannot have it imported. I would like to see that implemented. I don't know whether the current ATCA, the Atlantic Tuna Conventions Act, provides the type of specific legislative you need to make that work. But that is still a few years down the road. I think that ultimately will be the best approach for ICCAT, along with many other measures that it will be taking. But it may not be timely for us to look at changing the law today. We may need to see how specifically ICCAT develops and implements its white list. But that is the sort of thing that we will want to work with Congress on to make effective.

Mr. SAXTON. Jack?

Mr. DUNNIGAN. Thank you, Mr. Chairman. I think I would agree with Mr. Balton. And getting back to a comment that I made a little bit earlier, as we see more and more of international fisheries conservation going in the direction of focusing on trade, we may need to have some serious discussions about whether this sort of fishery-by-fishery piecemeal approach is the best one, or whether we ought to have a more comprehensive, broader approach toward fisheries trade and developing mechanisms to really effectively keep illegal product out of this country.

The other thing that we ought to be thinking about in terms of improving conservation, in a monitoring sense, is observer coverage. It is a very controversial issue. In NAFO, for example, right now, NAFO requires 100 percent observers on all vessels fishing in the NAFO area. And that is very expensive. But we need to look at whether or not—clearly, in most fisheries, we need to have dramatically more observer coverage than we have now. And I think we need to look at other new technologies, such as vessel monitoring systems, and the possibility of making investments there.

In an international sense, the United States could be even a better leader if we could help export some of this capability, this monitoring and compliance capability to other countries. We have been doing some of that, and that might be an area where we could devote some more attention.

Mr. SAXTON. Let me make a suggestion for short-term help. You both agree with the general thrust of the resolution, and I think that is great. And Dave has indicated that he is more than willing to work with you on language. Let's get this passed. Let's get it in a form that the administration can support it. Let's get it passed. Then about the same time, I will introduce, as Mr. Faleomavaega suggested, a proposed statute which does—which would implement the provisions of this resolution. And when you go to ICCAT, you can go and say those crazy guys in Congress, look at what they are going to do if we don't make progress. And maybe that will give you some leverage that you don't have. I mean, if we take a baby step and then we say that we are going to take a real step, and then you go with an arrow in your quiver that you don't now have. What do you think?

Mr. DUNNIGAN. I think we would be glad to work with you on that. Again, we need to know—

Mr. SAXTON. Does that mean yes?

Mr. DUNNIGAN. —and our partners at ICCAT—

Mr. SAXTON. You know, there are some guys that advise us over on the House floor. And when we walk in, we say what time are we going to vote? They say, well, sir, it may be about 2 o'clock or so. And then I come back and I ask them another question, and I say what time are we going to be finished today? And they say, well, possibly around 10 o'clock, but it could be a little earlier or a little later.

Now, you are giving me those kinds of answers. I want to know if this would be helpful as an arrow in your quiver when you go to ICCAT.

Mr. DUNNIGAN. Mr. Chairman, it is an honor to be compared to House of Representatives staff.

Mr. SAXTON. That is an even more vague answer than I got before. Is there something wrong with my English?

Mr. DUNNIGAN. And we will be glad to work with you. Thank you.

[Laughter.]

Mr. SAXTON. OK.

Frank, have you got any questions?

Mr. PALLONE. Yes, I wanted to ask a couple of things, but I—

Mr. SAXTON. You will probably get a "maybe" answer.

Mr. PALLONE. What you said about the questions we get, you know, about the House schedule was certainly true last night and this week. That is a perfect example of it.

I just—a couple of things. Following up on one thing that Mr. Dunnigan said, you mentioned the importance of observer coverage. And I know that we have also raised this concern to you, with regard to the resolution, that, you know, whether the U.S. itself would be vulnerable to trade sanctions. And one of the recommendations for which our compliance was questionable required a minimum of 5 percent observer coverage for all long-line trips targeting yellowfin and big-eye tuna.

Is it true—I guess the question is, is it true that the U.S. has been out of, and may still be out of, compliance with ICCAT recommendations. And if you want to comment on which ones those might be?

Mr. DUNNIGAN. I don't believe that we are out of compliance with ICCAT recommendations right now. I don't have the numbers on the specific details for the question you asked, and we will have to get you those separately. We take these responsibilities for implementing ICCAT very seriously. Ask our fishermen. You know, they certainly understand that we are serious about implementing these things.

Mr. PALLONE. Well, if you want to get back to us on it.

Mr. DUNNIGAN. I am going to have to get back to you on that.

Mr. PALLONE. I would appreciate it.

Mr. DUNNIGAN. Sure. Thank you.

Mr. PALLONE. And then I wanted to ask Admiral Hathaway, Mr. Balton mentions in his testimony that most of the flag states whose vessels are the greatest source of IUU fishing are not parties to international fishing treaties. And in your testimony, you mentioned the Straddling Fish Stocks and Highly Migratory Fish Stocks agreement, which allows the Coast Guard to board foreign fishing vessels flagged by nations that are party to mutual international fishing agreements. It appears you are helpless to stop IUU fishing from the flag states whose vessels are the greatest source of IUU fishing. Is that true? And how could that problem be solved if it is true?

Admiral HATHAWAY. Well, sir, once again we come at this from the Coast Guard point of view, at-sea enforcement. We have seen that where we are able to devise cooperative agreements with signatory flag states to various international agreements, we can devise very effective at-sea enforcement regimes. I think Mr. Balton's statement is right, that many of our international agreements that exist today are absent the signatures of some very significant countries that we would like to see as signatories. And I think that that is a process that is going to take time. And as we bring more countries on board, those countries that are hold-outs for whatever reason are going to be pressured to eventually get on board.

What I can tell you is that, when we have those significant countries as signatories, the Coast Guard has been very successful in devising very enforceable at-sea regimes to be able to take very effective action. And the best example of that in recent memory has been in the high seas driftnet arena, where we do have, in many cases, the right countries signed up, the PRCs of the world—South Korea, Russia—and we have been able to devise some very effective at-sea enforcement regimes.

But we have a lot of work to do to bring some significant countries on board with other international agreements—and, I would say, including ICCAT. I am sure that there are other countries we would like to bring into that forum.

Mr. PALLONE. OK. And I just have one more question, Mr. Chairman. Mr. Dunnigan, this year's Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory Species indicated that NOAA fisheries is currently evaluating the efficacy of recently implemented time-area closures intended to reduce bycatch. Can you summarize the results that have been found for these closures? And are international time and area closures a potentially effective tool for international fisheries management?

Mr. DUNNIGAN. Yes, thank you, Mr. Pallone. I think that time and area closures are always an effective tool that needs to be in the arsenal of any fishery management organization, and they need to be applied appropriately with the fishery conservation needs and the practices in those fisheries.

We have implemented some significant time-area closures in our fisheries, and we are still in the process of doing an assessment of the effectiveness of those. But some of the preliminary information is showing that they can be very effective, and we are very pleased with the early returns that we are getting. But we are still looking at that, and we won't—we don't have that available yet.

Mr. PALLONE. This is specifically with reducing bycatch, right?

Mr. DUNNIGAN. Not only with reducing bycatch, but also with improving the status of some of the resources.

Mr. PALLONE. OK. Thank you.

And Mr. Chairman, I know I asked some of the questions he said he would get back to us in writing, and maybe we can submit those in writing, with your permission, so that you know specifically what we were asking.

Thank you.

Mr. SAXTON. Thank you, Mr. Pallone.

One of you mentioned the High Seas Driftnet Fisheries Enforcement Act, and Dave reminded me that the Act, that Act has serious trade sanctions in the law and that when we threatened driftnet fisheries nations with sanctions, we got compliance. Do we need to do something like that to the Atlantic Tuna Conservation Act?

Mr. DUNNIGAN. I wouldn't suggest that right now, Mr. Chairman. I think that we have a lot of tools that are available to us working with ICCAT and in the Atlantic Tunas Convention Act. So I wouldn't suggest right now taking that same approach. I think it is fairly clear to people who watch what we do—and they do watch—that there is an enormous amount of interest in the Congress and in the community at large in making sure that these systems work. And I wouldn't recommend right now that you need to take that action. But I think knowing that you have it on your mind is helping us. It is helping us with the other countries.

Mr. SAXTON. Thank you very much. Do you have further questions, Mr. Pallone?

We have no further questions at this time. We thank you for coming here today.

I would just remind everyone who is here that at 12 o'clock on the west side of the Capitol, there will be a memorial service for the events of 2 years ago today. I am sure everybody remembers exactly where they were. I do. And as I turned on the television this morning, although I deal in a different forum with that subject every single day, seeing those pictures again was a grim reminder of those events and everything that has transpired since then. So it would certainly be appropriate for all of us to go and join our colleagues and friends on the west side of the Capitol this morning. I certainly will be there, and hope you will.

Thank you. And thank you for being here today. We are adjourned.

[Whereupon, at 11:37 a.m., the Subcommittee was adjourned.]

○